

A Survey of Socio-Political Basis of Constitutional
Freedom of Worship and the Impact of Kenyan
Church Opposition to Certain State Policies
On the Said Freedom:

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By

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Dedicated to my Mother whose indomitable spirit and relentless self-sacrifice has made me what I am.

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LIST OF ABBREVIATIONS

- A.C. - Appeal Cases
Ark. - Arkansas law reports
Ch. - Chancery law reports
Cal. - California law reports
C.L.A. - Commonwealth law report
K.B. - Kings Bench law reports
K.L.R. - Kenya law reports
L.R.P & D - Law reports: Perry and Davison
N.E. - North East law reports
U.S. - United States law reports
ILL - Illinois Law Reports

TABLES OF CASES

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Introduction.

In the mid 1980's many Christian Churches in Kenya have displayed an increased political awareness. Various church leaders have boldly commented on sensitive political issues that have been traditionally viewed as exclusive domain of politicians and engaged in heated public exchanges with Kenyan politicians over the role of the church in the politics of the country. In 1984 a few church leaders antagonized the politicians by seeming to side with the disgraced former Minister for Constitutional affairs Mr. Charles Njonjo. In 1986 the greatest church-state conflict was triggered off by KANU's resolution to adopt a new election method. On 20th August 1986 Kenya African National Union's (KANU) supreme organ, the annual delegates conference resolved that preliminaries to 1988 general elections will be done by having voters queue behind candidates of their choice. Those candidates who would not get at least 30% of the voters into their queue would be barred from proceeding to the next stage of the election. The National Council of Churches of Kenya (N.C.C.K.) which is an organisation of most of the protestant churches in Kenya combined with the Catholics to oppose the new polls method. The NCCCK argued that the queueing method is divisive while the Catholics contended that it was unconstitutional¹.

The politicians received the news of this opposition with utter surprise and deep resentment. Cabinet Ministers, and prominent KANU leaders deplored 'Church interference' in politics and challenged those Bishops with political ambitions to quit the church and join politics². As the storm continued to gather strength and more leaders continued to hurl warnings and threats at the clergy the Nation seemed to be poised at the edge of a crisis hitherto

unknown. Amidst calls for KANU to investigate some 'bogus' churches ³ the state seemed ready to crackdown on the church while the church appeared to be digging in for a protracted combat. However the crisis was swiftly eradicated by the President's exemption of senior church leaders, senior civil servants and senior members of the Armed Forces from queuing.

As the dust settled many important questions that had been raised by the confrontation remained unanswered. Such were questions of the source of freedom of conscience and worship and the role of the church in a socio-political set up. The main question of the day was whether freedom of worship in particular transcends the socio - political reality or is dependent on it. One of the basic aims of this paper is to answer this questions.

The Church leaders argue that freedom of worship does not emanate from any socio - political or legal factor, but is given by almighty God. Thus no government could claim to have given or guaranteed it and the best any government can do is to protect it. These sentiments are put in a nutshell by CPK Bishop Dr. John Henry

Okullu when he says:

"In East Africa the authorities have managed to talk of freedom of worship in such a fashion as to make even some church leaders think of it as a deal between church and the state, not realising that freedom of worship is an essential freedom given by God and protected by the state"⁴

Another CPK Bishop the Right Reverend Alexander Kipsung Muge says the same thing in a different style when he asserts that "Freedom of worship is not a privilege but a right ... and it's the duty

of every government to recognise and safeguard that right"⁵. To Bishop Muge and his colleagues freedom of worship is extra-political and extra-legal. He contends that anybody who claims to have given freedom of worship is assuming the role of God and takes exception to the argument that freedom of worship is guaranteed by the constitution. His opinion is that such an argument leads to worship of the constitution rather than God!⁶.

This paper finds the cleric's view dogmatic, idealistic and unrealistic and seeks to prove that freedom of worship is dependent for its survival and flourishing on socio-political realities of the day. Both the church and the state exist in the same society and each has carved sovereignty in a certain sphere. The spheres overlap and the main issue at the end of the day is: how far should the church concern itself with secular interests that fall within the domain of the state, and to what extent should the state step into the spiritual sphere delineated for the church. It has therefore been necessary to find a formula of co-existence between the two potentially antagonistic forces. As Professor Stark observes:

"The universal church has to develop a Modus vivendi with the state thus avoiding the scylla of absorption into it and the charybdis of ejection from it".

He then looks at it from a different angle and continues:

"The free church's most pressing problem therefore has been the preservation of its identity both in sense of independence and in sense of survival; and the first and foremost means towards this end has been self-definition in terms which exclude coincidence with any concrete country, an organisational framework which is wider than any individual Kingdom or Nation"⁸.

While Professor Stark has diagnosed the problem he has prescribed the wrong cure when he tells the church to define itself in "terms which exclude any concrete country, an organisational framework which is wider than any individual Kingdom or Nation". Such a framework might have existed in dark ages when the Pope used to be both the head of the international church and the most powerful political authority in the Christendom. That time the universal church had political clout of its own and did not need the **local** political authority to guarantee its independence or survival. However, today's churches are either indigenous or have their organisational framework within national boundaries with loose connections with similar churches in other countries. Each church's connection with its international counter-parts, if any, is normally a very loose federation as opposed to a centralised command. Not even the Roman Catholic church where the Bishop of Rome (Pope) is still recognized as a head of the whole international church can do anything to prevent eradication of any Catholic church in any particular country. It follows that the proper light in which to view the church is country by country rather than internationally and the concept of a universal church is impractical and misleading. As such a church has to ensure its survival within the socio-political set up of the country in which it operates. It has to develop a Modus vivendi with the supreme political organs in that particular country. Starting from this premise the paper will expound on the dependence of freedom of worship on amicable co-existence between the church and the state, and then the effect of Christian church opposition to certain state policies eg, queuing method on freedom of worship in Kenya.

In brief the paper aims at proving that freedom of worship survives and thrives only where the church allies itself with the dominant political force in the society. This dominant political force may be the state or a new revolutionary front that is about to supersede the state. In Kenya church opposition to some state policies while distancing the church from the state doesn't have the support of a new politically powerful front. In that case it can only lead to deterioration of church - state relationship and further curtailment of the freedom of worship.

Of the four chapters that make this paper the first chapter looks at the Christian church as an integral part of the society which reflects the social under-current therein. It is a general chapter with broad international outlook with an aim to illustrate historically the dependence of freedom of worship on the prevailing political goodwill. It will endeavour to show that the church has always been at pains to secure such goodwill thus its survival and independence, by directly or indirectly supporting the most powerful group in the society. It will illuminate the church support of despotic rulers of medieval Europe and oppressive regimes such as the colonial and apartheid ones. Illustrations will also be provided of situation where the de jure state loses power and the church ceases to cooperate with the waning state and supports the usurper or the de facto state. Lastly it will include a brief analysis of introduction and development of Christian churches in Kenya.

Chapter two focuses on the freedom of worship in Kenya both under colonialism and after independence. Section 78 of the constitution which guarantees freedom of conscience and worship is analysed

with particular emphasis on subsection 5 thereof which qualifies the freedom so much that under its umbrella the state can virtually wipe out this "guarantee" without violating the constitution. It is then submitted that since the constitution is ineffective in safeguarding this freedom the only thing that can prevent its elimination is the strength of the church which can only be got by keeping in the good books of whichever is the most powerful political force in the society.

The third chapter looks at various instances when churches or individual clergymen have contradicted state policies or "interfered in politics" as it were. The queuing debate features prominently in this category as well as acts of such churchmen as Dr. Timothy Njoya, Bishop Alexander Muge and Bishop Gitare among others. All these incidences will reveal whether the church has been speaking from a position of strength as a voice of a resurgent dominant democratic front or whether it was speaking from a position of weakness, like a solitary Gadfly on the flank of a massive noble horse.

The fourth chapter is an analysis of the state response to the church opposition and the impact that response has had on the freedom of worship in Kenya.

FOOTNOTES: INTRODUCTION

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CHAPTER ONE

The Social-Political Basis of Freedom of Worship

(a) Religion and Society

A discussion of freedom of worship inevitably brings into picture the question of religion. On the other hand one cannot talk about religion in isolation from the society for the simple reason that religion is a dynamic motive force of any and all societies. Indeed almost everyone has had a brush with religious practice at one time or another even if he is not an adherent of any given faith. No wonder much ink has been spilled in endeavours to define religion and the search for the most concise and precise definition of the same continues unabated. However, very few will dispute Phlekanov's definition which refers to religion as, "Belief in supernatural beings associated with morality and serving as its sanction"¹.

In view of this definition religion is seen as a vehicle of enhancement and preservation of morality in a society. If we take morality as the sum total of a society's valuations and those tenets the society holds dear, then religion goes to the core of the society. It consists of a culmination of social tenets into a concrete cultural institution. Christian religion is just one of the numerous Kenyan religions although it is the dominant one. Apart from this dominance it has been chosen for discussion in this paper due to time and space limitations which make it impossible to focus on all the religious forces in Kenya. Besides many controversies that have aroused issues of freedom of worship have involved the Christian Church.

Like the other religions the Christian church has come to be an integral part of the society and will always reflect the social economic and political values and prejudices in the society. Generally it is a part of a people's dynamic culture and reflects cultural evolution and sometimes revolution in any given social context. As a part and parcel of the society the church formation will reflect the forces of motion, change and contradiction in that society. Thus it would be a folly to envisage a church that is divorced from the socio-political and economic realities of the society that surround it. Should such a church appear it will not last long before it is once ignominiously cast off by the society because of its incompatibility with the prevalent social institutions. In a capitalist society the church has to be charted on capitalist lines and reflect the contradictions and inequalities in the economy. In other words if a church was to emerge in a free enterprise economy and start advocating for a social reform, as a result of which everybody is going to share the National resources on equal footing, everybody who has any bit of private property would "cry foul". It would be branded 'subversive' and then ejected from the society forthwith. To avoid imminent demise such a church will have to adhere to the social values which are inseparable from economic realities and extol the virtues of private property, private industry, initiative and innovation.

Some clerics² and Religious Philosophers^{2(a)} assert that the church and the state are divinely and independently appointed by God and each allocated a specific role. For

the church the spiritual domain is her's while the state has the secular sphere. Their Jurisdictions are thus correlative and coordinated and none is dependent on the other. It is submitted that this view is misleading and is not right as both the state and the church exist in the same society and share most if not all the members. The demarcation of the society into air-tight compartments, one designated secular and the other spiritual is impossible and one will have to go back to the socio-economic base of the society to find the base of the church. The question that one can pose at this juncture is: if the church is socially based and reflects the socio-economic values of a socio-political organisation how come that the church is not a homogenous unit?? This question can only be answered by looking at the source of contradictions in the society and the diversity of social values in any given society.

Contradictions in any society emanate from diversity of social values. It's an acknowledged fact that only the most dominant values are common to the whole society while the lesser ones apply only to some parts of the society. For instance preservation of human life is a national value in Kenya. The same applies to free enterprise and private property. On the other hand monogamy can't be said to have taken a national dimension as a value. This diversity of social values is reflected in social contradictions and ultimately in the Christian church itself. This diversity of social values and the resulting social contradiction is the one that accounts for the division of the church into hundreds of sects. Each sect differs from the others on basis

of the value/s it cherishes that the others don't. For the African Independent Pentecostal Church of Africa (A.I.P.C.A.) their tolerance of polygamy, female circumcision and a few other traditional African Institutions is their only difference with Catholics. Spiritualism characterises most of indigenous African Churches otherwise they are just like the other Christian churches.

It should therefore be noted that when the author talks of 'the church' he doesn't presuppose homogeneity in the Christian church but regards all such churches as owing their existence and survival to adherence to the prevalent social system their differences notwithstanding.

Freedom of worship is an inextricable part of church's existence and will not only depend on the above-mentioned adherence to the social order but also on the concomitant political setting. To enjoy such a freedom the church always has had to directly or indirectly ally itself with the powers that be. In other words the church has to enter into an entente cordiale with whichever political force it is that calls the tune in the society.

Such a dominant force can either be the state or a new political front, democratic or otherwise which is in a position to supersede the state and take political control.

I will firstly look at the direct and indirect church alliance with the state and secondly at the church alliance with a revolutionary front that seems poised to override the state. Such marriages of convenience are destined to ensure

the survival of the church as well as its freedom in conducting its acts of worship.

(b) The Church-State Marriage

Right from its dawn Christian church has had on several occasions to ally itself with the ruling state to guarantee unpersecuted continuity of its activities. The first known such alliance took place at around 313 A.D. when Constantine a Roman Emperor got converted to Christianity and gave the church his patronage. He issued a decree known as 'Edict of Toleration' legalising Christian worship in the Roman Empire. However, feudal Europe provides the best illustration of this marriage of convenience.

The classic case is that of England³. The Roman Catholic church was the official religion and led a privileged existence until it refused to fulfil the King's wishes which in those despotic times were synonymous with the state's wishes. Henry the VIII wanted to divorce his wife Catherine of Aragon because she had failed to bear him a living son. However, the Pope refused to annul the marriage as he was a virtual prisoner of a Germanic Emperor Charles V who was Catherine's nephew. The Pope's dilemma was to choose between ensuring the Church's survival in its supreme seat in Rome by appeasing Charles or its survival in a distant Kingdom (England) by appeasing Henry. He chose to appease Charles and refused to grant Henry the divorce. The Pope's failure to comply broke the alliance between the Roman Catholic church and the English State. The King consecrated his own Archbishop Thomas Cr

and declared himself the head of the new church known as the Church of England. At the same time the Roman Catholic Church was banned and it was declared illegal to say mass which is the main act of worship in a catholic congregation. The Church of England was thus a creature of state and its existence as well as its liberty to worship was dependent on the state from the outset.

In France before the French Revolution "The church and the monarchy were the twin pillars of ancien régime."⁴

In expressing the relationship between the church and the state Alec. R. Viddler had this to say.

"The clergy were a privileged class. The catholic church had no rivals for since the revocation of the edict of Nantes catholics alone had the right of citizenship....

The Bishops, accomplished and cultured men of the world were more occupied with politics than with spiritual care of their dioceses. It was said they administered more provinces than sacraments. They lived in a state of magnificence and of absence⁵."

In France therefore the church was an inextricable part of the feudal state. No wonder when the feudal state fell the church had to change or perish.

A more recent example is provided by the marriage between the colonial church and the colonial state. Western scholars argue that the motive behind missionary excursions into Africa was altruistic and philanthropic. It is the missionaries' humanitarian pity for the savage natives that were perishing in their thousands due to slave trade, inter-tribal wars and loathsome diseases that drew them to Africa. Humanitarianism was one of the

motives but it wasn't the only and by no means the dominant one. One just needs to glance at the activities of the church in the colonised countries, and the speeches and writings by any of the missionaries to find the real and dominant motive. For instance Dr. David Livingstone a pro explorer cum-missionary known for his altruism considered commerce and Christianity inseparable. In his oratory he assured his audience that:

"In Zambezia he had come upon bonanza of cotton wealth which would make Britain independent of slave-grown product of American Southern states and that in the river Zambezi he has discovered a water route which would carry mechanical transport cheaply into the interior"⁶.

In this statement his concern was commerce and pursuit of raw materials first and foremost and then christianity. At Cambridge the priority he gave to commerce was more evident when he concluded a breath-taking speech in the following words:

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"I go back to Africa, to make an open path for commerce and christianity; do you carry out the work, I have begun. I leave it with you"⁷.

When one finally removes the veil of altruism, one discovers the missionary institution's true colours. Missionary initiatives and later the colonial churches were the ritual aspect of European imperialism and colonialism. In words of a Ghanaian minister of communications while addressing a Methodist Conference., it was "out of loyalty to English Kings and queen that missionaries in colonial days used the pulpit to disseminate ideologies enhancing the exploitation of the people"⁸.

In Central Kenya the Kikuyus had an apt saying: "Gutiri muthungu na mubea" (There is no difference between a missionary and settler)⁹ which embodies the colonised people's view on missionary's relationship with colonial authorities. The whiteman got the African on his knees praying while the other got away the land. The colonial church not only spread the gospel but the missionaries:

"Could not envision a politically free Africa in which everyone enjoyed equal opportunity. They defended the constituted authorities and were passionate in favour of peace and order and condemned those Africans who got involved in subversive political activities!"¹⁰

It would not be an overstatement if one was to say that the church and the colonial administration were the pillars of colonialism and that the colonial church could not have survived had it not participated in the advancement of colonialism. No wonder the few independent churches that arose and attempted to denounce the evils of colonialism were either banned or had their members relentlessly hunted and persecuted. In other words they could not enjoy their freedom of worship.

Yet another example of a church allying itself with an abhorrent political institution so as to advance itself is the Gereformeerde Kerk (NGK) or the Dutch reformed church of South Africa. The NGK has been the ritual aspect of apartheid (Racial segregation) and has frequently sought scriptural and theological justification for it. NGK distorts the calvinistic theology of puritanism to make it the basis of the so-called Afrikaner nationalism which is another name for South African brand of racism. A typical sermon given by one Bishop Bashoff of NGK sounds as racist as that which would be given by a government minister cum-fanatic of apartheid. He said:-

"The black giant of Africa is eating bread for which he has not sweated, he wants to wear clothes which do not fit him, he wants to pay with what he doesn't possess yet, wants to talk about things he doesn't comprehend, wants to be where he still is not. By contrast the white giant is entirely ignored. The real giant of Africa - the white man and his name is Afrikaner - doesn't come into picture at all..

Every whiteman who loves this soil and loves his own child must come together to meet the enemy on his own terms. Those who strike must be struck back¹¹.

Apart from this open blessing of apartheid by Afrikaner church the numerous English-speaking churches in South Africa who claim to be opposed to apartheid have always expressed their opposition in very mild, timid and measured tones. They have thus continued to give indirect support to a state they viewed as abhorrent and dehumanising for their own survival.

Today many of the above-mentioned churches are becoming more and more outspoken against apartheid for the reason discussed below.

THE CHURCH DIVORCES THE STATE

The church continues to ally itself with the state so long as the state can guarantee the church's existence and give it a free/hand in its activities. It follows that the more the state becomes unpopular the less the guarantee and the more the church will tend to distance itself from the state and court the group or groups that are gaining popularity at the expenses of the state. Thus at the dusk of a political era the church will be found hurling poison - tipped lances at the dying state and embracing the emergent political force. It ceases to champion the now disgraced and vanquished powers, and hails the new bosses of the society.

Where it fails to do so it can be considered to have committed suicide as the makers of revolution will not tolerate it. It will be considered a remnant of the old system and will have to be suppressed at all costs. For such a church, freedom of worship exists nowhere but in fantasy and the church itself as a unit can't survive elsewhere but underground. such was the case in France during the French Revolution of 1789.

As the church estates were nationalised in the flames of revolution, a legislation was passed known as the civil constitution of the clergy abolishing all the privileges that the church enjoyed under the ancien régime and putting it under state control. Many Bishops adopted the new constitution but those who refused (non-jurors) came

under ferocious attacks and where massacred en masse
In the ensuing reign of terror those non-jurors who didn't
flee the country lost their lives. The church continued
to be persecuted until Napoleon came into uneasy understanding
between the church and the state in the famous concordat
of 1801¹². The catholic church in France had imbibed
too much of the old regime into its system to be able to
change fast enough and was almost consumed by the flames
of revolution. Had it sailed with the wave of change and
sided with the revolution it would have drawn no fire
from the revolutionaries.

Chile in Latin America provides a more current example.
In 1973 General Pinochet overthrew the socialist regime of
Allende and started a military dictatorship. A long litany
of repressive measures was implemented by the military
and its allies; mass arrest, tortures, exiles, executions
and disappearances became the order of the day. By October
1973 there had been 130,000 arrests 200 disappearances and *and*
executions. How did the church react to all these?. The state
was still very strong and showed no signs of waning; therefore:

"In general the Bishops were careful to use moderate tone
in criticism of the government because direct and harsh
confrontations would achieve no good purpose proportionate
to the damage of a definitive rupture with the regime.
Rather than hurl defiance at the government, the Bishops
employed much private diplomacy in the search for an
appropriate means to relieve suffering and retrieve
freedom"¹³

By 1976 more and more people were articulating their opposition to tortures, arbitrary arrests and detentions. The church was also becoming louder and louder in its criticism of the state. Thus when in 1978 the relatives of those who disappeared staged a hunger strike many Priests and Bishops joined in sympathy. By 1980 the discontent had assumed enormous proportions and the church had come out openly against the regime with whom it had been very careful not to break just a few years before. The historic harmony of the church and state was disappearing fast and the state came to see the church as a disruptive agent challenging its national security policies. By 1986 the pinochet regime was not only tottering at home but was also losing international support including that of its benefactor to the north, the United States. Now the fall of Pinochet Regime seems inevitable and the church is serving as the Clarion caller of the winning opposition political forces.

In the Philippines the Catholic church endured 2 decades of Ferdinand Marcos dictatorial Regime. However, when the Filipinos got tired of Marcos repression after he had rigged the February 1986 elections, and embarked on a National protest to get rid of him Cardinal Sin and his church condemned Marcos and jumped on board the revolutionary bandwagon. As thousands of Filipinos staged defiance campaigns that culminated in ouster of the dictator and brought Corazon Aquino to power Cardinal Sin used to wear vestments in anti-Marcos opposition colour while conducting mass. Meanwhile a 120 member Bishops conference released a statement condemning Marcos falling regime as follows:-

"The government that assumes or retains power through fraudulent means has no moral basis"¹⁵.

Thus the church divorced Marcos regime and joined hands with the revolutionaries to put the widow of assassinated Senator Aquino at the helm.

Even in South Africa the church is distancing itself from apartheid. The English speaking churches have at last found their voices and are joining the black revolutionary churches that are mushrooming in South Africa in a strong condemnation of apartheid. The most illustrative, astonishing and opportunistic development is in N.G.K. As anti-apartheid forces grow from strength to strength even the NGK has steadily continued to depart from its position as the traditional clarion caller of apartheid. Recently a conference of N.G.K. Bishops declared apartheid theologically unsound thus making one of the most dramatic about-turns in South African church history. The church's concern for its own survival is obvious in its eagerness to acknowledge the powerful liberation movement. These survival sentiments were aired in a classic tone by Archbishop Jorst de Blank:-

"The Africans have now turned not only against those whom they considered to be their white oppressors but also against the Christian church as being identified with them. In the terrible happenings of those days a large number of churches where burnt, ministers of religion were attacked and christian members of congregations were threatened and accused of betrayal. The church is now at crossroads. It's future is as precarious, unless it openly and publicly repudiates the doctrine and practice of compulsory segregation it is condemning itself to extermination"¹⁶

Indeed the church would condemn itself to extermination if the

revolution was to catch it still stuck deep in the quagmire of justifying apartheid. As it has already realised its survival lies with the winners.

To conclude the hypothesis it is reiterated that the church can only manage to alter any state policy if speaking for up and coming dominant forces in the country. If this is not the case its opposition to some policies can only cause a backlash from the state with a devastating effect on freedom of worship. Later the paper will analyse the effect of Christian church opposition for some state policies in Kenya in the light of church strength vis-a-vis the state.

(d) PLANTING OF CHRISTIANITY IN KENYA

The history of the planting of the Christian church in Kenya forms an important background to the understanding of the basis of freedom of worship in Kenya both during the colonial era and the post colonial one. Religion being a part of a people's culture the history of Christian church in Kenya is an embodiment of a systematic cultural imposition and ultimately cultural alienation. As for the independent churches in Kenya and elsewhere they can be seen as indigenous reaction against this cultural alienation.

The earliest brush that Kenya had with Christianity was in 1498 when Vasco da Gama set anchor at Malindi and walked ashore with his officers and priests. When he sailed away his priests who were Roman Catholics had identified an area that they thought

all over Kikuyu land, Embu and Meru districts as well as some parts of Western Kenya. The first African priests were ordained in 1927 while amongst the several orders of sisters operating in Kenya Immaculate Heart of Mary sisters got their first African Mother Superior in 1946.

Other missionaries that arrived before the close of 19th century were an inter-denominational missionary group known as the African Inland Mission (A.I.M.) which later came to be known as African Inland Church (A.I.C.) They arrived in 1895.

Among the significant missionary groups that arrived after 1900 are the Presbetyrian Church of East Africa (P.C.E.A.) that started operation mainly in Kikuyuland and the Methodist Church of Kenya that now operates among the Meru as well as at the coast and Lower Tana region. The Salvation Army arrived in 1921 and has its work mainly amongst the Kamba and the Luhya though it maintains a number of congregations in major towns like Thika, Kisumu, Embu and Mombasa.¹⁸

African response to Christianity was instantaneous and tremendous from the earliest days. From 1900 the number of converts doubled each year for 10 years. By 1948 30% of the population professed christianity and the figure rose to 54% in 1962 to over 63% in 1970. As to ethnic composition Christianity had become the majority religion by mid 1970s.

At this juncture it is worth noting that this evangelization process did not wholly confirm to the path set by the original

missionary organisations. Though the Catholics, Anglicans e.t.c. dominated and continue to dominate the scene numerous schisms sprouted right from the turn of the 20th century. These Schisms popularly known as independent or indigenous churches were set off as early as 1914 by John Owalo's Luo-mission Nomiya. This independent church split from the Anglican church and it was basically a holy spirit revival movement with a touch of African Fervour. It heralded the coming of indigenous christian churches whose numbers have continued multiplying unabated up to this day.

The next significant independent church to come into the picture was the African Independent Pentecostal church of Africa (A.I.P.C.A.) followed by African Orthodox church (A.O.C.). The former arose in 1929 while the latter came in 1946. The AIPCA originated in Kikuyu country due to serious conflicts in the protestant church over land alienation and the Kikuyu rite of female circumcission. The AIPCA is now the largest indigenous Christian community in Kenya.

After the second world war there was a tremendous upsurge of independent churches. Such churches include African Israel church Nineveh (AICN) African Brotherhood church (ABC) and Legio Maria. The Legio Maria is the only Schism in Roman Catholic church.¹⁹

The timing of the rise of schism with the awakening of natural political awareness explains the social-political role of independent churches just like their missionary counterparts. Its coincidence with the birth of African Nationalism reveals

that schism was a part of African reaction against political and ideological subjugation perpetrated by the colonial administration and the colonial church respectively. Since the pioneer period the European missionaries had wielded a lot of influence over the rulers of the land hence christianity grew hand in hand with colonialism. The mother churches had buried their heads so deeply in colonial political situation that they failed to identify and react against the evil elements inherent in it. Those members of the mother churches who identified such evils were left with no option but to secede and start independent churches. Thus politics became and still is a major factor in church independence.

Independent churches have continued to grow in numbers and strength and Kenya had over 220 distinct independent African denominations with a combined christian community of 2,600,000 persons by 1980.²⁰

In summary Kenya has over 300 registered christian churches the bulk of which are indigenous independent churches. However the Catholic church has the greatest following claiming a quarter of all the christian population in Kenya. It has 14 dioceses covering almost the whole of Kenya. The next largest church is the Church of the Province of Kenya C.P.K. (formerly the Anglican church) which has big following in such major tribes as the Kikuyu, Luo and the Luhyas. In the third position lies the African Inland Church which has 2500 congregations divided into 10 regions and 67 districts. The indigenous churches and the rest of the protestant denominations come after these three to claim the rest of the christian population.

FOOTNOTES CHAPTER ONE

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- 2a Stark in Philosophy of Religion: A Study of Christendom
New York Fordham U.P. 1960.
3. Moorman JRH: A History of Church in England 2nd Edition
London Black [1967].
4. Vidler A.R.: Church in An Age of Revolution 1789 to present
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Harmondsworth Penguin Books (1961) p. 21
5. Ransford, Oliver: David Livingstone:
London Blackier (1961) p.126.
7. Ibid p. 128
8. Times: August 9 1965 p. 16
9. The Kikuyu is one of central Kenya tribes that lost
huge tracks of land to white settlement.
10. Okite, O.W. in Barret DB's Kenyan Churches Handbook
1498-1973: Kisumu Evangel publishing house 1973 p.119.
11. Sachs Benard: Road from Sharpville. London: Dobson [1961]
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12. Vidler supra p. 19
13. 'Thought' vol. 61 Sept. 1986 p. 30p.
14. Ibid.
15. Newsweek February 24 1986 p. 20.
16. Sachs Benard Ibid. Emphasis added.
17. Barret David B: World Christian Encyclopedia

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20. Encyclopendia supra.

CHAPTER TWO: FREEDOM OF WORSHIP IN KENYA

(a) The concept of freedom of conscience and worship

Freedom of worship can be distilled from the general sphere of the freedom of conscience. However none of the two concepts is easy to define in precise terms so as to establish their province in totality and the best that has been done is to describe the basic ideas for which they stand. Oxford English Dictionary defines conscience as

"The internal acknowledgment or recognition of the moral qualities of one's motives and actions.... the faculty principle which pronounces upon the moral quality of one's actions or motives approving the right and condemning the wrong"¹.

In this context freedom of conscience refers to each individual's right to pass a moral judgement approving that which he regards to be morally right and disapproving or condemning that which he finds morally wrong. The ancient Babylonian Talmud forcefully and articulately explained freedom of conscience in the following words:

"Man must be free to exercise his mind and reason as he may see fit, independently, self-reliantly and without interference from anyone,, even from a heavenly voice"².

The Babylonians (Jews in exile) had recognised that freedom of conscience is freedom of thought and the moral guidance of such thoughts is not necessarily provided by religion. Indeed it includes the right to pass judgement on religion as being morally wrong and to desist from indulging in any

act that may be regarded as religious. Thus freedom of conscience embraces both the right to harbour and exercise religious beliefs as well as the right to entertain none at all. It follows that one is entitled to look at freedom of conscience as the concrete phenomenon^{o,1} from which freedom of religion and ultimately freedom of worship is derived. In other words freedom of worship is just but a part of a wider concept of freedom of conscience.

The quest for technical meaning of the term worship is by no means an easy one. Its mind boggling attribute is highlighted by the fact that courts have not been able to come up with a definition that is authoritative and final in character. An American court in the case of People ex Parte Religion Ring v. Board of Education³ attempting a definition had this to say:-

"We know of no technical definition of the word by any court. It includes, prayer, praise, thanks-giving. In ordinary church meetings the congregation is regarded as engaged in religious worship while listening to the sermon, reading the Holy scriptures or hearing them read or engaged in singing. Devotional religious exercises constitute worship: prayer is a chief part of the worship, prayer is always worship. Reading the Bible and singing may be worship."³

From this definition worship not only includes prayer sermons and singing but also "devotional religious exercises". This assertion has been supported by other American decisions which have taken the meaning of worship far beyond the realm of mere prayer and church services. In the case of people v. Woody⁴ a California court held that taking peyote a none-

addictive tranquilizing drug, by members of American Native church was an act of worship. The court observed that, to members of the religion, peyote is a central object of worship holding a place analogous to that of holy spirit in christian tradition. In Murdock .v. Pennsylvania⁵ the court extended the meaning of worship even further when it struck down a municipal licence tax when it applied to distribution of religious literature by Jehovah Witnesses. Reading the decision of the court Mr. Justice Dunglas equated distribution of religious literature by Jehovah Witnesses with worship. He said.

"The hand distribution of religious tracts is an old from the missionary evangelism... Its purpose is as evangelical as the revival meeting. This form of religions activity occupies the same high estate under the first amendment as do worship in churches and preaching from pulpits"⁵.

The dicisions make it clear that worship refers not only to an individual's supplication to a Deity but also those actitivies and practices that are undertaken as means of fulfilment and furtherance of religious belief. In other words all those acts that form a part of religious practice can be appropriately classified as worship. In this respect freedom of worship can be regarded as a right to practice one's religion with no interference from either the state or members of other religions. It is the liberty of the individual not only to entertain religious beliefs as it were but also to engage in acts of worship alone or with members of the same faith. It is the liberty

of religious belief and practice.

Freedom of worship and religious practice can't be realised in isolation from other freedoms and rights that constitute a constitutional Bill of rights. It is intimately connected and even dependent on freedom of assembly and association, freedom of movement, freedom of expression and to a certain extent freedom of press.

In order to worship together, believers have to move to their church, mosque or such other place of worship; hence the necessity for freedom of movement. Similary people can only congregate at a place of worship if and when they have freedom of assembly and association. On the other hand the notion of freedom of religious belief and worship carries with it a correlative idea of freedom of expression in ceremonial form. This freedom has to exist to enable the faithful not only to worship but also to air those values that they have acquired though their religion. Evangelism and general missionary activities call for issuance of pamphlets and limited use of the electronic media apart from the traditional preaching by the word of the mouth. To that extent freedom of press has also to come into the picture. In recognition of this relationship and dependence of freedom of worship on the other. Freedoms the United States First amendment include all the above mentioned freedoms in a single article of the Bill of rights. In Kenya they are not included in the same section but this

doesn't in any way diminish this relationship.

(b) FREEDOM OF WORSHIP UNDER COLONIALISM 1897 - 1960

In the colonial era fundamental rights and freedoms of the individual in a constitutional form as we have now did not exist in Kenya as justiciable rights until after 1960.

However, this doesn't mean that the colonial regime was lawless one. All it means is that there was more room and licence for the colonial regime to abuse these rights if and when the need arose. This was often done by passing various laws and regulations which might never have been passed if there was a justiciable Bill of rights. Under the 1897 Native courts regulations⁶ the commissioner for East African protectorate armed himself with wide powers of preventive detention and restriction of movement in respect of any persons subject to the regulations. If it was shown to the satisfaction of the commissioner that the person was disaffected to the government, was about to commit an offence against the regulations or was otherwise conducting himself so as to be dangerous to the peace and good order in the protectorate. Under vagrancy regulations of 1898⁷, any person found asking for alms or wandering about without visible means of subsistence was liable to detention. Under emergency powers order-in-council⁸ the Governor was empowered to declare emergency at his discretion either for the whole or part of the territory if he was satisfied that a public emergency existed. After declaring emergency he had wide law-making powers.

By Native Pass regulations 1900 the movement of the Natives in the protectorate could be controlled by the institution of a pass. They enabled the commissioner to make such general or local rules for controlling the movement of Natives travelling into, out of, or within the limits of the protectorate as may appear to him from time to time necessary or desirable.

Though there was some form of rule of law the colonial regime made enjoyment of one's natural rights and freedoms extremely hazardous if not impossible especially if his colour of the skin was dark enough for him to be designated 'a native'. The colonial regime had a licence to discriminate along colour lines as illustrated by among other statutes, The Registration of Persons Ordinance⁹ as well as court decisions in Kenya and elsewhere in the colonised commonwealth. The above ordinance differentiated Africans from other peoples and required any African who had reached the age of 16 to register.

A case from the British colony of Bechuanaland fairly illustrates this concept of racial discrimination. In this case¹⁰ Sekgome a Chief of Fatwana tribe in Bechuanaland protectorate was considered by the British authorities to constitute a menace to peace of the protectorate and was deported and detained. Sekgome applied for a Habeas Corpus against the secretary of state for colonies contending that, the proclamation authorising his deportation was void as it was

directed against him alone and disregarded the ordinary criminal law and legal process of the country. While admitting that the proclamation was a privilege of the most drastic kind, and that a privilege was something which never commended itself to the British Legislators, the Court of Appeal in England nevertheless upheld the validity of the proclamation. Lord Justice Vaughan Williams asserted:-

"It maybe true that an Englishman resorting to the Bechuanaland protectorate carries the Habeas with him but Sekgome certainly does not ... It is made less difficult if one remembers that the protectorate is over a country in which a few civilised men have to control a great multitude of Semi-Barbarous"¹¹

This decision reveals too well the fact that the colonial state was based on racial stratification and discrimination along each stratum. Or rather enjoyment of one's Natural rights and freedoms depended on one's position in the strata; that is whether one is among the few 'civilised men' or in the 'multitude of Semi-Barbarous.' This racial view was also explicit in the Kenyan case of Commissioner for for the local Government lands and settlement .v. Kaderbai¹². Here an Asian moved by mandamus to compel the Commissioner of Lands to allow him to bid for and purchase at an auction sale, Town Plots of land which was crown property; the commissioner having give notice that only Europeans were to be allowed to bid and purchase. It was held that the applicant was not entitled to the order because Prima facie

the crown and the servants of the crown in exercising the right of disposing of crown property have at least the rights of private owners of making the disposition in any way that appears to them to be best in the interest of the crown.

May be if the court was to be required in this case to elaborate as to what the much celebrated 'best interests of the crown' were, then the veil would have been lifted from the commissioner's notice to lay bare the naked racial discrimination that masqueraded as the interests of the crown.

The Africans occupied the bottom stratum and enjoyed the least rights of all the other racial groups. Various laws herded them into reserves and their freedom of movement was subject to the rigorous pass-system. Freedom of worship did not get exemption from this general restriction. The race factor and the pedigree of the church in question determined the amount of interference it was to expect from the colonial government. The catholic, the anglicans and other missionary churches enjoyed enormous freedom owing mainly to their origins and the support they gave to the colonial regime. On the other side of spectrum those sects that were homegrown by the indigenous people were met with suspicion at the very best and normally with open hostility. There independent African churches were rarely tolerated and every conceivable opportunity was seized to suppress them. A look at some of the so-called indigenous schism

churches is illustrative.

Dini Ya Msambwa was one of the earliest independent quasi-christian religions in Kenya. It originated among the Bakusus of Bungoma district and was founded by ex-mission converts who revolted against particular culturally alienating mission teachings such as forbidding polygamy. Led by Elijah Masinde a son of one of the Quakers of 'Friends of Africa Mission' at Kima it drew most of its practices from the old testament whose teaching was more compatible with Polygamus Bukusu Society. Besides, it merged christianity with elements of Bakusu ancestral religion to form what Machio refers to as "a hotch-potch of certain Christian and Native Practices"¹³.

Apart from being fiercely African, Dini Ya Msambwa believed in Liberation both in the religious and political fields. Their belief in political liberation must have been a reaction to the oppressive and exploitative nature of colonialism which is not in keeping with christian teachings. Masinde and his followers must also have been indignant with the existing christian churches for failing to condemn colonialism inspite of the dehumanising evils perpetrated by the system.

To Dini Ya Msambwa colonialism was sin and time was ripe for the British to depart "with their families and only the clothes they are wearing because everything they own they acquired here."¹⁴

Owing to these revolutionary beliefs it was clear that Msambwa's acts of worship were to involve blank and aggressive denunciation of colonialism and all that it stands for. Since these acts were indeed a threat to colonial state security, a stage was set for three decades of confrontation with the state right at the birth of the sect. As far as the state was concerned Dini Ya Msambwa was a political threat to be curbed at all costs. In words of C.J. Denton a Bungoma district commissioner "The Dini Ya Msambwa sect is a greater political threat to law and order than the Mau Mau"¹⁵. No wonder members of the sect were seen as terrorists in the making and some of the more vocal ones were arrested forcing the rest of the congregation into a confrontation with the government in what came to be known as the Malakasi riot.

On 10th February 1948 over a thousand members of Dini Ya Msambwa went to rescue by force three of their colleagues locked in in Malakasi Police Station. In the ensuing confrontation the policemen at the station opened fire killing eleven people and wounding ten others. Soon after this Dini Ya Msambwa was banned. Thus in a stroke of the pen their freedom of worship was eradicated and there was no means of appeal against the decision. Subsequently all the future acts of worship by that sect were regarded as criminal and time and again landed many worshipers in jail and Masinde in detention.

As Masinde was grappling with the colonial government over his sect's validity another group was riding an equally rough wind in central Kenya. This group known as Aroti (dreamers) or Akurinu were a sect with vision. They called themselves people of the holy spirit, swathed their bodies in immaculate white garbs and preached a new type of puritanism. Their vision was that of a free Kenya and they claimed that God had revealed to their Aroti (Prophetic - dreamers) that the Europeans have to quit. That prophesy was the root cause of their troubles, persecutions and imprisonment beside the general surveillance that every member of the sect had to exist with. They were treated like dangerous criminals on probation. In February 1934 3 Akurinu's were killed in Ndaragu Forest where they had sought refuge from persecutions of the British administrators. For the trio it was a jump from frying pan to the fire when the administration found them and shot them dead. This was followed by an arrest of their leaders lest they form more trouble. Due to its rigid puritanism the Aroti sect did not get enormous following as to be a key threat to colonial administration. like Dini Ya Msambwa so it was never banned. However, beatings, imprisonments and other persecutions continued and the Akurinus can't claim to have known what freedom of worship was or what it entails until the 1960s.¹⁶

Thus as observed earlier a sect could enjoy its freedom of worship if it at least cordoned or openly supported the colonial status quo. . The mainstream churches such as

the catholics and anglicans were active supporters of law and order hence they had a free hand in their activities. As for those indigenious churches whose activities militated against the existing order freedom of worship was no more than an illusion.

(c) FREEDOM OF WORSHIP UNDER THE KENYA CONSTITUTIONS BILL OF RIGHTS

Freedom of conscience which encompasses the freedom of worship is one of the freedoms protected by Chapter V of the Kenyan constitution.¹⁷ This chapter entitled protect ion of fundamental rights and freedoms of the individual, constitutes the Kenya Bill of rights which was geared towards creation of an egalitarian society wherein basic human liberties are sanctified and guaranteed for all. The question as to whether the Bill of rights has achieved its objective is outside the scope of this paper and no time will be spent in delving into it. Suffice it to note that, this work will just evaluate the success of S.78 which guarantees freedom of conscience in general and freedom of worship in particular. Section 78(1) reads:-

"Except with his own consent, no person shall be hindered in the enjoyment of his freedom of conscience and for the purposes of this section that freedom includes freedom of thought and of religion. Freedom to change his religion or belief, and freedom, either alone or in community with others and both in public and in private to manifest and propagate his religion or belief in worship, teaching practice and observance."

The spirit of section 78(1) is that both individual members and churches are to be free not only to be religious but also to propagate their religion through such activities as preaching and teaching as well as to observe basic rituals which pertain to their mode of worship. It also includes right to change from one religion to another and the right not to be coerced into joining any religious faith. Finally it also safeguards those who intend to harbour no religious belief. S.78(1) bears close resemblance with the First amendment of the American Bill of Rights which guarantees freedom of religion in the United States of America. The only difference between them is that the American first amendment prohibits the congress from making any law "respecting an establishment of religion". This clause has been interpreted by American courts to mean that government should not support or identify with all or any religion or contribute in any way whatsoever to be propagation of religious ideas. In other words the American constitution creates a wall of separation between the church and the state¹⁸. The first amendment reads:-

"Congress shall make no laws respecting an establishment of religion or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press or right of the people peaceably to assemble and petition the government for redress of grievances."¹⁹

In Kenya the constitution does not prohibit government support of religion and government policy has consistently supported the creation of a religious society. Indeed it's the

President himself who directed that religion's education should be made a compulsory examination subject in the Kenya certificate of education (KCE) with effect from 1988.²⁰

Interpreting the first amendment of the American constitution Supreme Court Justice Hugo Black used almost the same words as used in the Kenyan constitution when referring to the right of 'free exercise of religion'. He said: "It means at least this.....: Neither can force nor influence a person to go or remain away from any church against his will or force him to profess a belief in any religion. No person can be punished for entertaining or professing religious beliefs or dis-belief or non-attendance"²¹.

Like the Kenyan constitution Justice Black saw freedom of conscience to include both freedom to be religious as well freedom to have no religion at all.

Section 78^f is one of the few sections of the Kenyan Bill of rights that has rarely drawn any litigation. This is not to say that it has rarely been infringed. Indeed it is often violated but most aggrieved persons, may-be owing to ignorance of their rights, have not petitioned the High Court for redress. Thus Kenyan High Court and Court of Appeal have had very scanty opportunities to interpret the section. One of these opportunities was in the case of Lalji Meghji Patel .v. Karsan Premji²².

In this case both the appellant and the respondent were members of an oriental temple known as Shree Catch Satsang Swaminaranyan Temple. The appellant was the Chairman of the Nairobi temple while the respondent was the chairman of another one in Mombasa. In Nairobi another temple known as Temple Road S.C.S.S. temple had been started and its teachings were at variance with the appellant's temple although both claimed to belong to the same religion. The appellants's temple refused to acknowledge the new temple but the respondents's one recognised it. The appellant therefore sued the respondents claiming that the respondents should not recognise the temple road temple and asking for an injunction prohibiting the respondents from inviting members of the maverick temple to participate in respondent's religions and social functions. Sherridan J. at the High Court dismissed the suit and the appellant appealed to the court of Appeal where in it was held: "The freedom of conscience guaranteed by S.78 of the constitution precludes the courts from interfering in matters of religion and conscience except where there is a breach of the law; accordingly the courts would not interfere with matters of Dogma, ritual or other internal matters within the competence of a church or religions establishment".

This authoritative decision of the court of Appeal reiterates the constitutional protection of freedom of worship in articulate terms and restrains courts in the future from adjudicating on matters of theology and dogma. Nevertheless

as observed earlier infringements of this freedom even where the religious exercise doesn't breach the law have been rampant.

Ironically one of the most recent violations of freedom of worship and conscience happened in one of our courts. On 8th June 1987 a schoolboy was jailed by a Kakamega Magistrate for refusing to be sworn. The boy had declined to be sworn on the grounds that the Bible taught him that it is wrong to swear in the name of the Lord. He therefore begged to be allowed to give testimony without swearing. The Magistrate angrily told him to choose between swearing and going to jail and when the poor boy refused to buldge he was accordingly convicted for contempt of court and jailed for three days.^{2 3}

Apparently the Magistrate passed his judgement in ignorance or total forgetfulness of both S.78(4) of the constitution and S.15 of oaths and statutory declarations Act. Cap 15 laws of Kenya. S.78(4) of the constitution reads:
"No person shall be compelled to take an oath which is contrary to his religion or belief or to take an oath in a manner which is contrary to his religion or belief".
Section 15 of Cap 15 provides what is to happen, if a person can't be sworn on religious grounds. It states that:-

"Any person upon objecting to being sworn and stating as the ground of such objection, either that he has no religious belief or taking the oath is contrary to his religious belief, shall be permitted to make his solemn affirmation instead of taking an oath in all places and for all purposes

where an oath is required by law which affirmation shall be of the same effect as if he had taken the oath"

The Magistrate therefore had no right to convict the boy as the boy's conduct did not amount to contempt of court but was a mere exercise of his freedom of conscience.

Another recent illustration of denial of freedom of worship occurred in Nyeri on 13th September 1987.²⁴ On this day members of a traditional religion romantically named Evangelistic Gospel Church of the Holy Morning Star congregated under a Mugumo (FIG) tree to perform a traditional religious ceremony. The unique ceremony was to commence with sacrificing of one immaculate white and one black lamb to be offered to Ngai (God) under the tree and climaxed with a conversation between the High priest and the almighty amid thunderstorm, showers of rain and lightning. Bizarre as it may sound, it did not in any way infringe public order, security, morality or public health and was perfectly legitimate as an act of worship. However the local District officer (D.O.) stopped the ritual just before it began arguing that the church did not have a permit to carry on the proposed ceremony and prayers. When the leaders of the church flashed out a permit issued by the local chief under the Chief's Authority Act the D.O. turned a blind eye and shut his ears as he ordered his administration policemen to poise themselves in attack formations so as to be ready to disperse the crowd in case they don't leave as fast as required.

The real reason for cancellation of his ceremony remains a mystery too difficult for one to hazard a guess. Maybe the D.O. was responding to his sense of what is good religious taste or he was under pressure from powerful local christian leaders who had all the reasons to be unhappy with such a ceremony and to find it unpalatable. Be it as it may his cancellation of the ceremony was a blatant violation of the participants' freedom of worship and they were entitled to a redress in the High Court if they pursued one. After all if Meghji case (Supra) holds the courts to be incompetent in deciding what is theologically sound how competent is a D.O. or any other administration officer? This are just but a few examples of infringements of freedom of worship which are by no means rare in Kenya.

(d) CONSTITUTIONAL LIMITATION OF FREEDOM OF WORSHIP

Freedom of conscience like all the rights and freedoms guaranteed in chapter V of the Kenya constitution is not absolute. It is qualified by the same constitution. This is unlike in the American Bill wherein the first amendment guaranteeing these rights appears to be absolute. However the American Courts have put limitations to these rights in the course of their interpretation. They do so because the idea of limitation is implicit in every freedom that is given. The underlying reasons for the need to qualify these rights in a civil society is well explained by William Blackstone:

"But every man when he enters into society, gives a part of his natural liberty as a price of so valuable a purchase and in consideration of receiving the advantages of mutual commerce obliges himself to conform to those laws, which the community has thought proper to establish. And this species of legal obedience and conformity is infinitely more desirable than wild savage liberty which is sacrificed to obtain it. For no man that considers a moment would wish to retain the absolute and uncontrolled power of doing what he pleases.... Political and therefore civil liberty which is that of a member of society is no other than natural liberty so far necessary and expedient for the general advantage of the public."25

Indeed it boggles the mind to contemplate the wantonness and the anarchy that would rock the society if uncontrolled wild and savage liberty was to be allowed to exist. The absolute freedom is certainly liable to abuse. It's in recognition of this liability to abuse that S.78(5) was included to spell out limitations to the freedom guaranteed by S.78(1).

By virtue of S.78(5) freedom of conscience is enjoyed subject to defence, public safety, public order public morality and public health. Any law enacted in furtherance of these five interest is valid even when it violates freedom of conscience unless it can be shown that the promulgation is not justifiable in a democratic society. The onus of proving that the law enacted is not justifiable in a democratic society rests on the shoulders of the person making the complaint. Commenting on the implication of this provision Ghai and MacAuslan aptly noted:

"The wording of the provision in relation to the exception to the rights "except (it) be shown not to be reasonably justifiable in a democratic society" appears to throw some onus on the complainant. In practice this could be a serious burden especially in a challenge to executive action since much of factual information is in the possession of the executive. In cases where a threat to public safety and security is alleged it is un- to be disclosed in the court or given to the complainant moreover the courts have to perform a task which is novel to them and the chances are that they will in favour of the executive as they have in the the past on crucial issues, or interpret the Bill in a mechanic manner."26

Let's now have a close analysis of these five basic limitations on the freedom of conscience and worship in order to find how significant is the inroad they have made into the said freedom. Cases from the rest of the Commonwealth will hereby provide much needed illustrative aid owing to the scarcity of local authorities.

As concerns defence it is a truism that the primary duty of any state is the defence of its national borders from violation by external foes. As an old Roman maxim put it, the security of the state is the highest law. In discharge of this task the state's defence legislations do violate the fundamental rights and freedom of the individual. When the state is threatened there arises a crucial question of weighing the interest of the preservation of the state security and observance of the rights and freedoms of the individual. In the ensuing tug-of-war expediency and political pragmatism demand the subordination of the individual interests to those of the state. The threat of cessation

of the state either by alien conquest or by internal usurpation looms menacingly large in comparison with temporary eclipse of individual freedom which is the lesser of the two evils. If there is imminent danger to the security of the state, legislative measures taken to help in the execution of its defence cannot be invalidated for the reason only that they deviate from fundamental rights and freedoms of the citizen. This position is illustrated by Adelaide Company of Jehovah Witnesses Inc. .v. Commonwealth ²⁷ an Australian decision in which the plaintiffs were in exclusive occupation of a hall from which the defendant, the Commonwealth of Australia acting under powers conferred upon it by National Security (Subversive Associations) regulations, dispossessed them. The plaintiffs argued that the dispossession was unlawful and amounted to trespass. They further asserted that the regulations under which they were dispossessed were invalid in all cases or at least as against them because they contravened S.116 of the constitution which guaranteed freedom of religion. The plaintiffs in this case were members of Jehovah's Witnesses whose teachings refuse allegiance with earthly governments and decline assistance to such governments in times of war. Thus their attitude towards the Japanese threat that faced Australia during the second world war was nonchalant and neutral. Despite this finding by the court, it was held that the dispossession of Jehovah's Witnesses from the Hall was not a violation of S.116 of the constitution as this was a necessary step in defence of the territory from foreign enemies.

The case of United States.v. Seager²⁸ fairly illustrates the position of conscientious objectors. A conscientious objector is one who objects to doing such war-like things as joining the army because he thinks its morally wrong to wage warfare against fellow human beings and is loath to kill a fellow human being even in warfare. In this case Seager sought exemption on the ground that his conscience prevented him from taking any part in preparation for war. This kind of objection creates an undoubtable dilemma to any government. It raises a conflict most difficult to resolve. However, interest of National security makes the courts adopt a very strict attitude towards conscientious objection. National security would be at a jeopardy if people were to use this excuse to avoid military service en masse. This strict attitude was articulated by Justice Augustus Hand as he quoted and adopted a principle from an earlier case.²⁹ He said:-

"There is a distinction between a course of reasoning resulting in a conclusion that a particular war is inexpedient or disastrous and a conscientious objection to participation in any war under any circumstances. The latter and not the former maybe the basis for military exemption. The former is usually political objection while the latter we think can justly be regarded as a response of the individual to an inward mentor, call it conscience or God, that is for many persons at the present time the equivalent of what has always been thought as a religious impulse".

Seager was found to believe in supreme mentor and to be conscientiously opposed to all wars so his conviction in a lower court was quashed. Kenya is yet to have experiences

with conscientious objection but if the past experience with the other provisions of the bill of rights is something to go by, where freedom of the individual conflict with national security our courts would not hesitate to subordinate the former to the latter. It is therefore logical to say that Kenyan courts are likely to be far more intolerant with conscientious, objectors than the American courts.

The second qualification of freedom of conscience lies where it conflicts with public safety. State can legislate to ensure public safety and any religious activity that would encroach on public safety for instance by endangering the use of public facilities and infrastructure such as roads would have to be curbed. As the North Carolina case of State .v. Massey^{29A} said "when public safety is pitted against religious liberty the authorities are one in holding that the safety of the public comes first".

As for public order, the state has a right to ensure peace and tranquility within its borders and to ensure harmonious co-existence of its citizens. This is evidenced by penal provisions relating to crimes of treason sedition as well as unlawful assembly, riots and other offences against public order.

In colonial era certain customary practices were forbidden because they tended to disrupt public tranquility. Native

religious practices were seen as tools of disruption, subversion and disorder. Today Native religions are put on the equal footing with the other religions under the constitution. Hence the bone of contention is always the extent to which the state can declare certain religious practices illegal in the name of public order.

This question was mooted in another US case namely Cantwell .v. Connecticut³⁰. In this case Cantwell and other members of the much embattled Jehovah Witnesses were convicted of two violations of Connecticut state laws. One count charged them with soliciting money and subscriptions without first obtaining a certificate of approval from the secretary of public welfare council who was empowered to decide which cause was a religious one or a bona fide object of charity. Cantwell was also charged with breach of peace based on his actions of stopping persons on public streets and asking and receiving permission to play a phonograph record of a speech attacking catholicism. Two irate catholic men he had accosted testified that they had been tempted to strike Cantwell but no violence occurred and he had left when requested. The court arguing that there was no clear and present danger quashed an earlier conviction. It also stated that powers of the secretary of the public welfare council amounted to censorship of religious which was a denial of religious liberty.

The criteria to determine what acts fall within the province of public disorder is not given. In that case the risk of arbitrary and whimsical suppression of a religious act in the name of preservation of public order looms large indeed. One does not need to be too imaginative to envision a situation where an administrative officer be it a DC, a D.O. or even a chief decides that a certain religious ceremony is no good and stifles its activities with impunity. He would only need to state that it contravened public order and he would get away with it.

The case of preservation of public morality brings into picture the more unorthodox churches which have a tendency to deviate from those moral norms that are conventional, recognized as christian. Consequently the conventional christian faithfuls recoil with revulsion at the derogation from their traditional morality. In a country like ours where laws go to a large extent to enforce morality such religious practice contravene a law or laws of the land. Once again the courts have to embark on the onerous task of striking a balance between maintenance of the constitutional freedom of religion and preservation of equally constitutional public morality or that morality that the law recognises as public even if it is not necessarily so. This is best illustrated in

in the case of George Reynolds .v. United States³¹.

This is a case whereby the plaintiff was indicted for Bigamy regarded as an offence against morality in christian countries or those countries with christian influence. At the time of the second marriage he was a member of the church of 'Jesus Christ's later - day saints' commonly known as Mormon church. One of the basic tenets of his church was that it's a duty of every male member of the church, circumstances permitting, to practice polygamy. This duty was enjoined by different books, the members of the said church believed to be of divine origin and among others the Holy Bible. The church also believed that polygamy was bestowed by the almighty God on the male members of the church through the revelations of Joseph Smith the founder-prophet of the church. They also believed that failure to practice polygamy if circumstances are favourable was punishable with damnation in a life to come. Reynolds was convicted of the offence. Numerous decisions both in England and America have ruled that religious faith can't be used as a cover to practice Bigamy which is immoral and forbidden by the law.³²

Here in Kenya Pope John Pesa the mercurial head of Holy coptic church which appears to be a perverted version of North Africa based African coptic church, practised sodomy in his church as one of the acts of worship,

when some of his followers - cum-victims complained to the authorities he was arrested forthwith charged with committing "unnatural offences" under S.162 of the penal code and convicted.^{32(a)} His action had violated public morality and he could not hide in the shade of the constitution in order to get away with it. similiary Rejanesh Baghwan a Sikh from India who is popularly known as the 'Sex Guru' who set out to cultivate a sex-cult in the name of religion offended the Kenyan public morals and was banished from Kenya. He took his debauchery to California where he was kicked out after a few months, from where he went to Canada and the Canadians could not give such an immoral person sanctuary in their midst.

In Mombasa Mugo a self-styled prophet donning a messianic beard had himself crucified on good Friday (17th April 1987)³³. The police were not amused by his religious antics and he was arrested and charged with attempted suicide. Every civil government is entitled to safeguard human life and it was within the constitutional power of the state to prevent him from carrying his belief into practice.

The greatest danger under this qualification is the risk of some tradational religion, or even an unorthodox christian religion being curbed because of its dogmatic

divergency from the mainstream of christian morals. This is yet another passage through which inroads can be made into the freedom of worship with impunity.

Of the traditional categories of the police powers of the state the courts rank public health very highly when this conflict with religious liberty. This position can be discerned from the American vaccination case of Wright .v. Dewitt School District.³⁴

Some parents sought an order exempting their children on religious grounds, from compulsory vaccination prerequisite for school attendance. The complainant argued that there was no present grave or immediate danger of a small pox epidemic and in support of this assertion averred that no case of the pox had occurred in the country for more than 50 years and that the complainant's children attended school regularly without being vaccinated. The supreme court of Arkansas upheld a District court's dismissal of the application taking Judicial notice of the loathsome nature of the disease.

So if a country like Kenya has an epidemic of cholera, or certain religious acts can easily spread such a loathsome disease as Aids the state can impose a ban on all such religious activities as will expose the citizens to such risks, and having so done no court will invalidate the regulation or order as it were. The reason that makes public health reign so supreme is easy to see in the

fact that people have to be healthy before they can engage in any worthwhile religious activities. There are some religious sects in Kenya such as Abakambali, Dini ya Msambwa (banned) Legio Maria and Miracle Revival Church to name but a few, who believe in faith healing and thus don't take their sick to hospitals for treatment. There is no doubt that when this is done it's done in contravention of the law in force and the offenders can not successfully plead freedom of worship as a defence when they are charged. Time and again they are arrested, charged and convicted their religious convictions notwithstanding. The latest example took place in Mariakani Location of Kilifi District. A member of Miracle Revival Fellowship Church had refused to take his dying mother to a hospital and instead convened a prayer meeting after another expecting the woman to be miraculously healed in one of the emotionally charged prayer meetings. When the local Chief learned what was going on he contacted the area's officer in charge of police station (O.C.S.) and the local health officer and three proceeded to the man's home. Once they got there, they not only had the woman taken to hospital by force, but also arrested her son who had served six months in prison for a similar offence not a long while ago.³⁵

Having had an indepth look at the qualifications of freedom of worship, we can now evaluate how much of

that freedom has been taken away and how much has been left. Firstly these limitations do not eladicate a man's freedom to follow the religion he wants or to abstain from following any. Secondly as the case of Meghji Patel (Supra) shows it adequately protects an individual from being forced to follow a religion or to abandon one. In other words it adequately gurantees freedom of worship from infringement by a fellow citizen; but does it protect a man's freedom fo worship from being infringed by the state? This question gets a negative answer.

As it was observed earlier the concepts of public order, public security and public safety have no known fixed boundaries. Actually what is in the interest of public security, safety or order depends on the meaning the state chooses to give to those terms. It would not be a surprise to find that public security would at times refer to the security of the ruling class or even a part of its top hierachy. What will constitute public disorder will depend on the judgement of District Commissioners and Distric Officers and sometimes the Chiefs. These officers are not incapable of making arbitrary and capricious decisions as already seen in the case of the Evangelistic church of the Holy Morning Star at Nyeri. Even more disturbing is the fact that

these officers are not immune from influence and even control by powerful political figures to serve the latter's ends. Here it is worth noting that Kenyan civil servants are not protected like in Britain where independence of the civil service is rigorously maintained. As such the Kenyan civil service, provincial administration inclusive, is susceptible to political influence. Thus where a powerful political figure is not amused by a certain religious body he can easily employ the provincial administration to fight it in the name of preservation of public safety, security or order. As we are going to see in the next chapter political influence on the provincial administration has been used to thwart the activities of an outspoken CPK Bishop in Nandi district. In Mosop constituency the local politicians have time and again used their influence over the police and local administrators to cancel and sometimes disperse Bishop Muge's prayer meetings, alleging that the meetings were political and a threat to public order.

On the other hand if a church is involved in a major confrontation with the state the sect can be declared a threat to public security and get banned. This awesome power to crush a religious group, or any organisation defined as a society by Societies Act cap 108 rests in the hands of the Registrar of Societies. S 12 (1) (b) of the Act gives the registrar discretion:

to cancel registration of any society if "the interest of peace, welfare, or good order in Kenya would in his opinion be likely to be prejudiced by the continued registration of that society." Thus the threat of cancellation of registration is the Damocles sword that the state wields through the registrar over the heads of every society be it religious or otherwise; so that the society remains well behaved.

In the light of the above if the registrar was to deregister any church his decision would be unchallengeable even if the church would have the courage to challenge it. It's unchallengeable because the complainant has to prove not only that they are not a threat to public order, or security or welfare but that under the circumstances the decision to deregister them was not reasonably justifiable in a democratic society. This onus is a horrendous one under normal circumstances but here it's made impossible by the fact that factual information necessary for proving the case is in the possession of the state. In that case the state can smother the litigation at birth by involving its privilege to withhold information that would tend to damnify it. This privilege is bestowed on the executive by section 131 of evidence Act cap 80 of the Laws of Kenya. Section 131 provides that:-

"If the Minister states on oath that he has examined

the contents of such document and further that he is of the opinion that to produce it would be prejudicial to the public service either by reason of content of the document or by reason that it belongs to a class which on grounds of public policy should be withheld from production the document shall not be admissible".

This section produces almost word for word the decision of the British House of Lords in a second world war case of DUNCAN .v. CAMELL LAIRD AND CO LTD.³⁶ In this case a negligence suit had been filed against a company that had made a submarine that was lost at sea with much loss of life. The state stepped in and objected to production of the submarine's design in court alleging its production would jeopardise national security. The House of Lords upheld the state's claim to privilege hence the plaintiffs were left with no evidence to prove that the design was faulty and the company was liable in negligence. In subsequent cases British and other Commonwealth courts have held that the court can examine the document in private so as to authenticate the Minister's claim³⁷ but Kenyan courts have stuck to the position in Cammell Laird. This is demonstrated by a recent case of Mudavadi .v. Semo³⁸

This was an election petition whereby it was alleged that a powerful politician had written to Chiefs in the petitioner's constituency so as to cause irregularities in the election campaign and the election itself thus prejudicing the petitioner. The petitioner sought to have the letter produced in court so as to prove

the contents of such document and further that he is of the opinion that to produce it would be prejudicial to the public service either by reason of content of the document or by reason that it belongs to a class which on grounds of public policy should be withheld from production the document shall not be admissible".

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the good books of the powers that be or solicit the backing of a group that is as strong if not stronger than those powers if it's to ensure its survival and freedom in its day-to-day activities.

FOOTNOTES: CHAPTER TWO

1. Oxford English Dictionary. Third reprint 1969 V. II p. 845
2. CAHN E.N.: "Confronting injustice. Boston, Little Brown [1966]
Subheading Ancient Insights.
3. 245 Ill 334, 92 NE 251
4. 81 Cal. 2d 394
5. 319 US 105 (1943) - Quotation at page 108 - 109
6. E.A.P.G. orders and regulations Vol. 1 p. 65 S.77-79
7. Regulation No. 2 of 1898 replaced by No. 3 of 1900.
8. These were series of orders contained in group law and
order in Kenya (1954) 7 GLP 173
9. Now registration of persons Act Cap. 107 Laws of Kenya
10. R.V. Earl of Crewe 1910 2 K.B. 576
11. R.V. Earl of Crewe (Supra) pg. 607.
12. [1930] KLR 12
13. Machio S. Freedom of conscience in Kenya. A case study of
Dini ya Msambwa Sect. A UON LLb dissertation at pg. 21
14. Machio Supra at pg. 23. Elijah Masinde speech.
15. K.N.A. TN/2 handing over report by C.J. Denton to E.H.
Risley May 1955.
16. Kinyanjui Elijah found in Barrets Handbook on religion
in Kenya pg. 124-7.
17. Act No. 5 of 1969
18. See Engel .v. Vitale 370 US 421 (1962)
19. Article 1 of US constitution - Oceania Publishers 1981
20. Daily Nation September 14th 1987 p. 6
21. Cahn En Supra pg. 168

22. [1976] KLR 112
23. Daily Nation 9th June 1987 - p. 7
24. Daily Nation 14th September 1987
25. Blackstone W. Commentaries on laws of England V. 1. p. 121.
26. Ghai Y.P. and MacAuslan: Public Law and Political change in Kenya O.U.P. 1970 p. 429.
27. (1943) 67 C.L.R. 116
28. 380 US 163 (1965)
29. US .v. Kauten 29A. 381 145
30. 84 L.Ed 1213 1940
31. 98 US 145, (1878)
32. See Davies .v. Beason 133 US 333 (1890) Cleveland .v. 32a US 14 1946 Hyde .v. Hyde (1866) L.R. 1 P and D. 130.
32(a) - Drum magazine November 1986 p. 20.
33. Daily Nation 18 - 4 - 87
34. 238 Ark 906
35. Daily Nation 9-1-88 p. 6
36. 1942 A.C. 264
37. See Re Grosvenor Hotel London (No. 2) 1965 Ch 121 CA
Conway .v. Rimmer 1968 A.C. 910 N.L.
38. 1979 High Courts Election petition No. 12 of 1979 unreported.

CHAPTER III

CHURCH OPPOSITION TO THE STATE

Conflict between the church and the government in Kenya can be viewed at two levels. The first level is the one that can be termed as indirect confrontation while the second one can be termed as direct confrontation. Direct confrontation refers to a situation where a church, churches or some clergymen come out against a government act or policy or any act done by a politician for political purposes, and oppose it, on the ground that it's either contrary to specific religions teachings or it can cause social injustice or inconvenience. On the other hand indirect confrontation comes about where a particular sect has adopted practices of worship or ancilliary to worship that offend the law of the land.

A. INDIRECT CONFRONATION

This type of conflict doesn't generate much controvesy and is not as significant as the direct one because more often than not the offending church or churches incurs the wrath of the the law enforcement organ of the state by breaching the law of the land. In most cases the cardinal practices of such a church eschew the interests of peace, public welfare and good order in the country thus indirectly opposing the objective of the welfare state. Kenya as a welfare state has the full backing of the constitution to crackdown on all the churches that might undermine public order, safely, security and health.

Recently a voice of Kenya News commentary explained how radical

religious institutions antagonise the government in the following words.

"It is well known that some of these religious sects that have mushroomed since independence have been detrimental to development. Some of them would never take sick members of their faith to hospital for medical treatment. Even as the condition of their members continues to deteriorate they would insist on choruses and prayers. Yet a few tablets from the Kiosk or a penicillin injection from the health centre would have done the trick. If they cannot recognise such health institutions and services obviously they will not contribute towards the development of such health facilities which are badly needed especially in the rural areas and we know people's participation is the key to development involving local communities. Also some of these churches have no respect at all for authority. The Jehovah witnesses for example would never stand when National Anthem was played. This shows disregard for that symbol of our self-rule, our independence. It goes on to show disrespect for our government and what it stands for. These churches have also been public nuisances especially in the estates and other residential areas. They continue their religious ceremonies way into the night singing and praying at the top of their voices. Their door to door preaching also used to inconvenience residents. School children have not been spared either. Some of these churches mislead their children into not taking their school work seriously as the Holy Spirit is purportedly expected to do everything for them. They do not motivate their members, to work and improve their lot. Instead their followers continue to be subjected to poverty. "1

Here, it is worth noting that this commentary was made as an explanation to the nation of the reason for deregistration of five churches by the Registrar of Societies on 9th November 1987. Those deregistered were: The Association of Jehovah Witnesses in East Africa, The Evangelistic Gospel Church of the Holy Morning Star, Kigongona Gia Kenya Church, East Africa Israel Church (Ithanga branch) and African Israel Church (Diocese of Nyanza Province.)

The Jehovah Witnesses were being deregistered for the second

time since their registration a quarter of a century ago. This controversial locally incorporated branch of international society of Jehovah's Witnesses was registered in 1962 and proscribed for the first time in 1973 by the Attorney General Mr. Charles Njonjo. He had accused them of subversion accruing from their belief's basic tenet of rejection of temporal authority. Now the Jehovah Witnesses believe that an obligation imposed by law of God is superior to the laws enacted by secular governments. This belief stems from a literal interpretation of exodus 20 verses 4 and 5 that read:-

"Thou shalt not make unto thee any graven image or any likeness of anything that is in heaven above, or that is in the earth beneath, or that is in water under the earth. Thou shalt not bow down thyself to them nor serve them. For I the Lord thy God I am a jealous God, visiting the iniquity of the fathers upon the children into third and fourth generation of them that hate me."

The Jehovah Witnesses therefore consider earthly government as idols obedience to which is a violation of Divine law. Thus to them to show reverence to the National flag or to stand when the National Anthem is played is a satanic exercise whose inevitable consequences is to bring down the wrath of God on the sinner. It is this refusal to acknowledge the authority of earthly government, that has been seen as belligerence towards the state and active desire to subvert the same. For this reason Njonjo charged them with subversion. He dubbed them Devils Witnesses for refusing to accept the powers that be and proscribed the Association. By that time the group had already landed in similar troubles in Tanzania, Zambia and Malawi where the adherents engaged in running disputes with political and security forces over their refusal to acquire identity cards,

take part in political elections, join political parties or serve in the armed forces.

However, the 1973 proscription was shortlived as it was revoked four months later². The Witnesses thereafter moderated their stance with adherents being given a free hand to decide for themselves the level of state authority to recognise. However as the WOK commentary reiterates the Jehovah Witnesses still show "disrespect for the government and what it stands for".

The same commentary implies that the other religions were deregistered because of their practice of worshipping late at night with pounding of drums and wailing worshipers thus disturbing the peace in various neighbourhoods. The second reason is their fanatic belief in the powers of Holy spirit that militate against the governments development initiative by endangering the health of the citizens, stifling initiative and deterring education.

While the government is legally justified to act on such sects, it is difficult to verify the authenticity of these charges. As observed in the last chapter the registrar is the decision-maker as to what constitutes infringement of such aspects of public order security e.t.c. His is a political decision subject to vagaries and turbulence of political current. Thus the risk of deregistration out of political expediency is as awesome as it is real. No wonder when it was deregistered the Evangelistic Church of the Holy Morning Star asserted that

they they were deregistered because of engaging in traditional African practices and wondered whether the freedom of worship does not extend to traditional religions. They termed the deregistrations as unconstitutional and threatened to contest the matter in court. However, they have not done so yet but the Jehovah Witnesses have. On 26th November 1987 the Association filed an application in the High Court³ seeking leave to apply for an order to remove into the High Court of Kenya and quash the decision of Registrar dated 9th day of November cancelling the registration of the Association of Jehovah's Witnesses in East Africa under Societies Act cap 108.

Among the grounds for this prayer the application cited procedural defects in the deregistration by failing to give the Association a notice and to require it to show cause as to why it should not be deregistered as required by cap 108 of the Laws of Kenya. They further averred that the registrar's decision contravened the audi alterum partem rule of Natural justice because they were not heard before the deregistration. Finally they argued that the decision was not founded upon any basis of fact as is required by law.

Leave to apply for certiorari was granted and the application was made but the ruling has not yet been made. The outcome of this case is important to the extent that it will either limit the registrar's discretion by requiring him to strictly adhere to the laid down procedure or declare that the procedural defects were not sufficiently important to

warrant quashing of the registrar's decision. In that case the Witnesses will have lost their freedom of worship. However it can be noted that even if the registrar follows all the prescribed procedures his powers remain considerable and Maverick churches are still at his mercy.

B. DIRECT CONFRONTATION

While there can not be said to have been a definite or serious confrontation between religion and state in Kenya since independence, public exchanges between clergymen and politicians have become a common feature and hit a peak in 1986. The protagonists in these exchanges have been clergymen acting individually other than as representatives of their entire church on one hand and individual or groups of politicians counter-attacking the clergymen on the other. It is not until 1986 that both the Catholics and protestants joined hands to oppose a government policy. On the other hand the government response at this juncture went nearest to what can be seen as a policy stance against the church; also for the first time since independence.

Before getting to this clash that threatened to result into a real showdown between the government and the church it is necessary to appraise the chronology of church state conflicts since independence. This will throw light on the gradual growth of pockets of resistance to government policies as more and more churchmen grew bolder and joined others in condemnation of social "ills and criticism of the politicians

responsible for such ills.⁴ Thus the Presbyterian church of East Africa (P.C.E.A.) and the catholics have at one time or another engaged in running political controversies with the politicians. The muslims have also had their turn to oppose a law enacted by the government. In addition the catholics have joined the protestants to oppose the queuing method of holding elections and an amendement of the Kenya constitution to remove security of tenure of the office of the Attorney General. Other minor groups have also angered particular politicians of the government in general and their activities though less significant can be classified in the category of direct opposition.

(a) THE MUSLIMS

Although the controversy between the muslims and the government over the Law of Succession Act is not as significant as the other church-state conflicts that have involved major christian denominations, it is worth noting. The Succession bill had been enacted as far back as 1971 but it did not come into operation until 1981. It had been shelved largely because of the muslim community's opposition as they felt that most of the provisions ran counter to the practices of Islam and Quran law. When it finally came into operation a controversy was triggered off between the Attorney General's office and the Muslim community when the latter said they were not going to follow the new law as it was contrary to teaching of the Quran. Many clarifications from the Attorney General's office followed but the Muslims would

not bulge and sent a delegation to the President. This did not help as the President firmly rejected their request in the following words:

"I respect religion and would not like to see the Muslim faith in the country fall apart due to a law of state; but the laws of the state are designed to protect all Kenyas and cannot therefore be ignored."⁴

After having failed to make the state bul^{ge} the muslims seem to have resigned themselves to living with the new law inspite of the repercussions it might have on Quran law.

(b) THE PRESBYTERIAN CHURCH OF EAST AFRICA (P.E.C.A.)

The PCEA which arrived in Kenya from Scotland at the turn of 20th Century has contributed the greatest number of firebrand controversial clergymen and has been engaged in more battles with politicians than any other church in Kenya.

The earliest confrontation between PCEA and politicians took place in 1969 following the assassination of the Secretary General of KANU and Minister for Economics Planning and Development Mr. Tom Mboya. Mboya's murder created a serious political rift between Kenya's two biggest tribes the Luo and the Kikuyu with the former blaming the latter for the murder. The political Arena was dominated by the Kikuyus but the Luos who were soliciting sympathy from the smaller Kenyan tribes seemed to be

threatening this domination. Amidst this tension secret oathings were taking place in Central Province and parts of Eastern Province among the Kikuyu, Embu and Meru apparently designed to commit allegiance of the three ethnic groups to President Jomo Kenyatta and sustaining of a government dominated by the three groups in face to the threat posed by the Luo. This movement became widely known as 'KANU PRIVATE' a term borrowed from writing on the boards of public and private vehicles that were hired to ferry thousands of oath takers from their homes to secret oathing places set up for this purpose.

Religious groups considered oath-taking an evil practice and advised their members to resist attempts to coerce them to take the oaths at all costs. Now the PCEA was the numerically dominant church in the affected areas and was the most vocal in its resistance to the oathing. However, resistance by PCEA and other church members led to brutal beatings and occasional deaths including at least one clergyman.⁵ The government all along denied the existence of such secret oathings but persecution of those religious people who refused to be oathed continued unabated in spite of condemnation by the churches. Eventually the government admitted knowledge of the oathings and issued a statement condemning them and the practice finally came to an end.

In 1980s a different political crisis occurred and the PCEA was once again in the ring. In May 1983 President

Moi had dropped a bombshell when he told the nation that one cabinet minister was being groomed by foreign powers to 'illegally take reins of power from him'. As the suspense as to who this traitor was reached a crescendo the President had called a snap general election. Rumours already had it that Mr. Charles Njonjo a former Attorney General now a powerful Minister for constitutional Affairs was the dreaded traitor. It's against this tension charged political background that the 12 churches that make Rungiri PCEA Parish in Njonjo's Kikuyu constituency convened an annual meeting that was to become the talk of the nation. This otherwise normal annual prayer gathering achieved a new dimension when the congregation goaded by their pastor Revered G.M. Kabarugu and one of their senior laymen Mr. Samuel Githegi (an ex-Chairman of Coffee Board of Kenya and Njonjo's close friend) pledged in parables to return Njonjo as the M.P. for Kikuyu in the anticipated polls. With Njonjo under suspicion the Rungiri declaration was interpreted as intended to ridicule the President.

As if the delaration was not bad enough there were readings from the Bible about Daniel being thrown into a pit of lions by King Nebchadnezzar and reference

Kikuyu proverb Iguthua ndongoria itikinyagira nyeki which means that "if the lead sheep limps the rest of the flock would not reach the pastures"⁶ In the resulting parliamentary uproar the reading was interpreted to have equated Moi with Nebchadnezzar and Njonjo with

Daniel. The proverb was taken to mean that the limping lead sheep was Moi thus he was incompetent to lead the Kenyas.

After this the nation's suspense was erased when Njonjo was officially declared the traitor, suspended from the ruling party KANU and a commission of inquiry set up to investigate his alleged subversive activities. He was also accused of having been a party to the convening of the Rungiri Pseudo-prayer meeting.

A year later Rungiri was back in the News much to the embarrassment of the PCEA. In a similar annual meeting and undergraduate student of St. Paul's Theological College the Rev. James Mwangi Munyi seems to have revisited the Chilling pro-Njonjo demonstration of the previous year. In his sermon he read from Psalms chapter 30 which says in part:

"In thee Lord I seek refuge
In thy righteousnesses deliver me
I am the scorn of my adversaries an object of
dread by my acquaintances ...
Yeah! I hear the whispering of many there is
on every side as they scheme together against me,
as they plot to take my life."

Then the pastor continued to talk about persecution of christians during the reign of Delcius in AD 250 when they failed to worship the image of the Roman Emperor as a way of demonstrating their loyalty to him. He concluded by saying that what the government of Delcius or any other such government would have done or should have do is not to try and direct christian worship and

prayers but rather set free those it has imprisoned oppressed or suppressed in any way. To recognise those whose rights have been denied and to give them such rights.⁷

Here again the pastor was seen to be drawing a parallel between Kenya government and Delcius government and equating Njonjo's suffering with the oppression of early christians. It was also seen as a rejoinder to the government for its sharp reaction to the previous year's Rungiri prayers.

An Asistant Minister in the office of the President Mr. Martin Shikuku and the MP for Bahati Mr. Fred Omidia at least got the above impression and condemned the Rungiri church asserting that it was abusing freedom of worship and should be investigated.

Before the dust raised by the second Rungiri prayers had settled the greatest PCEA protagonist and perhaps the most controversial Kenyan clergyman came into the picture and shifted the limelight from Rungiri to St. Andrews church in Nairobi Presbytery. On 8th July 1984 Reverend Dr. Timothy Njoya delivered a Sunday sermon that was broadcast live to the nation by the Voice of Kenya. The message he had for the Kenyans was that it was the errant, the wayward and the self-righteous who needed prayers most. So he called upon his audience to pray for Njonjo the detainees and Kenyan's exiled abroad who

Njonjo may have had a hand in putting into the bars or forcing out of the country. He called for the prayers to be offered for those in power who might be tempted through self-righteousness to overstep their power or persecute others, that they might be delivered from their sense of self-importance and humbled to recognise that they were servants of the people.

This sermon fetched a sharp reaction from the government. Members of Parliament sought to outdo each other in employing the strongest terms to condemn the 'errant' clergymen. The Minister for the state in the office of the President in charge of internal security Mr. Tipis told the hushed house that:

"Whereas the right of worship is entrenched in the constitution and the government has allowed churches to preach the word of God without interference, church sermons should be complimentary to government policies and aspirations and every church should discipline its preachers."⁹

Thereafter the Minister of information and broadcasting cancelled live broadcasts of church sermons to enable prior scrutiny of their contents before broadcasting in order to ascertain whether they are contradicting government policy.

A few months later Dr. Njoya who prior to his prayer for Njonjo's call was little known outside PCEA circles entrenched his position as a household name by giving yet another politically sensitive sermon on 9th September 1984. This time he was on the war-path against some of the KANU

heavyweights. Mr. Kariuki Chotora the powerful Nakuru District KANU branch Chairman had previously castigated the clergymen who meddled in politics and proudly declared that his religion is KANU! In an obvious response to Mr. Chotora Dr. Njoya told his congregation that Kenyans should avoid idol worshiping in any form. He blasted 'politicians of fortune' who could not realise that they owed their priveleged positions to God. What a mess it would be for a political party to become a religion! he quipped.¹⁰

Incensed by Njoya's statement the then Minister for Transport and Communications Mr. Peter Okondo called for Njoya to be questioned by police to establish his political intentions saying that Njoya had gone beyond his pastoral duties and was using the church to challege the government and destabilise the nation. At this juncture it was clear that it was not only Okondo who had been angered by PCEA in general and Njoya and Rungiri pastors in particular. The President came out in support of his fellow politicians: Speaking at Jomo Kenyatta International Airport on arrival from an O.A.U. meeting in Addis Ababa Ethiopia he castigated the Rungiri prayers wondering why the churchmen would pray for peace in the country while it was there in plenty. He expressed dissatisfaction with the Presbyterian church in general not only because several of its clergymen had been involved in public controversies concerning sensitive political issues but because the church had not come out in strong dissociation from such clergymen.¹¹

Though the PCEA had found nothing theologically wrong with the sermons questions began to be asked in its ranks as to whether the PCEA could afford to continue to appear as though it was deliberately picking quarrels with politicians and by implication the government itself. Many church elders feared that at that rate it would end up being impossible to convince critics that the PCEA was not being used by Njonjo supporters to provoke the government. Thus after the Presidential criticism the Rungiri pastor Rev. Geoffrey Kabarugu and session clerk Mr. E. Munyua Gichini who were held responsible for organising the Rungiri prayers were suspended by South Kiambu Presbytery.

The Nairobi Presbytery was also wary of the possibility of being seen as troublemaker against the government and hellbent on blunting Njoya's sharp tongue. For a time stormy meetings were held with a section of elders calling for Njoya's discipline while others led by session clerk James Mageria stood by Njoya pointing at the theological soundness of the sermon as its justification. The pro-Njoya section contended that disciplining him for a sermon that was theologically sound was to castigate him for exercising his freedom of conscience and worship thus contravening the National constitution. The constitution would be violated by curbing Njoya's constitutional right to freely engage in worship. Eventually Njoya was told to show cause why he should not be disciplined for disobeying an earlier order never to touch on sensitive issues. He offered

a limited apology by saying that he regretted the sermons because of those who found it offensive contrary to his intentions. He then applied for leave which was granted and his apology accepted. Meanwhile the church was encouraging him to take job with Daystar University College which had advertised the post of Dean of Students. Thus his departure from PCEA would become a welcome relief from an irritating trouble shooter. Nevertheless Njoya neither took the appointment with DayStar nor abandoned the fireburned style of evangelism.

Two years latter he once again caused a National political outcry by issuing Sunday service phamplets that were declared by the President to be subversive. On Sunday October the 5th 1986 Njoya distributed typewritten sermons at St. Andrews. The sermon contained what seems to be a rejoinder to claims by some politicians that the ruling party KANU could not enter into a dialogue with churchmen over the resolution KANU had passed in its annual delegates meeting to adopt queuing system for preliminary elections. Njoya called for dialogue between the leaders and the people arguing that a government should rule by entering into a dialogue with its subjects who should be allowed to participate in decision-making if they are to develop a reasonable other than mystical patriotism. He argued that God did not presume that the people knew his justice without explaining it to them. Therefore christians should not be presumed to know the Bible, the National constitution, KANU manifesto,

sessional papers and important laws without participating in arguments about the wisdom and justice contained in them.

According to Njoya the ongoing battles between the preachers and politicians are not battles between the church and the government but between the righteous wanting to maximise reason in economics, politics and the community, and the unrighteous wanting to maximise their own power and wealth unreasonably by reasonable methods.

While addressing a goodwill delegation of African Gospel Church at his Kabarak house a week later the President in apparent reference to Njoya's sermon said that a certain church in the country was producing subversive pamphlets in the guise of Sunday sermons. Wondering how subversive documents would come from house of God the President challenged the authors of the documents to join politics so that they can make political statements instead of hiding behind the church to produce subversion.¹²

After this sermon and the subsequent scathing that it fetched from among others the President, it dawned on the PCEA that they could not afford Njoya's misadventures for long. The political pressure was mounting and severe repercussions were almost imminent. However, Njoya had got so famous that any drastic disciplinary action on him such as a dismissal would cause an unfavourable backlash of public opinion. To squirm out of this dilemma

the PCEA decided to take him away from the public eye by transferring him to to Kirimara a remote rural church in the heart of Nyeri district. When Njoya learnt of the transfer which was to take effect from first April 1987 he flew up in arms. He castigated the PCEA secretary general Mr. Plawson Kuria and PCEA Moderator Dr. Wanjau for victimising him for a theologically proper sermon and when the church refused to buldge he decided to retire 'on basis of conscience other than denounce his beliefs'.¹³

The church accepted his retirement but then changed its mind and decided to depose him as a Minister of PCEA thus denying him even the rare opportunity to preach that his retirement would have allowed him. Up to now he is still contesting the decision to dismiss him before the PCEA General Assembly but there are profound doubts as to whether they can reinstate a minister who had pushed PCEA reputation to the edge of a precipice.¹⁴

As PCEA was trying to make up its mind on how to get rid of Njoya on one front, another clergyman was busy besmirching its reputation and political standing in another frank. The new trouble-shooter was Dr. Anderson a PCEA pastor attached to St. Pauls Theological College Limuru. This fiery Scot unleashed scathing attacks on corrupt African clergymen (both protestant and catholic) as well as Government policies and institutions. Adopting the combative style of ancient prophets of the old testament he used the pulpit to conduct a one man crusade against

those African members of the clergy that he thought were corrupt and wondered why some clergymen adorned themselves with expensive attire while members of their congregations were ill-shod and poorly clad.

In the same spirit he prepared an explosive staff discussion paper in which he questioned the Biblical basis fo the country's self-help motto Harambee (pull together)! He wondered where the leaders who made substancial contributions in the meetings got their money. He implied that the generous contribution by politicians was a gimmick to buy populatity which resulted in precluding the poor from participation in the country's political process. He further insinuated that the money the politicians contributed is fraudulently acquired and geustioned the basis upon which the church consented to sharing it. His ultimate contention seemed to be that the church looses its prophetic freedom when it receives large sums of money that might have been acquired through corrupt means.

Such a paper was obviously bound to pinch the most sensitive raw-nerves both in the embattled PCEA and political ranks hence became his undoing. The PCEA dismissed him and ordered him to leave the country within three days. The reason given to the public was his alleged refusal to teach African theology at St. Paul's but observers came to hold that as a mere excuse the main

reason being his offensive against the clergy and the government.¹⁵

After the exit of those controversial clergymen the PCEA seems to be keeping a low profile in an apparent attempt to mend fences with the authorities.

(c) THE CHURCH OF THE PROVINCE OF KENYA (CPK)

The CPK is the name given to the former Anglican church as one of the measures taken towards indigenisation and Africanisation. Over the years it has contested the PCEA's position as the leading figure in the Arena of Political controversy. Like PCEA it is not the CPK as a whole that has often clashed with politicians but a number of its prominent clergymen. The most widely known of them are Bishop Dr. Henry Okullu of Maseno South Diocese, Bishop Alexander Muge of Eldoret, the Most Revered Manasses Kuria, the Archbishop of the church, and Bishop Dr. David Gitare of Diocese of Mt. Kenya South.

Bishop Dr. Henry Okullu holds Bachelors and Honorary Doctorate Degrees of Divinity from Virginia Theological College. After his theological studies he went back to Uganda (where he had been converted to christianity in 1956) and became the first African editor of 'New Day' the church of Uganda magazine. His stay in Uganda was shortlived and by 1968 he was an assistant editor of two

CPK magazines Lengo and Target in Nairobi. It is in this capacity as an assistant editor of the two magazines that he wrote an article that precipitated the first conflict between the CPK and the government by criticising the use of government money in construction of KANU Headquarters (now Kenyatta International Conference Centre). The furore the article caused led to expulsion of the editor of the magazine and Okullu assessed to the hot seat. In 1969 after the assassination of Mboya Okullu through Target and Lengo led the churches' attack on tribal oathings that were going on in the Central Province of Kenya. In 1971 Okullu moved to all Saints Cathedral and turned the once sleepy civic church into one of the most outspoken pulpits in the country. He attacked social practices that he thought were against Christian morality such as corruption in public office economic inequality, plight of the poor and detention without trial. In the process he got himself many enemies the most prominent of which was the then powerful Attorney General of Kenya Mr. Charles Njonjo, who was also the most prominent CPK layman. Dramatic exchanges between Okullu and Njonjo caught headlines with Njonjo calling Okullu a 'communist Bishop' and accusing him of using the pulpit to dabble in politics. Okullu retorted that it was a part of the divine calling of the clergy to seek out and excerciseall injustices and other social evils whenever they might be within society. He later crystallized these ideas in a book by the name Church and Politics in East Africa. In reference to the

role of the church in the society he wrote:- •

"The church claims no temporal power over men but appeals to their hearts and conscience. It is given the right to correct admonish or censure. Therefore it is no interference in politics for the church to warn the state that unrighteousness on public matters will bring calamity"¹⁷.

On the relationship between the church and the state he said:-

"The church in East Africa and it's councils are therefore having a very comfortable relationship with the state and tend in some areas at least to be a mere government department with the responsibility of offering prayers for leaders. Tragically this means the Nation's consciences has gone unheard"¹⁸.

Justifying the need for the church to censor

misdeeds by acting as the National conscience he remarked:

"African political structure of one party state is a phenomena which might take roots and became typical. This structure leaves the door wide open for abuse of power by individual leaders or groups. Yet sufficient checks and balances have not yet been built into the system or where they are in theory, the practice is rather that the leader's word is as good as a clause in the constitution. The church is thus left with no alternative than to play the role of the speaker for the underdog in Africa"¹⁹.

Amidst his exchanges with Njonjo and other politicians he was elevated into a position of Bishop of hitherto unheard of Maseno South diocese. Observers thought this to have been a banishment from Nairobi and the limelight.

At Maseno Okullu continued with his writing and continued to deplore political misdeeds and to caution the church about the danger of

too close association with politicians. In 1977 when he was re-elected the Chairman of National Council of churches of Kenya the collective body of Kenyan protestant churches he reiterated that "many a church leader has found himself largely jumping on the bandwagon and adopting opinions mooted by politicians"²⁰. In 1979 Okullu contested the office of the Archbishop of CPK after a controversial resignation of Archbishop Festus Olang but his nomination was invalidated and the most Revered Manasses Kuria took the office. After the invalidation of Okullu's nomination it was widely held that Njonjo the seniormost CPK layman and Okullu's bitterest political enemy had a hand behind the scenes in blocking Okullu's path.²¹

In the 80s Okullu has crossed swords with many politicians among who is Kariuki Chotora the late Nakuru district KANU chairman. However the fact that Maseno is tucked away in the Western end of Kenya hundreds of miles from Nairobi ensures that his opinions and utterances rarely reach the majority of Kenyans hence he is rarely in the limelight.

Besides Okullu the other cleric who has kept CPK at the hotbed of controversy is Bishop Alexander Kipsung Muge of Eldoret. He is a former member of the Crack General Service Unit (CGSU) paramilitary police. He resigned in 1973 and joined Maseno Bible institute where he got a Bachelor's degree in Divinity. Armed with his military background and his more recent theological qualification

he became the provost of All Saints Cathedral the station that had in previous years made.

Okullu's fame spread like bushfire. However, Muge kept away from the eye of controversy while at the cathedral and it is not until 1983 when he was transferred to Eldoret Diocese that he shot into the limelight. Upon arrival he struck an instant disagreement with the M.P. for Mosop constituency Mr. Arap Metto. The bulk of Eldoret Diocese is situated in Mosop constituency. The M.P. thought that the charismatic clergyman was getting too much influence and feared that he would eclipse him now that rumours were rife that Muge was a potential contestant of Mosop seat in 1988 General Elections. As a result he set out to curb this influence and started by mobilising the police against one of Muge's congregations. This happened at Tulwa where Muge and catholic Bishop Njenga of Eldoret were conducting a joint service. Metto told the police that the function was politically motivated to promote sectionalism as a result of which the police moved in and ordered the congregation to disperse. In return Muge banned Mr. Metto who was then an Assistant Minister for Culture and Social Services from performing any function in any of the CPK churches in the Diocese.²²

A few months later Muge was in the News again attacking those people who were telling Rev. Njoya (after one of Njoya's sensitive sermons) to stop abusing freedom of worship which is guaranteed in the constitution. He

took exception to the argument that freedom of worship is guaranteed by the constitution saying that this was leading to worship of the constitution rather than God.

He further asserted that:-

"The church must fulfil the role of a watchdog over the state and remain in principle critical of every state and ready to warn it against transgressions of its legitimate limits!"²³

In a matter of weeks he was on the war-path again now blasting those people who were seeking to discredit him by circulating photos of him taken in 1981 with the fallen minister for constitutional affairs Mr. Charles Njonjo. He said that his detractors were claiming that the photos had been taken recently and that the church projects he had undertaken in the Diocese were financed by Njonjo so the members of the Diocese should reject the projects. In his words:

"We live in a world of terror, ignorance, jealousy, hatred traitors. Full of those who are professionals in fabricating lies and getting away with all that!"²⁴

He then criticised political leadership in Nandi District and Mosop constituency in particular saying that if all political leadership in the district was like in Mosop the district would sink to hell. Incensed by the Bishop's attack which was indirectly launched against him the M.P. for Mosop in stern terms warned Muge to stop using church pulpits for politicking.

On October fifth 1987 when Njoya was distributing his 'subversive' sermon at St. Andrews Muge was once again on the offensive against politicians. He lashed out at those Nandi politicians who were calling for dismissal of outspoken preachers reserving his bitterest attack for those who had deployed youthwingers to stop him from addressing a Christian parade at Eldoret Stadium. He blasted deployment of KANU youthwingers to bar him from the stadium, instead of the regular police who were trained for maintenance of law and order in Kenya. He warned that such politicians were calling for their own sacking by christian electorate in 1988 elections and concluded by saying that those politicians who attacked the clergy do so to cover their own misdeeds.

Dust had hardly settled down after Rev. Njoya's dramatic exit from PCEA in early 1987 when Muge let go the greatest Bombshell of his controversial career. On April 12th 1987 the prelate gave a sermon in which he complained of harrassment meted to him and his flock by those in authority. He said:-

"For how long will these injustices and humiliations continue in our country. What is the point of protesting against South Africa when there are worse violations of human rights at home?"²⁵

His mention of Kenya's Human rights record came immediately after Kenya had come under criticism from Amnesty

international and western European media for alleged violation of human rights. With the politicians already on the defensive against Kenya's international detractors Muge could be seen as no better than a honky in the wood pile. From left, right and centre the politicians descended on him with daggers drawn and unleashed a formidable thrust of scathing criticism. The Minister for state in the office of the President Mr. Justus Ole Tipis, the Minister for Energy and Regional Development Mr. Nicholas Biwott and the Minister for Finance Professor George Saitoti led the group of leaders who condemned Muge and 'his foreign masters' and demanded an immediate apology to KANU. The evergreen Nakuru branch KANU Chairman Kariuki Chotora emphatically stated that the government would not allow clergymen to rule the country although freedom of worship was enshrined in the constitution. The events took a dramatic twist when all the 28 priests of Eldoret Diocese gave a statement in defense of Muge saying that they "were surprised by over-reaction by people whenever the truth is told". The statement copied to all the Anglican primates of the world said that the church is charged with the responsibility of speaking the truth.²⁶

In spite of all the heat generated by Muge's statement and exacerbated by CPK's support for Muge in the face of Government criticism, the government did not take a policy stand and the issue eventually died down. Muge

never made any apology to KANU publicly, if he ever made one. However after this his tone of criticism moderated considerably. On June 7th he exhorted leaders to accept constructive criticism and urged christians to speak out against the evils in our society.²⁷ It is after this he is said to have been reconciled with Mr. Metto and changed overnight from a government critic to a government supporter . In July he was no longer comparing Kenya authorities with South African ones but was full of praise for the government. He noted that christians should be loyal and give to the state every thing necessary for its existence including taxes. He exhorted christiansto pray for the state and those at its head and blasted those christians who join clandestine anti-government movements like Mwakenya accusing them of going against the gospel of Christ and the doctrine of the church.²⁸ Upto now Muge occassionally issues statements praising the government in public forums whenever he gets an opportunity to do so.

The other CPK Bishop who had 'interfered in politics' of late is Bishop Gitare the Head of CPK Diocese of Mr. Kenya East. On May 26 1987 the government announced that KPCU which is registered both under the Companies Act and Cooperatives Act will be wound up and replaced by a new organisation possibly called National Coffee Cooperative Union (NCCU). Members of the new organisation were to be restricted to coffee farmers only.²⁹

Farmers reacted angrily to the proposed move and seem to have been supported by the prelate of Mt. Kenya East which is an important coffee growing region. In his sermon on 20th May Bishop Gitare said:-

"The biggest mistake we can make in the life of our nation is to allow major decisions to be passed without sufficient time for all of those concerned to debate the issue".

He then criticised those who claim to be Nyayo followers while at the same time misleading the President.

This sermon sent KANU chairman Mr. Okiki Amayo into a wild rage. He demanded to know what the Bishop was upto and warned the Bishop and his supporters to shut up or face the music. Unperturbed by the warning the Bishop retorted that no political party has control over the church and that they (Clergy) don't preach to please leaders therefore a political party can't programme a preacher not to preach. He lamented that Bishops are told to keep off politics, but there is a Bishop in Parliament and we have never heard him being warned to keep off politics.³⁰

Gitare's reaction drew a sharper response from Amayo's colleagues. Three cabinet Ministers; Robert Ouko, Andrew Omanga and Nicholas Biwott condemned Gitare in strong terms wondering why should the church leaders use

the pulpit to criticise the government and get away with it. The Ministers said they would allow nobody to play around with the Kenya government and called upon church leaders to keep the church "pure and clean so that the followers can go there"³¹.

In spite of all this smoke no fire broke out and the controversy died down as quickly as it had began.

(d) THE ROMAN CATHOLIC CHURCH

Owing to differences and rivalries that date as far back as the missionary period the catholics and the protestants have had very little co-operation with each other. Thus when the protestants formed the National Council of Churches (NCCCK) the catholics kept their distance and have remained aloof up to this day. Again when the protestants were getting embroiled in political controversies the catholics steared clear of any public wrangle and preferred to express their opinion through high level private contacts with powers that be. However the catholics seemed to be changing this trend by June 1983 when all the catholic Bishops got together and issued a pastoral letter on the parliamentary elections that were about to take place.

In hitherto unprecedented bold style the Bishops castigated disunity among leaders that had characterised the last government, public corruption and financial

scandals involving public managers. The letter also gave a recipe for the kind of leadership needed in this country calling upon their members to elect only men and women who were capable of that kind of leadership. This pastoral letter was met by a barrage of criticism by politicians who implored the Bishops to stick to the pulpit and stop interfering with the country's electoral process.

A year later the catholic Bishops crossed swords with the government over family planning. As observed earlier 1984 was a year of verbal political battles between politicians on one hand and PCEA and CPK on the other. As the PCEA pastors Njoya and Kabarugu were making sensitive articulations from pulpits in Nairobi and Rungiri respectively Bishop Muge was busy engaging Nandi politicians in Eldoret. As the year approached its terminal, it was the catholics' turn to be at the centre of controversy.

The Kenya government is profoundly concerned about the meteoric rise of Kenyan population. Thus in its 1984/88 five year development programme it planned to intensify family planning campaign by cooperating with non-government organisations to inform and educate actual and potential parents regarding the benefits of smaller family sizes. Inclusive in the plan is making family planning services available in the rural areas mainly by increasing the

number of health centres offering family planning facilities.

In support of government efforts two charitable organisations, the Lions Club of Nakuru and the Giants Group of Nairobi set up camps at Nakuru, Kisumu and Kiambu to perform surgical sterilisation on targeted numbers of rural women. They aimed at performing 900 Tubal ligations in those camps.³² This programme had total support of the Ministry of Health.

The Roman catholic church is opposed to all methods of artificial contraception and maintains that use of contraceptives is unnatural and a contradiction of God's plan for mankind. Thus when the 16 catholic Bishops who were having an annual meeting at St. Thomas Aquinas Seminary Nairobi heard of the proposed sterilisation camps programme they made a vehement protest. On November the sixth they released a statement describing the programme as destruction of fertility that leaves the woman permanently sterile. In their words:-

"Such a mutilation of reproductive organs for direct purpose of preventing conception is against the Natural law. Aside from religious and moral objections to such fertility destruction, the whole promotional approach of the camps is an insult to women³³ and men of Kenya, a violation of human dignity".

In reply the Ministry of Health defended the programme asserting that surgical sterilisation is simple, safe and there is no mutilation. In addition the clients

who present themselves to the camps where this operation is done do so voluntarily without any coercion or persuasion.

The events took an interesting turn when the PCEA defended the programme and accused the catholics of ignoring economic realities while the CPK threw in its weight behind the catholics in condemning the sterilisation camps. In a tough statement the CPK described the camps as anti-African, repugnant to our christian conscience and an insult to human dignity. "Couples should be left to choose for themselves instead of luring them into sterilisation camps like lambs led to slaughter house," the CPK added.

To stop the squabbling from getting out of hand the Vice-President Mr. Mwai Kibaki called a press conference and pointed out that there was no disagreement between the government and the church as the catholics were not opposed to family planning perse but to the use of certain methods of family planning. Commenting on the same issue Presidnet Moi said that traditional methods of birth control were out-dated because the traditional set-up has been shattered by modern liberal and erratic styles. In apparent reference to the catholic position the President said it was naive for certain people to advocate traditonal methods of family planning. He poured scorn on them by referring to them as "theorists

talking from Nairobi in ignorance of the real problems facing the rural folk"³⁴. After this rebuke the catholics kept quiet until 1986 when they joined their protestant counterparts to oppose the queuing system.

(c) THE NCKK COMBINES WITH THE CATHOLICS TO OPPOSE QUEUING SYSTEM AND CONSTITUTIONAL AMENDMENT

On August 20th 1986 KANU's supreme organ the annual delegates conference adopted a new method of queuing behind candidates in preliminaries to 1988 general elections³⁵. That is to say only the run-off will take place through secret ballot while the preliminaries will be conducted through this new method. As coincidence would have it, when KANU delegates were meeting in Nairobi, 1200 pastors who are members of NCKK were having an annual four day conference at Kenyatta University. Upon hearing of KANU's resolution the pastors issued a statement opposing the polls plan on the grounds that:- "It will mean openly taking sides in the choice of candidates which will cause repercussions in our respective churches".³⁶

No sooner had the churches stated their stand than the politicians set out to dislodge them from it. Mr. Kariuki Chotora acting as a harbinger of KANU's onslaught roasted the pastors and warned them that "opposition by church leaders to a procedure fully endorsed by KANU was tantamount to opposition of party

leadership. Yet the church continued to enjoy fruits brought about by the party."

Meanwhile the head of catholic episcopal conference Bishop Ndingi Mwana Nzeki doubted the constitutionality of the new polls method and asserted that the catholic clergy will abstain from voting unless the constitution is amended to accommodate queuing.³⁷ For the first time in the history of independent Kenya the majority of Christian churches were at consensus in a solid opposition to a government policy.

After Chotora almost all the cabinet ministers attacked the pastors. The minister for energy and regional development Mr. Nicholas Biwott joined Robert Ouko to challenge the pastors to say the motive behind their opposition. This clarion call was taken up by Ministers Odongo Omamo (Agriculture) Oloo Aringo (Education Science and Technology) and a number of assistant Ministers and backbenchers. As temperatures continued to rise two churches, the African independent pentecostal church of Africa (AIPCA) and Full Gospel church chose to play it safe by supporting KANU while Dr. Njoya issued a statement in support of NCKK pastors.³⁸

Meanwhile President Moi who had been silently monitoring the development broke his silence in a conciliatory tone by urging the churches to honour the boundary

between religion and politics. He called upon church leaders among others to weigh their words carefully before uttering them. As the pastors continued to hold their position he expressed his growing impatience with them by referring to them as radicals and reminding them that KANU is supreme and its decision must stand.³⁹

A few days latter he pointed out that the polls plan had grassroots support and challenged the pastors to get their opposition grassroots support. As the church clung as obstinately as ever to its opposition the President finally made a devastating attack on NCKK questioning their sincerity in supporting him and his government. He called some sects which were members of NCKK 'bogus' and asked KANU to investigate some of these bogus sects with an aim of weeding them out.⁴⁰

At this juncture it had become clear that the government was collectively united against the pastor's stands unlike earlier occasion when prominent politicians had engaged in almost isolated squabbles with the clergymen. The tug of war between church and the state seemed to have reached a special crisis level and every observer was holding his breath wondering what was to happen next. However, the worst never happened and a sigh of relief were heaved when the President diffused the tension by announcing exemption of some senior civil servants, military leaders and clergymen from queuing.⁴¹

The clergymen were elated by the Presidential announcement. Although they did not succeed in making the government abandon the controversial election method they appeared

to have wrestled a major concession from it. The government seemed to have appreciated the divisive nature of queuing method if prominent community and church eladers were going to queue together with those they lead; thus exempted the senior civil servants, military bosses and clergymen from the exercise. The church leaders had a cause to celebrate. They thanked the President and shelved their opposition until after 1988 Queue -Voting when what they had hailed as a major accommodation by KANU and the government proved to be no concession at all.

Before we examine the 1988 General Elections and how the disappointed NCKK embarked on a second phase of opposition to queuing methods, let's round up the events of 1986 by looking of the church opposition to constitutional amendment bill 1986.

In November 1986 the Attorney General introduced in parliament 'The Constitution of Kenya Amendment Bill 1986'. The bill was intended to repeal S.22(i) of the constitution to abolish the office of the chief secretary and empower the President to appoint a Permanent Secretary in the office of the President who shall be the head of the civil service. The second aim was to amend S.109 of the constitution so as to remove the security of tenure of the office of the Attorney General. The amendment was to delete S.109(5), (6), (7) and (8) which provided for appointment of an impartial tribunal to

probe the Attorney General's conduct and recommend his removal or retention before the president could remove him. Once S.109 is deleted, the Attorney General could be removed at the pleasure of the President. Lastly the bill was intended to amend S.110 so as to remove the security of tenure of the office of the Auditor General who had been as much protected as the Attorney General.⁴².

Soon after the bill was tabled in parliament the Law Society of Kenya (LSK) issued a statement outlining checks and balances provided for in a democratic constitution and urging parliament to reject the bill. Next to oppose the bill were the NCCK also alluding to the need for checks and balances and calling upon the government to allow the people to participate in any decision on the matter possibly through a referendum.

As usual the politicians came out to tell the churchmen to mind their own business. Mombasa KANU branch Chairman Mr. Sharif Nassir said that the bill sought to remove foreign and obsolete laws and added that KANU through parliament is the sole law making organ thus implying that the proposed amendment is not open to debate. The Minister for Labour Mr. Okondo took up the cue and stated that the provisions were imposed on Kenyans during the independence negotiations and time is ripe to do away with them.

In parliament both the LSK and the NCKK were roasted in harsh terms. Mr. Robert Ouko declared that neither of the two bodies has authority to speak for the people who have parliamentary representatives. Mr. Oloo Aringo accused the NCKK of defending ethnic interests saying that those churches raising opposition were the ones supporting Njonjo at Rungiri, yet when there are financial problems in the country the same churches don't raise a finger. The politicians concluded by accusing the NCKK of having improper motives in commenting on the constitutional bill.

Meanwhile a former Evangelist employee of the NCKK Dr. Walter Osewe claimed in a Nairobi court that the council has hatched a plot to kill him because he had information to the effect that NCKK had links with underground movement Mwakenya! As he was about to be goaled, Osewe told the court that he had been introduced to Mwakenya by a client of NCKK and that he had been given the duty of recruiting church leaders by Mwakenya.

The mention of the council in connection with country's enemy number one, the anti-government Mwakenya was destined to besmirch the council's reputation and integrity. No wonder the council immediately strongly denied the allegations of any plot to kill Osewe or connection with Mwakenya.⁴³ In another development the MP for West Mugirango Mr. David Onyancha

called . . . the Minister for State in the office of the President in charge of internal security to probe the NCKK. He gave its opposition to the queuing method of voting, the constitutional amendment and its alleged link with Mwakenya as the reasons necessitating such a probe. The Minister in response to Onyancha's call later told parliament that the government was in fact investigating the validity or otherwise of allegations against the NCKK. He said that the council was trying to play the role of the opposition party and that there was reasonable evidence indicating the existence of some elements opposed to the policies of the government and the party within the council. He reported that these elements that he did not name, were the ones who are using the council in an attempt to mislead Kenyans by creating fear and despondency in the country. He finally warned that investigations were continuing and if any member of NCKK is found tampering with the security of the state he will be dealt with severely in accordance with the established laws.⁴⁴

Meanwhile the bill sailed through parliament without any hitch with almost all the MPs voting in its favour. The opposition of LSK and the church went unheeded.

As the honourable members were making their criticism and the Minister of State in charge of internal security was issuing threats to deal severely with any

member of NCKK found tampering with the security of the State, the African Inland Church (AIC) withdrew its membership from NCKK. It was soon followed by African Gospel Church - and the Baringo branch of Full Gospel Church. All the three churches stated that they withdrew because the NCKK had deviated from winning souls and gone too far in its political involvement.

From the foregoing however, it was clear that the state was rapidly getting fed up with NCKK's constant opposition to various state initiatives. The days of those elements in the NCKK that were creating despondency and fear among Kenyas were coming to an end as was adequately demonstrated later, by the aftermath of church-state conflict that arose after the 1988 queue-voting election.

On Monday February the 22nd voters turned up in polling stations all over the country and elected candidates of their choice by queuing behind them. Everybody was excited about this new amazing election method and both the church and the citizens were keenly observing to see how successful and democratic it was going to be. The results were as fascinating as they were controversial. Amid allegations of widespread rigging, voter harassment by administrative officials and other irregularities over 60 candidates

were elected by over 70% of those voters who turned out to queue in their respective constituencies. These candidates became automatic parliamentary representatives of their constituencies by virtue of a nomination rule which stipulates that any candidate who gets over 70% of the voters in the nomination exercise will go in unopposed. Other aspirants were unceremoniously bundled out of the race when they failed to get the mandatory 30% of the voters. Those leaders who went in unopposed after getting over 70% were quick to join President Moi in declaring the new polls method an overwhelming success. On the other hand those whose exit from the contest was accelerated by the swiftness of the method hastened to condemn the method as a dismal failure. Amongst the voices of dissent the loudest was that of Beyond magazine a christian monthly that is regarded as the NCCK's month piece.

No doubt the pastors, senior civil servants and military leaders were waiting for their inclusion in the nomination exercise through another method rather than queuing.

This did not happen and those who did not queue never voted. This must have embittered the pastors when they realised that their celebrated victory in 1986 was not victory at all. Expressing the pastors disillusionment in Beyond's special elections issue entitled, THE QUEUE-VOTING: WHO REALLY WON?⁴⁵ a correspondent observed:

"At one time after the clergy and other citizens had criticised queuing, the government had promised that professions civil servants and people in community leadership would be exempted from the procedures. Another form of voting that would not inhibit their preferences was to be sought before the election.

Yet when the time came, KANU reneged on this promise giving the impression that at no time even during the height of the debate was there any desire to listen to voices that expressed a different opinion. The result of course is the minority representation in those areas where candidates have supposedly been elected unopposed."⁴⁶

The magazine then gave elaborate accounts of alleged rigging, harrassment and intimidation of voters and those who were designated 'anti Nyayo candidates', in Kinangop, Kirinyaga, Nyandarua, Tinderet and Starehe constituencies dismissing the exercise as a "mockery of democracy.

In a scathing editorial the editor sought to explain the irregularities that characterised the elections in the following words:-

"What really came out to be the worst enemy of people's democratic right is the way the administration conducted itself. In most cases the administration terrorised citizens. These were countless examples of use of force. Although KANU... had done an excellent job to produce elaborate rules for nomination the administration in many cases disregarded those rules.

What has now emerged from the queuing form of nomination is that mwananchi's right and power to vote for a candidate of his or her choice was taken away by force by the administration. What a mockery of democracy consequently democracy in Kenya has slipped a step downward putting the country onto the path of self-destruction which many African countries have followed!"⁴⁷

As is to be expected the politicians were quick to condemn

the magazine in particular and the NCCK in general. A gathering of Turkana leaders led by their district KANU Chairman, Mr. Peter Ejore and their organising Secretary Mr. Japheth Ekidor called for the banning of NCCK. They argued that the council had been acting as an opposition party and since Kenya was legally a one party state the council should be dismantled. They severely grilled Beyond magazine for telling "blatant lies" against the people of Kenya.⁴⁸ In defence of Beyond the CPK Bishop of Mr. Kenya South Dr. Gitare deplored condemnation as a means of achieving national reconciliation in Kenya. He said that perpetuation of condemnation and calling for the banning of NCCK every time it comments on an issue is not the way to resolve problems in the country.⁴⁹

A few days later the Attorney General banned all the past and future issues of Beyond magazine "in exercise of the powers conferred to them by Section 53 of the Penal Code." The ban which was to take place immediately made all the past and future issues of the magazine to become prohibited publications, possession of which is penalisable by imprisonment not exceeding three years.⁵⁰

Having declared the Queue-voting method a resounding success the government was bound to regard Beyond's criticism of the method with ultimate resentment. Such contradiction of government statement soon after it was made showed that the NCCK's opposition to queuing method

was as strong as ever. It appeared that the NCKK was going to extraordinary pains to dig out the faults in the polls method so as to discredit it. To the politicians this would amount to discrediting KANU and the government by seeking to prove them wrong. Thus it was not surprising that the government took such a drastic step of banning of the magazine.

NCKK's top hierarchy seemed to have realised that the magazine had so gravely irritated the government to extent of endangering the council's existence. The council's chairman Mr. Bryon Makokha stated that Beyond had got out of step and failed to discharge its responsibility of spiritual enlightenment of christian flock. He supported the government that had implied that the magazine had outlived its usefulness as a christian magazine.⁵¹ The curious thing however, is the fact that the NCKK had not dissociated itself from Beyond until after the magazine had been banned. Apparently Beyond had the council's blessing when it wrote its election overview but became expendable once the coverage endangered the council's own existence. Makokha's denunciation of Beyond was an endeavour by the council to mend fences with the government in order to avert any more drastic reaction.

FOOTNOTES CHAPTER THREE

1. VOK News commentary 24 November 1987 a 1.15 p.m.
Title Deregistration of churches see Nairobi Law Monthly
No/Dec. 1987 at p. 20.
2. Weekly Review Nov. 27th 1987 p. 40
3. Miscellaneous civil case No. 654 of 1987.
4. Weekly Review August 31st 1984 - p. 9
5. Weekly Review August 31st 1984 p. 7
6. Weekly Review September 14th 1984 - p. 8
7. Ibid
8. Weekly Review July 27th 1984 p. 3
9. Ibid
10. Weekly Review September 14th 1984 p. 9
11. Weekly Review September 21 1984, p. 7
12. Weekly REview October 17th 1986, p. 5
13. Daily Nation March 23rd 1987 P. 21
14. Sunday Nation January 1st 1988 p. 1
15. Weekly REview April 11th 1986 p. 12
16. Weekly Review July 18th 1977 p. 3
17. Okullu J.H. Church and politics in East Africa
Uzima Printer 1974 p. 1
18. Supra p. 13
19. Supra p. 18
20. Weekly Review July 18th 1977 p. 3
21. Weekly Review August 31st 1984 p. 7
22. Weekly Review September 14th 1984 p. 9

23. Weekly Review December, 17th 1984 p. 31
24. Weekly REview March 14th 1986 p. 3
25. Daily Nation April 16th 1987 p. 6
26. Daily Nation April 17th 1987 p. 1
27. Daily Nation June 8th 1987 p. 9
28. Daily Nation July 7th 1987 p. 5
29. Daily Nation May 27th 1987 p. 7
30. Daily Nation June 29th 1987 p. 6
31. Daily Nation June 30th 1987 p. 9
32. Weekly Review November 11th 1984 p. 7
33. Weekly Review November 11th 1984 - Bishop Statements p.7
34. Weekly Review December 7th 1984 p. 21
35. Daily Nation August 21st 1987 p. 1
36. Daily Nation August 22nd 1986 p. 32
37. Daily Nation August 23rd 1986 p. 12
38. Daily Nation August 25th 1986 p. 3
39. Daily Nation August 26th 1986 p. 7
40. Sunday Nation August 31st 1987 p. 1
41. Daily Nation September 6th 1986 p. 32
42. Weekly Review November 21st 1986 p. 7
43. Weekly Review December 12th 1986 p. 13
44. Ibid
45. Beyond magazine March 1988: A special issue covering the queue-voting election and articulating a continued pastoralopposition to the method.
46. Ibid p. 4
47. Ibid p. 2

48. Sunday Nation March 13th 1988 p. 28

49. Daily Nation March 14th 1988 p. 24

50. Daily Nation 1st March 1988 p. 1

51. Daily Nation March 17th 1988 p. 1

CHAPTER FOUR

AN ANALYSIS OF STATE RESPONSE TO CHURCH OPPOSITION AND THE EFFECT OF THIS RESPONSE ON THE FREEDOM OF WORSHIP

As brushes between the state and the churches were developing the country's politicians began to see the church as playing a role akin to that of an opposition political party. Thus church leaders who played a central role in the controversy such as Dr. Njoya, the CPK Bishop of Eldoret Rt. Rev. Alexander Muge and his counterpart in Maseno South the Rt. Rev. Dr. Henry Okullu were singled out for special criticism. Nevertheless the contention by such politicians that the churches were acting as the opposition party is an overstatement. It's wrong because as we have seen the church opposition to state policies has neither been consistent nor unified. Rather the opposition has often been carried on by a few Gadflies within the ranks of church leadership and even those lone crusaders have not opposed every political act that they have thought abhorrent. In other words activities of Njoya, Muge etc have taken form of intermittent criticism of certain political acts rather than consistent opposition. On the other hand the NCCK as a body and the catholic episcopate have not embarked on a systematic censorship of all and any government policy that they deem inappropriate for a christian society. Had they undertaken a general criticism of any government policy they choose then they would qualify to be called the conscience of the Nation as Okullu wants the church to be and would be said to be playing a role akin to that of an opposition party.

Compared with such a country as Burundi where the church was involved in a virtual struggle for power with the government, the Kenyan church activities are nothing but mild forms of criticism. No wonder until the queuing debate the government had not seen it fit to take a policy stance against church criticism as it were. Even though the state was not taken a policy stance against the church it has reacted in various ways to counter criticism by such leaders as Dr. Njoya and Dr. Okullu, and those churches that have become the hub of state criticism like the P.C.E.A.

Those few sects that have adopted policies radically offensive to the government have inevitably been deregistered and those of their members who have continued to manifest their membership to the defunct societies have been jailed for belonging to an illegal society. Such churches include Diniya Msambwa and the Association of Jehovah Witnesses.

As for those individual church leaders who have chosen to lock horns with the politicians, they have often found themselves in great difficulties. Apart from being singled out for special criticism by politicians they often find themselves unable to exercise their freedom of worship in the way they want. Thus when Bishop Dr. Okullu condemned political ills from the pulpit of All Saints Cathedral he was transferred to Maseno Diocese in western Kenya where his utterances will not be heard by as many people as he had planned. Secondly his attempt to become the head of the C.P.K was effectively blocked. In both occasions the former Attorney General Mr. Charles Njonjo is said to have had a hand behind the scene.

As for Rt. Rev. Alexander Kipsung Muge once he started fighting Nandi politicians, they hit back using the coercive forces at their disposal to hinder his activities. Metto and his colleagues did not hesitate to 'deploy' police or KANU youthwingers to stop him from engaging in legitimate prayer meetings in attempts to intimidate him to silence. Thus his outspoken and critical attitude towards politicians has often led to curtailment of his freedoms of worship Assembly and Association.

Rev. Dr. Timothy Njoya and his Rungiri colleagues did not find the going easier. Although their sermons were declared by the P.C.E.A to be theologically sound they were found to be politically sensitive. In other words inspite of offending political tastes the sermons issued by Rev. Njoya and Kabarugu were found to have been legitimate evangelical exercises which are lawful acts of worship. However, their political sensitivity led to suspension of Kabarugu and his session clerk both of Rungiri church. In so doing the P.C.E.A was endeavouring to show that it has acted against pro-Njonjo, hence anti-government elements in their midst. In the same endeavour Njoya was to be transferred from Nairobi. His refusal to go led to his deposition as a minister of P.C.E.A thus clipping off his ability to exercise his freedom of religion through sermons.

Dr. Anderson the critical scot pastor at St. Pauls theological college Limuru had a worse fate. His dabbling in politics not only led to his dismissal as a P.C.E.A pastor but also to his expulsion from the country at 3 days notice!.

Those churches whose leaders have 'interfered' in politics have found themselves losing the state's favour and cooperation. In 1983 Rev. Benard Muindi the P.C.E.A general secretary visited Scotland. After his visit he mooted an idea that funds should be collected to help missionary work among the needy people in Edinburgh Scotland like the Scots did a hundred years earlier to aid missionary work in Kenya. Now this idea was brought when the church was engaged in a controversy with the government over its famous Rungiri prayers and most politicians had adopted a very combative attitude towards the P.C.E.A church. As the money was being collected the project hit a snag when the party owned local Daily Kenya Times reported that the central bank's foreign exchange officials have resolved not to grant foreign exchange for P.C.E.A's money unless it got special clearance from the president. The Kenya Times also expressed pessimism over the possibility of the president granting such a clearance. Though the P.C.E.A leadership stated they were not perturbed by the Kenya Times report and said they were going to continue collecting the money nothing was ever heard about the project and it's believed to have fizzled out.

Besides this non-cooperation the P.C.E.A like other controversial churches has faced severe criticism. The president had referred to it as subversive for failing to disassociate itself fast enough with activities of its errant pastors. Any allusion to disloyalty of any religious group is a veiled threat in that the next step might be a declaration that its a threat to public security

order etc. and then it would face such drastic consequences as deregistration. The impact of such veiled threats can only be fully appreciated when one pauses to reflect on the powers the constitution allows the state to have over the churches in Kenya.

As we observed in chapter two, S.78 of the constitution that guarantees freedom of worship does not provide impregnable fortification against violation of the guarantee. Indeed the guarantee prevents citizens from interfering with each other's freedom of worship but doesn't prevent the state doing the same in the guise of defence of public order, Public health, public security and public safety. This glaring weakness ensures that the practice is totally different from the theory. While the legal theory is that the freedom of worship is guaranteed by the constitution the practice is that this freedom is to a large extent dependent on political goodwill. The reality is that the state through the registrar can deregister practically any religious body in the name of public security etc. and the aggrieved body can't rely on the constitution to assert its right to continued existence. Therefore when the minister for state in the office of the President Mr. Tipis threatened to deal severely with any member of NCKK found "tampering with the security of the state in accordance with the established law¹⁸ there was nothing to prevent him from having any member of NCKK deregistered. Alternatively and more drastically he could have the NCKK itself deregistered and the councils' recourse to the constitution would be futile.

Having broken the central forum of the protestant churches the hundreds of tiny religious sects would be at the mercy of the registrar and he could pounce on any and wipe it out at will unless they behave. The deregistration of five churches at a go on 9th November 1987⁹ adequately illustrates the registrar's, thus government's, power to deal with Maverick religious bodies and the futility of the constitutional guarantee. Being so vulnerable its no suprise that the African Inland Church (AIC), The Full Gospel Church and The African Gospel church got extremely worried when Tipis threatened to investigate the NCKK with a view of weeding out the dessidents. The three churches decided to Quit the council when the going was still good.¹⁰

The inevitable conclusion that freedom of worship is nothing but political protection of religion and that such protection will last as long as there is political goodwill, leads us to another conclusion that every church has to strive to be in the good books of the government. In that respect no church wants to arouse the wrath of the state by being seen to be antagonistic towards state policy. No wonder the P.C.E.A was eager to get rid of troublemakers in its midst especially after the president had refered to it as 'subversive'. Similary the catholic church had to keep quiet when the president took exception to its opposition to Artificial methods of family planning in general and sterilisation camps in particular. On the same footing the muslims had to acquiesce in the succession Act, although they regarded it as contrary to the Quran and Islamic teachings, when the government refused to give in to their demands.

To act otherwise would have meant a confrontation with the government which would have had catastrophic results on the muslims. On the other hand when the constitutional bill was passed by parliament the NCCK could do nothing about it as further resistance would have been calamitous on the NCCK.

At this stage there is one question that can be posed by any keen observer of the church-state conflict in Kenya. Since the constitution allows the state to have so much power over religious bodies, why has the state engaged in long drawn debates with churches for example during the polls controversy instead of acting swiftly and decisively to stop their opposition? The answer to this question lies in three basic factors.

The first reason to state reluctance is the nature of the church opposition itself. More often than not the public exchanges have involved individual clerics and individual politicians or a number of politicians. In other words the occasions where a church as an institution has come out against government policy are very few. The scene has been dominated by a few firebrand clergymen involved in heated public exchanges with politicians, other than individual sects taking on a government policy. In such circumstances the government could only get displeased by such a pastor's church because the church has not acted to silence the culprit but it can't accuse the whole church of disloyalty.

It's only when the church doesn't apologise or dissociate itself from the clergymen that the government can regard

the church as giving quiet support to the pastor and then regard that particular church as a party to the activities of clergyman. In most cases the P.C.E.A or C.P.K have always distanced themselves from their preachers' sermons and even sought to discipline them for giving sensitive sermons even when such sermons are theologically right. Due to this disjointed nature of political interference the state has been content to stay afar and apply pressure to the mother church to discipline its mischevious children.

The second factor is the informal relationship that exists between top church leaders and top political leaders unlike in America where a rigid wall of separation is maintained between church and state activities the Kenyan political structure has identified with religion. Thus every important state function is normally opened with prayers and Bishops have been members of parliament at one time or another. With such co-operation in daily activities church and political leaders have got very close. Prominent clergymen share the same dais with prominent politicians in public gatherings. As Bishop Okullu once remarked sometimes the church acts as " a government department with responsibility of offering prayers for political leaders". With such informal relationship its easy to solve most controversies through high level contracts between church and political leaders thus defusing the tension before it makes the crisis reach such a stage that the government will have to take a policy decision.

Thirdly the church and the state share the same members. The same patriot who attends political meetings and pays taxes is the same worshiper who goes to church on Sunday or the other chosen day of worship. In that case a crackdown on a church group might tend to the loss of a certain degree of popularity for the government. Though an action against religious body or bodies will not necessarily lead to alienation of public support of the government, the government is not eager to loose any bit of popularity through a rash action. Thus it takes action against any church when the church activities themselves tend to discredit the government to such an extent that the stoppage of such activities is the lesser of the two evils. Thus in Burundi when the catholic church which has 65% majority combined with some protestant groups in a campaign to discredit the government, the government had no choice but to hit back very hard. Foreign church missionaries were kicked out of the country, the catholic Newspaper 'Ndongozi' was suspended, the protestant radio station banned and religions meetings seriously restricted.¹² Those priests who disobeyed orders that they thought contrary to their freedom of worship ended up languishing in jail. Here in Kenya the level of opposition has not reached such a height and the state can afford to make certain minor concessious to the clergy so as to maintain an amicable relationship. Such concessious have included a certain degree of toleration of vocal clergymen and what had seemed to be a compromise with the clergymen over the queuing issue in 1986.

However when the clergy discovered that this was not a compromise but a device to silence their opposition, they initiated a sensational campaign to discredit the method by revealing its weaknesses. The state felt discredited and banned the NCKK magazine 'Beyond' thus curtailing NCKK's freedom of expression. Beyond was initially started as a pastoral mouth organ devoted to preaching and general evangelism. Thus with its eradication a part of NCKK's evangelical capacity was whittled away. The banning was a set-back for the freedom of worship in Kenya by virtue of the NCKK's diminished pastoral capacity.

FOOT NOTES CHAPTER FOUR

1. Pro Mundi Vita Dossiers - Africa D. No. 39 of 1986 .
2. Weekly Review August 31st 1984 p. 7
3. Weekly REview October 10th 1986
4. See definition of worship in Chapter Two
5. Weekly Review October 5th 1984
6. Ibid
7. Weekly Review September 21 1984 and October 17th 1986
8. Weekly Review December 12th 1986
9. The Nairobi Law monthly Nov/Dec. 1987 p. 20
10. Weekly Review October 10th 1986
11. Okullu J.H. Church and politics in East Africa Uzima
Printers 1974 p. 17 para. 2
12. Pro Mundi Vita Dossiers Africa D. No. 39 1986

SUMMARY AND CONCLUSION

In the first chapter we saw that historically, churches have had to give either direct or indirect support to the state in order to preserve their freedom of worship. If they didn't closely associate with the government policy as the N.G.K had done in South Africa, they kept quiet in face of policies that contradict the Biblical teachings. This silence in the face of evil can be regarded as indirect support because when a church says "we will not interfere in politics", it is making a political decision. This decision is political in that its a way of avoiding colliding with the political establishment inspite of the abhorrent practices that may be done by the regime. It amounts to silent blessing of the status quo. Indirect support of the state characterised most of the colonial church. We also saw that the church has to keep abreast with the tide of political change in the society if it is to maintain its freedom. Thus when a revolution occurs it has to be quick to identify with it. Failure to identify with the new dominant group in the community is an automatic sacrifice of the freedom of worship.

In chapter two we saw that protection of freedom of worship in the constitution doesn't alter this historic situation. S.78 of the constitution can't prevent eradication of any church's freedom of worship if and when the state chooses to eradicate it, so long as the state uses any of the excuses so readily provided by S.78(5). Thus like ever before freedom of worship is no more than political protection of religion and churches have to exercise it in a way that is complimentary to the government policy if they are to get the political goodwill necessary to guarantee it.

In chapter three we had a chronology of church state conflicts in Kenya from the 1960's to the present. The 1980's saw the greatest upsurge of critical clergymen such as Njoya, Muge and Okullu as well as united church opposition of state policy in the queuing controversy and the issue of constitutional amendment. As a result of increase in church state conflict most of the controversial church leaders have had the bitter experience of limitation of their freedom of pastoral worship e.g. by transfer to distant places as in Okullu's case or total obliteration of their pastoral capacity as in the case of Dr. Njoya and Dr. Anderson. The NCKK lost a part of its freedom of expression and worship when 'Beyond' was banned. Similary some controversial Churches have lost their freedom of worship at a stroke of the pen when the registrar chose to deregister them. The latest and the most drastic deregistration was that of five Churches on November 9th 1987.

Those clergymen and Churches who have lost their freedom of worship owe their loss to their direct or indirect antagonism towards the Government. Secondly they are vulnerable because they don't have such support of citizens that one can say they are expressing the active will of the dominant group in the community. That is to say; their activities might express the enlightened opinion of social political critics but not the overall opinion and aspirations of the majority of semi-ignorant and uninformed Church goers in Kenya.

Theirs is an enlightened but isolated crusade other than a clarion call of the driving forces in the Society. Unless the impetus for change comes from the majority of the society the church can't goad the Society into changing their Political set-up without antagonising the state. Such a conflict with the state comes when the church has not cultivated enough support from it's members and those of other churches and the ultimate looser is the church.

Therefore the churches' contradiction to some state initiatives in Kenya have in the past led to curtailment of freedom of worship and will continue to do so until and unless the church has the support of the majority of the Kenyans. Then, church leaders will not be embarking on lone criticism of state policies but will be expressing the desires of the Kenyan People.