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The Constitutionality of Religious Education in Uganda

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NIMROD MUHUMUZA

THE CONSTITUTIONALITY OF RELIGIOUS
EDUCATION IN UGANDA

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This publication includes the thesis *The Constitutionality of Religious Education in Uganda*, written by Nimrod Muhumuza and supervised by Benyam Dawit Mezmur, University of Western Cape.

BIOGRAPHY

Nimrod Muhumuza is a licensed attorney in Uganda with experience in academia and the financial services sector. He is especially interested in children's rights, secularism and the state and constitutional law. He is currently pursuing his doctoral degree at the Dullah Omar Institute, University of the Western Cape.

ABSTRACT

The 1995 Constitution of the Republic of Uganda is the first of Uganda's constitutions to attempt to regulate church-state relations. Article 7 provides that Uganda 'shall not adopt a state religion.' This study attempts to discuss the jurisprudential value of this provision as it relates to religious education in Uganda. Borrowing from jurisdictions with a similar provision in their legislative framework, the study finds that state-sanctioned religious education that has the impact of endorsing or disapproving a particular religious instruction is unconstitutional.

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DEDICATION

*To my dad, Swethen Kyamulesire;
And the loving memory of my mother, Juliet Namukasa.*

I am eternally grateful to my supervisor, Prof Benyam Dawit Mezmur, who offered guidance, responded to queries and provided invaluable academic support.

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TABLE OF ABBREVIATIONS

CESCR	Committee on Economic, Social and Cultural Rights
CMS	Church Missionary Society
CRC	Convention on the Rights of the Child
CRE	Christian Religious Education
CRKEE	Christian Knowledge and Religious and Ethical Education
DP	Democratic Party
ECtHR	European Court of Human Right
HRC	Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IRE	Islamic Religious Education
MoES	Ministry of Education and Sports
NCDC	National Curriculum Development Centre
ODIHR	Office for Democratic Institutions and Human Rights
OGOD	Organisasie Vir Godsdientse-Onderrig en Demokrasie
OSCE	Organisation for Security and Cooperation in Europe
UPC	Uganda People's Congress

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CHAPTER 1

1.0 BACKGROUND AND CONTEXT

In 2008 the Ugandan Parliament enacted the Education (Pre-Primary, Primary and Post-Primary) Act No 13 of 2008 (the Education Act, 2008). The Education Act, 2008 provides for the teaching of religious education in schools.¹ Parliament, however, rejected a proposal by the Uganda Joint Christian Council and the Uganda Muslim Education Association to make religious education compulsory in schools.² The clerics argued that ‘studying the subject would instil morals in [sic] the students.’ Parliament on the other hand reasoned that while religious education was necessary for the spiritual growth of the students, it would be burdensome to those who have other compulsory subjects.³ Despite the provisions of the Education Act, 2008 some clerics were adamant and vowed to continue teaching religious education as a compulsory subject. In an Op-Ed column, one member of the International Seminar on Religious Education and Values was blunt in his assessment that ‘teaching religious studies is still compulsory.’ He rationalised this assessment thus:

¹ Section 4 of the Education Act, 2008 provides that ‘Religious studies shall form part of the curriculum in primary and post-primary schools.’

² Section 21(l) provides that no head teacher shall require any student ‘to receive denominational or instruction or attend denominational or religious observances against the wish of such student’s parents or guardians if they are of a different denomination or religion.’

³ C Musoke & J Odyek ‘Religious studies retained on curriculum’ *The New Vision* 14 May 2008 <www.newvision.co.ug/new_vision/news/1189976/religious-studies-retained-curriculum> accessed 7 August 2018.

since more than three-quarters of our schools in Uganda are religiously founded, they will continue to offer religion on the curriculum despite its being rendered optional. The [legislative] decision not to make the teaching of religious studies compulsory is therefore insignificant and impractical.⁴

Eight years later in 2016, the Uganda government banned the teaching of comprehensive sex education in all schools after the discovery of sexual reproductive health books in a number of schools.⁵ The books covered a range of topics from sexual orientation to a non-negative portrayal of masturbation.⁶ The cultural and religious undertones that influenced the ban were evident. The government argued that comprehensive sexuality education targeted schools as recruitment grounds for homosexuality (although no evidence was provided to substantiate this claim) and that sexuality education ‘undermined the country’s values.’⁷ This was despite widespread outcry within and outside the country that a ban on sex education would harm sexually active teenagers by denying them access to crucial information about safe-sex practices.⁸ After two years of negotiation, deliberation, and the threat of a law suit from civil society organisations, the government released the National Sexuality Education Framework. The Framework was promptly rejected by the Catholic Church. The Church argued for a ‘positive, age, culturally and *religiously appropriate* sex education which would uphold moral and *Christian values*.’⁹ [Emphasis added]

⁴ Fr F Mwesigwa ‘Teaching Religious studies still compulsory’ *The New Vision* 26 May 2008 <www.newvision.co.ug/new_vision/news/1189192/teaching-religious-studies-compulsory> accessed 7 August 2018.

⁵ ‘MPs Demand Immediate Ban on Sexual Literature dissemination in Schools’ *Business Guide Africa* 18 August 2016 <<http://businessguideafrica.com/mps-demand-immediate-ban-on-sexual-literature-dissemination-in-schools/>> accessed 5 August 2018. Also see S Okiror ‘Uganda condemns sex education for 10-year-olds as “morally wrong”’ *The Guardian* 20 October 2017 <www.theguardian.com/global-development/2017/oct/20/uganda-condemns-sex-education-for-10-year-olds-as-morally-wrong> accessed 17 July 2018.

⁶ *ibid.*

⁷ *ibid.*

⁸ D Bbosa ‘Time to lift ban on sex education in schools’ *The Daily Monitor* 11 July 2017 <www.monitor.co.ug/News/Education/Time-to-lift-ban-on-sex-education-in-schools/688336-4007894-mm27t8z/index.html> accessed 30 July 2018.

⁹ A Ssenyonga ‘Churches reject sexuality education in school’ *The New Vision* 4 June 2018 <www.newvision.co.ug/new_vision/news/1479030/churches-reject-sexuality-education-school> accessed 30 June 2018. N Wassajja & J Lukwago ‘Catholic Church rejects government proposal on sex education’ *The New Vision* 14 June 2018 <www.newvision.co.ug/new_vision/news/1479629/catholic-church-rejects-govt-proposal-sex-education> accessed 30 June 2018.

In Uganda, religious education is comprised of two orthodoxies, that is, Islamic Religious Education and Christian Religious Education.¹⁰ Learners can only choose one of the two options. However, providing just two options for religious education in a religiously diverse country appears to be at odds with the stated intent of the curriculum to:

enable learners to appreciate and value the mystery of creation and the interrelationships within it; to foster both good human relationships and respect for the differences between people and to promote tolerance and empathy for other learners.¹¹

State-endorsed religious education that is not taught in an objective and neutral manner that advances the values of tolerance and pluralism runs afoul of the requirement to be neutral towards religion in general and religious education in particular.¹² Article 7 of the Constitution of the Republic of Uganda, 1995 (1995 Constitution) provides that Uganda ‘shall not adopt a state-religion.’ This religious neutrality clause was inserted following the recognition of the history of division that religion had wrought on the country in the past.¹³ Parochial religious education, particularly and exclusively of the Christian and Islamic faiths is a mainstay of the national curriculum in Ugandan schools. Whenever the state fails to provide sufficient non-denominational religious education in schools, it may be actively contributing to religious segregation.¹⁴ This, therefore, calls for an examination of the relationship between church/mosque/temple/shrine and state in the realm of education in Uganda.¹⁵

¹⁰ The National Curriculum Development Centre <www.ncdc.go.ug/subject/religious-education> accessed 30 May 2018.

¹¹ *ibid.*

¹² See for instance *Folgero v Norway* (2008) 46 EHRR para 36 where the European Court of Human Rights (ECtHR) stated that ‘indoctrination or other preaching of a specific religion or a specific philosophy of life will be contrary to the European Convention and the ICCPR,’ *Lautsi & others v Italy* Application no. 30814/06 para 62 where the ECtHR held that the aim of the principle of neutrality in education is to ensure that ‘information or knowledge included in the curriculum is conveyed in an objective, critical and pluralistic manner, enabling pupils to develop a critical mind particularly with regard to religion in a calm atmosphere free of any proselytism,’ and *OGOD v Minister of Basic Education & others* High Court of South Africa 29847/2014 at para 24 where the High Court found that there is a duty on the state particularly at the national level to ensure that religious observances do not favour one religion to the exclusion of others.

¹³ Report of the Uganda Constitution Commission, 1995 at pages 10, 44, 50 & 61.

¹⁴ J Temperman ‘State Neutrality in Public School Education: An Analysis of the Interplay Between the Neutrality Principle, the Right to Adequate Education, Children’s Right to Freedom of Religion or Belief, Parental Liberties, and the Position of Teachers’ *Human Rights Quarterly* 2010 (32) 865, 875.

¹⁵ This study will use the phrase ‘church-state’ relations because of its ubiquity in literature to discuss the relationship between institutionalised religious and non-religious belief and the state.

Uganda is a nation that was established partly on a polarised religious foundation. These religious divisions, mainly between Catholic, Anglican and Muslim adherents can be traced to the advent of colonialism in the late 19th century.¹⁶ One of the ways through which this was done was the establishment and foundation of so-called mission schools. These mission schools were either Catholic or Anglican in character and pedagogy.¹⁷

The schools had the overarching aim of evangelising the natives in the areas in which they operated. But they were also used as recruitment centres for the colonial civil service. The colonial government was disproportionately staffed by Anglican civil and public servants much to the chagrin of their Catholic counterparts.¹⁸ In fact it became British policy to recruit members of the Anglican faith over those of other religious groups because the British Empire itself was Anglican.¹⁹ In the mid-1950s as the dawn of independence neared, political parties that were founded by former students of these mission schools exploited these underlying religious divisions and started jostling for control of the reins of the soon-to be independent nation.²⁰ The mission schools that had been founded were taken over and administered by the newly independent state either through funding or the appointment of teaching staff. Many retained their parochial character insofar as they upheld the religious ethos of their founders.²¹ This state of affairs, where the Church and Mosque are inextricably linked, especially, in the case of the public-school system has persisted to-date.²²

¹⁶ P Kasenene *Religion and Politics in Nkore* (2011) 10.

¹⁷ *ibid* 90.

¹⁸ SR Karugire *A Political History of Uganda* (2010) 64-71.

¹⁹ *ibid* 68.

²⁰ GW Kanyeihamba *Constitutional and Political History of Uganda: From 1894 to Present* (2010) 31-38.

²¹ Mwesiga (n 4).

²² Karugire (n 18) 62.

1.1 PROBLEM STATEMENT

Uganda is a religiously diverse country yet the curriculum on religious education ignores this diversity.²³ Article 7 of the 1995 Constitution has never been the subject of direct litigation in Ugandan courts. However, a reading of the provision and the jurisprudence that has been generated from countries with a similar provision in their constitutions calls into question the legality and constitutionality of a religious education curriculum premised on a parochial character of just two religious traditions. The state should not be seen to endorse or inhibit the profession of any particular religion. The Uganda government would be in violation of article 7 of the 1995 Constitution if the curriculum is viewed as an endorsement and/or inhibition of any particular religion(s).

1.2 RESEARCH QUESTIONS

This study is premised on one principal question: Is the religious education as provided for in the religious education curriculum constitutional in light of article 7 of the 1995 Ugandan Constitution? International human rights law and jurisprudence will be relied on in answering this question given the absence of comprehensive jurisprudence in Uganda and Africa in general that deals with the question. The following sub-questions will be used to guide the study:

- a. What is the nature of the duty imposed on the state by article 7 of the 1995 Constitution in the realm of education?
- b. What impact does that duty have on the state's obligation towards parochial religious education?
- c. What recommendations, if any, are available to the state to align it with its constitutional obligations under article 7 of the 1995 Constitution and similar obligations under international human rights law that the State is a party to?

²³ According to the National Population and Housing Census, 2014, Uganda has ten distinct religious denominations. See National Population and Housing Census Main Report, 2014, 19 accessed at <https://www.ubos.org/onlinefiles/uploads/ubos/NPHC/NPHC%202014%20FINAL%20RESULTS%20REPORT.pdf> on 1 August 2018.

1.3 SIGNIFICANCE OF RESEARCH

The study hopes to make a modest contribution to the literature on the relationship between church and state in Uganda. As noted above, Uganda is a religiously diverse country with a population which accounts for ten different religious orientations. It is therefore imperative that a mechanism that accounts for and caters to that diversity, particularly in the realm of education and religious education be put in place and be premised on sound scholarship. Children need to be given the tools to understand the role of religion in their society while simultaneously being protected from state-endorsed indoctrination within the school system. This is more so in a country whose public institutions and identity are constitutionally required to be neutral regarding religion.

1.4 METHODOLOGY

This research will rely on desktop research. The study will have recourse to international law such as the Convention on the Rights of the Child, the International Covenant on Civil and Political Rights, and the International Covenant on Social, Economic and Cultural Rights. Jurisprudence from jurisdictions that have dealt with church and state relations in general, and the constitutionality of religious education in particular will also be used. This methodology is intended to ground the study in a doctrinal analysis particularly in relation to article 7 of the 1995 Constitution. This will include an inquiry into its drafting history and rationale, as well as an attempt to flesh out the jurisprudential nature and scope of the provision. Other sources will include books, journal articles and internet sources that are relevant to the topic.

1.5 LITERATURE REVIEW

The literature available on church-state relations addresses the broader question of whether the church should be separate from the state and why. There is scant scholarship in Africa and Uganda that addresses the separation of church and state from a constitutional perspective and what the impact of such a separation should be on

the education system. Nonetheless, the available literature is crucial in providing a theoretical foundation from which an analysis of the constitutionality of religious education in republican states that are neutral regarding religion, such as Uganda, can take place.

Nsereko in 'Religion, the state and the law in Africa' examines the three broad categories of church-state relations in Africa: those that provide for the separation of religion from the state; those that provide for supremacy of religion over the state; and those that tend to subordinate religion to the state.²⁴ Uganda's article 7 would squarely place it in the first category and Nsereko offers a simple reason: the principle of separation of church and state is the best guarantee of freedom of religion in a pluralistic society. He, however, notes that there are cases where absolute separation of church and state is unattainable or undesirable. This is in areas relating to the provision of educational, medical and other social services. He concedes that this convergence has inevitably been a source of conflict particularly in the realm of education. The Church views education as vital to their evangelistic efforts, to the spiritual nurturing of their converts, and to their growth. Governments on the other hand view education as a vital tool for development and for inculcating social and political consciousness in their young people. How can a balance between these competing interests be struck? Nsereko does not offer a solution to this problem. This study aims to recommend best practices such as those developed by the Organisation for Security and Cooperation in Europe (OSCE) and the Office for Democratic Institutions and Human Rights (ODIHR).²⁵ Nsereko's analysis is also dated having been undertaken in 1986. It therefore does not engage with recent jurisprudence that has shown how a balance between religious interests and state interests in the realm of education can be struck.

Quashigah discusses the imperative for church-state separation in 'Religion and the republican state in Africa: The need for a distanced relationship'.²⁶ The central thesis of his paper is that a republican state such as Uganda should not impose a dominant religious belief either

²⁴ DD Nsereko 'Religion, the State, and the Law in Africa' *Journal of Church and State* 1986 28(2) 269.

²⁵ ODIHR Advisory Council on Experts on Freedom of Religion or Belief 'Toledo Guiding Principles on Teaching About Religions and Beliefs in Public Schools' (2007).

²⁶ K Quashigah 'Religion and the republican state in Africa: The need for a distanced relationship' (2014) 14 *African Human Rights Law Journal* 78.

expressly or insidiously on its citizens. The rationale, he argues, is simple: minorities would be disadvantaged in conscience because they are inhibited from challenging the religious beliefs of the majority of the dominant group while the latter takes it for granted that by the mere fact of their dominant position, whatever position agrees with their conscience should constitute the law for all. He notes that in Uganda, for instance, 64 per cent of Christians and 66 per cent of Muslims prefer to have the law based on their respective religious traditions. This study does not have the benefit of empirical data but one of the issues it seeks to address is whether a particular religious or non-religious philosophy can claim state-approved privileges on the basis of numerical advantage despite the requirement for religious neutrality as in the case of Uganda.

In their article 'Law, religion and human rights in Africa: Introduction' van der Vyver and Green note that African constitutions reflect almost all varieties of church-state relationships in their constitutional arrangements.²⁷ However, theoretical provisions regulating this relationship are perhaps in most cases fiction rather than fact. The authors therefore caution that in evaluating the relationship between church and state in Africa, one should not be misled by constitutional rhetoric. They arrive at this conclusion by conducting a cursory analysis of a number of constitutional provisions in countries such as Botswana, South Africa, Zambia and the Democratic Republic of Congo. This paper will examine the veracity of the claim that the attempt to separate church and state in Uganda as it pertains to religious education is mere rhetoric.

Mutua's 'Limitations on Religious Rights: Problematizing Religious Freedom in the African context' explores the historical experience of religious penetration and the conflict between certain forms of evangelistic advocacy and human rights norms.²⁸ He argues that the rights regime which includes injunctions such as freedom of belief and/or religion incorrectly presumes a level playing field in the market place of ideas. Messianic religions have either been forcibly imposed or their introduction was accomplished as part of the cultural package borne

²⁷ JD van der Vyver & MC Green 'Law, religion and human rights in Africa: Introduction' (2008) 8 *African Human Rights Law Journal* 337.

²⁸ M Mutua 'Limitations on Religious Rights: Problematizing Religious Freedom in the African Context' 1999 5 *Buffalo Human Rights Law Review* 75.

by colonialism at the expense of existing indigenous belief systems. He notes that the different denominations of Christianity introduced bitter rivalries between African communities and singles out Uganda as one of the countries where sectarian rivalries have erupted into ethno-political violence. Although Mutua does not engage with the constitutionality or validity of church-state relations, his analysis is crucial in providing a theoretical lens through which those relations can be assessed. This study will discuss the constitutionality of church-state relations in the realm of education fully aware that the religious 'playing field' in Uganda is not level as a result of its colonial legacy.

In 'Religious Pluralism and Conflict as Issues in Religious Education in Uganda'²⁹ FS Mwesigwa investigates 'the complications raised in teaching a confessional religious education in a multi-religious context prevalent in Ugandan religiously founded public schools and private funded schools.' Mwesigwa's study confines itself to the utility of religious education and even then, discusses 'religious education' only to mean Christian or Islamic religious studies. This study will go beyond that and seek to interrogate the constitutionality of teaching parochial religious education in public schools.

In 'Religious education in the context of sub-Saharan Africa: the Malawian example.'³⁰ YH Matemba takes the view that many countries in sub-Saharan Africa acknowledge their religious plurality. However, these countries, many with a history of European colonialism, continue to resist changes to their school and education systems aimed at reflecting this plurality. The study concludes that 'efforts should be made to interest those who are wary of multi-faith religious education given the heterogeneity rather than the homogeneity in Malawi.' This study differs from the Malawian experience in two crucial respects: Malawi does not have a provision regulating church-state relations in its Constitution, and; Matemba does not discuss the constitutionality of religious education in Malawi. Matemba's relevance to the Ugandan case is constrained by the difference between the legal regimes of the two countries.

²⁹ FS Mwesigwa 'Religious Pluralism and Conflict as Issues in Religious Education in Uganda' unpublished PhD thesis, The University of Leeds, 2003.

³⁰ YH Matemba 'Religious education in the context of sub-Saharan Africa: the Malawian example' (2008) 31(1) *British Journal of Religious Education* 41.

Byaruhanga's 'Essential Approaches to Christian Religious Education: Learning & Teaching in Uganda'³¹ discusses the various pedagogical approaches to Christian Religious Education (CRE) in Uganda. The study discusses the fact that Uganda has no state religion and that freedom of religion is guaranteed in the 1995 Constitution. The author views that as a license to teach CRE in 'private founded schools,' 'church founded schools' and 'government funded schools.' This study differs in its focus on article 7 of the 1995 Constitution and whether that provision allows for the unrestricted license to teach CRE that Byaruhanga seems to argue for in his study.

1.6 SCOPE AND LIMITATIONS

This research is limited to the constitutionality of parochial religious education in Ugandan schools under article 7 of the 1995 Constitution even though an examination of the relationship may reveal areas of contention related to the right to education, right to equality, and freedom from discrimination. The study does not examine these issues. The 1995 Constitution permits individuals, religious bodies and other nongovernmental organisations to 'found and operate educational institutions if they comply with the general educational policy and maintain national standards.'³² A study of the constitutionality of the religious education and its curriculum is therefore applicable to private schools to the extent that the religious education curriculum is the standard approved by government and is applicable in both public and private schools. The study will be constrained by the dearth of jurisprudence on the issue in Uganda and from around the continent. There has been only one judicial decision in Uganda where the Supreme Court had to determine the scope of freedom of religion and the right to education in a public institution. The study will therefore be compelled to rely on jurisprudence from other jurisdictions which might have a different social, cultural, and historical background from Uganda.

³¹ C Byaruhanga *Essential Approaches to Christian Religious Education: Learning and Teaching in Uganda* (2018).

³² Constitution of the Republic of Uganda, 1995 (as amended) 'National Objectives and Directive Principles of State Policy' XVIII.

1.7 STRUCTURE

The study will consist of four chapters. The first chapter will introduce the topic, the research problem and methodology and the general layout of the study. The second chapter will discuss the doctrinal and historical foundation of article 7 of the 1995 Constitution. It will also examine the scope and obligations imposed by article 7. The chapter will define relevant terminology and actors such as ‘parochial religious education’ and ‘religious neutrality.’ The third chapter will discuss the impact of the obligations imposed on the state by article 7 in the arena of religious education in Uganda. It will also take into account the international and regional standards for a religious education curriculum that is suitable for a pluralistic society like Uganda. The final chapter will suggest recommendations directed towards aligning the obligations of the Ugandan state under article 7 and also conclude the study.

CHAPTER 2

2.0 INTRODUCTION

This chapter will undertake a brief historical analysis of the relationship between church and state dating back to colonial times and its impact on the education system and the curriculum in Uganda. It then explains the antecedents of article 7 of the 1995 Constitution and its relevance as the first constitutional provision of Uganda's past 3 constitutions to directly regulate the relationship between the church and the state. The chapter discusses the obligations imposed on the Ugandan state by article 7 by borrowing and analysing jurisprudence from jurisdictions that have a similar provision, particularly the United States. It also discusses a conceptualisation of parochial religious education.

2.1 RELIGION AND POLITICS IN UGANDA: A HISTORY REVISITED

The impact of religion on Uganda's body-politic has been extensively covered and a comprehensive analysis of the same here would be tautological.³³ Nonetheless a historical study reveals a fractious relationship between religion and the Ugandan state, before, during

³³ FBW Welbourn *Religion & Politics in Uganda 1952-62* (1965), AA Mazrui 'Religious Strangers in Uganda: From Emin Pasha to Amin Dada (1977) 76(302) *African Affairs* 21, D Mudoola 'Religion and Politics in Uganda: The Case of Busoga, 1900-1962' (1978) 77(306) *African Affairs* 22, A Obed *Religion and Politics in Uganda: A Study of Islam and Judaism 1995*, AB Mujaju 'The Political Crisis of Church Institutions in Uganda (1976) 75(298) *African Affairs* 67, A Obed *Islam in Uganda: Islamisation Through a Centralised State in Pre-Colonial Africa* (1974).

and after colonialism. This, it is contended, explains the rationale for the constitutional injunction under article 7 to keep religion and the state separate.

Uganda has had a chequered and sometimes violent history with the three major Abrahamic faiths particularly Christianity and Islam. Judaism, although prevalent even during the colonial period, did not have as much an impact on the country's political and social structure.³⁴ At the advent of colonialism, evangelical foot soldiers from the Anglican Church Missionary Society and the Catholic White Fathers set about carving out spheres of influence for their missionary activities.³⁵ One of the means that was employed was courting the favour of Kings and monarchs. For instance, Kabaka Mutesa I of Buganda Kingdom was persuaded to 'request' the Queen of England, in writing, to send more missionaries for the purpose of Christianising his Kingdom.³⁶ The same approach was employed in western Uganda where the clerics of the Church Missionary Society convinced the, traditional leader, the Omugabe to 'convert' and be baptised as an Anglican Christian.³⁷ The logic for the targeted conversion of these traditional rulers was simple: wherever the King went, the subjects would follow. In Busoga region, in eastern Uganda, the close relationship between religion and the education was recognised early on by the colonial administration working together with CMS missionaries. Sons of young chiefs were sent to mission schools for the purpose of political socialisation and to mould them into malleable instruments for the utility of the colonial administration.³⁸ In some cases, this influence was sought through outright violence as exemplified by the religious wars of the late 1880s.³⁹

Once the British had brought the protectorate firmly under their control and pacified it, mission schools became the main entry point for many evangelists who sought to socialise Ugandans through proselytization while simultaneously manoeuvring for influence within the colonial government.⁴⁰ These schools and the divisions that they

³⁴ Obed, *Religion and Politics in Uganda* (n 29) 100.

³⁵ Karugire (n 18) 62-70.

³⁶ *ibid.* For the full letter see DA Low *The Mind of Buganda: Documents of the Modern History of an African Kingdom* (1971) 5.

³⁷ Kasenene (n 16) 47.

³⁸ Mudoola (n 33) 23.

³⁹ Karugire (n 18) 66-67.

⁴⁰ Kasenene (n 16) 142-166.

sowed had a lasting impact on Uganda's political future. At the dawn of independence, political parties founded by former students of these schools, split along religious lines, begun competing for the reins of power as the British prepared to exit.⁴¹ Alava and Ssentongo note that:

In preparation for Uganda's independence, both the Catholic and the Protestant church lobbied the colonial state and emerging Ugandan political elites to adopt their views on how best to arrange church-state relations in the fledgling state. By the time of independence in 1962, the newly [formed] Democratic Party (DP) was popularly known as *Diini ya Papa* (religion of the Pope), and the Uganda People's Congress (UPC) as the United Protestants of Canterbury.⁴²

Curiously, while freedom of worship was guaranteed and provided for, none of Uganda's first three post-independence constitutions regulated the relationship between the church and the state in the manner that the 1995 Constitution does, possibly for a number of reasons.⁴³ Any attempt to restrict the influence of the church on Ugandan politics would have had unintended negative consequences on the political parties given that two of the major parties were essentially founded on religious grounds. Secondly, given the fact that Ugandans had embraced these religions, any attempt to regulate church-state relationships might have been considered as an unnecessary and undue restriction on the right to freedom of religion. Thirdly, it might have been the case that such regulation was not a priority during the negotiations and drafting process for a new constitution given the delicate political compromises that kept a fractious and uneasy coalition in power in the early years of post-independence Uganda.

⁴¹ RJ Reid *A History of Modern Uganda* (2017) 311-315.

⁴² H Alava & JS Ssentongo 'Religious (de)politicisation in Uganda's 2016 elections' (2016) 10(4) *Journal of Eastern African Studies* 677, 680.

⁴³ For instance section 25(1) of the 1962 Independence Constitution provided that '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, the said 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 provision was maintained in the 1966 Interim Constitution and the 1967 Constitution under article 16(1). See HF Morris 'The Uganda Constitution' (1966) *Journal of African Law* 10(2) 112, 114.

Nonetheless, post-independence leaders, particularly President Idi Amin, did attempt to unofficially impose government-endorsed religion by requiring that certain aspects of Sharia law be applied to all citizens regardless of their religious affiliation.⁴⁴ Early on in President Amin's tenure the pendulum swung as it appeared Muslims had the favour of the sitting president. First, Pentecostal groups were banned.⁴⁵ Uganda was even admitted as a Muslim state at the Islamic Summit Conference in 1974 despite only 5% of the country professing the Islamic faith.⁴⁶ The perception that Muslims were favoured by the Amin government at the expense of other religious groups had dire consequences when Amin was overthrown. It is reported that 'in the immediate aftermath of the collapse of Amin's government, several Muslims were murdered by Christians with the Obote government did virtually nothing to put an end to those atrocities.'⁴⁷ Those atrocities serve as a cautionary tale to Ugandans and the Ugandan state that it should not be perceived to favour any religious group(s) over others.⁴⁸

Today, the relationship between religion and state still reveals a fusion between the two entities but the roles have been reversed. The Ugandan State has become one of the biggest benefactors of religions and religious groups through a system of financial patronage and material donations. For instance, the president has donated cars, construction material or given hard cash to several religious leaders. This, in turn, has been interpreted as a means of tempering any criticism from religious leaders.⁴⁹ Given the clout that the particularly established Catholic and Anglican churches enjoy within Ugandan society, it is easy to see why politicians would court them for support.

⁴⁴ F Mugabe 'Idi Amin decrees on mini-skirts, gonorrhoea and wigs' *Daily Monitor* 31 May 2015 <www.monitor.co.ug/Magazines/PeoplePower/Idi-Amin-decrees-on-mini-skirts-gonorrhoea-and-wigs/689844-2734504-74yweoz/index.html> accessed 1 September 2018.

⁴⁵ K Ward 'Role of Anglican and Catholic Churches in Public discourse on homosexuality and ethics' (2015) *Journal of East African Studies* 9(1) 127, 131.

⁴⁶ Mazrui (n 33) 21.

⁴⁷ Report of the Commission of Inquiry into the Violations of Human Rights: Findings, Conclusions and Recommendations pp 537-539 (1994) cited in JD Mujuzi 'The Right to Freedom to Practice One's Religion in the Constitution of Uganda' (2011) 6 *Religion and Human Rights* 4.

⁴⁸ Mujuzi (n 47).

⁴⁹ Alava & Ssentongo (n 42) 687.

2.2 THE UGANDA CONSTITUTIONAL COMMISSION AND THE DRAFTING OF
ARTICLE 7

An opportunity to revisit this state of affairs presented itself during consultations over the drafting of a new constitution by the Uganda Constitutional Commission set up in 1989. The Commission's Terms of Reference included the study and review of the existing 1967 Constitution with a view to making proposals for the enactment of a new constitution that would 'guarantee the fundamental rights and freedoms of the people of Uganda.'⁵⁰ The Commission traversed the entire country, gathering views in furtherance of that goal.⁵¹ It is worth noting that this was the first time since independence that Ugandans from all walks of life had been consulted on what should and should not be included in the Constitution.⁵²

The issue of the relationship between religion and the state was raised for the first time by Ugandans. The Commission found that people supported the principle of non-adoption of state religion in Uganda. The negative language of the injunction is important as shall be discussed later in the chapter. The rationale for this principle was stated by the Commission thus:

Locally and nationally, Ugandans are deeply divided by religion. The major political parties have been based on religion and although the major religions cut across ethnicity and region, they have not promoted social cohesion.⁵³

The report goes on to note that while ethnic and religious diversity are dominant features of Ugandan society and that this diversity is not antithetical to nation-building and social cohesion, it had instead been used to rend Ugandan society apart.⁵⁴ Many Ugandans expressed their concern at the magnitude of discrimination meted out against minorities including minority religious groups.⁵⁵ The Commission, as a result of

⁵⁰ Report of the Uganda Constitutional Commission: Analysis and Recommendations (1992) 4.

⁵¹ *ibid* 23-41

⁵² *ibid* 2. Also see BJ Odoki *The Search for a National Consensus: The Making of the 1995 Uganda Constitution* (2014).

⁵³ *ibid* 61.

⁵⁴ *ibid*.

⁵⁵ Mujuzi (n 47) 4.

this finding, recommended the inclusion of article 6 (later article 7) in the draft Constitution to guarantee the separation of church from the state.⁵⁶

It is clear that this proposal was informed by the country's turbulent past and the misuse of religion to oppress, suppress and divide Ugandans based on their religious affiliation. The Commission also made reference to the Establishment Clause of the United States Constitution.⁵⁷ The Establishment Clause forbids Congress from establishing a state religion. It also prohibits the enactment of any law that gives preference to or forces belief in any one religion. It is paired with a clause that prohibits limiting the free expression of religion.⁵⁸ This is significant because the United States Supreme Court has developed considerable jurisprudence on the nature and scope of the Establishment Clause which will be relied on in this study.⁵⁹

2.3 ARTICLE 7 AND THE DEBATE IN THE CONSTITUENT ASSEMBLY

Article 6 of the draft Constitution, which became article 7 in the final document, was one of the few non-contentious provisions during the Constituent Assembly debate on the adoption of a new constitution. A random sampling of the submissions of the Constituent Assembly delegates reveals that there was consensus that the new constitution should guarantee non-adoption of a state religion. There was concern, however, that the provision should not interfere with the people's right to enjoy exercising their freedom to religion. One delegate stated that:

⁵⁶ Report of the Uganda Constitutional Commission *ibid* 10.

⁵⁷ Report of the Uganda Constitutional Commission *ibid* 880. The Commission made reference to a number of scholarly works notably LW Levy's *The Establishment Clause: Religion and the First Amendment* which examines the circumstances that led to the writing of the establishment clause of the First Amendment of the United States Constitution. The wording of the establishment clause which provides that 'Congress shall make no law respecting an establishment of religion' is similar to the proposed article 6 of the draft Constitution (which became article 7 of the final document) which provided that 'Uganda shall not adopt a state religion.'

⁵⁸ See generally A Schwarz 'No Imposition of Religion: The Establishment Clause Value (1968) 77(4) *Yale Law Journal* 692.

⁵⁹ *School District of Abington Township, Pennsylvania v Schempp* 374 US 203 (1963) 214 where the US Supreme Court considers a number of decisions, some as old as a century, that uphold the injunction of the establishment clause: 'The government is neutral, and, while protecting all [religions], it prefers none, and it disparages none.'

As for Article 6, although personally I understand the importance of this Article, that the Government of Uganda shall not adopt any religion as a state religion, when I approached the people I represent, they were confused, they thought that what was being suggested by this Article is that Uganda does not care about religion whereas our Motto is “For God and My Country.” So, some way should be found to include the fact that Uganda is a God-fearing country.⁶⁰

However, as shall be discussed in this chapter and chapter three, religious neutrality does not require the ejection of religion from the public arena. In any event, the right to freedom of religion was guaranteed in the draft and final Constitution under article 29.⁶¹ Another delegate, with an eye on Uganda’s turbulent past, stated

Coming to the provisions of the Constitution on non-adoption of state religion, Article 6 which states “The Government of Uganda shall not adopt any religion as a State religion.” There have been some interferences in some religions in this country by the past Governments. Some politicians have used religions in Uganda to achieve their political objectives. That Article must be respected religiously.⁶²

Jacob Aniku succinctly stated that ‘The Madi people do not want a state religion’ while Abbey Mukwaya captured the essence of article 6 stating that in ‘In relation to article 6, my people would like to urge the Government to desist from interference into religious affairs.’⁶³

The unanimity on the inclusion of article 7 was overshadowed by the debate on whether political parties that had been founded on religious and ethnic divisions should be banned and replaced by the so-called Movement system. Taking their cue from the findings of the Constitutional Commission, many delegates were of the view that political parties should not be given the opportunity to continue sowing these divisions and that the Movement system was the best alternative to political parties.⁶⁴

⁶⁰ Submission by Edward Ssekandi, Proceedings of the Constituent Assembly (Official Report) (1994) p 779.

⁶¹ The draft and final 1995 Constitution retained the right to freedom of religion in almost similar terms to those in the previous 3 constitutions. Article 29(1)(c) provides that ‘Every person shall have the right to practise freely any religion and manifest such practice which shall include the right to belong to and participate in the practices of any religious body or organisation in a manner consistent with this Constitution.’

⁶² Proceedings of the Constituent Assembly (Official Report) (1994) 909.

⁶³ *ibid* 925.

⁶⁴ The Movement system was a de-facto one party system of government under the guise of a ‘broad-based, individual merit and inclusive’ umbrella that catered for all Ugandans irrespective of political affiliations. This choice – entailing the suspension of political party activities unless the populace decided otherwise through a referendum – was justified in the interests of national unity and reconciliation, stability and reconstruction. See J Mugaju & J Oloka-Onyango (eds) *No-party Democracy in Uganda: Myths and Realities* (2000). In 2005, the Ugandan people decided, through a referendum, to amend the Constitution and to lift the ban on political party activity.

2.4 ARTICLE 7 AND THE SCOPE OF RELIGIOUS NEUTRALITY

The meaning of neutrality is heavily influenced by historical factors and changing cultural contexts.⁶⁵ The Ugandan judiciary has yet to determine the normative or jurisprudential scope of article 7. The Constitutional Commission did not elaborate on what exactly 'non-adoption of a State religion' would mean for the country's constitutional order. The Commission did, however, make reference to the Establishment Clause of the United States Constitution which has been the subject of considerable scholarly and jurisprudential analysis. This study therefore borrows extensively from that analysis in an effort to flesh out the scope of article 7.

Religious neutrality has been defined to mean that the government cannot utilise religion as a standard for action or inaction and [the government] is prohibited from conferring a benefit or imposing a burden based on a religious classification.⁶⁶ This definition has been criticised for being too academic given that a strict application of this rule might prove impossible in some cases.⁶⁷ Government will engage with religious organisations on matters related to corporal punishment, compulsory school attendance, building codes, fire inspections, to mention a few.⁶⁸ Another definition has therefore been proposed, termed 'substantive neutrality.' This is where the government is required to minimise the extent to which it either encourages or discourages religious belief or disbelief, practice or non-practice, observance or non-observance.⁶⁹ Common to both definitions is the idea that government does not and should not be seen to tip the scales in one way or the other when it comes to religious observances or practices.

Religious neutrality is not an endorsement of secularism. Neutrality is a constraint on the use of state apparatus from promoting or inhibiting a particular religion.⁷⁰ It does not oppose the manifestation

⁶⁵ B Ryder 'State Neutrality and Freedom of Conscience and Religion' (2005) 29 *The Supreme Court Law Review: Osgoode's Annual Constitutional Cases Conference* 168, 171.

⁶⁶ P Kurland 'Of Church and State and the Supreme Court' (1961) 29(1) *University of Chicago Law Review* 1, 6.

⁶⁷ D Laycock 'Formal, Substantive, and Disaggregated Neutrality toward Religion (1990) 39 *DePaul Law Review* 993, 1001-1002.

⁶⁸ *School District of Abington Township, Pennsylvania v Schempp* (n 58) para 260.

⁶⁹ Laycock (n 67).

⁷⁰ D Kyritsis & S Tsakyrakis 'Neutrality in the classroom' (2013) *International Journal of Constitutional Law* 11(1) 200, 206.

of religious beliefs within the public domain by individuals because its main concern is the manifestation or endorsement of religious beliefs and attitudes by the state.⁷¹ In order to determine whether there is a violation of the religious neutrality, one has to consider whether the impugned act, policy or law reflects a government endorsement or the disapproval of a particular religious belief.⁷² A secular state on the other hand aims to foster a sense of belonging among its members and actively seeks to inculcate a civic spirit in its citizens.⁷³ A state, such as France, that is committed to a robust version of secularism seeks to remove all reference to religion from the public domain and requires citizens to suppress their religious identity and assume their civic one.⁷⁴ Uganda is for all intents and purposes committed to religious neutrality as indicated in article 7 of the 1995 Constitution.

The United States Supreme Court has since the late 1940s established a body of jurisprudence that comports with the foregoing definitions. The general theme that can be gleaned from these decisions is that religious neutrality involves the prohibition of any government action(s) the purpose of which are to advance or inhibit a particular religion.⁷⁵ In fact, as in Uganda's case, the Court has stated that political division along religious lines was one of the evils that the First Amendment read together with the Establishment Clause aimed to cure.⁷⁶ The Court has stated that the purpose of the Establishment Clause is not to 'strike merely at the official establishment of a single sect, creed or religion.'⁷⁷ It was also intended to 'create a complete and permanent separation of the spheres of religious activity and civil authority by comprehensively forbidding every form of public aid or support for religion.'⁷⁸ The Court has stated that:

⁷¹ Kyritsis & Tsakyrakis (n 70).

⁷² *ibid.*

⁷³ *ibid.*

⁷⁴ France's Constitution is explicit in its designation of the country as a secular state. Article 1 of the Constitution of the Fifth Republic of France, 1958 provides in part that 'France shall be an indivisible, secular, democratic and social Republic.' The implications of such an explicit endorsement of secularism on church-state relations are quite different from those in countries like Uganda which are required to be neutral. See generally J Fox *A World Survey of Religion and the State* 2008.

⁷⁵ JH Choper 'The Establishment Clause and Aid to Parochial Schools-An Update' (1987) 75(5) *California Law Review* 5, 8.

⁷⁶ *School District of Abington Township, Pennsylvania v Schempp* (n 59) para 216.

⁷⁷ Choper (n 75).

⁷⁸ *School District of Abington Township, Pennsylvania v Schempp* (n 59) para 217.

The Amendment requires the state to be neutral in its relations with groups of religious believers and nonbelievers; it does not require the State to be their adversary. State power is no more to be used to handicap religions than it is to favour them. The State can neither support nor hinder the exercise of religion.⁷⁹

In summation, the Establishment Clause secures two freedoms or rights. The State is to remain neutral in its relationship with religious groups without offering tacit or overt support or hindrance. The State cannot also interfere in an individual or entity's right to exercise its right to freedom of religion. The role of the State is, therefore, said to be a neutral intermediary in relations between the various denominations and between those denominations and civil society.⁸⁰

The latter part of the State's role as an intermediary between religious denominations and civil society has received considerably less judicial and legislative attention. Suffice to say, religious neutrality does not mean state indifference. It does not mean that the state must refuse to take positions on policy disputes that have a religious dimension or even abdicate its duty to protect its citizens in the face of perceived dangers posed by religious practices. Many if not most legislative policies will accord with some religious beliefs and violate others.⁸¹ One contentious area where the state cannot remain indifferent is the arena of education. It is for that reason that public and private schools in Uganda adhere to the same curriculum established and regulated by the National Curriculum Development Centre.⁸²

Another area is one the regulation of the establishment and oversight of churches and other religious groups. The Uganda government was criticised for attempting to infringe the right to freedom of expression when it mooted a proposal to draft a policy that would provide standard guidelines on starting churches and other faith-based organisations. Officials in the Ministry of Ethics defended the move arguing that there was a need to protect people from 'destructive cults.' Government cited the killing of over 1000 people in a doomsday massacre in a church in western Uganda as justification for its proposal. However, the proposal was criticised by a section of Christian believers who feared that it

⁷⁹ *School District of Abington Township, Pennsylvania v Schempp* (n 59) para 218.

⁸⁰ Ryder (n 65) 171.

⁸¹ *ibid* 173.

⁸² Section 3(1)(a) of the National Curriculum Development Centre Act, 1973.

would prompt a clampdown on mainly Pentecostal churches. They cited the ‘destructive historical path of state control and restraint reminiscent of banning evangelical and Pentecostal faith entities in the 1970s’ as evidence of government overreach in matters pertaining to religion.⁸³

Therefore, in order to ensure that the neutrality principle is fairly and judiciously applied, the US Supreme Court in *Lemon v Kurtzman*⁸⁴ developed a three-pronged test to determine whether a government law or policy conforms to the Establishment Clause: the statute or policy must have a secular legislative purpose; its principal or primary effect must be one that neither advances nor inhibits religion, and; the statute or policy must not foster an excessive government entanglement with religion. The Court has not laid down any hard-and-fast rules regarding the exposition of the *Lemon* test and therefore each case must be decided on its own merits. However, some guidance emanating from the *Lemon* test has been provided:

[t]he purposes prong of the *Lemon* test asks whether the government’s actual purpose is to endorse or disapprove of religion. The effect prong asks whether, irrespective of government’s actual purpose, the practice under review in fact conveys a message of endorsement or disapproval. An affirmative answer to either question should render the challenged practice invalid.⁸⁵

The requirement that prohibits an ‘excessive government entanglement with religion’ requires the state to be neutral regarding the value of religion generally. In other words, while the church or mosque might promote the truth-claims of their various religious traditions, a religiously neutral state is prohibited from doing so. The state is in no position to be, nor should it become, the arbiter of religious dogma. Accordingly, courts and the state should avoid interpreting and thus determining the veracity of the content of religious requirements, obligations, commandments, customs or rituals. This prohibition should be exercised within the framework of the freedom to exercise one’s religion and the permissible derogations from that right.

⁸³ L Namagembe ‘Policy to regulate religious activities divides clerics’ *Daily Monitor* 8 May 2017 <www.monitor.co.ug/News/National/Policy--regulate-religious--activities--divides-clerics/688334-3921758-go0teqz/index.html> accessed 1 September 2018.

⁸⁴ 403 US 602 (1971).

⁸⁵ *Lynch v Donnelly* 465 US 668 (1984) cited in AH Loewy ‘Rethinking Government Neutrality towards Religion under the Establishment Clause: The Untapped Potential of Justice O’Connor’s Insight’ (1986) 64 *North Carolina Law Review* 1049, 1051.

The *Lemon* “criteria” has been recast into the ‘endorsement or disapproval test.’ In other words, endorsement sends a message to nonbelievers of a given religious ideology that they are outsiders while simultaneously conveying the message to believers that they are favoured members of the political establishment. Disapproval sends the opposite message. The commitment to state neutrality does not mean that religion should not have a place in the public arena.⁸⁶ This is guaranteed by article 29(1) of the 1995 Constitution which provides for

the right to freedom to practice any religion and manifest such practice which shall include the right to belong and participate in the practices of any religious body or organisation in a manner consistent with the Constitution.

This right is reinforced by article 37 which guarantees the right of everyone ‘to belong to, enjoy, practice, profess, maintain and promote any creed or religion in community with others.’ These provisions are not subject to the public-private space dichotomy. Indeed, the Uganda Supreme Court has held there is a duty on public and state institutions to accommodate believers and religious groups where such duty is reasonable and does not impose an undue burden or hardship. The Court emphasised that these freedoms are subject to other provisions of the Constitution including article 7 although it did not elaborate on the normative content of article 7.⁸⁷ In that spirit, it is appropriate to conclude with the following exposition of the US Supreme Court:

The place of religion in our society is an exalted one, achieved through a long tradition of reliance on the home, the church and the inviolable citadel of the individual heart and mind. We have come to recognise through bitter experience that it is not within the power of the government to invade that citadel, whether its purpose or effect be to aid or oppose, to advance or retard. In the relationship between man and religion, the State is firmly committed to a position of neutrality.⁸⁸

⁸⁶ Loewy (n 85).

⁸⁷ In *Dimanche Sharon and Others v Makerere University* [2006] UGSC 10 (1 August 2006), the Uganda Supreme Court had to determine whether there had been a violation of the appellants’ rights by the respondent institution in requiring them to attend classes and sit examinations on Saturday. The appellants, all Seventh Day Adventists who eschew manual labour on the Sabbath argued that the requirement was a violation of their freedom of religion under article 29(1)(c) of the Constitution. The Court found that the right to freedom of religion was not absolute and that it is subject to other people’s rights and to the public interest. The Court, however, took notice of the measures that the respondent had instituted to accommodate the appellants and found them sufficient even though the appellants disagreed. For a full analysis of the decision, see Mujuzi (n 47) 8-11.

⁸⁸ *School District of Abington Township, Pennsylvania v Schempp* (n 59) para 226-227.

The foregoing discussion has attempted to define the normative scope and content of article 7 of the 1995 Constitution using a comparative analysis of the jurisprudence established by the United States Supreme Court. Ugandan courts have often found decisions from jurisdictions with similar constitutional and legislative provisions persuasive. For instance, the Uganda Supreme Court relied heavily on North American decisions in determining whether a public university that required its students to sit examinations violated the religious freedom of Seventh Day Adventists.⁸⁹ Therefore, the fact that the Constitutional Commission found the Establishment Clause to be of some value in drafting Uganda's 'non-adoption' clause should count towards using the existing jurisprudence to develop the normative content of Uganda's provision tailored to its historical, political, social, cultural and religious context.

2.5 PAROCHIAL RELIGIOUS EDUCATION: A CONCEPTUALISATION

Parochial religious education is a phrase that despite its ubiquitous usage in scholarly literature has eluded definition. This is in spite of the fact the legality and validity of parochial religious education has been the subject of a number of national supreme court decisions,⁹⁰ regional courts judgments,⁹¹

⁸⁹ In *Dimanche Sharon and Others v Makerere University*, the Uganda Supreme Court referred with approval to several decisions of the Canadian Supreme Court including *R v M Drug Mart* (1986) LRC 332, *Syndicat Enseignement de Champlain v CSR Dechambly C Bergevin* (1994) RCS 52 and *Central Alberta Dairy Pool v Alberta Human Rights Commission* 1990 2 SCR 489. (n 87).

⁹⁰ The Argentine Supreme Court in *Castillo v Provincia de Salta* declared unconstitutional a provincial norm that imposed religious education based on the teaching of the Catholic faith in public schools during school hours. The Court held that while neutral in terms of faith, and while allowing the possibility of parents to opt their children out of the classes, the norm violated in practice the right to equality and the right to privacy. See S Giuliano 'Argentine Supreme Court Strikes Down Mandatory Religion Classes in Public Schools' Oxford Human Rights Hub 29 January 2018 accessed at <http://ohrh.law.ox.ac.uk/argentine-supreme-court-strikes-down-mandatory-religion-classes-in-public-schools/>.

The US Supreme Court has struck down legislation that it said had the effect of promoting parochial religious education especially where that legislation promoted the teaching and learning that is tailored to the principles or prohibitions of any religious sect or dogma. See *Epperson v Arkansas* 393 US 97 (1968). Also see *OGOD v Minister of Basic Education & Others* High Court of South Africa 29847/2014.

⁹¹ *Folgero v Norway & Lautsi & others v Italy* (n 12) and accompanying text.

General Comments,⁹² communications⁹³ and concluding observations on reports by several United Nations treaty monitoring bodies.⁹⁴ It is a term that is easier to describe than to define and even then, it is described in terms of what it is not rather than what it is. Parochial religious education is that which is premised on a particular religion, religious belief, ethos or philosophy. Such education is not given in an unbiased, objective and neutral manner; it does not take into account the rights to freedom of opinion, conscience, expression and religion of others.⁹⁵ It is religious education that promotes one particular religious or non-religious tradition. Exclusion is central to a parochial religious education because students are meant to appreciate their own religious customs and are usually not exposed to other religious traditions.⁹⁶

The description entails a number of key ingredients such as the absence of neutrality and objectivity and the presence of bias towards a particular religion or religions. Although there is widespread acceptance of the requirement for 'objectivity' and 'neutrality' in theory, there is little analysis of what it means in practice.⁹⁷ How are the values of objectivity and neutrality determined? For some pupils and parents, teaching about

⁹² The UN Committee on Economic, Social and Cultural Rights has given an interpretation of article 13(3) on the right to educational freedom provided for by the International Covenant on Economic, Social and Cultural Rights. The Committee has in General Comment No. 13, para 28 stated the following: 'Article 13(3) has two elements, one of which is that States parties undertake to respect the liberty of parents and guardians to ensure the religious and moral education of their children in conformity with their own convictions. The Committee is of the view that this element of article 13(3) permits public school instruction in subjects such as the general history of religions and ethics if it is given in an unbiased and objective way respectful of the freedoms of opinion and expression. It notes that public education that includes instruction in a particular religion or belief is inconsistent with article 13(3) unless provision is made for non-discriminatory exemptions or alternatives that would accommodate the wishes of parents and guardians.' Also see UN Human Rights Committee General Comment No. 22 para 6.

⁹³ See for instance *Leirvåg v Norway* Communication No 1155/2003 which challenged the introduction of 'Christian Knowledge and Religious Ethical Education (CKREE)' into the Norwegian public school curriculum. The Human Rights Committee concluded that the teaching of CKREE did not meet the requirements of being delivered in a neutral and objective way because the stated intention of the subject was to, among others, help to give pupils a Christian and moral upbringing.'

⁹⁴ The Committee on the Rights of the Child has for instance in its Concluding Observations on Costa Rica expressed concern 'at the fact that classes on Catholicism are part of the curriculum which is discriminatory for non-Catholic children.' See Concluding Observations: Costa Rica, adopted 3 June 2005 UN Doc CRC/C/150 (2005) cited in Temperman (n 14) 872.

⁹⁵ Temperman (n 14) 868-869.

⁹⁶ FS Mwesigwa 'Religious Pluralism and Conflict as Issues in Religious Education in Uganda' (2003) unpublished PhD thesis, University of Leeds, 15.

⁹⁷ C Evans 'Religious Education in Public Schools: An International Human Rights Perspective' (2008) 8(3) *Human Rights Law Review* 449, 463.

all religions as though they were equally true is teaching a dangerous falsehood while others seem to view such an approach as a Trojan horse for the promotion of secularism which is hostile to any religious orientation.⁹⁸ Nonetheless, scholars are agreed that most sectarian religious instruction fails the test of 'objectivity' and 'neutrality' insofar as it promotes certain view points as true and any contrary assertions as false. In the same manner, instructing children that all religions are untrue or superstitious would also fail the 'objectivity' and 'neutrality' test.⁹⁹ This argument seems to be supported by jurisprudence from national and international bodies.¹⁰⁰ How courts and other quasi-judicial bodies have dealt with the meaning of 'neutral,' 'impartial,' and 'objective,' as the terms pertain to religious education in pluralistic societies like Uganda will form part of the core of the next chapter.

2.6 COLONIALISM AND PAROCHIAL RELIGIOUS EDUCATION IN UGANDA

It is important to note that in Uganda, especially during colonialism, each religious group that founded a school was not overly concerned with a 'neutral' or 'objective,' or 'impartial' education. The primary goal of these schools was to convert as many pupils as they could for the purpose of promoting these religions in their spheres of influence. The missionary aim of formal education led to the creation, not only of a denominational, but a divisive educational system. Islamic schools were also set up during colonial times although they were vastly outnumbered by their Christian counterparts. These schools instructed students on the beginnings of Islam, the evolution and expansion of the Muslim community into Uganda as well as the practices and bases of Islamic morality.¹⁰¹ Kasenene notes that 'for both Catholic and Protestants, schools were a major channel through which the missionaries recruited children for baptism lessons.'¹⁰² This system inculcated pupils into the religious orthodoxy of the schools they went to.¹⁰³ Pupils who were brought up in these schools took on the idea that members of the other denomination were enemies. This antagonism

⁹⁸ Evans (n 97).

⁹⁹ *ibid.*

¹⁰⁰ (n 90, 91, 92, 93).

¹⁰¹ Mwesigwa (n 96) 54.

¹⁰² Kasenene (n 16) 66.

¹⁰³ Kasenene (n 16) 96-105.

continued well into adulthood and spilled over into politics as political parties were established on the basis of religious affiliation and/or ethnic division.

This parochial curriculum was criticised because it was narrow in scope and unsuitable for the country as independence dawned. Opponents noted its failure to respond appropriately to emerging social and economic needs for a country preparing for independence.¹⁰⁴ A flavour of the kind of education provided in these schools is described by Tamale in the following terms:

Missionary education for women such as that provided at prestigious all-girls schools like Gayaza High, Namagunga Senior, and Buloba College was primarily geared toward providing educated men with good wives and homemakers.¹⁰⁵

2.7 INDEPENDENCE AND THE NATIONALISATION OF RELIGIOUS SCHOOLS IN UGANDA

It was not until after independence in 1962 that the education system in Uganda was nationalised by the government in 1963. With the enactment of the Education Act, 1963 by the newly independent government, all religiously founded schools were taken over by the state.¹⁰⁶ This does not mean that religious education was banished from schools. Rather, the goals and objective of education became less evangelical and more national. The independent government's immediate priorities were to address the low levels of literacy; expand primary and school enrolment; improve the standards of technical and agricultural education, and; to expand access of opportunities to girls.¹⁰⁷ The overall management and administration of schools was transferred to the central government and positions of mission school supervisors held by representatives of the religious groups were abolished.¹⁰⁸ This was a decisive shift away from the evangelical mission of

¹⁰⁴ R Musiime 'A Critical Evaluation of the Religious Education Curriculum for Secondary School Students in Uganda (1996), unpublished PhD thesis, University of North Texas, 27.

¹⁰⁵ S Tamale *When Hens Begin to Crow: Gender and Parliamentary Politics in Uganda* (2000) 11-12.

¹⁰⁶ Mwesigwa (n 96) 56.

¹⁰⁷ DR Evans & WS Kajubi 'Education Policy Formation in Uganda: Continuity Amidst Change' (1994) 66 *Education Policy Formation in Africa, Agency for International Development Bureau for Africa* 128, 131.

¹⁰⁸ Mwesigwa (n 96) 58.

many colonial-era schools. However, the parochial nature of these schools was left intact. They were, and still are, run on the religious ethos of the founders and the church and mosque have a say, alongside government, in the management and administration of these schools.¹⁰⁹

2.8 CONCLUSION

Article 7 of the 1995 Constitution proscribes government action, policy and legislation that either favours religion over non-religion or privileges one particular denomination over another. It attempts to strike a balance in constraining the state from imposing, endorsing or disapproving of one religious idea or philosophy to the detriment or advantage of others. The Constitution simultaneously provides for the freedom to exercise one's religion in two separate articles. It is clear that the rationale and intended effect of article 7 of the 1995 Constitution is to enable the state to mediate the divisive terrain of religious freedom and diversity in a pluralistic society like Uganda without privileging one religion over the other irrespective of the clout that certain religions might enjoy in society. This is especially more so in the field of education where Uganda's history reveals that parochialism and competition for converts and influence played a major role in how and why schools were built, and curricula developed. Article 7 and religious neutrality attempt to align Uganda's constitutional order in a manner that allows for a free exchange in the market place of ideas and respect for all religions and the citizens who profess or choose not to profess a particular faith. The state should, as is reasonably possible, not privilege one idea be it religious or non-religious over others. Special attention must therefore be paid to the curriculum prevalent in Uganda's schools. Education, especially public education, is too important an area to be left to the devices of sectarian, political, religious or ethnic divisions. Indeed, if Uganda's past education system was based on parochial divisions, its present one should be tailored to reflect its plurality and no religious tradition should be put at an advantage over others.

¹⁰⁹ Mwesigwa (n 4).

CHAPTER 3

3.0 INTRODUCTION

The previous chapter has shown that religious neutrality prohibits the state from privileging or disapproving; endorsing or inhibiting any religious or non-religious orthodoxy or philosophy. This is especially more so in the determination of the values that the state chooses to inculcate through its education system. This chapter seeks to show that Uganda's religious education and its curriculum is formulated by a statutory body which means it has the full institutional backing of the state. This is crucial in determining the constitutionality of the religious education because it is a reflection of the state's attitude towards particular religious beliefs. This is the main question that the study seeks to answer. This chapter extensively cites the content of the religious education curriculum and relies on jurisprudence from national and international bodies that have considered the legality of parochial religious education. This chapter uses that analysis to determine whether Uganda's religious education comports with article 7 of its Constitution.

3.1 THE RELIGIOUS EDUCATION CURRICULUM IN UGANDA: A PRIMER

In Uganda, the national curriculum, including the religious education curriculum is set by the National Curriculum Development Centre (NCDC), a statutory body established by the National Curriculum Development Centre Act, 1973. The NCDC is mandated to, among others, 'investigate and evaluate the need for syllabus revision and curriculum

reform at primary, secondary and tertiary levels of education.¹¹⁰ It is also required to ‘initiate new syllabi, revise existing ones, carry out curriculum reform, research, testing and evaluation, to bring it up to date and improve syllabi to school and college courses.’¹¹¹ The NCDC is overseen and supervised by the Ministry of Education and Sports (MoES). Education, particularly curriculum development in Uganda, and is therefore a key government function. The provision of education and development of religious education curricula must, therefore, be done in accordance with article 7 of the 1995 Constitution. The curriculum has undergone several revisions, with the latest major modifications to the religious education curriculum having been adopted in 1992.¹¹² The government acting upon recommendations of a comprehensive study and analysis of the national curriculum, decided to adopt a revised religious education curriculum.¹¹³ It is therefore accurate to say this curriculum reflects the views of government towards religious education and has the institutional patronage of the state. This curriculum is premised on Christian and Islamic religious traditions. An examination of the content of this curriculum is therefore imperative for the determination of its constitutionality under article 7 of the Constitution.

According to the NCDC, ‘teaching religious education enables learners to appreciate and value the mystery and beauty of creation and the interrelationships within.’¹¹⁴ Religious education also ‘fosters good human relationships and respect and above all, a range of positive attitudes such as patience, honesty, responsibility, tolerance, joy in life, cooperation, appreciation, sharing, endurance, perseverance, care for other people and respect for other learners.’¹¹⁵ In addition, the curriculum helps learners to appreciate the values of love, service, tolerance, integrity, loyalty, justice, self-discipline, peace and patience which are crucial in human fellowship.¹¹⁶

¹¹⁰ Section 3(1)(a) of the National Curriculum Development Centre Act, 1973.

¹¹¹ *ibid* section 3(1)(b).

¹¹² UNESCO ‘The Development of Education in Uganda 1990-1999: A Report to the 43rd Session of the International Conference on Education, Geneva’ 11 <www.ibe.unesco.org/National_Reports/Uganda/nr_mf_ug_1992_e.pdf> accessed 13 October 2018. For a full discussion on the evolution of Uganda’s education curriculum, see Evans & Kajubi (n 106).

¹¹³ The aims of a revised curriculum included the development and promotion of ‘ethical values which enable the individual to develop self-discipline, personal integrity, a sense of responsibility and belief in the spiritual nature and worth of man, and; to develop a sense of national unity and the unity of mankind which entail respect for the rights of others and an acceptance of tolerance for those with different religious, ethnic tribal/racial and cultural background. See UNESCO (n 112) 3.

¹¹⁴ The National Curriculum Development Centre <www.ncdc.go.ug/subject/religious-education> accessed 30 May 2018.

¹¹⁵ *ibid*.

¹¹⁶ *ibid*.

These benevolent and positive values are adversely affected by the fact that the religious education curriculum comprises of only two parts, that is, Islamic religious education (IRE), and Christian religious education (CRE). Learners can only choose from one of the two to learn and take examinations in. This therefore begs the question as to what message a state that is constitutionally required to be neutral regarding religion is sending to those who might not be inclined to learn either from either the Islamic or Christian tradition but still have an interest in religious studies?¹¹⁷ A survey of the content of the Christian and Islamic religious education is necessary to help answer the question as to its constitutionality.

3.2 CHRISTIAN RELIGIOUS EDUCATION

According to the MoES, the basis of the CRE syllabus is to enable the teacher guide and assist the learner to develop morally and spiritually so as to grow into a balanced, responsible and mature person in community.¹¹⁸ The aims and objectives of CRE are to enable the learner to ‘develop awareness and knowledge of God’s presence and purpose in the world as revealed through its creation, the Bible, the Christian community, the life and teaching of Jesus Christ and the Holy Spirit living in us today.’¹¹⁹ It is also intended to develop the Christian virtues of love, joy, peace and

to build a personal Christian ideal to inspire her/his development and growth to maturity; live a committed Christian life following in the footsteps of Jesus Christ; acquire the practice of praying alone and in fellowship with other Christians; to gain knowledge of the teaching of the Bible; to appreciate the common elements in traditional and other religions and Christian beliefs; to develop the Christian moral values of honesty, concern for others, sharing, tolerance and justice, and; to develop personal qualities of leadership to serve others in the community.¹²⁰

Some of the themes covered in the lower primary school curriculum for instance include ‘Christians with the Saviour,’ ‘God’s People and

¹¹⁷ *Lemon v Kurtzman* (n 77) and accompanying text.

¹¹⁸ Ministry of Education and Sports (2002) ‘Primary Four Christian Religious Education Syllabus’ vi.

¹¹⁹ *ibid.*

¹²⁰ *ibid* vii-viii.

the Law,' 'Following Jesus as a Leader,' 'Jesus Christ Our Saviour,' 'Christians with the Saviour' among others.¹²¹ Noteworthy is that the only mention of other religious traditions in the syllabus' objectives is to determine if there they share any common elements with Christianity.¹²²

3.3 ISLAMIC RELIGIOUS EDUCATION

According to the MoES, prior to the 1970s, Islamic education was provided in ungazetted Quran schools across the country.¹²³ These schools did not provide a curriculum and students were not easily integrated into the national education system.¹²⁴ This changed under the leadership of President Idi Amin when IRE was introduced into the curriculum 'with the aim of streamlining its instruction.'¹²⁵ The major aims of Islamic religious education, as stated by the MoES are to

enable learners to recognise, appreciate and add to the contribution of Muslims to world civilisation; to introduce learners to basic and fundamental values and practices of Islam, to provide learners with the knowledge and concepts of Islamic faith and virtues; to develop in learners an appreciation of the rich Islamic heritage and the values that are cherished by Muslims the world over; to develop in learners a sense of religious tolerance in recognition of the fact that the Muslim community thrives in an atmosphere of peace and harmony; to develop the knowledge of learners in the historical aspects of Islamic civilisation in relation to the prevalent world conditions; to nurture the learners' personality towards the best moral and societal conduct, healthy attitudes and self-discipline and to encourage them to develop as responsible citizens, who will contribute to the well-being of society and to humanity in general; to promote an enquiring, analytical and positive approach to the study of Islam, especially in its individual and collective expression in the contemporary world; to introduce learners to the challenging and multi-faceted nature of Islam and to the ways in which this is reflected in experience and practices to enable learners to recognise, appreciate and add to the contribution of Muslims to world civilisation.¹²⁶

¹²¹ Ministry of Education and Sports (2002) 'Primary Four Christian Religious Education Syllabus' x-xii.

¹²² *ibid.*

¹²³ *ibid.* vi.

¹²⁴ *ibid.*

¹²⁵ *ibid.*

¹²⁶ *ibid.* viii.

To that end, the scope and depth of the syllabus include key tenets of the Islamic faith such as belief in the oneness of Allah, Islamic prayer (Al-Salat), alms-giving (Al-Zakat), fasting (Al-Saum), the pilgrimage to Mecca (Al-Hajji), Islamic ceremonies, belief in life after death.¹²⁷

3.4 AN ANALYSIS OF THE CONSTITUTIONALITY OF RELIGIOUS EDUCATION IN UGANDA

The endeavour to extensively cite the aim and content of the religious education curriculum above is important in determining whether or not it violates the religious neutrality required by article 7. As noted above, a principle of religious neutrality speaks to the even-handedness necessary in a religiously and culturally plural society.¹²⁸ State-backed religious education that promotes or is premised on the tenets of any given religion, ethos or philosophy; that is not impartial and is exclusive in the sense that learners are taught to appreciate just their own religious traditions and are not exposed to other religions violates the principle of neutrality.¹²⁹ There is a positive educational duty upon the state to make neutral public education available.¹³⁰ This duty is not suspended because the majority of the population in the country profess one religion or the other.¹³¹ In fact, in Uganda's case, the population was emphatic during the constitution-making process that the Uganda should not adopt a state religion.¹³² This duty requires the Ugandan state to avoid latent or overt endorsement or disapproval for particular religions even

¹²⁷ Ministry of Education and Sports (2008) 'Islamic Religious Education Syllabus' vi.

¹²⁸ BL Berger 'Religious Diversity, Education, and the "Crisis" in State Neutrality' (2014) *Canadian Journal of Law and Society* 29(1) 103, 119.

¹²⁹ *Rosenberger v University of Virginia* 515 U.S. 819 (1995) 839 cited in MD Donovan 'Religion, Neutrality and the Public School Curriculum: Equal Treatment or Separation 2004 43(1) *The Catholic Lawyer* 187, 202. Also see Temperman (n 14) 883-884 and Evans (n 97) 453.

¹³⁰ Temperman (n 14) 867.

¹³¹ Some have argued that the validity of Uganda's religious education curriculum derives from 'the support of the population and the policy makers.' That the greatest advantage of religious education was that it had overall support of the population and that no objection had been raised against its implementation.' See Musiime (n 104) 160. This argument was made and rejected by the US Supreme Court in *School District of Abington Township v Schempp* (n 58).

¹³² Report of the Uganda Constitutional Commission (n 53 & 54).

within the realm of education. If the State fails in its duty to provide non-denominational religious education curriculum for instance, by maintaining and actively endorsing historical religious prerogatives that enable religious education to be monopolised by a particular religion, then the principle of neutrality is violated.

The aims of the religious education curriculum in Uganda are neither objective nor impartial. The present curriculum, key aspects of which are highlighted above, promote a study of either the Christian or Muslim religions. The CRE and IRE syllabi and content reveal a focus on religious principles and teachings to the exclusion of studies from other religious domains. The pervasive religiosity and direct governmental involvement inhering in the prescription of religious orthodoxy and reading of holy texts as part of the curriculum, utilising the prestige, power, and influence of public infrastructure cannot realistically be termed simply accommodation and must fall within the interdiction of article 7 of the 1995 Constitution.¹³³ The curriculum provides minimal opportunity for pupils to learn about other religions or philosophies. Such a curriculum cannot be said to facilitate the promotion of national unity and where it is endorsed and actively promoted by a state required to be neutral, it violates the principle of neutrality.

This position is bolstered by several provisions of international treaties to which Uganda is a party and therefore bound by. Although the 1995 Constitution does not specifically require Ugandan courts to make reference to international instruments, even those to which Uganda is a party, the Supreme Court and the Constitutional Court have both shown a willingness to liberally apply the provisions of international law in interpreting the Constitution.¹³⁴ To that end, therefore, the provisions of various international instruments and their interpretation by their monitoring bodies are pertinent to this study.

¹³³ *School District of Abington Township v Schempp* (n 59), Justice Goldberg, concurring 305-307.

¹³⁴ JD Mujuzi 'International human rights law and foreign case law in interpreting Constitutional rights: The Supreme Court of Uganda and the death penalty' (2009) *African Human Rights Law Journal* 9(2) 576, 580.

3.5 INTERNATIONAL LAW ON RELIGIOUS NEUTRALITY IN SCHOOLS

The Convention on the Rights of the Child (CRC) under article 29(1) provides for the aims of education. Of particular interest is article 29(1) (d) which provides that

State parties agree that the education of the child shall be directed to the preparation of the child for responsible life in a free society, in a spirit of understanding, peace, tolerance, equality of the sexes, and friendship among all peoples, ethnic, national, and religious groups and persons of indigenous origin.¹³⁵

The Committee on the Rights of the Child has stated that the realisation of this particular goal is not just a matter of access to education but is also dependent on the content of education.¹³⁶ In other words, the curriculum must be one that seeks to transcend any and all divisions if the goal of preparing the child for a responsible life in a free society is to be achieved.¹³⁷ It is difficult to contemplate this goal being realised if a curriculum is premised, for instance, on just two religious traditions out of 10 as is the case in Uganda. The Committee on the Rights of the Child has noted that the provision recognises the need for a balanced approach to education that succeeds in reconciling diverse values through dialogue and respect for differences.¹³⁸ Discrimination on any grounds, such as religion, whether it is overt or latent, offends the human dignity of the child and is capable of undermining or even destroying the capacity of the child to benefit from educational opportunities. The Committee has also raised concerns with State parties to the CRC, such as Costa Rica and Poland, whose religious education curriculum is steeped in the instruction of one religious tradition to the detriment of others.¹³⁹

Article 18 of the International Covenant on Civil and Political Rights

¹³⁵ Uganda ratified the Convention on the Rights of the Child on 17 August 1990 without any reservations. See <https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4&lang=en> accessed 1 September 2018.

¹³⁶ UN Committee on the Rights of the Child General Comment no 1 (2001) 'Article 29(1): The Aims of Education' CRC/GC/2001/1 para 3.

¹³⁷ General Comment no 1 (n 136) para 4.

¹³⁸ *ibid.*

¹³⁹ Temperman (n 14). The Committee on the Rights of the Child has raised concerns with Poland's failure to provide alternatives to religious education that is comprised mainly of instruction of the Catholic faith for children who might prefer ethics courses that are not denominational. See CRC 'Concluding Observations: Poland' UN GAOR Comm. On Rts. of the Child UN Doc CRC/C/15/Add.194 adopted 4 October 2002.

(ICCPR) provides for the right to freedom of thought, conscience or religion.¹⁴⁰ The Human Rights Committee (HRC) has noted that this right protects theistic, non-theistic and atheistic beliefs as well as the right not to profess any religion or belief.¹⁴¹ The HRC stresses that article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions.¹⁴² Any attempt to discriminate against religions or beliefs for any reason including those that are newly established or represent religious minorities that may be the subject of hostility on the part of a predominant religious community.¹⁴³ This interpretation would dispense with the argument that CRE and IRE inform the religious instruction in Uganda because adherents of the faiths constitute the largest segment of the populace.¹⁴⁴ The HRC has also noted that article 18(4) permits school instruction in subjects such as the general history and ethics if it is given in a neutral and objective way.¹⁴⁵ The HRC notes that public education ‘that includes instruction in a particular religion or belief is inconsistent with article 18(4) unless provision is made for non-discriminatory exemptions or alternatives that would accommodate the wishes of the parents and guardians.’¹⁴⁶

The United Nations Committee on Economic, Social and Cultural Rights (CESCR) has reiterated this interpretation in its General Comment on the Right to Education.¹⁴⁷ Article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) provides that the role of education shall be to enable all persons to ‘participate effectively in a free society, promote understanding, tolerance and

¹⁴⁰ Uganda acceded to the International Covenant on Civil and Political Rights without reservations on 21 June 1995. See <https://treaties.un.org/Pages/ViewsDetails.aspx?chapter=4&clang=_en&mtdsg_no=IV-4&src=IND> accessed 13 October 2018.

¹⁴¹ OHCHR General Comment no 22 (1993) ‘Article 18 (Freedom of Thought, Conscience or Religion) CCPR/C/21/Rev.1/Add.4 para 2.

¹⁴² *ibid.*

¹⁴³ *ibid.*

¹⁴⁴ See n 131 and accompanying text. According to the National Population and Housing Census, 2014, Catholics, Anglicans, Pentecostal/Born Again/Evangelicals, Seventh Day Adventists, Baptist, Orthodox Christians, and Muslims together account for 98.1% of the religious affiliation of the populace. See n 21 above. This is not to suggest that there is a homogeneity among the various adherents of the Christian or Islamic faiths.

¹⁴⁵ General Comment no 22 (n 141) para 6.

¹⁴⁶ *ibid.*

¹⁴⁷ Uganda acceded to the International Covenant on Economic, Social and Cultural Rights on 21 January 1987. See http://treaties.un.org/pages/viewdetails.aspx?src=ind&mtdsg_no=IV-3&chapter=4&clang=_en accessed 13 October 2018.

friendship among all nations, and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.’ In furtherance of this goal, the CESCR has stated that public education that includes ‘instruction in a particular religion or belief is inconsistent with article 13 unless provision is made for non-discriminatory exemptions or alternatives that would accommodate the wishes of parents and guardians.’¹⁴⁸

3.6 THE JURISPRUDENCE ON RELIGIOUS NEUTRALITY AND THE SCHOOL CURRICULUM

Judicial and quasi-judicial bodies in several jurisdictions that are constitutionally required to remain neutral on matters of religion, and even those with state religions have in essence stated that a curriculum that endorses or inhibits a particular religious view is unconstitutional. The decisions have been selected because the issues that they dealt with are similar to contentions that could potentially arise from the way the religious education curriculum has been formulated and is taught in Ugandan schools. Although they are not binding on Ugandan courts, they serve as a persuasive authority for the interpretation and application of article 7 to the religious education in Uganda.¹⁴⁹ There is scant jurisprudence within the East African region and on the continent regarding the relationship between church and state and how it affects religious education. However, decisions from the South African Constitutional Court, the US Supreme Court, regional courts, and treaty monitoring bodies such as the HRC are pertinent to the study and an analysis of the same therefore follows.

In *Sv Lawrence; Sv Negal; Sv Solberg* the South African Constitutional Court heard appeals challenging the validity of the appellants’ convictions for selling liquor on proscribed days.¹⁵⁰ The appellants relied on several provisions of the Constitution. Of importance to this discussion is the appeal of Magdalena P. Solberg. The appellant contended that the purpose of prohibiting wine-selling by grocers on so-called ‘closed days’

¹⁴⁸ UN Committee on Economic, Social and Cultural Rights General Comment no 13 ‘The right to education’ E/C.12/1999/10 para 28. See note 91 above and accompanying text.

¹⁴⁹ Mujuzi (n 134).

¹⁵⁰ 1997 10 BCLR 1348 (CC).

such as the Sabbath, Sunday, and Easter holidays was to ‘induce submission to a sectarian Christian conception and compel observance of the Christian Sabbath and holidays’ which the appellant alleged was contrary to section 14 of the interim 1994 Constitution.¹⁵¹ Both the interim and 1996 Constitutions do not provide for how the state should relate with religious entities besides requiring that freedom of religion, conscience, and thought be guaranteed and protected by the state. Indeed, the Court found that the Constitution did not require ‘scrupulous secularism’ or ‘walled-off neutrality.’¹⁵² However, the Court was wary of the message sent by banning the sale of alcohol on what are essentially religious holidays. Sachs J, noted that the Constitution, through section 14, acknowledges the multi-faith and multi-belief nature of the country and requires the state not to favour one religious creed or doctrinal truth above another.¹⁵³ It prohibits the state from imposing orthodoxies of thought that require conformity of conduct in terms of any particular world-view. This principle holds regardless of how widespread or reduced the acceptance of a particular idea is because Constitutions serve to protect the fundamental rights of non-majoritarian groups.¹⁵⁴

The test proposed by Sachs J in determining whether a particular law or government policy sent a message of approval for some world views to the detriment of others was that of a reasonable South African of any faith or none who is neither hyper-sensitive nor overly insensitive to the belief in question, and is highly attuned to the requirements of the Constitution.¹⁵⁵ Such an individual neither attempts to purge public life of even the faintest association with religion nor does he or she regard religiously based practices to be as natural and non-sectarian simply because of their widespread acceptance. Relying on the foregoing principles and test, Sachs J found that the message sent by the particular choice of the ‘closed days’ was that the state shows special solicitude to Christian opinion and therefore infringes section 14 of the Constitution.¹⁵⁶

Applying the *Lawrence* decision to the constitutionality of Uganda’s religious education curriculum and using the test of a reasonable Uganda

¹⁵¹ *S v Lawrence* (n 150) para 83.

¹⁵² *ibid* paras 100-103.

¹⁵³ *ibid* para 148. Section 14 of the interim Constitution guaranteed the right to freedom of conscience, religion, thought and belief. It also permitted religious observances at state or state-aided institutions provided they are conducted on an equitable basis and that attendance is free and voluntary. The provision was maintained in the 1996 Constitution.

¹⁵⁴ *ibid*.

¹⁵⁵ *ibid* para 162.

¹⁵⁶ *ibid* para 179.

attuned to the requirements of the 1995 Constitution, it becomes patently clear that the Ugandan state evinces special solicitude to Christian and Islamic opinion, yet it is required to be neutral in matters of religion. The decision is of special importance because, unlike Uganda, South Africa does not have a constitutional provision regulating the relationship between church and state. The Ugandan religious education curriculum sends an unmistakable message of approval that only those two world views held by the majority of Ugandans have the blessing of the State, yet the populace constitutes eight other religious orientations. It is immaterial, for the purposes of the constitutionality of the curriculum, that the majority of Ugandans approve of or adhere to the material being taught. As noted by Sachs J, constitutions are meant to protect minorities from the unfair imposition of majoritarian views.¹⁵⁷ The curriculum does not reflect the multi-faith and diverse character of Ugandan society and because it has the backing of the state, it violates article 7 of the 1995 Constitution.

Over 20 years after the above decision was laid down, another challenge was brought by the Organisasie Vir Godsdiens- en Demokrasie (OGOD) against the Minister of Basic Education, and Minister of Justice and Correctional Services of South Africa and six public schools. In *OGOD v Minister of Basic Education and Others*, the applicant sought declarations that the respondents' actions which included promoting only one religion in favour of others in public schools, and the association by public schools with particular religions was unconstitutional.¹⁵⁸ Of importance to this study was the issue as to whether a public school could promote itself as a single-faith school or that it only endorsed one particular religion to the exclusion of others. The respondent schools accepted that they endorsed Christianity insofar as they accepted it as the basis for their ethos.¹⁵⁹ They, however, rejected the claim that their acceptance of a single faith in this way was to the exclusion of others. The High Court rejected this argument. The High Court noted that public schools are juristic entities and organs of the state and that the society within which they operate is diverse. As public assets, public schools cannot advance the parochial interests of their immediate learners but are required to help achieve universal and non-discriminatory access to education.¹⁶⁰

¹⁵⁷ *S v Lawrence* (n 150) para 148.

¹⁵⁸ High Court of South Africa case no 29847/2014.

¹⁵⁹ *ibid* para 80.

¹⁶⁰ *ibid* paras 82, 89 & 92.

The rationale to be extrapolated from this decision for purposes of this study is that the Ugandan religious education curriculum that is designed to be used in public and private schools should not be used to advance the parochial interests of a section of its beneficiaries. The curriculum is by law, in particular article 7 of the 1995 Constitution, required to help achieve universal and non-discriminatory access to education in a pluralistic society. The Court also noted that the potential impact of ‘single-faith’ branding might be viewed as instilling a sense of inferiority and exclusion for those that do not belong to the faith or ethos that has been endorsed by a particular school thereby infringing the right to freedom of religion. It is conceivable that providing religious education that is premised on just two religious philosophies inculcates a feeling of inferiority and exclusion for members of other faiths and adherents of other world views. Article 7 read together with article 29 of the 1995 Constitution seek to promote and protect the diversity and plurality of Uganda’s society and enjoin the state to maintain this diversity without seeking to privilege or inhibit one particular view.

*School District of Abington Township v Schempp*¹⁶¹ was about a challenge to a Pennsylvania law that required public schools to read passages from the Bible at the opening of each school day although students who did not want to participate were allowed to excuse themselves from the ritual. The action was brought by atheist parents on behalf of their children who argued that the law violated the state-neutrality requirement of the First Amendment irrespective of the opt-out provisions. The US Supreme Court held that because of the prohibition respecting an establishment of religion, no state law or school board may require passages from the Bible to be read or that the Lord’s Prayer be recited in public schools at the beginning of each school day even if individual students may be excused from attending or participating in such exercises.¹⁶² The Court found that exercises of reading from the Bible formed part of the school curricula, and through them, the state was signalling that it allied itself with one particular form of religion and by extension, disapproving of other religions and persons who hold contrary beliefs.¹⁶³ The Court found that it was immaterial that the impugned exercises were not compulsory because they nonetheless sent a message that the government approved of them in violation of the

¹⁶¹ 374 U.S. 205 (1963). Also see note 59 above and accompanying text.

¹⁶² *ibid* 223.

¹⁶³ *ibid* 224.

constitutional requirement to remain neutral.¹⁶⁴

Reading of and reliance on devotional scriptural texts such as the Bible and Quran feature heavily as part of Uganda's religious education curriculum. That these texts form an integral part of the curriculum is a signal of the approval and endorsement of particular religious ideals, the kinds that are proscribed by article 7 of the 1995 Constitution. It is submitted that in Uganda's case, the religious education is not merely instruction, but overt proselytization encouraged and facilitated by the State. It is immaterial for the purposes of article 7 that these classes are optional as provided in the Education Act, 2008. This is because not only does it send a message of approval for adherents of the chosen texts but as was pointed out by the courts in the *Schempp* and *OGOD* decisions, those who opt-out of or are unable to take the classes might possibly view the state's provision of particular subjects for study as a message of indifference or disapproval for their world view(s).

In *Epperson v Arkansas*¹⁶⁵ the appellant brought a suit for declaratory and injunctive relief challenging the constitutionality of Arkansas' 'anti-evolution' statute which made it unlawful for a teacher in any state-sponsored school or university to teach or to use a textbook that teaches that 'mankind ascended or descended' from a lower order of animals. In determining whether the statute violated the neutrality requirement of the First Amendment, US Supreme Court considered the animus that propelled the enactment of the law. The Court noted that the enactment of the law had been influenced by 'fundamentalist sectarian conviction to make it unlawful to teach any theory that denies the story of the Divine Creation of man as taught in the Bible.'¹⁶⁶ It found that the law violated the prohibition of state laws respecting an establishment of religion because its sole reason is that a particular religious group considers the evolution theory to conflict with the account of the origin of man set forth in the Book of Genesis.¹⁶⁷ The Court found that Arkansas' statute 'selects from the body of knowledge of a particular segment which it proscribes for the sole reason that it is deemed to conflict with a particular religious doctrine, that is, with a particular interpretation of the Book of Genesis' by a particular religious

¹⁶⁴ *School District of Abington Township* (n 161) 225.

¹⁶⁵ 393 U.S. 97 (1968).

¹⁶⁶ *ibid* 108.

¹⁶⁷ *ibid* 103, 107-109.

group.¹⁶⁸ The Court reiterated its position that

[G]overnment must be neutral in matters of religious theory, doctrine, and practice. It may not be hostile to any religion or to the advocacy of no-religion, and it may not aid, foster or promote on religion or religious theory against another or even against the militant opposite.¹⁶⁹

The Court was unequivocal in finding that the neutrality principle in the First Amendment and the Establishment Clause does not require that teaching and learning be tailored to the principles or prohibitions of any religious sect or dogma.¹⁷⁰

The similarity between the law challenged in *Epperson* and part of Uganda's CRE curriculum is crucial for the determination of the latter's constitutionality. Just as in *Epperson*, Uganda's CRE curriculum seeks to promote a particular view about the origins of the world that is encapsulated in the aim to 'develop awareness and knowledge of God's presence and purpose in the world as revealed through its creation.' This also sends a clear message that the State has chosen to ally itself with a particular religious philosophy regarding the origins of the world to the exclusion of others. This would, on the basis of the persuasive authority in *Epperson*, and a reading of article 7 of the 1995 Constitution render Uganda's CRE curriculum unconstitutional.

The authors of the communication in *Leirvåg v Norway*¹⁷¹ challenged the Norwegian government's decision to implement a mandatory religious subject into its public-school curriculum entitled Christian Knowledge and Religious and Ethical Education (CRKEE). The parallels between the aims of the Norwegian curriculum set out in sections 2-4 the Norwegian Education Act and those of Uganda's CRE are striking and it is important that they be set out *in extenso*: They included the need to

transmit thorough knowledge of the Bible and Christianity in the form of cultural heritage and the Evangelical Lutheran Faith; transmit knowledge of other Christian Communities; transmit knowledge of the world religions and philosophies and, and ethical and philosophical subjects; promote understanding and respect for Christian and humanist values; promote understanding, respect and the ability to maintain a dialogue between people with different perceptions of beliefs and convictions.¹⁷²

¹⁶⁸ *Epperson v Arkansas* (n 161) 103, 107-109.

¹⁶⁹ *ibid* 103-104.

¹⁷⁰ *ibid* 106.

¹⁷¹ UN Doc CCPR/C/82/D/1155/2003.

¹⁷² *ibid* para 2.3.

The curriculum was challenged before the HRC by parents who felt that the subject was not neutral enough and that the available opt-out clauses were insufficient. The authors of the communication argued that Norway had violated their rights under articles 17, 18 and 26 of the International Covenant on Civil and Political Rights (ICCPR).¹⁷³ The HRC's decision on article 18 shall be the focus of this discussion. Norway has a state religion and a state church, the Evangelical Lutheran Church to which over 80% of the country's population are members. The Education Act that provided for CKREE stipulated that the subject would provide a 'thorough knowledge of the Bible and Christianity in reference to cultural heritage and the Evangelical Lutheran Faith.'¹⁷⁴ Students were offered options to opt out of certain segments of the subject otherwise it was mandatory for all pupils in Norway. 55% of the teaching-time was allocated to the teaching of Christianity, 25% to other 'religious life/life stances' and 20% to ethical and philosophical themes.¹⁷⁵ The issue was whether compulsory instruction of the CRKEE subject in Norwegian schools, with only a limited possibility of exemption violated the authors' rights to freedom of conscience, thought and religion.

The Committee found that instruction in religion and ethics is permissible under article 18(4) of the ICCPR if given in a 'neutral and objective way' and that public education that includes instruction in a particular religion or belief is inconsistent with article 18(4) unless provision is made for non-discriminatory exemptions or alternatives that cater to the wishes of parents or guardians.¹⁷⁶ The Committee considered the *travaux préparatoires* of the Education Act which made it clear that the subject gives priority to tenets of Christianity over other religions and philosophies of life.¹⁷⁷ The Committee further found that the subject involved, on the face of it, was not just an education in religious knowledge but also involved instruction in the practices of a particular religion.¹⁷⁸ The Committee therefore concluded that the teaching of CKREE was not being delivered in a neutral and objective way which was contrary to article 18(4) of the ICCPR.¹⁷⁹

¹⁷³ Article 17 guarantees the right to privacy while article 18 enjoins state parties to ensure freedom of thought, conscience and religion is protected. Article 26 provides that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law.

¹⁷⁴ UN Doc CCPR/C/82/D/1155/2003.

¹⁷⁵ *ibid* para 2.7.

¹⁷⁶ *ibid* 14.3.

¹⁷⁷ *ibid* paras 10.12 & 14.3.

¹⁷⁸ *ibid*.

¹⁷⁹ *ibid* 14.3.

Uganda's religious education curriculum goes beyond the imparting of religious knowledge which is itself constitutionally questionable. It goes further by instructing children in the practices of the orthodoxies of the religions that NCDC has decided it need to be taught. The religious practices of the Islamic faith for instance are expressly mentioned as one of the key principles that learners are taught. Applying the rationale and reasoning of the HRC in the foregoing decision, it is clear that Uganda's religious education curriculum is not taught in a neutral and objective manner. Further, the time allocated to the study of other religious and non-religious world views besides Islam and Christianity in Uganda is zero. In essence, the state is sending a clear message of allying itself with particular religions and orthodoxies to the detriment of others which is a clear violation of the letter and spirit of article 7 of the 1995 Constitution.

In *Folgero v Norway*,¹⁸⁰ a complaint was brought before the Grand Chamber of the European Court of Human Rights (ECtHR) on the heels of the HRC's decision in *Leirvåg v Norway* which compelled the Norwegian government to make changes to the Education Act including the allowance of a broader scope of exemptions for students who did not want to take part in the religious instruction or activities provided by the law. The complaint was brought by humanist parents for and on behalf of their children arguing that the curriculum still was not neutral or objective enough and did not allow for sufficient or adequate opt-out arrangements that ensured their children got education and teaching that was in conformity with their own religious and philosophical convictions. The complainants alleged that the curriculum violated article 2 of Protocol no. 1 to the European Convention on Human Rights.¹⁸¹ One of the issues the ECtHR had to determine was whether the information or knowledge included in the curriculum was conveyed in an objective, critical and pluralistic manner or whether it pursued an aim of state-approved indoctrination. Although the ECtHR found that about half of the curriculum deals with Christianity and the other half with other religions and philosophies, it found that this could not by itself be viewed as a departure from the principles of pluralism

¹⁸⁰ Application no 15472/02. For a full analysis of the decision see S Lied 'The Norwegian Christianity, Religion and Philosophy subject KLR in Strasbourg' (2009) *British Journal of Religious Education* 31(3) 263.

¹⁸¹ Article 2 of the Protocol provides for the right to education. It states that 'no person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the state shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.'

and objectivity amounting to indoctrination.¹⁸² The ECtHR noted that it was within the State party's margin of appreciation to determine how much time it would allocate to Christianity given the latter's influence on its society dating back hundreds of centuries.¹⁸³

The ECtHR noted that article 2 of the Protocol, in part, aims at safeguarding the possibility of pluralism in education which is essential for the preservation of "democratic society."¹⁸⁴ The article also requires the state to ensure that information or knowledge included in the curriculum is conveyed in an objective, critical and pluralistic manner.¹⁸⁵ The state is forbidden to pursue indoctrination that might be considered disrespectful of parents' (and children's) religious and philosophical convictions.¹⁸⁶ A combination of the time allocated for teaching Christianity, the aim of giving pupils a Christian and moral upbringing as well as a description of the contents of the curriculum was sufficient for the ECtHR to find that the curriculum was not conveyed in an objective, critical and pluralistic manner.¹⁸⁷ The ECtHR also noted that the quantitative and qualitative differences applied to the teaching of Christianity compared to that of other religions and philosophies of life could not promote understanding, respect and the ability to maintain dialogue between people with different perceptions, beliefs and convictions.¹⁸⁸ The ECtHR also found that the differentiation of knowledge further emphasizes its bias and that the Education Act made provision for schools to teach a 'thorough knowledge' of Christianity while there is no requirement of thoroughness applied to the knowledge to be taught about other religions and philosophies.¹⁸⁹ The ECtHR stated that it was difficult to reconcile the requirement that pupils could engage in religious activities in the subject including prayers, learning of religious texts by heart and participation in plays of a religious nature with an objective, neutral, pluralistic and critical teaching method.¹⁹⁰ The ECtHR therefore found that there was a violation of article 2 of the Protocol no.1 of the European Convention on Human Rights.¹⁹¹

¹⁸² Fogero v Norway para 89.

¹⁸³ *ibid.*

¹⁸⁴ *ibid* para 84(b).

¹⁸⁵ *ibid* para 84(h).

¹⁸⁶ *ibid.*

¹⁸⁷ *ibid* paras 95-98.

¹⁸⁸ *ibid.*

¹⁸⁹ *ibid.*

¹⁹⁰ *ibid.*

¹⁹¹ *ibid.*

The import of the foregoing decisions is that a religious curriculum that is grounded in a particular religious tradition or philosophy or atheistic belief is not neutral, impartial or objective. This is true for states that are constitutionally bound to be neutral, and as is the case with Norway, even in countries with an official state religion. It is immaterial that a majority of the population is religiously inclined or that pupils and students can opt-out of parochial education as was stated in *Schempp* and *OGOD*. In summary, the state is required to ‘teach, not preach.’¹⁹²

3.7 CONCLUSION

The basic purpose of article 7 of the 1995 Constitution is to promote and assure religious liberty and tolerance, and to nurture the necessary conditions that secure that goal. In choosing a particular curriculum, especially one that includes a restricted number of prescriptive texts, the Ugandan state makes a conscious determination of which values it will inculcate. It is essentially a message of what the state approves and disapproves. Where a state that is required to be religiously neutral brings its weight to bear not just through the facilitation but the approval of certain religious orthodoxies and the unmistakable proselytization through devotional reading and recitation of scriptural texts in a manner that has the effect of sending a message of approval for some religions, there is a violation of the principle of neutrality. In fact, the Uganda curriculum is not just sending a message of approval for certain religious traditions, it is ‘excessively entangled in religious affairs’ insofar as it purports to make truth-claims about certain religious traditions – that they are the custodians of morality and ethical behaviour. It is evident that the religious education and the curriculum upon which it is based are not taught in a neutral, impartial and objective way and are therefore unconstitutional. However, state neutrality does not call for the banishment of religion or religious education from the public arena and certainly not from schools. The next chapter will therefore offer recommendations on how religious education can be taught in Ugandan schools in a manner that comports with article 7 and religious neutrality and concludes the study.

¹⁹² Mujuzi (n 134).

CHAPTER 4

4.0 INTRODUCTION

This chapter summarises the findings of the study and offers recommendations. It draws inspiration from guidelines issued by the OSCE Office for Democratic Institutions and Human Rights (ODIHR) on teaching about religions and beliefs in public schools¹⁹³ the main elements of which are covered in chapters 2 and 3. The chapter concludes the study.

4.1 RELIGIOUS NEUTRALITY, PLURALISM AND RELIGIOUS EDUCATION

The constitutional injunction in article 7 of the 1995 Constitution is an acknowledgement of an increasing religious pluralism that characterises Ugandan society. Read together with article 29 and article 37 on the right to freedom of religion, it is a call for the state to facilitate the exchange of ideas without tipping the scales one way or the other. So, it is with religious education. The religious education and the curriculum that underpins it should reflect the multi-faceted nature of Ugandan society and include a recognition of the fact that there are other world views that should be given an audience and be exposed to students in the spirit of promoting tolerance as one of the aims stated by the NCDC. Religious education is permissible as long as it falls short of religious indoctrination by the State. Context and history are important in this

¹⁹³ ODIHR Advisory Council on Experts on Freedom of Religion or Belief 'Toledo Guiding Principles on Teaching About Religions and Beliefs in Public Schools' (2007).

regard, however. Religions that have historically enjoyed a ‘competitive advantage’ in terms in resources and population-reach might benefit from an approach that requires the State to stay away from the market place of ideas. Nonetheless, this historical advantage does not suffice for a country like Uganda which is required to be religiously neutral and to promote one religious ethos or point of view over others.

Religious neutrality imposes both positive and negative duties on the state. The state may not require a course of action for the purpose of compelling religious compliance or attempting religious proselytization or indoctrination through a biased religious education curriculum. Religious neutrality requires the state to avoid laws or policies that seek to, overtly or latently, impose the practices and beliefs of a particular religion. Religious education that is dominated by the perspective(s) of a particular denomination or denominations is impermissible as a result of the duty imposed by article 7. The state is by the same token required to change laws or policies that place any state-imposed burden or confer state-endorsed privileges on the exercise of religious freedom. This would include, in Uganda’s case, prohibition of the use of the public-school infrastructure to promote and amplify certain religious philosophies over others. However, religious neutrality does not mean there is no role for religion in public life. It does not mean that arguments grounded in religious belief should be ignored when formulating government policy. Ultimately, though, the validity of state laws and policies, including those related to education must be determined by reference to constitutional norms and not religious doctrine.

Courts have stated that religious neutrality does not call for the banishment of religious education from schools. In *Schempp* the US Supreme Court noted that ‘it might well be said that one’s education is not complete without a study of comparative religion or the history of religion and its relationship to the advancement of civilisation.’¹⁹⁴ The ECtHR has echoed similar sentiments stating in *Kokinnakis v Greece* that the pluralism that comes with the protection of freedom of thought, conscience and religion is indissociable from a democratic society.¹⁹⁵

An objective, impartial, and neutral religious education is important for a number of reasons key among them is the preparation of the child

¹⁹⁴ *School District of Abington Township, Pennsylvania v Schempp* (n 59) 225.

¹⁹⁵ Application no 14307/33 para 31.

for a responsible life in a free society in the spirit of understanding, peace, tolerance, equality of sexes and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origins.¹⁹⁶ This no doubt requires some level of understanding and education about different ethnic and religious groups in order to counteract biases, misinformation and bigotry that can flourish in relation to religious minorities in particular. If schools are not permitted to explore different religious traditions of the world, children are likely to develop a myopic conception of people of other religions from far less reliable sources. Children have a right to an education that will prepare them to live in societies that are increasingly complex.¹⁹⁷ In societies like Uganda where religion and its manifestation plays a crucial role in public life, it is necessary for all students to understand its role without necessarily adopting religious ideas in order to fully participate in that society. There is no gainsaying the role that religion has had on the culture, history and politics of Uganda and students should be encouraged to have a basic religious literacy to fully understand this impact. Schools should therefore teach *about* religion so that pupils and students can make informed decisions about laws and other government actions that not only originate from the impact of religion on the state but also decisions that affect religious belief and practice in both the private and public domains.

Despite finding that religious education that is premised on a parochial religious belief is unconstitutional, courts, quasi-judicial bodies, and treaty monitoring committees have offered little guidance into what an acceptable religious education curriculum would actually be composed of in practice. Even if it is accepted that teaching methods and materials used in the curriculum must be neutral toward religion in both purpose and effect, there is no denying that such an exercise is fraught with difficulty: the study of religion, like other disciplines such as history, has been the subject of intractable disputes arising from the competing narratives that flow from the various interpretations by different scholars or adherents.¹⁹⁸ Most religions assert their validity and legitimacy from the truth-claims they make about the world and

¹⁹⁶ Evans (n 97) 471.

¹⁹⁷ *ibid.*

¹⁹⁸ WE Yerby III 'Toward Religious Neutrality in the Public School Curriculum' (1989) *University of Chicago Law Review* (56) 899, 921.

humanity in general. To strip religious education of its truth-claims in public schools might comport with the ‘reasonable Ugandan’ attuned to the requirements of the Constitution but it might not seem neutral to a religious adherent. Nonetheless, given that the Constitution is the supreme law, attempts should be made to formulate a curriculum that complies with its provisions specifically article 7 of the 1995 Constitution.

4.2 RELIGION AS A TOPIC OF STUDY

In the absence of guidelines by judicial bodies on what an objective, neutral and impartial religious education curriculum should be comprised of, this study has had to make reference to the Toledo Guidelines. The Toledo Guidelines were developed by the Office for Democratic Institutions and Human Rights Advisory Council of Experts on Freedom of Religion or Belief to provide guidance regarding how religion might be taught in public schools, preparation of curricula, and the development of teacher education. The Toledo Guidelines emphasize the importance of religious education that is ‘fair, accurate, and based on sound scholarship’ with due regard to religious freedom and respect for human rights.¹⁹⁹ The drafters of the Toledo Guidelines provide a useful criteria against which states seeking to assess the way in which teaching about religion in public schools (or in state-developed curriculum) complying with constitutional and human rights obligations can test themselves.

The Toledo Guidelines are unequivocal in their support for including or maintaining religious education on the public-school curriculum. They note that ‘no educational system can afford to ignore the role of religions and beliefs in history and culture.’ Such ignorance, they add, might contribute to intolerance and discrimination and lead to the development of negative stereotypes. The Toledo Guidelines find that there is positive value in education that emphasizes respect for everyone’s right to freedom of religion or belief and that teaching *about* religions and beliefs as opposed to teaching *of* religions and beliefs can reduce harmful misunderstandings and stereotypes.²⁰⁰ Teaching about religions

¹⁹⁹ ODIHR Advisory Council on Experts on Freedom of Religion or Belief ‘Toledo Guiding Principles on Teaching About Religions and Beliefs in Public Schools’ (2007) 19.

²⁰⁰ *ibid* 19-20.

and beliefs is imperative for the preparation of young people for life in diverse and plural societies. This pedagogical philosophy was reiterated at the World Education Forum in 2000 where the Dakar Framework for Action 2000-2015 (Dakar Framework) was adopted. The Dakar Framework noted that schools are instrumental for the promotion of understanding among religious groups.

The Toledo Guidelines note as their starting point that the development of an appropriate religious education curriculum requires education about religions and beliefs without promoting or denigrating any of them. Students are informed about various religions and beliefs without requiring them to conform or convert to any particular religion or belief.²⁰¹ Further, the Toledo Guidelines advise that such a curriculum should be ‘sensitive, balanced, inclusive, non-doctrinal, and impartial.’²⁰²

The study therefore contends that Uganda’s religious education curriculum should be ‘comprehensive and pay particular attention to key historical and contemporary developments pertaining to issues of religion and belief.’²⁰³ The curriculum should also be alive to changes in interpretations of reality, whether religious or non-religious that are caused by fluidity of societies as a result of demographic changes, new interpretations of holy texts, scientific developments as well as wars and conflicts.²⁰⁴ The curriculum should also be ‘sensitive to different local manifestations of religious and non-religious plurality found in schools and the communities they serve.’²⁰⁵ Such sensitivities will help to address concerns of students, parents and other stakeholders in education regarding the need for a fair and balanced coverage of different religions and philosophies. It might also help mitigate the negative impact of low self-esteem suffered by students identified in the *Schempp* and *OGOD* decisions that arises from the exclusion of certain religions and philosophies from the curriculum. An impartial and inclusive approach should therefore be reflected not only in the schools but in the curriculum as well.

The study also highlights the importance of teacher education and

²⁰¹ ODIHR (n 199) 21.

²⁰² *ibid* 32.

²⁰³ *ibid*.

²⁰⁴ *ibid* 40.

²⁰⁵ *ibid* 41.

preparation for the purposes of teaching a subject that is as multi-faceted and controversial as religious education. Basic teacher preparation should be framed in and undergirded/ reinforced by constitutional, democratic and human rights principles.²⁰⁶ The teachers/instructors should be alive to the commitment to freedom of religion or belief and also take into account the need for mutual respect and understanding of all religions and beliefs. This calls for strengthened and continuous training before and after they are hired to facilitate and teach religious education in schools.

4.3 RECOMMENDATIONS

The take-away from the foregoing discussion for the Ugandan state, therefore, should be an attempt to develop a curriculum that speaks to Uganda's religious diversity; one that seeks to promote tolerance, and a mutual and respectful exchange of ideas and philosophies and most importantly one that has/demonstrates conformity with the Constitution. This curriculum should be one where students learn *about* the fundamental beliefs, practices, and rituals of a variety of religions. This instruction would be presented in manner that does not teach that these religions are (un)true and may be extended to philosophies and beliefs of a non-religious nature. The Toledo Guidelines propose a number of pedagogical approaches that states can adopt taking into account variables like the historical importance of religions and beliefs; the presence of particular religions or beliefs in a nation or the local community and the present or future likelihood of contact with adherents to a particular religion or belief. This study will defer to the expertise of officials in the MoES and the NCDC for the development of a wholesome, and holistic religious education curriculum. Suffice to note, however, that it should be constitutional taking into account articles 7, 29 and 37 of the 1995 Constitution and should seek to promote the values of tolerance and mutual respect that the NCDC highlights as the aims of religious education in Uganda. As Chirwa notes:

the preparation of a child for responsible life in a free society in the spirit of tolerance, equality of sexes, and friendship among all peoples,

²⁰⁶ ODIHR (n 199) 52-62.

ethnic, national, and religious groups and persons of indigenous origin is arguably more relevant to Africa than any other continent. This is so, considering the fact that most armed conflicts have resulted from differences that have roots in ethnicity and religious orientation. Understanding, tolerance and friendship of peoples is therefore very crucial in Africa and education has a great role to play in inculcating these virtues.²⁰⁷

The Government of Uganda, through the MoES and NCDC, needs to:

1. Ensure to the fullest extent possible that the religious education in public schools is taught in a neutral, impartial and objective manner without privileging certain belief systems over others in accordance with article 7 of the 1995 Constitution. Consultation and engagement with all stakeholders, including religious leaders, civil society, and academia among others is crucial if this exercise is to be fruitful.
2. Revise the religious education curriculum to reflect the country's diversity and make a shift away from the parochial content of religious education with a view towards promoting tolerance, mutual respect and inclusiveness particularly within the public-school system.
3. Ensure that teachers and religious instructors receive sufficient and adequate pre-service and in-service training to help achieve the foregoing objectives and help guarantee that religious education is delivered in a fair, balanced, inclusive manner that is devoid of bias.

Recommendations to civil society and other stakeholders

- Civil society and other stakeholders such as academics and religious leaders should not shirk their duty to hold the state accountable through lobbying, advocacy and if necessary, the institution of legal proceedings in the Constitutional Court. This would be required to enable government to conform to the provisions of article 7 of the 1995 Constitution.

²⁰⁷ DM Chirwa 'The merits and demerits of the African Charter on the Rights and Welfare of the Child' (2002) *The International Journal of Children's Rights* (10) 157, 162.

BIBLIOGRAPHY

BOOKS

- Byaruhanga, C (2018) *Essential Approaches to Christian Religious Education: Learning and Teaching in Uganda: EthicsPraxis*
- Fox, J (2008) *A World Survey of Religion and the State*: Cambridge University Press
- Kanyehamba, GW (2010) *Constitutional and Political History of Uganda: From 1894 to Present*: LawAfrica
- Karugire, SR (2010) *A Political History of Uganda*; Fountain Publishers
- Kasenene, P (2011) *Religion and Politics in Nkore*: Fountain Publishers
- Low, DA (1971) *The Mind of Buganda: Documents of the Modern History of an African Kingdom* Heinemann Publishers
- Mugaju, J & Oloka-Onyango, J (2000) (eds) *No-party Democracy in Uganda: Myths and Realities*: Fountain Publishers
- Obed, A (1974) *Islam in Uganda: Islamisation Through a Centralised State in Pre-Colonial Africa*: East African Educational Publishers
- Obed, A (1995) *Religion and Politics in Uganda: A Study of Islam and Judaism*: East African Educational Publishers
- Odoki, BJ (2014) *The Search for a National Consensus: The Making of the 1995 Uganda Constitution*: Fountain Publishers
- Reid, RJ (2017) *A History of Modern Uganda*: Cambridge University Press
- Tamale, S (2000) *When Hens Begin to Crow: Gender and Parliamentary Politics in Uganda*: WestView Press
- Welbourn, FBW (1965) *Religion & Politics in Uganda 1952-63*: East African Publishing House

JOURNAL ARTICLES

- Alava, H & Ssentongo, JS 'Religious (de)politicisation in Uganda's 2016 elections' (2016) 10(4) *Journal of Eastern African Studies* 677
- Berger, BL 'Religious Diversity, Education, and the "Crisis" in State Neutrality' (2014) 29(1) *Canadian Journal of Law and Society* 103
- Chirwa, DM 'The merits and demerits of the African Charter on the Rights and Welfare of the Child' (2002) 10 *The International Journal of Children's Rights* 157
- Choper, JH 'The Establishment Clause and Aid to Parochial Schools-An Update' (1987) 75(5) *California Law Review* 5
- Donovan, MD 'Religion, Neutrality and the Public School Curriculum: Equal Treatment or Separation' (2004) 43(1) *The Catholic Lawyer* 187
- Evans, C 'Religious Education in Public Schools: An International Human Rights Perspective' (2008) 8(3) *Human Rights Law Review* 449
- Evans, DR & Kajubi, WS 'Education Policy Formation in Uganda: Continuity Amidst Change' (1994) 66 *Education Policy Formation in Africa, Agency for International Development. Bureau for Africa* 128
- Kurland, P 'Of Church and State and the Supreme Court' (1961) 29(1) *University of Chicago Law Review* 1
- Kyrtsis, D & Tsakyrakis, S 'Neutrality in the classroom' (2013) 11(1) *International Journal of Constitutional Law* 200
- Laycock, D 'Formal, Substantive, and Disaggregated Neutrality toward Religion' (1990) 39 *DePaul Law Review* 993
- Lied, S 'The Norwegian Christianity, Religion and Philosophy subject KLR in Strasbourg' (2009) *British Journal of Religious Education* 263
- Loewy, AH 'Rethinking Government Neutrality towards Religion under the Establishment Clause: The Untapped Potential of Justice O'Connor's Insight' (1986) 64 *North Carolina Law Review* 1049
- Matemba, YH 'Religious education in the context of sub-Saharan Africa: the Malawian example' (2008) 31(1) *British Journal of Religious Education* 41
- Mazrui, AA 'Religious Strangers in Uganda: From Emin Pasha to Amin Dada' (1977) 76(302) *African Affairs* 21
- Morris, HF 'The Uganda Constitution' (1966) *Journal of African Law* 10(2) 112
- Mudoola, D 'Religion and Politics in Uganda: The Case of Busoga, 1900-1962' (1978) 77(306) *African Affairs* 22
- Mujaju, AB 'The Political Crisis of Church Institutions in Uganda' (1976) 75(298) *African Affairs* 67
- Mujuzi, JD 'International human rights law and foreign case law in interpreting Constitutional rights: The Supreme Court of Uganda and the death penalty' (2009) 9(2) *African Human Rights Law Journal* 576
- Mujuzi, JD 'The Right to Freedom to Practice One's Religion in the Constitution of Uganda' (2011) 6 *Religion and Human Rights* 4
- Mutua, M 'Limitations on Religious Rights: Problematizing Religious Freedom in the African Context' (1999) 5 *Buffalo Human Rights Law Review* 75

- Nsereko, DD 'Religion, the State, and the Law in Africa' (1986) 28(2) *Journal of Church and State* 269
- Quashigah, K 'Religion and the republican state in Africa: The need for a distanced relationship' (2014) 14 *African Human Rights Law Journal* 78
- Ryder, B 'State Neutrality and Freedom of Conscience and Religion' (2005) 29 *The Supreme Court Law Review: Osgoode's Annual Constitutional Cases Conference* 168
- Schwarz, A 'No Imposition of Religion: The Establishment Clause Value (1968) 77(4) *Yale Law Journal* 692
- Temperman, J 'State Neutrality in Public School Education: An Analysis of the Interplay Between the Neutrality Principle, the Right to Adequate Education, Children's Right to Freedom of Religion or Belief, Parental Liberties, and the Position of Teachers' (2010) 32 *Human Rights Quarterly* 865
- van der Vyver, JD & Green, MC 'Law, religion and human rights in Africa: Introduction' (2008) 8 *African Human Rights Law Journal* 337
- Ward, K 'Role of Anglican and Catholic Churches in Public discourse on homosexuality and ethics' (2015) 9(1) *Journal of East African Studies* 127
- Yerby III, WE 'Toward Religious Neutrality in the Public School Curriculum' (1989) 31(3) *University of Chicago Law Review* (56) 899

DISSERTATIONS

- Musiime R 'A Critical Evaluation of the Religious Education Curriculum for Secondary School Students in Uganda (1996), unpublished PhD thesis, University of North Texas
- Mwesigwa FS 'Religious Pluralism and Conflict as Issues in Religious Education in Uganda' unpublished PhD thesis, The University of Leeds, 2003

GOVERNMENT REPORTS

- Ministry of Education and Sports (2002) 'Primary Four Christian Religious Education Syllabus'
- Ministry of Education and Sports (2008) 'Islamic Religious Education Syllabus'
- National Population and Housing Census Main Report, 2014, <<https://www.ubos.org/onlinefiles/uploads/ubos/NPHC/NPHC%202014%20FINAL%20RESULTS%20REPORT.pdf>> accessed 1 August 2018
- Proceedings of the Constituent Assembly (Official Report) (1994)
- Report of the Uganda Constitution Commission, Analysis and Recommendations, 1995

INTERNATIONAL INSTRUMENTS AND DOCUMENTS

Convention on the Rights of the Child
International Covenant on Civil and Political Rights
International Covenant on Economic, Social and Cultural Rights
UN Committee on Economic, Social and Cultural Rights General Comment no
13 (1999) 'The right to education' E/C.12/1999/10
UN Committee on the Rights of the Child General Comment no 1 (2001)
'Article 29(1): The Aims of Education' CRC/GC/2001/1
OHCHR General Comment no 22 (1993) 'Article 18 (Freedom of Thought,
Conscience or Religion) CCPR/C/21/Rev.1/Add.4f
ODIHR Advisory Council on Experts on Freedom of Religion or Belief (2007)
'Toledo Guiding Principles on Teaching About Religions and Beliefs in
Public Schools.

MUNICIPAL LEGISLATION

The Constitution of the Republic of Uganda, 1995
The Constitution of the Republic of South Africa, 1996
The Constitution of the Fifth Republic of France, 1958
The Interim Constitution of the Republic of South Africa, 1994
The Education (Pre-Primary, Primary and Post-Primary) Act of 2008
The Education Act of 1963
The National Curriculum Development Centre Act of 1973.

CASE LAW

Folgero v Norway (2008) 46 EHRR
Lautsi & Others v Italy Application no. 30814/06
OGOD v Minister of Basic Education & others High Court of South Africa case
no 29847/14
School District of Abington Township, Pennsylvania v Schempp 374 US 205
(1963)
Lemon v Kurtzman 403 US 602 (1971)
Dimanche Sharon & others v Makerere University [2006] UGSC 10
S v Lawrence; S v Negal; S v Solberg 1997 10 BCLR 1348 (CC)
Epperson v Arkansas 393 US 97 (1968)
Leirvåg v Norway UN Doc CCPR/C/82/D/1155/2003
Kokinnakis v Greece Application no 14307/33

INTERNET SOURCES

- 'MPs Demand Immediate Ban on Sexual Literature dissemination in Schools' *Business Guide Africa* 18 August 2016 <<http://businessguideafrica.com/mps-demand-immediate-ban-on-sexual-literature-dissemination-in-schools/>> accessed 5 August 2018
- The National Curriculum Development Centre <www.ncdc.go.ug/subject/religious-education> accessed 30 May 2018
- Bbosa, D 'Time to lift ban on sex education in schools' *The Daily Monitor* 11 July 2017 <www.monitor.co.ug/News/Education/Time-to-lift-ban-on-sex-education-in-schools/688336-4007894-mm27t8z/index.html> accessed 30 July 2018
- Mugabe, F 'Idi Amin decrees on mini-skirts, gonorrhoea and wigs' *Daily Monitor* 31 May 2015 <www.monitor.co.ug/Magazines/PeoplePower/Idi-Amin-decrees-on-mini-skirts--gonorrhoea-and-wigs/689844-2734504-74yweoz/index.html> accessed 1 September 2018
- Musoke, C & Odyek, J 'Religious studies retained on curriculum' *The New Vision* 14 May 2008 <www.newvision.co.ug/new_vision/news/1189976/religious-studies-retained-curriculum> accessed 7 August 2018
- Mwesigwa, F 'Teaching Religious studies still compulsory' *The New Vision* 26 May 2008 <www.newvision.co.ug/new_vision/news/1189192/teaching-religious-studies-compulsory> accessed 7 August 2018
- Namagembe, L 'Policy to regulate religious activities divides clerics' *Daily Monitor* 8 May 2017 <www.monitor.co.ug/News/National/Policy--regulate-religious--activities--divides--clerics/688334-3921758-go0teqz/index.html> accessed 1 September 2018
- Okiror, S 'Uganda condemns sex education for 10-year-olds as "morally wrong"' *The Guardian* 20 October 2017 <www.theguardian.com/global-development/2017/oct/20/uganda-condemns-sex-education-for-10-year-olds-as-morally-wrong> accessed 17 July 2018
- Ssenyonga, A 'Churches reject sexuality education in school' *The New Vision* 4 June 2018 <www.newvision.co.ug/new_vision/news/1479030/churches-reject-sexuality-education-school> accessed 30 June 2018
- UN Convention on the Rights of the Child <https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4&lang=en> accessed 1 September 2018
- UN International Covenant on Civil and Political Rights <https://treaties.un.org/Pages/ViewsDetails.aspx?chapter=4&clang=_en&mtdsg_no=IV-4&src=IND> accessed 13 October 2018
- UNESCO 'The Development of Education in Uganda 1990-1999: A Report to the 43rd Session of the International Conference on Education, Geneva' 11 <www.ibe.unesco.org/National_Reports/Uganda/nr_mf_ug_1992_e.pdf> accessed 13 October 2018
- Wassajja, N & Lukwago, J 'Catholic Church rejects government proposal on sex education' *The New Vision* 14 June 2018 <www.newvision.co.ug/new_vision/news/1479629/catholic-church-rejects-govt-proposal-sex-education> accessed 30 June 2018

Monastery of San Nicolò
Riviera San Nicolò, 26
I-30126 Venice Lido (Italy)

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