

# Religion and Secularism in Nigeria: The Effect of Compulsory Dress Codes in the Educational System on the Right to Practice Religion

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## Abstract

Though Nigeria is regarded as a secular state, there are two major religions which are predominantly practiced. Religious sentiments have permeated the societal space in Nigeria and often times the ardent practice and observance of religious tenets lead to perennial conflicts with governmental policies. It is one of the fundamental precepts of human rights that the religious belief of individuals should be respected, therefore the provision for the protection of right to religion in the national laws and some international instruments. The education system requires specific dress codes which must be observed. It is against this backdrop that this paper examines the right to practice religion in Nigeria and the obvious conflicts between this practice and policies in the Nigerian education system particularly at primary and post-primary school levels. The paper addresses the scope of the right to practice one's religion under the law vis-à-vis governmental policies in educational institutions.

## Keywords

law – religion – Nigeria – secularism – dress code – human rights

## 1 Introduction

The right to religion underscores the right of an individual or a group of people to freely adopt and practice their religion or renounce a religion without fear or hindrance. The right to religion is one of the first generation human rights that enjoy the legal backing of all the foremost human rights documents.<sup>1</sup> Consequently, the constitutions of many states have explicit provisions on the right to religion. In some countries women's choices about their attire and appearance, and also in general, wearing of religious symbols claimed to be a sign of religious practice have been restricted through laws, policies and regulations particularly in public places.<sup>2</sup> Belgium Constitutional Court upheld such ban in December 2012 and that it was necessary to protect public safety, ensure equality and preserve "a certain conception of 'living together' in society."<sup>3</sup> On the other hand, the United States of America is considerably liberal in allowing wearing of religious dresses in the public.<sup>4</sup> Nigeria, which is a multi-religious society, has been bedevilled by constant tussles between different religious worshippers, especially those of the Muslim faith and the Christian faith on the one hand and school management on the other hand in respect of wearing headscarves by Muslim students to publicly-owned primary and secondary schools.<sup>5</sup> Until recently, Nigeria had not experienced disputes on school uniform or dress code, which would end up in the court of law. The full awareness and liberalisation of practice of religion as guaranteed by the law have informed the religious movements and fundamentalism being experienced in the country.

The case of *S.J. Bamgbade v. The Vice Chancellor, Obafemi Awolowo University and Ors*<sup>6</sup> exemplifies reaction of Muslims to established dress codes in public institutions that contravene acclaimed Islamic injunctions. In this case the

1 Ikenga KE Oraegbunam, 'Islamic Law, Religious Freedom and Human Rights in Nigeria' [2016] 2(1) African J of Law and Criminology 4.

2 Pew Research Centre, 'Restrictions on Women's Religious Attire' (5 April, 2016) <<https://www.pewforum.org/2016/04/05/restrictions-on-womens-religious-attire/>> accessed 21 March 2019.

3 See U.S. Department of State. May 20, 2013. "Belgium." 2012 Report on International Religious Freedom.

4 Paula N Johnson, 'Religious Equity in Schools – Protecting Students and Their Civil Rights' XLV(7) *IDRA Newsletter* 3(August 2018).

5 Abdulmumini A Oba, 'Hijab in Educational Institutions and Human Rights: Perspectives from Nigeria and Beyond,' [July 2009] 10(1) *Identity, Culture & Politics: An Afro-Asian Dialogue* 54.

6 (Unreported) Suit No. HIF/MISC/20/2002 delivered by Awotoye J, at the Ile-Ife High Court on 9/5/2002.

Faculty of Pharmacy in Obafemi Awolowo University instituted a dress code prohibiting wearing of a flowing dress in the laboratory to prevent unwarranted accidents. In reaction to this a Muslim student filed an action in the High Court of Osun State challenging the dress code. An interim injunction was granted against the defendants by the court, which was later vacated and the *status quo ante* was restored. The case did not however get to the appellate courts. More recently, there was a case that took place in Kwara State, Nigeria in the case of *The Provost, Kwara State College of Education, Ilorin and 2 Ors v. Bashirat Saliu and 2 Ors*, which commenced at the High Court of the State and later went on appeal to the Court of Appeal.<sup>7</sup> The facts of the case were that the College prescribed a dress code that prevented covering of the entire face by the students for the purpose of security on campus. Three students of the College who were Muslims approached the High Court to challenge the circular containing the dress code upon which the management acted to prevent the students from attending lectures and writing examinations. The student argued that since using a veil was part of their religious (Islamic) injunctions as contained in Chapters 17:45, 24:3 and 33:59 of the Quran, preventing them from doing that would be against their fundamental human right to practice their religion as entrenched in section 38 of the 1999 Constitution (as amended). The court found for the plaintiffs and declared the portion of the circular containing the dress code illegal. On appeal to the Court of Appeal by the College the court dismissing the appeal held *inter alia* that “The veiled dress is recommended for Muslim women, which the respondents undeniably are, and which also enhances the preservation of their honour and chastity. It is their fundamental right to practice and observe their religious injunctions in any part of Nigeria including the 3rd appellants’ premises.” It therefore held that the respondents had a constitutional right under section 38 of the Constitution to practice, propagate and manifest their religion which covered the use of veil by them. The court further held that the right could not be derogated from under section 45 of the Constitution as the dress code was merely an administrative rule and not a legislative enactment.

Subsequently, a similar case took place in the year 2014 in the High Court of Lagos State in respect of Muslim female pupils who were prevented from adorning their heads with *hijab* (Islamic headscarf) during school hours in the case of *Asiyat Abdulkareem and Ors v. Lagos State Government*.<sup>8</sup> The High Court found for the State and held that preventing the pupils from wearing

<sup>7</sup> (Unreported) Appeal No. CA/IL/49/2006 (delivered on the 18th day of June, 2009).

<sup>8</sup> *Miss Asiyat Abdulkareem (through her father), Miss Oyeniyi and the Muslim Students’ Society of Nigeria v. Lagos State Government* (2016) 15 NWLR (pt 1535) 177.

*hijab* did not erode their rights under section 38 of the 1999 Constitution, and allowing Muslim pupils to wear *hijab* was discriminatory. On appeal to the Court of Appeal, the decision of the High Court was overturned. The court held that the use of *hijab* was an Islamic injunction and act of worship and it would violate the appellants' rights to stop them from wearing it in public schools and that the lower court erred in law when holding that the ban on the use of *hijab* was a policy of the Lagos State Government. The Lagos State Government, not satisfied with the judgment of the Court of Appeal appealed to the Supreme Court, which is the apex court of the country, and the matter is still pending in the Supreme Court.

Similar occurrence as above happened in Osun State of Nigeria in the case of *Sheikh Salaudeen Ade Olayiwola & Ors v. The Governor of Osun State & Ors*<sup>9</sup> where a principal of a public school sent some Muslim students out of school for wearing *hijab*. On instituting a suit for breach of their fundamental rights, the High Court of the State gave judgment in favour of the Muslim students against the authorities of the State relying heavily on the decision of the Court of Appeal in the case *The Provost, Kwara State College of Education, Ilorin and 2 Ors v. Bashirat Saliu and 2 Ors*.<sup>10</sup> The Christian Association of Nigeria (CAN), Osun State chapter, not satisfied with this judgment ordered Christian students to also wear church garments to school, which created an unpalatable situation in the State. Additionally, a Muslim graduate from the Nigerian Law School was prevented from being called to the Nigerian Bar in 2017 for wearing *hijab* underneath her wig and gown until the Body of Benchers decided otherwise in June 2018 and she was later called to the Bar. Around the same year 2018, there was also a brawl by some female Muslim Students of the International School Ibadan (a secondary school owned by the University of Ibadan) and the school authorities for preventing them from entering the school wearing *hijab*, which was against the dress codes of the school. This led to temporary shutdown of the school to avoid break down of law and order. The matter is now before the court for determination.

With this spate of conflicts, it is imperative to consider whether school authorities are unduly depriving the right to freedom of religion guaranteed under the law for everyone by preventing pupils from wearing religious attire and symbols to public school in Nigeria. It is also important to consider whether the public schools authorities have power to limit the exercise of this freedom and in what circumstances they can do so, if they can.

<sup>9</sup> Suit No. HOS/M.17/ 2013 judgement delivered on 3rd of June, 2016.

<sup>10</sup> *Asiyat Abdulkareem*.

## 2 Governance, Secularism and Religion

There has been a perennial argument about whether a state should be free from professing certain religion as a state religion and be free from attaching herself to the apron string of any faith. This idea actually takes its root in giving everyone the opportunity to decide his or her religious choice and freedom to determine the compass for identifying with his or her conscience. Freedom of religion is a state of having that choice to determine what to believe in and what religious doctrine to adopt as the philosophy guiding one's spiritual life. The idea of a state not being actively involved in religious activities to the extent of taking such religion as a state religion is termed "secularism". The import of secularism is significant for implementation of constitutional and international ideals of protecting freedom of religion and co-existence of people with different religions and beliefs within a society therefore encouraging pluralism.<sup>11</sup>

It is important to mention here that there may sometimes not be a clear dividing line between secularism and religiosity as the two concepts often describe "adjacent but opposite areas of social space, each being a negation of the other, and yet each being intertwined with the other in vital ways."<sup>12</sup> Secularism does not necessarily mean absolute bar from practice of one's religion, but it requires the state not professing one religion over and above other, especially in multi-religious society, and a complete severance of the state from religious activities. Thus, this idea should display a blend of moral equality of individuals and freedom of conscience and religion and state neutrality towards religions.

Impacts of religions on state affairs are obvious especially in states that do not have clear severance between state activities and religious practices. Religion continues to have its riveting influence on governmental responsibilities including its budgetary spending which include state financial supports for religions. Despite the fact that some states find it difficult to cut-off from giving supports to religions and the influence of religion on their activities, yet claiming to be secular states, they still have state policy directives that are not for promotion or manifestations of religious activities within governmental establishments. This may involve providing codes of practice within such establishments devoid of religious manifestation, especially in their mode of dressing. So glaring in Nigeria are the military and the paramilitary establishments,

11 Javier Martinez-Torron and W Cole Durham, 'Religion and Secular State' <<https://www.iclrs.org/content/blurb/files/General%20Report.pdf>> accessed 19 January 2019.

12 *ibid.*

which include the Armed Forces, Police, Custom, Immigration, and so on. Similarly, the education sector of the nation also has prescribed codes of dressing particularly in public primary and secondary schools.

School uniform is an idea that started in the United Kingdom around 16th century and the practice later spread around the world. The practice of wearing school uniform can be regarded as promoting social equality among the pupils particularly in a multi-religious society and heterogeneous culture. Government policy on dressing in public schools may have the obvious reflection of stripping the pupils of all symbols, insignia and paraphernalia of religion, which some may consider emblematic of true followers or believers of certain religions. The question is, to what extents should government policy on dressing or uniform influence or suppress the practice of one's religion in government institutions and other establishments? This uncomfortable rivalry has brought about pockets of violence and struggles among certain religious believers. While the Muslim pupils are of the opinion that strict obedience to the dress codes prescribed by government will violate their constitutionally guaranteed fundamental right to practice their religion the secular authority are at the other end of the straw and uphold that maintaining religious neutrality in public space will guarantee religious peace and harmony in the nation.<sup>13</sup> The Islamic faithful who have blatantly flouted the uniform policies/codes in schools severally to appear in religious regalia, particularly the female worshippers who believe the doctrine of Islam, or perhaps injunction, demands compulsory use of veils (*hijab* or *niqab*) all the time by the female. Presently, it is imperative to state that the conflict between right to freedom to practice religion is often conflicting with policy directions given at public schools to maintain uniform/dress codes among the pupils. It is therefore important to consider whether that right is superior to governmental policy or vice versa or whether there is a common meeting point between the two where equilibrium can be established.

### 3 Nigeria as a Secular State

Nigeria has a history rooted in the British colonial style of governance. At independence in 1960, Nigeria adopted a stance that separated religion from the state and thus never adopted any religion as a state religion. Despite this,

13 Tolulope Anthony Adekola, 'The Wearing of Hijab in Public Educational Institutions in Nigeria: A Call for Alternative Dispute Resolution' in MC Green (ed), *Law, Religion and Human Flourishing in Africa*. (Stellenbosch: Conference-RAP 2019) 65.

Nigeria has been struggling to clearly articulate the relationship between religion and the state.<sup>14</sup> Even though Nigeria is a secular state, the geographical landscape of the country is marked by the dominance of a particular religion in certain regions of the country, which predated the colonial era. Nigeria is a heterogeneous society with over two hundred and fifty (250) ethnic groups and multi-religious. The Islamic religion enjoyed predominance in the Northern region while Christianity is the dominant religion in the Southern region with a fragmentary spread of indigenous religious practitioners across the states of the South and the North. By the nature of this structure, the Northern states have their customary legal system influenced by the predominant religious leanings of their residents. Thus, many states of the Northern region operate Sharia law as part of their legal system. This structure has been maintained substantially over the decades.<sup>15</sup>

The provision of section 10 of Constitution affirms Nigeria has a secular state and prohibits the adoption of any religion as state religion.<sup>16</sup> It is not to say that section 10 should be interpreted to mean total disappearance of religion from the political space.<sup>17</sup> The Constitution further entrenches the right to religious freedom. However, there are arguments that despite the constitutional provisions, which declare Nigeria as a secular state, religion has played a significant role in public governance in Nigeria.<sup>18</sup> Besides the fact that many northern states operate legal systems which have been heavily influenced by religious leanings, some of these states maintain public agencies and parastatals with varying mandates towards the promotion of religion.<sup>19</sup> For instance,

14 Isaac Terwase Sampson, 'Religion and the Nigerian State: Situating the de facto and de jure Frontiers of State – Religion Relations and Implications for National Security' (June 2014) 3(2) OJLR 311.

15 United States Department of State Bureau of Democracy, 'Human Rights and Labour International Religious Freedom Report 2017' 2–3 <<https://www.state.gov/documents/organization/281018.pdf>> accessed 10 February 2019. The recent alleged agitations by the Islamic insurgent group, Boko Haram that seemed to be pursuing a religious agenda amongst other aims of the group.

16 Section 10 of the Constitution Federal Republic of Nigeria 1999 (as amended).

17 IO Oloyede, WO Egbewole, HT Oloyede, 'The Operational Complexities of "Free Exercise" and "Adoption of Religion" Clauses in the Nigerian Constitution' in Peter Coertzen *et al.* (eds), *Religious Freedom and Religious Pluralism in Africa: Prospects and Limitations*, (Stellenbosch: Sun Media, 2016) 39.

18 Momoh Lawani Yesufu, 'The Impact of Religion on A Secular State: The Nigerian Experience' (2016) 42/1 *Studia Hist. ECC* 1, 1 <[http://www.scielo.org.za/scielo.php?script=sci\\_arttext&pid=S1017-04992016000100003](http://www.scielo.org.za/scielo.php?script=sci_arttext&pid=S1017-04992016000100003)> accessed 10 January 2019.

19 United States Department of State Bureau of Democracy 'Human Rights and Labour International Religious Freedom Report 2017' 4 <<https://www.state.gov/documents/organization/281018.pdf>> accessed 10 February 2019.

the Nigerian government is involved and even funds the activities of Nigerian Inter-religious Council (NIREC).<sup>20</sup> The governments at all levels have interfered in the performance of religious rites and pilgrimages and have budgetary allocations sponsoring many of these religious rites. In addition, government observes major religious holidays such as *Maulid al-Nabi*, *Eid al-Fitr*, *Eid al-Adha*, Good Friday, Easter Monday and Christmas as national holidays.<sup>21</sup> This notwithstanding Nigeria does not have a state religion based on the constitutional provision of section 10 of the 1999 Constitution. However, Christianity and Islamic religions take dominance among the majority of the people in the country, whereas the indigenous traditional religions are relegated to the background. This accounts for the reflection of state interests in religious activities in these two popular religions.

#### 4 Management of Public Education in Nigeria

Formal education in Nigeria is a colonial heritage that was bestowed unto the polity through British colonisation. In the beginning of colonisation of Nigeria, which then comprised of the Colony of Lagos, the Southern Protectorate and the Northern Protectorate, the colonial masters recognised the dominance of Islamic education in the Northern Protectorate; it was therefore difficult to introduced formal education to that region. Whereas the Southern region readily embraced English formal education, the Northern region was not receptive of this system of education, which accounted for its regression in formal education compared with the Southern region.<sup>22</sup> The colonial lords introduced the British system of education to Nigeria, which was administered through certain educational ordinances and codes, which served as the foundation of modern day educational policies, educational laws and administration in Nigeria.<sup>23</sup> Such included the 1882, 1887, 1916, 1926 and 1946 Education Ordinances and the 1926 Education Codes.<sup>24</sup> Upon attainment of independence in 1960 the British colonial masters severed their control over the country, including education.

20 NIREC is a privately formed independent body by heads of the two predominant religions in Nigeria in 1999. US Department of State – Bureau of Nigeria Democracy ‘Human Rights and Labour International Religious Freedom Report 2017’ *supra* note 15, pp. 3–4.

21 See Public Holidays Act, Cap P.40, LFN 2004.

22 Martins Fabunmi, ‘Historical Analysis of Educational Policy Formulation in Nigeria: Implications for Educational Planning and Policy’ (2005) 4/2 Intl J of African and African American Studies 1, 1.

23 *ibid.*

24 Fabunmi *supra* note 22, at 2.

There are certain rules and policies meant to run the educational system, which take their source from the rules and laws made by the colonial masters. Education is under the concurrent legislative list in the 1999 Constitution of Nigeria.<sup>25</sup> The current legislative powers on educational matters in Nigeria first appeared in the Macpherson Constitution of 1951 therefore making the administration of education come within the powers of both the Federal and State governments. Section 2(a) of the Fourth Schedule to the Constitution provides for the participation of Local Government Council in Government of a State in respect of provision and maintenance of primary, adult and vocational education.

The legislatures at the federal and state levels have power to enact laws for the education sector and such power to make rules may equally be delegated to administrative bodies or agencies.<sup>26</sup> Thus, the Minister for Education, Commissioners for Education and appointed Governing Councils for schools, local school boards and other educational parastatals perform the functions of government in relation to education, which include appointment, promotion, discipline, developing policies, rules and regulations for the operations of schools in Nigeria.<sup>27</sup> The ministries of education directly or indirectly provide for management policies and administrative procedures of public schools.<sup>28</sup> Hence, the creation of public schools and the administration are directly or indirectly products of law.<sup>29</sup> Policy making and its effect on the teachers, pupils, parents and the society derives from the Constitution or enabling legislation. For instance, the Compulsory, Free Universal Basic Education Act 2004 confers on the Universal Basic Education Commission power to “formulate policy guidelines for the successful operation of the universal basic education programme in the Federation.”<sup>30</sup> To further substantiate this position, the Interpretation Act provides that –

Where an Act confers a power to make a subsidiary instrument, proclamation or notification, the power shall include:

- (a) Power to make different provisions for different circumstances;

25 Paragraphs 27–30, Part II Second Schedule of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

26 See the cases of *A.G. Bendel State v. A.G. Federation* [1982] 3 NCLR 1 and *Balogun v. A.G. Lagos State* (1981) 2 NCLR 509 at 648.

27 Kayode O Fayokun, and Segun O Adedeji ‘Legal Issues in Educational Management in Nigeria’ (2013) 4(2) *Makerere J of Higher Education* 187, 188.

28 Fayokun, *supra* note 27 at 187.

29 *ibid.*

30 See section 9(a) of the Act.

- (b) Power, exercise in the like manner and subject to the like consent and conditions (if any) to vary and revoke the instrument, proclamation or notification.<sup>31</sup>

It is absolutely true that the ministries of education at the federal and state levels together with other regulatory bodies are delegated with powers to control and manage education in Nigeria. As such, the policies, rules and regulations made by these bodies have the force of law. The rules and regulations may sometimes come in form of guidelines, circulars or notices and are expected to be constitutional, reasonable and subject to judicial review and interpretations.<sup>32</sup> As succinctly put by Fayokun and Adedeji:

The rules and regulations or students discipline made and applied by Federal and State Ministries of Education, schools management boards, Commission, Governing Councils and other regulatory agencies have the force of law. They cannot be impeached unless they infringe on the provisions of the constitution or fail the test of “reasonableness”. It is not uncommon for example for school heads to prescribe certain standards of behaviour in dressing, physical appearance, conduct within school precincts, restriction of movement, school opening and closing hours, courtesy, examination regulations, vocational and curricula involvements etc. for pupils.<sup>33</sup>

Having considered the management of public education in Nigeria it is apt to consider the government policy on dress codes for public primary and secondary school in Nigeria with the purpose of determining its effect on the right to freedom of religion of the pupils.

## 5 Educational Policy on Compulsory Dress Codes in Nigerian Public Schools

Education is a social means through which the members of a society are equipped with knowledge to become active participants in positive transformation of their society. By the provision of Article 28 of the Universal Declaration of Human Rights (UDHR) everyone has a right to education and

<sup>31</sup> Section 12(1) of the Interpretation Act, Cap 1 23, Laws of the Federation of Nigeria 2004.

<sup>32</sup> Fayokun, *supra* note 27 at 193.

<sup>33</sup> *ibid.* 198.

education shall be directed to promote understanding, tolerance and friendship among all nations, racial or religious groups. Policy is a general guideline of operation or management of affairs, or a definite course of action or acceptable procedure of a governmental body. According to Cambridge Online Dictionary policy is “a set of ideas or a plan of what to do in particular situations that has been agreed to officially by a ... government.”<sup>34</sup> Educational policies are rules set to promote and improve the quality and process of teaching and learning in educational institutions. A dress code set rules governing the physical appearance of persons especially within a particular setting or for a specific purpose. Before independence and until the late 1960s many educational institutions were religiously affiliated and very few were public educational institutions.<sup>35</sup> Many of these schools were primary and secondary schools spread across the whole federation that propagated both western and religious education. In the mid-1970s, there was a widespread acquisition of these faith-based schools by the military government, thus making them secular public schools.<sup>36</sup> This move did not however preclude the continued existence of privately-owned faith-based schools which account for a reasonable percentage of schools in Nigeria. Nigeria is composed of a federal government, 36 states governments, the Federal Capital Territory, Abuja and 774 Local Government Areas. The three tiers of government, i.e. the federal, state and local governments, share concurrent responsibilities in the regulation and administration of formal education in Nigeria to the extent prescribed by the Constitution. The Federal Government however acts as the unifying epicenter for ensuring horizontal and vertical policy alignment and coordination, while still allowing for flexibility in the implementation to address diversities and peculiarities.<sup>37</sup> The administration and regulation of the education sector are under the control of the executive president of the Federation and governors of the States acting through the Minister and Commissioners for Education, respectively, or through departments, boards or agencies under their ministries to develop policies, guidelines and directions for the sector. For instance, the National Policy on Education of 2013 provides that the Federal Ministry

34 Accessed 15 March, 2019 from <https://dictionary.cambridge.org>.

35 Lawani Yesufu, *supra* note 18 at 2.

36 Momoh argues that this action by the ruling military government then received both positive appraisal and public condemnation.

37 Burton Bollag (ed.), ‘Governance and Financial Analysis of the Basic Education Sector in Nigeria,’ *World Bank Group (Education) Report, No. ACS14245*, September, 2015, p. 10. Note that the Federal Government had come up with National Policy on Education which first came into force in 1977 and subsequently reviewed in 1981, 1998, 2004, 2007 and the latest is 2013 to achieve national educational goals.

of Education shall, in collaboration with States and relevant stakeholders, be responsible for the provision of a National Policy on Education and provision of “appropriate education laws and ensuring their enforcement.”<sup>38</sup> Similarly, State Ministries of Education and the Federal Capital Territory (FCT) Education Secretariat shall have responsibility within the States and the FCT, respectively to make policy on education in respect of state-owned educational institutions in accordance with the requirements of the National Policy on Education.<sup>39</sup> These Ministries can also make education laws while also ensuring their enforcement. Local governments are also responsible for management of Primary Education within their local government areas through Local Education Authorities (LGEAs).<sup>40</sup>

Apart from the constitutional provisions guaranteeing the right to freedom of religion, the Constitution makes no express provision for dress code in public educational institutions. Compulsory dress codes are thus a matter of educational policy. However, educational policies are an important feature of the fundamental objectives and directive principles of state policy contained in Chapter 2 of the Constitution. Section 18 of the Constitution provides that educational policies of the government must be directed towards equal and adequate educational opportunities. It is a well-known fact that there are compulsory dress code policies in public schools in Nigeria at the primary and secondary levels. It is doubtful if such policies exist at the tertiary level except in few cases, even though there have been agitations to enforce dress codes generally in public tertiary institutions.

However, it is a conventional and widespread practice across the Federation that school uniforms are mandatory for all students of public primary and secondary schools. For instance, in 2014, following the religious crises which erupted in a public secondary school in Osun State of Nigeria, the State developed an educational policy which branded standard uniforms for Osun State public schools at the primary and secondary levels.<sup>41</sup> The constitutional provision on the right to freedom of religion in Nigeria precludes policies and practices which discriminate between citizens based on their faith or which encourage mixed living patterns or segregations of people of different religious inclinations. Section 17(1) of the 1999 Constitution in a bid to establish the needed social equilibrium in a society that is greatly heterogeneous and

38 See section 9, paragraph 138(a) and (n) of the document.

39 Section 9, paragraph 13(a) and (g) of the National Policy on Education 2013.

40 See Section 9 paragraph 140 of the National Policy on Education 2013.

41 The Nation Newspapers, ‘Understanding Essence of Osun’s New Education Policy’ (January 2014) <<http://thenationonlineng.net/understanding-essence-of-osuns-new-education-policy>> accessed 5 January 2019.

diversified on many fronts provides that the country's social order is founded on ideals of Freedom, Equality and Justice, and to achieve this every citizen shall have equality of rights, obligations and opportunities before the law.<sup>42</sup> The fact that the Constitution expressly declares Nigeria a secular state trenches the idea of a standard dress code devoid of anything emblematic of religion across all public institutions in the country. The idea of extending the freedom of religion to religious dressing in public schools offends the spirit and letter of the Constitution and promotes a divisive and unhealthy environment for learning. Nigerian is secular and so are its public institutions.

## 6 Right to Freedom of Religion Under the Law in Nigeria

There are certain rights that are considered important in every human society and some of these rights are given universal recognition and guaranteed under the law. Rights are considered beneficial to human existence and must be enjoyed by human beings. Some rights are conferred on human beings through positive or man-made law whereas some rights are considered as conferred by nature. There are rights that are of such importance that they are given the status of being fundamental in comparison with other human rights. Rights to freedom of thought, conscience and religion are measured to be one of the human rights that are regarded as fundamental and these rights also find recognition in the Nigerian legal system. Also in the international sphere right to freedom of religion is well recognised and protected. International documents that recognise this right include the Universal Declaration of Human Rights;<sup>43</sup> the International Covenant on Civil and Political Rights;<sup>44</sup> the African Charter on Human and Peoples Rights;<sup>45</sup> American Convention on Human Rights<sup>46</sup> and; European Convention for the Protection of Human Rights and Fundamental Freedoms<sup>47</sup> among other human rights documents.<sup>48</sup>

The main component of the right to religion identifiable from all the human rights documents is the freedom to adopt and renounce a religion or belief. This essentially precludes any form of coercion in adoption and practice of

42 See section 17(1)(2)(a).

43 Article 18 of the UNDHR (1948).

44 Article 18 of the ICCPR adopted by UN General Assembly Resolution 220A (XXI) of 16 December 1966.

45 Article 8 of the ACHPR (1981).

46 Article 12 of the ACHR (1969).

47 Article 9 of the ECHR (1950).

48 Note that Nigeria has ratified the UNDHR, ICCPR and the ACHPR.

any religion. The right to religion also extends to the right against discrimination based on religion or on the basis of a state religion. These international and regional legal instruments similarly recognise that the right to religion is limited<sup>49</sup> and there are permissible derogations to the right.<sup>50</sup> This right is subject to the protection of other's rights and made subject to limitations prescribed by law, which are necessary in a democratic society, in the interest of public safety and for the preservation of public order, health and morality.<sup>51</sup> The right to religion also intersects with other human rights such as the right to freedom of expressions and the right to liberty. The realisation of these other human rights necessarily incorporates the fulfilment of the right to religion.

Most of the international human rights documents provide no definition for religion. These human rights documents interchange the use of religion and belief in the same context, though arguably with distinct meanings, and associate religion with thoughts, conscience and beliefs. These human rights documents also enumerate various manifestations of religion, which are protected and guaranteed. Thus, the protection of the right to religion extends to manifestation of one's religion in teaching, worship, practice and observance. The right to religion is conceived both as an individual right and the right of a collective or group. The right to religion itself engenders controversial discourse in international law especially in relation to its sacrosanctity and point of divergence from other fundamental rights.

Article 26 of the UNDHR specifically provides that education 'shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.' In furtherance of the protection of the right to religion, the United Nations Declaration on Religious Freedom was adopted in 1981.<sup>52</sup> The Declaration expressly prohibits all forms of religion-based discrimination and places obligations on state parties to eliminate all forms of discrimination on the grounds of religion or belief. Undoubtedly, religion has such strong force of influence on the way of life of a people, which may dictate their lifestyle, manner of dressing, etc. Thus, each country adopts the concept of right to freedom of religion in line with its stance on the role of religion in its legal and political landscape on the one hand and obligations under international human rights law on the other hand.

49 Article 18 (3) of the ICCPR.

50 Article 4 (1) and (2) of the ICCPR.

51 See for example article 18 (3) of the ICCPR.

52 Declaration on the Elimination of all Forms of Intolerance and of Discrimination Based on Religion or Belief A/RES/36/55 25 November 1981.

The Constitution of the Federal Republic of Nigeria guarantees right to freedom of thought, conscience and religion, modelled after the provisions of the international human rights documents. The Constitution of Nigeria in section 38 ensures that everyone shall be entitled to embrace the religion of his choice and no religion should be preferred over the other.<sup>53</sup> The Constitution clearly provides for freedom of observance of one's religion in the country, including educational institutions. By the provision of section 38 of the Constitution, every person shall be entitled to freedom of thought, conscience and religion. Consequently, every person shall be entitled to change his or her religion or belief, and has the freedom to manifest or propagate his or her religion or belief, either alone or in community of others and either publicly or privately, by way of worship, teaching, practice and observance.<sup>54</sup> The Constitution provides further that no person attending any place of education shall be required to receive religious teachings or instructions, attend any religious ceremony or observe the biddings of such religion where such instructions, ceremony or observance relate to any religion other than his or her own.<sup>55</sup> The foregoing provision is to further protect the right of persons to practice their religion without being forced to observe doctrines belonging to other religions.

The Constitution protects the institutions of religion in the country and clearly shows that Nigeria is not particularly interested in divesting any religious community of its right to religion and other ancillary rights that emanate therefrom. In this light, the Constitution provides that a religious community or denomination shall not be prevented from providing religious instructions for its pupils in any place of education maintained wholly by that community or denomination. This provision is inadvertently professing that such religious activities of any religious community or denomination shall not be interfered with where such is being carried out by the community or denomination in a wholly owned educational institution of such community or denomination.

The African Charter on Human and Peoples' Rights to which Nigeria is a signatory and which has been domesticated in Nigeria as African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act<sup>56</sup> has relevant provisions on human rights as guaranteed in the Continent of Africa. Article 8 provides for a guarantee of freedom of conscience, the profession and free

53 See section 38 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) (CFRN).

54 See section 38(1) of the 1999 Constitution.

55 See section 38(2) of the 1999 Constitution.

56 Cap A9, Laws of the Federation of Nigeria, 2004.

practice of religion. The Article thereafter provides that restrictive measures may be placed on the exercise of such right where law or order so demands.

## 7 Dress Codes in Public Schools and Conflict with Right to Freedom to Manifest Religion

A close observation of section 38(2) of the Constitution particularly the portion that provides that everyone shall be entitled “to manifest and propagate his religion or belief in worship, teaching, practice and observance” would seem to reveal unfettered rights to manifest and observe all the biddings of the religion, which may also include modes of dressing. The question is, to what extent is this interpretation applicable in modern society? Can rules and policies shape some of the rites prescribed by religion? As a secular state, the Nigerian government is not precluded from making rules and policies that are able to restrain some religious dictates, which are not in conformity with governmental motives. It can be said that the right to religion under the Constitution is a general provision, which has some points of divergence from the general norm. Apart from the provision of section 38(3)<sup>57</sup> which serves as an exception to the reach of some of governmental educational policies or rules, institutions established by the government are not excluded from such rules or policies. It may seem that the guarantee of right to religion under section 38 of the Constitution is sacrosanct and would not accommodate any governmental policy to the contrary. The Constitution is regarded as supreme because Nigeria operates a system that promotes constitutional supremacy. Therefore, section 1(3) of the Constitution provides that “if any other law is inconsistent with the provisions of this Constitution, this Constitution shall prevail, and that other law shall to the extent of the inconsistency be void.”<sup>58</sup>

It is instructive that the Constitution itself provides for areas of divergence from observing the right under section 38 of the Constitution. Notwithstanding the provisions of section 38 of the 1999 Constitution, the right to religion so guaranteed is not absolute but with qualified derogation under section 45 of the same Constitution. That section provides that section 38 of the Constitution shall not invalidate any law that is reasonably necessary or justifiable in a democratic society “in the interest of defence, public safety, public order, public

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57 The section provides that “No religious community or denomination shall be prevented from providing religious instruction for pupils of that community or denomination in any place of education maintained wholly by that community or denomination.”

58 Section 1(3) of the 1999 CFRN (as amended).

morality and public health; or for the purpose of protecting the rights and freedom of other persons.”<sup>59</sup> In Nigeria, the federal executive arm of government ably headed by the President, gives policy directions. Governmental ministries, departments and agencies are sometimes delegated with power to make such policies. Chapter 11 of the Constitution dealing with Fundamental Objectives and Directive Principles of State Policy empowers the executive to make policies for the government of the nation. Section 148 of the Constitution gives the President the responsibility to hold regular meetings with the Vice-President and all other Ministers for the purpose of determining the general direction of the domestic and foreign policies of the Government of the Federation.<sup>60</sup> Nothing in the Constitution prevents the executive from making rules and policies for effective running of the government provided it operates within the ambits of the law, particularly the Constitution which is the *grundnorm*. If, however, there are policies that raise issues of national interest, the policies so made by the executive arm can be questioned by the National Assembly by requisitioning the attendance of the President or any of his ministers at the sitting of the Assembly, either jointly or separately.<sup>61</sup>

Largely, it can be deduced from the above legal considerations that the executive arm is capacitated to develop policies to run the government effectively. Such policies are those we have in the public education sector that require prescribed modes of dressing for all the pupils regardless of their religious affiliations. Prescribing dress codes is purposive and is aimed at achieving certain end results, which may include instilling discipline, moral virtues, good principles and values in the pupils, encouraging neutrality and giving the pupils sense of belonging. Education itself is concerned with the development of a total person who should be moulded in character and learning. According to Ifedili and Ifedili, a ‘dress code’ is a “set of rules governing what garment may be worn in a specific setting.”<sup>62</sup> It is assumed that there should be a sense of uniformity or equality among learners and there should not be anything emblematic of the religion being professed by any pupil during school hours, which is not part of dressing paraphernalia of the school. Perhaps this policy is to promote social inclusion and avoid unsavoury stratifications in the education sector, which is itself a learning strategy to promote unity, equality and indiscrimination in society. If everybody should be allowed to put on his

59 See section 45(1)(a) and (b) of the 1999 CFRN (as amended).

60 See section 148(2)(a) of the 1999 CFRN (as amended).

61 See section 67 of the 1999 CFRN (as amended).

62 Chika Josephine Ifedili, and Ikechukwu Anthony Ifedili, ‘Implementation and Management of Students Dress Code in Nigerian Universities’ (October 2013) 2(7) Eur J of Business and Social Sciences 28.

or her religious regalia or insignia there would be adulteration of prescribed dress code and the real purpose behind prescribing uniform will be defeated as 'there will not be uniformity in the uniform' and this may promote discrimination or division among the pupils.

It is apposite to say that dress code is not only peculiar to the education sector but there are also many other uniformed establishments by the government, which include the military, the civil defence, the police, customs, immigration, and other security outfits with prescribed modes of dressing. It is pertinent to know that all these government establishments are staffed with people from various faith and religions, but are all regimented to put on prescribed uniform devoid of the manifestation of their religions. It should also be mentioned that right to religion should also not be regarded as a blanket right which must be protected by the law without reservations, especially where the rules or precepts and practices under the religion are irritable, practically irrational, barbaric and particularly dehumanising. The activities of some societies are entrenched in secrecy, barbarism and are dangerous to human existence and such societies do not enjoy the protection of the law. Section 38(4) of the 1999 Constitution specifically provides that right to freedom of thought, conscience and religion guaranteed under that section shall not entitle any person to form, take part in the activity or be a member of secret society.

It is believed that the interpretation that could be given to the intent and purpose of section 38 of the Constitution is well captured by Ayoola JSC (as he then was) in the case of *Medical and Dental Practitioners Disciplinary Tribunal v. Okonkwo* thus:

The right to freedom of thought, conscience and religion implies a right not to be prevented, without lawful justification, from choosing the course of one's life, fashioned on what one believes in, and a right not be coerced into acting contrary to one's religious belief. The limits of these freedoms, as in all cases, are when they impinge on the rights of others or where they put the welfare of society or public health in jeopardy.<sup>63</sup>

The above assertion by the honourable Justice implies that the State cannot proscribe any religion in so far as it does not involve dangerous activities that are inimical to human existence or public good. However, the government can impugn on the activities of religious organisations, which are not in harmony with its programmes, and valid policies of the government. From the provision of section 38(1) of the Constitution the right of individual to manifest his or her religion is guaranteed. The word "manifest" according to its ordinary

63 (2001) 10 WRN 1 SC at 41.

English meaning as defined by the Oxford Advanced Learner's Dictionary is "to show something clearly, especially in feeling, an attitude or a quality."<sup>64</sup> It also means, "to appear or become noticeable."<sup>65</sup> This is not to put religious practitioners in a position that will compromise the policies and standards of practice put in place by the government in any sector of the society. In the U.S. case of *Reynolds v. United States*<sup>66</sup> the Supreme Court held that even though the constitution protects right to religion, not all actions performed in the name of religion were protected by the law. The implication of this is that if actions inspired by religion are in conflict with state interest such action will not be sustained under the law. Public interest should override personal interest. According to some writers, action inspired by religion could very easily be sacrificed if it conflicts with the least state interest.<sup>67</sup>

One may also consider limitations to freedom of religion in Nigeria in the light of the exceptions provided by the Constitution under section 45. It is trite that Nigeria is a society heavily polarised along religious divides, given the antecedents of constant clashes between different religious practitioners, particularly the two major religions in the country – which are Christianity and Islam. It is believed that sense of social inclusion should be promoted in government owned institutions within the country to see everybody in the same light and not to bear around dresses that are emblematic of any religion, which may tend to cause segregation among other peers in society.

This idea of social inclusion should be promoted from the cradle to instill sense of oneness or togetherness and avoid any form of social discrimination in order to forestall future conflicts. Children have tender and innocent minds and may not even be able to know which religion a child belongs by virtue of his birth, especially where such a child does not bear a name symbolising his religion and they all relate well without any form of social seclusion. Separating the pupils based on religious dressing automatically creates a chasm among them and they start to have a sense of disparity among themselves. Making the children to dress the same way to school will definitely prevent this sense of seclusion and asocial identity. By this, public order and public security can be promoted.

It is therefore submitted that where public order, public morality or public safety will be promoted it should take priority over individual's right to practice

64 *Oxford Advanced Learner's Dictionary*, International Student's Edition, 8th Edition.

65 *ibid.*

66 98 U.S. 145 (1879).

67 JO Ezeanokwasa, BE Ewulum, and OO Mbanigo, 'Religious Freedom and its Implications under the 1999 Constitution of Nigeria' (2016) NAUJILI 61.

religion to the detriment of the public. The Constitution under section 45 provides that law justifiable in a democratic society can be used to curtail the excesses of religious activities in the interest of defence, public safety, public order, public morality and public health, or for protecting the rights or freedom of other persons.<sup>68</sup> Similarly, Article 8 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act provides that exercise of freedom of conscience and free practice of religion can be curtailed by law and order.

Due to cultural and religious diffusion, it is not impossible to see some varieties of religions not known to Nigeria infiltrating the society. In fact, there are some religions, aside the two major religions, Christianity and Islamic religions, which are not indigenous traditional religions that are being practiced in Nigeria. Some foreign religions have strange doctrines, which are particularly considered as an affront to public morality and order. For instance, there is a religion known as *Jain sadhus* that believes in *Digambar*, which means 'nude by body, mind and speech.' Therefore, it considers nakedness as a virtue and glowing example of socialism and *aprigrahvad* (which means denouncing worldly possession).

All forms of religion are welcome in Nigeria in so far as they are not secret societies as envisaged under section 38(4) of the 1999 Constitution. Every religion has its ways of life and practice and if given unfettered freedom, may bring about mayhem in society. It should be reiterated that Nigeria, by virtue of section 10 of the Constitution, is a secular state and must not be seen to promote the interest of one religion over the other in a multi-religious society that it is. If a religion makes claims to right to practice religion under section 38 as being guaranteed without control by the government, other religions may also claim right against discrimination under section 42<sup>69</sup> and should be allowed to put on their religious outfits. If this is the case the intention of prescribing school uniform will be grossly defeated.

The Islamic religion encourages the Muslim ladies to put on *hijab*, which the Muslim faithful have seen as a necessity for all their females to observe as part of their dressing even during school hours. There are also minority religions in the country that also have their religious emblems and paraphernalia which may not be appropriate for school dress codes, but they believe they are religiously or spiritually compelled to put on all the time. A Sango worshiper who has been ordained a priest from birth may be compelled to weave his hair always – the observance of which may flout dress code prescribed in public

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68 Section 45(1)(a) and (b) of the 1999 Constitution (as amended).

69 Section 42 of the CFRN (as amended).

institutions. Similarly, the followers of the religions that preach nudity may choose not to put on dress or garb their children to school being against their religious dictates. If every religion is allowed to practice its religious dressing principles there will be likelihood of corruption of public morality, safety and order. There is therefore a necessity to strike a balance between all religions, and as a matter of policy government knows what is best for its citizens in order to keep public morality free and immaculate and to avoid unnecessary tensions in society. It is therefore the responsibility of any government, particularly in a secular state, to prescribe dress codes for public school in the country devoid of religious raiment.

International Covenant on Civil and Political Rights, like the Nigerian Constitution, allows for limitations on the right to manifest one's religion or belief where such limitations are "prescribed by law and are necessary to protect public safety, order, health or morals or fundamental rights and freedoms of others."<sup>70</sup> Nigeria ratified and acceded to the United Nations International Covenant on Civil and Political Rights (ICCPR)<sup>71</sup> on 29 July, 1993 and it came into force on 29 October, 1993. By virtue of article 18(3) of the Covenant freedom to manifest one's religion or belief may be restricted and this aspect seems to be the only aspect among the freedoms guaranteed in article 18 that has been restricted. The article provides that this freedom "may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others." The United Nations Human Rights Committee accords strict interpretation to the provisions on limitation to the right to manifest one's religion. It states that restrictions are not allowed on grounds not specified in the provision of article 18(3) and such restrictions may be allowed "only for those purposes for which they are prescribed and must be directly related and proportionate to the specific need on which they are predicated."<sup>72</sup> The Committee further asserts that limitations must not "be imposed for discriminatory purposes or applied in a discriminatory manner."<sup>73</sup> The Committee considered that justification for limitations based on morals should be based on principles not deriving exclusively from a single tradition but from many social, philosophical and religious traditions.<sup>74</sup> This paper opines that a government policy or

<sup>70</sup> See article 18(3) of the Covenant.

<sup>71</sup> Adopted and opened for signature, ratification and accession by the United Nations General Assembly Resolution 2200A (XXI) of 16 December 1966 and entered into force on 23 March, 1976 in accordance with Article 49.

<sup>72</sup> United Nations Compilation of General Comments, p. 145, para. 8.

<sup>73</sup> *ibid.*

<sup>74</sup> *ibid.* 145–146, [8].

regulation that would allow a religious sect to wear its religious materials but would disallow others is discriminatory and against the spirit of limiting manifestation of religion in non-discriminatory way suggested by the Committee.

In the absence of specifically enacted law to create the necessary balance between conflicting religious interests and the need to maintain social stability and decorum, it is the responsibility of the courts to make such rules based on their inherent power of judicial interpretation of the relevant laws, rules and constitutional provisions. In the words of Ayoola, JSC (as he then was): "The courts are the institutions ... with the responsibility of balancing conflicting interests in a way to ensure the fullness of liberty without destroying the existence and stability of society."<sup>75</sup> According to Nwauche, "human rights framework in Nigeria is a balance between individual entitlement and communitarian values."<sup>76</sup> Therefore, public morality and values should take precedence over religious values, even though public or social values are largely influenced by religious values in religious states. Since Nigeria is a secular state it should have full control and adequately administer public schools affairs without fear or favour. The Constitution has given the privilege to religious organisations or bodies to establish educational institutions or faith-based schools fully owned by them in which they can fully practise their religious tenets.<sup>77</sup> This provision is broad enough for any religious community to actualise the right to freedom of religion guaranteed under the Constitution to a preferred level. By this, it will not have any clash with the policy of the government or other peoples' religious values or any public morality since their practice will be in the community of the faithful. Government holds public schools in trust for the people and it must remain religiously neutral and fully administered in the best possible way by the government, particularly in a secular state.

It is apt to consider Article 9 of the European Convention on Human Rights (ECHR), which has the combined effects of section 38 and section 45(1) of the 1999 Constitution of Nigeria on right to freedom of religion, thought and conscience. It is also important to consider the derogations to this right and consider how the European Court on Human Rights interpreted the provisions of the Article particularly in relation to religious dresses in public schools. The Convention provides thus:

75 *Medical and Dental Practitioners Disciplinary Tribunal v. Okonkwo* (2001) 10 WRN 1 SC at 41.

76 Enyinna S Nwauche, 'Law, Religion and Human Rights in Nigeria' (2008) 8(2) African Human Rights Law J 574.

77 Section 38(3) of the 1999 Constitution.

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

There are certain decisions reached by the European Court of Human Rights (ECHR) that have bearing on determining whether right to manifest one's religion had been breached or not – measured against certain parameters. The decision of the ECHR in the case of *Osmanoğlu and Kocabaş v. Switzerland*<sup>78</sup> was predicated on the interpretation of the provisions of Article 9 of the European Convention on Human Rights. This case was about the refusal by the school authorities to exempt some pupils in a school from participating in a mixed swimming exercise as part of educational activities of the school. The Applicants who were the parents of the children were Muslims and they applied that their daughters who had not reached the age of puberty be exempt from the swimming exercise as it was against their religious convictions.

The ECHR held that the refusal did not violate Article 9 of the Convention and that the school authorities had not exceeded their bound by not granting the refusal and allowing the children to follow the full curriculum and their successful integration. It held further that the refusal was also excused based on compulsory education of the children and noted that the interference on the rights of the Applicants to manifest their religion was to pursue legitimate aim. The Court also observed the role of the school in the process of social integration. The Court emphasised that full education based on local customs and mores facilitates social integration of a child, which takes precedence over the children's origin, their parents' religions or philosophical convictions. It can be seen that the submissions of the Court in this case appeal to sound judgment of promoting social unity, equality and full integration of a child into society without any form of social discriminations. Perhaps, this very conviction is apt in publicly owned institutions and non-faith based institutions.

It is apposite to also consider some cases decided by the ECHR on dress code, which is the core of this paper. In the decided case of *Leyla Sahin v. Turkey*<sup>79</sup>

78 ECHR 10 Jan 2017.

79 (application no. 28957/95).

the applicant who was a Muslim and a medical student at Istanbul University had no choice than to leave the school when a rule was announced prohibiting students from wearing headscarf in class or during examinations. She later claimed a violation of her right under Article 9 of the European Convention on Human Rights. The ECHR held that there was no such violation as there was legal basis under the Turkish law for the interference with the applicant's right to manifest her religion, as the Turkish Constitutional Court had earlier ruled that wearing of headscarf in the Turkish Universities was unconstitutional. It held that such interference could be said to be necessary in a democratic society in accordance with Article 9(2) of the Convention.

Similarly in the case of *Dogru v. France*<sup>80</sup> and *Kervanci v. France*<sup>81</sup> the applicants who were Muslims refused to put off their headscarves during physical education classes despite repeated warning from their teacher that putting on headscarf was incompatible for sport classes for health and safety reasons and in compliance with schools' internal rules governing safety, health and assiduity. The School's disciplinary committee decided to expel the applicants from the school for breaching the duty of assiduity by failing to participate actively in physical education and sports classes. The ECHR upheld the decision of the Committee and held that there was no violation of Article 9 of the Convention. In *Aktas v. France*;<sup>82</sup> *Bayrak v. France*;<sup>83</sup> *Gamaleddyn v. France*;<sup>84</sup> *Ghazal v. France*;<sup>85</sup> *J. Singh v. France*;<sup>86</sup> and; *R. Singh v. France*<sup>87</sup> the applicants who were Muslim boys and girls were expelled from their various schools for refusing to put off their Islamic headdresses which was against the French law prohibiting the wearing of all conspicuous signs of religious faith during classes. After such refusal, they were not allowed to attend classes, and after dialoguing with their parents they were expelled for breaching the Education Code. On application to the ECHR claiming that their right under Article 9 of the Convention was breached, it was held by the court that such applications were inadmissible as the interference with the pupils' freedom to manifest their religion was prescribed by law.

80 (application no. 27058/05) ECHR 4 Dec 2008.

81 (application no. 31645/04) ECHR 4 Dec 2008.

82 (application no. 43563/08).

83 (application no. 14308/08).

84 (application no. 18527/08).

85 (application no. 29134/08).

86 (application no. 25463/08).

87 (application no. 27561/08).

The Grand Chamber of the ECHR also held in the case of *S.A.S. v. France* [GC]<sup>88</sup> that prohibiting the concealment of a person's face in public, by using cloths like a *burqa* or *niqab*, did not violate the European Convention on Human Rights. The Grand Chamber observed that "in a democratic society with diverse religions, it may be necessary to place limitations on freedom to manifest ones religion or beliefs in order to reconcile the interests of the various groups and ensure that everyone's belief are respected."<sup>89</sup>

From the various cases decided by ECHR as considered above, it can be gleaned that directives by public schools authorities have superior force over individual or sectional religious interests and they were not considered as outrageous to the extent of depriving people of their right to manifest their religions under the European Convention on Human Rights. These decisions show the superiority of public right over private rights and were tailored in line with the principle of equality and social justice.

Though the Constitution of the Federal Republic of Nigeria may not have specifically mentioned promulgated rules as one of the bases of limiting the exercise of right to freedom of religion, the African Charter on Human and Peoples' Rights, which has been domesticated in Nigeria, may be instructive. Article 8 of the African Charter mentions that "Freedom of conscience, the profession and free practice of religion shall be guaranteed. No one may, subject to law and order, be submitted to measures restricting the exercise of these freedoms." Law in a democratic setting is an enacted legislation made by a politically recognised legislative body, though in legal philosophy it may be wider than that; and 'order' according to Oxford Online Dictionary is "an authoritative command, direction or instruction."<sup>90</sup> Also, online Cambridge Dictionary defines 'order' as "an official instruction telling someone what they can or cannot do ..."<sup>91</sup> Thus, the power of the executive arm to make orders, which may be in form of policies or guidelines, is derived from the Constitution, particularly Chapter 11 and section 5(1)(b) and (2)(b), and the laws made by the relevant legislature. It has also been opined that the power granted the executive goes beyond powers expressly granted by the provisions of the Constitution, or enacted laws except where the power or authority is expressly prohibited by the Constitution or a law made by the legislature.<sup>92</sup> This is because the Constitution or the legislature cannot envisage all issues that may confront the

88 (application no. 43835/11), delivered on 1 July, 2014.

89 (paragraph 26).

90 Accessed on 21 March, 2019 from <https://www.lexico.com>.

91 Accessed on 21 March, 2019 from <https://dictionary.cambridge.org>.

92 Mowoe, Kehinde M, *Constitutional Law in Nigeria*, (Malthouse Press Ltd., Nigeria 2008) 127.

executive in its enormous duty of running the affairs of the government.<sup>93</sup> It is therefore submitted that public schools' administrative bodies can duly make policy decisions and orders touching on the dress codes for public schools in Nigeria.

Furthermore, article 8 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act does not qualify the law and order that may be used to curtail freedom of conscience nor the profession and free practice of religion. Section 45 of the 1999 Constitution requires that such a law must be reasonably justifiable in a democratic society and also must be in the interest of defence, public safety, public order, public morality or public health, and for the purpose of protecting the rights and freedom of other persons. However, article 27(2) of the Act provides that "the rights and freedom of each individual shall be exercised with due regard to the rights of others, collective security, morality and common interest" therefore offering a blanket restriction of rights under the Act. Reading the provision of article 8 of the Act in conjunction with Article 27(2) and section 45 of the Constitution will help achieve the desired equilibrium.

The Universal Declaration of Human Rights (UNDHR) in article 1 provides that "All human are born free and equal in dignity and rights." The UNDHR further provides that everyone is entitled to all rights and freedoms under the Document without distinction of any kind.<sup>94</sup> To further consolidate on the need for equality of treatment of everyone the UNDHR provides that "All are equal before the law and are entitled without discrimination to *equal protection of the law*."<sup>95</sup> Also, article 2 of the African Charter provides that everyone shall enjoy the rights and freedom contained in the Charter without distinction of any kind such as race, colour, sex, ethnic group, sex, language, religion, etc. And article 3 provides that every individual shall be equal before the law and be entitled to equal protection of the law. Based on the principle of equality everyone must be subject to equal protection of law without any disproportionate consideration. Section 42 of the Nigerian Constitution is to the effect that:

A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person:

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93    ibid.

94    Article 2 of the UNDHR.

95    Article 7 of the UNDHR.

(a) be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions are not made subject; or

(b) be accorded either expressly by, or in the practical application of, any law in force in Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions.

The literal meaning of section 42 of the Constitution and its philosophical implication is that the law and executive or administrative action of the government should not be discriminatory in its application to all the citizens of Nigeria, either positively or negatively. The Constitution proffers equal treatment to everyone, and no one should enjoy undue advantage over others based on his or her distinction from others by sex, ethnic group, place of origin, community, religion and political opinion. In the case of *Onyinyeka M. Enoch v. Mary U. Akobi*<sup>96</sup> Anambra High Court had to consider a secondary school rule disallowing wearing of certain hairstyles. The Applicant who was a fresh student in the school was disallowed registration for keeping long hair against the regulations of the school and she refused to cut her hair low despite insistence by the school authorities. The student argued in court citing Chapter 11 Verses 5–6 and 10–15 of the Book of I Corinthians in the Holy Bible which requires a Christian woman not to shave her hair for her honour, therefore cutting her hair low would be against her right to practice her religion. Dismissing the Bible references made by the Applicant, the court held that the religious rights of the Applicant had not been violated, and held that the school's regulation on keeping the hair short is “not only reasonable, but accords with proper and basic discipline in a model educational institution.”<sup>97</sup> It can therefore be submitted that allowing one religion to use their religious dresses in public schools while other religions are not given similar opportunity is discriminatory against such other religions. In the very interpretation of the term ‘discrimination’ under the ICCPR the Human Rights Committee is of the view that –

96 (1994) A.N.S.L.R. 338.

97 *ibid* 353.

the term 'discrimination' as used in the Covenant should be understood to imply any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, *and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.*<sup>98</sup>

According to the Committee, enjoyment of rights and freedoms on an equal footing "does not mean identical treatment in every instance." In interpreting article 26 of the ICCPR the Committee submitted under the Optional Protocol that "the right to equality before the law and equal protection of the law without any discrimination, does not make all differences of treatment discriminatory. A differentiation based on *reasonable and objective criteria does not amount to prohibited discrimination within the meaning of article 26.*"<sup>99</sup> In the notion of the Inter-America Court of Human Rights on the concepts of discrimination and equality –

Precisely because equality and non-discrimination are inherent in the idea of the oneness in dignity and worth of all human beings, it follows that not all differences in legal treatment are discriminatory as such, for not all differences in treatment are in themselves offensive to human dignity ... There may well exist certain factual inequalities that might legitimately give rise to inequalities in legal treatment that do not violate principles of justice. They may in fact be instrumental in achieving justice or in protecting those who find themselves in a weak legal position.<sup>100</sup>

According to the Inter-America Court of Human Rights:

no discrimination exists if the difference in treatment has a legitimate purpose and if it does not lead to situations which are contrary to justice, to reason or to the nature of things. It follows, that there would be no discrimination in differences in treatment of individuals by a state when the classifications selected are based on *substantial factual differences and*

98 General Comment No. 18, in *United Nations Compilation of General Comments*, p. 135, para. 7.

99 Communication No. 172/1984, *S.W.M. Broeks v. the Netherlands* (Views adopted on 9 April 1987), in UN doc. *GAOR*, A/42/40, p. 150, para. 13.

100 *I-A Court HR, Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica, Advisory Opinion OC-4/84 of January 19, 1984, Series A, No. 4*, p. 104, para. 56.

*there exists a reasonable relationship of proportionality between these differences and the aims of the legal rule under review. These aims may not be unjust or unreasonable, that is, they may not be arbitrary, capricious, despotic or in conflict with the essential oneness and dignity of humankind.*<sup>101</sup>

The European Court of Human Rights is of the belief that the principle of equality of treatment is violated if the distinction is arbitrary and has no objective and reasonable justification.<sup>102</sup> The consideration of such justification must be based on the aim and effects of the measure actually taken or subscribed having regard to the principles which normally prevail in democratic societies.<sup>103</sup>

In as much as we do not dispute that not all differences in legal treatment are discriminatory we are of the opinion that no religion should be left out for consideration. It is therefore difficult to adopt proportionality test in determining peculiarities of some religions in multi-religious society without creating a state of disorder. The principle of equality in treatment of all persons may be a perfect approach to actualisation and protection of human rights based on justice in society. However, giving certain religion special treatment may dovetail into other religions also clamouring for consideration of some of their peculiarities. For instance, a Celestial Church of Christ member who has received spiritual instruction to always be in his white apparel may have a cogent reason not to obey wearing school uniform based on his religious faith. Denying the Celestial Church member wearing of the apparel while allowing the Muslim faithful to wear *hijab* or sewing her uniform in a way different from the prescribed style may be discriminatory.

In this wise, the distinction accorded one religion against other religions in terms of treatment has no objective and reasonable justification and is not in accordance with prevailing principles in democratic societies. Since the objective of the government in prescribing uniform in public primary and secondary schools is based on a legitimate aim and not arbitrary or despotic nor contrary to essential oneness and dignity of humankind, particularly being a secular state, such objective ought to be obeyed.

At this juncture, we align with the judgment of the trial court in the case of *Miss Asiyat Abdulkareem (through her father), Miss Oyeniyi and the Muslim*

<sup>101</sup> *ibid.*, para. 57.

<sup>102</sup> ECHR, Case “relating to certain aspects of the laws on the use of languages in education in Belgium” (Merits), judgment of 23 July 1968, Series A, No. 6, p. 35, para. 10.

<sup>103</sup> *ibid.*

*Students' Society of Nigeria v. Lagos State Government*<sup>104</sup> which dismissed the suit filed by the plaintiffs against Lagos State Government on the ground that their rights to freedom of thought, religion and education had been infringed by the State. The trial court held that such ban from using religious dresses did not violate sections 38 and 42 of the Nigerian Constitution as claimed by the Plaintiffs and the State authority had power to prescribe school uniform for the pupils of public schools.<sup>105</sup> With due respect to the learned trial judge in the case of *Sheik Salaudeen Ade Olayiwola & Ors v. The Government of Osun State*,<sup>106</sup> and in difference to the decision given in that case that "Female Muslims have constitutional right to put on *hijab* in all public primary and secondary schools in Osun State ... in exercise of their constitutional right under sections 38(1) and 42 of the Constitution"; also holding that the guideline of the government of the State against the use of *hijab* in public primary and secondary schools was unconstitutional is wrong based on the provisions of section 45 of the Constitution and articles 8 and 27(2) of the African Charter on Human and Peoples' Rights which promote the interest of the public over individual or sectional interest. With respect, section 42 of the Constitution was wrongly applied in that case. That section deals with freedom against discrimination; and 'discrimination' in its ordinary meaning is 'being unequally treated.' In a clearer term, discrimination involves giving preferential treatment to someone or group of people in a community of persons bound together by supposedly certain and unwavering balanced considerations. This is however not the intentment of the law. The combined effect of section 42 of the Constitution and articles 1 and 2 of the African Charter is that no religion should be given a preferential treatment against other religions. Therefore, allowing one faith to flout the dress rule put in place by the government under the guise of religious injunction while other religions are stripped of their religious insignia and other manifestations in public schools is discriminatory.

Also in difference to the decision of the Court of Appeal in the case of Kwara State, Nigeria in the case of *The Provost, Kwara State College of Education, Ilorin and 2 Ors v. Bashirat Saliu and 2 Ors*,<sup>107</sup> that the right or freedom to practice and manifest ones religion under section 38 of the Constitution could not

<sup>104</sup> (2016) 15 NWLR (pt 1535) 177.

<sup>105</sup> Though, and unfortunately, the decision of the High Court was overturned by the Court of Appeal. But an appeal is currently lying to the Supreme Court against the Court of Appeal decision.

<sup>106</sup> *Sheikh Salaudeen Ade Olayiwola v. The Governor of Osun State*, Suit No. HOS/M.17/2013 judgement delivered on 3rd of June, 2016. Note that this case is currently on appeal to the Court of Appeal against the decisions of the trial judge.

<sup>107</sup> (Unreported) Appeal No. CA/IL/49/2006 (delivered on the 18th day of June, 2009).

be derogated from under section 45 of the Constitution by dress code put in place by the College being merely administrative rule and not a legislative enactment, with due respect, is wrong. Under the provision of article 8 of the African Charter orders can also be made in addition to enacted laws to curtail the exercise of freedom to practice or manifest religion. Section 1 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act provides that upon the commencement of the Act it shall have the force of law in Nigeria and shall be given full recognition and effect and be applied by all authorities and persons exercising legislative, executive or judicial powers in Nigeria. Also the Supreme Court held in the case of *General Abacha v. Chief Gani Fawehinmi*<sup>108</sup> that the Charter is part of Nigerian law and must be enforced by courts. Hence, educational policy on dress code is not unconstitutional as administrative bodies are empowered to make rules, orders, regulations, guidelines and develop policies to function effectively and efficiently. The only concession is that such rules, regulations, orders, policies, etc must be lawful and reasonable.

## 8 Conclusion

In conclusion, it can be said that public morality is a consensual idea that must take precedence over individual or sectional interest. The government being the rallying point of common awareness of the society is bestowed with the coordinating power to organise the society for common development and goals. In view of this, it is imperative to state that the government of the nation has the power or perhaps the responsibility of prescribing the necessary codes of practice for sectors under its control. The administration of public schools is the sole prerogative of the government and it is responsible for developing codes of practice for the schools, which must be duly obeyed by all irrespective of his societal status, religion, belief or affinity.

It is pertinent for the purpose of drawing inferences to consider the fact that government is a representation of common interest of the community it governs against personal or sectional interests in the community. In a state that has a state religion, it is assumed that that religion represents the common interest and common good of the society and therefore the religion should be accorded the desired preference among other minority religions. This is without prejudice to the believers in other minority religions to practice their religions without discrimination. However, in a secular state which is even

<sup>108</sup> (2000) SC No. 45/1997.

multi-religious it is expected that the government should not promote any religion, though the members of the state are at liberty to practice any religion of their choice. Individual religion practised in the state must not have any superiority over the laws and policies made by the government which are valid in a democratic society.

It is pertinent to mention here that there have been different opinions as regard compulsory use of school uniforms. Whereas a school of thought is of the opinion that school uniforms make school safer for pupils, creates a level playing field for the pupils in terms of reducing socio-economic inequalities, and promote concentration on study by the pupils.<sup>109</sup> At the other end of the divide are those that believe school uniform infringes on the right of the pupils to express their individuality. Equality of treatment is germane in society that has as its governmental philosophy built on secularism and therefore undue manifestation of religious dressing in uniform should not be encouraged in order to create a rancour-free society. To this end the pertinent issue which calls for uniformity in dressing by school pupils in a religiously divided society like Nigeria which professes to be a secular state requires the need to protect the common interest of all in this heavily polarised society. Government policies on uniform in public schools should not be seen as denying or suppressing the pupils' right of expression or manifestation of their religion. Religious dressing in public schools should not be seen to overshadow the reason for government interest in prescribing the uniform in the first place.<sup>110</sup>

Public schools are communally owned properties and discriminatory treatment of pupils should not be encouraged. It is believed that there are individual differences, and in heterogeneous society like Nigeria there are diversities based on culture, ethnicity, language, belief, and religion, if every religion is allowed to be manifested in a publicly owned place there will be avoidable confusion, chaos, ill feelings and divisiveness. Uniform is a common factor to create equality in the way the pupils are dressed to public schools. This is without prejudice to the right of every one to belong to the community of worshippers of the same religion where he or she can fully manifest his or her religious doctrines without undue interference, provided their activities are lawful.

Flowing from the fact that powers are directly and indirectly conferred by law, dress codes in public primary and secondary schools are determined by government authorities. If the policy made by the government is morally

109 ProCon.org, 'History of School Uniform' (last updated 24 October 2018) <<https://school-uniforms.procon.org/view.resource.php?resourceID=006507>> accessed 10 March, 2019.

110 See Indian Department of Education Quarterly Report, July–September 2007, 14. <<http://www.doe.in.gov/sites/default/files/legal/2007julsep.pdf>> accessed 10 March, 2019.

justifiable and suitable in a democratic society it ought to be obeyed by all and sundry irrespective of their personal or religious convictions. Although section 38 of the 1999 Constitution guarantees right to freedom of thought, conscience and religion there are exceptional cases where it can be derogated from as prescribed by section 45 of the same Constitution. It is submitted therefore that no religious dictates should be seen as divesting the government its power to control dress codes in public schools through policy decisions particularly where public interest is involved. Uniform, as seen earlier in this paper, is meant to serve certain social ends in the interest of the public and such must be adhered to without bowing to any religious sentiments. The very idea of not giving preferential treatment to one religion over others particularly in a secular state like Nigeria is based on the jurisprudential theory of social justice. 'Social justice' according to Radhakrishnan, "is an attribute of God ... Every act, thought is weighed in the invisible but universal balance scales of justice."<sup>111</sup> According to Aristotle, who was one of the foremost proponents of the concept of justice, injustice arises when equals are treated unequally and unequal are treated equally. His justice concept is inherent in morality, scientific insight and constitutional rule. He categorised these into general justice and particular justice.<sup>112</sup> While the former is the whole good of the society, a moral conduct and virtues, and requires man not to think of himself but of other people, particular justice on the other hand is part of the whole justice that has restricted area of application, and further sub-divided into 'distributive justice' and 'connective justice.'<sup>113</sup> In line with this, section 17 of the Nigerian Constitution provides that "State social order is founded on ideals of Freedom, Equality and Justice" and in furtherance of the social order every citizen shall have equality of rights, obligations and opportunities before the law.<sup>114</sup>

The practice of a uniform dress code in public educational institutions is not only necessary to resolve possible conflicting interests in pursuing religious liberties in public schools but also forestalls the possibility of such fragmentary and competing religious interests in dress code. It seems enough liberty and entrenchment of the right to freedom of religion where religious influence on dress code is limited to faith-based educational institutions. Furthermore, Dias argues that social existence depends on co-ordination, which necessarily requires restraint in individual liberties.<sup>115</sup> Such restraint may be imposed by

111 'Social Justice: 7 Theories of Social Justice Explained' <[www.yourarticlelibrary.com](http://www.yourarticlelibrary.com)> accessed 3 February, 2019.

112 *ibid.*

113 *ibid.*

114 See section 17(1) and (2)(a) of the 1999 Constitution.

115 RWM Dias *Jurisprudence* (5th ed., LexisNexis, 2013) 111.

laws or individual moral judgement. Where there is no restraint on the exercise of individual liberties, anarchy is inevitable.<sup>116</sup>

For a secular state like Nigeria that maintains religious apathy, religion should play no role in influencing public policies relating to the dress code in public educational institutions. This is without prejudice to the right to religion, which right in itself is not absolute. Section 15 (3) of the Constitution explicitly states that the governmental policies must be directed toward national integration without any discrimination on the basis of religion and as such foster the feeling of involvement which cuts across sectional loyalties.<sup>117</sup> A broad interpretation of this section would imply that the educational policy, which enforces a uniform dress code, fulfils the provisions of this section and does not offend the right to religious mode of dressing in any way.

The Honourable Chief Judge of Kwara State, Nigeria, Kawu, S.D. once submitted as follows:

Since man is the object of both right and religion it is necessary that religious rights are exercised in accordance with the laws of the land for a balanced development of man and society ...

The violation and suppression of religious rights recognised and guaranteed by law and the exercise of religious rights in total disregard for law and the interests of people of other faiths in a pluralistic world can only lead to chaos, violence and disruption of society with mankind being the loser.<sup>118</sup>

It can be thus be said that law and order in society should take pre-eminence over self interest, and government may make laws that is reasonably justifiable in a democratic society to suppress religious rights for the interest of the general populace. Howbeit, section 45 of the 1999 Constitution and articles 8 and 27(2) of the African Charter curtail the right to practice religion under section 38 of the same Constitution and article 8 of the Charter respectively, therefore regarding it as not an absolute right. There is still light at the end of the tunnel in Nigeria on the issue of dress codes in public schools as the highest court in Nigeria, the Supreme Court, is yet to make definite pronouncement on this matter. It is hoped that the Court will take adequate precautions in

<sup>116</sup> *ibid.*

<sup>117</sup> Sec. 15 (3) (d) and Sec. 15 (4) of the 1999 CFRN (as amended).

<sup>118</sup> Honourable Chief Judge SD Kawu, "Religious Rights in a Pluralistic World: The Nigerian Experience." A paper delivered at the Symposium held at Brigham Young University Provo, Utah from October 1-4, 2016.

considering this issue having the interest of the general public at heart and establish the needed social equilibrium through its pronouncements.

In submission, every religion should be dealt with equally based on the concept of social justice without given any one preferential treatment. The Nigerian Constitution already provides that needed liberty for religious individuals or communities to establish their institutions wholly owned by them where they can manifest their religious doctrines without fear or hindrance. This is enough guarantee of right to religion and no religion should be seen to meddle with the standards developed for the public by the government. Perhaps, the legislature should amend the Constitution to specifically address the issue of dress codes in public schools in Nigeria or enact a law to specifically address dress code and conferring power on the government or its authorities to determine school uniforms for public school pupils.