



Identity, Culture & Politics: An Afro-Asian Dialogue. Volume 10, Number 1, July 2009. pp. 51 - 74. © CODESRIA, ICES. 2006. ISSN 0851-2914

The Hijab in Educational Institutions and Human Rights: Perspectives from Nigeria and Beyond

Abdulmumini A. Oba*

Abstract

L'Islam met beaucoup d'accent sur la modestie et la chasteté. L'Islam le rend forcé pour que tous les musulmans s'habillent avec la grande modestie. Le dressage modeste pour des femelles désigné sous le nom du hijab. L'AMBIT exact du hijab est sujet des polémiques. Au cours des années, conformément à cette injonction divine, les femmes musulmanes ont adopté tous ou un ou plusieurs combinaison de ces derniers : vêtement externe lâche (jilbab), foulards (khimar), voile de visage (niqab), et bas pour couvrir leurs pieds. N'importe quel femme musulman pieux se sentirait fortement, l'impératif pour adopter ces derniers. Les nombres Teeming d'étudiants dans les établissements tertiaires au Nigéria se tournent maintenant vers le hijab. Cependant, quelques établissements ont essayé de renverser le hijab en présentant codes vestimentaires pour leurs étudiants. Ceux-ci ont causé des frottements dans beaucoup d'établissements. Les étudiants affectés arguent du fait entre autres que codes vestimentaires violent leur droit fondamental constitutionnellement garanti de pratiquer et observer les principes de leur religion et de leur droit à l'absence de la discrimination pour des raisons de religion. Ce document semble que les frottements produits par le désaccord entre les impératifs et les codes vestimentaires religieux dans les établissements tertiaires (universités, universités d'éducation, écoles secondaires, et l'école de droit nigérienne) dans le cadre des droits religieux au Nigéria, et l'attitude des cours là-dessus. Le papier examine également la position en vertu du droit international de droits de l'homme et dans d'autres pays à travers le monde.

* Senior Lecturer, Faculty of Law, University of Ilorin, P. M. B. 1515, Ilorin, Nigeria.

Islam places much emphasis on modesty and chastity. These demand respect for nudity. Islam makes it compulsory for all Muslims to dress with great modesty. The modest dressing for females is referred to as the *hijab*.¹ The exact ambit of the *hijab* is subject of controversies but there is a consensus among all Islamic scholars that all mature females when in a place where non-*mahrims*² would see them must dress in a way that all their bodies are covered with loose clothing which does not expose the shape of the body and which is not transparent. In addition, the covering of the head in a manner that the hair, the neck and the shape of the bosom are not exposed is considered mandatory. The areas of controversy are rather narrow. Majority of the scholars would permit the exposure of the face and feet while other scholars are of the view that these should be covered also.³ The differences between the scholars are not based on their private whims and caprices but on the different interpretations they give to the same texts of the *Qur'an* and *hadith*⁴. The practical result is that some Muslim women apart from adopting the long loose outer garment (*jilbab*) and headscarves (*Khimar*⁵) that cover the head, neck and the upper body, also adopt the face veil (*niqab*). Others go further by covering their hands with gloves and their feet with stockings. In this way, no part of the body is exposed to the gaze of strangers. Some others do this but leave the hands, feet, and face exposed.

¹ Literally *hijab* means "woman's veil", "cover", "wrap", "drape", "partition", or "curtain": J. Milton Cowan (ed.), *A Dictionary of Modern Written Arabic* (Beirut: Librairie du Liban, reprint 1980). In this paper, the headscarf, which we have also referred to as '*hijab*', is distinguished by the inverted commas

² A *mahrim* is a close relative with whom marriage is prohibited.

³ The majority relies essentially on the following, which was reported from the Prophet (SAW): "Asma, daughter of Abu Bakr, entered upon the Apostle of Allah (peace be upon him) wearing thin clothes. The Apostle of Allah (peace be upon him) turned his attention from her. He said: O Asma', when a woman reaches the age of menstruation, it does not suit her that she displays her parts of body except this and this, and he pointed to her face and hands": Abu Dawood, *Sunan* (Dar Ihyau al-Sunnah Al-Tabauyat, undated) Hadith No. 4092. See the detailed consideration of this view in Al-Muhajabah, *Opinion of scholars in favour of displaying the face and hands at* <<http://www.muhaajabah.com/scholars.htm>> (accessed on 3 September 2006). Also see generally Murtaza Mutahhari, *On the Islamic Hijab* (Tehran: Islamic Propagation Organization, 1987).

⁴ *Hadith*: the sayings, actions, and tacit approvals of the Prophet Muhammad (SAW). These are regarded by Muslims as part of the binding aspects of the Islamic faith.

⁵ Abdul Rahman Abdullah, formerly Raymond J. Manderola (ed.), *Islamic Dress Code for Women* (Riyadh, Saudi Arabia: Darussalam, 1999) pp. 10 – 11, Ayub Azhar Hamid, *Unveiling The Commands: The Truth About Hijaab, Jilbaab and Khimar* (Canada: Bayaan Communications and Publications, 2004) 25 -26 and Manisuli Ssenyonjo, "Moslem Women, Religion and the Hijab: A Human Rights Perspective" *East African Journal of Peace and Human Rights* Vol. 14 No, 1, 2008, 148, at 155.

Muslims constitute a sizeable percent of the Nigerian populace.⁶ The northern Nigeria is overwhelmingly Islamic with pockets of Christians and adherents of traditional religions. Muslims constitute the majority in the southwestern part of the country. Although, Christians and adherents of traditional religion dominate the southeast, a few communities are largely Muslims. The position in the South South is similar to that of the southeastern except that only few individuals are Muslims. The level of compliance of female Muslims in the country with the Islamic dress code varies from the *purdah* (seclusion) and the 'full' *hijab* to nominal headscarf covering just the head. Some do not use the *jilbab* but adopt traditional or western mode of dressing and use scarves to cover their heads. The sizes of these scarves vary from the "cape *hijab*" which merely covers the head and the shoulders to the one extending beyond the knees. It is not all Muslim women in the country that comply with the requirements of the *hijab*. Some do not comply at all and there is no difference at all between these Muslims and non-Muslims in terms of dressing.

Islam recognizes as a factual matter that Muslims are of varying degrees of faith but enjoins every Muslim to strive to greater heights of faith.⁷ A Muslim cannot claim to be a true believer (*Mumin*), that is, a person with faith (*iman*) unless he or she complies or strives to the utmost of his or her ability to comply with all the tenets of Islam.⁸ Any pious Muslim woman would therefore feel strongly, the imperative to adopt the *hijab*. This is because it is a great sin not to do so. It is therefore not surprising that many enlightened and highly educated Muslim women are now turning to the *hijab*. The *hijab* has become the foremost symbol of Islamic revivalism (or to some "political Islam") in the modern era. It has also become the symbol of the clash, which some predicted between Islam and western civilization.⁹

⁶ See the statistics in Abdulumuni A. Oba, "Religious Rights and the Corporate World in Nigeria: Products and Personnel Perspectives" *Recht in Afrika* 2004, 195 at pp. 195 - 196.

⁷ The various categories are determined by a person's the level of *Islam* (surrender), *Iman* (faith), *taqwa* (God-consciousness), and *Ihsan* (godliness): Khurram Murad, "Introduction" in Sayyid Abul A'la Mawdudi, *The Islamic Movement: Dynamics of Values, Power and Change* (London: The Islamic Foundation, new English version, 1984) p. 11.

⁸ The Qur'an says concerning some new converts: "The desert Arabs say, "We believe" Say: "Ye have no faith (*iman*); but ye (only) say, "We have submitted our wills to Allah," for not yet has Faith entered your hearts... only those are Believers who have believed in Allah and His Apostle, and have never since doubted, but have striven with their belongings and their persons in the cause of Allah: such are the sincere ones": Qur'an 49: 14 - 15. Again, the Qur'an says: "But no, by thy Lord, they can have no (real) faith until they make thee judge in all disputes between them and find in their souls no resistance against thy decisions, but accept them with the fullest conviction": Qur'an 4:65.

⁹ See the clash of civilization thesis in Samuel Huntington, "The Clash of Civilization? Foreign Affairs" Vol. 72, 1993, 2993 and Samuel Huntington, *The Clash of Civilization and the Remaking of World Order* (New York : Simon and Schuster, 1996).

Islamic revivalism is very strong in Nigeria particularly in northern part of the country where in the post 1999 era majority of the states formally declared Islamic law as their basic and official law. It is equally strong in the southwest even though there, Islam is grudgingly accorded official recognition only as a personal law.¹⁰ Throughout the country, more and more Muslim students are turning to Islamic values. The most visible expression of this revivalism is perhaps the adoption of the *hijab* by many female students. The number of such students is growing daily. Today, teeming numbers of women in *hijab* are present in tertiary institutions in the north and southwest. Even in institutions in the southeast and south-south, students in *hijab* are seen. The whole spectrum of the *hijab* is represented among these students. The reaction of the authorities of tertiary institutions in the country to the increasing use of the *hijab* by students varies. Many institutions simply ignored the development. However, in some institutions the authorities have attempted to subvert the *hijab* by introducing dress codes for their students. These dress codes are not uniform across the country. While some institutions prohibit only the *niqab*, others prohibit both the *niqab* and the *khimar* and a few prohibit both and even the *jilbab*. The dress codes and the *hijab* prohibition have caused many frictions in the institutions. The affected students argue inter-alia that the dress codes violate their constitutionally guaranteed fundamental right to practice and observe the tenets of their religion. Religious rights as fundamental rights in Nigeria stand on two constitutionally guaranteed human rights. The first is the right to freedom of thought, conscience and religion contained in section 38 (1) of the 1999 Constitution:

Every person shall be entitled to freedom of thought, conscience and religion, including the freedom to change religion or belief, and freedom (either alone or in community with others, and in public or in private) to manifest and propagate his religion or belief in worship, teaching, practice and observance.

The second is the right to freedom from discrimination on grounds of religion articulated in section 42 (1) of the Constitution:

¹⁰ Muri Okunola, "The Relevance of Sharia to Nigeria" in Nura Alkali, et al (eds), *Islam in Africa – Proceedings of the Islam in Africa Conference*, (Ibadan: Spectrum Books Ltd., 1993) 23 – 36 and Muri Okunola, "Relationship between Islamic Law and Customary Law of Succession in Southern Nigeria" in Yemi Osinbajo and Awa. U. Kalu (eds.), *Towards A Restatement of Nigerian Customary Law* (Lagos: Federal Ministry of Justice, 1991) pp. 157 – 173.

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

- (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 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.

Religious rights like other human rights are not without limits. The only constitutional limits to religious rights are specified in section 45 of the Constitution:

- (1) Nothing in sections 37, 38, 39, 40, and 41 of this Constitution shall invalidate any law that is reasonably justifiable in a democratic society –
 - (a) in the interest of defence, public safety, public order, public morality or public health; or
 - (b) for the purpose of protecting the rights and freedom of other persons.¹¹

International human rights provide additional sources of freedom of religion. Nigeria is a party to many international human rights documents that guarantee religious freedom.¹² These include general human rights treaties which include the right to freedom of religion among other rights such as the

¹¹ See an overview of some of the legislations covered by these provisions in A. A. Oba, "The Relevance of Religion in Nigeria, *Punjab University Law Journal* 1997 Vol. LIV, 23 at pp 37 – 39.

¹² See the general review of some of these documents in R. P. Dhokalia, "The Human Right to Religious Freedom: Problems of Effective Enjoyment", *Calabar Law Journal*, Vol. 1 No. 1 (1986) 90 at pp. 97 - 98.

Universal Declaration of Human Rights, 1948¹³, the African Charter on Human and Peoples' Rights¹⁴, the International Covenant on Civil and Political Rights (ICCPR)¹⁵, and the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities¹⁶ and treaties dealing specifically with religious rights such as the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.¹⁷ The Constitution stipulates that treaties have the force of law in the country only if enacted into law by the National Assembly.¹⁸ The African Charter is the only human rights treaty that has been so domesticated and has become part of Nigerian law¹⁹

This paper looks at the frictions generated by the clash between religious imperatives and dress codes in tertiary institutions (universities, colleges of education, secondary schools, and the Nigerian Law School) in the context of religious rights in Nigeria and in other countries across the world.

THE HIJAB IN NIGERIAN EDUCATIONAL INSTITUTIONS

1. Universities

The ostensible reason for the introduction of dress codes in some Nigerian universities is the need to maintain decent dressing among the student populace. It is indisputable that many female students make indecent display of their bodies by the scant dresses they wear on the campuses and to lectures. Nonetheless, some of the dress codes that have emerged went well beyond the curtailment of immorality and clearly targeted the *hijab*. The

¹³ Adopted on 10 December 1948, G.A. Res. 217A (III). UN Doc. A/810, at 71 (1948). Article 18 of the Declaration provides for freedom of religion.

¹⁴ Adopted on 27 June 1981, entered into force 21 October 1986, OAU Doc. CAB/LEG/57/3 Rev. 5 reprinted in (1982) 21 *International Legal Materials* 58. Article 8 provides for freedom of religion.

¹⁵ Adopted 16 Dec. 1966, entered into force 23 March 1976, G. A. Res. 2200A (XXI), UN Doc. A/6316 (1966), 999 UNTS 171 reprinted in (1967) 6 *International Legal Materials* 368. Article 18 provides for freedom of religion

¹⁶ Adopted 18 December 1992, G. A. Res. 47/135, reprinted in (1993) 32 *International Legal Materials* 911.

¹⁷ Adopted 25 November 1981, G. A. Res. 36/55, 35 UN GOAR, Supp. (No. 51), UN Doc. A/36/51, at 171 (1981).

¹⁸ Section 12, 1999 Constitution.

¹⁹ See the African Charter on Human and Peoples' Rights (Enforcement and Ratification) Act, *supra*, *General Sani Abacha & Ors v Chief Gani Fawehinmi* [2000] 4 S.C.N.J. 401, U. O. Umzurike 'The Application of International Human Rights Norms to Nigeria' (1997) 18 *The Advocate* 36–37 and A. A. Oba, "The African Charter on Human and Peoples' Rights and Ouster Clauses under the Military Regimes in Nigeria: Before and after 11 September" *African Human Rights Law Journal* Vol. 4 No. 2, 2004, 275 at pp. 279.

Obafemi Awolowo University provides a good example of this.²⁰ The University's guidelines regarding dressing forbid the wearing by students on the campus of dresses that are "sexually provocative" and which "exposes vital parts of the body that are supposed to be hidden (such as the chest, navel and thighs)". The guidelines also stated:

The identity of all students must, at all times, be visible, i.e. their faces must be fully visible. The form of dressing that obscures identification poses serious security problems.

This no doubt targeted the *niqab*. The guidelines further permitted the faculties "to draw up additional guidelines that are relevant to their academic activities". Pursuant to this, the Faculty of Pharmacy issued a dress code, which extended the prohibition to the *jilbab* and gave the following as justification:

Wearing a flowing dress is prohibited in the laboratory because it has been found to cause dispensed and corrosive chemicals to pour on another student or pour on the wood bench. Such spill-over usually eats up the laboratory benches and often skin. In the case of concentrated sulphuric acid, the burn it causes leaves a wound that takes a long time to heal with a permanent scar.²¹

In response, some students filed a suit challenging the university's dress code.²² In granting the plaintiffs an interim injunction against the defendants, the court held that the dress code was "most unwarranted, unfair, discriminatory, oppressive, baseless, a gross violation of the rules of natural justice and of the Applicants' respective Constitutional rights, unlawful, unconstitutional, null and void".²³ However, this injunction was later discharged and the *status quo ante* was restored by the court.²⁴

It is interesting that the Faculty of Pharmacy adopted its prohibition of "flowing dresses" from the dress code in force at the Kuwait University. This may be because the faculty felt it needed to pre-empt accusations of religious intolerance. The attitude of the Kuwait University to the *hijab* is an

²⁰ The information on the position at this university was derived essentially from Kayode Fayokun, "Limits to the Campus Dress Codes" *Journal of International and Comparative Law*, Vol. 7, 2003, 1, at pp. 13 - 14.

²¹ *Ibid.*.

²² *S. J. Bamigbade v Vice Chancellor, Obafemi Awolowo University* (Unreported) Suit No. HIF/MISC/20/2002 delivered by Awotoye J., at the Ile-Ife High Court on 9/5/2002. The case was cited and discussed extensively in Fayokun, *supra* note 20, 13 - 14.

²³ *Id.*, at 13 -14.

²⁴ *Id.*

example of the total capitulation of some Muslims and the authorities in some Islamic countries to western values. This attitude is not a popular one and is definitely not representative of the past and modern trends in the Islamic nation (*Ummah*). The Obafemi Awolowo University's Faculty of Pharmacy could have adopted a more progressive approach by taking after the universities in other Muslim countries such as Saudi Arabia, Iran and Malaysia²⁵ that permit the *hijab*. The University of Ilorin provides a good example for other universities in the country. At the 2006 induction ceremony of medical students in University of Ilorin, two of the doctors inducted wore face veils. It was the first time this happened. Although, there was no official reaction to this by the College of Medicine to which these graduating students belong or by the university authorities, it no doubt generated some controversy. It was rumoured that the last minute behind-the-scene attempt by the college to prevent the induction of the two students was repulsed by the Vice Chancellor who prudently and wisely did not want a religious controversy in his campus. The Vice Chancellor was said to have dismissed the objections by pointing out that these students went through the faculty, passed their examinations and qualified as a medical doctors in the college and its faculties wearing the face veil and that the induction ceremony could not in these circumstances be the appropriate forum to raise the face veil issue against the students.

2. Polytechnics and Colleges of Education

The issue of dress codes with special reference to the "full *hijab*" was considered by the Ilorin High Court in *Bashirat Salisu and Ors v The Provost, Kwara State College of Education, Ilorin and ors*²⁶ where the court struck down the regulation prohibiting female Muslim students from wearing veils on the College of Education, Ilorin campus. The facts of the case as found by the court are that the three applicants (plaintiffs) are "female Muslim students of College of Education Ilorin whose life is guided purely by Islamic doctrines of which require them to cover their body with *hijab* or 'veil'". On 28 September

²⁵ For example according to the International Islamic University, Malaysia Students' Discipline Rules 2004 guidebook, only female Muslim students' attire should cover the whole body except the face and palms: the full text of the handbook is available at the university's website <http://www.edu.my/currentstudent/images/st_attire.pdf>. See also the news report Sharmilla Ganesan, "Non-Muslim IUM students need not wear *tudung* [*hijab*]" at <<http://thestar.com.my/news/story.asp?file=/2005/11/10/nation/12554244&sec=nation>> (accessed on 22 Aug 2006).

²⁶ (Unreported) Suit No. KWS/28M/2006 delivered by Kawu J. on 8 May 2006. See the news report of the case in Nigeria: "Coe Ilorin: Muslim Students Floor Provost Over Dress Code Law" *Daily Trust* (Abuja), 9 May 2006, also available online at <<http://www.dailytrust.com/news1d.htm>> and <<http://allAfrica.com/stories/200605090734.htm>> both accessed on 22 May, 2006.

2005, the respondent college issued a circular titled “Dress Code for students of the College”. Article J of Code prohibits the wearing of “dresses/apparels that cover the entire face of an individual thereby making the immediate identity of the person impossible”. Acting pursuant to this article, the respondents prevented the applicants from attending lectures and writing examinations. The applicants therefore went to court. The arguments in the case are quite interesting. The applicants contended that since the veil is part of their religion, it falls within the ambit of their fundamental right to religion as enshrined in section 38 (1) of the Constitution quoted above

The respondents argued that it is not compulsory in Islam for a Muslim woman to cover her face completely and that the three respondents are the only ones who insisted on the putting on the veil out of the respondents’ total Muslim population of 4000 students. They argued further that article J of the dress code is justified since effective communication between students and lecturers would require that the faces and eyes of the student been seen by the lecturers. They also contended that veils could aid cheating at examinations. Finally, they contended that the applicants could not complain since they have taken the College’s matriculation oath whereby they affirmed that they would abide by the College rules and regulation.

The court upheld the contention that the regulation violated the freedom of religion of the applicants. The court interpreting sub-section 1 of section 38 held:

According to the LONGMAN DICTIONARY OF CONTEMPORARY ENGLISH NEW EDITION at page 867, the word “manifest” means to show, or to appear or become easy to see while “OBSERVANCE” is defined at page 973 to mean “... a part of a religious ceremony; ritual observances”. The word “practice” is defined at page 1104 to mean “Something that you do often because of your religion or... religions beliefs and practices.”²⁷

The court pointed out that fundamental rights granted by the constitution could only be limited by the constitution. It held that the prohibition of the veil by the respondents could not be brought within the permitted limits to freedom of religion stipulated under section 45 of the Constitution (quoted above). The section provides that the right to freedom of religion (and other fundamental rights) could be limited by any law that is reasonably justifiable in a democratic society in the interests of defence, public safety, public order, public morality, or public health and for protecting the rights and freedom of

²⁷ *Id.*, at 6.

others. The court also held that the fact that other female Muslim students in the school do not wear the veil could not defeat the rights of the applicants. The court held that the *hijab* cannot be brought under the "... arrogant, indecent and embarrassing modes of dressing ..." which the respondents' dress code sought to prevent. According to the court, a matriculation oath is not "a blank cheque signed by the students in favour of the college allowing it to withdraw as many rights of the students as the college fancy under the excuse that such rights have been waived",²⁸ The court declared that a matriculation oath could not abridge fundamental rights or imply a waiver of fundamental rights.

It is important to note however that the court did not strike down the dress code *in toto* as its decision relates only to Article J which they applicants challenged before the court:

... let me state for the sake of clarity that the applicants have approached the court for redress only in respect of article J of the dress code which prohibits the use of dresses or apparels which cover the entire face. It is therefore only article J which has been adjudged offensive to the provisions of section 38 of the constitution that should and is hereby struck down from the dress code. All other articles in the dress code therefore remains operative so far as they have not been pronounced otherwise by the court.²⁹

3. Secondary Schools

All secondary schools in the country have dress codes for their students. Mandatory school uniform is standard in all schools. Some schools have additional regulations such as hairstyles and hair lengths for both male and female students. Most schools insist on short haircuts for boys and will overlook stylish haircuts provided the styles are not too flamboyant or conspicuous. The large varieties of hairstyles available to the girls, which range from the different traditional styles of wearing and plaiting to the modern western styles of perming and curls present more problems for schools. Most schools will not permit perming and curls but virtually all will allow plaiting and weaving. Some schools stipulate mandatory plaiting or weaving patterns on a weekly basis. In *Onyinyeka M. Enoch v Mary U.*

²⁸ *Id.*, at 9.

²⁹ *Id.*, at 12.

*Akobi*³⁰, the High Court of Anambra State considered hairstyle regulations in secondary schools vis-à-vis religious rights. In the case, a fresh female student spotting a “newly permed hair” contrary to school regulations was refused registration by a Federal Government College. The school insisted that she cut her hair short in compliance with the student regulation. The student argues citing the Biblical Chapters 11 Verses 5 – 6 and 10 – 15 of the Book of Corinthians that her Christian faith requires her never to “cut, shorn or shave her hair”. The Court interpreting religion solely a system of belief and dismissing summarily without any reason the biblical passages cited by the applicant held that the religious rights of the applicant have not been violated.³¹ The court held that the school’s regulation relating to keeping the hair short is “not only reasonable, but accords with proper and basic discipline in a model educational institution”.³² This decision was heavily criticized, and rightly too. For one thing, the court introduced without any basis, the limitation of “reasonableness” to freedom of religion. Professor Okonkwo rightly pointed out:

But even if the requirement that lower form students should shorn their hair was prescribed by law, it is submitted that the law would be unconstitutional because it would not be founded on any of the exceptions in section 41 (1) i.e. defence, public safety, public morality, public health or protecting the rights and freedoms of other persons. The closest, if at all, may be public morality but it is difficult to appreciate how exempting a lower form student from cutting short her hair will affect public morality in a school where upper form students may wear their hair long (and as alleged, some foreign lower form students have been exempted).³³

Nwauche agrees with Professor Okonkwo adding that “if the learned trial judge had averted his mind to the effect of section 39 (1) of the 1979 Constitution [now section 45, 1999 Constitution quoted *supra*] the process of balancing interest may have been dispensed with since the facts in the case were not disputed, the court should have reached a verdict that the plaintiffs

³⁰ (1994) A.N.S.L.R. 338 cited and discussed extensively in E. S. Nwauche, “A Note on Manifesting the Right to Freedom of Religion in Nigeria” *Calabar Law Journal* Vol. 4 no. 1, 1999, 97 at pp. 104 – 105.

³¹ At 352 of the judgment cited in *supra* note 30.

³² *Id.*, at 353.

³³ C. O. Okonkwo, “Religious Freedom – *Onyinyeka M. Enoch v Okobi: A Comment*” *Nigerian Juridical Review*, Vol. 6, 1994 – 1997, 214 at p. 217 quoted in Nwauche, *supra* note 30, 105

fundamental rights have been infringed”.³⁴ Another problem is that the court did not avert its mind to what properly constitute a religious tenet. The court held that the requirement that students cut their hairs short is an “innocuous, humane, fair, reasonable and non-discriminatory” requirement, which has no religious connotation.³⁵ With due respect to the learned judge this cannot be correct. The case of some Christians leaving their hair unshorn is not strange in Nigeria. Many spiritual churches believe that children born naturally with matted hair similar to the dreadlocks popular among Rastafarians and Jamaican reggae artists³⁶ have spiritual powers of prophesy and that they retain this power only if their hair remains unshorn. However, the applicant’s case was not based on this well-known practice but on a general relatively unknown and little practiced direction to Christian women. May be this was why the court insinuated that the applicant’s contention are not part of the “lawful tenets of her chosen faith”.³⁷ The court did not explain how it came about this. The court ought to have considered the biblical passages cited by the applicant (which were not in any way controverted or denied by the respondents) to determine whether the contention of the applicant is correct. May be the court was biased because the applicant’s hair was permed. However, the court could have affirmed the applicant’s right to leave her hair unshorn but without perming. After all, perming is not part of the religious tenet in question.

In the north, for most schools the headscarf is part of the school uniform. In other schools, the headscarves of stated colours are permitted options for female students. This position was attained in some schools only after much controversy.³⁸ In the south, the controversy was more heated. The incident at a school in Ibadan in 2003 provided the worst example of the acrimonious nature of the opposition to the *hijab* in schools. The students who refused to remove their head scarves when so ordered by the school authorities and who allegedly shouted what the school authorities described as “Islamic

³⁴ Nwauche, *supra* note 30, 105.

³⁵ At p. 355 of the judgment cited in *supra* note 30.

³⁶ Bob Marley is perhaps the most popular of such reggae artist. He popularized reggae music and the Rastafarian creed.

³⁷ At 355 of the judgment cited in *supra* note 30.

³⁸ The controversy is by no means settled especially in the schools founded by Christian missions. For example there another *hijab* controversy in the ECWA LGU BEA School, Oja Iya, Ilorin in November 2006. This controversy was eventually settled in favour of the right of the pupils to wear the *hijab* if they so wish. Interestingly, although the school was founded by the ECWA Mission, the student population is 78.5% Muslims and 21.5% Christians. Source: “Letter of Notification and Appeal” written by the PTA Association of Kwara State to the headmaster of the School. The date of the letter is not clear in the copy seen by this author.

Slogans” were charged to court for “conduct likely to cause a breach of the peace”!³⁹

There has been a considerable reduction in the tension in relation to the *hijab* in secondary schools due to three main factors. The first is that now most public schools have accepted the *hijab* as an optional part of their school uniforms. Secondly, Muslims are establishing more and more private schools where the *hijab* is allowed. Lastly, generally Muslim parents no longer enrol their children in schools they consider hostile to the Islam

4. Nigerian Law School

The Nigerian Law School is responsible for the professional training of lawyers in the country. It is part of the Call to Bar requirements that the students must attend at least three mandatory dinners organized in the school. Students are expected to attend the dinners wearing the “regulation dress”. This for the males has been interpreted to mean a white shirt, black tie, and dark suit.⁴⁰ For the females, the regulation dress in England from which the Nigerian position derived was stated by Boulton:

Women barristers should wear ordinary gowns and wig which should completely cover and conceal the hair and hands. Dress should be plain black or very dark, high to the neck with long sleeves and not higher than the gown, with a high plain white collar. Alternatively, plain coats and skirts may be worn black or very dark, not higher than the gown, with plain shirts and high collars.⁴¹

The Council of Legal Education in Nigeria and the Nigerian Law School interpreted this thus:

For female students, white blouse, dark jacket and black skirts covering the knees (dark suit) or dark ladies dress and black shoes are to be worn. There should be no embroidery and trimmings of any type and only moderate jewellery (ear – rings, and watches) are allowed to be worn.⁴²

³⁹ See the news report in Yemi Banjo, *35 Students charged with rioting* THE PUNCH, Tuesday, March 20, 2003, p. 10 and comments in Oba, *supra* note 5, 210.

⁴⁰ Circular issued by the Council of Legal Education to the students of the Nigeria Law School quoted in Fayokun, *supra* note 20, 25. See also J. Ola Orojo, *Conduct and Etiquette for Legal Practitioners* (London: Sweet and Maxwell, 1979) p. 76.

⁴¹ W. W. Boulton, *Conduct and Etiquette at the Bar of England and Wales* (3rd ed,) p. 77.

⁴² Circular issued by the Council of Legal Education quoted in Fayokun, *supra* note 20, 25.

Thus, regulation dress for women is either black dress or black dress suit over white blouses. In both cases, the women are to leave their head bare without any head covering in the manner of English women as a matter of *practice* even though there is nothing in the *rules*, which require this. The prohibition of head covering became controversial when female students in *khimar* started gaining admission into the Law School. This has remained a continuing controversy. In some campuses of the Law School, women are permitted to wear a black skull cap, which they purchase at exorbitant prices. In other campuses, the caps are not allowed. In any case, the cap does not meet the minimum Islamic requirement for head covering for the caps leave part of the hair, the ears and the neck bare. Although there is a strong opposition to the law school's policy on the *hijab*,⁴³ the law school has not been challenged in court. This may be due to the fear of aggrieved students as to the possible consequences on their careers. The Nigerian Law School together with its controlling body the Council of Legal Education enjoys a monopoly of legal education in the country and an unfettered discretion on whom to admit to the Nigerian Bar. Once a student incurs the wrath of the authorities of the School and the Council, he or she could forget about becoming a lawyer in the country.

Although the law school has not been challenged in court on the *hijab* issue, the law school would do well to relax its attitude on the *khimar*. This is because if the law school were challenged in court, the result would most likely to be no different from *Bashirat Saliu's* case since the same arguments and laws would apply.

The main reason why the hostility to the *khimar* has persisted in the Law School is the attitude of many senior Muslim judges and lawyers who have taken the conservative attitude that female Muslim students should comply strictly and without questions with the rules of the law school.⁴⁴ This attitude

⁴³ Mariam Bayero, "The Prescribed Mode of Female Dressing by Allah's Shari'ah: A Case for Muslim Lawyers", *Al-Maslaha – A Journal of Law and Religion* Vol. 1, 1998, pp. 92 - 109, Abdulmumini A. Oba, "Lawyers, Legal Education and Shari'ah Courts in Nigeria" *Journal Legal Pluralism* Vol. 49, 2004, 113 at pp. 140 – 141, Oba, *supra* note 5, 202 – 203, Nimatallah Modupe Abdulraheem, "The *Hijab*, Barristers' Dress Code and Religious Freedom in the Legal Profession in Nigeria" *IJUM LAW JOURNAL* Vol. 14 No. 2, 2006, 253 and Juwairiyya Bint Badamasuy, "Dressing and Women in the Legal Profession: Legal and Islamic Perspectives" *Al-Maslaha - Journal of Law and Religion* Vol. 3, 2004 – 2006, pp. 150 - 154.

⁴⁴ Attempts over the years by the Muslim Students Society (Nigerian Law School Branch) and the National Association of Muslim Law Students (NAMLAS) to enlist the support of these categories of Muslims in the struggle to protect the *khimar* in the Law School have been fruitless for this reason. The very few who support the *khimar* are virtually powerless in the face of the strong opposition by their more influential, more powerful and more numerous colleagues.

probably reflects the older generation of Muslims elites whose wives and probably daughters do not wear the *hijab*. There is manifestly an overwhelming support for the *hijab* among the younger generation of lawyers and judges in the country.⁴⁵ Many of the women in these categories are themselves *Mahjubah* (wearers of *hijab*) and so are many of the wives and daughters of the men. With the gradual but steady exit of members of the older generation, the future no doubt portends good for the *hijab* in the Law School.

5. Hijab as a Religious Tenet in Nigeria

We have pointed out earlier that the practice among Muslims in relation to the *hijab* varies. This variation is also found in the practice among Muslim countries. In Saudi Arabia and Afghanistan, the use of *niqab* is widespread. Yet this has not prevented women from attending co-educational institutions in Saudi Arabia. In Iran and Malaysia, the *jilbab* and *khimar* are standard among students but the *niqab* is not common.

Given the different practices among Muslims, questions could be asked about the status of *niqab* in Islam. Would the *niqab* be on a lesser category than the *jilbab* and the *khimar*? Perhaps this and other similar questions may be of concern to Islamic jurists; they are irrelevant when it comes to the issue of freedom of religion in the context of modern human rights. The pertinent question here would be: Is the *niqab* known to Islam? The answer to this cannot but be in the affirmative. It is apt to point out that in Nigeria, the *niqab* and even *pardah* are well known even in the pre-colonial era. This is so not only in parts of northern Nigeria but also among Yoruba Muslims in the southwestern part of the country.⁴⁶ The juristic basis of the *hijab* is found in the Qur'an and the Hadith.⁴⁷ The status of the *jilbab*, *khimar* and *niqab* as part of the tenets of Islam is indisputable. For this reason, they form part of the religious tenets protected by the Constitution. The tenets of any religion for

⁴⁵ A good example here is the judge in *Bashirat's case* who belongs to the younger generation. His lordship's decision aptly expressed the attitude of the younger generation.

⁴⁶ For accounts of *pardah* in Nigeria see generally, Yakubu Zakaria, "Entrepreneurs at Home: Secluded Muslim Women and Hidden Economic Activities in Northern Nigeria" *Nordic Journal of African Studies* Vol. 10 No. 1, 2001, 107, Fatima L. Adamu, "Gender Myth about Secluded Women in Hausa Society of Nigeria" in Mary E. Modupe Kolawole (ed.), *Gender Perceptions and Development in Africa* (Lagos: Arrabon Academic Publishers, 1998) 231 and Abdurrahman I. Doi, *Islam in Nigeria* (Zaria: Gaskiya Corpartion, 1984) 286, and 291 - 291.

⁴⁷ Qur'an 24:31 and 33:59. See a detailed analysis these and other hadiths in Abu Bilal Mustafa Al-Kanadi, *The Islamic Ruling Regarding Women's Dress according to the Qur'an and Sunnah* (Jeddah, Saudi Arabia: Abul-Qasim Publishing House, 1991) and Ssenyonjo, *supra* note 5, 154 - 158.

the purpose of freedom of religion are not limited by the practice of some of the adherents of that religion but by reference to the religion itself. Consequently, the freedom of members of any religious group to practice their religion cannot be construed with reference to what the less zealous members of the group do and do not. In *Jenebu Ojonye v Aleyi Adegbudu*⁴⁸ the court explained the categories of religious tenets recognized for the purpose of the freedom of religion guaranteed under the Nigerian Constitution:

We wish to explain for the guidance of lower courts that no court, authority or person has the power to compel anybody to practise what is not recognized or allowed by his religion so long as that practice is generally known not to be allowed by his religion. This is so because a person should not be allowed to escape from his civil responsibility or civil obligations to other people on the pretext of his freedom of religion unless what is sought to be avoided is well known not to be allowed by the religion in question and the religion itself is well known so that the matter does not revolve on the capricious choice of the individual person concerned.⁴⁹

Although *Jenebu Ojonye* and *Bashirat Saliu* are High Court decisions which can be overruled by the Court of Appeal and the Supreme Court⁵⁰, the principles enunciated therein are apparently unassailable and may be taken to represent the true state of the law in the country.

THE HIJAB IN OTHER COUNTRIES⁵¹

Religious affiliation is important but not always decisive in the reaction to the *hijab*.⁵² Opposition to the *khimar* may result from religious bigotry or extreme

⁴⁸ (1983) 4 N.C.L.R. 492 (HC, Otukpo - Ogebe, Idoko, JJ).

⁴⁹ *Id.*, at 494.

⁵⁰ Apparently, there was no appeal in *Jenebu Ojonye*. An appeal in *Bashirat Saliu*'s case was filed in the Court of Appeal but was reportedly abandoned.

⁵¹ The reaction to the *hijab* is a continuing unfolding phenomenon. Hence, the situation in some of the countries discussed in this section could have changed.

⁵² See generally the overview in Fahad Ansari and Uzma Kari, *Hijab and Democracy: The Ways of, and Against Secular Fundamentalism* (England, Wembley: Islamic Human Rights Commission, 2004).

secularism as in the case of the French ban on the *khimar* in public schools.⁵³ Other western nations that have followed the French example include some states in Germany,⁵⁴ Bulgaria,⁵⁵ Azerbaijan,⁵⁶ and Albania.⁵⁷

However, not all Christians are opposed to Muslim women wearing the *hijab*. A few non-Muslims in Nigeria - for various reasons such as safety from sexual violence and sexual harassment, which are allegedly rife in the campuses - have adopted the *khimar* and sometimes with the veil without becoming Muslims. Western countries that have accommodated the *khimar* in public schools include United Kingdom, Ireland, Norway, Sweden, Denmark, Spain, Italy, Netherlands, Austria, United States and Canada.⁵⁸ The acceptance of the *niqab* and *jilbab* is narrower than that of the *khimar*. Countries that permit

⁵³ In March 2004, France banned the wearing of headscarves in its elementary and secondary schools: Mukul Saxena *The Manifestation of Belief and the Display of Ostentatious Religious Symbols in France* EXPRESSO PREPRINT SERIES (2006) Paper 901 at <<http://law.bepress.com/expresso/eps/901>>, Human Rights Watch press release, *France: Headscarf Ban Violates Religious Freedom* February 27, 2004 and Oba, *supra* note 5, 202 – 203.

⁵⁴ Ansari and Kari, *supra* note 52, p. 5. In *B v R* 1436/02 of 24 September 2003, the court ruled in favour of an elementary schoolteacher wearing the *khimar* in her working place only because the state in question (Baden-Wurtemberg) did not specifically banned the *hijab* in schools. The court indicated that it would uphold any such legislative ban on the *hijab*. The State subsequently enacted a law banning the *khimar* in 2004. See the analysis of the case and review of the position in Germany in Robert A. Kahn, “The Headscarf as Threat? A Comparison of German and American Legal Discourses” *Expresso Reprint Series* No 1504, 2006 available at <<http://law.bepress.com/expresso/eps/1504>> and Axel Frhr. von Campenhausen, “The German Headscarf Debate” *Brigham Young University Law Review*, Summer 2004, 665.

⁵⁵ Islamic Human Rights Commission, “URGENT ALERT: Protest Hijab ban in Bulgaria” available at <<http://www.ihrc.org.uk/show.php?id=2064>> (accessed on 10 September 2006).

⁵⁶ See *Leyla Sahin v Turkey*, *infra* note 74, at ¶ 55.

⁵⁷ *Id.*

⁵⁸ Ansari and Kari, *supra* note 52, 12 – 17. The Quebec Human Rights Commission has held that private schools cannot forbid the *hijab*, skullcaps, See the news item “Quebec private schools must allow *hijabs*, skullcaps” at <www.cbc.ca/ottawa/story/07-hijab20050616.html> accessed on 17 September 2006.

the *khimar* but not the *jilbab* and/or *niqab* as part of school uniforms include England,⁵⁹ Norway,⁶⁰ and Netherlands.⁶¹

Although some profess Islam and perform some of the religious requirements of Islam such as the canonical prayers (*salat*) and fasting (*saum*), they are opposed to the *khimar* generally or the *niqab* in particular. An example is the secularist Egypt where in 1994 the Minister of Education issued a Ministerial Edict banning the *hijab* and *niqab* in all schools below university level, although, after much public protest, the ban was limited to the *niqab* alone.⁶² The more secularist Turkey followed in 1998 by banning the wearing of

⁵⁹ In *R. (on the application of Begum) v. The Headteacher and Governors of Denbigh High School*, [2006] 2 WLR 719; [2006] UKHL 15, the English House of Lords reversing the Court of Appeal upheld a *jilbab* ban by a high school. The government has subsequently issued a directive that allows head teachers to ban the *niqab* in their respective schools: Islamic Human Rights Commission, *Press Release: IHRC Statement in Response to New Government Guidelines which give Head Teachers the Right to Ban Face Veil in Schools* (20 March 2007) at <<http://www.ihrc.org.uk/show.php?id=2554>> accessed on 31 March 2007. See criticism of the House of Lords' decision in Gareth Davies, "(Not Yet) Taking Rights Seriously: The House of Lords in *Begum v Headteacher and Governors of Denbigh High School*" *Human Rights and Human Welfare Working Papers* Working Paper no. 37 posted on 13 November 2006 at <<http://www.du.edu/gsis/hrhw/working/2006/37-davies-2006.pdf>> accessed on 31 March 2007 and support for the government's position in Joan Smith, "Our schools are no place for the *jilbab*. Or for the Creationists" *Independent.co.uk Online Edition: Home* published on 26 March 2006 at <http://comment.independent.co.uk/columnists_m_z/joan_smith/article353601.ece> accessed on 31 March 2007 and Ali Khan, *The Veil and the British Male Elite* MWC NEWS (October 26, 2006) at <<http://mwcnews.net/content/view/10415/42>> (see also THE AMERICAN MUSLIM (October 26, 2006) at <http://theamericanmuslim.org/tam.php/features/articles/the_veil_and_the_british_male_elite_/001395>; and BALTIMORE CHRONICLE & SENTINEL (online edition) (October 26, 2006) at <<http://baltimorechronicle.com/2006/102606ALIKHAN.shtml>>).

⁶⁰ Norway prohibits students from the wearing of the *niqab* in schools: Western Resistance, *Norway: Oslo To Ban Muslim Veil In Schools* (June 21, 2006) at <<http://www.westernresistance.com/blog/archives/002394.html>> accessed on 17 September 2006 and Islamic Human Rights Commission, *URGENT ALERT: Protest Nikab ban in Norway* (19 July 2006) <<http://www.ihrc.org.uk/how.php?id=1951>> accessed on 18 September 2006.

⁶¹ *Leyla Sahin v Turkey*, note 74 below, at ¶ 64

⁶² After widespread opposition to the ban, the edict was amended to allow schoolgirls wear the *hijab* provided they have their parents' consent to do so. The *niqab* ban however remained and was contested in the courts. Even though article 2 of the Egyptian Constitution provides that "Islamic Sharia will be the principal source of Egyptian legislation", the Supreme Constitutional Court upheld the ministerial edict banning *niqab* in schools. See the detailed analysis of this controversy and the decision of the Supreme Constitutional Court in Clark Benner Lombardi, "Islamic Law as a Source of Constitutional Law in Egypt: the Constitutionalization of the Sharia in a Modern Arab State" *Columbia Journal of Transnational Law* Vol. 37, 1998, 81 at 106 – 113.

khimar in public places in the country.⁶³ Other examples in the Muslim world that have banned the *khimar* in their educational institutions include Tunisia and Algeria.⁶⁴ *Bashirat Saliu's* case where the defendants either are Muslims or are based in a predominately-Islamic environment provides a local example in Nigeria. From the Islamic perspective, any Muslim who opposes or prevents Muslim women from adopting any aspect of the *hijab* has committed a grievous sin that puts his or her Islam in question. According to the Qur'an, those who do not judge by what Allah has revealed are "unbelievers ... wrongdoers ... [and]... rebels".⁶⁵ Such conduct may also amount to hypocrisy (*nifaaq*).⁶⁶

Although, the central issue in the *hijab* and the dress code controversies in some educational institutions in Nigeria and elsewhere relates to freedom of religion, there are other vital issues. There is the question of culture shock for westernized Nigerians to whom western values represent the ultimate values attainable by man. To them, anything inconsistent with these values stands condemned. There is also the issue of religious intolerance for those who equate any development favorable to Islam in the country as evidence of further Islamisation of the country.⁶⁷ There is the right to freedom of expression. After all, mode of dressing could also be a vehicle for self-expression. Thus, there is the right to choose how one wants to express one's self in terms of dressing. There is also the right to education. Any policy that

⁶³ Hundreds of Turkish women who defiantly insisted on wearing the *khimar* have either been prevented from attending educational institutions or have been jailed for violating the *hijab* ban. See the example in Islamic Human Rights Commission, *Huda Kaya And Her Daughters* at <http://www.ihr.org.uk/file/PRISONERSOF_FAITHHUDA.pdf>. The ban on *hijab* by the Turkish government has been upheld by the European court, see *infra* notes 69 - 78.

⁶⁴ Ansari and Kari, *supra* note 52, 12 – 17.

⁶⁵ Qur'an 5: 44, 45 and 47. See further Abdulmalik Bappa Mahmud, *A Brief History of Shari'ah in the Defunct Northern Nigeria* (Jos University Press, 1988) 54 – 61.

⁶⁶ *Nifaaq* is the sin of pretending to be a Muslim when one does not actually believe in Islam. *Nifaaq* is worse than *kufr* (disbelief): "The Hypocrites will be in the lowest depth of the Hell fire" Qur'an 4:145.

⁶⁷ Some Christians have consistently opposed any extension of the application of Islamic law in the country even when this relates exclusively to the personal law of Muslims: Abdulumuni Adebayo Oba, "Sharia Court of Appeal in Northern Nigeria: The Continuing Crises of Jurisdiction" *American Journal of Comparative Law* Vol. 52 No. 4, 2005, 859 at 888 – 891.

disallows the *hijab* in educational institutions by implication excludes practicing Muslim women for obtaining formal education.⁶⁸

HIJAB AND INTERNATIONAL HUMAN RIGHTS LAW

The *hijab* has been subject of attention at international human rights tribunals. The European Commission for Human Rights, European Court of Human Rights and the United Nations Human Rights Committee have given rulings on the *hijab* as relates to educational institutions. In 1993, the European Commission for Human Rights⁶⁹ held inadmissible two applications by Turkish students who were refused their certificates by their universities because they wore *khimar* in the photographs they submitted to be affixed to the certificates.⁷⁰ More recently, the European Court rejected two separate complaints relating to prohibition of the *hijab*.⁷¹ The first case, *Dahlab v Switzerland*⁷², concerned a Muslim primary school teacher. The Court held that it "appears difficult to reconcile the wearing of an Islamic headscarf with the message of tolerance, respect for others and, above all, equality and non-discrimination that all teachers in a democratic society must convey to their pupils".⁷³ The second case, *Leyla Sahin v Turkey*⁷⁴ concerned a medical student at a university. The court held that a ban on *khimar* applied in furtherance of the separation of Church and State should be regarded as "necessary in a democratic society"⁷⁵ and that the effect that "wearing such a symbol, which was presented or perceived as a compulsory religious duty, could have on those who chose not to wear it" must also be taken into consideration.⁷⁶ The

⁶⁸ Human Rights Watch, *Memorandum To The Turkish Government On Human Rights Watch's Concerns With Regard To Academic Freedom In Higher Education, And Access To Higher Education For Women Who Wear The Headscarf* (Human Rights Watch, 2004), and Elizabeth Chamblee Burch, "Rhetoric or Rights?: When Culture and Religion Bar Girls' Right to Education" *Virginia Journal of International Law* Vol. 44, 2004, 1073. (also available at: <http://works.bepress.com/elizabeth_burch/4> at pp. 42 - 43).

⁶⁹ The Commission used to determine the admissibility of applications made to the European Court of Human Rights. The Commission was abolished in 1998 and applications are now made directly to the court: Human Rights Watch, *supra* note 68, 36.

⁷⁰ *Bulut v Turkey* (Application No. 18783/91, 3 May 1993) and *Karaduman v Turkey* (Application No. 16278/90, 3 May 1993).

⁷¹ See the news items in *European Union Rights Court Backs Turkey's Hijab Ban* at <<http://www.islamonline.org/English/News/2004-06/29/article05.shtml>> and Raphael Minder and Metin Munir, *Muslim Students Lose Headscarf Ban Case* <<http://news.ft.com/servlet/ContentServer?pagename=FT.com/StoryFT/FullStory&c=StoryFT&ci=1087373360021>> both accessed on 10 September 2006.

⁷² Decision of 15 February 2001, Application No. 42393/98, 2001-V. ECHR 447.

⁷³ *Id.*, at 463.

⁷⁴ Judgment of 10 November 2005, Application No. 4474/98 (Grand Chamber) affirming *Sahin v Turkey* (2005) 41 EHRR 8 (Chamber).

⁷⁵ *Id.*, paras. 99 – 116.

⁷⁶ *Id.*, para 115.

decisions of the European Court are very disappointing. The European Court's interpretation of the right to freedom of religion as guaranteed by the European Convention on Human Rights makes nonsense of this right. Not surprising, these decisions have met a barrage of criticisms.⁷⁷ Apart from being logical incomprehensible, the decisions send out the signal that Islam is not compatible with the values of the European Union and that *khimar* is a troublesome and vexatious matter to the court and to member States of the Council of Europe.⁷⁸ The decisions may also have a negative impact on religious rights in countries where there is manifest hostility to 'political Islam' and on African countries such as Nigeria whose constitutionally entrenched bills of rights on freedom of religion are couched on the same terms as those in the European Convention.

The conclusion on *hijab* reached by the Human Rights Committee was different from those of the European Court. In *Hudoyberganova v Uzbekistan*⁷⁹ the complaint before the Committee was that the complainant was prevented from attending lectures and finally expelled from the Tashkent State Institute for Eastern Languages because of her insistence on wearing the *hijab*. Between her expulsion and her filing the complaint, a new law "On the Liberty of Conscience and Religious Organizations" entered into force. Article 14 of the law forbids Uzbek nationals from wearing religious dresses in public places. The basis of her complaint was that her right to freedom to practice her religion under article 18 of the International Covenant on Civil and Political Rights (ICCPR) has been violated by the actions of her School and the State Party. The Committee by a majority upheld her claim.⁸⁰ The

⁷⁷ See generally T. Jeremy Gunn, *Fearful Symbols: The Islamic Headscarf and the European Court of Human Rights* paper posted at <strasbourgconference.org/papers/Sahin%20by%20Gunn%2021%20by%20T.%20Jeremy%20Gunn.pdf>, Njal Hostmaelingen, *Hijab in Strasbourg: Clear conclusions, unclear reasoning* paper posted at <www.strasbourgconference.org/papers/Sahin_IslamInEurope_060217TLrev.doc>, Tore Lindholm, *Comments on the Case of Leyla Şahin v. Turkey: Political and Public Morality Aspects* paper posted at <www.strasbourgconference.org/papers/LindholmCommentsEnglishFINAL.doc>, and Christian Moe, *Refah Revisited: Strasbourg's Construction of Islam* at: <www.strasbourgconference.org>; "Analysis and Review"; "Papers and Scholarly Documents" Carolyn Evans, "The 'Islamic Scarf' in the European Court of Human Rights" *Melbourne Journal of International Law* 2006, 4.

⁷⁷ Hostmaelingen, *supra* note 74 and Ssenyonjo, *supra* note 5, 180 – 191.

⁷⁸ Hostmaelingen, *supra* note 77.

⁷⁹ Human Rights Committee, Communication No. 931/2000 of 5 November 2004, U.N. Doc. CCPR/C/82/D/931/2000 (2004).

⁸⁰ By a majority of 13 to 1. One member (Mr. Hipolito Solari-Yrigoyen) dissented while two others (Sir Nigel Rodley and Ms. Ruth Wedgewood.) filed individual opinions disagreeing with aspects of the majority verdict.

decision however left many loose ends. First, it is not clear whether the type of *hijab* in dispute was the *jilbab*, *khimar* or *niqab*.⁸¹ Secondly, the State Party did not advance any reasons for the *hijab* ban.⁸² The implication is that it is still technically possible in future for the HRC to rule in favour of a state party that provides “justifiable” reasons for prohibiting the *hijab* in its universities.⁸³

HIJAB, HUMAN RIGHTS, AND CULTURAL RELATIVISM

The *hijab* is very central to the human rights dialogue between Islam and the West. The *hijab* has become the symbol of the conflict in the construction of human rights in the West and among Muslims. The arguments in favour of the *hijab* are often premised on the right to practice religion but opponents see the *hijab* as a violation of women rights.⁸⁴ The former is the view of women who wear the *hijab* and who perceive the opposition to the *hijab* as an expression of religious intolerance while the latter is the view of women (mostly non-Muslim women based in the West) who do not wear the *hijab* and who believe that it is their indisputable duty to emancipate women worldwide. It is beyond the widest imagination of these opponents of the *hijab* that a woman could adopt the *hijab* voluntarily without any compulsion from others. They believe that the women in *hijab* are sorely in need of the ‘women liberation’ that has become the norm in the West.⁸⁵ For practising Muslim women, the *hijab* frees them from being perceived as mere sexual objects.⁸⁶ It diverts attention away from their sexuality to their personality. For them, the *hijab* is also a passport to emancipation of Muslim women for it allows them to move freely and work outside their homes.⁸⁷ Thus, for many modern educated and successful Muslim women, the *hijab* is “a statement of

⁸¹ *Id*, Individual opinion by Committee member Ms. Ruth Wedgwood.

⁸² *Id*, Individual opinion by Committee member Sir Nigel Rodley

⁸³ *Id*, Individual opinion by Committee member Ms. Ruth Wedgwood.

⁸⁴ For an overview of the competing arguments, see Bahia Tahzib-Lie, “Applying a Gender Perspective in the Area of the Right to Freedom of Religion or Belief” *Brigham Young University Law Review* 2000, 967 at 977 – 983.

⁸⁵ See for example Alice Walker, “A World Where Womanhood Reigns Supreme (The Seeds of My own Re-Evaluations)” available at <http://www.islamfortoday.co/mary_walker.htm> (accessed on 27 September 2008).

⁸⁶ Rukaiyah Hill Abdulsalam, *Women’s Ideal Liberation: Islamic Versus Western Understanding* (Jeddah, Saudi Arabia: Abul-Qasim Publishing House, 1998) 71 - 78 and Samuel Cole, “Donning the Hijab (how not to be a sex object)” available at <<http://www.ibiblio.org/prism/mar98/donning.html>> (accessed on 27 August 2006).

⁸⁷ Abdulraheem, *supra* note 43, 268 - 269.

religious affiliation, and even of independence and empowerment”.⁸⁸ To the Muslim woman, her western counterpart is no more than a sex object – a mere object of entertainment obliged to primp and deck out herself in perpetual pursuit of the approval of men,⁸⁹ and whose worth rarely outlives her relevance and usefulness as a sexual tool.⁹⁰ Hijab bans in educational institutions negatively impact on the formation of identity, self-worth, and educational achievements of female Muslims students.⁹¹ To the Muslim woman, the hijab is an indispensable component of feminism – Islamic feminism. Thus, the differences between Westernised women and Muslim women are very fundamental and touch on the very meaning of human rights. The western approach to *hijab* again questions the relevance of human rights (as currently formulated in the West) to Islamic societies in particular and to non-western societies generally.

The West insists on the universality of human rights but as illustrated by the hijab cases, the West is far from having a consensus in the interpretation of freedom of religion. The “margin of appreciation” in the interpretation of the European Convention on Human Rights applied in *Leyla Sahin* is a *de facto* and a *de jure* recognition of cultural relativism or diversity in the matter of its States practice regarding human rights.

The reasons given for non-acceptability of the *hijab* in the West do not really matter. *Hijab* is a fundamental aspect of the Islamic faith.⁹² Many Muslims rightly perceive the opposition to the *hijab* as a continuation of the long

⁸⁸ Davies, *supra* note 59, 18 citing also E. Tarlo, “Reconsidering Stereotypes: Anthropological Reflections on the Jilbab Controversy” *Anthropology Today* Vol. 21, 2005, 13 and D. Lyon and D. Spini, “Unveiling the Headscarf Debate” *Feminist Legal Studies* Vol. 12, 2004, 333.

⁸⁹ Walker, *supra* note 85 and Cole, *supra* note 86. How else can one rationalise the inconveniences women in the West endure and the healthy risks they take so as to stay ‘beautiful’? The list of non-therapeutic plastic or ‘beauty’ surgeries is almost endless and ever expanding: breast augmentation, vaginal surgeries, fat reduction procedures, and so on. Many of these procedures are expensive and often entail painful and life threatening consequences.

⁹⁰ It is often disgusting how the press media in the West torments aging celebrities - singers and actresses - by publishing pictorial evidence and physical signs of their aging. A recent example is the close-up picture of the singer Madonna’s “veiny hand” in Angelina Jolie Watch, *Angelina and Madonna are BOTH so vein at* <<http://www.angelinajoliewatch.com/angelina-and-madonna-are-both-so-vein/>> accessed on 08 April, 2007. How many newscasters and anchorwomen in television shows and in the cable networks programmes lose their prime spot the moment they can no longer conceal the natural signs of aging?

⁹¹ Amani Hamdan, “The Issue of Hijab in France: Reflections and Analysis” *Muslim World Journal of Human Rights* Vol. 4, Issue 2, 2007, Article 4.

⁹² Ssenyonjo, *supra* note 5, 150 – 151 and 154 – 162.

standing hostility for Islam and its values in the West. After all, the *khimar* presents no culture shock to the West which has for centuries lived with and tolerated the Nun's habit. The insistence on non-acceptability of *hijab* by the West and its inability to include the right to *hijab* firmly among the bundle of rights called "freedom of religion" could simply mean that the West and the Islamic world will never agree on human rights and this could alienate Muslims and Islamic nations from the so-called international human rights system.

CONCLUSION

The newly introduced dress codes in some educational institutions in Nigeria obviously targeted the *hijab*. For many years, these institutions have ignored the sexually provocative dresses on their campuses. They spurred into action only when the *hijab* started gaining converts in the country's educational institutions. To this extent, the dress codes cannot be said to have been made *bona fide*. The requirement of *hijab* for Muslim women is a recognized tenet of Islam. To deny Muslim women the right to any aspect of the *hijab* would be tantamount to denying them the right to be Muslims. The longing of female students to comply fully with the Islamic mode of dressing is a legitimate human right, a fundamental right, and a constitutional right in Nigeria.

Religious tolerance and acceptance of otherness are indispensable to the survival of Nigeria as a corporate entity given its multifarious religious, ethnic, and legal pluralism. As the court in *Jenebu Ojonye v Aleyi Adegbudu* (*supra*) puts it:

The Constitution guarantees freedom of religion to every citizen and the courts must guard jealously any attempt directly or indirectly to erode this freedom which is essential to maintain peace and stability in a multi-religious society like Nigeria.⁹³

Such attitude is equally indispensable in the modern world. It is a condition precedent to peaceful co-existence in today's global village. To this extent, the judicial decisions affirming religious rights to the *hijab* in Nigeria and in other places across the world are in order. Ultimately, Nigerians and others throughout the world should develop a culture of tolerance and acceptance of, and even respect for otherness in matters of religion.

⁹³ *Jenebu Ojonye v Aleyi Adegbudu*, *supra* note 48, 494.