AN APPRAISAL ON THE RIGHT OF THE CHILD TO FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION UNDER NIGERIAN LAWS

By

Hamid DANBURAM

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BEING A PROJECT SUBMITTED TO THE SCHOOL OF POSTGRADUATE STUDIES, AHMADU BELLO UNIVERSITY, ZARIA IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR THE AWARD OF THE DEGREE OF MASTER OF ARTS IN LAW-M.A. LAW

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DECLARATION

I declare that the work in this project entitled *"An Appraisal on the Right of the Child to Freedom of Thought, Conscience and Religion under Nigerian Laws"* has been carried out by me in the Department of Public Law. The information derived from the literature has been duly acknowledged in the text and a list of references provided. No part of this thesis was previously presented for another degree or diploma at this or any other institution.

_____ _____

Hamid DANBURAM **Date**

MAL/LAW/72385/2013-2014

CERTIFICATION

This project entitled *"An Appraisal on the Right of the Child to Freedom of Thought, Conscience and Religion under Nigerian Laws"* by Hamid DANBURAM meets the regulations governing the award of the degree of Master of Arts in Law – M.A. Law of the Ahmadu Bello University, Zaria and is approved for its contribution to knowledge and literary presentation.

_____ _____

Dr. Ibrahim Shehu — Date

Chairman, Supervisory Committee

_____ _____

Dr. K. M. Danladi — Date

Head, Department of Public Law

_____ _____

Prof. Y. Y. Bambale — Date

Dean of Law

_____ _____

Prof. Kabir Bala — Date

Dean, School of Postgraduate Studies

DEDICATION

To Saidu Danburam, the late District Head of Gulak, who contributed in seeing through my education to this level.

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ABSTRACT

This study has examined the intricacies involved with respect to child's rights to freedom of thought, conscience and religion under Nigerian laws. It has been argued that the right to freedom of thought, conscience and religion entails the liberty of conscience accorded to the individual to have or adopt any religion or belief including the right to change one's religion or belief as well as the freedom to manifest one's religious belief in teaching, observance, practice and worship. The research work is predicated upon the problems arising out of the complexities involved with the tripartite issues of protecting the rights of the child to freedom of thought, conscience and religion on the one hand and the liberty of parents/guardians to secure the religious upbringing of their children as well as the obligation placed upon States in respecting this right. The main objective of this research work therefore, is to provide an appraisal on the right of the child to freedom of thought, conscience and religion under Nigerian Laws. It is contended that children should not be allowed absolute autonomy to decide for themselves on matters bordering freedom of thought, conscience and religion but such delicate decision should only be exercised through their parents/guardians who would provide directions as to the manner in which their child should exercise his/her right to freedom of thought, conscience and religion. It is therefore observed that Nigerian law recognizes the ultimate right of children to freedom of thought, conscience and religion and is to a large extent compatible with international norms and standards under the UN Human Rights system. It is further observed that the application of freedom of thought, conscience and religion in relation to children requires additional caution and a special consideration of the diverse structure of the Nigerian society. This is in view of the fact that the legal framework on child rights in Nigeria perpetuates only the application of western ideas on the adherents of all religions in Nigeria. It is thereby recommended that in view of the vulnerable state of their mind, children should not be allowed full liberty to take everlasting decision for themselves on matters pertaining to freedom of thought, conscience and religion and that despite the integration of the concept of autonomy into the concept of children's rights, such autonomy must always be made subject to the overriding choice of parents. Any framework short of this would, in our view, be tantamount to enforcing absolute secularism and/or free thinking by the state on all children independent of the wishes of parents. Therefore, the study concludes with the firm recommendation that as Nigeria is comprised of both Muslims, Christians and adherents traditional African religions, a model law on the subject of freedom of thought, conscience and religion more particularly as it affects child protection must be one which takes into account the religious rights and interests of Nigerian citizens without spreading western ideas on adherents of all religions in Nigeria. It is therefore suggested that to curve the indiscreet secular element involved in the idea of autonomy and freedom of choice in religious matters granted to children independent of the wishes of parents, States in Nigeria that desires to enact into law the provisions of the CRA especially those states in northern Nigeria that applies the sharia, such states should cautiously revise and redraft the pro-western conception on child's right to freedom of thought, conscience and religion in order that respect should be accorded to the religious rights and interests of parents and legal guardians to secure the religious upbringing of their children.

TABLE OF ABBREVIATION

AU	African Union
CRC	Child Rights Convention
ECtHR	European Court of Human Rights
EU	European Union
HR	Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IDP	Internally Displaced Persons
IHL	International Humanitarian Law
IHRL	International Human Rights Law
ILC	International Law Commission
IRL	International Refugee Law
LFN	Laws of the Federation of Nigeria
NLR:	Nigerian Law Report
NWLR:	Nigerian Weekly Law Report
RF	Religious Freedom
SCNJ	Supreme Court of Nigeria Judgment
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
UN	United Nations
US	United States (of America)

LIST OF STATUTES

NIGERIAN STATUTES

Constitution of the Federal Republic of Nigeria, 1999 (as amended in 2011)

Child Rights Act, No. 6 of 2003

Universal Basic Education Act

Children and Young Persons Law, Laws of Lagos State, 1973

INTERNATIONAL DOCUMENTS

Universal Declaration of Human Rights (**UDHR**) of 1948

International Covenant on Civil and Political Rights (**ICCPR**) of 1966

International Covenant on Economic, Social and Cultural Rights (**ICESCR**) of 1966

UN General Assembly Declaration on the Elimination of All Forms of Religious Intolerance and Discrimination

African Charter on Human and Peoples' Rights of 1981

Convention on the Rights of the Child (CRC)

Treaty of Berlin of 1878

United Nations' Charter of 1945

UN Declaration on The Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992)

The Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights

Refugee Convention 1951

Migrant Workers Convention 1990

TABLE OF CONTENTS

Title Page - - - - - - - - - - i

Declaration - - - - - - - - - - ii

Certification - - - - - - - - - - iii

Dedication - - - - - - - - - - iv

Acknowledgment - - - - - - - - - v

Abstract - - - - - - - - - - vi

List of Abbreviations - - - - - - - - vii

List of Statutes - - - - - - - - - viii

Table of Contents - - - - - - - - - ix

CHAPTER ONE:

GENERAL INTRODUCTION

1.1 Background of the Study- - - - - - - -1

1.2 Statement of the Research Problem(s)- - - - - - -5

1.3 Aims and Objectives of the Research- - - - - - -8

1.4 Scope of the Research - - - - - - - - -8

1.5 Research Methodology- - - - - - - - -9

1.6 Literature Review- - - - - - - - -9

1.7 Significance of the Research- - - - - - - -20

1.8 Organizational Layout- - - - - - - - -21

CHAPTER TWO

CONCEPTUAL CLARIFICATION OF KEY TERMS

2.1 Introduction- - - - - - -- - - -23

2.2 Historical Development of Freedom of Thought, Conscience and Religion-24

2.3 Emergence of The Legal Framework on Child Rights Protection - - -31

2.4 Legal Framework on Freedom Of Thought, Conscience And Religion in Nigeria - - - - - - - - -34

2.5 Definition of Key Terms- - - - - - -- -40

2.5.1 The Concept of "Child" - - - - - - -40

2.5.2 The Concept of "Right" - - - - - - -42

2.5.3 Meaning of the Term "Religion" - - - - - -44

CHAPTER THREE

MEANING, NATURE AND SCOPE OF FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION

3.1 Introduction - - - - - - - - - - - -50

3.2 Nature Of Freedom Of Thought, Conscience And Religion - - -50

3.3 Scope Of Freedom Of Thought, Conscience And Religion - - - -53

3.4 Elements Of The Right To Freedom Of Thought, Conscience And Religion - -57

3.4.1 Right To Have, Adopt Or Change One's Religion - - - -58

3.4.2 The Right To Manifest One's Religion Or Belief - - - -61

3.4.3 State Religion - - - - - - - - -62

3.5 Derogation And Limitation On Freedom Of Thought, Conscience And Religion - - - - - - - -68

CHAPTER FOUR

RIGHT OF THE CHILD TO FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION UNDER NIGERIAN LAWS

4.1 Introduction - - - - - - - - - - -76

4.2 Change Of Religion (Conversion) - - - - - - -77

4.3 Discrimination on Grounds of Religion - - - - - - - -83

4.4 The Right to be Brought-up in their Parents' Faith and Beliefs - - - -86

4.5 Teaching Religious Instructions/Curriculum in Public Schools - - -87

4.6 Wearing Religious Symbols In Public Schools - - - - - - -93

4.7 Right Against State Coercion, Forced Conversion and Persecution - - -94

4.8 Giving Primacy to Child's Religious Interest in Custody and Adoption - -96

4.9 Liberty of Parents/Guardians to Influence the Religious Upbringing of their Child - - - - - - - - -98

CHAPTER FIVE:

SUMMARY AND CONCLUSION

5.1 Introduction - - - - - - - - - - -100

5.2 Summary - - - - - - - - - - -100

5.3 Findings- - - - - - - - - - -103

5.4 Recommendations- - - - - - - - - -106

Bibliography - - - - - - - - - - -110

CHAPTER ONE

GENERAL INTODUCTION

1.1 BACKGROUND OF THE STUDY

The right to freedom of thought, conscience and religion is one of the fundamental freedoms that has gained recognition in the *International Bill of Rights*[1] and this freedom has also been recognized and/or given effect to in the Nigerian domestic laws inclusive of the Nigerian Constitution[2] which is the ground norm of the nation to allow for the domestic application and/or enforcement of this freedom in Nigeria. Thus, the right to freedom of thought, conscience and religion entails the liberty of conscience accorded to the individual to have or adopt any religion or belief including the right to change one's religion or belief as well as the freedom to manifest one's religious belief in teaching, observance, practice and worship.[3]

However, with the development of child rights in international law which culminated into the adoption of the *Convention on the Rights of the*

[1] The *International Bill of Rights* consist of three principal international documents, i.e., Universal Declaration of Human Rights (**UDHR**) of 1948; International Covenant on Civil and Political Rights (**ICCPR**) of 1966; International Covenant on Economic, Social and Cultural Rights (**ICESCR**) of 1966.

[2] Section 38, *Constitution of the Federal Republic of Nigeria 1999* (as amended in 2011), Cap. C 23, L.F.N. 2004

[3] See Article 18, **UDHR**; Article 18, 4(2) **ICCPR**; Article 13 (3) & (4) **ICESCR**; Article 1, UN General Assembly Declaration on the Elimination of All Forms of Religious Intolerance and Discrimination; Article 8, African Charter on Human and Peoples' Rights of 1981; Section 38, Constitution of the Federal Republic of Nigeria, 1999

Child[4] [CRC] in 1989, an additional legal framework on freedom of thought, conscience and religion which is child specific emerged. Under this Convention (the CRC), protection of the rights of the child to freedom of thought, conscience and religion was recognized and is akin to that embodied in the UDHR and the ICCPR. The relevant provisions of the CRC include Article 14 (1) which provides to the effect that "*States Parties shall respect the right of the child to freedom of thought, conscience and religion*."[5] Article 30 of the CRC further provides that:

> In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language.

These provisions of the CRC reinforce the tripartite rights of the child to the *freedom of thought, conscience and religion* on the one hand and the liberty of parents/guardians to secure the religious upbringing of their children as well as the obligation placed upon States in recognizing and respecting this right.

[4] Convention on the Rights of the Child (CRC), Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 and entered into force on 2 September 1990, arts 2, 14, 20, 29.
[5] Art. 14, CRC

Likewise, this international Convention was also ratified and further domesticated by Nigeria under the *Child Rights Act*[6] [CRA] 2003 which is the most comprehensive legislation as far as the protection of the rights of the child in Nigeria is concerned.[7] *Child Rights Act*[8] reinforces the rights of a child to the *freedom of thought, conscience and religion* and the responsibility of parents and legal guardians thereto as well as that of the State in recognizing and respecting this right. Although it seeks to provide for the rights of the child, it could be wondered how parents and legal guardians especially in Nigeria could uphold the provisions of the CRC/CRA in matters that has to do with children's latitude to change their religion in view of parental role in this matter.

Nevertheless, given the historical controversies and difficulties that trailed the development of this freedom under international law as well as in other domestic jurisdictions like the United States (US), United Kingdom (UK), France, India, Australia, Germany, etc., and in view of the current state practices of the international community with respect to freedom of thought, conscience and religion that still reflect negative observance of this

[6] *Child Rights Act*, No. 6 of 2003

[7] Ladan, M. T. *The Child Rights Act, 2003 And The Challenges of Its Adoption By State Governments In The 19 Northern States*, A Paper Presented on 23rd July, 2007 at a One-day Interactive Forum for Sokoto State House of Assembly Legislators Organized by the Sokoto State Ministry of Women Affairs and UNICEF, held at Sokoto State House of Assembly, Sokoto, p. 4.

[8] See section 7 of the *Child Rights Act*, No. 6 of 2003

freedom; the vulnerability and peculiarities of children when it comes to the protection of their rights in respect of this freedom presents another scenario of complex legal problems as to the requirement of special and specific context under which this freedom can be said to apply to child as per its best interest and evolving capacity of mind on the one hand and the challenges of indigenous and orthodox cultural and religious practices that may reflect adverse aspiration to those of the established international norm on this freedom. Thus, the application of this freedom in relation to children requires additional caution and a special consideration of the diverse structure of the international community.

This study will therefore be an endeavor to examine the various context and peculiarities of freedom of thought, conscience and religion as it applies to children with particular reference to the extent of its implementation in Nigeria. Moreover, a discussion of this freedom in Nigeria especially as it relates to children has become of immense importance in view of the various religious conflicts and riots that have engulfed the Nigerian nation but unfortunately, there are not many studies dealing with the protection of this freedom as it relates to the child in Nigeria. It is thus the desire of this study to attain the goal of curbing religious intolerances, discrimination and violence among the youth so as to

secure national peace and religious co-existence among the citizenry in Nigeria.

1.2 STATEMENT OF THE RESEARCH PROBLEM(S)

Issues pertaining to "religion" and the right to "freedom of thought, conscience and religion" pose some of the most difficult and controversial challenge to the universality of the human rights movement generally and to peaceful co-existence in several nations to which Nigeria is not an exception. Although the right to freedom of thought, conscience and religion has nowadays attained recognition under international human rights law inclusive of the Nigerian constitution, yet controversial issues related to this freedom are still prevalent.

Amidst these challenges, international concern and efforts regarding the protection of the rights of the child has materialized into an international convention that have been ratified by many nations including Nigeria wherein state parties are obliged to secure the protection of the rights of the child inclusive of freedom of thought, conscience and religion.

Against this background, certain controversial issues and legal problems related to the protection of the rights of the child to freedom of thought, conscience and religion emerged to the extent that the legitimacy of the State power or policy to control the protection of the rights of the child

especially on freedom of thought, conscience and religion becomes questionable as a secular paradigm that seeks to indoctrinate the child to the tents of secularism to the disregard of diverse traditional, religious and cultural practices of the people in a given locality and this may hold true especially in Nigeria if a child is allowed the liberty to adopt any religion independent of the wishes of parents and/or guardians. Thus, given the status of freedom of freedom of thought, conscience and religion in international law and under the Nigerian laws, does state policy oblige parents and guardians to remain aloof or standby to witness adverse religious upbringing of their child more particularly for him/her to change its religion or apostatize just in the name of freedom of thought, conscience and religion?

Therefore, the emergence of child rights protection as it comes to freedom of thought, conscience and religion has brought forth conflict between the role of parents and guardians towards the control and supervision of the religious upbringing and education of their child on the one hand and the need to secure the best interests of the child to enjoy freedom of thought, conscience and religion as a person or human being different from his/her parents and as a citizen of Nigeria. Thus, in the event of this conflict, is it the best interest of the child or of parents that will be given paramount importance?

Moreover, whether the international norms on the protection of the rights of the child particularly freedom of thought, conscience and religion which the Nigerian law seeks to domesticate are compatible with Nigerian indigenous cultural and religious beliefs is a legal question that one way or the other affects the protection of the rights to the child to freedom of thought, conscience and religion in Nigeria.

Besides, on the marginal side of it, there is the problem of lack of attention or dedication by researchers and child rights advocates to this vital aspect of child protection in Nigeria. Most studies concentrate on child justice administration and the protection of the child from abuse and neglect. As the sub-section on literature review indicates, there were little discussion or exploration by academics, advocates and policy makers on freedom of thought, conscience and religion as it applies to children in Nigeria. this lacunae, in our view, poses problem of lack of concern towards articulating the best strategies to enhance and promote the protection of the child right to freedom of thought, conscience and religion in Nigeria. Pertinent to this is the growing negative judicial attitude towards the interpretation of the norms or tenets of freedom of thought, conscience and religion in relation to children in a manner that more or less absolves elements of Western

secularism to the disregard of Nigerian indigenous cultural and religious beliefs and practices.

1.3 AIM AND OBJECTIVES OF THE RESEARCH

The principal aim of this research work is to analyze the protection of the rights of the child to freedom of thought, conscience and religion under international law with particular reference to its application in Nigeria. The research work focuses upon the following specific objectives:

1. To assess the level of implementation of freedom of thought, conscience and religion as it relates to child protection in Nigeria.
2. To highlight the basic tenets, nature and scope of the right to freedom of thought, conscience and religion with particular reference to its application on children.
3. To examine and analyze the major contexts or areas under which the right to freedom of thought, conscience and religion is applied with reference to children.

1.4 SCOPE OF THE RESEARCH

The scope of this research is restricted only to the discussion on the rights of the child to freedom of thought, conscience and religion under Nigerian laws.

1.5 RESEARCH METHODOLOGY

Doctrinal method of legal research will primarily be employed. Recourse would be made to primary and secondary legal materials on the subject, that is to say: books, articles, journals, conference and seminar papers, statutes, case law, etc.

1.6 LITERATURE REVIEW

A review of available literatures that have bearing on the subject, ranging from books, articles, seminar and research papers is presented below.

Jeremy T. Gunn,[9] in his scholarly articled titled "*The Complexity of Religion and the Definition of Religion in International Law"*, this author addresses the difficulty of defining religion and puts forth a conceptual context and theoretical approach to understanding rather than defining religion. But to differ with this author, it may be maintained that whether religion is adequately defined by law or simply understood with reference to what it connotes, what matters most is that, individuals claim of a particular religion or belief must be recognized and respected by state authorities.

[9] Jeremy T. Gunn, *The Complexity of Religion and the Definition of Religion in International Law*, Havard Human Rights Journal, Vol. 16, 2003, p. 189

Karen Musalo[10] in his article titled "*Claims for Protection Based on Religion or Belief*", there were discussion on the international norms on freedom of religion or belief focusing on the provisions of the UNIVERSAL Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR) and other relevant international instruments. He further discussed the scope of the right to freedom of religion or belief under international law but much of his discussion focused on religious based claims under the Refugee Convention. Our concern therefore in this work, is to consider its relevance and/or application as regards children.

I. A. Ayua and I. E. Okagbue,[11] in their book titled "*The Rights of the Child in Nigeria***,** these authors have discussed most of the issues related to child protection in Nigeria with even empirical data to support their views. The areas of child protection that featured prominently in the book are rights of the child to education, health, child labour, child welfare, child abuse, treatment of juvenile offenders, etc. However, the vitality of freedom of thought, conscience and religion has been highly relegated in not being featured prominently in this book. It will thus be the effort of this study to further the literature in this regard by filling this gap.

[10] Karen Musalo, *Claims for Protection Based on Religion or Belief*, International Journal of Refugee Law, Vol. 16, No. 2, 2004, pp. 165-226

[11] Ayua I. A. and Okagbue I. E. (eds.), *The Rights of the Child in Nigeria*, Nigerian Institute of Advance Legal Studies (NIALS), 1996

Tokunbo Ige and Olumide Lewis,[12] while discussing the concept of human rights have made mention of freedom of religion as one of the fundamental freedoms of the individual in a given state or society, only that no more elaboration on the import and application of this freedom in any given context or situation was discussed by the author.[13] He further considered freedom of religion as part of civil rights which in essence requires a more positive observance of etiquette in social behavior and sincere consideration of others rights.[14] So also, while discussing fundamental freedoms, he states that it means the state and quality of being free and these include freedom of every person to worship his own way.[15] As regard the *Child Rights Convention* (CRC), he states that it is the most complete statement of children's rights ever made and it is the first to give these rights the force of international law and that respect for human rights begins with the way society treats its children.[16] That notwithstanding, he failed to examine the peculiarities of freedom of thought, conscience and religion to the special needs and vulnerabilities of children.

[12] Tokunbo Ige and Olumide Lewis, *Human Rights Made Easy: An Introductory Text on Human Rights*, Legal Research and Resource Development Centre, Lagos (1999, 3rd ed), pp. 3-8
[13] Ibid, p. 3
[14] Ibid, p. 7
[15] Ibid, p. 8
[16] Ibid, p. 46

Kehinde M. Mowoe,[17] in his book titled "*Constitutional Law in Nigeria*", he had elegantly treated freedom of thought, conscience and religion with even a chapter dedicated to the discussion of this freedom unlike other authors. But that notwithstanding, his discussion of the subject is not child specific as he altogether neglected the relevance of freedom of thought, conscience and religion to the domain of child protection. In fact, while writing post 1989 CRC regime as well as post 2003 CRA regime in Nigeria, he fundamentally omitted both the CRC and CRA from the list of legal framework on freedom of thought, conscience and religion under both international law and the Nigerian domestic laws as part the legal instruments on the subject. It is not wondered, therefore, that he neglects the relevance of freedom of thought, conscience and religion to child protection in Nigeria. Thus, it will be the effort of this study to fill this gap.

A. S. Ogwuche,[18] in his book titled "*Compendium of Human Rights"*, he had included freedom of thought, conscience and religion in his discussion on human rights only that as regard this freedom, his work remained a restatement of the provisions of section 38 of the 1999 Constitution of Nigeria vis-à-vis Articles 18 of UDHR, Article 8 of African

[17] Mowoe, K. M. *Constitutional Law in Nigeria*, Malthouse Press Ltd., Lagos (2008) pp. 423-439

[18] Ogwuche, A. S. *Compendium of Human Rights*, Maiyati Chambers, Ikoyi-Lagos (2006, 1st ed), pp. 59-60

Charter on Human and People's Rights and Articles 9(1)&(2) of the European Declarations of Human Rights.[19] He also restated the provisions of section 38(2)&(3) of the 1999 Constitution to state that so far as religious instructions in educational institutions is concerned, the Constitution gives full freedom to parents to educate their children as they please.[20] But one may wonder if this is truly the practice in Nigeria or only a mere theoretical framework. We thus intend to fill this gap by investigating and analyzing the extent to which this principle is observed in the educational institutions in Nigeria.

Kayode Eso,[21] have tried to discussed the correlation between human rights and education as it applies in Nigeria but he left a vital gap of not discussing the status of religious instruction in the educational institutions in Nigeria and how the application of this right or the lack thereof in Nigeria affects the protection of the rights of the child to freedom of thought, conscience and religion. This is because, securing the child right to receive religious education at tender years is one of the vital aspects or contexts under which the right of the child to freedom of thought, conscience and religion can be protected.

[19] Ibid, p. 59
[20] Ibid, p. 60
[21] Kayode Eso, *Thoughts on Human Rights and Education*, St. Paul's Publishing House (2008), p. 272

N. M. Jamo,[22] in his article titled "*Civil and Human Rights under the 1999 Constitution: Need for Some Amendments"*, he correlates section 10 & 38 of the 1999 Constitution to state that there was erroneous description of section 10 as endorsing secularism in Nigeria.[23] He observed that no meaning by the Constitution was attached to the term "adoption" under section 10 so as to rest the controversy surrounding sharia and other related issues between so-called "secularism" and "theocracy" and their relationship, if any, with the state.[24] However, this writer had failed to consider other aspects of the right to freedom of thought, conscience and religion contained in section 38 of the 1999 Constitution particularly religious instruction for children in public schools and the role of parents and guardians thereby.

J. N. Aduba,[25] in his article titled "*The Sharia Controversy and the 1999 Constitution: A Case of Shadow Boxing*", he had attempted a discussion on the constitutionality of the application of sharia in Nigeria

[22] Jamo, N. M. *Civil and Human Rights under the 1999 Constitution: Need for Some Amendments*, pp. 97-110. In: M. T. Ladan (ed.), Law, Human Rights and the Administration of Justice in Nigeria: Essays in Honour of Hon. Justice Muhammed Lawal Uwais, Department of Public Law, ABU Zaria (2001)
[23] Ibid, p. 106
[24] Ibid, p. 107
[25] Aduba, J. N. *The Sharia Controversy and the 1999 Constitution: A Case of Shadow Boxing*, pp. 397-395. In: M. T. Ladan (ed.), Law, Human Rights and the Administration of Justice in Nigeria: Essays in Honour of Hon. Justice Muhammed Lawal Uwais, Department of Public Law, ABU Zaria (2001)

from the secular democratic and human rights perspective. He attempted a definition of the terms "religion" and "secularism" but to no avail as his endeavor was alas to counteract the constitutionality of the application of sharia in Nigeria.

Some authors like **Bashir Wali,[26] M. T. Ladan,[27] S. Idris,[28]** etc., in some of their articles only make a passing by mention of freedom of thought, conscience and religion as one of the core rights recognized under the Nigerian Constitution without elucidation on the rudiments of this freedom lest its application to children. As for **M. T. Ladan,[29]** similar approach exists in some of his writings that are on child rights but in his book titled "*Materials and Cases on Public International Law,"*[30] he had

[26] Bashir Wali, *Democracy and Administration of Justice*, pp. 20-35 at p. 29. In: M. T. Ladan (ed.), Law, Human Rights and the Administration of Justice in Nigeria: Essays in Honour of Hon. Justice Muhammed Lawal Uwais, Department of Public Law, ABU Zaria (2001)

[27] Ladan, M. T. *Should All Categories of Human Rights Be Justiciable*?, pp. 66-96 at pp. 69-70. In: M. T. Ladan (ed.), Law, Human Rights and the Administration of Justice in Nigeria: Essays in Honour of Hon. Justice Muhammed Lawal Uwais, Department of Public Law, ABU Zaria (2001).

[28] Idris, S. *Sharia and the 1999 Constitution: Is there a Cause for Sharia?* pp. 396-404. In: M. T. Ladan (ed.), Law, Human Rights and the Administration of Justice in Nigeria: Essays in Honour of Hon. Justice Muhammed Lawal Uwais, Department of Public Law, ABU Zaria (2001)

[29] Ladan, M. T. *The Child Rights Act, 2003 And The Challenges of Its Adoption By State Governments In The 19 Northern States*, A Paper Presented on 23rd July, 2007 at a One-day Interactive Forum for Sokoto State House of Assembly Legislators Organized by the Sokoto State Ministry of Women Affairs and UNICEF, held at Sokoto State House of Assembly, Sokoto, p. 4.

[30]Ladan, M. T. *Materials and Cases on Public International Law*, Ahmadu Bello University Press Ltd., ABU Zaria, Nigeria (2008) p. 261

exposited thoroughly on Human Rights and its protection. He argued that freedoms of thought, conscience, religion or belief are fundamental freedoms which may not be suspended even in states of emergency. That the same protection is due to religious believers as to non-believers and that no one may be discriminated against because of his/her religion or belief nor forced to adhere to any other only that his discussion of the subject does not encapsulate the protection of the rights child to this fundamental freedom.

Similarly, **A. I. Bappah,**[31] in his article titled "*The Child Rights Act 2003: Understanding It's Peculiarities and Conflicts in Its Application in the Northern States of Nigeria",* discussion on freedom of thought, conscience and religion receives less treatment as it was visited with passing by remarks only, with a mention of it as parts of the basic rights of the child without elaborative discussion on its imports and implications to the child. In the same vein, **Y. Y. Bambale**,[32] in his article titled "*An Appraisal of human Rights in Islamic Law and the Constitution of the Federal Republic of Nigeria 1999*", this author had attempted a comparative study on human

[31] Bappah, A. I. *The Child Rights Act 2003: Understanding It's Peculiarities and Conflicts in Its Application in the Northern States of Nigeria,* pp. 231-356. In: Y. Aboki (ed.) Nigeria's March Towards Global Political Stability: An Assessment of Her Law and Status, Legal Essays in Honour of Senator Bala Mohammed, Department of Public Law, ABU Zaria (2013).

[32] Bambale, Y. Y. *An Appraisal of Human Rights in Islamic Law and the Constitution of the Federal Republic of Nigeria 1999,* A.B.U.L.J., (2001-2002) Vols. 19-20, pp. 92-110

rights under the two systems of laws,[33] only that his discussion does not embrace the peculiarities of child protection especially the vulnerabilities of children when it comes to the issue of freedom of thought, conscience and religion; his work is therefore not child specific on this freedom.

J. O. Akande,[34] while discussing constitutional guarantee of rights with particular reference to minorities, he had discussed freedom of religion as one of the rights with special application to minorities. He states that freedom of religion was protected under section 35(1) of the 1979 Constitution. He further considered the practice of taking an oath in accordance with one's religious belief as well as the rights to own property accorded to religious organizations. He also discussed the right not be forced to follow religious instructions of other religions in schools only that he failed to contextualize this aspect as part of the rights of the child in the public school system. This is because, the taking of religious instructions at schools by students other than those belong to one's religion or belief is preserved by law to protect the vulnerability of children against indoctrination to the tenets of other religions against the wishes or consent of parents. This gap that is left by the author will be filled in this study.

[33] Ibid, pp. 95 & 101-102
[34] Akande, J. O. *Constitutional Protection of Minorities Interests in a Federal System of Government*, Nigerian Current Law Review (1995) pp. 204-216 at pp. 211-212

Furthermore, he succeeded in identifying areas not covered by the constitutional arrangement in Nigeria as regard protection of religious minorities, more particularly protection against incitement to hatred directed on religious minorities.[35] This vital lacunae created by the Nigerian laws will be vigorously analyzed and addressed in this study.

E. S. Olarinde,[36] in her article states that the right to freedom of thought, conscience and religion among other rights, forms the collectivity of mechanisms designed to enhance and promote the social development of children and to ensure their participation in social affairs.[37] She further stresses the desire of the CRC/CRA that in all actions concerning children, the best interest of the child shall be the primary consideration. But in our view, as far as the right to freedom of thought, conscience and religion of the child is concerned, and in view of the parallel right of parents and guardians to exercise reasonable supervision and control over the religious conduct of their children or wards, there exists conflict of rights and in circumstances of this nature, it is our view that paramount consideration shall be given to the

[35] Ibid, p. 211
[36] Olarinde, E. S. *Reflections on the Basic Rights of the Nigerian Child under the Child Rights Act 2003*, University of Ibadan Journal of Private and Business Law, (2005) Vol. 4, pp. 87-102
[37] Ibid, pp. 89-99

right of parents to secure the religious upbringing of their child according to the dictate of their faith.

Y. I. Ajani,[38] in his article on **"***Child Rights Protection in Nigeria: A Critique"*, he focused more on child abuse and neglect as well as the criminal aspects of child projection. He altogether failed to discuss issues of freedom of thought, conscience and religion not even a mention of it was done. He only takes the view that a child is also human, that the fundamental human rights provisions in chapter IV of the 1999 Constitution shall apply to the child. While we also share this view of the author that a child is also human, therefore the fundamental human rights provisions in chapter IV of the 1999 applies to child, we thus intend to fill the gap created by this author in failing to examine how does the provisions of chapter IV of the 1999 Constitution as well as other laws on freedom of thought, conscience and religion applies to the child in Nigeria.

J. A. M. Audi,[39] in her article titled "*Enforcement of Human Rights and Enduring Democracy in Nigeria"*, she identified the right to freedom of

[38] Ajani, Y. I. *Child Rights Protection in Nigeria: A Critique*, pp. 212-226 at p. 222. In: Oyeyemi, O. et al (ed.) Cross-Cutting Issues in Nigerian Law: Essays in Honour of Prof. Funso Adaramola, Showers IMC Press, Lagos (2007).

[39] **Audi**, **J. A. M.** *Enforcement of Human Rights and Enduring Democracy in Nigeria*, pp. 305-337. In: Madaki, A. M. (ed.) Challenges of Constitutional Governance in Nigeria: Essays in Honour of Dr. Samson Sani Ameh, Department of Private Law, ABU Zaria (2012).

thought, conscience and religion as one of the fundamental rights of the citizen in Nigeria.[40] In her discussion of this freedom, she restated the American case of *West Virginia State Board of Education v. Barnett*[41] where the American Supreme Court held that compelling school children to salute the flag violates the right to freedom of religion. But while this case is relevant to the subject of discussion in this work, it lacks the force of law to apply in Nigeria. Moreover, the author did not analyze the case thoroughly as to lay background on how to contextualize the principle established in this to the situation in Nigeria especially as regard the right of the child to freedom of thought, conscience and religion. Thus, filling this gap would be the focus of this study.

1.7 SIGNIFICANCE OF THE RESEARCH

The intended research work would be of significance and benefit to all stakeholders involved in child protection in Nigeria. Thus, the research work would be very helpful, relevant and beneficial to the Government in the formulation of law and policies on child protection in Nigeria; it would be of interest to practitioners and students of human rights and constitutional law; it would be of interest to Judges in exercise of their judicial powers towards the enforcement of the rights of the child to freedom of thought, conscience

[40] Ibid, p. 310
[41] 319, US, 624, 63

and religion; it would be of interest and benefit to parents and guardians in nurturing and accomplishing the protection of their child's right to freedom of thought, conscience and religion especially the religious upbringing of their children; it would be of interest and benefit to the society in fostering religious tolerance, non-discrimination and peaceful co-existence.

1.8 ORGANIZATIONAL LAYOUT

This project work is structured into five chapters as indicated below.

Chapter One primarily deals with the General Introduction identifying the Statement of the Problem(s), Aim and Objectives of the Research, Scope and Limitations, Literature Review, Justification/Significance of the Research and Organizational Layout.

Chapter Two provides conceptual clarification of key terms and it will encompass a discussion on the historical background on the development of the concept of freedom of thought, conscience and religion generally as well as its emergence under Nigerian Laws; the legal framework on freedom of thought, conscience and religion in Nigeria, definition of key terms, etc.

Chapter Three provides an overview on the concept of freedom of thought, conscience and religion under Nigerian laws which will encompass its meaning, nature, scope, limitations and derogation from freedom of thought, conscience and religion, etc.

Chapter Four basically provides the context under which the rights of the child to freedom of thought, conscience and religion is protected, e.g., issues of change of religion (conversion/apostasy), teaching religious instructions/curriculum in public schools, wearing religious symbols in public schools (e.g., the Cross, Turban, Head tie, Hijab), giving effect to the interest of the child as regard the protection of his/her right to freedom of thought, conscience and religion during custody dispute amidst parental conflict of interest therein, liberty of parents and guardians to monitor and influence the religious upbringing of their child, etc.

Chapter Five is the final chapter and it contains the summary of the preceding chapters - from chapter one to chapter four. It also contains findings and recommendations. The chapter also gives the concluding remarks on the work.

CHAPTER TWO

CONCEPTUAL CLARIFICATION OF KEY TERMS

2.1 INTRODUCTION

This chapter provides for the conceptual clarification on certain pivotal concepts that pertains to the right of the child to freedom of thought, conscience and religion in Nigeria. It also provides for the historical background of the subject matter under discussion. Thus, the chapter seeks to lay the proper background that would necessitate appropriate understanding of the discussion that follows in the subsequent chapters of this research work.

However, children are precious assets and sources of joy not only to their parents and immediate families but to the entire society. As the future hope and leaders of tomorrow, they have rights that need to be protected. They have to be cared for and nurtured to develop their potentials so that they can contribute to the development of the society. The saying that "the child is the father of the man" is true if and only if the right of the child is adequately protected in the society. This therefore makes it pertinent to examine the rights of the child to freedom of thought, conscience and religion more

particularly to what extent have these rights been protected in the Nigerian society.[42]

2.2 HISTORICAL DEVELOPMENT OF FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION

The idea that all persons possess natural rights had its beginnings in late medieval Christian thought as is the idea of human rights which is implicit in the Judeo-Christian tradition, especially in its recognition that each person is created in the image of God and in its fundamental commands to love God supremely and to respect the person and property of our neighbor.[43] This doctrine was important for the development of a regime of religious freedom, which requires a theory of rights that emphasizes the importance of individual freedom, dignity, and conscience.[44]

However, Brian Tierney makes a convincing case that "the origin of the later natural rights theories is to be found in the Christian jurisprudence of the late twelfth century, especially in the works of the canonists of that era."[45] He writes that "[t]he idea of natural rights grew up - perhaps could only have

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[42] *AKWARA, Azalahu Francis; SOYIBO, Adekunle G.; AGBA, Michael S. Law and Children's Rights Protection: the Nexus for a Sustainable Development in Nigeria,* CANADIAN SOCIAL SCIENCE (2010) Vol. 6, No. 2, 2010, pp. 26-33 at pp. 27-28

[43] Wallace, E. G. Justifying Religious Freedom: The Western Tradition, *Pennsylvania State Law Review* (2009) Vol. 114, No. 2, p. 541

[44] Ibid

[45] Brian Tierney, *Religious Rights: A Historical Perspective, in* Noel B. Reynolds and W. Cole Durham, Jr. eds., Religious Liberty in Western Thought, (1996), at 34.

grown up in the first place - in a religious culture that supplemented rational argumentation about human nature with a faith in which humans were seen as children of a caring God."[46]

The sixteenth-century Reformation although it did little to end the intolerance and persecution of the middle ages, it has brought revolt against the authority of a unified Christendom, spawned multiple new religious groups, and helped recover what it meant to be a true Christian by shifting attention away from liturgies and doctrinal uniformity in nonessential matters and back to fundamental Christian virtues such as piety, humility, love, and forbearance.[47] Reformation was "at its core, a fight for religious liberty—liberty of the individual conscience from intrusive canon laws and clerical controls, liberty of political officials from ecclesiastical power and privilege, liberty of the local clergy from central papal rule and oppressive princely controls."[48]

Thus, even before the concept of freedom of thought, conscience and religion was recognized in national law, the practice evolved of making

[46] Ibid, at 343
[47] Wallace, E. G. Justifying Religious Freedom: The Western Tradition, *Pennsylvania State Law Review* (2009) Vol. 114, No. 2, p. 543
[48] John Witte, Jr., *Moderate Religious Liberty in the Theology of John Calvin, in* Noel B. Reynolds and W. Cole Durham, Jr. eds., Religious Liberty in Western Thought, (1996), at 119.

treaty stipulations ensuring certain rights to individuals or groups professing a religion or belief different from that of the majority in a given country. Such treaty stipulations date back to the time when law was felt to be personal rather than territorial, and to follow an individual even when he lived in a country other than his own.[49]

One of the most important treaties granting such "capitulations" was signed in 1536 by Francis I of France and Suleiman I of the Ottoman Empire, which allowed the establishment of French merchants in Turkey, granted them individual and religious freedom, and provided that consuls appointed by the King of France should judge the civil and criminal affairs of French subjects in Turkey according to French law, with the right of appeal to officers of the Sultan for assistance in carrying out their sentences. This treaty became the model for many later treaties of this sort as the capitulation system spread during the seventeenth, eighteenth and early nineteenth centuries.[50]

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[49] Goadby, F. M. Religious Communities and Courts in Palestine, *Tulane Law Review* (1934) Vol. VIII, No. 2, pp. 215-235 at p. 215; Liebesny, H. J. Comparative Legal History: It's Role in the Analysis of Islamic and Modern Near Eastern Legal Institutions, *The American Journal of Comparative Law* (1972) Vol. 20, No. 1, pp. 38-52 at p. 39-40

[50] Krishnaswami, A. Study on Discrimination in the Matter of Religious Rights and Practices, U.N. Doc. E/CN.4/Sub.2/200/Rev.1 (1960) New York, p. 11, *available online at* http://iiss.berkeley.edu/files/2011/06/Krishnaswami19601.pdf (last visited on the 6/03/2013).

At a later date, somewhat similar procedures were followed as a means of settling disputes which arose out of the Reformation. For example, the Treaty of Osnabruck, signed in 1648 at the end of the Thirty Years' War, stipulated a certain degree of toleration for Protestants in Catholic States and for Catholics in States which had established a Reformed Church; but it did not go so far as to provide for freedom of thought, conscience and religion for all individuals and groups. Later, under the Treaty of Berlin of 1878, the great European Powers compelled the newly recognized independent and autonomous States of Bulgaria, Montenegro, Romania and Serbia, as well as the Ottoman Empire, to assure religious freedom to all their nationals.[51]

Moreover, the problem of protection of religious groups and their members came up again at the Paris Peace Conference, after the First World War. Provisions dealing with the protection of minorities, including religious minorities, were either included in peace treaties with some of the defeated countries (Austria, Bulgaria, Hungary and Turkey), or were dealt with in special treaties with certain new or enlarged States (Czechoslovakia, Greece, Poland, Romania and Yugoslavia). Later, some countries (Albania, Estonia, Latvia, Lithuania and Iraq) made declarations to the Council of the League of Nations containing similar provisions. These instruments, while primarily

[51] Treaty of Berlin of 1878; see also Krishnaswami, A. op. cit., at p. 12

intended to protect minorities, including religious minorities, often contained provisions applicable to all nationals of the country concerned, or even to all its inhabitants.[52] The instruments were placed under the guarantee of the League of Nations; however, it should be noted that the guarantee applied only in respect of members of racial, religious or linguistic minorities.[53]

During the Second World War, the need to assure freedom of religion was affirmed in several important statements on the aims of the war. Thus in a joint declaration of 1 January 1942, the allied leaders stated their conviction "that complete victory over their enemies is essential to defend ... religious freedom and to preserve human rights and justice in their own lands as well as in other lands".[54]

When the Charter of the United Nations was being drafted in San Francisco in 1945, proposals or amendments suggesting the inclusion of detailed provisions on the right to freedom of thought, conscience and religion — or at least certain aspects of this right — were submitted by Chile, Cuba, New Zealand, Norway and Panama.[55] However, the UN Charter refers to "human rights and fundamental freedoms for all, without distinction as to race, sex,

[52] Ibid at p. 15
[53] Ibid
[54] Article 1(3), UN Charter of 1945
[55] Ibid at p. 17

language or religion", only in general terms.[56] The Universal Declaration of Human Rights, adopted on 10 December 1948, is more explicit: in Article 18, it states that *"Everyone has the right to freedom of thought, conscience and religion..."*

Certain aspects of this right were recognized in diplomatic instruments concluded at the end of the Second World War; for example, all the treaties of peace concluded in Paris on 10th February 1947 provide that each former enemy country is to take "all measures necessary to secure to all persons under its jurisdiction, without distinction as to race, sex, language or religion, the enjoyment of human rights and of the fundamental freedoms, including freedom ... of religious worship ..."[57]

An identical provision is to be found in the Treaty for the re-establishment of an independent and democratic Austria of 15 May 1955.[58] The treaties with Hungary and Romania, as well as the Austrian Treaty, contain also certain non-discrimination clauses which prohibit, *inter alia*, discrimination on the ground of religion. The Peace Treaty with Japan of 8 September 1951 does

[56] Ibid
[57] Treaty of Peace with Bulgaria, article 2; Treaty of Peace with Finland, article 6; Treaty of Peace with Hungary, article 2, para. 1; Treaty of Peace with Italy, article 15; Treaty of Peace with Romania, article 3, para. 1.
[58] Article 8, Treaty for the re-establishment of an independent and democratic Austria of 15 May, 1955

not contain similar provisions. However, the preamble to the Treaty includes a clause under which "Japan for its part declares its intention... in all circumstances, to conform to the principles of the Charter of the United Nations; to strive to realize the objectives of the Universal Declaration of Human Rights..."[59]

Freedom of thought, conscience and religion has also been recognized in international instruments of a regional character, such as the American Declaration of the Rights and Duties of Man,[60] and the European Convention on Human Rights.[61] Similarly, the Organization of African Unity (OAU) now African Union (AU) has by 1981 adopted the African Charter on Human and People's Rights.

The European Convention is particularly interesting since its provisions — modeled on those of the Universal Declaration of Human Rights — are binding upon the countries which have ratified it, and since it provides for a system of implementation by the European Court of Human Rights whose

[59] Krishnaswami, A. Study on Discrimination in the Matter of Religious Rights and Practices, op cit., p. 15; Brian Tierney, Religious Rights: A Historical Perspective, op cit., p. 39

[60] adopted at the ninth International Conference of American States, held in Bogota in 1948

[61] adopted and signed at the sixth session of the Committee of Ministers of the Council of Europe in Rome on 4 November 1950

decisions is of supranational efficacy.[62] This means that treaty obligations entered into by member states of the Council of Europe carries binding force over and above that of the state's national law or constitution. In that, its supranational efficacy acts against assertion of national sovereignty.

2.3 EMERGENCE OF THE LEGAL FRAMEWORK ON CHIILD RIGHTS PROTECTION

It is pertinent to note that law, being a dynamic tool in development, has been employed at different times to protect children and their rights. As far back as 1919, an industrial minimum age was adopted by the *International Child Labor Convention* to regulate children participation in the workplace. And with the birth of the United Nations, the *Declaration of the Rights of the Child* was made in 1959. And on 20th November 1989, the *Convention on the Rights of the Child*[63] (CRC) was adopted. Built on varied legal systems and cultural traditions, the CRC is a universally agreed set of non-negotiable standards and obligations. It spells out the basic rights of the child everywhere; some of which range from the right to survival; development; protection from harmful influences, abuses and exploitation; to right to participate fully in family, culture and social life. Every right spelt out in the

[62] Ibid at p. 17

[63] Convention on the Rights of the Child (CRC), Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 and entered into force on 2 September 1990, arts 2, 14, 20, 29.

Convention is inherent in human dignity and harmonious to the development of the child. The Convention gave birth to regional treaties like the *African Charter on the Rights and Welfare of the Child*, and national laws like the Nigerian *Child's Rights Act 2003*.[64]

The rights of the child concerning freedom of religion or belief remain a complex issue, especially because they touch upon the position of the child but may also concern his or her parents or legal guardians as well as the religious communities involved. The right of the child to freedom of religion or belief is therefore enshrined in article 14, paragraph 1, of the *Convention on the Rights of the Child*. The parental rights are immediately reaffirmed in article 14, paragraph 2, which requires States parties to respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right to freedom of thought, conscience and religion in a manner consistent with the evolving capacities of the child.[65]

[64] *AKWARA, Azalahu Francis; SOYIBO, Adekunle G.; AGBA, Michael S. Law and Children's Rights Protection: the Nexus for a Sustainable Development in Nigeria,* CANADIAN SOCIAL SCIENCE (2010) Vol. 6, No. 2, 2010, pp. 26-33 at p. 27
[65] *Rapporteur's Digest on Freedom of Religion or Belief,* p. 81

With the enactment of the Nigerian *Child's Rights Act*[66], the welfare and responsibilities of children as well as those of government and institutions towards children became more defined. In addition, the Act makes provision for the enforcement of these rights by imposing strict penalties for abuses, creation of the Family Court, and bringing of Nigeria's child's rights law to global standard. These rights can be classified into survival rights, development rights, participation rights and protection rights. Under survival rights, children have the right life; survival and development; health and health services; dignity of the child; and freedom from discrimination. Under development rights, they have the right to leisure, recreation and cultural activities; to freedom of thought, conscience and religion; to free, compulsory and universal primary education; to parental care, protection and maintenance.[67]

With the coming of the *Child's Right Act* to regulate the affairs of children, the authors believe Nigeria has a positive future concerning child rights protection and it is thereby posited that the more we invest in the children, the more we are investing in our future. It must be noted that there can be no sustainability if there are no persons to manage tomorrow's resources. The

[66] No. 6, 2003

[67] *AKWARA, Azalahu Francis; SOYIBO, Adekunle G.; AGBA, Michael S. Law and Children's Rights Protection: the Nexus for a Sustainable Development in Nigeria,* CANADIAN SOCIAL SCIENCE (2010) Vol. 6, No. 2, 2010, pp. 26-33 at p. 27

quality of our nation's future is therefore directly proportional to the quality of our children, today.[68]

2.4 LEGAL FRAMEWORK ON FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION IN NIGERIA

Nigeria is a country with plurality in religious, cultural and legal traditions. Muslims, Christians, and adherents of various traditional religions are the three main religious groups in Nigeria.[69] Muslims and Christians are the most powerful religious groups in the country.[70]

In the Nigerian domestic legal order, first, the 1999 Constitution[71] has provided in Chapter IV for the right to *freedom of thought, conscience and religion*. It specifically provides:

> 38.-(1) Every person shall be entitled to freedom of thought, conscience and religion, including freedom to change his religion or belief, and freedom (either alone or in community with others, and in public or private) to manifest and propagate his religion or belief in worship, teaching, practice and observance.

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[68] *AKWARA, A. F.; SOYIBO, A. G.. and AGBA, M. S.* op cit., pp. 30-31

[69] Oba, A. A. Religious and Customary Laws in Nigeria, *Emory International Law Review* (2011) Vol. 25, at p. 881; CIA, *Country Profile: Nigeria*, WORLD FACTBOOK, https://www.cia.gov/library/publications/theworld-factbook/geos/ni.html (last updated Oct. 18, 2011).

[70] *See* Enyinna S. Nwauche, Law, Religion and Human Rights in Nigeria, *African Human Rights Law Journal*, (2008) Vol. 8, 568 at 577–79; *See also, Conflict in Nigeria Not Just About Religion!*, AFR. COUNCIL RELIGIOUS LEADERS: RELIGIONS FOR PEACE (Afr. Council Religious Leaders, Nairobi, Kenya), Apr. 2011, at 1.

[71] Constitution of the Federal Republic of Nigeria, 1999 (as amended in 2011) Cap. C 23, L.F.N. 2004

> (2) No person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance if such instruction, ceremony or observance
>
> (3) No religious community or denomination shall be prevented from providing religious instructions for pupils of that community or denomination in any place of education maintained wholly by that community or denomination.
>
> (4)Nothing in this section shall entitle any person to form, take part in the activity or be a member of a secret society.[72]

To appreciate section 38 of the 1999 Constitution, it must always be read together with section 10 of same Constitution on State religion. It provides that: "*the Government of the Federation or of a State shall not adopt any religion as State Religion".*[73] Now, to begin with, issues of religion or belief can be seen incorporated in a vague manner right from the preamble to the 1999 Constitution to which when a critical look at sections 10 on prohibition of State religion; section 38 on freedom of thought, conscience and religion and section 42 on prohibition of discrimination on religious ground as major provisions on the subject are made together with sections 15(2) on political objectives emphasizing national integration while seeking to prohibit discrimination on religious ground; 15(3)(b) that seeks to impose on the Government a duty to encourage inter-marriage among persons of different religions; social objectives that seeks to promote social order founded upon

[72] Section 38 Constitution of the Federal Republic of Nigeria, 1999
[73] Section 10 Constitution of the Federal Republic of Nigeria, 1999

freedom, equality and justice and for the Government to direct its policies towards ensuring that there are adequate facilities for religious life;[74] that national ethics shall among others include religious tolerance;[75] permissible derogation on Fundamental Rights-freedom of thought, conscience and religion inclusive;[76] the Constitution says that no association can function as a political party unless the membership of the association is open to every citizen of Nigeria irrespective of his place of origin, circumstances of his birth, sex, **religion** or ethnic grouping reveal that the positive and negative aspects of religious freedom are not reconciliatory in Nigeria.[77]

Part of the preamble to the 1999 Constitution provides that *"Nigeria is one indivisible and indissoluble Sovereign nation under God dedicated to the promotion of Inter-African solidarity, world peace, international co-operation and understanding*". The basic question here is that should Nigeria be a sovereign nation under God, which of the gods? a monotheist or polytheist god? atheist or agnostic god? Until this is resolved to the satisfaction of every citizen in Nigeria, conflicts of interests must continue to arise between secular forces, Islamic and Christian forces not to talk of that of traditional religions as each sect had its own interpretation of God to

[74] section 17(1)&(3)(b) Constitution of the Federal Republic of Nigeria, 1999
[75] section 23 Constitution of the Federal Republic of Nigeria, 1999
[76] section 45 Constitution of the Federal Republic of Nigeria, 1999
[77] section 222(b) Constitution of the Federal Republic of Nigeria, 1999

whom they declare their loyalty and under whose guidance they seek to live their lives.

Other statutes that chiefly relates to this right are the *Child Rights Act [CRA]*[78] which reinforces the rights of a child to the ***freedom of thought, conscience and religion*** and the liberty of parents and legal guardians thereto as well as that of the State in recognizing and respecting this right.[79] The Convention on the Rights of the Child enjoins that: "State Parties shall undertake to disseminate the Convention's principles and take all appropriate legislative, administrative and other measures for the implementation of the Rights recognized in the present Convention.[80] Against this background, the Child Rights Act (CRA) was passed in 2003. The structure of the Act was informed by the mandate to provide a legislation, which incorporates all the rights and responsibilities of children, and which consolidates all laws relating to children in a single legislation.[81] The CRA provides:

> **7.**(1) Every child has the right to freedom of thought, conscience and religion.

[78]No. 6 of 2003
[79] See section 7 of the *Child Rights Act,* No. 6 of 2003
[80] Article 4 CRC
[81] Adaora, I. N. and Nosike, O. *An Examination Of The Child Rights Protection And Corporal Punishment In Nigeria* p. 100. In: The Legislative and Institutional Framework of Environmental Protection in the Oil …

> (2) Parents and, where applicable, legal guardians shall provide guidance and direction in the exercise of these rights having regard to the evolving capacities and best interest of the child.
> (3) The duty of parents and, where applicable legal guardians to provide guidance and direction in the enjoyment of the right in Subsection (1) of this section by their child or ward shall be respected by all persons, bodies, institutions and authorities.
> (4) Whenever the fostering, custody, guardianship or adoption of a child is in issue, the right of the child to be brought up in and to practice his religions shall be a paramount consideration.

Moreover, as regard the right to freedom from discrimination which is a corollary to the child's right to *Freedom of Thought, Conscience and Religion,* the CRA provides: "A child shall not be subjected to any form of discrimination merely by reason of his belonging to a particular community or ethnic group or by reason of his place of origin, sex, religion or political opinion.[82]

Additionally, the CRA protects child's right to *Freedom of Thought, Conscience and Religion* in respect of custody and as well as in respect of the child's proper religious upbringing and the law mandates the courts to take into consideration the wishes of the child in this regard. Section 76 of the CRA provides:

[82] Section 10(1), Child Rights Act 2003

> The Court may, on an application by a parent for the production or custody of a child, if it is of the opinion —
> (a) that the parent ought not to have the custody of the child; and
> (b) that the child is being brought up in a different religion other than that in which the parent has brought the child up, make such order as it may deem fit to ensure that the child is brought up in the religion in which the parent requires the child to be brought up.[83]

Section 154(3) on professionalization and training of court personnel shall have regard to the protection of the religious interests of the children whose rights are being protected. Thus, the CRA provides emphatically that "in constituting a Court handling a matter concerning a child, consideration shall be given to the circumstances and the needs of the child, particularly the age, sex, religion or other special characteristics of the child".[84] Although it seeks to provide for the rights of the child, it could be wondered how parents and legal guardians especially in Nigeria could uphold the provisions of the Convention or Act in matters that has to do with children's latitude to change their religion in view of parental role in this matter.

Moreover, the *Universal Basic Education Act* makes provisions as to compulsory enrolment by parents of their wards into primary and junior secondary schools. The Act had failed to recognize the liberty of parents to

[83] Section 76 of the Child Rights Act 2003

[84] Section 154(3) of the Child Rights Act 2003

choose for their wards religious educational schools while imposing for parents the duty to send their wards and ensure their compulsory attendance at schools. Not only that the Act omits to recognize this liberty of parents but has also sought to confer strict liability on parents for that matter with a threat of legal sanction. Then, how conflicting or reconciliatory is the Act's position with that of the 1999 Constitution, ICCPR and ICESCR that recognized these liberty of parents?

The *Advisory Council on Religious Affairs Act*[85] which is charged with the responsibility of fostering religious harmony in Nigeria is also noteworthy on statues that has to do with religion or a right thereto.

2.5 DEFINITION OF KEY TERMS

The meanings of some major key terms and concepts that are used in this study have been explained hereunder.

2.5.1 The Concept of a "Child"

Certainly, everyone is a child of some person but not everyone can rightly be regarded as a child. Here, we need to know what constitute childhood from the cultural, social and legal points of view. Under the Nigerian socio-cultural context, the definition of a child varies widely due to lack of

[85] Cap. 9, L.F.N. 1990; Cap. A 8, L.F.N. 2004

uniformity in the cultural systems. In some ethnic groups, a boy remains a child until initiated into an age-grade society or until he is old enough to contribute physically and financially to community development.[86] But in some societies, childhood terminates at puberty.

Under the common law, the age of puberty in the case of a boy is fourteen (14) years, while that of a girl is twelve (12) years. However, it is not certain whether the common law ages for puberty apply in Nigeria. Under customary law, there is no fixed minimum age for puberty. According to Sagay, the age of puberty amongst the Yoruba is fourteen (14) for girls and seventeen (17) for boys.[87]

However, with regard to *Section 2 of the Children and Young Persons Law* of Lagos State, which provides for the welfare of the young and treatment of young offenders, a child is a person under the age of fourteen (14) years while a young person is one who has attained the age of fourteen years but is under the age of seven years.[88] The Nigerian *Labor Act* (1974) considers a child as a person below fifteen (15) years of age while the National Child Welfare Policy (1989) defines a child as anybody who is twelve years of age

[86] Ayua, I.A. and Okagbue, I.E. (1995) *The Rights of the Child in Nigeria*, Nigerian Institute of Advanced Legal Studies [NIALS], p. 52
[87] Sagay, I. E (1999) *Nigerian Family Law,* Malthouse Press Ltd., Lagos p. 179
[88] Section 2 of the Children and Young Persons Law, Laws of Lagos State, 1973

and below. This uncertainty trailing the definition of a child under the Nigerian law was finally laid to rest by *Section 274 of the Childs Rights Act* which defines a child as a person who has not attained the age of eighteen (18) years. It must be noted that this is in line with the *Convention on the Rights of the Child* (CRC) and the *African Charter on the Rights and Welfare of the Child* both to which Nigeria is a signatory. In any case, it must be borne in mind that children are the most vulnerable members of any community; they are fragile, frail, innocent, naïve, defenseless and often oblivious of danger. They are naturally incapable of enforcing their rights and usually oblivious of them.[89]

2.5.2 The Concept of "Right"

The term 'right' is often used to describe any advantage conferred on a person by a rule of law. As such, different jurists have put forward many theories in order to explain the term 'right'. Vinogradoff (1924) asserted that a right is a kind of claim.[90] Dias (1970) asserted that the behavior of one person is the substrate, which the right of another is founded. Rights are therefore interest or benefit recognized by law.[91] Gray (1916) conceives

[89] *AKWARA, Azalahu Francis; SOYIBO, Adekunle G.; AGBA, Michael S. Law and Children's Rights Protection: the Nexus for a Sustainable Development in Nigeria,* CANADIAN SOCIAL SCIENCE (2010) Vol. 6, No. 2, 2010, pp. 26-33 at p. 28

[90] Vinegradoff. (1924), The Foundation Theory of Law, *Yale Law Journal, Vol. 3,* p. 60 cited in *AKWARA, A. F.; SOYIBO, A. G.. and AGBA, M. S.* op cit., p. 28

[91] Dias, C. (1970). Jurisprudence. Oxford University Press, London

rights as essentially powers.[92] To Professor Hart (1983), rights are protected choices.[93] Thus, the concept of rights implies a relationship between two or more person. Man can only have a right after he has entered the society and by implication entered into relations with other men. It is therefore man's existence within society that accords him the status of a human being, which ultimately entitles him to some rights as a consequence of his humanity.

The Supreme Court of Nigeria in the case of *Odogu V. Attorney General of the Federation2* held that a fundamental right is a right guaranteed in the constitution which every person is entitled to enjoy by virtue of being a human being. Thus, if every person who is human is entitled to some rights, then children are also entitled to human rights by virtue of the fact that they are human beings. Children's rights, therefore, are rights that make for their survival, development, protection and meaningful participation in the society.[94]

[92] Gray. (1916), *The Nature and Sources of Law,* cited in *AKWARA, A. F.; SOYIBO, A. G.. and AGBA, M. S.* op cit., p. 28

[93] Hart, H. L. A. (1993), *Essay in Jurisprudence and Philosophy*, Oxford University Press, London

[94] *AKWARA, A. F.; SOYIBO, A. G.. and AGBA, M. S.* op cit., pp. 28-29

2.5.3 Meaning of the Term "Religion"

Defining the term "religion" is not an easy task in view of the prevalence of theistic, atheistic and none theistic beliefs in existence in the world today.[95] The legal constrain in defining "religion" is further buttressed by the fact that of recent, some new religious movements come to the law seeking legal recognition as religious communities or groups.[96] These challenges tend to defy a universally accepted definition to the term "religion". To some, any attempt to legally define "religion" would violate religious freedom and may imply exclusion of other forms of beliefs from that domain especially that of minorities as the term could not be compressed into a few words.[97] Thus, in

[95] Jeremy, J. Building Cohesion in Religious Diverse Society: Religious Vilification, Discrimination and Liberty, (1997) 19 (3) *Migration Action* 31, p. 31.

[96] Polamino, R. The Concept of Religion in the Law: European Approaches. A paper delivered at the Conference on State-Church Relations in Europe: Contemporary Issues and Trends at the Beginning of the 21st Century, Brastislava, 8-10 November 2007. Of recent, the UN Human Rights Committee (in its General Comment No 22 on Article 18 of ICCPR, para. 2) considers that the right to freedom of religion in Article 18 of ICCPR is not limited in application to traditional religions and no discrimination should be allowed on the fact that a particular religion is newly established.

[97] Weiss, Privilege, Posture and Protection: "Religion" in the Law, *Yale Law Journal* (1964) Vol. 73, 593 at 604 ("[A]ny definition of religion would seem to violate religious freedom in that it would dictate to religions, present and future, what they must be ..."); See also Judge Augustus Hand's declaration in United States v. Kauten, 33 F.2d, 703, 708 (2d Cir. 1943) that a definition of religion is unnecessary since the content of the term was found in the history of the human race and could not be compressed into a few words.

many respects, "religion" is a fluid concept evolving overtime and varying between different cultures and different political systems.[98]

Although many international, regional domestic human rights instruments guarantee rights related to freedom of religion or belief, none attempts to define the term "religion". It defies acceptable definition in both international and domestic legal instruments. It has been observed that the "effort to define religion is as old as the academic study of religion itself."[99] In fact, "dozens, if not hundreds of proposals have been made, each claiming to solve the definitional problem in a new and unique way".[100] Needless to say, no one definition of religion has garnered a consensus, and the definitional enterprise, as well as the debate over the very need for definitions, continues in full vigor[101].

[98] See the Australia's Human Rights and Equal Opportunity Commission's Commentary on Article 18 of UDHR/ICCPR tagged "Article 18 Freedom of Religion or Belief", Commonwealth of Australia 1998.

[99] Brian C. Wilson, *From the Lexical to the Polytheist: A Brief History of the Definition of Religion*, *in* What is Religion? 141–42 (Thomas A. Indinopulos & Brian C. Wilson eds., 1998) cited in Gunn, J. T. Op. Cit at p. 3

[100] Gunn, J. T. The Complexity of Religion and the Definition of "Religion" in International Law, *Harvard Human Rights Journal*, (2003) Vol. 16 No. 1 available online at http://www.law.harvard.edu/students/orgs/hrj/iss16/gunn.pdf (assessed on the 19/4/2012/ by 2:38 AM)

[101] Brian C. Wilson, *From the Lexical to the Polytheist: A Brief History of the Definition of Religion*, *in* What is Religion? 141–42 (Thomas A. Indinopulos & Brian C. Wilson eds., 1998) cited in Gunn, J. T. op. cit at p. 3

While academics have the luxury of debating whether the term "religion" is hopelessly ambiguous, judges and lawyers often do not. Asylum-case adjudicators, for example, may be called upon to decide whether there is a "well-founded fear of being persecuted for reasons of … religion" regardless of whether the 1951 Refugee Convention offers a definition.[102] Similarly, the UN through its Human Rights Council under the mandate of the *Special Rapporteur on Freedom of Religion or Belief* had attempted a definition of the term "religion".[103] It was thus considered that the Latin root of the term religion, *religare*, means "binding together" the human and the divine. On the basis of that root, religion is a system within whose setting a community of men and women is linked by a set of beliefs, practices, behaviour patterns and rituals, which establish a connection between the individual and holy life. It was not until much later that definition of religion refers to a belief in a supreme being as the central characteristic of religion.

However, from the perspective of some major ancient religions, 'religion' is a feature of every human society irrespective of its state of development, be it extremely primitive. There does not appear to be a complete or single definition of religion and discussion of its origins is still shrouded in

[102]1951 Refugee Convention, Art. 1-2.
[103] See UN Doc. No. E/CN.4/2002/73/Add.2, para. 6-12

vagueness.[104]All one can do is identify religions' common traits, at least the most important ones. It is often difficult to distinguish secular ritual from religious experience, both being so closely entwined. Even magic is sometimes linked with religion and it is difficult to distinguish the sacred from the profane.

As explained by the Human Rights Committee in its **General Comment 22**[105] on freedom of religion, which right is established by Article 18 of the International Covenant on Civil and Political Rights [ICCPR], the terms "belief" and "religion" have to be broadly construed. That provision of Article 18 of ICCPR protects theistic, non-theistic and atheistic convictions. It is not limited to traditional religions or beliefs but applies also to religions and beliefs that are newly established as well as to those of religious minorities.[106]

Legal rulings have stated that there are two criteria for determining the existence of a religion: belief in a supernatural being, thing or principle and

[104] Syed Hussein Alatas, Problems of Defining Religion, *International Social Science Journal*, vol. 29, No. 2, 1977, p. 214.
[105] General Comment No. 22 on the right to freedom of thought, conscience and religion (Art. 18), Human Rights Committee, 30 July 1993 (UN Doc. No. HRI/GEN/1/Rev.3). Available online at http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/9a30112c27d1167cc12563ed004d8f15?Opendocument (last visited on the 6/03/2013 by 2:36 PM)
[106] Ibid, at p. 36, para. 2

acceptance of rules of conduct which give effect to such belief.[107] Any organization whose beliefs or practices is a revival of, or resembles, earlier cults could thus claim to believe in a supernatural being or beings, or in an abstract entity or god, and would be regarded as religious. Hence orthodoxy, number of followers, worshippers or longevity does not constitute criteria for establishing the existence of a religion. The credibility and sincerity of an individual's beliefs and the fact of their not being illegal or contrary to clearly defined public policy have, however, been accepted as prerequisites for the protection of asserted religious beliefs.[108]

Religion was given interpretative content by sociological and philosophical writers as well as by judges in the light of the proceedings and actions of many administrative bodies and judicial tribunals across the various sub-regions of the world. Of particular importance is that, an acceptable definition must be neutral towards the varieties of religious experience and this goal is best attained by attempting to describe religious experience. The

[107]See Australian High Court ruling cited in the report of the Special Rapporteur on religious intolerance (UN Doc. No. E/CN.4/1998/6/Add.1, para. 12).
[108]See United States Supreme Court ruling referred to in the report of the Special Rapporteur on religious intolerance (E/CN.4/1999/58/Add.1, para. 8).

requirements suggested by Edgar Brightman for the philosophical study of religion are equally applicable to the quest for legal definition of religion:[109]

> The definition of religion with which philosophy may start should, therefore, be one which notes not merely the characteristics of the definer's own religion, but rather those which are common to all persons and groups who experience what they regard as religion. This description should be purely descriptive; that is, it should be quite neutral to the normative question whether religion as it has been bears any resemblance to religion as it ought to be. A proper descriptive definition, then, is neutral to all inquiries on whether religion is true or false, helpful or harmful, illusory or veridical. It will contain solely a concept of what religion has actually been, and like any good definition, will distinguish the *definiendum* from all other terms with which it might be confused.[110]

Thus, a definition of "religion" may not simply be neutral, but may contain an appropriate societal value judgment regarding particular beliefs or actions with "good" beliefs being characterized as "religions" and "bad" beliefs being characterized as "cults" or "heresies."[111]

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[109] Hall, T. L. The Sacred and the Profane: a First Amendment Definition of Religion, *Texas Law Review* (1982) Vol. 61, No. 1, p. 161

[110]Brightman, E. A Philosophy of Religion (1940) 14-15 quoted in Hollingsworth, Constitutional Religious Protection: Antiquated Oddity or Vital Reality? *Ohio State Law Journal* (1972) Vol. 15, at p. 32.

[111]Gunn, J. T. Op. Cit., at p. 9

CHAPTER THREE

NATURE AND SCOPE OF FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION

3.6INTRODUCTION

This chapter provides a discussion on the meaning, nature and scope of *Freedom of Thought, Conscience and Religion* generally as it is conceived under the international and Nigerian domestic laws. This is to lay a foundation for the proper appraisal of the context in which it applies to children in the subsequent chapter.

3.7 NATURE OF FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION

The basic idea of *Freedom of Thought, Conscience and Religion* is that no one, especially the government, is allowed to force religion on anyone else or prohibit anyone from practicing a religion. To force others to support a church or profess belief in a church's tenets is as much a violation of their civil rights as is preventing them from practicing their religion.[112] Freedom of religion is freedom of the individual conscience against the State. It means that State institutions, be it legislative or executive should not

[112]*Chris Allen*, Freedom of Religion, (1992) an online article by Utah Humanists available at www.humanitsofutah.org

[9] Gunn, T. J. "The Complexity of Religion and the Definition of 'Religion' in International Law", *Harvard Human Rights Journal*, vol. 16 (2003), 189-215.

establish a religion nor enforce the legal observance of it by law or compel men to worship God in any manner contrary to their conscience.[113]

Freedom of Thought, Conscience and Religion is a fundamental freedom that has attained the status of *jus cogens* (pre-emptory norms) in international law and it is subject to neither suspension nor derogation by States in all times and situations, be it during peace or war.[114] This mean that States may not persistently object to *jus cojens* norms which prevail over all competing principles of treaty and customary international law.[115] Interestingly, the *African Charter on Human and Peoples' Rights* contains no derogation clause, but limitations are possible on the basis of Article 27(2), which states that "the rights and freedoms of each individual shall be exercised with due regard to the rights of others, collective security, morality and common interest".

Freedom of religion is both an individual as well as a group right. It is an individual right in the sense that it belong to the category of civil and

[113] Corwin, E. S. The Supreme Court as National School Board, *Law and Contemporary Problems* (1949) Vol. 14, No. 1, p. 11

[114] See ICCPR, art. 4(2); The Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights [herein referred to as "the Siracusa Principles"], UN Doc. E/CN.4/1984/4 (1984), para. 58; Danchi, P. G. U.S. Unilateralism and the International Protection of Religious Freedom: The Multilateral Alternative, Columbia journal of Transnational Law (2002-2003) Vol. 41, pp. 75-78.

[115] See Article 12 of the 1969 Vienna Convention on the Law of Treaties [VCLT]

political rights which are termed first generation rights in international human rights law. It is a group right because its observance is always portrayed in congregation or community with others, more particularly when proclaimed by minorities.[116] In fact, the ICCPR expressly states: *"Everyone has the right to freedom of thought, conscience and religion; ... and* ***freedom, either alone or in community with others and in public or private****, to manifest his religion or belief in teaching, practice, worship and observance".*[117] It is in this sense that freedom of religion intersects with other fundamental freedoms as, while giving effect to one's religious rights, complementarities of freedoms of expression, association and assembly must always be activated by the individual or group in order to adequately enjoy religious freedom.

In its protection, *Freedom of Thought, Conscience and Religion* encompasses both positive and negative State obligations. In that, in some instances, some of the rights inherent in religious freedom demands abstention or inaction by States and non-State actors from encroaching upon the absolute freedom of the individual to hold any form of religion or belief

[116] See the UN Declaration on The Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992); See also Article 18 of both the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

[117] Article 18, ICCPR

(*forum internum*). Likewise, it also demands positive actions from States and non-State actors in ensuring the realization by the individual or groups of their right to maintain practice and observance of the tenets of their religious beliefs. To this end, the need arises for such positive obligations from States and non-State actors to exhibit tolerance, non-discrimination, accommodative and pluralistic platforms towards the proclaimants of this right.

Today, in most countries of the world, the right to *freedom of thought, conscience and religion* is recognized, either by national constitutions or by law. It must therefore be acknowledged to be a fundamental right. It is thus a matter of constitutional law within domestic legal order that can always be activated as of constitutional right.

3.8 SCOPE OF FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION

Freedom of Thought, Conscience and Religion encompasses several rights that are subject to international treaty, custom and case laws. The struggle for religious freedom has been on-going for centuries, and has led to innumerable, tragic conflicts. The twentieth century has seen the codification of common values related to freedom of religion and belief, though the struggle has not abated. The United Nations recognized the importance of

freedom of religion or belief in the 1948 Universal Declaration of Human Rights (Universal Declaration), in which Article 18 states that *"everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have a religion or whatever belief of his [her] choice."* Since the Universal Declaration, the attempt to develop an enforceable human rights instrument related to freedom of religion and belief has been unsuccessful[118]. Customarily and at present, the following are some of the prominent body of rights that are at stake within religious freedom discourse in international law as well as under Nigerian domestic legal order, that is to say:

i. Right to personal freedom to hold any form of thought, conscience, religion or belief;
ii. Right to have a religion or whatever belief of one's choice including the right of choosing and changing one's religious commitment;
iii. Right either individually or in community with others, in private or public, to manifest a religion or belief through worship, observance, practice and teaching;

[118]STUDY GUIDE: Freedom of Religion or Belief (2003) University of Minnesota Human Rights Center available online at http://www1.umn.edu/humanrts/hrcentre.htm (accessed on the 15/3/2012 by 10:45 AM)

iv. Right not to suffer coercion that impairs the freedom to choose a religion or belief;

v. Right of States to limit the manifestation of a religion or belief if based in law, and only as necessary to protect public safety, order, health, morals and the fundamental rights and freedoms of others including State laws regulating religious registration, assembly and association;

vi. Right of parents or legal guardians to bring-up their children in their religion or belief;

vii. Right to worship and assemble for this purpose, and to establish and maintain places of worship;

viii. Right to establish and maintain appropriate charitable or humanitarian institutions including the right to solicit and receive voluntary financial and other contributions for these purposes;

ix. Right to make, acquire, use and disseminate publications and materials related to religion including religious rites and customs;

x. Right to teach a religion or belief in places suitable for these purposes;

xi. Right to train, appoint, elect or designate religious leaders;

xii. Right to observe days of rest (Sabbath) and celebrate holidays and ceremonies;

xiii. Right to establish and maintain communication with individuals and communities at national and international levels.[119]

Interestingly, the Nigerian Constitution as well as the CRA replicates these set of rights that are echoed in international instruments as forming the scope of *Freedom of Thought, Conscience and Religion.* Under the 1999 Constitution, it specifically provides for the following set of rights:

i. Right to hold any form of thought, conscience, religion or belief;
ii. freedom to change religion or belief;
iii. freedom (either alone or in community with others, and in public or private) to manifest and propagate his religion or belief in worship, teaching, practice and observance;
iv. right not to be compelled to receive religious instruction or to take part in or attend any religious ceremony or observance other than that endorsed by one's parent;
v. freedom accorded to religious community or denomination to provide religious instructions for pupils of that community or denomination in a place of education maintained wholly by that community or denomination;
vi. prohibition of taking part in the activities or membership of a secret society.[120]

[119] See Article 1 of the 1981 UN General Assembly Declaration on the Elimination of all Forms of Intolerance and of Discrimination Bases on Religion or Belief
[120] Section 38 Constitution of the Federal Republic of Nigeria, 1999

3.9ELEMENTS OF THE RIGHT TO FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION

Over the years, the widely held view regarding freedom of religion is that it encompasses two broad aspects, the first being the right to have maintain or adopt any form of religion or belief, which is in the nature of things absolute. The second is the right to manifest one's religion or belief, which may be subject to certain limitations by the State. The first aspect of the right to freedom of religion being *forum internum* (right to hold or conceive any form of belief) poses no legal problems than the second aspect which for practical purposes, require the complementarity of certain other rights for its full enjoyment.

It is in respect of these second aspect that certain other elements of the right to freedom of religion and the right to manifest one's religion or belief as to its practice, observance, teaching and worship comes to play. Thus, the basic elements of the right to freedom of religion includes the right to practice, observance, teaching and worship which eventually requires freedom of expression, freedom of association and assembly, right to land, freedom from torture and other cruel, inhuman or degrading treatment or punishment.

3.9.1 RIGHT TO HAVE, ADOPT OR CHANGE ONE'S RELIGION

The questions related to change of religion are at the very heart of the dictates of freedom of religion or belief. Violations and limitations of this aspect of the right to freedom of religion are unacceptable by the international standards even though it still occurs too often than one may imagine. The UDHR together with ICCPR in Article 18 has provided specifically that everyone has the right to freedom of thought, conscience and religion; and that this right includes freedom to have or to adopt a religion or belief of one's choice including the right to change one's religion or belief.[121] Moreover, the ICCPR in Article 18(2) provides: "No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice." Similarly, the 1981 Declaration[122] of the General Assembly provides that "Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have a religion or whatever belief of his choice ..."[123] The 1981 Declaration

[121] Article 18(1), UDHR & ICCPR
[122] The 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.
[123] Ibid, Article 1(1)

further provides that "No one shall be subject to coercion which would impair his freedom to have a religion or belief of his choice."[124]

In its efforts to give effects to the provisions of the UDHR and that of the ICCPR, the UN Human Rights Commission in its General Comment 22 emphasizes further on this rights more so in explicit terms. It provides thus:

> Article 18 does not permit any limitations whatsoever on the freedom of thought and conscience or the freedom to have or adopt a religion or belief of one's choice … The Committee observes that the freedom to 'have or to adopt' a religion or belief necessarily entails the freedom to choose a religion or belief, including the right to replace one's current religion or belief with another or to adopt atheistic views, as well as the right to retain one's religion or belief.[125]

It is now established that religious freedom cannot be dissociated from the freedom to change religion. It is considered that the 1948 and 1981 Declarations and the International Covenant on Civil and Political Rights, although they varied slightly in wording, all meant precisely the same thing: that everyone had the right to leave one's religion or belief and to adopt another, or to remain without any at all. This meaning is implicit in the concept of the right to freedom of religion regardless of how the concept was presented.

[124] Ibid, Article 1(2)
[125] Human Rights Committee general comment 22, Para. 3 & 5

Similarly, Article 18(2) of ICCPR bars coercion that would impair the right to have or adopt a religion or belief, including the use of threat of physical force or penal sanctions to compel believers or non-believers to adhere to their religious beliefs and congregations, to recant their religion or belief or to convert. Policies or practices having the same intention or effect, such as, for example, those restricting access to education, medical care, employment or the rights guaranteed by article 25 and other provisions of the ICCPR, are similarly inconsistent with article 18(2).[126]

The UN Special Rapporteur on freedom of religion or belief have addressed the issue of conversion in a number of communications, in which there has been an alleged infringement on the freedom to change, maintain or adopt a religion or a belief. There were a number of cases of persons being arrested because of their beliefs, and where there had been an attempt to force them to renounce or abandon their faith. This has been the case in communications sent to the Governments of China, Saudi Arabia, the Lao People's Democratic Republic, Egypt, and Turkmenistan.[127] This types of infringements are unacceptable forms of violations of the right to freedom of religion or belief because, in essence, they limit or tend to limit the freedom of thought or conscience itself (or what is called the "*forum internum*"),

[126] Ibid., para. 5
[127] See UN Doc No. E/CN.4/2005/61, paras. 45-47

which, according to the main international instruments, forms the part of the right to freedom of religion or belief that is not susceptible to any limitation.

3.9.2 THE RIGHT TO MANIFEST ONE'S RELIGION OR BELIEF

This aspect of freedom of religion encompasses several rights that collectively put together ensures to the individuals and groups, their rights to manifest their religion or belief in practice, observance, teaching and worship. The international bill of rights emphatically provided that everyone shall have the right either individually or in community with others and in public or private, to manifest one's religion or belief in worship, observance, practice and teaching.[128] To this end, freedom to manifest one's religion or beliefs 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.[129]

Pertinently, the freedom to manifest religion or belief in worship, observance, practice and teaching encompasses a broad range of acts. The concept of worship extends to ritual and ceremonial acts giving direct expression to belief, as well as various practices integral to such acts, including the building of places of worship, the use of ritual formulae and

[128]See Article 18 (1) of the ICCPR; Article 18, UDHR
[129] See Article 18 (3) of the ICCPR

objects, the display of symbols, and the observance of holidays and days of rest.

The observance and practice of religion or belief may include not only ceremonial acts but also such customs as the observance of dietary regulations, the wearing of distinctive clothing or head coverings, participation in rituals associated with certain stages of life, and the use of a particular language, customarily spoken by a group. In addition, the practice and teaching of religion or belief includes acts integral to the conduct by religious groups of their basic affairs, such as freedom to choose their religious leaders, priests and teachers, the freedom to establish seminaries or religious schools and the freedom to prepare and distribute religious texts or publications.[130]

3.9.3 **STATE RELIGION**

The term "state religion" refers to a situation whereby the government of a particular country officially adopts or subscribes to a particular religion or belief as the only recognized or favoured religion or belief. This is usually done by way of constitutional arrangement. In States with a range of religious and ethnic identities, the constitutional profession of an official religion as the "state religion" may be politically or historically justified, but

[130]Human Rights Committee General Comment 22, Para. 4

by its very nature, it carries the seed of aggravated discrimination. However, if in its Constitution, the State professes its adherence to a particular faith, some will see the mere profession of that faith - whatever the good intentions of the State - as a form of discrimination against the ethnic or religious minority or minorities.[131] Therefore, when the State itself announces its religion in its Constitution, the law ceases to reflect the ethnic and religious variety of the society, and the way is opened to arbitrary action and intolerance."[132]

Without addressing the question of whether a "state religion" is a system that is compatible with human rights, the Special Rapporteur has noted that in a few States, legislation has been adopted that recognizes certain religions and not others or that institutes a different status among certain categories of religions. While the Special Rapporteur has not been provided with sufficient information suggesting that in any of these cases the legislation actually causes violations of the right to freedom of religion or belief, she is of the opinion that the legalization of a distinction between different categories of religion is liable to pave the way for future violations of the

[131] See the Report of the UN Special Rapporteur on Freedom of Religion or Belief, UN Doc. A/CONF.189/PC.1/7, paras. 119-120

[132] See the Report of the UN Special Rapporteur on Freedom of Religion or Belief, UN Doc. A/CONF.189/PC.1/7, paras. 119-120 at 120

right to freedom of religion or for discrimination on the basis of religion or belief. On this question, the Special Rapporteur stated that "the principle of freedom of religion or belief, as enshrined in international human rights law, is difficult to reconcile with a formal or legal distinction between different kinds of religious or faith-based communities insofar as such a distinction in their status must imply a difference in rights or treatment, which may, in some cases, constitute discrimination that is incompatible with the exercise of human rights"[133]

Moreover, aggravated discrimination tends to intensify or become more likely to occur when the State itself officially adopts the religion of the majority or of the ethnically dominant minority, or subscribes to a particular ideology. The State religion or the religion of the State is not, of course, a characteristic of the religion, but of the State. In the area of legislation, moreover, some States adopt clearly discriminatory provisions, in order to impose the constitutionally established religion or ideology, and therefore a particular vision of society and of the universe, on members of ethnic or religious minorities.

[133]Report on the country visit of the Special Rapporteur on freedom of religion or belief to Romania (UN Doc. E/CN.4/2004/63/Add.2), para. 94; See the *Rapporteur's Digest on Freedom of Religion or Belief,* **p. 60**

This is no doubt one of the most unacceptable violations of an individual's right to have and practice his religion and that of his ancestors. It is true, as the Special Rapporteur has noted, that "States which are or claim to be based on religion may be either exclusive - for the benefit of the predominant religion alone - or open and respectful vis-à-vis other religions".[134]

Human Rights Committee in its general comment 22 Para. 9 states:

> The fact that a religion is recognized as a State religion or that it is established as official or traditional or that its followers comprise the majority of the population, shall not result in any impairment of the enjoyment of any of the rights under the Covenant, including articles 18 and 27, nor in any discrimination against adherents to other religions or non-believers. In particular, certain measures discriminating against the latter, such as measures restricting eligibility for government service to members of the predominant religion or giving economic privileges to them or imposing special restrictions on the practice of other faiths, are not in accordance with the prohibition of discrimination based on religion or belief and the guarantee of equal protection under article 26.[135]

If a set of beliefs is treated as official ideology in constitutions, statutes, proclamations of ruling parties, etc., or in actual practice, this shall not result in any impairment of the freedoms under article 18 or any other rights

[134] See the Report of the UN Special Rapporteur on Freedom of Religion or Belief, UN Doc. (E/CN.4/1998/6, para. 42); See the Report of the UN Special Rapporteur on Freedom of Religion or Belief, UN Doc. A/CONF.189/PC.1/7, paras. 119

[135] **Human Rights Committee general comment 22** Para. 10; Also see the *Rapporteur's Digest on Freedom of Religion or Belief,* **p. 59**

recognized under the Covenant nor in any discrimination against persons who do not accept the official ideology or who oppose it.[136]

An official or State religion in itself is not opposed to human rights. The State should not, however, take control of religion by defining its content, concepts or limitations, apart from those which are strictly necessary, as provided in. the 1981 Declaration as well as in the ICCPR.[137] On 20 July 1993, the Committee on Human Rights adopted General Comment No. 22 concerning article 18 of the Covenant, in which it expressed the opinion that the right to freedom of thought, conscience and religion was far-reaching. The Committee also pointed out that limitations on the freedom to manifest a religion or belief are authorized only if prescribed and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others, and are applied in such a manner that would vitiate the right to freedom of thought, conscience and religion."[138]

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[136] Human Rights Committee general comment 22 Para. 10; Also see the *Rapporteur's Digest on Freedom of Religion or Belief,* **p. 59**

[137] Article 1(3) of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief; Article 18, of the International Covenant on Civil and Political Rights

[138] See the Report of the UN Special Rapporteur on Freedom of Religion or Belief, Country visit to Pakistan, UN Doc. E/CN.4/1996/95/Add.1, para. 81; Human Rights Committee general comment 22 Para. 9; Also see the *Rapporteur's Digest on Freedom of Religion or Belief,* p. 59

In his country visit to the Islamic Republic of Iran, the Special Rapporteur has indicated that a State religion is not, in itself, in contradiction with human rights. However, this state of affairs which is consecrated by the Iranian Constitution - should not be exploited at the expense of the rights of minorities and the rights associated with citizenship, which imply that citizens should not be discriminated against on grounds such as, inter alia, religion or belief. From this standpoint, the concept of Islamic criteria as set forth in the Constitution of Iran should be precisely defined in regulations or legal texts without, however, giving rise to discrimination among citizens."[139]

The Special Rapporteur observes that the existence of a State religion is not in itself incompatible with human rights. However, this situation, which in the case of Greece is sanctioned by the Constitution, must not be exploited at the expense of the rights of minorities and the rights linked to citizenship, which imply prohibition of discrimination among citizens on the grounds, inter alia, of considerations relating to religion or belief."[140]

[139] See the Report of the UN Special Rapporteur on Freedom of Religion or Belief, Country visit to the Islamic Republic of Iran, UN Doc. E/CN.4/1996/95/Add.2, para. 88
[140] See the Report of the UN Special Rapporteur on Freedom of Religion or Belief, Country visit to Greece, UN Doc. A/51/542/Add.1, para. 132

3.10 DEROGATION AND LIMITATION ON FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION

The law recognizes certain limitations as regard *Freedom of Thought, Conscience and Religion* for reasons of public policy, public health, public order, and for the protection of the rights and interests of others. Thus, in a declared and legitimate state of emergency, States can take measures which aims at restricting, suspending or derogating from the enjoyment of certain human rights by its citizens that are internationally guaranteed by the international bills of rights. Such derogations are permitted only to the extent necessary for the situation and may never involve discrimination based on race, colour, sex, language, religion or social origin. Any such derogation must be reported to the Secretary-General of the United Nations.[141]

Interestingly, the *Child Rights Convention* contains no derogation clause,[142] and the *African Charter on Human and Peoples' Rights* also contains no derogation clause, but limitations are possible on the basis that "the rights and freedoms of each individual shall be exercised with due regard to the rights of others, collective security, morality and common interest".[143]

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[141] See the Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights, UN Doc E/CN.4/1984/4 (1984).

[142] Article 14, Child Rights Convention 1989

[143] Article 27(2), *African Charter on Human and Peoples' Rights*

However, in accordance with Article 4(3) of the ICCPR, certain category of human rights religious (freedom inclusive) are non-derogable rights. They may never be suspended or restricted even in situations of war or armed conflict. In addition, even in times of armed conflict where International Humanitarian Law [IHL] applies, human rights law continues to apply affording protection to individuals and groups regarding these sets of rights that are considered non-derogable. Specifically, the ICCPR in Article 4(1) & (2) provides:

> In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin. No derogation from articles [...] 18 may be made under this provision.

Interestingly, the African regional approach to the concept of "Derogation" is particularly unique in permitting no derogation. The African Charter on Human and Peoples' Rights contains no derogation clause, but limitations are possible on the basis of Article 27(2), which states that "the rights and freedoms of each individual shall be exercised with due regard to the rights of others, collective security, morality and common interest". The African

Commission on Human and Peoples' Rights, in a case concerning killings and disappearances during a civil war, confirmed that no derogation was possible under the African Charter on Human and Peoples' Rights, and that the government remained responsible for securing the safety and liberty of its citizens and for conducting investigations into murders.[144]

In another case, the Commission confirmed that no derogations were possible and referred to Article 27(2) of the African Charter on Human and Peoples' Rights, which states that the rights "shall be exercised with due regard to the rights of others, collective security, morality and common interest". The Commission added that this provision must be interpreted as meaning that "limitations must be strictly proportionate with and absolutely necessary for the advantages which follow. Most important, a limitation may not erode a right such that the right itself becomes illusory."[145]

On the other hand, regarding limitations of *Freedom of Thought, Conscience and Religion*, the UDHR states that "in the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are

[144] African Commission on Human and Peoples' Rights, *Civil Liberties Organisation v. Chad*, Communication No. 74/92, 18th Ordinary Session, Praia, 11 October 1995, *9th Annual Activity Report*, §§ 21–22.
[145] African Commission on Human and Peoples' Rights, *Constitutional Rights Project v. Nigeria*, Communication Nos. 140/94, 141/94 and 145/95, 26th Ordinary Session, Kigali, 1–15 November 1999, *13th Annual Activity Report 1999–2000*, Doc. AHG/222 (XXXVI), Annex V, §§ 41–42.

determined by law solely for the purpose of securing the recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society".[146] The Article further states that "everyone has duties to the community" and that the rights and freedoms proclaimed in the Declaration "may in no case be exercised contrary to the purposes and principles of the United Nations".[147]

Therefore, a limitation in order to be legitimate must satisfy two essential criteria: it must be "determined by law", and it must be enforced solely for one or several of the purposes mentioned in the article. The expression "determined by law" may be thought to be self-explanatory. Its meaning is that the limitations envisaged in the article should be stated in general and objective terms in accordance with the characteristics of the law, as distinct in a sense from individual and concrete legal decisions resulting from decrees of courts or administrative acts. Regulations to control manifestations of religion or belief are normally issued by the executive and executed by subordinate administrative authorities; but these authorities

[146] Article 29(2) of the UDHR
[147] Article 29(2) of the UDHR

have to take care that their acts are within the scope of the authority given them by law.

The statement that limitations, in order to be legitimate, must be enforced solely for one or several of the purposes mentioned in article 29 means that not only the acts of the executive and of the subordinate authorities, but the law itself, should not be unduly restrictive of the right to freedom of thought, conscience and religion. The first purpose enumerated in the article, for which a limitation is permitted, is to secure "due recognition and respect for the rights and freedoms of others". This means that, since it has already been recognized that freedom to maintain or to change one's religion or belief should not be impaired, precedence should be given to this freedom whenever it comes into conflict with any practice of a religion or belief which would lead to its disregard.

Furthermore, in a multi-religious society, certain limitations on religious practices, or on customs which owe their origin to religious doctrines, may be necessary in order to reconcile the interests of different groups, notably minorities and the majority. Such limitations should not be of such a nature as to sacrifice minorities on the altar of the majority, but to ensure a greater measure of freedom for society as a whole.

Legitimate limitations upon the right to freedom of thought, conscience and religion can also be imposed, according to article 29 of the UDHR, "for the purpose ... of meeting the just requirements of morality, public order and the general welfare in a democratic society". The use of these terms indicates a consensus of opinion that the exercise of the right could be limited only in the interests of the common good of society; great pains were taken in the preparation of the Declaration to avoid the possibility of arbitrary judgement being exercised.

While the legitimate limitations set forth in article 29 apply equally to all rights and freedoms proclaimed in the Declaration, it must be stressed again that the right to freedom of thought, conscience and religion has a distinctive character because the demands of various religions and beliefs on their followers are so far from identical. As the Supreme Court of India once stated:[148]

> A religion may not only lay down a code of ethical rules for its followers to accept; it might prescribe rituals and observances, ceremonies and modes of worship which are regarded as integral parts of religion, and these forms and observances might extend even to matters of food and dress.

[148] *The Commissioner, H.R.E. Madras* v. *Sir L. T. Swamiar* (1955), S.C.R. 1005, at 1023-4.

In another decision, the same court stated:[149]

> What constitutes the essential part of a religion is primarily to be ascertained with reference to the doctrines of that religion itself. If the tenets of any religious sect of the Hindus prescribe that offeringsof food should be given to the idol at particular hours of the day, that periodical ceremonies should be performed in a certain way at certain periods of the year or that there should be daily recital of sacred texts or oblations to the sacred fire, all these would be regarded as parts of religion and the mere fact that they involve expenditure of money or employment of priests and servants or the use of marketable commodities would not make them secular activities partaking of a commercial or economic character... The freedom [for such religious practices] is guaranteed by the Constitution except when they run counter to public order, health and morality.

Viewed from this angle, it may be seen that certain limitations imposed upon particular manifestations of religion or belief, although apparently conceived in general terms, may in fact tend to affect only a particular group, or to affect it more than others. This consideration cannot be ignored when deciding whether or not a particular limitation is legitimate. Only when public authorities refrain from making any adverse distinctions against, or giving undue preferences to, individuals or groups, will they comply with their duty as concerns non-discrimination.

Finally, in any discussion of the permissible limitations on the right to freedom of thought, conscience and religion, account must be taken of the

[149] *Commr. H.R.E.* v. *Lakshmindra* (1954), S.C.A. 415 (432).

fact that even though each of several limitations taken by itself may be considered to be permissible, the whole complex of limitations when taken together may be such as to render the exercise of the right nugatory. That is why article 29, after setting forth the grounds on which limitations are permissible, uses the term "in a democratic society" — a term which should of course be construed as referring to a society in which human rights and fundamental freedoms are ensured. The same idea is brought out more comprehensively, and in even sharper focus, in article 30, which states that nothing in the Declaration "may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein". Clearly this article interdicts not only public authorities but also "any group or person" from engaging in activities aimed at the destruction of a human right or fundamental freedom.

CHAPTER FOUR

RIGHT OF THE CHILD TO FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION UNDER NIGERIAN LAWS

4.1 Introduction

This chapter provides an appraisal on the rights of the child to freedom of thought, conscience and religion under Nigerian laws. The chapter examines the various context and peculiarities of freedom of thought, conscience and religion as it applies to children with particular reference to the extent of its implementation in Nigeria.

However, given the vulnerability and peculiarities of children when it comes to the protection of their right in respect of this freedom presents another scenario of complex legal problems as to the requirement of special and specific context under which this freedom can be said to apply to the child as per its best interest and evolving capacity of mind on the one hand and the challenges of indigenous and orthodox cultural and religious practices that may reflect adverse aspiration to those of the established international norm on this freedom. Thus, the application of this freedom in relation to children requires additional caution and a special consideration of the diverse structure of the international community. The protection of child's rights as against that of adults may require certain specific contexts of which, as regard the right to freedom of thought, conscience and religion,

the context under which the rights of the child to these freedoms is protected along certain hotly contested legal issues.

These encompasses issues of change of religion (conversion), discrimination on grounds of religion, teaching religious instructions/curriculum in public schools, wearing religious symbols in public schools (e.g., the Cross, Turban, Head tie, Hijab), giving effect to the interest of the child as regard the protection of his/her right to freedom of thought, conscience and religion during adoption and custody dispute amidst parental conflict of interest therein, liberty of parents and guardians to monitor and influence the religious upbringing of their child, etc.

4.2 Change Of Religion (Conversion)

Change of religion or conversion from one faith to another is among the cornerstone elements that compose the right to freedom of thought, conscience and religion; in fact, it forms the root or *substratum* of this right. From the constitutional point of view, section 38(1) provides: *"Every person shall be entitled to freedom of thought, conscience and religion, including freedom to change his religion or belief ..."*[150] Thus, the law in Nigeria constitutionally guarantees this freedom in respect of every person inclusive of children.

[150] Section 38(1), Constitution of the Federal Republic of Nigeria, 1999 (as amended in 2011) Cap. C 23, L.F.N. 2004

Additionally, the CRA guaranteed to children the right to freedom of thought, conscience and religion without having specifically mentioning the right to change their religion or belief as was case under the constitution. The CRA only states that: "*Every child has the right to freedom of thought, conscience and religion".*[151] Thus, in view of the vulnerability of children and their evolving capacity, the CRA which is the most child specific legislation in Nigeria does not expressly mention change of religion or conversion to encompass the right to freedom of thought, conscience and religion.

It may therefore be understood that this stance of the law is meant to accord due regard to the rights of parents and legal guardians to provide directions to the child as to the manner in which it exercises its right to freedom of thought, conscience and religion. Thus, it may therefore be that change of religion or conversion in respect of children fall within the exclusive domain of parents and legal guardians. Consequently, the CRA states: "*Parents and, where applicable, legal guardians shall provide guidance and direction in the exercise of these rights having regard to the evolving capacities and best interest of the child*".[152]

[151] Section **7**(1), *Child Rights Act*, No. 6 of 2003
[152] Section **7**(2), *Child Rights Act*, No. 6 of 2003

Likewise, attention must be given to the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right to freedom of thought, conscience and religion in a manner consistent with the evolving capacities of the child.[153] The concept of evolving capacities is crucial since it acknowledges that the child at some point comes of age and should be able to make personal choices in matters of religion or belief. Due weight should be given to the views of the child in accordance with his or her age and maturity, which need to be assessed on a case-by-case basis.[154]

In our view, these provisions of the law have undoubtedly deprived children freedom of choice in matters of religion or belief and that the law accorded preference to parental choice on the matter. Furthermore, to the writers view, if the right to change religion or belief is not expressly accorded to the child, it is tantamount to having not accorded any freedom of thought, conscience and religion to the child; instead, the law should have simply acknowledge that every child should maintain the religion or belief of its parent or guardian. In which case, during childhood, every child adopts the religion of

[153] Art. 14(2), Convention on the Rights of the Child
[154] See Committee on the Rights of the Child, general comment No. 12 (2009) on the right of the child to be heard, para. 29.

its parent or guardian and becomes automatically raised in their parent's religion or faith.

Conversely, the position under the CRC whose principles forms the basis of the Nigerian CRA is that a child should be accorded sufficient autonomy to decide for itself when it comes to the issue of freedom of thought, conscience and religion. Thus, article 14(1) of the CRC refers unambiguously to the right of the child to freedom of religion and under article 14(2), the "rights and duties" of parents were mentioned rather than to their "liberty".[155]

Similar to the general statement given in article 5 of the CRC,[156] article 14 requires States to "*respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child*". But it is the child who exercises the right. Parents can provide direction, but the direction must be consistent with the child's evolving capacities and must be applied in conformity with the whole of the

[155] UN Human Rights Committee, *Implementation Handbook for the Convention on the Rights of the Child, p*p. 188-189

[156] Article 5 of the CRC refers to parental responsibilities and child's evolving capacities of the child.

Convention.[157] "Direction" cannot involve, for instance, any form of physical or mental violence.[158] And the child's views must be taken seriously in order to preserve the right of all children who can form views to express their views freely "in all matters affecting the child",[159] which includes matters of religion and choice of religion as well as the child's freedom of expression.[160]

Thus, it is a contending proposition under international law that the wording of article 14 the provisions of the CRC do not support the concept of children automatically following their parent's religion until the age of 18, although article 8 (preservation of identity), article 20 (preservation of religion when deprived of family environment), and article 30 (right to practice religion in community with members of the child's group) support children's right to acquire their parents' religion.[161]

Consequently, according to international law as against what obtain under Nigerian laws particularly the CRA, a child possesses autonomy against parental influence in the matter of freedom of thought, conscience and

[157] UN Human Rights Committee, *Implementation Handbook for the Convention on the Rights of the Child, p*p. 188-189
[158] article 19, CRC
[159] article 12, CRC
[160] article 13, CRC
[161] UN Human Rights Committee, *Implementation Handbook for the Convention on the Rights of the Child, p*p. 188-189

religion. In that, the child has a right that the state protects them against their parents in certain circumstances. This applies to both refusing religious education classes and joining a religious community.

When the child comes of age, they have a right to decide for themselves whether to attend religious education classes, withdraw from them or choose an alternative, even if this is against parental wishes. This means that the state must protect the child's choice, but only when the child comes of age. This includes a procedural right for the child to decide at school.

Similarly, this applies to positive membership of the child in a religious community. The state has a duty to protect the choice of the child to join the religious community of their choice, but only after the child has come of age. When the child is of age, they have the right to choose, even if this is against parental wishes, and the state must justify any intervention by reference to the right of the child.[162]

[162] Sylvie Langlaude, *The Right of the Child to Religious Freedom in International Law, Martinus Nijhoff Publishers,* Leiden, Boston (2007) pp. 245-255; Rapporteur's Digest, p. 35; UN Human Rights Committee, *Implementation Handbook for the Convention on the Rights of the Child, p*p. 188-189

4.3 Discrimination on Grounds of Religion

Discrimination on grounds of religion adversely affects the enjoyment of the right of the child to freedom of thought, conscience and religion. Consequently, of particular concern is that a child should be protected against discrimination on grounds of religion and that securing this right is a pivotal context that the right of the child to freedom of thought, conscience and religion seek to achieve. In this respect, the 1999 Constitution while prohibiting discrimination including on grounds of religion, it provides:

> 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 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.[163]

From this constitutional provision, it may be understood that in Nigeria, the law offers safeguard against any unwarranted acts of discrimination that may be leveled against any person by reason of holding any particular religious

[163] Section 42(1), Constitution of the Federal Republic of Nigeria, 1999 (as amended in 2011) Cap. C 23, L.F.N. 2004

belief. What is noteworthy is that disability or deprivation merely by reason of the circumstances of birth is also prohibited and this secures the right of the child to maintain its identity. Thus, the Constitution states: "*No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth."*[164]

In the same vein, the CRA also prohibits discrimination and that a child has the right not to be subjected to any adverse discrimination on grounds of religion. The CRA provides:

> A child shall not be subjected to any form of discrimination merely by reason of his belonging to a particular community or ethnic group or by reason of his place of origin, sex, religion or political opinion. No child shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth.

Consequently, to give effects to the child's right to freedom of thought, conscience and religion, the law must practically maintain prohibition of adverse discrimination on grounds of religion in order that tolerance should be achieved.

In addition, there must be no discrimination affecting the child's enjoyment of any other rights under the CRC/CRA on the grounds of the child's, or his or her parent's, religion. From the international law perspective which forms

[164] Section 42(2), Constitution of the Federal Republic of Nigeria, 1999 (as amended in 2011) Cap. C 23, L.F.N. 2004

the basis of the Nigerian CRA, article 2(2) of the CRC requires States to take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions or beliefs of the child's parents, legal guardians or family members.[165] The Human Rights Committee, in its General Comment on article 18 of ICCPR also emphasizes:

> The fact that where a religion is recognized as a state religion or that it is established as official or traditional or that its followers comprise the majority of the population, shall not result in any impairment of the enjoyment of any of the rights under the Covenant... nor in any discrimination against adherents to other religions or non-believers.[166]

Thus, a child must not suffer discrimination because of the child's right to have a religion, or to have no religion, nor over the child's right to manifest his or her religion. Due regard should therefore be accorded by all relevant authorities to the manifestation of the child's right to freedom of thought, conscience and religion without any form of discrimination that might adversely impair the enjoyment of these right.

[165] UN Human Rights Committee, *Implementation Handbook for the Convention on the Rights of the Child,* p. 193
[166] Human Rights Committee, General Comment No. 22, 1993, HRI/GEN/1/Rev.8, para. 9, p. 196

4.4 The Right to be Brought-up in their Parents' Faith and Beliefs

Regarding the transmission of religious beliefs from parents to children, the child has a right against the state to be brought up in their parents' faith and beliefs. This means that the child does not have a right to be protected from their parents' beliefs: it is not coercive or indoctrinating in itself to bring a child into a religious community, and the child does not have a right against their parents that they should be old and mature enough to hear about religion.[167]

In the same vein, the child has a right that the state does not intervene in their nurture. This includes religious practices, ceremonies, initiation rituals, and freedom of worship. The state is not allowed to interfere with the diet and dress codes of the child. It cannot prohibit the baptism or circumcision of the child, and it is not allowed to prohibit the child from worshiping in a specific building or in the home or from praying. Similarly, the state is not allowed to prevent, prohibit, or make it more difficult for parents to initiate their child in these practices, ceremonies, rituals, and worship.[168]

[167] UN Human Rights Committee, *Implementation Handbook for the Convention on the Rights of the Child, p*p. 188-189

[168] Sylvie Langlaude, *The Right of the Child to Religious Freedom in International Law, Martinus Nijhoff Publishers,* Leiden, Boston (2007) pp. 245-255

In the same way, the state must not prohibit these activities or impose any age-limits or test on the evolving capacities of the child which would restrict the right of the child. This also includes the right of the child to tell others about their religion. All this is at the core of the negative rights of the child against the state. Therefore, if the state considers that it is necessary to interfere with these rights, there is a heavy burden lying on the state to justify any interference with the right of the child.[169]

4.5 Teaching Religious Instructions/Curriculum in Public Schools

Teaching religious instructions or curriculum in public schools provides one of the contexts under which the rights of the child to freedom of thought, conscience and religion require protection of the law. This is in view of the fact it may affect their life positively or negatively depending on the way it is exerted on them. In respect of this freedom, it mostly operates as a negative right against the intrusion of state authorities. Thus, the child has a right that the state does not interfere in their religious education.

Religious instruction, i.e., instruction in a particular religion or belief based on its tenets, can take place in different constellations. In Nigeria, religious instruction given in the public school system (i.e. the system of public education provided by the State) constitutes an integral part of public school

[169] Ibid

teaching and may even be of the mandatory school curriculum. Many parents may wish that their children be familiarized with the basic doctrines and rules of their own religion or belief and that the school take an active role in that endeavour.[170]

In the understanding of many parents, the development of knowledge and social skills of their children through school education would be incomplete unless it includes a sense of religious awareness and familiarity with their own religion or belief. Hence, the provision of religious instruction in the public school system may be based on the explicit or implicit wishes of considerable section of the people within the country‘s population.[171]

In Nigeria, the law allows teaching religious instructions or curriculum in public schools only that no coercion or compulsion should be applied especially to children to attend the religious instruction of any particular religion other than that endorsed by the child’s parents. From constitutional point of view, section 38(2) provides:

> No person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance if such instruction,

[170] *Report of the Special Rapporteur on Freedom of Religion or Belief* (herein called Rapporteur’s Digest) , United Nations Human Rights Council (2011) p. 35
[171] Rapporteur’s Digest, p. 35

> ceremony or observance relates to a religion other than his own, or religion not approved by his parent or guardian.[172]

Additionally, the 1999 Constitution further provides:

> No religious community or denomination shall be prevented from providing religious instructions for pupils of that community or denomination in any place of education maintained wholly by that community or denomination.[173]

From the above constitutional provisions, it is clear that the state cannot prevent or prohibit parents from bringing up their child in accordance with their own religion and convictions. The state is not allowed to prohibit parents from giving religious education at home or in the religious community. Similarly, it cannot impose tests on the evolving capacities of the child, or age-limits according to which religious education would not be possible before a certain age. The state must also refrain from imposing on parents and children a policy of neutrality in the education of children at school, which would interfere with the relationship between child, parents and religious community.[174]

In addition, the state must not interfere with the education of the child at school. If the state provides religious education classes, whether

[172] Section 38(2), Constitution of the Federal Republic of Nigeria, 1999 (as amended in 2011) Cap. C 23, L.F.N. 2004
[173] Section 38(2), ibid
[174] Sylvie Langlaude, *The Right of the Child to Religious Freedom in International Law, Martinus Nijhoff Publishers,* Leiden, Boston (2007) pp. 245-255

denominational or not, they might thereby interfere with the nurture of the child at home or in the religious community. Accordingly, the child has a right to complete exemption.[175] If the child is young, it is up to the parents to decide and withdraw their child from these classes, and when the child comes of age, then the decision is up to them. The issue is to know when the child comes of age, and who decides so. The state may have a margin of appreciation to decide upon an age-limit or a range of ages according to which the child comes of age, yet this must allow flexibility. The state does not have complete discretion but must recognise that children come of age at different times.[176]

However, given the ambivalence of the school situation – including possible situations of particular vulnerability for some persons or groups – religious instruction in the public school system must always go hand in hand with specific safeguards on behalf of members of religious or belief minorities. The Human Rights Committee has also emphasized that instruction in a religious context should — respect the convictions of parents and guardians

[175] Rapporteur's Digest, p. 35; UN Human Rights Committee, *Implementation Handbook for the Convention on the Rights of the Child,* p. 193
[176] Sylvie Langlaude, *The Right of the Child to Religious Freedom in International Law, Martinus Nijhoff Publishers,* Leiden, Boston (2007) pp. 245-255

who do not believe in any religion.[177] A minimum requirement would be that members of minorities have the possibility of — opting out of a religious instruction that goes against their own convictions. Such exemptions should also be available for persons adhering to the very same faith on which instruction is given, whenever they feel that their personal convictions – including dissenting convictions – are not respected. Moreover, the possibility of opting out should not be linked to onerous bureaucratic procedures and must never carry with it *de jure* or *de facto* penalties. So also, wherever possible, students not participating in religious instruction due to their different faith should have access to alternative courses provided by the school.[178]

Moreover, the decision whether or not to opt out of religious instruction must be left to students or their parents or guardians who are the decisive rights holders in that respect. In this respect, the Human Rights Committee with regard article 18(4) of ICCPR has noted that ―public education that includes instruction in a particular religion or belief is inconsistent with article 18(4) of ICCPR unless provision is made for non-discriminatory

[177] See Human Rights Committee, communications No. 40/1978, *Hartikainen v. Finland*, Views adopted on 9 April 1981, para. 10.4, and *Leirvåg v. Norway*, para. 14.2.
[178] Rapporteur's Digest, p. 35

exemptions or alternatives that would accommodate the wishes of parents and guardians.[179]

In this context, it is worth emphasizing that practices which forcibly expose students to religious instruction against their own will violate article 18(2) of the ICCPR which states that ― no one shall be subject to coercion which would impair his freedom to have or adopt a religion or belief of his choice. This *forum internum* component of freedom of religion or belief enjoys particularly strong protection under international human rights law as no derogation from article 18 of the Covenant may be made, not even in a time of public emergency which threatens the life of the nation.[180] In addition, coercive practices may also violate the rights of parents ―to ensure the religious and moral education of their children in conformity with their own convictions.[181]

Equally, the *Universal Basic Education Act* makes provisions as to compulsory enrolment by parents of their wards into primary and junior secondary schools. The Act had failed to recognize the liberty of parents to

[179] Human Rights Committee, general comment No. 22, para. 6; See also Committee on Economic, Social and Cultural Rights, general comment No. 13 (1999) on the right to education, para. 28.
[180] International Covenant on Civil and Political Rights, art. 4; see also Human Rights Committee, general comment No. 22, para. 1.
[181] See art. 18, para. 4, of the ICCPR; See also Rapporteur's Digest, p. 35

choose for their wards private religious education instead of public schools while imposing for parents the duty to send their wards and ensure their compulsory attendance at schools. Not only that the Act omits to recognize this liberty of parents but has also sought to confer strict liability on parents for that matter with a threat of legal sanction. Then, how conflicting or reconciliatory is the Act's position with that of the 1999 Constitution, ICCPR and ICESCR that recognized these liberty of parents?

4.6 Wearing Religious Symbols In Public Schools

With regard to wearing religious symbols especially in public schools, this is also an issue that pertains to the manifestation of the right to freedom of thought, conscience and religion. Although in Nigeria neither the Constitution nor the CRA provides explicitly on the legality of wearing religious symbols in public schools, e.g., the Cross, Turban, Headtie, Hijab, etc., such a right may be said to be implicit from the provisions the 1999 Constitution that allows the manifestation of religion in teaching, observance, practice and worship.[182] Thus, the school environment cannot be an exception to the wearing of any type of religious symbol if at all the right to freedom of thought, conscience and religion is meant to be true.

[182] Section 38(1) of the 1999 Constitution

However, if restrictions on the wearing of religious symbols are deemed necessary, these restrictions should not be applied in a discriminatory manner and they must be directly related and proportionate to the specific need on which the restrictions are predicated. At the same time, for example, the rights of the child and their parents or legal guardians may justify limiting the freedom of teachers who wish to manifest their religion or belief by wearing a religious symbol which have adverse implication on the child. Therefore, the guiding principle is that, in all actions concerning children, the best interests of the child shall be a primary consideration.[183]

With regard to the State-prescribed mandatory display of religious symbols in classrooms, States should uphold confessional neutrality in public education in order to include students of different religions or beliefs on the basis of equality and non-discrimination.[184]

4.7 Right Against State Coercion, Forced Conversion and Persecution

The Convention on the Rights of the Child enjoins that: "*State Parties shall undertake to disseminate the Convention's principles and take all appropriate legislative, administrative and other measures for the*

[183] Rapporteur's Digest, p. 35; UN Human Rights Committee, *Implementation Handbook for the Convention on the Rights of the Child,* p. 193
[184] Rapporteur's Digest, p. 35

implementation of the Rights recognized in the present Convention.[185] In view of this, it is one of the basic rights of the child that the state must not interfere with the right of the child through coercion, forced conversion, and persecution as to impair the enjoyment of its right to freedom of thought, conscience and religion.[186]

Thus, the law does not allow forcible conversion of the child through forced marriages, abduction and kidnappings. So also, the child has a right that the state does not force them to undergo initiation rituals, attend services of worship or religious ceremonies. In addition, the state must not force the child to accomplish 'neutral' acts that the child considers to be in contradiction with their religious beliefs, and there is a burden on the state to justify any interference.[187]

On the other hand, the child also has a right to be protected by the state against other third parties. For example, the state must protect the child against persecution, coercion, and forced conversions, which are likely anyway to infringe other rights in addition to religious freedom. The right of the child includes a duty upon the state to require third parties to refrain

[185] Article 4 CRC
[186] Sylvie Langlaude, *The Right of the Child to Religious Freedom in International Law*, *Martinus Nijhoff Publishers*, Leiden, Boston (2007) pp. 245-255
[187] Ibid

from interfering with the child's right. The child also has a right that the state should protect them against harmful practices imposed by third parties, such as parents or religious community, which endanger the life or health of the child.[188]

4.8 Giving Primacy to Child's Religious Interest in Custody and Adoption

The child also has procedural rights regarding custody, adoption, and care-matching practices. This is an area where the state is particularly active because of the cases that arise before the courts. We have seen before that the child has the right to be brought up in their parents' religion. As regards custody, the child must be able to carry on in the religion they have practised or been brought into. This means that the child has a right to be heard before coming of age, and a right that his/her wishes be acted upon when coming of age. The CRA provides:

> Whenever the fostering, custody, guardianship or adoption of a child is in issue, the right of the child to be brought up in and to practice his religions shall be a paramount consideration.[189]

Likewise, the religious interests of children should be given paramount importance by courts in their activities. Under the CRA, professionalization

[188] Sylvie Langlaude, *The Right of the Child to Religious Freedom in International Law, Martinus Nijhoff Publishers,* Leiden, Boston (2007) pp. 245-255; UN Human Rights Committee, *Implementation Handbook for the Convention on the Rights of the Child, p*p. 188-189

[189] Section 7(4) of the Child Rights Act 2003

and training of court personnel shall have regard to the protection of the religious interests of the children whose rights are being protected. Thus, the CRA provides emphatically that "in constituting a Court handling a matter concerning a child, consideration shall be given to the circumstances and the needs of the child, particularly the age, sex, religion or other special characteristics of the child".[190]

Consequently, the CRA protects child's right to *Freedom of Thought, Conscience and Religion* in respect of custody in order that due respect should be accorded to the child's proper religious upbringing. Moreover, the law mandates the courts to take into consideration the wishes of the child in this regard. The CRA provides:

> The Court may, on an application by a parent for the production or custody of a child, if it is of the opinion —
> (a) that the parent ought not to have the custody of the child; and
> (b) that the child is being brought up in a different religion other than that in which the parent has brought the child up, make such order as it may deem fit to ensure that the child is brought up in the religion in which the parent requires the child to be brought up.[191]

[190] Section 154(3) of the Child Rights Act 2003
[191] Section 76 of the Child Rights Act 2003

4.9 Liberty of Parents/Guardians to Influence the Religious Upbringing of their Child

The role of parents, families and legal guardians is an essential factor in the education of children in the field of religion or belief. Consequently, special attention should be paid to encouraging positive attitudes and, in view of the best interest of the child, to supporting parents to exercise their rights and fully play their role in education in the field of tolerance and non-discrimination, taking into account the relevant provisions of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief and the Convention on the Rights of the Child.[192]

However, when parents disagree over the child's religion, the Convention on the Rights of the Child requires States to recognize the principle that "both parents have common responsibilities for the upbringing and development of the child".[193] Similarly, section 20 of the CRA makes it a joint responsibility of parents and guardians to secure the upbringing of their child. This must apply to the qualified parental direction that article 14 of the CRC and

[192] Rapporteur's Digest, p. 38
[193] Article 18, CRC

section 7 of the CRA on the right of the child to freedom of thought, conscience and religion authorizes that in the exercise by the child of his or her right to freedom of religion, neither parent should have "authority" over such matters.[194]

Where there is disagreement and the matter goes to court, the matter should be decided on the basis of the child's right under article 14 of the CRA as well as section 7 of the CRA with the child's views taken seriously into consideration according to his or her age and maturity.[195]

[194] UN Human Rights Committee, *Implementation Handbook for the Convention on the Rights of the Child, p*p. 188-189; Sylvie Langlaude, *The Right of the Child to Religious Freedom in International Law, Martinus Nijhoff Publishers,* Leiden, Boston (2007) pp. 245-255

[195] UN Human Rights Committee, *Implementation Handbook for the Convention on the Rights of the Child, p. 189*

CHAPTER FIVE

SUMMMARY AND CONCLUSION

5.1 INTRODUCTION

Chapter five is the final chapter of this research work. In this chapter, the summary, findings, and recommendations or suggestion of the entire research work are provided.

5.2 SUMMARY

This research work comprises of five chapters. In chapter one, we have laid the general background of the subject matter wherein the statement of research problems, aim and objectives, scope of the research, research methodology and literature review on the research work were discussed.

In chapter two of this research work, we have explained the nature and the meaning of the right to freedom of thought, conscience and religion whereby the conceptual clarification of certain pivotal concepts as well as the historical background of the subject matter under discussion were examined. Historically, the sixteenth-century Reformation was “at its core, a fight for religious liberty - liberty of the individual conscience from intrusive canon laws and clerical controls, liberty of political officials from ecclesiastical power and privilege, liberty of the local clergy from central papal rule and

oppressive princely controls."[196] Moreover, even before the concept of freedom of thought, conscience and religion was recognized in national law, the practice evolved of making treaty stipulations ensuring certain rights to individuals or groups professing a religion or belief different from that of the majority in a given country. Such treaty stipulations date back to the time when law was felt to be personal rather than territorial, and to follow an individual even when he lived in a country other than his own.[197]

In chapter three, the concept of freedom of thought, conscience and religion were discussed. In that, it is stated that *freedom of thought, conscience and religion* entails freedom of the individual conscience against the State. It means that State institutions, be it legislative or executive should not establish a religion nor enforce the legal observance of it by law or compel men to worship God in any manner contrary to their conscience.[198] Consequently, the basic idea of *Freedom of Thought, Conscience and*

[196] Wallace, E. G. Justifying Religious Freedom: The Western Tradition, *Pennsylvania State Law Review* (2009) Vol. 114, No. 2, p. 543; John Witte, Jr., *Moderate Religious Liberty in the Theology of John Calvin, in* Noel B. Reynolds and W. Cole Durham, Jr. eds., Religious Liberty in Western Thought, (1996), at 119.
[197] Goadby, F. M. Religious Communities and Courts in Palestine, *Tulane Law Review* (1934) Vol. VIII, No. 2, pp. 215-235 at p. 215; Liebesny, H. J. Comparative Legal History: It's Role in the Analysis of Islamic and Modern Near Eastern Legal Institutions, *The American Journal of Comparative Law* (1972) Vol. 20, No. 1, pp. 38-52 at p. 39-40
[198] Corwin, E. S. The Supreme Court as National School Board, *Law and Contemporary Problems* (1949) Vol. 14, No. 1, p. 11

Religion is that no one, especially the government, is allowed to force religion on anyone else or prohibit anyone from practicing a religion.

In chapter four, the protection of the rights of the child to *freedom of thought, conscience and religion* under Nigerian laws were discussed. Under the Nigerian domestic legal order, first, the 1999 Constitution[199] has provided in Chapter IV for the right to *freedom of thought, conscience and religion*. It specifically provides "*Every person shall be entitled to freedom of thought, conscience and religion, including freedom to change his religion or belief, and freedom (either alone or in community with others, and in public or private) to manifest and propagate his religion or belief in worship, teaching, practice and observance*.[200]

Additionally, the *Child Rights Act [CRA]*[201] specifically reinforces the rights of a child to *freedom of thought, conscience and religion* and the liberty of parents and legal guardians thereto as well as that of the State in recognizing and respecting this right.[202] Likewise, discrimination on grounds of religion adversely affects the enjoyment of the right of the child to freedom of thought, conscience and religion. Consequently, of particular concern is that

[199] Constitution of the Federal Republic of Nigeria, 1999 (as amended in 2011) Cap. C 23, L.F.N. 2004
[200] Section 38 Constitution of the Federal Republic of Nigeria, 1999
[201] No. 6 of 2003
[202] See section 7 of the *Child Rights Act,* No. 6 of 2003

a child should be protected against discrimination on grounds of religion and that securing this right is a pivotal context that the right of the child to freedom of thought, conscience and religion seek to achieve. In this respect, the 1999 Constitution prohibits discrimination including on grounds of religion.[203]

5.3 FINDINGS

In the course of this study, the following findings have been noted:

1 It is observed that the rights of the child concerning *freedom of thought, conscience and religion* remain a complex issue, especially because it touches upon the position of the child as well as his or her parents or legal guardians and the religious communities involved. Moreover, the protection of this right becomes much more intricate in view of the positive obligation placed upon the state to intervene between the child and its parents in certain circumstances to ensure adequate protection is being accorded to the child against some harmful traditional practices from being perpetrated on children. This poses serious dilemma as parents exercises immediate custody and control over their children and can at all times exert influence over them as of right in order to provide direction to the child in the

[203] Section 42(1), Constitution of the Federal Republic of Nigeria, 1999 (as amended in 2011) Cap. C 23, L.F.N. 2004

exercise of his or her right to *freedom of thought, conscience and religion* not necessarily in a manner consistent with the evolving capacities of the child as per the dictate of the law.

2 It is observed that the protection of the right of the child to *freedom of thought, conscience and religion* integrates the concept of autonomy into the concept of children's rights. However, autonomy is not the ultimate foundation of the right but only becomes relevant when the child comes of age. This means that despite being a minor, the law seeks to ensure that a child is allowed the latitude to decide for himself when it comes to the issue of *freedom of thought, conscience and religion.* Therefore, the law accords to children autonomy to exercise the right to freedom of thought, conscience and religion according to the child's evolving capacity

3 It is observed that in respect of teaching religious instructions in public schools in Nigeria, students belonging to religious minority especially those belonging to traditional African religion experiences formal or informal pressure to either attend religious instruction given on the sole basis of the country's dominant religious tradition (Islam and Christianity) or having to content with none as religious instructions in the public schools curricula reflects only the teachings

of Islamic and Christian religious studies. This vulnerable situation of religious minority should therefore the remedied in order that the right to freedom of thought, conscience and religion should be afforded to all citizens in Nigeria.

4 It is also observed that Nigerian law recognizes the ultimate right of individuals inclusive of children to change his/her religion as well as the right to its practice in teaching, observance, practice and worship. And the protection of this freedom is to a large extent compatible with international norms and standards under the UN Human Rights system. As is evident from the preceding discussion, the right to *freedom of thought, conscience and religion* is a fundamental human right in Nigeria as expressed in section 38 of the 1999 Constitution as well as section 7 of the CRA.

5 It is further observed that the application of *freedom of thought, conscience and religion* in relation to children requires additional caution and a special consideration of the diverse structure of the Nigerian society. This is in view of the fact that the current legal framework on child rights in Nigeria perpetuates only the application of western ideas on the adherents of all religions in Nigeria. Thus, in our view, the severe criticisms and/or rejection meted out on the CRA

as the principal law on child rights protection in Nigeria also applies to the child's right to *freedom of thought, conscience and religion.* That is to say, certain elements of these freedom is derogatory to the religious and cultural aspiration of certain section of the Nigerian population, more particularly the Muslims whose religion is sternly opposed to allowing a child the liberty to change its religion and/or granting to the child autonomy to exercise choice in religious matters independent of the wishes of its parents.

5.4RECOMMENDATIONS

The following are the recommendations of this study:

1 It is recommended that the need arises for States and non-State actors to exhibit tolerance, non-discrimination, accommodative and pluralistic platforms towards the proclaimants of the right to *freedom of thought, conscience and religion,* more particularly as it affects the domain of child protection. Thus, it is suggested that while discerning its positive obligations towards the child, state authorities in Nigeria at both federal and state levels should foster an environment of religious tolerance and peaceful coexistence among the citizens. And to achieve this objective, it is recommended that the curriculum of civic education in Nigeria should specifically include lessons on religious

coexistence and the abandonment of religious discrimination to be taught to pupils at the appropriate level of education.

2 It is recommended that in view of the weak or vulnerable state of their mind, children should not be allowed full liberty to take everlasting decision for themselves on matters pertaining to *freedom of thought, conscience and religion* and that despite the integration of the concept of autonomy into the concept of children's rights, such autonomy must always be made subject to the overriding choice of parents. Any framework short of this would, in our view, be tantamount to enforcing absolute secularism and/or free thinking by the state on all children independent of the wishes of parents.

3 It is recommended that educational policies in Nigeria at both state and federal levels should aim to strengthen the promotion and protection of human rights, eradicating prejudices and conceptions incompatible with freedom of religion or belief, and ensuring respect for and acceptance of pluralism and diversity in the field of religion or belief as well as the right not to receive religious instruction inconsistent with one's conviction. Efforts should be made to establish advisory bodies at different levels that take an inclusive approach to involving different stakeholders in the preparation and

implementation of school curricula related to issues of religion or belief and in the training of teachers. Thus, the government should strengthen a non-discriminatory perspective in education and of knowledge in relation to freedom of religion or belief at the appropriate levels. Additionally, the government should take appropriate measures against all forms of intolerance and discrimination based on religion or belief which manifest themselves in school curricula, textbooks and teaching methods.

4 It is recommended that the protection of child's right to *freedom of thought, conscience and religion* as against that of adults require certain specific contexts under which these freedoms can best be secured. Thus, given the vulnerability of children, the law must adequately secure the teaching of religious instructions/curriculum in public schools, wearing religious symbols in public schools (e.g., the Cross, Turban, Head tie, Hijab), giving effect to the interest of the child as regard the protection of his/her right to freedom of thought, conscience and religion during adoption and custody dispute amidst parental conflict of interest therein, liberty of parents and guardians to monitor and influence the religious upbringing of their child, giving

primacy to the right of the child to *freedom of thought, conscience and religion* while under the care of social welfare institutions, etc.

5 It is recommended that as Nigeria is comprised of both Muslims, Christians and adherents traditional African religions, a model law on the subject of *freedom of thought, conscience and religion* more particularly as it affects child protection must be one which takes into account the religious rights and interests of all without perpetuating only the application of western ideas on adherents of all religions in Nigeria. It is therefore suggested that to curve the indiscreet secular element involved in the idea of autonomy and freedom of choice in religious matters granted to children independent of the wishes of parents, States in Nigeria that desires to enact into law the provisions of the CRA & CRC especially those states in northern Nigeria that applies the sharia, such states should cautiously revise and redraft the pro-western conception on child's right to *freedom of thought, conscience and religion* in order that respect should be accorded to the religious rights and interests of parents and legal guardians to secure the religious upbringing of their children.

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