



Addis Ababa University
School of Graduate Studies
College of Law and Governance

**Right to Education of Muslim Niqabi Women in Ethiopia: Analysis of the
2008 MOE Directive on Manners of Worship**

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DECLARATION

I, Ourji Bisio Bekele, hereby declare that the thesis entitled " **Right to Education of Muslim Niqabi Women in Ethiopia: Analysis of the 2008 MOE Directive on Manners of Worship**" is my original work and that it has not been submitted for any degree or examination in any other university. I also pledge that all sources in any form are duly acknowledged.

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ACRONYMS

ACHPR	African Charter on Human and Peoples' Rights
ACRWC	African Charter on the Rights and Welfare of the Child
CADE	Convention against Discrimination in Education
CEDAW	Convention on Elimination of All Forms of Discrimination against Women
CRC	Convention on the Rights of the Child
ECHR	European Court of Human Rights
FDRE	Federal Democratic Republic of Ethiopia
GC	General Comment
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social, and Cultural Rights
MOE	Ministry of Education
NGO	Non- Governmental organization
NNP	Nations, Nationalities, and People's
OAU	Organization of African Unity
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNICEF	United Nations Children's Fund
UDHR	Universal Declaration of Human Rights

Glossary

Burqa - An outer garment worn by Muslim women covering them from head to toe

Hijab- In general terms used to describe the act of covering up and specifically garments, headscarves, and shawls used to cover Muslim women's hair and head up to shoulders

Jemea – A fellowship or gathering of Muslims for supporting and teaching each other the religion

Jilbab- An outer garment worn head to toe by Muslim Women covering all her body except the face and the hands

Niqab – A face veil worn on the outer garment of a Muslim woman to cover her face

Niqabi- A woman who wears *Niqab*

Abstract

The 2008 MOE directive on manners of worship in educational institutions introduced a clear ban on Niqab. The Niqab one of the religious manifestations of Muslim women worn by many in Ethiopia including higher education institution was banned by the enactment of the directive and anyone wearing it was prohibited from getting all kinds of service including living on campuses of the institutions after wards. This research has questioned the constitutionality of the ban in light of the internationally guaranteed human rights of women. An analytical method is used to examine the appropriateness of the directive with human rights guaranteed constitutionally and under international human rights instruments. The FDRE Constitution, the 2008 MOE Directive, education-related laws and policies along with relevant international human rights instruments and interviews with purposively selected former students from Higher Educational institutions, have been used as primary sources. Court cases, commentaries, and publications concerning women's equal right to education have also been used as secondary sources. All collected data were analyzed, interpreted, and judged qualitatively based on the essential tools of legal reasoning. The directive which was controversial and questioned from its draft stage for being an obstacle to religious freedom and the right to education was proved to be the barrier to the right to education of Niqabi female students who were forced to choose between exercising freedom of religion and pursuing their right to education. This problem of the directive was a good example showing the intersectionality of women's human rights violation, how the prohibition of one right of women can be an obstacle to the exercise of other human rights showing human rights are interdependent and indivisible. Despite the security and secularism reasons put to necessitate the enactment of the directive the measure of all in all banning Niqab and expelling female Niqabi students otherwise was discriminatory, not necessary, and not proportional measure. Thus, the state, alongside its duty to respect and fulfill has to make the enjoyment of the right possible, by adopting laws and regulations that are adaptable to the social change taking place in Ethiopia.

CHAPTER ONE

1.1 INTRODUCTION

“The human rights of women and the girl child are an inalienable, integral, and indivisible part of universal human rights, and the full and equal participation of women in political, civil, economic, social, and cultural life, at the national, regional, and international levels, and the eradication of all forms of discrimination on the grounds of sex are priority objectives of the international community.”¹

This statement of the declaration confirms the world shall strive for empowering women through education to guarantee the respect of all of their human rights equally. The significance of educating girls and women, in general, is educating society is a very old saying used by many who campaign for the empowerment of women in education. Many organizations working on girls' education including UNICEF² affirm investing in girls' education transforms themselves, communities, and the world. Studies also show that girls' education improves the welfare of society and enhances a country's economic productivity. Hence, investing in girls' education provides the highest returns, both economically and socially.³ However, principally not for the benefit of the world but rather for the sake respect of for their human rights women's and girls' right to education shall be guaranteed and respected by the states and international community in general.

In Ethiopia also the right to education of women and girls as a constitutionally protected right is to be enjoyed with no distinction being made on any ground including gender and religious differences. Yet in 2008, the Ministry of Education (hereafter, MOE) introduced a Directive (hereafter, Directive) which banned the wearing of a *Niqab* (face veil Muslim women wear to cover themselves when in public) in higher education institutions. The introduction of the directive started to become a problem and obstacle for the exercise of the right to education of Muslim Niqabi women when many of the higher education institutions started banning *Niqab* and required the *Niqab* wearing students to unveil to get all services including attending classes

¹ Vienna Declaration and Programme of Action (Adopted on 25 June 1993) art 18

² <https://www.unicef.org/education/girls-education>

³ Leah W. Jackson, Educate the Women and You Change the World: Investing in the Education of Women is the Best Investment in a Country's Growth and Development , Forum on public policy, 2009

and entering the gates. Though the researches and actual documentation of the victims of such law is not exactly not known, the 2013 ban in Bahardar University has made 13-18 Niqabi students quit their education and 700-1200 Muslim students who were supporting and demanding the return of the Niqab wearing students were forced to withdraw and leave campus.⁴ In the same year, several Dilla University Niqabi students who were estimated to be half of the then-female students on the campus were also in a difficult situation since the directive was implemented.⁵

Thus, this research focuses on identifying the violations concerning the right to education of Muslim Niqabi women to pursue higher education without any discrimination and their right of getting equal protection and respect endowed under the constitution and international human rights instruments.

1.2 Statement of Problem

The principles of gender equality and non-discrimination are at the core of the FDRE Constitution and all fundamental human rights treaties ratified by Ethiopia. In Ethiopia, despite the legal protection and significant efforts, gender inequality and gender-based discriminatory practices are apparent.⁶ Compared to Sub-Saharan African countries, the country has the lowest performance record in terms of gender inequality.⁷ In the global gender gap report 2021, Ethiopia ranked 97 on the level and magnitude of gender inequalities.⁸

One of the critical sources and consequences of gender inequality is the lower education of women. Ethiopia ranks among the bottom 35 countries on the index for offering equal access to

⁴<https://freedom4ethiopian.wordpress.com/tag/addis-ababa/page/287/?fbclid=IwAR01OQQVBfZxEz3u6jp41zwywPLC48UdqaxbAi7fX8rc03CWY5GOQ17guiE;>
<https://www.facebook.com/100003777918108/posts/pfbid02vsmPKfAwoRGX2Dy14G9AuyMKpi4pA3DoxQXHbjRh3jdZ37zTUVjX4sgpZf3FMY9Jl/?app=fbl> and
<https://www.facebook.com/377770888970665/posts/pfbid0Zq1uoTeKvAiQeLj7p9p9pmWu7UpHW4tB4nzYCbUNrWApdvEXLm5XJTjdLsKHHy72l/?app=fbl>

⁵<https://www.facebook.com/377770888970665/posts/pfbid0waB4zdgctYnFdfKgHbkYRvSo8NkvZtNiC3R3Cr2yc3QkySAord5h97nZhNX52MuKl/?app=fbl>

⁶ Ain Wright, Closing the Gender Gap: Women's Rights in Ethiopia and Mexico, Global Majority E-Journal, Vol. 11, No. 1 (June 2020), pp. 47–60; Endalcachew Bayeh, Human Rights in Ethiopia: An Assessment on the Law and Practice of Women's Rights. Humanities and Social Sciences. Vol. 3, No. 2, 2015, pp. 83-87.

⁷ Global Gender Gap Report 2021; ETHIOPIA, World Economic Forum, 31 March 2021, p. 187, available at: [WEF_GGGR_2021.pdf \(weforum.org\)](https://www.weforum.org/reports/global-gender-gap-report-2021) (Accessed on: 15 May 2021)

⁸Ibid

education to both boys and girls in terms of educational attainment.⁹ Further, the gender gaps in tertiary education are huge. Only 5.3% of girls are enrolled half of the share of boys.¹⁰ As the figures depict, the disparity is enormous. This happened not accidentally; instead, due to the historical discrimination in education, women and girls have been suffering in many places of the world including Ethiopia.

From a human rights perspective, education is right in itself, and a means to empower individuals to enjoy and claim all of their human rights.¹¹ The same is true when we speak about women's right to education. Education opens up access to political participation and helps women to fight poverty and disempowerment.¹² The realization of the equal right to education is essential for women to enjoy human rights in a full range further.¹³ This makes the right to education the most important right for women who have been suffering inequalities and discrimination. As enshrined in various international human rights instruments, the right to education includes entitlements to have equal opportunity to education requiring inclusive and accessible education to men and women in law and practice.

The right to education requires progressive realization within the maximum available resources.¹⁴ However, this does not mean that other elements do not need immediate realization, like non-discrimination and equal treatment.¹⁵ For instance, the ICESCR obliges states parties to ensure the right to education, equally and without discrimination.¹⁶ However, women have been facing inequality and discrimination in accessing education. The result of such discrimination is evident, as indicated in the aforementioned Global Gender Gap Report 2021. Women's exclusion

⁹ Ibid

¹⁰ Ibid

¹¹ Coomans, APM & Veriava, F, The Right to education. in D Brand & C Heyns (eds), *Socio-Economic Rights in South Africa*. Pretoria University Law Press, 2005 Pretoria, pp. 57-83.

¹² Shetty, S.S. et al., The Role of Education on Women Empowerment and Development Issues and Impact, (2015); Deepmala Singh, Education as a Tool of Women Empowerment, *Paripex Indian Jour of Research*, vol. 5, no. 5, 2016; A. Palaniappan et al., Empowering Women Through Education, Health and Employment, *Indian Jour of Management* 3 2010 (11): 3–13.

¹³ Zhang B-sheng, Values and Their Realization of the Equal Opportunities of Education, *Jour of Hebei Normal University*, 2003; Enock Akattu, Realization of the Right to Education." *Msingi Jour*, vol. 1, no. 1, 2018, pp. 3–39.

¹⁴ Klaus Dieter Beiter, *the Protection of the Right to Education by International Law* (2006).

¹⁵ Kalantry, Sital; et al., "Enhancing Enforcement of Economic, Social, and Cultural Rights Using Indicators: A Focus on the Right to Education in the ICESCR" (2010). Cornell Law Faculty Publications. Paper 1076.

¹⁶ Article 2(2) and 3, ICESCR.

from education and/or discrimination in education institutions intersect with other social problems.¹⁷

Gender-based discrimination will be amplified when other forms of human rights violations exist in a particular situation. In other words, women shoulder double the burden of human rights violations compared to their male counterparts; on the one hand, as the primary victims of ordinary human rights violations similar to men, and on the other hand, due to gender-based discrimination in a similar situation.¹⁸ For instance, a violation of the right to religion of a particular religious group may be severely felt by the women followers of the same religion due to gender-based discrimination.

On top of the above acute challenges, the Ethiopian government introduced a directive¹⁹ in the year 2008 intending to regulate worship activities in higher education institutions. The directive categorically banned “*Niqab*” wearing by Muslim female students in higher education institutions.²⁰ Following the issuance of the 2008 MOE Directive, many higher-education institutions expelled *niqabi* Muslim students from attending education. For instance one of the well-spoken incidents was Bahardar University where many as some say more than 700 -1000 including graduating classes of undergraduate and post graduate students left campus after protesting against the Niqab ban followed by the expulsion of *Niqab*-wearing female students of the university.²¹ Dilla University has also the following year 2006 Et.c has banned more than 40 *Niqab* wearing female students from the campus unless they choose to take off their face veil.²² Apart from reinforcing the historical marginalization of the Muslim community²³, the directive has disproportionately affected Muslim female students as the *Niqab* ban targeted them.

This study investigates whether the MOE directive contradicts the freedom of religion and the right to education enshrined under the FDRE Constitution and international human rights

¹⁷ CEDAW GC 36 Para40 ...poverty... etc

¹⁸ “International Intersectionality: A Theoretical and Pragmatic Exploration of Women’s International Human Rights Violations” Prof. Johanna E. Bond, 2003

¹⁹ በትምህርት ተቋማት የአምልኮ ስርዓትን በሚመለከት የወጣ የትምህርት ሚኒስቴር መመሪያ፤ የኢ.ፌ.ዴ.ሪ ትምህርት ሚኒስቴር፤ አዲስ አበባ፡ 2000 ዓ.ም

²⁰ Article 6 (3) of the directive specifically states that, “Muslim female students should not wear niqab”.

²¹ Supra note 4

²² Supra note 5

²³ Mohamed Assen, 'Contested Secularism in Ethiopia: The Contention between Muslims and the Government' (2016), p 191

instrument ratified by Ethiopia. Hence, it is essential to exhaustively analyze the directive vis-à-vis the FDRE constitution and international human rights instruments ratified by Ethiopia from a women's rights perspective. Accordingly, the study examines the *Niqab* ban under the directive in light of women's equal right to education and the State's obligation. Based on the intended objective of the measure introduced under the directive, the study critically scrutinizes the necessity and proportionality of the ban on women's equal right to education.

1.3 Research Questions

The research questions this study aims to address are:

1. Whether the 2008 MOE directive ban on *niqab* contradicts the principle of non-discrimination and right to education for niqabi Muslim women as enshrined in the FDRE constitution and international instruments;
2. Whether the MOE directive ban on *niqab* is necessary and proportional?

1.4 Research Objectives

1.4.1. General Objective

The study's general objective is to assess the *Niqab* ban in Ethiopia's higher education in light of the right to education of the Muslim *Niqabi* women enshrined under the FDRE constitution and other international treaties ratified by Ethiopia.

1.4.2. Specific Objectives

The specific objectives of this study are:

1. To analyze whether the principle of equality is upheld in the directive as protected under the Constitution and international human rights instruments.
2. To analyze how the niqab ban affects the state obligation to respect and fulfill the right to education of Muslim niqabi women.
3. To analyze the necessity and proportionality of the ban to achieve the objectives the directive has set to meet with its implementation in light of the right to education of female Muslim niqabi students.

1.5 Significance of the study

This research explains the imposition of the 2008 MOE directive on the right to education of women especially *Niqabi* Muslim women pursuing higher education. The directive disregards the diversity of our community and bans the wearing of *Niqab* in higher education institutions on one hand putting at risk the right to education while on the other hand violating their right to freedom of religion and its manifestation. It also has a lot of impact on empowering women through education since it denies them the right to enjoy their human rights inseparably. Hence, this research will open the eyes of law makers towards making laws and directives sensitive to gender equality in education and more accommodating of the diversity in the country. It will also contribute to further studies in the area.

1.6 Research Methodology

The study is based on doctrinal and analytical methods. Since the study examines the compatibility of the 2008 MOE Directive with the principle of non-discrimination and the right to education for *Niqabi* women as enshrined in the FDRE constitution and international instruments. This approach is suited for the collection and analysis of relevant data to properly respond to research questions and also helps to improve the validity of the findings. Accordingly, critical effects of the *Niqab* ban on the *Niqabi* women's right to education and the state's obligation to respect and fulfill the right to education of all citizens without discrimination have been analyzed in light of relevant national and international legal instruments, court cases, and best country practices.

Both secondary and available primary sources have been used to deal with the questions of the study. In particular, the FDRE Constitution, the 2008 Ministry of Education Directive on worship code of conduct in Ethiopian Educational Institutions, national education-related laws and policies, and relevant international human rights instruments, such as ICCPR, ICESCR, CEDAW, UDHER, and Convention Against Discrimination in Education(CADE) have been used as the primary source. Moreover, semi-structured interviews with *Niqabi* women and former students from Higher Education institutions are used for obtaining detail information which will help to a more profound understanding of the implications of the Directive on the *Niqabi* women's equal right to education. The interviews have been conducted in person and on

the phone with purposively selected interviewees based on their personal experience in higher educational institutions, to acquire valuable information capable of addressing research questions. Court cases, commentaries on the human rights instruments, and publications of international organizations concerning women's equal right to education along with the relevant books, scholarly articles, journals, documents, and internet sources have also been used as secondary sources. Finally, the data collected from all sources were methodically analyzed, interpreted, and judged qualitatively based on the essential tools of legal reasoning to make a meaningful analysis that appropriately answers the questions presented and helps achieve the thesis's objectives.

1.7 Literature review

The right to education of women and the girl child is very much researched and written upon topic despite the lack of consideration of the situation of differences among women all over the world. The problem begins when the look for studies on the education of Muslim women with their hijab starts. Very few works of literature exist especially regarding the 2008 MOE directive in light of Muslim women's right to education. During the literature review for the issue at hand, most research and articles are written to answer whether or not Islam has an imposition on the right of general Muslim women to take part in secular education. In some cases, the headscarf, the niqab, and the burqa ban are discussed as an obstacle to the freedom of religion of those women in the banned countries. In his article titled "The Hijab in Educational Institutions and Human Rights: Perspectives from Nigeria and Beyond" Abdulmumini said, "The newly introduced dress codes in some educational institutions in Nigeria targeted the hijab. Although the central issue in the hijab and the dress code controversies in some educational institutions in Nigeria and elsewhere relates to freedom of religion...there is also the right to education. Any policy that disallows the hijab in educational institutions by implication excludes practicing Muslim women from obtaining formal education."

Mohamed in his dissertation titled "Contested Secularism in Ethiopia: the Contention between Muslims and the Government" has addressed the Directive for Regulating Worshipping Codes of Conduct in Educational Institutions, which "provides for some form of restrictions on manifestations of religious symbols, regulates diets for students and puts a guideline for worship

in educational institutions.” According to his finding, “the 2008 Directive of the Ministry of Education and other subsequent regulations of educational institutions pose threats to this constitutional protection. This is because, for one thing, the restrictions go beyond the grounds of restriction as ‘prescribed in the constitution and for the other, they allow the restriction of religious worship and symbols where ‘necessity’ does not exist.” In chapter 5 of the dissertation, while discussing the directive’s prohibitive nature towards conspicuous religious symbols and congregational worship in educational institutions (the word of the author) he has incidentally raised the issue of Muslim *Niqabi* women’s right to education being jeopardized. However, in his discussion, he has not seen the ban’s effect from the perspective of women’s right to education, and his recommendation also fails to suggest ways to avoid this problem. Rather the focus of the dissertation and the specific chapter was on the concept of secularism and the directives restriction the overall right to religious manifestation respectively and doesn’t concern adequately on the gaps of the directive towards violating the right to education of Muslim female *niqabi* women.

Therefore this research mainly emphasizes Muslim *Niqabi* women’s right to education which has fallen into question due to the directive. In doing so, it assesses the consistency of the ban on the right to education of those women in light of international human rights instruments and the FDRE constitution.

1.8 Scope and limitation of the research

When dealing with the right to education of Muslim *Niqabi* women it was in light of the 2008 MOE directive and only limited to the right to education of Muslim *Niqabi* women in higher education institutions of the country. While doing so, as the problem is very much associated with the freedom to the manifestation of once belief and religion, raising the issue of freedom of religion was inevitable while still dedicating the whole purpose and goal of the work to the right to education of the group.

One of the challenging situations of doing this research was not getting any published information on the students expelled due to the *niqab* ban. The main stream media was blind-eyed to the then Muslim movement against government involvement in religious affairs despite

the constitutional principle of secularism or moreover taking the government's side.²⁴ Hence the researchers used the only available source, social media platform accounts which of most are deactivated or inaccessible due to the general silence on the issue in recent years.

1.9 Organization of the research

This research is divided into four chapters. The first chapter gives a general introduction regarding the research as there lay the research problem, the research objective, the significance of the study, and other related background information that provides general guidance on the research to be conducted. The second chapter discusses the right to education and freedom of religion of women. Using the relevant international and national human rights documents and laws the chapter tries to give insight into the right to education and freedom of religion. State's obligation towards the fulfillment of the right and the limitation imposed on them. The interdependency and indivisibility of human rights are also discussed to show the correlation between the rights. Chapter three the very heart of this research, under this chapter the constitutionality of limitation on the right to education of Muslim niqabi women imposed with the directive is studied. Lastly, chapter four will have the findings and recommendations of the research.

²⁴ Ibid p.24

CHAPTER TWO

The Right to Education and Freedom of Religion of Women under Human Rights Instruments

2.1 The Right to Education in International and Regional Human Rights Instruments

Education has been formally recognized as a human right ever since the adoption of the Universal Declaration of Human Rights in 1948.²⁵ According to the UDHR,²⁶ “everyone has the right to education; Education shall be free, at least in the elementary and fundamental stages, Elementary education shall be compulsory, Technical and professional education shall be made generally available, and higher education shall be equally accessible to all based on merit.”

Moreover, the right to education is incorporated under several human rights documents at the regional and international levels.²⁷ Article 13 of the Covenant on Economic Social and Cultural Rights (ICESCR) is dedicated to the concept of the right to education. The Covenant under Articles 2 and 13 guarantees the right to education for everyone without any discrimination. Similarly, international and regional treaties like article 3 of CADE, article 10 of CEDAW, ACHPR article 17, and Maputo protocol under article 12 have acknowledged the same.

Education by itself, as we saw above, can stand as a recognized human right, and also, it is a means to achieve other rights due to its direct impact on the right to the full development of human personality. The right to education is known to be part of socio-economic rights. However, the right to education is also a base for the realization of other rights. The achievement of education reaching all opens the way for respect and promotion of human rights and freedoms and enables all to take part freely in public matters promoting democratic values.²⁸ Education is

²⁵ UNICEF and UNESCO, ‘A Human Right-based Approach to Education’, (2007)

²⁶ UDHR was proclaimed by the UNGA R/s 217A in Paris on 10 Dec. 1948. Drafted by representatives with different legal and cultural backgrounds from all regions of the world, it’s a milestone document in the history of human rights. The UDHR is widely recognized as having inspired, and paved the way for, the adoption of more than seventy human rights treaties, applied today on a permanent basis at global and regional levels (all containing references to it in their preambles).

²⁷ ICESCR Art 13, UDHR Art 26(1), Convention on the Rights of the Child, General Assembly resolution 44/25, adopted on 20. November 1989, entered in to force 2 Sep, 1990(hereafter CRC), Art 28 and African Charter on the Rights and Welfare of the Child, OAU Doc. CAB/LEG/24.9/49 (1990), entered into force Nov. 29, 1999. (hereafter ACRWC), Art 11

²⁸ Shruti Kirti Rastogi, Human Rights and its Impact on Educational and Social Awareness, , 2014, p61

an essential tool for the full exercise of other human rights.²⁹ Sub article 3 of article 26 of UDHR dictates education shall be directed to the full development of the human personality and the strengthening of respect for human rights and fundamental freedoms. Article 13 (1) affirms that education shall be directed to the full development of the human personality and the sense of its dignity and shall strengthen the respect for human rights and fundamental freedoms.³⁰ Similarly, under UDHR, ICSEC, and CRC, “it has been indicated that education leads to individual creativity, improved participation in the social, economic, cultural, and political life of society, and hence, to more effective contribution to human development and transforming the society.”³¹ From these, one can reasonably conclude that education has an overarching impact on the personality development of an individual concerned and benefits the community to which the individual belongs as well as others.

While the instrument establishes free and compulsory primary education, higher education shall also be accessible without any discrimination. ICSECR provides primary education shall be compulsory, reaching all free from any fee, while secondary and higher education shall be accessible aiming for progressive free provision.³²

2.1.1 Women’s Right to Education

Article 1 of the CEDAW Convention defines discrimination as ‘any distinction, exclusion or restriction made based on sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, based on equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.’ State parties, therefore, are not only required to ensure that education is recognized as a human right but also that appropriate conditions are created for this right to be fully and freely enjoyed and exercised by girls and women.

Equality of men and women in the enjoyment of all human rights is a universally recognized principle unequivocally enshrined in the major international human rights instruments. In

²⁹ Husen Nasir, *The Right to Education of Children with Visual Impairment in Addis Ababa*, 2020, p12

³⁰ ICSECR. Art 13 (1)

³¹ Yodit Zenebe, ‘the Right to Primary Education in Ethiopia: Progress, Prospects and Challenges’, (LLM thesis, University of Oslo 2009) 9.

³² ICSECR, art 13 (2(a) and (b))

particular, non-discrimination and equality remain among the core elements of international and regional human rights instruments. In this regard, Article 2 of the UDHR states that every human being is entitled to all rights and freedoms “without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” Similarly, Article 2 of both the ICCPR and ICESCR require States parties to guarantee the enjoyment of all rights without discrimination of any kind. Article 3 of the same instruments also expressly guarantees “equal rights” of men and women to enjoy all rights. Further, other specialized human rights instruments such as CEDAW, under Articles 2 and 10, and the CADE under Article 1 assure equality of women and men in the enjoyment of the right to education. Thus, the right to education, like any other human right, imposes on the states a duty to ensure equal enjoyment of the right to education by men and women.

Consequently, human rights instruments discussed in the previous sections in one way or another; generally or specifically guarantee women's right to education. However, this paper further argues that women, as one of the historical disadvantage segments of many societies, deserve additional support from the States to ensure equal enjoyment of their rights. In this regard, education has been stressed as a powerful instrument for empowering those who suffer from multiple disadvantages, specifically ‘women’ and marginalized groups of society.³³ “The role education plays in ‘empowering women’ and protecting children from exploitative and hazardous labour and sexual exploitation, safeguarding the environment, and checking population growth is so vital that it is agreed that education is one of the bases for the development of societies and as such its importance is universally accepted.”³⁴ Likewise, the Committee on Economic, Social, and Cultural Rights stated that the “right to education is a medium through which economically and socially marginalized adults (women) and children can elevate themselves out of poverty and obtain the means to participate fully in their communities.”³⁵ Thus, States are not only under obligation to eliminate discrimination and situations that hinder equal enjoyment of rights for a particular group but also provide special assistance to ensure the enjoyment of the right of women.

³³ CESCR General Comment number 13, para.1

³⁴ Manisuli Ssenyonjo, *The Islamic Veil and Freedom of Religion, the Rights to Education and Work: a Survey of Recent International and National Cases*, Vol. 6, No. 3, *Chinese Journal of International Law* (2007), p. 653–710.

³⁵ *Ibid* para.1

2.1.2 State's Obligation to Fulfil the Right to Education

The making of international human rights instruments is by laying down obligations states must respect, protect, and fulfil. When states become parties to international treaties, they assume a duty to live up to these obligations by default. However, mere ratification of a human rights treaty may be of little value to the domestic population.³⁶ Hence, “international human rights law defines governmental obligations relating to human rights, specifying obligations needed to be performed by the various actors, States being the major ones” (Yodit, 2009).

Article 2 of the ICSECR puts the duty of state parties to undertake to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, to achieve progressively the full realization of the rights recognized in the Covenant by all appropriate means, including particularly the adoption of legislative measures. Article 2 (c) of the same convention states higher education shall be made equally accessible to all, based on capacity, by every appropriate means, and in particular by the progressive introduction of free education. While the Covenant provides for progressive realization and acknowledges the constraints due to the limits of available resources, it also imposes on States parties various obligations which are of immediate effect.³⁷ “States parties have immediate obligations concerning the right to education, such as the “guarantee” that the right “will be exercised without discrimination of any kind” art. 2(2) and the obligation “to take steps” art. 2 (1) towards the full realization of article 13.” Added to this, “such steps must be “deliberate, concrete and targeted” towards the full realization of the right to education.”³⁸

Concerning article 13 (2), states have obligations to respect, protect and fulfil each of the “essential features” (availability, accessibility, acceptability, adaptability) of the right to education.³⁹ “The obligation to **respect** imposes on the state the duty to refrain from conducting itself in manners that adversely affect the enjoyment of the right to education.”⁴⁰ The obligation to respect prohibits states from negatively interfering with the right to education by enacting laws or with the action of its officials. The obligation to **protect** is about the duty of the state to

³⁶ Supra note 31, p 13

³⁷ General comment No. 13, Para 43

³⁸ Ibid

³⁹ Ibid, Para 50

⁴⁰ Ibid

protect the right to education from being infringed by other non-state actors the organization, on the other hand, imposes on a state a regulatory or protective duty on a horizontal level. Here the state is required to protect its citizens from infringements on their enjoyment of the right to education by other non-state actors like families, teachers, or institutions.

The obligation to **fulfil** puts the duty on the State to take positive measures to make the enjoyment of the right to education possible. “This third level of the obligation of the State, in turn, consists of three interrelated obligations: the obligations to facilitate provide and promote.”⁴¹ Facilitating the acceptability of education by taking positive measures to ensure that education is culturally appropriate for all, providing the adaptability of education by designing and providing resources for curricula that reflect the contemporary needs of students in a changing world, and providing the availability of education by actively developing a system of schools, including building classroom is what we mean by the obligation to fulfil.⁴²

As mentioned above, while the precise and appropriate application of the terms will depend upon the conditions prevailing in a particular State party, education in all its forms and at all levels shall exhibit the following interrelated and essential features: availability, accessibility, acceptability, and adaptability. **Availability**, according to the general comment no 13, is to mean the educational institutions and programs being sufficiently available in quantity, material, and facilities, according to the requirements of the programs including buildings or other protection from the elements, sanitation facilities for both sexes, safe drinking water, trained teachers receiving domestically competitive salaries, teaching materials, and so on; while some will also require facilities such as a library, computer facilities, and information technology.

Accessibility implies “institutions and programs accessibility to everyone, without discrimination. Education must be accessible to all, especially the most vulnerable groups, in law and fact, **without discrimination** on any of the prohibited grounds.” It shall also have **physical accessibility** i.e., within safe physical reach, either by attendance at some reasonably convenient geographic location or via modern technology. In addition, education shall have **economic accessibility**, and it has to be affordable to all. This dimension of accessibility is subject to the differential wording of article 13 (2) with primary, secondary, and higher education: whereas

⁴¹ Ibid,

⁴² Ibid

primary education shall be available “free to all,” State parties are required to progressively introduce free secondary and higher education.⁴³

Acceptability is about the “form and substance of education, including curricula and teaching methods, being acceptable (e.g., relevant, culturally appropriate, and of good quality) to students and, in appropriate cases, parents.”⁴⁴ While” **adaptability** indicates education has to be flexible so it can adapt to the needs of changing societies and communities and respond to the needs of students within their diverse social and cultural settings.”⁴⁵

The convention against discrimination in education CADE is adopted to reinforce the principle of non-discrimination and proclaims that every person has the right to education.⁴⁶ It states discrimination in education is a violation of rights expressed in the UDHR. UNESCO has the purpose of instituting collaboration among the nations to further for all universal respect for human rights and equality of educational opportunity and has the duty not only to proscribe any form of discrimination in education but also to promote equality of opportunity and treatment for all in education.⁴⁷ This non-discrimination is applied to all, and no discrimination based on sex, religious beliefs, or any other reason is allowed.⁴⁸

Art 17.1 of the African Charter on Humans and Peoples’ Rights (ACHPR) affirms “Every individual shall have the right to education.” Education is a fundamental right that affects the growth, development, and welfare of human beings, particularly children and youth.⁴⁹ The convention affirms education has a vital role in empowering women, safeguarding children from exploitative and hazardous labour and sexual exploitation, promoting human rights and democracy, protecting the environment, and controlling population growth, the right also encompasses pre-school, primary, secondary, tertiary, adult education and vocational training.⁵⁰

⁴³ Ibid

⁴⁴ ICSECR art 13 (3) and(4)

⁴⁵ Ibid

⁴⁶ Convention against Discrimination in Education 1960

⁴⁷ Ibid

⁴⁸ Ibid, Art 1

⁴⁹ ACHPR, Art 17

⁵⁰ Ibid

Both CEDAW⁵¹ and Maputo protocol⁵² in addition to the provision of education stress on states' responsibility to eliminate discrimination and make opportunities equally available for women and men. State parties are to abrogate any statutory provisions, any administrative instructions, and to discontinue any administrative practices which involve discrimination to eliminate and prevent discrimination in education.⁵³

2.2 National laws and Policies on the Right to Higher Education Women in Ethiopia

The national policy on women (women policy) formulated in 1993 after the fall of the Dergue regime has aimed at creating a government and legal structure sensitive to the gender issue; hence it will not be ambitious to say the laws and the policies are sensitive towards women's rights.⁵⁴ The government institutions and offices in their structure and function are supposed to aim to create women's empowerment and equal access with men in any sphere of life, social, political, or economic. Therefore starting from the 1995 FDRE constitution, laws and policies of the country are formulated in a manner asserting and renewing their loyalty to this policy.

2.2.1 The FDRE Constitution

The FDRE constitution doesn't have explicit provisions relating to the right to education. Yet cumulative readings of the constitutional provisions establish the right to education for all and women specifically. The constitution, the supreme law of the land⁵⁵ in article 9(4) provides that an international agreement Ethiopia is party to constitute laws of the land. The fundamental rights and freedoms shall be interpreted in a manner adhering to the principles of the UDHR and international treaties Ethiopia has ratified.⁵⁶ Ethiopia has ratified ICESCR, CEDAW, ACHPR, Maputo Protocol, and many other international and regional human right instruments which has adherence to the right to education of women which in return will let our conclusion that Ethiopia in her laws is devoted to respect, promote and protect the right.

⁵¹ CEDAW art 10

⁵² Maputo protocol , Art 12

⁵³ CADE, Art 3

⁵⁴ Endalcachew Bayeh. Human Rights in Ethiopia: An Assessment on the Law and Practice of Women's Rights. Humanities and Social Sciences. Vol. 3, No. 2, 2015, pp. 85

⁵⁵ FDRE Constitution, art 9(1)

⁵⁶ Ibid art 13(2)

Non-discrimination is a principle that stands high, and in light of the right to education and it shall be accessible to all human beings without prejudice based on any ground. The constitution also values non-discrimination and, under article 25, provides the equality of all persons before the fair eyes of the law. The equal treatment provided under the provision extends to protection by the law without any distinction based on any grounds of discrimination, including sex and religion. Hence, another relevant conclusion can be made that the constitution guarantees the right to education of Muslim niqabi women equally with others.

The constitution, while discussing socio-economic rights stated all Ethiopians shall enjoy equal access to publicly funded social services⁵⁷ and the state's duty towards fulfilling the right to education and other socio-economic rights with the allocation of resources to the fullest.⁵⁸ Furthermore, it is provided under article 35 (1) women in the enjoyment of all rights shall have equal protection under the constitution. Thus, to protect fundamental freedoms and rights, for guaranteeing equal access to social services, including education women have equal protection by the constitution. It even goes another step ahead and entitles women to affirmative action measures to remedy past inequalities and injustice to bring the competition to an equal starting ground.⁵⁹ Therefore, Muslim niqabi women of Ethiopia are entitled to access to the right higher education in Ethiopia, additionally, any affirmative measures, women are entitled to join higher education institutions without prejudice. A fact to consider here is that gender parity decreases as we go higher on the ladder of education in Ethiopia, contrary to the global rate (Abraha,2012). In Ethiopia women in higher education account for only 27% of the nearly half a million higher education students, a quarter of which drop out before graduation.⁶⁰

2.2.2 Higher Education Proclamation No 1152/2019

The Higher Education Proclamation No 1152/2019 aiming at filling the gap the previous proclamation had in producing better graduates of quality and relevance to the human power required was enacted recently in August of 2019. The proclamation under article 38 discusses the right of students. Among other rights, students of higher educational institutions have their

⁵⁷ Ibid, Art 41(3)

⁵⁸ Ibid, Art 35, sub art (4)

⁵⁹ Ibid art 35(3)

⁶⁰ Abraha Asfaw, Gender Inequalities in Tertiary Education in Ethiopia: Mediating the Transition to University through the Development of Adaptive Competencies, 2012

constitutionally guaranteed human rights and personal and material safety protected.⁶¹ It also clearly puts students' protection from any form of discrimination or harassment.⁶² The proclamation acknowledging in higher education institutions the respect of human rights of students will be in acknowledgment of the right to access higher education of women in general and *niqabi* Muslim women in particular. Given, women's low tertiary level education and high dropout rate, and all the unequal positions dragging women back, it is unavoidable to take steps and measures to pave the way to balance the ground. Therefore in law, we can wrap up higher education institutions of Ethiopia in addition to respecting the right may also make a better environment, more accessible to women of any background, including religious identity, without any discrimination. Acting otherwise will be contradicting the constitution and the content of the proclamation itself.

2.1.3 Education and Training Policy

The 1994 FDRE Education and training policy starts by giving its definition of education. The preamble paragraph continues, elaborating on the goals of education to develop society's hunch of identifying its needs and creativity to fulfil its goals and purposes. Accordingly, education is also a tool to uphold democratic values and promote respect for human rights and collaboration in society.⁶³ In addition to its different articles aimed at enhancing education and its accessibility for all, the policy has various provisions dedicated to enhancing education and its access to women. It starts with making education itself a mechanism to reform society's orientation towards the education of women and the result of that is meeting the development goal.⁶⁴ As the common African saying goes "educating women is educating the society."

The policy is keen on using education to change society into a better one, and this can't be achieved by excluding women who are half of the population from the education sector. Consequently, not only for the sake of respect for the right of women, educating women is undeniable to achieve the greatness we aspire to reach as a nation. Thus, giving special attention to women⁶⁵ for they have been denied the opportunity in accessing the facilities and the right

⁶¹ Proc no 1152/2019, art 38 (1(c))

⁶² Ibid .sub art 1(e)

⁶³ FDRE Education and training policy, 1994, preamble para,2

⁶⁴ Ibid, Art 2.2.13

⁶⁵ Ibid art 3.7.7

itself, including but not limited to financial support to increase the participation of women⁶⁶ are some of the measures put forward. According to Enguday, (2008), these measures can contribute significantly to bringing the desired change because part of the reason for the lower enrolment of women is society's biased attitude towards women as a whole, their education, and financial limitations. Hence, educational institutions of the country, including higher education institutions, are expected to work to achieve the objectives of the police.

2.3 Freedom of Religion

2.3.1 What is Religion and Freedom of Religion?

“Religion is a set of organized beliefs, practices, and systems that most often relate to the belief and worship of a controlling force such as a personal God or another supernatural being.”⁶⁷ While this is a basic definition, there are many different understandings of what religion is, and not all religions are centred on a belief in a god, gods, or supernatural forces.⁶⁸ Religion frequently encompasses cultural convictions, perspectives, writings, predictions, disclosures, and principles that hold spiritual significance for adherents of the respective faith; additionally, it can encompass a variety of customs, including sermons, rituals, prayer, meditation, sacred sites, symbols, trances, and feasts.⁶⁹ 84% of the world's population identifies with a religious group.⁷⁰ This means more than ¾ of the world is a believer and follower of religion and willing to abide by the commandments of the supernatural. Yet this doesn't imply atheism is not protected; not believing in any of them is also a protected right. Article 18 protects theistic, non-theistic, and atheistic beliefs, as well as the right not to profess any religion or belief; thus the terms belief and religion are to be broadly construed.⁷¹

Religion is one of the significant issues of the human race. Hence, the aforementioned international instruments, which were previously engaged in discourse pertaining to education, exhibit comparable awareness with regards to the imperative nature of preserving religious

⁶⁶ Ibid art 3.9.5

⁶⁷ M. Stibich, 'What Is Religion? The Psychology of Why People Believe' (2022), available at: <https://www.verywellmind.com/religion-improves-health-2224007>.

⁶⁸ Ibid

⁶⁹ Ibid

⁷⁰ Religion: why faith is becoming more and more popular, Harriet Sherwood

⁷¹ Freedom of Religion or Belief: Laws Affecting the Structuring of Religious Communities, Cole Durham

freedom.⁷² Article 2 of UDHR declares that “Everyone is entitled to all the rights and freedoms outlined in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or another opinion, national or social origin, property, birth or another status. Everyone has the right to freedom of thought, conscience, and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship, and observance.”⁷³

Article 18(1) of ICCPR also acknowledges everyone shall have the right to freedom of thought, conscience, and religion, including the freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice, and teaching. The African Charter also guarantees freedom.⁷⁴ The right to freedom of thought, conscience, and religion (which includes the freedom to hold beliefs) in article 18 is far-reaching and profound, it encompasses freedom of thought on all matters, personal conviction, and the commitment to religion or belief, whether manifested individually or in community with others.⁷⁵ Everyone in all these instruments stands for both men and women, affirming all the freedom granted to women in the same manner.

2.3.3 State duty towards Freedom of religion

No one shall be subject to coercion that would impair his freedom to have or to adopt a religion or belief of his choice.⁷⁶ The fundamental character of these freedoms is also reflected in the fact that this provision cannot be derogated from, even in times of public emergency. International human rights treaties impose a duty upon States “to be impartial guarantors of the enjoyment of freedom of religion or belief, including the right to freedom from religion, for all individuals and groups within their territory and subject to their jurisdiction.”⁷⁷

⁷²CHARLES J. RUSSO, Religious Freedom in Education: A Fundamental Human Right. P 5

⁷³ UDHR art 18

⁷⁴ Art 8 ACHPR

⁷⁵ GC 22, para 1

⁷⁶ ICCPR art 18, 2

⁷⁷ A/HRC/37/49 Human Rights Council report of special rapporteur on freedom of religion and belief, para 28

The ICCPR reinforces the substantive protections of freedom of religion by making it very clear that State Parties are obligated “to **respect** and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant, **without distinction** of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status” (Article 2(1)). Moreover, the Covenant does more than articulate a recommended ideal, it obligates State Parties “to take the necessary steps ... to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant” and to make sure that persons whose rights or freedoms are violated shall have effective remedies.⁷⁸ The principle of non-discrimination shall apply, and all persons have equal protection of the law despite their religion.⁷⁹

The Human Rights Committee notes that “state duty involves both negative obligations, like refraining from perpetuating discriminatory acts, and positive duties, such as the obligation to protect against third-party infringements, including incitement to religious hatred.”⁸⁰ The nature of a State’s obligation to promote and protect the right to freedom of religion or belief must be understood within a wider human rights-based framework that stresses the principles of universality, equality, and freedom, and which satisfy the duties to respect, protect, and promote all human rights for everyone.⁸¹

2.3.4 Limitations to Freedom of Religion

Article 18(3) ICCPR establishes very limited scenarios to impose restrictions on the enjoyment of freedom of religion and belief. “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.” Still, the limitations are not on the right to have a belief or religion of one owns self but instead on the ways of manifestation.

While international human rights law permits some restrictions related to the manifestation of one’s religion, like ways to worship, observance, practice, and teaching (often referred to as *forum externum*), any limitations must be the exception and narrowly interpreted and must not

⁷⁸ ICCPR 2(2) and (3)

⁷⁹ Ibid art 26

⁸⁰ Supra note 85, para 29

⁸¹ Ibid para 30

be discriminatory.⁸² The report explains further and puts the burden of justification for such restrictions on those who wish to impose them. Grounds of restriction under art 18(3) are exhaustive, and other reasons are not accepted under the guise of national security.⁸³ The General Comments provided on art 18 of ICCPR by the Human Rights Committee stress the need for a narrow interpretation of the provisions of the law to limit these rights. That is to mean, only the listed restrictions under the law are allowed. Furthermore, it is stated that “limitations must be directly related and proportionate to the specific need on which they are predicated and may not be imposed for discriminatory purposes or applied in a discriminatory manner”.⁸⁴

2.4 The nexus between the Right to Education and Limitation on Freedom of Religion

Human rights are universal and inalienable, indivisible, interdependent, and interrelated. They are **universal** because everyone is born with and possesses the same rights, regardless of where they live, their gender or race, or their religious, cultural, or ethnic background, **inalienable** because people’s rights can never be taken away, **indivisible and interdependent** because all rights – political, civil, social, cultural and economic are equal in importance cannot be positioned in a hierarchical order and none can be fully enjoyed without the others.⁸⁵

The beginning of the second decade of the century has made us witness the tension between the right to education and freedom of religion; both are believed to be basic human rights mainly in their interaction with publically funded educational (Charles, 2015). In other words, while most states didn’t fail at accepting education and religious freedom as fundamental human rights, noteworthy restrictions exist in much of the world as to whether people can exercise the rights to religious freedom in and around state-funded or private schools.⁸⁶

Limiting the internationally acknowledged freedom of religion, belief, and its manifestation will, in one way or another, have an impact on the enjoyment of other human rights. The 1981 Declaration condemns discrimination on the ground of religion or belief, as an offense to human dignity and a denial of the principles of the UN Charter and the Universal Declaration of Human

⁸² Ibid 85, para 44

⁸³ Ibid, para 45

⁸⁴ Parker, 2006. p207

⁸⁵ <https://www.unfpa.org/resources/human-rights-principles>, 9/6/2021

⁸⁶ Charles J. Russo (2015) Religious Freedom in Education: A Fundamental Human Right, Religion & Education, 42:1, p 17

Rights.⁸⁷ Consequently, when we discuss discrimination based on religion, it is not solely limited to an individual's right to religion and its manifestation rather "it can also take place when an individual's enjoyment of other fundamental rights for example, the right to health, education, expression, peaceful assembly is restricted or interfered with by State or non-State actors in the name of religion, or based on a person's religion or belief."⁸⁸

An individual can be discriminated against based on more than one ground, e.g. on the ground of race and gender. When these grounds intersect and cannot be separated from each other, the term 'intersectional discrimination' is used.⁸⁹ **Intersectional discrimination** implies discrimination based on several grounds operating and interacting with each other simultaneously, thus producing distinct and 'synergistic' types of discrimination.⁹⁰ In some cases, education is legally denied for certain groups belonging to a given religion or belief, such laws are luckily rare but exist in a few countries around the world, primarily at the university level.⁹¹ Some limitations having no obvious gender specifics but yet inclined to be more pressuring of the female portion of the group; good examples are the case of Iran and Myanmar's ban on religious minorities in their country having greater pressure on the right to education of the women.⁹²

It is becoming a concern for the global community, especially of Muslim women in recent years, that hijab (including the headscarf, jilbab, niqab, and burqa) is being the centre of attention and target of the ban in public spheres, but not limited to education and workplaces.⁹³ (Cochav,2014) says one of the most controversial debates in recent years involves the tension between women's equality and religious freedom. According to her, many European states have tried to justify the ban for reasons of preserving state secularism in the public sphere, ensuring the state's religious neutrality, promoting gender equality (as these garments are often seen as an oppressive

⁸⁷ A/RES/36/55, Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, Art 3

⁸⁸ Ahmed Shahed, "Protecting and Promoting the Right to Freedom of Religion and Belief for All", *SUR* 29 (2019), p 43

⁸⁹ The right to freedom of religion or belief and its intersection with other rights Dr Alice Donald and Dr Erica Howard School of Law Middlesex University January 2015..p6

⁹⁰ Marie J.Petersen, promoting freedom of religion or belief and gender equality in the context of the sustainable development goals: a focus on access to justice and education, 2020, p 8

⁹¹ Ibid p.43

⁹² Ibid p.44

⁹³ Cochav Elkayam-Levy, Women's rights and religion - the missing element in the jurisprudence of the European court of human rights, , 2014, p1175

practice)⁹⁴, protecting the public order from the perceived threat of radical political Islam, and the need to protect school children from religious influences.

It has been contested the ban is solely on religious manifestation and for justified reasons in making the democratic society of Europe as understood from different European court decisions. European court of Human Rights (ECHR) decision on Shabina Begum's and other similar cases confirms no violation of the right, and even if there was, it was justified as "necessary in a democratic society."⁹⁵ Tulkens, in her dissent, has stressed if it is truly for the cause of women's human rights "*the message that needs to be repeated over and over again is that the best means of preventing and combating fanaticism and extremism is to uphold human rights.*"

Yet, the ban on the veil is not one dimension limitation; rather it is intersectional and in violation of other rights of women. Cases such as Leyla Sahin, which ban the wearing of headscarves in public universities, are examples of indirect gender discrimination against Muslim women in their access to higher education because the only targets and victims of the prohibition are Muslim women alone as they are the once wearing the veil.⁹⁶ For Melieha Melik, it is time to replace the single-axis way of defining gender issues and adapt to the intersectional approach and let Muslim women define themselves rather than allowing the majority of European feminists to define what is oppression or otherwise.

The international human rights monitoring mechanisms have been using the single-axis approach when dealing with general human rights monitoring activities and especially that of women, yet such kind of move does cost the understanding of women's problems and the outcome thereof. What would be better and what they seem to be diverting to in recent times is viewing women's issues as multi-dimensional and complex, requiring an intersectional approach to evaluate discrimination.⁹⁷

⁹⁴ Judge Tulkens, J. The European Court of Human Rights' Grand Chamber opinion gave rise to one dissent on Sahin v. Turkey, App. No. 44774/98, 2005-XI Eur. Ct. H.R. 220, 11 case, while discussing the reasons for the ban one of the justifications by the court was to create equality of women, but Tulkens asks", what, in fact, is the connection between the ban and sexual equality? The judgment does not say. ... What is lacking in this debate is the opinion of women, both those who wear the headscarf and those who choose not to."

⁹⁵ Maleiha malik, complex equality: Muslim women and the 'headscarf', p133, 2008

⁹⁶ Ibid p, 134-135

⁹⁷ Truscan Ivona and Bourke Martignoni Joanna, International Human Rights Law and Intersectional Discrimination, 2016

CHAPTER THREE

Analysis of the 2008 MOE Directive on Manners of Worship

3.1 Overview of the objectives and Contents of the 2008 MOE Directive on the conduct of worship in Educational Institutions

The MOE enacted in 2008 a directive which has been since its draft status a controversial and questionable law relating to the worshiping manners in educational institutions of Ethiopia.⁹⁸ In December of 2008, following the ban on Muslim students in Mekele University for the cause of praying in a group, Muslim students of Addis Ababa University marched on campus to show their support to Mekele students and against the MOE directive for they believed it stands against their constitutionally guaranteed freedom to religion and the rights following the freedom.⁹⁹ The main objectives of the Directive, as stated in the preamble, include the reinforcement of article 25 of the Constitution of the Federal Democratic Republic of Ethiopia, which guarantees the equal protection of all individuals while forbidding any form of discrimination based on religion. Furthermore, the Directive seeks to implement the principle of religious freedom enshrined in article 27 specifically in educational institutions. The Directive also aims to achieve the objectives set forth in article 90 (2), which calls for education to be provided to citizens in a manner that is free from any religious influence, political partisanship, or cultural prejudices. Lastly, the Directive seeks to implement the 1994 Education and Training Policy of the country, which declares education to be secular. The objective and purpose the directive itself put regarding the necessity for the enactment of such law is the need to adhere to principles of equality, and secularism according to the constitution and education policy, and make educational institutions peaceful and secure to conduct the learning-teaching process (*Translation of the author*).¹⁰⁰ Hence the directive is said to be introduced to ensure equality, secularism, and peace in educational institutions.

Since, this is the directive going to be analyzed; hence, having a brief introduction will benefit the reader. The scope of the directive will be found from the cumulative reading of articles 2 and 10 of the directive. It is applied to all educational institutions, public and private, run by the

⁹⁸ Badr Magazine annual edition 2008, p 40-41

⁹⁹ Ibid, p 37-39

¹⁰⁰ 2008 MOE directive, Art 4 and 5

government, individuals, NGOs, or missionaries founded for non-religious purposes, at all levels of education starting from kindergarten, primary and high schools, and colleges up to universities. The applicability is in all regional and city administration education levels and higher education under federal government administration. To meet its purpose, the directive puts forward different measures. The measures believed to be meeting the goals are mostly prohibitions on different religious manifestation symbols and acts.

Despite the popular claim of the objective of the directive aiming at marginalizing Muslims from the education sector¹⁰¹, including scholarly arguments of Mohamed (2016),

“The law is also self-defeating because it marginalizes the already marginalized group of the society. It ‘signifies a new stigmatization of a group’ already suffering from the effects of past discrimination. ... Muslims were long excluded from the educational sector due to the discriminatory policies of the previous regimes. The new Constitution emphasized the rectification of such injustices through, for example, affirmative action as is stated under art 89(4). The makers and owners of the Constitution (NNP) explicitly expressed their full conviction and agreement for the need to rectify the historically unjust relationships. The historical legacy of inequality and discrimination sustained by Ethiopian Muslims even deserves affirmative measures to remedy this legacy”

... For Mohamed (2016) the bans in the directive, including the ban on niqab (face veil) are carrying on the legacy of marginalization of Muslims from education in Ethiopia. One of the findings of a research paper titled “Human Rights of Women Wearing the Veil in Western Europe” is restrictions on the face veil don’t only infringe on the right to freedom of religion of those women, it also hinders the enjoyment of other human rights including the right to education.¹⁰²,

Under article 6 (6.1- 6.6) a dressing code for students is set. Students under the university or college-level education, i.e., kindergarten to secondary school, wear uniforms. And female Muslim students of such level are to wear a hijab in a similar color to their uniform. Even though

¹⁰¹ Different informal discussions in person, on facebook and other social Medias also chanting of the “dimtsachin yisema” Muslim moment demonstrations tried to voice, the directive and other government actions were systematically re distancing the Muslim of the country from public life, political and educational system.

¹⁰² Supra note 23

hijab is interpreted in different terms from a headscarf covering to a whole-body covering cloak leaving no part of a woman's body in sight, from the following sentence banning a black veil covering the whole body, including the face, we can conclude the directive allows a headscarf having similar color with the uniform. In higher education institutions where laboratory, workshops, and medical education require gowns or other ways of dressing, they can be administered in a manner not affecting the religion of one another. Where permission is granted by the university administration, students may wear religious clothing for occasions of festivity. While prohibiting Muslim female students from wearing niqab or full-face cover, religious hermits and leaders are allowed to wear a head turban.

The following article 7 with all its subs (7.1-7.9) features the worshiping manners allowed and prohibited in educational institutions. Accordingly, group prayers, religious sermons, and the distribution of religious writings in any form are not permitted to be conducted in the compound and any infrastructures provided by the institution. While individual worship, prayer, and reading of religious scriptures are allowed, doing any of them in a manner affecting other students' peace and freedom is forbidden. Other than days calendar acknowledged as public and religious holidays, the teaching-learning process is not to be discontinued to celebrate a religious holiday.

The dietary manner in educational institutions is also addressed under Article 8 (8.1- 8.4). Students' cafeterias are not separated based on religion, and group prayers are not allowed in the cafeterias. Yet preparation of different meals fasting and non-fasting based on religion is allowed. Taking food prepared for fast or celebration of holidays out of the cafeteria constitutes a violation.

Some of the bans on the manners are to create equality while others aspire to achieve the objective of secularism and others additionally to the above reasons for security purposes. However, the provisions of the directive are self-contradicting in light of any of the grounds. For instance, allowing the wearing of religious symbols and clothes for nuns, monks, priests and sheiks, and others mentioned for any ground shows us that the purpose is not fully "secularizing" the institutions but exceptionally niqabi Muslim students. While also not permitting students of a different religion to be served in different cafeterias meals prepared according to their religious values, it allows the provision of fasting meals for orthodox Christian students as the amharic

words “ፍስክ” and “የጾም” is clearly related to the concept of the mentioned religion’s fasting methods. This is a violation of the principle of equality under the constitution and the directive has claimed to achieve by its enactment. These are some of the examples showing the self-contradicting nature of the directive making its acceptability and legality questioned.

3.2 Assessing the Directive in light of Ethiopia’s obligation under international human rights instruments and FDRE constitution

In the previous chapter, we have discussed the state obligation to respect imposes on the state the responsibility to abstain from conducting itself in manners that adversely affect the enjoyment of the right to education. State should not enact laws that may have a negative impact on the enjoyment of the right. Nor do the acts of officials impose the same on the right. As state party to the ICSECR, Ethiopia inherently assumes the obligation. According to CESCR GC no 13, paragraph 58, the state party may violate the right to education through direct action (acts of commission) or failure to take measures (acts of omission) required by the covenant to meet the immediate and progressive goals of the right.

3.2.1 The Directive’s compatibility with the principle of Secularism and non-discrimination envisaged under FDRE Constitution

Secularism: secularism is one of the principles of the FDRE constitution repeatedly mentioned by itself or in relation to other provisions. Art. 11 clearly put state and religion as separate. There is no state religion and one shall not interfere in the affairs of the other. Art 90 (2), while addressing social objectives, put forward education shall be liberated from the influence of religion. Here what the constitution wants to adhere to is clear for the one not trying to abuse through translation the pure intention of the provisions. As the state of Ethiopia is diversified in its values and backgrounds, including religion, it will be against the commitment people, nations, and nationalities have entered into in order to live together without discrimination on any ground and to maximize respect of individual and group rights, to have a specific state religion. Therefore, to involve religion in education, a public service, that shall be equally provided for all at the cost of state (tax payers’ money) will be favouring one religion, imposing the values and standards of that religion on the non-followers. It will also open the way for discrimination against others. Even if, as a principle, having state religion is not prohibited, it is clear that

having such shall not impact the enjoyment of freedom of religion of followers of other religions. But the reality is the opposite for many countries, including our own Ethiopia, until the fall of the imperial regime had Orthodox Christianity as state religion, which had her own impact on the education and government system. (Mohamed 2016)

Secularism does not mean to have secular students rather a secular education curriculum. It doesn't go to the extent of allowing the government to get involved in dictating religious manifestation and worship methods and coming of as a law aimed at secularizing people from religion, not institutions as the principle dictates.¹⁰³ While dictating how the religious manifestation of the followers should be, it goes further to deciding who is priest, monk, nun, or sheik in the religions and involves itself into the matters that should be left for the institutions and followers to decide. Hence, for going against the secularism principle under art 11 of the FDRE constitution and involving in affairs of the religious institutions the directive should have been void. The overextended definition of secularism and the involvement of government in defining what should and shouldn't be the conduct of followers of a given religion under the directive have in one way or another affected the right to education of Muslim niqabi women.

While addressing what constitutes a religious head or hermit, the directive excludes Muslim women; this work by itself, as we have tried to see above, constitutes involvement in the matter of religions and violation of the principle of secularism. Additionally, this way of addressing subjects of law in a clear discriminatory nature amounts to a violation of the non-discrimination principle, under art 25, thus failing to be a valid law under the scrutiny of the eyes of the constitution, the supreme law of the land.

3.2.2 The Directive's compatibility with Ethiopia's 'obligation to respect' the right to education of Muslim *Niqabi* women

Duty to respect imposes on state the obligation to avoid measures that hinder or prevent the enjoyment of the right to education. By nature socio-economic rights may have two phases of implementation depending on the relative economic capacity of a state i.e. immediate and progressive realization. The duty to respect is immediate obligation as state at any stage of education must adhere to the principle of equality and non-discrimination and refrain from any

¹⁰³ Supra note 23, p 224

act that directly or indirectly interferes with individuals' endeavour to enjoy rights unless justified by limitations. It is also a principle that this obligation should be adhered to towards any state duty without giving time.

For instance, in an interview with a staff of Dilla university in 2008 when the niqab ban was strictly being adhered to more than 40 female niqabi students were denied full service of the university they were forced to leave campus and settle in the jemea mosque in the city and the jemea, the staff and the local community after discussion and pushing hardly for the students reinstatement too class, it was finally agreed that those students will only enter the campus for class and exam with no other dormitory and cafeteria service allowed. Among these students there were also graduating class and the local community and the students' jemea was able to support those niqabi students. The interviewee, said she witnessed many high scoring students after that being demolirized and due to the struggle for livelihood scoring lesser some others leaving their education for good.

Discrimination against women will add up to past injustice and going against constitutionally and internationally guaranteed rights, which is meant to be given special treatment to remedy historical and cultural inequality. Article 35 (3) FDRE constitution and art 4 of CEDAW has this concept of affirmative action until equality is achieved between the genders both in opportunities and treatment. Again here, it is well recognized that the enjoyment of human rights on the basis of equality between men and women must be understood to include both *de jure* (and formal) equality and *de facto* (or substantive) equality.¹⁰⁴ In this regard, CESCR Committee in General Comment 16 emphasized time and again that guarantees of non-discrimination and equality in international human rights treaties mandate both *de facto* and *de jure* equality.

According to the Committee, formal equality can be achieved if a law or policy treats men and women in a neutral manner and substantive equality is achieved with the effects of laws, policies, and practices, which are of high importance to attain formal equality.¹⁰⁵ The Committee further reaffirmed that States must ensure that they do not maintain, but rather alleviate, the inherent disadvantage that particular groups experience. The Committee further concluded that equality of men and women would not be achieved simply through the enactment of laws or the

¹⁰⁴ CESCR GC 16, para. 7

¹⁰⁵ Ibid

adoption of policies that are, *prima facie*, gender-neutral, but State parties should take into account that such laws, policies, and practice can fail to address or even perpetuate inequality between men and women if they do not take account of existing inequalities, particularly those experienced by women.¹⁰⁶

This shows us women are to be encouraged through legislation and government acts to get access to universities and pursue education. However, the directive seems to do the opposite by expelling female niqab-wearing students who, as most third-world countrywomen, had to pass many obstacles to reach where they are now. The researcher, thus, contends that, if in any case, the government contends that the Directive is gender-neutral (which is implausible due to the above reasons), it cannot in any way escape an attack on the same ground due to its discriminatory effect in its application against Muslim *Niqabi* women's right to education and access to higher education specifically. It is, thus, argued that the Directive is against Ethiopia's obligation to respect the right to education as it interferes with the enjoyment of the right by the Muslim *Niqab* women. The Directive directly or systematically interferes with the right to education of Muslim *Niqabi* students

3.3.3 Violation of the Right to non-discrimination

Living aside the question of secularism being used out of its context and the scope of art 90 and 2.2.7 being broader than the intention of the laws, and if we agree to accept this ground, the directive fails us again in itself, as it contains several self-contradicting provisions. Under part two articles 6, 6.3, and 6.4 of the directive where the first one clearly bans "niqab" to be worn by Muslim women in educational institutions, the following article allows Christian monks, priests, nuns, and Muslim sheiks to wear head turbans. This means both female and male from Christian religious and only male Muslim religious background hermits and fathers are permitted to manifest their religious identity disregarding the question of secularism otherwise raised as a justification for the niqabi Muslim women's ban from school. The double standard here has resulted in unequal treatment of Muslim niqabi women on the ground of both their religion and gender identity against the constitutionally guaranteed protection from discrimination. The intersectionality of women's problems in contributing mutually to the violation of their right

¹⁰⁶ Ibid

holds true here. This violates art 25 and 35(1) of the FDRE constitution and international treaties Ethiopia is a party to.

As discussed under Chapter two of this research, the principle of equality (non-discrimination) is fundamental principle and clearly stipulated under almost all human rights instruments. Among others, Articles 2 of the UDHR, Articles 2 & 3 of both the ICCPR and ICESCR enshrines equal enjoyment by every human being of all rights and freedoms “without distinction on the grounds of race, colour, sex, age, language, religion, political or other opinion, national or social origin, sexual orientation, and civil, political, social or other status”. By virtue of these provisions, thus, women and men shall have equal right to enjoy every human right, including the right to education. In addition, other human rights instruments specifically concerned with women’s human rights, such as CEDAW under art. 1, 2, 10, and the Maputo Protocol under article 2 require States parties to guarantee the enjoyment of all rights by women without discrimination of any kind, which includes the right to equal access to education. Generally, states are obligated to eliminate any form of discrimination and situations that hinder equal enjoyment of rights for a particular group. Hence, Ethiopia as a signatory to the above mention documents and the HPR, has ratified the same treaties as part of the law of the land has failed its international and constitutional obligation to treat women equally. Muslim niqabi women’s discriminatory treatment has violated their right to be treated equally.

This study argues that the Directive under scrutiny characteristically discriminates Muslim niqabi women due to the intersection of their religion and sex. In this respect, the researcher would like to reiterate an analysis of the ICESCR Committee in General Comment 16. The Committee, put straight forward that many women experience distinct forms of discrimination due to the intersection of sex with such factors as, among others, religion, social origin, property, birth, or other status, such as age, ethnicity, disability, marital, refugee or migrant status, resulting in compounded disadvantage.¹⁰⁷ Under the article in discussion, men of the same religion acknowledged as “sheiks” are allowed to wear a head turban as a religious symbol while women are prohibited from wearing niqab. To make it more precise, the Directive evidently targeted Muslim women as a result of the intersection between their sex and religion. Therefore,

¹⁰⁷ Ibid, para. 5

it is argued that being a woman and being Muslim has put Muslim niqabi women in a position to suffer a distinct form of discrimination due to the mere fact of ‘women-Muslim’ intersection.

3.3.4 The Directive’s compatibility with Ethiopia’s ‘obligation to fulfil’ the right to education of Muslim Niqabi women

Let us be reminded of the discussion on state obligation to fulfil. It is the duty of the state to make enjoyment of right to education possible. Under this obligation, state shall take positive measures by facilitating, providing, and promoting the right to education. Among others, governments shall provide adaptable, acceptable, and accessible education. According to General Comment no 13, Adaptability is to indicate education has to be flexible so it can adapt to the needs of changing societies and communities and respond to the needs of students within their diverse social, religious, and cultural settings. Again Ethiopia having an obligation to do so, has to act accordingly.

The directive disregarding the growing number of Muslim women wearing face veil or niqab post the 1991 regime change attributed to internal liberal religious policy and global revival of Islam.¹⁰⁸ According to Mohamed (2016), the increase in more practicing Muslims, at least in appearance, could also be attributed to access to Islamic scriptural teachings and globalization in the recent two or three decades. Personal experience and observation of the author also show higher Education with its nature of bringing students from different backgrounds and religious teaching is also one of the reasons in increasing the influence of Muslim students on each other in relation to religious teachings and practices. Turning a blind eye to this reality and changes in the community, the directive was enacted.

This growth and change should not be disregarded as the duty to fulfill through facilitating the adaptability of education should extend to adapting to the social change in the Muslim community. As we know, laws adapt to social change, and social change may follow laws. The main point is social change and law is a much-related concept influencing one another both ways. Hence, for Ethiopian laws to adapt to social change and be enacted to maximize the enjoyment of citizens' rights wouldn't be a strange practice. For example, the irregular union had no legal recognition up until the enactment of the family code in 2000. But, due to the social

¹⁰⁸ Supra notenote 23, p. 191

change since the enactment of the 1960 civil code, the practice has increased and more cases have appeared before the court, creating a dilemma even though the law doesn't recognize the same as legal act rights emanating from, the union has been accepted in the community as married life and the people in it as husband and wife. Yet when separation comes and the issue of common property and child allowance is raised, the gap in law opened the way for the violation of right of women (as most of the women are stay at home and own no property under their name) and children. Therefore, the law was enacted recognizing the change and accommodative of the results the changes brought.

As a matter of reality, due to the reasons mentioned above and other factors, niqab and other general hijab-wearing styles are growing in Ethiopia. Muslim women from different backgrounds, including those in higher education institutions of the country, are practicing wearing niqab as a symbol of their religious manifestation and the commitment to the commands of the supreme.¹⁰⁹ And the ban on niqab has consequently has resulted in the dropout of niqabi Muslim women from different universities. Informal information from social media shows since the ban was implemented in Bahardar (2005)¹¹⁰ and Dilla (2006) universities, over 53 female students have left their higher education and went home choosing not to unveil after a long struggle and questions to be treated equally. Many other universities following their footsteps, including Addis Ababa University, have banned the wearing niqab, stating the reason of security and peace.¹¹¹ Mainstream media was clearly ignoring and blaming (by associating it with religious fundamentalism) the then Muslim movement against this and other measures of government the community believed to be against the freedom of religion and other rights of the Muslim of Ethiopia.¹¹² Hence, obtaining conclusive quantitative evidence regarding the incidents has been difficult. However, as a witness and victim of such law up to date, the author can talk from personal experience about how hard it is to be forced to choose between freedom of religion and right to education, both rights equally important. The fear of being forced to choice between niqab and attending university class was following the author from 2006 up until graduation in 2009. And later the evitable happened when the author got a chance to study Human rights law in Addis Ababa University, the incident of being forced to unveil started when

¹⁰⁹ Authors informal discussion with fellow niqab wearing university students in Haramaya University

¹¹⁰ <https://www.facebook.com/DimtsachinYisema/posts/740645785986780>

¹¹¹ <https://www.facebook.com/BBN.YenantewDimist/posts/552012448268255>

¹¹² Supra notenote 23, p 316

the author came in to take the entrance exam in summer of 2011, the security guards order by the then supervisor at the gate demanded the author to take off her 'niqab' otherwise can't pass the gate to sit on the exam. This kind of demands continued after the author joined the school and was coming to campus every day for class until March of 2012 when Covid 19 outbreak happened and stay at home was declared. The directive's inadaptability towards the social change has clearly resulted in the violation of right to education.

3.3.5 The Directive's Necessity, and the Proportionality of the Limitations

Even if the implementation of the Directive is mandatory due to security and peace issues, it should have tried to take other measures to meet the said purpose rather than banning students fully and taking the harsh measure possible towards the fulfilment of right to education. As per paragraph 7 of the GC no 13 the best interest of the student shall come first when considering all the special features of education, including adaptability; this means the option best suited to students to attend school should be persuaded as much the country resource allows. According to CESCR GC No. 20 paragraph 13, discriminatory measures against socio-economic rights, including right to education based on prohibited grounds, constitute a violation of non-discrimination principle unless it is justified as 'reasonable and having objective'. It prescribes an assessment of the effect and legality of the measures. Accordingly, the proportionality of the effect of the omission and the purpose intended to achieve shall be very reasonable, adequate to the end sought, the least restrictive measure on the enjoyment of human rights and in a strict sense (proportional *stricto sensu*) , must keep the balance between the costs and its benefits. Also, failure to eliminate discriminatory measures without making every possible effort to avoid such prejudiced actions can't be justified reason and constitute a failure of state responsibility. The directive to 'secularize' or/ and secure educational institutions from uncertain fear has banned Muslim niqab wearing women from totally accessing higher education institutions(both public and private) and their services.

However, the directive before prohibiting fully and putting the burden on Female Muslim students' wearing niqab to choose between wearing niqab while forgoing their right to pursue education or forgo wearing niqab they believe is a way to eternal salvation and the manifestation

of their freedom to religion in order to continue their education, should have opted to look for and implement proportional measures. However, no indication of interest or prior action showing motivation to try on alternative measures was witnessed before enacting this directive. This indicates the failure of the directive in the above qualification.

CHAPTER FOUR

4.1. Conclusion

This study has been conducted to analyse “the 2008 MOE Directive on manners of worship in educational institutions” in relation to Muslim *Niqabi* women’s right to higher education. The right education is recognized human right in different covenants, including UDHR, ICSECR, CEDAW, and ACHPR. Higher education available in the country shall be accessible to all without discrimination based on any of the grounds. For women, inequalities are intersectional and their human right can be violated for different grounds in addition to the bias against them based on their gender identity. Enactment of discriminatory national laws amounts breach of duty to respect from the side of the state.

Ethiopia, as a country party to most of the international treaties, including CEDAW, which specifically stipulated right to education of women has assumed the duty to respect the right to education for all and women particularly. The commitment of Ethiopia to adhere to these stipulations can be seen from the policy directions. However, the directive in question was in opposition to this and had prohibiting article intended to ban niqab-wearing female Muslim students from entering schools, attending classes and overall accessing services of the institution. This ban was confronted with much opposition and has resulted in the dropout of many female students from different universities of the country. The prohibition was analyzed in light of international commitments and the FDRE constitution and the following conclusion was made.

The state shouldn’t interfere on the enjoyment of the right to education with measures that hinder achievement intended otherwise. The directive directly indirectly interferes with the enjoyment of the right to higher education of Muslim niqabi women. It violates the state duty to refrain from enacting discriminatory law. The directive was found in violation of non-discrimination principle as it discriminates against Muslim niqabi women based on both their religious and gender identity. The state, alongside its duty to respect, also has the duty to fulfil and make the enjoyment the right possible. Yet through failing to enact a directive adaptable to the social change (growing number of niqab-wearing Muslim women) that is taking place in the Ethiopian Muslim community has failed to give access to the country's higher education.

The directive also fails when measured against the principle of proportionality. A limitation measure on socio economic rights unless justified reasonably amounts to violation. The justified measures also need to be proportional and as much as the possible the least restrictive measure on the enjoyment of the right in question. However the directive took banning wholly as the unquestionable measure before practicing any other relatively less restrictive solution that won't have such drastic impact on the right to education of Muslim niqabi women in higher education institutions.

The directive has also taken the scope of secularism out of context and involved itself in the affairs of religion while defining what should be the manifestation of religion and allowing the clergymen and hermits to wear religious manifestation symbols' going out of its scope has left out Muslim niqabi women. The definition given is a clear violation of secularism principle enshrined under FDRE constitution.

5. Bibliography

Books, Journals, Articles, Thesis (Published and Unpublished)

- Leah W. Jackson, 'Educate the Women and You Change the World: Investing in the Education of Women is the Best Investment in a Country's Growth and Development' (2009) Forum on Public Policy.
- Ain Wright, 'Closing the Gender Gap: Women's Rights in Ethiopia and Mexico' (2020) Global Majority E-Journal, Vol. 11, No. 1, pp. 47-60.
- Endalcachew Bayeh, 'Human Rights in Ethiopia: An Assessment on the Law and Practice of Women's Rights' (2015) Humanities and Social Sciences, Vol. 3, No. 2
- Global Gender Gap Report 2021; ETHIOPIA, World Economic Forum, 31 March 2021, p. 187, available at: WEF_GGGR_2021.pdf (weforum.org) (Accessed on: 15 May 2021).
- Coomans, APM & Veriava, F, 'The Right to education' in D Brand & C Heyns (eds), Socio-Economic Rights in South Africa (Pretoria University Law Press, 2005), pp. 57-83.
- Shetty, S.S. and Hans, V.B., 'Role of Education on Women Empowerment and Development Issues and Impact' (2015), available at: <http://ssrn.com/abstract=2665898> (accessed on: 27 May 2021).
- Deepmala Singh, 'Education as a Tool of Women Empowerment' (2016) Paripex Indian Journal Of Research, vol. 5, no. 5.
- A. Palaniappan and Aniyam C. Anish, 'Empowering Women Through Education, Health and Employment' (2010) Prabandhan: Indian Journal of Management 3(11): 3-13.
- Zhang Bing-sheng, 'Values and Their Realization of the Equal Opportunities of Education' (2003) Journal of Hebei Normal University.
- Enock Akattu, 'Realization of the Right to Education' (2018) Msingi Journal, vol. 1, no. 1, pp. 3-39.
- Klaus Dieter Beiter, 'The Protection of the Right to Education by International Law' (2006).
- Sital Kalantry, Jocelyn E. Getgen, and Steven A. Koh, 'Enhancing Enforcement of Economic, Social, and Cultural Rights Using Indicators: A Focus on the Right to Education in the ICESCR' (2010) Cornell Law Faculty Publications, Paper 1076.
- Johanna E. Bond, 'International Intersectionality: A Theoretical and Pragmatic Exploration of Women's International Human Rights Violations' (2003).
- Mohamed Assen, 'Contested Secularism in Ethiopia: The Contention between Muslims and the Government' (2016) SSRN 2831300.

- UNICEF and UNESCO, 'A Human Right-based Approach to Education' (2007).
- Shruti Kirti Rastogi, 'Human Rights and its Impact on Educational and Social Awareness' (2014), p. 61.
- Husen Nasir, 'The Right to Education of Children with Visual Impairment in Addis Ababa' (LLM thesis Addis Ababa University, 2020)
- Yodit Zenebe, 'The Right to Primary Education in Ethiopia: Progress, Prospects and Challenges' (LLM thesis, University of Oslo, 2009)
- Abraha Asfaw, 'Gender Inequalities in Tertiary Education in Ethiopia: Mediating the Transition to University through the Development of Adaptive Competencies' (2012).
- M. Stibich, 'What Is Religion? The Psychology of Why People Believe' (2022), available at: <https://www.verywellmind.com/religion-improves-health-2224007>.
- Harriet Sherwood, 'Religion: Why Faith Is Becoming More and More Popular'.
- Cole Durham, 'Freedom of Religion or Belief: Laws Affecting the Structuring of Religious Communities'.
- Charles J. Russo, 'Religious Freedom in Education: A Fundamental Human Right' (2015) *Religion & Education*, 42(1), p. 17.
- Ahmed Shaheed, 'Protecting and Promoting the Right to Freedom of Religion and Belief for All' (2019) *SUR* 29, p. 43.
- Alice Donald and Erica Howard, 'The Right to Freedom of Religion or Belief and Its Intersection with Other Rights' (2015) *School of Law, Middlesex University*, p. 6.
- Marie J. Petersen, 'Promoting Freedom of Religion or Belief and Gender Equality in the Context of the Sustainable Development Goals: A Focus on Access to Justice and Education' (2020).
- Cochav Elkayam-Levy, 'Women's Rights and Religion - The Missing Element in the Jurisprudence of the European Court of Human Rights' (2014), p. 1175.
- Manisuli Ssenyonjo, 'The Islamic Veil and Freedom of Religion, the Rights to Education and Work: a Survey of Recent International and National Cases', Vol. 6, No. 3, *Chinese Journal of International Law* (2007)
- Maleiha Malik, 'Complex Equality: Muslim Women and the 'Headscarf'' (2008).
- Truscan Ivona and Bourke Martignoni Joanna, 'International Human Rights Law and Intersectional Discrimination' (2016).

- Special Rapporteur on freedom of religion or belief, Report of the Special Rapporteur on freedom of religion or belief, A/HRC/37/49 (presented to the Human Rights Council, 2018).
- 35. Badr Magazine annual edition 2008

International Legal Instruments

- Vienna Declaration and Programme of Action (adopted 25 June 1993) UN Doc A/CONF157/23.
- Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3.
- Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13.
- International Covenant on Civil and Political Rights, on the Right to Life (30 October 1988) UN Doc CCPR/C/GC/36.
- United Nations Convention on the Rights of the Child: United Nations Convention on the Rights of the Child, General Assembly resolution 44/25 of 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990).
- Universal Declaration of Human Rights, General Assembly resolution 217 A (III) of 10 December 1948, art. 26(1).
- Convention Against Discrimination in Education (CADE): Convention Against Discrimination in Education, adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO) on 14 December 1960, 429 UNTS 93 (entered into force 22 May 1962).
- African Charter on the Rights and Welfare of the Child (ACRWC), OAU Doc. CAB/LEG/24.9/49 (1990), entered into force on 29 November 1999, art 11.
- African Charter on Human and Peoples' Rights (ACHPR): African Charter on Human and Peoples' Rights, adopted by the Organization of African Unity (OAU) on 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 ILM 58 (1982) (entered into force 21 October 1986).
- Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), adopted by the African Union on 11 July 2003, CAB/LEG/66.6 (entered into force 25 November 2005).
- General Assembly resolution 36/55, Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (adopted 25 November 1981).

Domestic Legal Instruments

- FDRE Constitution, Federal Democratic Republic of Ethiopia (1995)

- Higher Education Proclamation (Ethiopia) Proclamation No 1152/2019
- Education and Training Policy (Ethiopia) (April 1994).
- በትምህርት ተቋማት የአምልኮ ስርዓትን በሚመለከት የወጣ የትምህርት ሚኒስቴር መመሪያ፤ የኢ.ፌ.ዴ.ሪ ትምህርት ሚኒስቴር፤ አዲስ አበባ፡ 2000 ዓ.ም. (Ethiopian Ministry of Education Directive for Regulating Worshipping Codes of Conduct in Educational Institutions, 2008)

Cases

- Sahin v. Turkey, App. No. 44774/98, (2005) XI Eur. Ct. H.R. 220.

Web Pages

- <https://www.unicef.org/education/girls-education>
- <https://www.unfpa.org/resources/human-rights-principles>, 9/6/2021
- <https://www.facebook.com/DimtsachinYisema/posts/740645785986780>
- <https://www.facebook.com/BBN.YenantewDimist/posts/552012448268255https://www.facebook.com/100003777918108/posts/pfbid02vsmPKfAwoRGX2Dy14G9AuyMKpj4pA3DoxQXHbjRh3jdZ37zTUVjX4sgpZf3FMY9Jl/?app=fbl>
- <https://www.facebook.com/377770888970665/posts/pfbid0Zq1uoTeKvAiQeLj7p9p9pmWu7UpHW4tB4nzYCbuNrwApdvEXLm5XJTjdLsKHHy72l/?app=fbl>
- <https://www.facebook.com/377770888970665/posts/pfbid0waB4zdgctYnFdfKgHbkYRvSo8NkvZtNiC3R3Cr2yc3QkySAord5h97nZhNX52MuKl/?app=fbl>
- <https://freedom4ethiopian.wordpress.com/tag/addisababa/page/287/?fbclid=IwAR01OQQVBfZxEz3u6jp41zwywPLC48UdqaxbAi7fX8rc03CWY5GOQ17guiE>