

Freedom of *Waaqeffannaa* Religion in Ethiopia post 1991

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Abstract: This study explores the current practical application of religious freedom to *Waaqeffannaa* or Oromo indigenous religion in Ethiopia. It looks into factors and actors hindering the practical application of religious freedom to *Waaqeffannaa*. To gather an in-depth understanding of why and how the problem of the study emerged, it employs the qualitative approach. Data was hence collected through interview, focused group discussions, personal observation and document analysis. Freedom of *Waaqeffannaa* religion was thoroughly discussed within the framework of various international and regional human rights instruments and Ethiopian legal system. In the analysis, the reality and practical application of religious freedom to *Waaqeffannaa* was discussed with adherents of the religion at the study areas and some governmental officials at different levels. The analysis emphasizes the current status of *Waaqeffannaa*, the *Waaqeffataas'* freedom to worship and access to land to build religious shrines and cemeteries. The interviews revealed that currently, post 2013, *Waaqeffannaa* is restored to the status of a religion. Although, its adherents have limited freedom to worship, access to land for building *galmoota* (holy places) and *hujuba* (cemetery), they enjoy full freedom of religion on par with the dominant religions in the country. Therefore, the government is expected to pursue the religious equality to achieve the full realization of all human rights in the country. Government officials at various levels of administration have an obligation to serve the public in an accountable and transparent manner in order to develop the public trust. Freedom to equal opportunity to take part in and benefit from public resources, like land and public media, has to be respected to the adherents of indigenous religion.

Key Words: Freedom of religion, indigenous religion, Oromo and *Waaqeffannaa*.

I. CONCEPTUAL FRAMEWORK

1.1. Introduction

Freedom of religion is one of the fundamental human rights which serve as a minimal requirement for functioning democratic societies. Almost all international and regional human rights instruments affirm freedom of religion as inalienable and inviolable. However, these instruments do not define the term religion in a legal context. The absence of precise definition for the term religion in these legal documents invites different scholars to define the term through various disciplines. The first part of this article explores various definitions of the term religion and provides an operational definition for this study. This is followed by a discussion of the concept of freedom of religion under various international, regional human rights instruments, and the Ethiopian Constitution.

Long before the introduction of Christianity and Islam, the Oromo people had their own indigenous faith tradition and belief system called *Waaqeffannaa*. This Oromo indigenous religion was suppressed under successive Ethiopian regimes even though it has been a longstanding tradition in Ethiopia that religion is a private matter. The Oromo religion was able to withstand and survive the challenges of heavy-handed government intervention because of it was indigenous and rooted in Oromo cultural universe. As noted above, freedom of religion is today enshrined in international and regional human rights instruments. The FDRE Constitution of 1995 explicitly avows religious freedom in Ethiopia. However, *Waaqeffannaa* did not enjoy constitutionally guaranteed freedoms until the government officially recognized it as a religion in September 2013.

Thus second part of this article examines the extent to which *Waaqeffannaa* enjoys the internationally, regionally and nationally guaranteed freedom of religion under the EPRDF regime. The paper argues that, although the FDRE Constitution and various international and regional human rights instruments, ratified by Ethiopia, affirm religious freedom, in practice *Waaqeffannaa's* position relative to the dominant Abrahamic religions has been obsequiously subordinate. To examine the current condition of *Waaqeffannaa* in Ethiopia, the paper examines the implementation of the right to freedom of *Waaqeffannaa* religion by focusing on the public perception about its status, freedom of its adherents to manifestation of their religion, and freedom to access to land to build worship places and cemeteries.

1.2. The Concept of Religion

Since the 1948, a dozen of human rights organizations and treaties have developed through state practices, international courts and civil society organizations. These international, regional and national human rights organizations and treaties are intended to realize the promotion and protection of human rights.¹ These are rights focus on freedom, protection, status, or benefit for the right holders.² Although almost all of the international and regional human rights instruments declare freedom of religion as a fundamental human right,

¹ Muhammed Hamid, "Freedom of religion and Ethiopian Muslims: advancements and setbacks," (MA thesis, Addis Ababa University, 2012), 1

² T. Jeremy Gunn, (2003), "The Complexity of Religion and the Definition of Religion in International Law," *Harvard Human Rights Journal* Vol. 16, (2013): 189-190

none defines the term religion in a way that is widely accepted and readily applicable in a legal context.³

What makes legal definition impossible is the absence of a common assumption about the nature of religion. In other words, there is no consensus as to what is being defined. According to T. Jeremy Gunn, there are at least three distinct theories. The first is religion in *its metaphysical or theological sense*, as in, for instance, the underlying truth of the existence of God, Allah, *Waaqaa*, etc. The second is religion as it is *psychologically experienced by humans* as in the case of the feelings of a believer towards the divine. The third is religion as a *cultural or social force*, a symbol that binds or divides communities. Because the theoretical assumptions about religion are varied, the definitions are equally diverse.⁴

One notable exception among international human rights instruments is the UN Human Rights Committee's General Comment No. 22 on Article 18 of the ICCPR which affirms theistic, non-theistic and atheistic beliefs as religion.⁵ Even though the Human Rights Committee stated atheistic, non-theistic and theistic beliefs as a religion, it does not precisely define the term 'religion' in a legal context. Without a clear definition of what constitutes a religion, it is difficult to implement a legal regime that guarantees the free and equal exercise of the right.

In the absence of an internationally-accepted legal definition, it is thus worth appraising existing scholarly definitions of religion in order to be able to adopt an operational definition for this study.

The most influential scholarly definitions of religion were offered by social scientists who look at the content of religion rather than practitioners who seek a divine truth. One such definition was given by the French sociologist, Emile Durkheim, who defines religion as:

*a unified set of beliefs and practices relative to sacred things, that is to say, things set apart and forbidden, - beliefs and practices which unite [into] one single moral community, all those who adhere to them.*⁶

Durkheim's German counterpart, Max Weber, acknowledges that religion has a strong social component but he refrain from defining it, suggesting instead that the truth-claims of religion are irrelevant to the scientific study of society. Weber's ideas influenced the study of religion mainly through his intellectual scion, Clifford Geertz, whose definition has been widely employed in studies of religion. Geertz defines religion as

*(1) a system of symbols which acts to (2) establish powerful, pervasive, and long-lasting moods and motivations in men by (3) formulating conceptions of a general order of existence and (4) clothing these conceptions with such an aura of factuality that (5) the moods and motivations seem uniquely realistic.*⁷

British social anthropologists emphasize the social aspect and define religion as a collective enterprise. In studying religion, A. R. Radcliffe-Brown, known as the father of structural-functionalism, states that

*religious beliefs and observances [are] a part of a complex system by which human beings live together in an orderly fashion. We should look, he maintains, at the social functions of religion, that is, the contribution that it makes to the formation and maintenance of a social order.*⁸

In this regard, Karl Marx's definition of religion is salient. For Marx (a classical sociologist), religion is an ideology of the powerful to support the existing social order, a tool employed by the dominant class to oppress the subordinate classes.⁹ In giving such a definition, it seems Marx looked mainly at the function rather than the content of religion.

When religion is discussed in connection with human rights, its conceptualization seems to opt for simplicity. Betty A. Reardon, in a short guide to films on human rights and religious freedom, defines religion as "a system of belief in a higher power" and human relationship to that power, forms of worship and the obligations".¹⁰ It is a reason that could determine how the society lives, with whom its members connect and what they believe. Hence religion is a force that shapes a society's way of life and through its cultural attachment, presents their identities.¹¹

From sociological perspective, the concept of religion could be defined through two different lenses: *substantive and functional* aspects. The substantive definition basically observes what religion is. Accordingly, religion is a web of human relationships with supernatural beings. The functional aspect deals with what religion does within human consciousness, human society, or human culture.¹²

⁷ Clifford Geertz, "Religion as a Cultural System," in *Anthropological Approaches to the Study of Religion*, ed. M. Banton (London: Tavistock, 1966): 4

⁸ Brian Morris, *Anthropological Studies of Religion: An Introductory Text* (Cambridge; Cambridge University Press (1987): 37.

⁹ Anthony Giddens and Philip W. Sutton, *Sociology: Religion*, (17 ed.), (Polity Press, Malden MA., 2013): 148

¹⁰ Betty A. Reardon (2nd); "Freedom of religion and belief: an essential human right: a companion guides to a set of short films on the human right to the freedom of religion and belief," *IARF and PDHRE*: 31

¹¹ Reardon, *Freedom of religion and belief: an essential human right: a companion guides to a set of short films on the human right to the freedom of religion and belief*, .31

¹² Hamid, *Freedom of religion and Ethiopian Muslims: advancements and setbacks*, 15

³ Gunn, *The Complexity of Religion and the Definition of Religion in International Law*, 190

⁴ Gunn, *The Complexity of Religion and the Definition of Religion in International Law*, 194.

⁵ Wolfgang Benedek, *Understanding of human rights: Manual on human Rights Education*: (Graz: European Union, 2013), 232

⁶ Émile Durkheim, *The Elementary Forms of the Religious Life*: Trans. Joseph Ward Swain (London: Allen & Unwin, 1955): 62

For the purposes of this study, both the substantive and functional aspects of religion are important. In this regard, Russell Kirkland description of religion is illuminating the concept of religion. He writes:

"Religion" is not mere intellectual assent to certain propositions about the nature of life. Rather, it involves what people do in their lives: "religion" has been called "enacted tradition" or "embodied belief." Religion originates in humanity's tendency to seek to maximize the meaning and value of our life-experience by aligning that life-experience with a higher or deeper reality, with "an unseen order" that somehow transcends ordinary human existence. That alignment can serve to integrate diverse aspects of our lives (individually and collectively), and to permeate our lives with a sense of purpose and direction. The concern with establishing and maintaining a harmonious relationship with the higher/deeper reality while conducting our everyday life often generates religious values - guidelines for thought and action that often develop into powerful cultural force. The myths, symbols, rituals, and intellectual reflection that grow up around people's experience of the higher/deeper reality form the basis of religious traditions ("religions"). "Religions" evolve within human culture and society, and are affected by the surrounding physical, historical and cultural realities.¹³

Kirkland's description presents religion as a human ultimate quest for the meaning of existence, which derives from his/her relationship to a transcendent reality. In the framework of his conception, religion is central to developing an understanding of the meaning of everything, to integrating every aspect of human existence in a harmonious manner and to provide the individual with direction, intention, and reason for his/her life.¹⁴ According to Kirkland, religion is also an activity that articulates myths, symbols and rituals to draw guidelines for thought and action under all conditions.¹⁵ More importantly, it shows how the interaction between religion and culture affects the life of a community. As such, this conception of religion lends itself well to the analysis of this study.

1.3. Freedom of Religion

Freedom of religion is one of the fundamental human rights which serve as a cornerstone of democratic societies. In the early twentieth century, although the concept of religious freedom was not explicitly recognized in international law, the system of minority protection established at Paris Peace Treaty (1919) had adumbrated freedom of religion for inclusion the charter

¹³Russell Kirland, "A definition of 'religion.'" www.uga.edu/religion/rk/basehtml/guides/RELDEF Last Accessed on Feb. 15, 2014.

¹⁴ Russell Kirland, "A definition of 'religion.'" www.uga.edu/religion/rk/basehtml/guides/RELDEF Last Accessed on Feb. 15, 2014.

¹⁵ Russell Kirland, "A definition of 'religion.'" www.uga.edu/religion/rk/basehtml/guides/RELDEF Last Accessed on Feb. 15, 2014.

of the League of Nations.¹⁶ The participants at the conference attempted to discuss the protection of human rights of minorities, including religious minorities, under a mandate of the League of Nations. However, the effort was derailed because of League of Nations' lack of capacity to enforce it.¹⁷ Later on, the issue of minority rights (group rights) and freedom of religion (both individual and group rights) came to be viewed as separate concepts. In 1948, the Universal Declaration of Human Rights effectively separated these concepts and spelled out freedom of religion as an international matter.¹⁸

Since then, religious freedom has been recognized in international law as a universal human right and firmly established as a fundamental freedom in UN declarations, international treaties,¹⁹ and national constitutions. Article 18 of the UDHR, the cornerstone of religious freedom, provides the clearest articulation of this recognition as follows:

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.²⁰

The declaration states clearly that all persons have an inherent right to exercise their religion or belief either individually or in community with others and in public or private, through worship, observance, practice and teaching, without fear of intimidation, discrimination, violence or attack. Because the free exercise of this freedom can contribute to democracy, development, rule

¹⁶ Christian Walter, "The Protection of Freedom of Religion Within the Institutional System of the United Nations; Universal Rights in a World of Diversity. The Case of Religious Freedom," *Pontifical Academy of Social Sciences, Acta 17*, (2012):588, Online available at www.pass.va/content/dam/scienze-sociali/pdf/acta17/acta17-walter.pdf.

¹⁷Hamid, Freedom of religion and Ethiopian Muslims: advancements and setbacks; see also Karen Murphy, "State security regimes and the right to freedom of religion and belief: changes in Europe since 2001," *Routledge research in human rights law*, (2013): 69

¹⁸Hamid, Freedom of religion and Ethiopian Muslims: advancements and setbacks; see also Karen Murphy, "State security regimes and the right to freedom of religion and belief: changes in Europe since 2001," *Routledge research in human rights law*, (2013): 69

¹⁹ After its recognition as an international matter on 1948 by the UDHR, freedom of religion is enshrined within different international conventions like Convention on the prevention and punishment of the Crime of Genocide Article 2 (1948), European Convention for the protection of human rights and fundamental freedoms Article 9 (1950), ICCPR Article 18, 20, 24, 26, 27 (1966), American Convention on Human Rights, Article 12, 13, 16, 17 and 23 (1969), African Charter on human and peoples' rights, Article 2, 8, 12 (1981), the UN Declaration on the Elimination of Discrimination based on Religion or Belief (1981) and UN Declaration on the rights of persons belonging to Ethnic, Religious and Linguistic Minorities, Article 2 (1992) and national documents of different democratic states.

²⁰Allen D. Hertzke, "Religious Freedom in the World Today: Paradox and Promise. Universal Rights in a World of Diversity: The Case of Religious Freedom," *Pontifical Academy of Social Sciences, Acta 17*, (2012):110, online available at www.pass.va/content/dam/scienze-sociali/pdf/acta17/acta17-hertzke.pdf

of law, peace and stability, the protection and promotion of freedom of religion or belief is universally protected as a fundamental human right.²¹

Under international law, religious freedom is protected as a freedom of thought, conscience and religion.²² Freedom of thought is a fundamental human right to autonomy of the human conscience and freedom to adopt or change any religion or belief that the individual chooses.²³ These rights applications not limited to traditional religions and beliefs or those with institutional characteristics or practices. According to the Human Rights Committee General Comment No.22 (2) and Article 18 of the ICCPR, these freedoms (thought, consciences and religion) pertain equally to theistic, non-theistic and atheistic beliefs as well as the right to not profess any religion or beliefs at all.²⁴

Pursuant to Article 18 of the UDHR, in particular, freedom of religion encompasses two distinct components based on the degree of the attendant limitation: the freedom to have or not to have or adopt (which includes the right to change) a religion or belief of one's choice, which is protected unconditionally and the freedom to manifest one's religion or belief, individually or in community with others, in public or private, through worship, observance, practice and teaching, which may be subject to limitation.²⁵

The Human Rights Committee has sketched out the freedom to practice one's religion as follows:

The notion of worship extends to ritual and ceremonial acts giving direct expression to belief, as well as various practices integral to such acts, including the building of places of worship, the use of ritual formulae, and objects, the display of symbols, and the observance of holidays and days of rest. The observance and practice of religion or belief may include not only ceremonial acts but also such customs as the observance of dietary regulations, the wearing of distinctive clothing or head coverings, participation in rituals associated with certain stages of life, and the use of a particular language customarily spoken by a group. In addition, the practice and teaching of religion or belief includes acts integral to the conduct by religious groups of their basic affairs, such as, inter alia, the freedom to choose their religious leaders, priests

²¹ Council Of European Union, "EU Guidelines on the promotion and protection of freedom of religion or belief," (paper presented at the foreign affairs Council meeting, Luxembourg, 24 June 2013)

²² The UDHR Article 18

²³ Benedek, *Understanding of human rights: Manual on human Rights Education*: European training and Research centre for human rights and democracy (Graz: European Union):

²⁴ International Humanist and Ethical Union (IHEU); Freedom of Thought 2012: A Global Report on Discrimination Against Humanists, Atheists and the Nonreligious was created by the International Humanist and Ethical Union (IHEU) with the American Humanist Association, Center for Inquiry, Richard Dawkins Foundation for Reason and Science, and the Secular Coalition for America. P.8

²⁵ Council Of European Union, "EU Guidelines on the promotion and protection of freedom of religion or belief," (paper presented at the foreign affairs Council meeting, Luxembourg, 24 June, 2013)

*and teachers, the freedom to establish seminaries or religious schools and the freedom to prepare and distribute religious texts or publications.*²⁶

Freedom of religion does not presume that any behavior could pass for religious practice. Limitation on freedom to practice one's religion is necessary to maintain public safety, public order, and public health, or protect the rights and freedoms of others.²⁷ This limitation shall be secured without discrimination on such grounds as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.²⁸

Nevertheless, these limitations should not serve as a license to discriminate against and abridge freedom of religion. According to Article 4 of the United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, discrimination on grounds of religion or belief by any state body done at any level of society, constitutes an offense against human dignity. Such practice is deemed as a disavowal of the principles of the UN Charter and a violation of the human rights and fundamental freedoms proclaimed in the UDHR and articulated in the International Covenants on Human Rights, and as an obstacle to friendly and peaceful relations between nations.²⁹ The Declaration also charges religious communities as duty-bearers to treat those of different and even unpopular beliefs and non-believers, reasonably and with patience.³⁰

1.4. Freedom of Religion under International and Regional Human Rights Documents and a National Constitution (Ethiopian Focus)

1.4.1. The UDHR

The UDHR, adopted by General Assembly Resolution 217 (III) of 10 December 1948, has a number of provisions relevant to freedom of religion. Article 2 prohibits distinction of any kind, including religion, in the enjoyment of the rights and freedoms set forth in the Declaration. Article 26 refers to religious groups and covers the right to education. Article 29, which addresses the limitations in the exercise of the proclaimed rights, is

²⁶ Human rights Committee, General Comments No.22 on Article 18 (Forty-eighth session, 1993), U.N. Doc. CCPR/C/21/Rev.1/Add.4 (1993), reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.6 at 155 (2003). par.4

²⁷ Convention for the Protection of Human Rights and Fundamental Freedoms, June 4, 1950, art.9, Europe. T.S. No. 5, available at <http://www.echr.coe.int/Convention/webconveneng.pdf>

²⁸ The ECHR Article 14

²⁹ The United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief Article 4

³⁰ Kevin Boyle and Juliet Sheen, *Freedom of religion and beliefs: A world report*, (London: Routledge 1997), 5

also relevant to those interested in protecting religious freedom.³¹

As noted, Article 18 of the UDHR enumerates a number of rights. The first part of article itemizes certain rights an individual is entitled to, such as the right to have a religion or not, right to change religion or belief without reservation. The second part of article lists some specific rights that may be abridged.³² According to the UDHR, the *raison d'être* of the restriction on the exercise of freedom of religion and other rights and freedoms is justified if and only if it fits the requirements specified by the Article 29 of the Declaration.³³ Accordingly, in the exercise of one's rights and freedoms, everyone shall be subjected only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and meeting the just requirements of morality, public order and general social welfare in a democratic society.³⁴ In any event Article 2 of the UDHR stipulates that the right to enjoy the freedom of religion and belief shall not be subject to any form of discrimination based on religion.³⁵

1.4.2. The ICCPR

The ICCPR is a core international human rights convention which affirms freedom of religion. Article 18 of the Convention states freedom of religion *inter alia*:

Everyone shall have the right to freedom of thought, conscience and religion. This right shall include 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.³⁶ *No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.*³⁷ *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.*³⁸ *The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.*³⁹

³¹Natan Lerner, 2006: "Religion, Secular Beliefs and Human Rights: 25 years after a 1981 Declaration," *Studies in religion, secular beliefs and human rights*, Volume 2, Boston: Martinus Nijhoff publishers, ,2006): 13

³² The UDHR Article 18

³³ The UDHR Article 29

³⁴ The UDHR Article 29 (2)

³⁵ The UDHR Article 2

³⁶ The ICCPR Article 18 (1)

³⁷The ICCPR Article 18(2)

³⁸ The ICCPR Article 18(3)

³⁹ The ICCPR Article 18 (4)

Similar to the UDHR, the ICCPR also affirms freedom of religion under the freedom of thought, conscience and religion. In the first part, Article 18 states the elements/contents of freedom of religion. However, unlike to the UDHR, which provides for the right to 'change 'one's religion or belief, the ICCPR posits the right to 'have or to adopt' a religion or belief of one's choice as a non-derogable right, which is automatically protected unconditionally. In its second part, the article states freedom to manifest religion or belief. Accordingly, everyone has the right to manifest his/her religion or belief either individually or in community with others in public or private through worship, observance, practice and teaching.⁴⁰

Based on the interpretation provided by Human Rights Committee's General Comment 22 on the above article, the right to manifest one's religion or belief covers comprehensive worship performances. The concept of worship extends to ritual and ceremonial acts giving direct expression to belief, as well as various practices integral to such acts, including the building of places of worship, the use of ritual formulae and objects, the display of symbols, and the observance of holidays and days of rest.⁴¹ The observance and practice of religion may include the observance of dietary regulations, the wearing of distinctive clothing or head coverings, participation in rites of passage, and the use of a particular language customarily spoken by a group⁴². In addition, the practice and teaching of religion or belief includes acts integral to religious groups' conduct of their basic affairs, such as, *inter alia*, the freedom to choose their religious leaders, priests and teachers, the freedom to establish seminaries or religious schools and the freedom to prepare and distribute religious texts or publications.⁴³

In light of Human Rights Committee's General Comment on Article 18 of the ICCPR, right's application is not limited to traditional religions or those with institutional characteristics or practices religion or belief. Rather, the Convention affirmed to protect the right to freedom of theistic, atheistic, non-theistic beliefs, as well as right not to profess any religion or belief.⁴⁴ Even though the ICCPR gives equal and due respect for any kind of religion, some indigenous religion are not actually enjoying equality guaranteed to them under this treaty without any discrimination clause in the real world.

⁴⁰ The ICCPR Article 18 (1)

⁴¹Human rights Committee, General Comments No.22 on Article 18 (Forty-eighth session, 1993), U.N. Doc. CCPR/C/21/Rev.1/Add.4 (1993), reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.6 at 155 (2003). par.4

⁴²Human rights Committee, General Comment No.22

⁴³ Human rights Committee, General Comment No.22

⁴⁴ Human rights Committee, General Comment No.22

1.4.3. Declaration on Elimination of all Forms of Intolerance and of Discrimination Based on Religion or Belief

The Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief was proclaimed by the General Assembly of the United Nations by resolution 36/55 of November 25, 1981.⁴⁵ Article 1 and 6 of the Declaration are the core articles that provide a catalogue of protected religious rights under the Declaration. Similar to the UDHR and ICCPR, the Declaration proclaimed that everyone has the right to freedom of thought, conscience and religion. Article 1(2) of the Declaration prohibits coercion and infringements on freedom of religion, Article 1(3) of the Declaration allows for limitations on the freedom to manifest one's religion, if and only if it prescribed by law and necessary for the predicted purposes stated by this Declaration. Subsequently, the article enumerated the acceptable purpose for the limitation of freedom of religion as to protect public safety, public order, public health or morals, or the fundamental rights of others, as understood in free society.⁴⁶

More importantly, Article 6, the Declaration enumerates a list of protected religious and related human rights.⁴⁷ Under Article 2, the Declaration avows prohibition of discrimination and intolerance based on religion or beliefs. Article 2(2) mentioned the definition and scope of discrimination and intolerance in the declaration. Accordingly, discrimination and intolerance based on religion or belief refers to any distinction, exclusion, restriction, or preference based on religion or belief and having as its purpose or as its effect nullification or impairment of the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis.⁴⁸

In addition the Declaration provides provisions that are closely related with Article 18 of both the UDHR and the ICCPR. However, unlike the UDHR and but similar to the ICCPR, the Declaration does not affirm the right to change a religion or belief of one's choice. Rather, one merely has the right to have or adopt a religion or belief of his or her choice.

1.4.4. The African Charter on Human and People's Rights

Article 8 of the African Charter on Human and Peoples' Rights (ACHPR) states that, "Freedom of conscience, the profession and free practice of religion shall be guaranteed. No one may, subject to law and

order, be submitted to measures restricting the exercise of these freedoms". The ACHPR therefore guarantees freedom of conscience, profession and free practice of religion. A guarantee of freedom of conscience and religion would seem to imply that the state should not interfere with an individual's profession of belief, whether of a religious or non-religious nature, or thought.⁴⁹

The charter construes freedom of religion as the matter which could determine the self respect and dignity of individuals. Although the ACHPR posits freedom of religion along with the right to freedom of conscience and profession of belief, it doesn't clarify the contents of religious freedom. It does however affirm the propriety of limitation to the manifestation of religious freedom. However, the Charter doesn't clearly define the conditions under which limitation on the manifestation of these freedoms may be justified. In fact, its claw-back clauses, subject to law and order, may seem as obstructing the realization of the rights in or undermining the very essence of the Charter.

1.4.5. The FDRE Constitution

The 1995 FDRE Constitution restructured the political and administrative organization of the country to ethnic based federalism. One third of its contents (Article 14-44, provisions that become a core of the Ethiopian Bill of Rights) cover the fundamental rights and freedoms of citizens. The Constitution establishes the principles of secularism (Article 10) separating state and religion. Unlike its predecessors, the FDRE Constitution does not grant a privileged position to any particular religion. The two realms rendered separate in the sense that one does not interfere in the business of the other. Moreover, Articles 10 and 27 affirm freedom of religion as a natural right that is inviolable and inalienable.

According to Article 9 (4) of FDRE Constitution, all international agreements ratified by Ethiopia are considered an integral part of the law of the land.⁵⁰ Article 13 (2) states that all the fundamental rights and freedoms guaranteed by the Constitution shall be interpreted in a manner conforming to the principles of the Universal Declaration of Human Rights, the International Covenants on Human Rights and international instruments of human rights ratified by Ethiopia.⁵¹

As such, the FDRE Constitution affirms the right to freedom of religion with the same words in the ICCPR. In Article 27, freedom of religion is articulated as

Everyone has the right to freedom of thought, conscience and religion. This right shall include the freedom to hold or to adopt a religion or belief of his choice, and the 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. [...] No

⁴⁵Natan Learner, "Religion, Secular Beliefs and Human Rights: 25 years after a 1981 Declaration," *Studies in religion, secular beliefs and human rights, Volume 2, Boston:MartinusNijhoff publishers, 2006*: 28

⁴⁶ The UN Declaration on Elimination of all Forms of Intolerance and of Discrimination Based on Religion or Belief (hereinafter Declaration) Article 1

⁴⁷ The Declaration Article 6

⁴⁸Learner, "Religion, Secular Beliefs and Human Rights: 25 years after a 1981 Declaration," 34

⁴⁹ The African Charter on Human and Peoples' Rights, Article 8

⁵⁰ The FDRE Constitution Article 9

⁵¹ See Article 13 of the FDRE Constitution

*one shall be subject to coercion or other means which would restrict or prevent his freedom to hold a belief of his choice.*⁵²

The FDRE Constitution therefore avows the right to freedom to hold a religion or belief of his/her choice without limitation. The right to freedom of religion is broadly to encompass a number of specific rights such as freedom to choose a religion or belief, a right to replace one's religion or belief with another and a right to adopt atheistic views.

On other hand, the Constitution does not state in unequivocal terms the inviolability of the cultural resources of indigenous peoples in the country. Although Ethiopia has indigenous religions and institutions, including the *Waaqeffannaa* religion and *gada* system, the FDRE Constitution does not explicitly state the rights of indigenous religion in its provisions. Although, Articles 10 and 27 (3) of the Constitution guarantee the rights of the individual to hold or adopt a religion of his/her choice and the right of believers to establish religious institutions, the legality of *Waaqeffannaa* religion has been violated at different times.

1.5. Restriction on Freedom of Religion

Freedom of religion or belief can be abridged under international standards.⁵³ According to Article 29 of the UDHR, such limitations are determined by and instituted merely for the purpose of securing due recognition and respect for the rights and freedoms of others and meeting the just requirements of morality, public order, safety, health and the general welfare of the society.⁵⁴ As stated by the Human Rights Committee General Comment No.22 (2) on Article 18 of the ICCPR, any tendency to discriminate⁵⁵ against any religion or belief for any reasons, including the fact that they are newly established, or that they correspond to religious minorities or a lack of sympathy by a predominant religious community is expressly proscribed.⁵⁶

In principle, these non-discrimination clauses impose duty both on the state and individual believers. The state has the duty to provide remedies or redress for victims of discrimination or intolerance because of their faith or secular beliefs.⁵⁷ While the freedom to have or

hold religion or belief and the right of parents and guardians to ensure religious and moral education of their children without interferences are protected unconditionally, the right to practice freedom of religion is subject to limitation to certain conditions.⁵⁸ As reported by the Committee, limitations may be considered permissible when the intention is to avert manifestations of religion or belief that amount to propaganda for war or advocacy of national, racial or religious prejudice that constitutes provocations to discrimination, hostility or violence.⁵⁹

In this regard, it should be emphasized that, while the right to have or not have religion is non-derogable, the rights to practice one's own religion may be restricted under certain circumstances. Prohibiting any person from manifesting his/her religion without the presence of the conditions is contrary to the intentions and provisions of several international instruments of human rights. When it comes to *Waaqeffannaa*, limitations imposed on its status as a religion and on the rights of its adherents to manifest their beliefs look very different from what international, regional human rights instruments and national constitution affirms.

1.6. Indigenous Religious Minorities

Indigenous peoples have unique and distinctive cultures, languages, legal systems and histories. Most indigenous peoples have a strong connection to the environment and their traditional lands. They are often the descendants of the original inhabitants of a geographical region who fell under the domination of new arrivals conquest, occupation, and settlement.⁶⁰

According to the definition of the United Nations Special Rapporteur to the Sub-Commission on Prevention of Discrimination and Protection of Minorities, indigenous communities, peoples and nations are;

*...those which having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop, and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems.*⁶¹

Accordingly Indigenous Peoples are concerned with preserving, promoting, developing and protection of the

⁵² The FDRE Constitution Article 27 (1 and 3)

⁵³ Kevin Boyle and Juliet Sheen, *Freedom of religion and beliefs: A world report*, (London: Routledge 1997), 7

⁵⁴ The UDHR Article 29

⁵⁵ See Article 14 of the European Court of Human rights which state the principle of equality and strongly prohibits discrimination based on religion. It stated as the enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

⁵⁶ Human rights Committee General Comment No.22(2)

⁵⁷ Kevin Boyle and Juliet Sheen, *Freedom of religion and beliefs: A world report*, (London: Routledge 1997), 6

⁵⁸ European Court of Human rights Article 10 (2)

⁵⁹ Human Right Committee General Comment No.22

⁶⁰ Bahr, Ann Marie B. and Marty, Martin E., *Religions of the World: Indigenous Religions*, Philadelphia: Chelsea House Publishers, 2005), .3

⁶¹ The University of Minnesota Human Rights Center, The Rights of Indigenous Peoples. *The university of Minnesota Human rights center library*, 1, (www.hrusa.org, www.umn.edu/humanrts, and www.indigipeoples.org accessed on March 21, 2014 at 7:25AM

socio-cultural and politico-legal aspects of their ancestral and transmit to future generations.

From a human rights perspective, indigenous people continue to suffer from legacies of confiscation of their traditional lands, destruction of their cultures, subjugation, discrimination and widespread violations of their human rights. Their political and cultural institutions and the integrity of their religion are often undermined by the dominant communities' failure to recognize their values.⁶² On other hand, the UDHR avows the inherent dignity, the equal and inalienable rights of all members of the human family.⁶³ More recently, however, substantial progress has been made to redress past injustices against indigenous peoples and notable movement to ensure their free and equal participation as citizens in the affairs of the society in which they live.⁶⁴

African Commission on Human and Peoples' Rights with the International Work Group for Indigenous Affairs identifies some indigenous people in Africa. Accordingly, Oromo (Boorana and Karrayyu), Afars, Somalis and Nuer of Ethiopia are recognized as indigenous people.⁶⁵ As noted earlier, most indigenous peoples have a strong bond to their traditional lands and culture. Traditional religion is therefore among the cultural markers that could dub a certain community as an indigenous. Indigenous peoples are also minorities in terms of ethnic, religion, national or linguistic in their state.

Religious minorities in various countries face discrimination on the basis of religion or belief. Discriminatory legislation and state practices provide a legitimatizing framework for wider discrimination in society. Deprivation, social exclusion and violence towards minorities are the inevitable results of systematic discrimination which threatens the social fabric of society. Numerous religious communities often encounter problems in obtaining the legal status necessary to function and in acquiring, building or maintaining places of worship and burial grounds or facilities. They are frequently denied using national media and freedom to propagate religious teaching.⁶⁶ Such actions are contradicted with the rights and freedoms affirmed by the

international and regional human rights instruments and national legal documents of democratic states.

II. FREEDOM OF WAAQEFFANNAA RELIGION IN ETHIOPIA IN POST 1991

2.1. The General Overview of Waaqeffannaa

Even though *Waaqeffannaa* had faced mounting challenges under successive Ethiopian regimes, it was never abandoned by Oromo people. My informants relate that the Oromo people view *Waaqeffannaa* not just as merely an expression of spirituality, but also as a foundation of Oromo traditions, cultural heritage, symbol of identity, and a pillar of the Gada system. Put succinctly, *Waaqeffannaa* is the bedrock that underlies the entire Oromo life aspects. To preserve these values, many Oromos have paid with their lives and ensured the survival of the Oromo indigenous religion down to the 21st century. At this juncture, my informants are hopeful that the locked door to indigenous religions in Ethiopia that has stood for more than five centuries finally seems to be opening.

Currently *Waaqeffannaa* has a legal personality as a religious faith. It is spreading fast to restore its former status in nearly all parts of the country. As data from the Central Committee of the *Waaqeffannaa* Religion Followers Association (WRFA) currently the association is clustered around five centers. This classification is for the sake of practicing in harmonized ways across different *galmoota* or worship centers, to facilitate smooth relationship among adherents of the religion in various *galmoota*, to keep up its theology and transfer it intact to the next generation and to create conducive environment for administration.

As such, the five clusters are located at various locations. The Center for the Central Cluster, seated at Malkaa Ateetee Buraayyuu, covers adherents of *Waaqeffannaa* from the Finfinnee, the Special Zone towns surrounding Finfinnee and the Southwestern Shoa Zones. The Center for the Western Cluster, seated at Naqamtee town (Galma Oda Bisil) covers areas around in all parts of the Wallagga Zones, the Ilu Abbaa Booraa Zone, the Jimmaa Zone, the Benushangul-Gumuz and Gambella Zones. The Center for the Eastern Cluster placed at *Booset*, Walanciti district. Territorially it covers around the Eastern Shoa, Hararge, Arsi, Baalee, Afar and Somalia. Center for the Northern Cluster made its seat at Gabra Gurraachaa in Northern Shoa. It is serving followers of *Waaqeffannaa* religion from the Northern Shoa, the Special Zone of Kamisee, Amhara Regional State and Tigray Regional State. Center for the Southern Cluster located at Dirree Arraabii (Gujii-Diillaa border). It covered Gujii, Booranaa and the Southern Nation, Nationalities and Peoples' Regional State. These whole centers may cover the area where inhabited by Oromo to some extent.

⁶² Asia Pacific Forum of National Human Rights Institutions and Office of the United Nations High Commissioner for Human Rights, (2013), "The United Nations Declaration on the Rights of Indigenous Peoples: A Manual for National Human Rights Institutions" Geneva: Palais des nations, Switzerland, 2013):1

⁶³ The UDHR, preamble, paragraph 1

⁶⁴World Council of Churches 10th Assembly (2013), "Statement on the Politicization of Religion and Rights of Religious Minorities," (paper presented on the World Council of Churches 10th Assembly, Busan, Republic of Korea, 2013)

⁶⁵African Commission on Human and Peoples' Rights with the International Work Group for Indigenous Affairs (2006), *Indigenous Peoples in Africa: The Forgotten People in Africa?*, Copenhagen: Eks/SkolensTrykkeri, 2006), 16

⁶⁶World Council of Churches 10th Assembly (2013), "Statement on the Politicization of Religion and Rights of Religious Minorities," (paper presented on the World Council of Churches 10th Assembly, Busan, Republic of Korea, 2013)

2.2. The Status of Waaqeffannaa in post 1991

Before discussing the right to freedom of *Waaqeffannaa* religion in Ethiopia, it is necessary to see its status as a religion. Based on data gathered in the study areas, *Waaqeffannaa* religion in Ethiopia was so delayed to enjoy the constitutionally guaranteed rights under the FDRE Constitution. As we have seen under Chapter 3, *Waaqeffannaa* is an African indigenous religion which started to be practiced within Oromo people at a very early period in time. Tradition claims that the origin of Oromo religion to be more than sixty centuries. However, due to recent political injustice, the Oromo claim much of the original religious concepts and practice have been lost along with a lot of their cultural values, politico-administrative system, social cohesion, traditional heritages and their identity. These past trends and some other factors continued to deny recognition of Oromo indigenous religion even in post 1991. Although the FDRE Constitution opened the door for religious freedom, it had taken more than two decades for the *Waaqeffannaa* religion to receive official recognition as a religion.

The right to freedom of religion, as defined by international standards, is a wide-ranging right covering a large number of distinct issues. Many present the identity of believers and their conception of life as the most vital element among other rights.⁶⁷ These comprehensive rights were denied to *Waaqeffataa* Oromo until September 2, 2013 (Ref. No.MFA 00198) when *Waaqeffannaa* religion was given a legal personality in Ethiopia.⁶⁸ As data gathered from study areas shows, although the adherents of this religion did everything to fulfill the requirements and procedures of government's rigorous registration process at various times to register as an officially recognized religion, the government did not approve their until 2013.

The Human Rights Committee's General Comment No. 22 on Article 18 of the ICCPR explicitly affirms the rights to freedom of religion to everyone and without distinction.⁶⁹ Whether they are adherents of atheistic, non-atheistic or theistic believers, they should be considered as religious community. No religion should be favored by

⁶⁷Heiner Bielefeldt (nd). (Special Rapporteur on Freedom of Religion since 2010), "Rapporteur's Digest on Freedom of Religion or Belief: Excerpts of the Reports from 1986 to 2011 by the Special Rapporteur on Freedom of Religion or Belief; Arranged by Topics of the Framework for Communications", 4 available at <http://www2.ohchr.org/english/issues/religion/standards.htm>.

⁶⁸ The FDRE Ministry of Federal Affairs: Certificate of Registration. It reads as "this is to certify that WAAQEFFANNANNAA RELIGION FOLLOWERS ASSOCIATION has been registered by the ministry in accordance with proclamation No 691/2010. This certificate bearing the number MFA 00198 has been issued on September 2, 2013 and shall be valid until September 1, 2018".

⁶⁹ The UN Human Rights Committee's General Comment No. 22 on Article 18 of the ICCPR, paragraph 4, see also Wolfgang Benedek, "Understanding of human rights: Manual on human Rights Education"; European training and Research centre for human rights and democracy, Graz, EU. (2012); 232

the state. The Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief strongly disapproves of discrimination based on religion. Article 2 of the Declaration openly describes the scope of discrimination and intolerance on religion or belief that should not be permitted. These includes any distinction, exclusion, restriction, or preference based on religion or belief and having as its purpose or as its effect nullification or impairment of the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis.⁷⁰

Contrary to this declaration, *Waaqeffannaa*, the traditional religion and heritage of Oromo people, denied its legal personality for more than twenty years after the adoption of the FDRE Constitution. *Waaqeffannaa* meets the requirements to be incorporated as a religious community. Government officials argue that the lack of legal personality did not affect its adherents from exercising the religion's freedom guaranteed by the Ethiopian Constitution and other relevant human rights instruments ratified by Ethiopia.⁷¹ They underscore that some religious sects are yet not registered. The Ethiopian Orthodox Christianity (EOC) has never registered and has never faced the ramifications of not registering.⁷² However, the EOC has been an official religion in the country for centuries and does not need legal protection. In truth, the fact that *Waaqeffannaa* in Ethiopia was denied its status of religion for many years indicates official indifference to the politically less influential religions such as the Oromo indigenous religion.

As data from the respondents revealed that the Ministry of Justice denied a license to *Waaqeffannaa* for unspecified reasons. My informants surmise that the government presumably suspects the group of collusion with the banned Oromo political organization, the Oromo Liberation Front (OLF). They maintain that they faced violation of right to freedom of religion and other human rights because of political reasons. There are grounds for their suspicions. For instances, in 2009, among followers of the Malkaa Ateetee Buraayyuu *Waaqeffannaa* congregation, seven persons were detained during *Irrecha Birraa*. They were detained by the Federal Police on the pretext of their association with the OLF. As the result, the congregation's license was revoked. Often harassments and detentions such as these are performed by the security force and federal police without any legal warrant.⁷³ Reports of independent organizations corroborate my informant's suspicions. The International Religious Freedom Report of 2005 and of 2012 have also documented that the Ministry of Justice denied a license to *Waaqeffannaa* without offering any reason for its

⁷⁰ The Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief Article 2

⁷¹ Interview with the Oromia Culture and Tourism Bureau, April 2014

⁷² United States Department of State Bureau of Democracy, Human Rights, and Labor, "International Religious Freedom Report 2005 and 2012".

⁷³ Interview with anonymous I at Buraayyuu on April, 2014

action because the government presumably suspects the group of clandestine collaboration with the OLF.⁷⁴

Before 1991, the practice of *Waaqeffannaa* religion was illegal. In the aftermath of the overthrow of the military regime in 1991 by the combined struggle of the OLF and the Tigray Peoples' Liberation Front (TPLF), a Transitional Government (1991-1994) was established. During this period, the OLF decided to take part in the administration of the country. During that time, the question of identity became an important issue for the Oromo people. The Oromo indigenous religion became one of the identity markers for many Oromos.

Although *Waaqeffannaa* was practiced and its various *Ayyaanota* (plural form of *Ayyaana*), including the *Irreecha* celebrated in a generally haphazard way at different local levels society before the Transitional Period, in the period after, the *Irreecha* festival came to be celebrated more publicly at *Hora Arsadi* of Bishoftu this time under the auspices and coordination of the OLF. Thereafter, the issue of *Waaqeffannaa* came to be associated more closely with the OLF.⁷⁵ Although *Waaqeffannaa* is an ancient religion of Oromo people, many started to identify its activities as the political act of the OLF.

After the OLF's left the Transitional Government and the country, the government attempted to ban the religion. However, the government could not succeed to totally ban practice of *Waaqeffannaa*. Once the impartibility of banning became evident, the government decided to try another alternative, revitalization of the religion under the auspices of the Oromo Peoples' Democratic Organization (OPDO).⁷⁶ To do so, it legalized *Waaqeffannaa* as an official religion in 2003 by the reference number 11/2765/-s1390, dated on 23/12/2003 and in turn invalidated the license on 2004. The revitalization process of *Waaqeffannaa* continued from the effort of its adherents at different level of government throughout the country. An effort of *Waaqeffataas* gave the last updated version of legal license on 2013.

Another study also exhibits *Waaqeffannaa* as contempt religion in Ethiopia under reign of the EPRDF. MezmurYared, in his thesis *freedom of religion and beliefs in correctional institutions*, reveals the denial of *Waaqeffannaa* religion and yet in different toward adherents of the religion. Based on its empirical investigation, the study find out the extent to which *Waaqeffannaa* is intentionally subjected to arbitrary deteriorations and *Waaqeffataas* prohibited to manifesting

their various ritual ceremonies.⁷⁷ Unlike the other religious groups, *Waaqeffannaa* privately subjected to discrimination in its efforts to receive recognition, registration, treatment and land allocation particularly at local and zonal administrative system.⁷⁸

Although international and regional human rights instruments and the FDRE Constitution affirm religious freedom, that freedom was too delayed in coming to *Waaqeffannaa*. According to data gathered Oromo religion, *Waaqeffannaa* was unrecognized as a religion until September 2013 and *Waaqeffataas* were sullied their right to freedom of religion. The prohibition of *Waaqeffannaa*, in one or another way, is the suppression of Gada system, which represents the socio-cultural and politico-legal institution, and sabotage of and gradually destructs of Qaalluu institution, the spiritual pilgrimage of Oromo religion, which in turn brings the loss of their spiritual aspects. This loss of spiritual and social capital leads to confusion, disorganization, instability, poverty, and several other social problems.⁷⁹

Though it was failed, the adherent of this religion made an effort to legalize *Waaqeffannaa* as a religion at different times without hesitation. For instance, in 1998, the followers of the religion attempted to register this religion under the auspices of Maccaa and Tuulamaa Welfare Association (MTWA), under the name *Waaqeffannaa* Religion Followers Association (WRFA). The association reinstated *Waaqeffannaa* to some extent at different parties of Oromia. The association reestablished its *galma* (worship center) at various parts of Oromia. For instances, *Waaqeffannaa* congregations were established at Ada'a Liban, Liban Cuqqaalaa, Afran Wallisoo, Sadan Sooddoo, Toorban kuttaayee (Amboo), Noolee Kaabbaa (Western Wallaggaa), Jalduu, Gadaa Roobalee (at Odaa Nabee) between 1998 to 2000.⁸⁰

After a long challenge and repeated appeals, the WRFA was affirmed as a legal entity from the Federal Ministry of Justice. As soon as this license secured the legality of *Waaqeffannaa* religion, the central committee of the association started members' mobilization at different parts Oromia through conducting symposium. However, the legality of the religion was annulled after 51 days of its registration. The license was revoked by the Federal Ministry of Justice by a letter referenced 11/4562/10-1390 dated on 12 February 2004. The letter stated that the license was revoked because the association (WRFA) went beyond its legal mandates in exercising its rights. Besides revoking the license, the

⁷⁴ United States Department of State Bureau of Democracy, Human Rights, and Labor, "International Religious Freedom Report 2005 and 2012".

⁷⁵ Interview with Oromia Culture and Tourism Bureau, at Finfinnee on April 2014

⁷⁶ Interview with Oromia Culture and Tourism Bureau, at Finfinnee on April 2014

⁷⁷ MezmurYared, "Freedom of religion and beliefs in correctional institutions: the case of Ethiopian Federal Correctional Institutions", (MA thesis, Addis Ababa University Center for Human Rights, 2011), 41-77

⁷⁸ Interview with Anonymous 1 at Buraayyuu on March 2014

⁷⁹ Begna Fufa Dugassa, "Reclaiming Oromo Indigenous Organizational Structures and Fostering Supportive Environments for Health." *Archives of Business Research – Vol.2, No.1., 27*

⁸⁰ Dirribi Damisie Bokkuu, *Oromo wisdom in Black Civilization*, (Finfinnee: Finfinnee Printing and Publishing S.C, 2011), 34

letter also instructed the police to detain anybody who may call a meeting or participate in the assembly held by the name of *Waaqeffannaa*.⁸¹ Then after this year, not only practice of *Waaqeffannaa* is limited, but also legality of the *Waaqeffannaa* was revoked. Identifying oneself as an adherent of this religion may criminalize and take anyone into custody.

As we have seen above, *Waaqeffannaa* was officially banned in 2004. However, international human rights instruments, particularly, the UDHR and the ICCPR, and national constitution (FDRE) affirm the right to have a religion or not to have as a right to freedom of religion which is entitled to every human being unconditionally. Accordingly whenever, the exercise of one's religion is alleged to damage the rights and freedoms of the others, public morality, order and the general welfare in a democratic society, it is possible to limit only the exercise of that religion.⁸² However, *Waaqeffannaa* was not merely limited to its manifestation, rather it also lost its legal recognition, which violates the *Waaqeffataas'* right to hold or to have a religion, which is entitled and expected to be respected absolutely.

Besides, Article 13(2) of the FDRE Constitution stipulates that the fundamental rights and freedoms specified in the constitution as human and democratic rights shall be interpreted in a manner conforming to the principles of the UDHR, the ICCPR and international instruments adopted by the Ethiopia.⁸³ Article 9 (4) of the FDRE Constitution recognized the international instruments ratified by Ethiopia as an integral part of the law of the land.⁸⁴ Additionally Article 27(2) of the FDRE Constitution avows the non derogability of the right to freedom to hold a religion or belief of one's choice. In line with these existing legal frameworks, prohibition of *Waaqeffanna's* legality is beyond a reasonable limitation. It seems an act performed against these international human rights instruments ratified by the Ethiopia and also against the FDRE Constitution itself.

2.3. Freedom to Worship

Article 18 of the ICCPR and the UDHR, Article 6 of the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief, Article 8 of the ACHPR and Article 27 of the FDRE Constitution guarantees the freedom to manifest one's religion or belief either individually or in community with others and in public or private. They avow the freedom to do so in worship, observances, practice and teaching. As illustrated by the Human Rights Committee, the concept of worship enlarged to ritual and ceremonial acts giving direct expression to belief, as well

as various practices integral to such, including the building of places of worship, the use of ritual formulae and objects, the display of symbols, and the observance of holidays and days of rest.⁸⁵ It is an act of devotion exercised by adherents of a religion.⁸⁶

The devotion performed by the followers of every religion has its own procedures.⁸⁷ *Waaqeffannaa* as faith system has its own worship procedures. It devoted both individually and in community with others and in public as well as private stages. At individual level every *Waaqeffataa* may hold *Waaqeffannaa's* mythology as his/her spiritual identity. *Waaqeffattootaa* exercised different ritual activities within their daily life. According to *Waaqeffannaa* mythology, the *Waaqeffataa's* ways of life depends on the virtue of *Waaqeffannaa*. At the community level *Waaqeffattootaa* have various religious rituals which they perform in together at the *galma* as well as at the public square.⁸⁸

According to data gathered from the study area, the right to freedom of Worship has two stages in Ethiopia. These are *Waaqeffannaa* in pre 2013 and in the post 2013. Before its recognition by the Ethiopian Ministry of Federal Affairs at 2013, *Waaqeffattootaa* faced overt limitation on their freedoms to manifest their religion either in private or in public. Identifying oneself as *Waaqeffataa* was often resulted in a numbers of individual being suspected as members of the opposition Oromo political organizations. Despite being criminalized however, adherents of *Waaqeffannaa* practiced their religion secretly, secured and systematized the survived precepts of their religion.⁸⁹

The act of worship may differ from religion to religion. For instance, many religions require their followers to worship in a certain place, temples, mosques or churches, which carries institutional, social and communicative dimensions. Others also allow individual worship.⁹⁰ *Waaqeffannaa's* worship is manifested through celebrating various *ayyaanota*, performing ritual acts at the *galma*. Although *Waaqeffannaa* was legalized in 2013 in Ethiopia, *Waaqeffataas* were celebrating a few *Ayyaanota* in the public square prior to legalization. For instance they are continually exercising *Ayyaana Irreechaa* as one ritual act of their religion. Before its recognition, except *Irreecha Malkaa* (Riverside thanksgiving), sometimes called *Irreecha Birraa* (Spring *Irreechaa*) of *Malkaa Hora Arsadi*, which is celebrated at *Malkaa Hora Arsadii* of Bishooftu; Not all activities of *Waaqeffannaa* were celebrated publicly.⁹¹

⁸⁵ Human Rights Committee General Comment No.22 on Article 18 of the ICCPR

⁸⁶ Hamid, Freedom of religion and Muslim in Ethiopia, 59

⁸⁷ Hamid, Freedom of religion and Muslim in Ethiopia, 59

⁸⁸ Researcher observed during religious teaching at Galma Odaa Bisil, Malkaa Ateetee Buraayyuu and Hora Arsadii at different times.

⁸⁹ Interview with anonymous 2 at Naqamtee on February 2014

⁹⁰ Hamid, Freedom of religion and Muslim in Ethiopia, 59

⁹¹ Interview with anonymous 1, 2, 4 and 10 at different study areas at different times

⁸¹ Waldaa Amantii Waaqeffannaa Addunyaa (WAWA), "Waaqeffannaa: Barsiisa Amantii Durjireessaa", *Jiildii I, Lakk.1* ,(6407), 38-53, see also Bokkuu, *Oromo Wisdom in Black Civilization*, 47

⁸² The UDHR Article 29

⁸³ The FDRE Constitution Article 13 (2)

⁸⁴ The FDRE Constitution Article 9 (4)

Despite the status of *Waaqeffannaa* in pre 2013, currently its followers are exercising their right to worship in accordance with their religious doctrine in line with the national constitutional framework. Except *Waaqeffattoota* of few *galmoota* (Galma MalkaaTajii, southwestern Shoa, Malkaa Shugute and Jalduu, the western Shoa and Galma Malkaa Fiichee, northern Shoa), almost all of my respondents confirm the existence of freedom to teach their religious values at their respective *galma*, they are enjoying the right to assembly to discuss their ritual issues at different levels. For instance, they conducted different conference at national level after its recognition. The first and second conference was held at Naqamte town on November 2013 and the third was held at *Boosat* in January 2014. On the Booset Conference they celebrated *Ayyaana Abbaa Oromo*; the fourth conference was conducted after three weeks at Maqi, Eastern Shawa Zone and the fifth conference was held in Finfinnee at the end February 2014.⁹²

Beside to the governmental reluctance to declare *Waaqeffannaa* religion, the role of non-*Waaqeffannaa* religion followers has negatively affected the right to freedom of worship. For instance, the strong impact of the Protestant religion at the western cluster has generated resistance against *Waaqeffannaa*. Data gathered from Galma Odaa Bisil of Naqamtee reveals that at the beginning of 2013 the Protestants held their conference at Malkaa Hadiyyaa (Hadiyyaa riverside), the very site where the Odaa Bisil *Waaqeffannaa* religion followers' congregation hold their ritual activities regularly. Their purpose was to develop public awareness about the "evilness" of *Waaqeffannaa*. They declared that, "*We have a vision to convert the Oromo people to a true faith, ways and an everlasting life. Our almighty God revealed us that no more devils and goddesses will be worshipped over this land, this river and this riverside*".⁹³ This is how the Protestants perceive *waaqeffannaa* as worshipping goddesses and an evil spirit.

2.4. Access to Land for Place of Worship and Cemetery

As it was mentioned earlier, freedom of worship may encompasses various ritual practices connected with right to access to free land to build places of worship, cemeteries and manifestation of religious attached ceremonies. The FDRE Constitution entirely vested the ownership of the land to the Ethiopian peoples and State. It state as:

The right to ownership of rural and urban land, as well as of all natural resources, is exclusively vested in the State and in the peoples of Ethiopia. Land is a common property of the nations, nationalities and peoples of

*Ethiopia and shall not be subject to sale or to other means of transfer.*⁹⁴

Accordingly, the religious groups, as the member of nations, nationalities and peoples of Ethiopia, have the right to use their communal property. Besides, international religious report revealed that, religious groups are given the free use of government land for Churches, schools, hospitals, and cemeteries through applying to regional and local governments for land allocation.⁹⁵ The question is how much *Waaqeffattoota* are relishing these provisions in contemporary Ethiopia?

Although *Waaqeffannaa* was registered as religion in Ethiopia recently, it has spread at alarming rate and renewed its ritual shrines across different parts of the country. As data from the central board of the association (*Waaqeffannaa* Religion Followers Association) reveals that currently they have grown to about 72 *Galmoota* (plural form of *galma*).⁹⁶ However, among these *galmoota*, only *Galma* Booset, which is found at Walanciti in the Eastern Shawa Zone, has legally has been granted free governmental land to build a *galma* and licensed cemeteries. *Waaqeffattoota* of this *galma* have accessed the land to build *galma* and cemeteries freely at the end of 2013.

However, almost the entire *Galmoota Waaqeffannaa* do not own land for religious activities yet. After its spiritual institution was destroyed by the Abyssinian rulers and replaced by Orthodox Christian church, *Waaqeffannaa* has lost its worship places (*galma*) and cemeteries (*hujuba*). The data collected from the entire study area exhibits, except *Galma* Booset of Eastern Shawa Zone administered under the Center of Central Cluster, Ateetee Burayyuu, none of them own their own house and lands to build *galma* or cemetery yet. A key informant from *galma* Ateetee Buraayyuu narrated a condition of *Waaqeffataa*'s freedom to access a land to cemetery as follows.

*Two years ago (2012), our beloved fellowship member died at Holota town. He was a Waaqeffataa and from Waaqeffataa family. We had suffered an unspeakable challenge to bury the dead body of our fellowship man. We lost a piece of land to bury the body of deceased for two days. Then he was taken to and buried at Finfinnee, by Finfinnee City Administration, after his family appealed to authorities there traveling far away out of the zone.*⁹⁷

Similar incident was also occurred at Ada'a, four years ago.⁹⁸ These occasions may relate with religious

⁹⁴ The FDRE Constitution Article 40 (3)

⁹⁵ International religious report of 2012, <http://www.state.gov/j/drl/rls/irf/2000/index.htm>: accessed on March 2014.

⁹⁶ Interview with anonymous 2 at Naqamtee on February, 2014

⁹⁷ Interview with anonymous 4 at Galma Malkaa Ateetee Buraayyuu on March 2014

⁹⁸ Interview with anonymous 7 at Bishooftuu on April 2014

⁹² The researcher attended and observed almost all conferences except the Maqi conference

⁹³ Interview with anonymous 2 at Naqamtee on February 2014

based discrimination. This shows that to what extent the right to religious equality, (Article 7 of the UDHR, Article 26 of the ICCPR, Article of ACHPR and Article 25 of the FDRE) is protected. Besides, the FDRE Constitution exclusively vested the ownership of land to the state and Ethiopian peoples. It also explicitly states land is a common property of nations, nationalities and peoples of Ethiopia. However, members of the less dominant religions such as *Waaqeffannaa* are apparently “less equal” than the other religions, due to serious challenges from past trends. These conditions cast them as a minority in the country in terms of their belief system. Whether they are a minority or followers of a dominant religion – a traditional or a newly adopted religion, discrimination on any aspect may violate provision of the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief. Article 41 (9) of the FDRE Constitution also makes the state has duty bearer with a responsibility to protect and preserve the historical and cultural legacies of its citizens. Accordingly, the discrimination perpetrated against the *Waaqeffataa* amounts to denying constitutionally guaranteed rights. In particular, the denial of access to use land to build a worship center or conduct other religious activities is an example of the failure of the duty bearer to ensure the free exercise of religious beliefs.

Although *Waaqeffannaa* currently has received a legal status, it does not enjoy the right to use land to build religious center on it yet. These challenging limitations more often come from local government officials and their protracted bureaucratic procedures. At the federal level, *Waaqeffannaa* has already been registered as a religion and the government avows to protect the rights and freedom of religion in accordance of the constitution. However, the implementation of these constitutionally guaranteed rights and freedoms at the zonal and district levels has exhibited severe constraints. For instance, the entire *galmoota* of *Waaqeffannaa* requested their respective Zonal administration to grant them land for their ritual activities at least six months before the events were scheduled to be held. Except for one *galma*, Galma Booset, none of them were granted permits to use a designated space or land for a worship site.⁹⁹

After September 2013, they have legalized to devote their worship ceremony. They are enjoying the right to assembly on religious issues and practicing their ritual activities at different parties of the country. However, these whole *galmoota* uses rented houses for worship and totally no piece of land even by rent for cemetery.

III. CONCLUSION

A right to choose which religion to belong to, or to belong to no religion, is one among many internationally and regionally guaranteed inalienable and inviolable human rights. The entire regime of international and

regional human rights instruments and national legal frameworks of democratic states affirm freedom of religion as inherent human rights. These instruments posit that everyone has the right to freedom of religion, which may cover the right to freedom to hold/ adopt religion, freedom to change his/her religion, freedom to manifest his/her religion in teaching, practice, worship and observance either alone or in community with others and in public or private. Among these, the right to have/hold a religion, right to change a religion and right to have no religion are considered non derogable rights.¹⁰⁰ Whereas, the right to freedom to manifest a religious practice may abridged by law under certain conditions in line with the principle of proportionality and necessary for the predicted purposes of protection of public order, public safety, public health and morals and the fundamental rights and freedoms of the others.¹⁰¹

Freedom of religion expressed as a respect for the dignity of humans. The dozens of international and regional human rights instruments avow freedom of religion as fundamental freedoms and rights entitled to every individual irrespective of nationality, status, colour, ethnic, age, political opinion, religion and race. Although freedom of religion was conceived as minority rights protection system, it has over time evolved to being viewed explicitly as separate category of rights and has attained the status of *jus cogens* in the international arena. This status makes every state in the world duty-bearer to promote, protect and fulfills, the right to religious freedom of their citizens.

The FDRE Constitution affirms the right to freedom of religion as fundamental freedom and basic rights. Beside to guaranteeing the right to freedom of religion, the FDRE Constitution also gives the same status to the international human rights instruments, which ratified by the Ethiopian state, with the country’s law of the land (constitution). Similarly, Ethiopia has ratified a numbers of international and regional human rights instruments. Accordingly, Ethiopian state has a duty bearer to protect, respect and fulfills the right to religious freedom of every individual within its jurisdiction. Beside to ratification, the *jus cogens* status of human rights in general and right to freedom of religion in particular impose the duty to guarantee the right to freedom of religion in accordance with the international human rights norms.

Contrary to these legal frameworks *Waaqeffannaa*, the Oromo indigenous religion otherwise, Amantii Oromo has not secured religious status for more many centuries in Ethiopia. Because of the endemic political injustice in pre 1991 Ethiopia, the Oromo people had lost their historical heritages, cultural values, political institutions, religious norms and even identities. The political injustice of the imperial regime made Orthodox Christianity a state religion and relegated non-Orthodox religions in Ethiopia to marginalization and ill-treatment. A large number of the Oromo people were forcibly converted to the state religion. To resist forced conversion, some Oromos

⁹⁹ Interview with anonymous 1, 2, and 7 at Naqamtee, Buraayyuu and Bishooftuu (Ethiopia) on February, March and April respectively

¹⁰⁰ The ICCPR Article 18 (2)

¹⁰¹ The ICCPR Article 18(3)

responded by embracing Islam and Protestant Christianity. All of these factors had prevented the *Waaqeffannaa* religion from achieving a status of religion at the state level and develop an understanding and deeper knowledge of *Waaqeffannaa* at the societal level.

Even though the FDRE Constitution provides for freedom of religion and the central government now generally respects this right to *Waaqeffannaa*, local government authorities infringe on the constitutionally guaranteed right with impunity. The constitution affirms religious freedom in accordance of the international and regional human rights norms. It avows the right to freedom to hold/ adopt religion, the freedom to manifest one's religion through worship, observation, practice and teaching. However, practically the observance of these freedoms at zonal and local levels of government exhibits the limitation. For instances, even if *Waaqeffannaa* is registered with the Ministry of Federal Affairs as a recognized religion, it has not yet come to enjoy freedom to access to land to build worship place and cemeteries. Nevertheless, the fact that it is has achieved legal status as a religion would enable its adherents to claim the further realization of their religious freedom.

Based on the data analyzed, the researcher underscores that all concerned bodies should play their role for the progressive realization of constitutionally guaranteed human rights and fundamental freedoms. In a particular context, the government should bridge the gap between the rhetoric and reality of the constitution on the right to freedom of *Waaqeffannaa* religion. More importantly, it is better if the government, specifically the regional, zonal and local level of administrations, properly discharge their institutional duty to protect, respect and fulfill the right to freedom of religion irrespective of the number of its adherents or whether the religion is new or old.