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College of Law and Governance Studies

School of Law

**Protection of Religious Freedom under the Constitution of the Federal
Democratic Republic of Ethiopia: The Case of *Waaqeffannaa*.**

By Tadesse Yadeta Bari

Advisor: Abera Degefa (Ph D)

**A Thesis Submitted to Addis Ababa University College of Law and Graduate
Studies Presented in Partial Fulfillment of the Requirements for Masters
Degree (LL. M) of Constitutional and Public Law**

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Approval Sheet

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DECLARATION

I, TadesseYadeta, hereby declare that this dissertation is original and has never been presented in any other institution. To the best of my knowledge and belief, I also declare that any information used has been duly acknowledged.

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ACRONYMS AND ABBREVIATIONS

ACHR	American Convention on Human Rights
ACHPR	African Charter of Human and Peoples Rights
Art	Article
EOC	Ethiopian Orthodox Church
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EIASC	Ethiopian Islamic Affairs Supreme Council
EPRDF	Ethiopian People Revolutionary Democratic Front
ed.	Edition, Editor
etc	And so on (et cetera)
E. C.	Ethiopian Calendar
FDRE	Federal Democratic Republic of Ethiopia
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Convention on Economic, Social and Cultural Rights
i.e.	That is (id est)
MTA	Macaa-Tuulamaa Association
NGO	Non-Governmental Organization
OLF	Oromo Liberation Front
Para	Paragraph
P	Page

PP	Pages
Ref. No.	Reference Number
UDHR	Universal Declaration of Human Rights
UN	United Nation
UNDRIP	United Nation Declaration on Right of Indigenous People
UNSECO	United Nation on Science, Economic and Cultural Organization
WRFA	<i>Waaqeffannaa</i> Religion Followers Association
V.	Versus
Vol.	Volume

GLOSSARY

(Translation from Afaan Oromoo to English)

Ardaa-jila -- Place where the Oromo worship God together

Arsaa -- Slaughtering

Ayyaana -- Holy day

Ayyaanota -- Holy days

Ayyaantuu – Religious leader

Caaccuu – A sacred ornament for women (it is a strip made of small snail shell (coral))

Callee -- A jewelry made of beads and worn by women to signify fertility.

Dalaguu – Anthem (to praise *Waaqa*)

Dadarbaa – Tossing

Dhibayyuu -- Libation

Gadaa -- The Democratic Administrative Institution of Oromo

Galma – The hall of worship

Galmoota – Plural form of *Galma*

Gubaa–One of holy days of Oromo celebrated by burning torch for the coming birraa (spring) season

Haadha Caaccuu – Holy Mother

Hamachiisaa -- Blessing babies

Irboora -- Jewelry used by male

Ireecha – Oromo thanksgiving

Irreensa kennuu -- Green leaf for gift

Kadhachuu – Praying

Malkaa -- River side

Muudaa – Ointment field or a shrine place

Safuu – Oromo morality and norm in nature (moral principle)

Wareeguu– Offering

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ABSTRACT

The FDRE Constitution has been guaranteed the rights to religious freedom and avows religious equality by avoiding discrimination based on religion. But, no study has been conducted to look at the practical applicability of these constitutionally guaranteed fundamental human rights as applied to adherents of Waaqeffannaa. Hence, the main issue addressed in this paper is whether the constitutionally guaranteed rights to religious freedom has been implemented properly in congruence with international human rights instruments and the provisions of the FDRE Constitution concerning Waaqeffannaa. Thus, this study explores the protection accorded to religious freedom regarding Waaqeffannaa. It looks at the current status of Waaqeffannaa in Ethiopia and the scope of protection religious freedom accorded to Waaqeffannaa in practical terms. Furthermore, it looks into factors that hinder religious status and practical application of religious freedom to Waaqeffannaa. To generate the necessary data for this research, qualitative approach has been used extensively. The major tools employed for gathering primary data were interview; both structured and semi-structured interview and focused group discussion. Secondary data was generated from review of written sources particularly books, journals, reports and academic research works. The analysis of the bulk of data collection in the course of the study revealed that Waaqeffannaa lost its religious status for about two decades even though the FDRE Constitution avows the protection of religious freedom. Ethiopian government have officially banned Waaqeffannaa religious group and restricted the rights to religious freedom of adherents of Waaqeffanna unlawfully. The analysis revealed that the current religious freedom to Waaqeffannaa, the Waaqeffatootas' freedom to worship and access to land to build religious shrines and cemeteries has been limited by regional and local government authority. Although Waaqeffannaa has been recognized as religion and restored its religious status in 2013, its adherents have limited freedom to worship, access land for building galmoota (places of worship) and hujuba (cemetery) and discriminated by government officials at different level. Therefore, the government is expected to pursue the religious equality to achieve the full realization of all human rights in the country. Freedom to equal opportunity to take part in and benefit from public resources, like land and public media, has to be respected for the adherents of the indigenous religion Waaqeffannaa

Keywords: Ethiopia, Freedom of religion, indigenous religion, Waaqeffannaa and Oromo.

CHAPTER ONE

INTRODUCTION

1. Background

Ethiopia is one of the religiously diversified countries in the world that hosts all major world religions, among which *Waaqeffannaa* (native religion), Judaism, Christianity and Islam are the major ones.¹ As far as Ethiopia's religious background is concerned, what comes to one's mind first, is the Orthodox Church. The Ethiopian Orthodox Church (EOC), introduced in the early fourth century during the ancient kingdom of Abyssinia,² which lies in the northern part of modern Ethiopia. Next to the Orthodox Church, Islam is the second largest religion in Ethiopia and has been introduced around the early seventh century with the arrival of the first batch of immigrants, to the Christian kingdom of *Najashi*.³ However, long before the introduction of Christianity and Islam, the Oromo people had their own indigenous belief system known as *Waaqeffannaa*.⁴ The Oromo constitutes the largest single national group in Ethiopia and the Horn of Africa. *Waaqeffannaa* is an African indigenous religion which has been in practice among the Oromo from prehistoric time. Tradition claims that the origin of Oromo religion goes back to more than sixty centuries.⁵ The Oromo engage in the exercise of worldviews and religious tradition of their ancestors. Even after their expansion, the Oromo followed this traditional religion of their own in which they worshipped one God called *Waaqa* (God).⁶

After conquering Oromo land, the Abyssinians forcefully imposed Orthodox Tewahdo Christianity on the Oromo. According to Mohammed, "historically, Orthodox Tewahdo Christianity was privileged over all other religions with a status of state religion long before the

¹ Mohammed Dejen Assen, "Contested Secularism in Ethiopia: The Freedom to Public Manifestation of Faith," available at: p. 1 <http://polisci.berkeley.edu/people/faculty/Arriola-2008.pdf/last>, accessed on march 15, 2015

² Bahru Zwede, *A History of Modern Ethiopia*, (1855-1991), (2nd ed., *Eastern African Studies*, 2002), P.1

³ Tashome Amenu, *The rise and expansion of Islam in Bale of Ethiopia: Socio-cultural and political factors and inter-religious relations*, (2008), (Unpublished MA thesis, Bergen, Norway) p. 11

⁴ Mekuria Bulcha "Priests, Religion and Language in Ethiopia", *the Oromo Commentary*, Vol. 4, No. 1(1994), pp. 8-11.

⁵ Bartels L., *Oromo Religion, Myths and Rites of the Western Oromo of Ethiopia: an Attempt to Understand* (Berlin: Dietrich Reimer), (1983), p. 195

⁶ Workineh Kelbessa, "Traditional Oromo Attitudes towards the Environment," *Social Science Research Report Series*, no.19, (2001), P. 23

empire building and after.”⁷ In Ethiopia, the notion of constitutional recognition of freedom of religion was introduced in the 1955 Revised Constitution of Ethiopia. However, in practice, that did not bring any change to the realization of the right to religious freedom. In contrast to the recognition of freedom of religion, Art 126 of the 1955 Revised Constitution of Ethiopia affirms the Ethiopian Orthodox Church as state religion and it strengthened the establishment of one religion preferred and patronized by the state subordinating other faiths.⁸

As a result of political subjugation and conquest by alien forces, the indigenous religion or beliefs and practices of Oromo have been destroyed along with their cultural values, politico-administrative system, social cohesion, traditional heritages and their identity.⁹ According to Bedassa, many Oromo have been converted to Islam; some have forcibly converted to Christianity. But there are still some who remained faithful to their indigenous religion.¹⁰ In its status, *Waaqeffannaa* was suppressed under successive Ethiopian regimes despite the fact that religion was considered a private matter in Ethiopia.¹¹

Nowadays, freedom of religion is one of the fundamental human rights which serve as a minimal requirement for functioning democratic societies. Religious freedom is recognized in international law as a universal human right and firmly embedded as a fundamental freedom in UN declarations, international treaties, customary law, and national constitutions.¹² Freedom of religion and belief was formally recognized in the 1948 Universal Declaration of Human Rights (UDHR),¹³ the European and American Human Rights Conventions of 1950 and 1978 respectively,¹⁴ the Human Rights Covenants of 1966,¹⁵ the 1981 U.N. General Assembly

⁷ Mohammed, cited above at note 1

⁸ Berhane Zekarge, The Scope of Religious Freedom and its Limits under the FDRE Constitution: A Survey of Contemporary Problems and Challenges, (2009)(Unpublished LL. M thesis at Addis Ababa University) p. 6

⁹ Bedassa, Gebissa Aga, “Freedom of *Waaqeffannaa* Religion in Ethiopia Post 1991”, IJRSI, Volume 2, Issue IX, (2015), p. 9,

¹⁰ *Id.*, p. 1

¹¹ *Ibid*

¹² Hertzke, D.Allen, “Religious Freedom in the World Today: Paradox and Promise,” The Case of Religious Freedom Pontifical Academy of Social Sciences, (2012), p. 17

¹³ Universal Declaration of Human Rights, Arts 2, 18, G.A. Res. 217 A (III), U.N. GAOR, 3d Sess., 1st plen. Mtg, U.N. Doc. A/810 Dec. 12, (1948)

¹⁴ Convention for the Protection of Human Rights and Fundamental Freedoms Art.9, Nov.4, 1950, E.T.S. No. 5, 213 U.N.T.S. 222; American Convention on Human Rights Art 12, July 18, 1978, O.A.S.T.S. No. 36, 1144 U.N.T.S.123.

¹⁵ International Covenant on Civil and Political Rights Arts 2, 18, 27, Dec. 16, 1966, 999 U.N.T.S. 171; International Covenant on Economic, Social and Cultural Rights Art 2, Dec.16, 1966, 993 U.N.T.S. 3

Declaration on religious intolerance and discrimination,¹⁶ and the African Charter on Human and Peoples Rights of 1981.¹⁷ Ethiopia is one of the African countries who ratified these international and regional human right instruments incorporated and recognized the freedom of religion in its constitution. In doing so, the 1995 Federal Democratic Republic of Ethiopian Constitution (here in after the FDRE Constitution) guarantees equality of religions, proclaims freedom of religion, and declare its concomitant principle of secularism. In doing so, the 1995 of FDRE Constitution has made a significant departure from its predecessors in many respects. State parties to the international and regional human right instruments have not been properly enforcing especially rights related to protection of religious freedom though they ratified the instruments. According to Parker (2006);

*[g]overnments in many regions of the world actively deny religious liberty. This denial ranges from the genocide of religious minorities to rigid restrictions on churches' governance and practice. More passively, this denial can take the form of a government's refusal to officially recognize a church (after repeated applications for such recognition), thereby significantly inhibiting the church's ability to function as a church body.*¹⁸

The 1995 FDRE Constitution explicitly avows religious freedom. But, even though these basic rights are guaranteed constitutionally, the reverse is true in practice. As one of the existing religions in Ethiopia, *Waaqeffannaa* did not enjoy officially recognized status until very recently. Though it was indigenous and deeply rooted in Oromo cultural universe, *Waaqeffannaa* got official recognition in 2013. Since 1995; it had taken more than two decades for *Waaqeffannaa* to receive official recognition as a religion. This research aims at examining the scope of religious freedom and the protection provided to *Waaqeffannaa* under the FDRE Constitution and the problems having to do with the practical implementation in the exercise of religious freedom.

¹⁶ Declaration on the Elimination of all Forms of Intolerance and of Discrimination Based on Religion or Belief Arts 1, 6, G.A. Res.36/55, U.N. Doc. A/36/684 Nov. 25, (1981)

¹⁷African Charter on Human and Peoples' Rights, Arts 17, 18(2), 20(3), June 27, 1981, OAU Doc. CAB/LEG/67/3/Rev.5 (1981)

¹⁸ M. Todd Parker, "The Freedom to Manifest Religious Belief: An Analysis of the Necessity Clauses of the ICCPR and the ECHR," Duke Journal of Comparative and International Law, Volume 17:91, (2006), pp. 91-92

1.2. Statement of the Problem

With the downfall of the *Derg* in 1991, and the establishment of a federal republic, Ethiopian state officially detached itself from matters of religion. The 1995 FDRE Constitution guaranteed equal status to all forms of religious denominations. Despite that constitutionally guaranteed religious freedom; there were instances where these rights have been violated. The typical instance is the case of *Waaqeffannaa* religion which was not allowed to exercise the rights to freedom of religion. *Waaqeffannaa* has been denied legal personality for more than fifteen years after the adoption of the FDRE Constitution though it meets the requirements to be incorporated as a religious community. Art 27(1) of the FDRE Constitution has clearly provided that:

*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.*¹⁹

This provision has two parts. The first part guarantees a general right to freedom of thought, conscience and religion. The second part gives two branch of the definition of the general part. The first limb of the second part refers to “freedom to hold or adopt a religion or belief of his choice”, and the second limb to “freedom either alone or in community with others and in public or private to manifest his religion or belief in worship, observance, practice and teaching.”

However, in practice, Ethiopian Government has continued to ban *Waaqeffannaa* the indigenous religion of Oromo when the group to entertain the internationally recognized freedom to manifest religion or belief of their own faith neglecting its religious status. This practice is in violation of free exercise of religious freedom which is proclaimed as the fundamental human rights and enshrined in the FDRE Constitution. Although Art 25 of the FDRE Constitution proclaimed about equality of religion and prohibits the discrimination based on religious back grounds, there is still obvious discrimination based on religion especially on religious minorities like *Waaqeffannaa*, in the provision of land for religious purpose to build *galmoota* (plural form of *galma*), cemeteries, place of worship and the recognition of holydays. According to the evidences gathered from informants in this research, there is no plot of land provided by the

¹⁹ Constitution of the Federal Democratic Republic of Ethiopia, Federal Negarit Gazeta, year 1, no.1,21st August 1995, Addis Ababa, Art 27(1)

government for the use of religion purpose of *Waaqeffannaa*. Hence, finding the possible explanations which hindered adherents of *Waaqeffannaa* from enjoying their constitutionally guaranteed rights is the main problem to be addressed in this research. In order to determine the current status and condition of *Waaqeffannaa* in Ethiopia, the research examines the legislation and practice pertaining to the right to religious freedom. Determining the scope of protection given to religious freedom as applied to *Waaqeffannaa* is the main focus of the research. The government practices are examined in light of its international and regional commitment having to do with religious freedom of adherents of *Waaqeffannaa*.

1.3. Research Questions

The research questions to be addressed are:

1. What is the current status of *Waaqeffannaa* and how does a faith or religious denomination acquire legal status under the FDRE Constitution?
2. To what extent are adherents of *Waaqeffannaa* enjoying their religious rights; religious equality and its concomitant principle of secularism under the FDRE Constitution?
3. What is the role and legal obligation of the Ethiopian government to protect and respect religious freedom of followers of *Waaqeffannaa*?

1.4. Objectives of the Study

The general objective of the study is to assess the extent of protection of religious freedom accorded to *Waaqeffannaa* religion under the FDRE Constitution.

The Followings are the specific objectives of the research:

1. To explore, the current status of *Waaqeffannaa* religion and how a faith or religious denomination acquire legal status under the FDRE Constitution regarding these points.
2. To identify the extent to which followers of *Waaqeffannaa* enjoy their religious rights, religious equality and its concomitant principle of secularism under the FDRE Constitution.
3. To assess the government role and obligation in the protection and respect of religious freedom to *Waaqeffannaa*.

1.5. Significance of the Study

The study will be important to *Waaqeffannaa* followers by way of helping them requiring the state to create conducive environment for the exercise of their rights. It creates awareness for the right holder on how to enjoy internationally granted freedom of religion under their own domestic law and make them vigilant against violation of their rights. And hopefully it will be significant being as a highlight for other researchers who want to deal their study in this area. On top of this, the study will be vitally important for the government machinery, policy makers and arbitrators for knowing the right based claims of the religious organizations.

1.6. Scope and Limitation of the Study

The study mainly focuses on both the legal and practical aspects of protection of religious freedom under the FDRE Constitution and international human right instruments framework. Particular focus will be given to examining the practical implementation of religious freedom as applied to *Waaqeffannaa*. The fact that historically *Waaqeffannaa* religion directly linked with Oromo Nation and majority of its followers geographically confined to Oromia, the study is limited to part of Oromia Regional State. However, since the issue of religion was directly connected with the Federal Government, only selected offices of federal government are the concern of this study. The experiences of some developed countries may be revised if necessary. In terms of time frame, the study covers the period from 1995 until now, unless as a matter of necessity, some remote events are mentioned.

1.7. Research Methodology

This research explores the scope of protection of religious freedom under the FDRE Constitution with particular reference to *Waaqeffannaa*. It will try to critically analyze the practice in relation to exercise of freedom of religion with regard to *Waaqeffannaa*. For these purposes, the study generally has made use of both primary and secondary sources. Therefore, the research is qualitative in nature. In the main, the study has tried to make an appropriate review of relevant literature, reports and other documents relating to protection and respect, concept, scope and limit of the right to freedom of religion. On the other hand, interviews were conducted to gather detailed and personalized views and perspectives of followers of *Waaqeffannaa*, their leaders and other adherents at some selected centers of *Waaqeffannaa* in parts of Oromia Regional State (like, 'Buraayyu', 'Bishooftuu', Ambo and 'Sabbata').The interviewees have been selected

purposely and proved to be very important as it gave a diversified perspective and views about *Waaqeffannaa* and protection of rights to religious freedom to *Waaqeffannaa*. Government officials of selected institutions also used as input for the study. Twelve informants were interviewed. In terms of age groups, priority was given to elders and religious leaders closely associated with *Waaqeffannaa*, because it is this group of people who have a good knowledge and understanding of the *Waaqeffannaa*, its protection and status. Other followers of *Waaqeffannaa* were randomly interviewed. In the process; respondents were given time and opportunity to enter the research platform with their own perspectives.

Three different types of interviews were employed by the researcher to get a deeper insight into the various social phenomena as well as personal motives and aspirations. They were all held either on individual and/or on group basis. The first and most frequently type was the structured interview, through which I designed a list of questions and followed it as much as possible. The second type employed was the semi-structured interview through which I, not only asked questions from a list but also, asked further questions that arose from the answers provided by informants. The third and the final type was the unstructured interview, whereby I put different general questions to different informants. The researcher has also used focus group discussion as primary data collection methods in some cases. Relevant cases have also been analyzed so as to show the practical aspects.

1.8. Literature Review

There are literatures on religious rights including researches on religious freedom both at international and national level. A number of materials have also been written on the situations of religious rights and freedom in Ethiopia. This research would focus on specific right of individuals to religious freedom under the FDRE Constitution and protection accorded by the legal system. To be more specific there have been researches and literatures on the rights to religious freedom of religious groups in Ethiopia. Among the researched materials; Berhane Zekarge, examines about “the Scope of Religious Freedom and Its Limits under the FDRE Constitution referring on the Contemporary Problems and Challenges on the Rights of Individual and Religion Groups.” This research endeavors generally the scope and limits of religious freedom under the FDRE Constitution. Furthermore, Gedion Sisay specifically, looks at, “the Rights to Proselytize in a Religiously Diverse Society in the Case of Ethiopia.”

The study examines the gap of the law and the effects of proselytize on the rights of others. Also he scrutinized the place of proselytism within the religious freedom clauses of the relevant human rights instruments and examine whether proselytism poses a threat to religious tolerance. Hamid examines, “the Freedom of Religion and Ethiopian Muslims and its Advancements and Setbacks.” This research specify about the advancement and setbacks of freedom of religion for Ethiopian Muslims. However, it is very specific and only to freedom of religion for Ethiopian Muslim. In similar, but different content and specific ways to the above researches, this study intended to examine specifically the protection of religious freedom to *Waaqeffannaa* by focusing on the laws that protects religious freedom and the practice in violation of the rights protected by the laws. Moreover, different from above researches this study focuses among other things on the protection to rights of adherents of *Waaqeffannaa*, to be protected from persecution and mistreatment by government actors and provides pertinent recommendation to addresses solution for violations of the rights. This research addresses in detail the protection of religious freedom to *Waaqeffannaa*. It focuses on protection of freedom of religion accorded both legally and practically to adherents of *Waaqeffannaa* under the FDRE Constitution in light of international human rights instruments which Ethiopia ratified.

1.9. Structure of the Paper

This paper contains five chapters. By way of introduction, Chapter one provides background of the study. Chapter two offers an overview of the notion of religious freedom and other related concepts. It outlines the concepts of religious freedom and its internal and external aspects. It will also outline the definitional, philosophical underpinning of religion and the justifications. Chapter three discusses the legal framework of the protection of religious freedom under international, regional and national human right instruments. Chapter four will provide the scope of protection of religious freedom accorded to *Waaqeffannaa* under the FDRE Constitution. The chapter will discuss the general overview of *Waaqeffannaa* and examine its status under the FDRE Constitution. Furthermore, part of the chapter will be devoted to examination of the practical aspects of the right to religious freedom with the help of relevant cases. The responses from interviews have been integrated with the case study so as to assess and articulate the extent of protection of religious freedom exercised by adherents of *Waaqeffannaa* under the FDRE Constitution. Chapter five provides the concluding remarks along with major findings and proposed recommendations.

CHAPTER TWO

CONCEPTUAL FRAMEWORK: RELIGION, RELIGIOUS FREEDOM AND THE ROLE OF THE STATE

2.1. Definition of Religion

The word religion is an elusive concept, thus difficult to define. This is compounded by the fact that it deals with immaterial objects that cannot be empirically verified. It has been defined diversely by people of diverse interests.²⁰ As a concept, it is complex, and as such must be approached from a multidimensional viewpoint. Because of the complexity of the concept; it is not the same thing to the anthropologist, to the psychologist, to the sociologist, and another to the theologians etc. However, according to Kanu, three elements have been constant in the definitions of religion: belief, cult/worship and morals. This belief is in a being who is supreme, in cult/worship, the dependence of subjects on the supreme being is expressed, in morals, the rules and regulations to guide the new relationship is drawn up.²¹

Many scholars see the definition of religion from their own perspective. Besides, it is observed that most of the definitions of religion by scholars are either vague or prejudiced. For instance, Sigmund Freud defines religion as, a psychological disturbance, one which although universal, must be overcome if humanity is to attain psychological health.²² According to him, religion has to do with the emotions, feelings or psychological states of the human in relation to the religious object.²³ This observation connects religion with some complexes in a person's psyche which is obviously very narrow. Paul Tillich a well-known philosopher define religion as, "the ultimate concern"²⁴ which appears to be vague since it doesn't clarify what this ultimate concern is as human beings have so many ultimate concerns. Edward Taylor on the other hand offered a more

²⁰ Kanu I. Anthony, "African Traditional Religion in a Globalizing World", International Journal of Humanities , Social Sciences and Education (IJHSSE) Volume 1, Issue 8, (2014), p. 4

²¹ Ibid

²² Sigmund Freud, The Future of an Illusion, translated by W. D. Robson-Scott (London: The Hogarth Press and the Institute of Psycho-Analysis, (1962), p. 28

²³ Ibid

²⁴ Tillich, P., Theology of Culture. London: Oxford University Press, (1959), P.7

theological definition by observing that religion is belief in spiritual beings.²⁵ This again excludes some religions, as there are many religious beliefs not based on spiritual beings.

Most scholars of sociology have tried to provide working definition. Among those scholars of sociology, French sociologist, Emile Durkheim, 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.”²⁶The sociological definition makes the central criterion of religion the existence of a community of people which is identified, bound together and maintained by its beliefs in powers or forces greater than the community itself. These sociological definitions of religion fails to includes some religions especially African Traditional Religion, because the definition fails to embodied the three elements or characteristic, i.e. belief which is (belief in God, belief in divinities, belief in spirits, belief in the ancestors and belief in the practice of magic and medicine.), cult/worship, and morals or values, which is main element in the definition of African Tradition Religion.²⁷

Hence, it is important to seek the working definition; because the focus of the paper is about one of the African Traditional Religion which is *Waaqeffannaa*. African Traditional Religion is a nebulous concept. Unlike Christianity and Islam, it is not composed of a single concept. This is because, for African people their religion is part and parcel of their life and may not be separated from it. There is no clear distinction between the profane and religious or secular and the sacred as religion and culture are intertwined. However, neither does it have a founder or scripture.²⁸ According to Mbiti, the definition of religion in an African’s understanding includes concepts as beliefs, values and morals, places and objects and officials and leaders considered to be religious.²⁹ In this paper, therefore, we will take this latter meaning of religion, that is, that consisting of societies and their beliefs, values, morals, places, leaders and objects used during rituals, connected with such beliefs.

²⁵ Edward B. Tylor, *Primitive Culture*. London: Murray, (1958), pp. 112- 159

²⁶ Durkheim Emile, *The Elementary Forms of the Religion Life*: London George Allens and Unwin Ltd, (1995), p.62

²⁷Awolalu J. Omosade, “What is African Traditional Religion?”*Studies in Comparative Religion*, Vol. 10, No. 2 (1976), p. 1, available at :www.studiesincomparativereligion.com accessed on May 23, 2016

²⁸Anthony, cited above at note 20, p.5

²⁹ John S.Mbiti, *Introduction to African Religion*. London: Heinemann, (1975), p.12

2.2. Philosophical Underpinning of Religion

It is said to be the philosophical interest that religion has originated in the west with the ancient Greek and many of the long term questions talked first by them, and the claims and arguments they developed served as frame work for following philosophizing for more than 1,500 years.³⁰ Plato was the first philosopher to consider the idea of creation and attempt to provide the existence of the God³¹ and also, Aristotle was attempted to provide a rational demonstration of the existence of the God based on the features of natural world.³²

By the 3rdc Augustine of Hippo clarified doctrine of the God, like the forms was eternal, incorruptible, and necessary. He also saw God as an agent of supreme power and the creator of the universe out of nothing. Augustine's alteration of Platonic thought shows that such thinkers did not take over Greek ideas uncritically; indeed, they may be seen as using Greek ideas to elucidate and defend scriptural teaching against pagan attack.³³ Thomas Aquinas was the main philosopher of scholasticism brings a first-hand philosophical direction for Christian theology. Aquinas, however, was only the first among many scholars in philosophical reflection on the nature of religion in this epoch.³⁴ He agreed with Jewish philosopher Maimonides that God didn't really look like a man, but was more like a spirit or idea but, disagreed about other things.³⁵

In the 17thc philosophy of religion was taken in different way by John Locke empiricism. The importance of Locke lay in the fact that he was self-confessedly philosophical innovator. Locke's further empirical view that the chief source of human knowledge is experience led to the development of a more 'reasonable' approach to religion in which reason was held to constrain any appeal to divine revelation.³⁶

³⁰Philosophy of Religion, available at:<http://www.britannica.com/EBchecked/topic/497132/philosophy-of-religion> accessed on May 20, 2015

³¹Ibid

³² Ibid

³³ Ibid

³⁴ Thomas Aquinas, Philosophy of Religion, available at:<http://www.historyforkids.org/learn/medieval/religion/aquinas2.htm> accessed on May 20,2015

³⁵Ibid

³⁶Enlightenment Philosophical foundation of Religion, available at:<http://www.britannica.com/EBchecked/topic/497132/philosophy-of-religion/280010/The-Enlightenment> accessed on May 22,2015

However, history tells us that the philosophical interest of religious is started in Africa with the black Cushitic people.³⁷The Oromo is the one among the Cushitic people of Africa. *Waaqeffannaa* is the indigenous religion of the Oromo people. Given the hypothesis that Oromo culture is a part of the ancient Cushitic cultures that extended from what is today called Ethiopia through ancient Egypt over the past three thousand years, it can be posited that *Waaqeffannaa* predates the Abrahamic religion in its origin.³⁸ According to Awolalu, African religion is the product of the thinking and experiences of our forefathers and mothers that is men, women and children of former generations. He said, though the western scholars erroneously write about African religion, we can learn the truth from the mythology of the African people.³⁹ As regards to mythology of Oromo (*Waaqeffannaa*), God created the universe and within the universe He created the visible (material) and invisible (immaterial) things.⁴⁰ Therefore from this perception it is believed that there is the supernatural being that created the universe.

2.3. Concept of Religious Freedom in General

Freedom of religion, one of the fundamental human rights,⁴¹ can be explained by certain rights although attaching definition seems problematic. These rights got protections under International Human Rights Instruments like UDHR, ICCPR and as well as the FDRE Constitution. Pursuant to Article 18 of the UDHR, in particular, freedom of religion encompasses two distinct components based on the degree of the attendant limitation. Hence, freedom of religion mainly freedom of thought, conscience and religion includes; freedom to change a religion or belief as well as freedom to manifest ones religion. *Forum Internum* and *Forum Externum* aspects of religious freedom are usually the division.⁴² This part of the paper is devoted to the discussion of such rights. For Tahzib, the right to freedom of thought, conscience and religion consists of two major constitutive elements.⁴³“*Forum Internum*” is about the freedom to change one’s religion or belief, whereas the “*Forum Externum*” concerns to the freedom either alone or in community

³⁷Dirribi Damissie Bokku, Oromo wisdom in Black Civilization, Finfinnee: Finfinnee Printing and Publishing S.C, (2011), pp.27-28

³⁸ Ibid

³⁹Awolalu, J. Omosade “Sin and Its Removal in African Traditional Religion”, Journal of the American Academy of Religion44 (2), (1976),p. 275

⁴⁰Dirribi, cited above at note 37, p. 29

⁴¹ Richard Clayton and Hugh Tomlinson, The Law of Human Right, New York : Oxford University Press, (2000), p. 976

⁴² Bahiyyah G. Tahzib, Freedom of Religion or Belief: Ensuring Effective International Legal Protection, The Netherlands, Kulwar, (1996), p.50

⁴³ Id, p.73

with others and in public or private, to manifest the religion or belief, in teaching, practice, worship and observance.⁴⁴

However, it remains the question whether the view adopted by the human rights corpus on the freedom of religion, belief, and conscience in Art 18 of both the UDHR and ICCPR took into account indigenous religions. In the next chapter, I shall briefly examine what protections, if any, are afforded indigenous religions under international human rights regime and the FDRE Constitution.

2.1.1. Internal Aspects of Religious Freedom (*Forum Internum*)

This section will focus on the *forum internum*, the internal aspect of the right to freedom of religion, that sphere of religious freedom legally unlimited. For instance, as proclaimed in Article 18 of the International Covenant on Civil and Political Rights (here in after the ICCPR) and Art 27(1) of the FDRE Constitution, this aspect of religious belief not subject to restriction, “Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or adopt religion or belief of his choice.”⁴⁵ Basically, this aspect of freedom encompasses the freedom of thought and conscience and freedom to maintain or to change one’s religion or belief. The right to freedom of thought and conscience means “the right of every one to develop autonomously thoughts and a conscience free from impermissible external influence.”⁴⁶ In this sense, belief is totally free from outside influence. “The free exercise of religion means, first and foremost the right to believe and profess whatever religious doctrine one desires.”⁴⁷

The fact that belief is more internal than external i.e. one that manifested in conduct toward others, makes this right out of government regulation.⁴⁸ The UDHR and ICCPR seems do not protect indigenous religions of Africa in relations to dominant faiths or cultures; they even do not refer to them. Article 18, simply provides the rights of every one “freedom of thought, conscience, and religion” and prohibits the use of coercion to “impair” the freedom of other to

⁴⁴ Ibid

⁴⁵ The ICCPR(1966), cited above at note 15, Art 18

⁴⁶ Manfred Nowak, U.N. Covenant on Civil and Political Rights: CCPR Commentary, N.P. Engel, Kehl, (1993), p.314

⁴⁷ William Cohen, Supplement to Cohen and Kalplan’s Constitutional law: Civil Liberty and Constitutional Rights, Westbury/ New York: The Foundation Press, (1991), p. 85

⁴⁸ Thomas C. Berg, The State and Religion in a Nut Shell, New York: West Group, (1998), p.25

have or to adopt a religion or belief of their choice. However, it is provided by Human Rights Committee that Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions.⁴⁹

2.1.1.1. Freedom to Choice Religion or Belief

A genuine and true recognition of the rights of religious freedom first and for most implies the freedom to choice religion or belief. The right of freedom of religion entitles everyone to choice from the existing religions.⁵⁰ That is to mean, not only to receive belief but also to challenge such belief with a view to establishing the new one.⁵¹ Moreover, the right of freedom of religion extends up to the rights of the individual professing no religion at all i.e. “freedom from religion.”⁵² Atheism is not by itself “religion”, but since it is considered as belief, it gets equal protection.⁵³ Therefore, under the right of freedom of choice an individual is free to choice from amongst the existing religions, establish new one or respect all religions.⁵⁴

2.1.1.2. Freedom to be free from Coercion

It is clearly provided under Art 18(2) of the ICCPR and Art 27(3) of the FDRE Constitution the freedom from coercion to have or to adopt a religion or belief “bars coercion that would impair the right to have or adopt a religion or belief, including the use of threat of physical force or penal sanctions to compel believers or non-believers to adhere to their religious beliefs and congregations, to recant their religion or belief or to convert”⁵⁵ and the liberty of parents and guardians to ensure religious and moral education cannot be restricted. As it is clearly stipulated by the Committee, policies or practices having the same intention or effect, such as, for example, those restricting access to education, medical care, and employment is not valid, that any

⁴⁹ General Comment No. 22: The Right to Freedom of Thought, Conscience and Religion, Art 18, CCPR/C21/Rev. 1/Add. Para.2 available at: <http://www.equalrightstrust.org/ertdocumentbank/general%20comment%2022.pdf>, accessed on June 20, 2016

⁵⁰ Y. Dinstein, “Freedom of Religion and Protection of Religious Minorities”, in The Protection of Minorities and Human Rights, Boston/London: Martious Nijhoff Publishers, (1992), p. 147

⁵¹ Id, pp. 147-148

⁵² Id, p. 148

⁵³ Ibid

⁵⁴ Ibid

⁵⁵ General Comment No. 22: cited above at note 49, Para. 5

compulsion in matters of choice of belief should be avoided because the act of faith is essentially a free act.⁵⁶

2.1.2. Freedom to Manifest or Exercise Religion or Belief (*Forum Externum*)

The other aspect of religious freedom that pertains to *forum externum* incorporates freedom to manifest religion or belief.⁵⁷ Religious faith involves not only holding beliefs but also duties might be imposed on believers for performance or abstention from certain acts.⁵⁸ This is the reflection of internal personal belief when manifested externally. A “manifestation” implies a perception on the part of adherents that a course of activity is in some manner prescribed or required.”⁵⁹ The FDRE Constitution Art 27 (1) that guarantees freedom of religion “either individually or in community with others and in public or private to manifest [one’s] religion or belief” does not give the leverage for the government but only for the believers to choice their preferences.

What makes the freedom of religion more important is; it includes different kinds of fundamental rights within itself and the natures of the manifestation of one aspect of it in most cases appear with other, at a time.⁶⁰ So in short, when we talk about freedom of thought, conscience and religion on one side, the right to association, assembly, freedom of expression or press, and the right to equality can co-exist together at once.⁶¹

Hence, the next area of protection in regulating the right of freedom of religion is external manifestation (*forum externum*). It could also be manifested in different forms. For example, manifestation in the form of freedom of worship, freedom of observance, freedom of practice, and freedom of teaching in group of more than one or two to the extent of larger number of association. Art 27 of FDRE Constitution never defines about freedom of religious worship, observance, practice and teaching mean. However, for the purpose of this paper the definition given by international human rights instruments and Human Rights Committee could be applied.

⁵⁶ Ibid

⁵⁷ Tahzib, cited above at note 42 , p. 56

⁵⁸ Berg, cited above at note 48, p.26

⁵⁹ General Comment No. 22: cited above at note 49, Para. 4

⁶⁰ Tekalign Fanta, Managing Religious Conflicts: A Study of Legal Framework with Particular Reference to the 2006 Muslim-Christian Conflict in Oromiya, (2008) (Unpublished LL.M Thesis, Addis Ababa University,) p.25

⁶¹ Ibid

2.1.2.1. Freedom of Worship

There is no precise definition of worship in relevant international human right instruments yet. It is tried by scholars and different dictionaries. For instance, Macmillan English Dictionary defines worship as “the activity of showing love and respect for a god for example by singing and praying.”⁶² On the other hand the Human Right Committee ascribed, “ritual and ceremonial acts giving direct expression to beliefs 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.”⁶³ Kirshinaswami pointed as follows about religious worship:

*[The] individual's right to worship by himself in private does not raise any serious problem; however, worship normally takes place “in community with others” and “in public.” In most areas the right to worship in public is not only recognized, but protected, by law; there are, however, notable exceptions. In a few countries the law recognizes the right to worship in public only for followers of the Established Church or the State religion. Members of other faiths do not have this right. In other areas the right to worship in public is denied to certain faiths, either directly or indirectly by preventing them from using buildings which were erected for purposes of public worship.*⁶⁴

However, not all ritual acts can be considered as manifestation of religion or belief in worship. In the case lodged before Human Right Committee, the complainant referred to the concept of worship under Article 18 of the ICCPR and General Comment No. 22 to justify the use of cannabis in a religion so called Rastafarianism.⁶⁵ The committee concluded that the prohibition of cannabis did not violate manifestation.⁶⁶ The right to set up places of worship and cemeteries also an important issue of manifestation of religion or belief in worship.

⁶² Macmillan English Dictionary, For Advanced Learners, International Student Edition, Bloomsbury Publishing Plc., Macmillan Publishers Ltd (2003)

⁶³ General Comment No. 22: cited above at note 49, Para.4

⁶⁴ Acrot Krishnaswami, Study of Discrimination in the Matter of Religious Rights and Practices, United Nation, New York. (1960), p. 31

⁶⁵ Garteth Anver Prince v. South Africa 1474/2006, available at: <http://sim.law.uu.nl/sim/Dochome.nsf> accessed on June 26, 2016

⁶⁶ Ibid

2.1.2.2. Freedom of Observance

The 1981 Declaration shades some light on what the term observance actually involves. It provides, “to observe days of rest and to celebrate holidays and ceremonies in accordance with the precepts of one’s religion or belief.”⁶⁷ According to Peter Edge, observance, in the context of manifestation of religion or belief, mean more than keeping days of rest; including dress, grooming custom such as the cutting of hair or the growing of beards, and special diets.⁶⁸ The Human Rights Committee considers that the freedom to manifest one’s religion encompasses the right to wear clothes or attire in public which is in conformity with the individual faith or religion.

2.1.2.3. Freedom of Practice

According to Macmillan Dictionary, practice means “a way of doing something especially as a result of custom, habit or tradition.”⁶⁹ The term signifies wider conduct that fall within the purview of observance and teaching of religion or belief.⁷⁰ In other word, it sometimes encompasses conducts ranging distribution of leaflet to requirement to wear religious apparel and special diets.⁷¹ In the General Comments to the ICCPR, “practice” seems to overlap with both observance and teaching, and includes the “freedom to choice religious leaders, priests and teachers, the freedom to establish seminaries or religious schools and the freedom to prepare and distribute religious texts or publications.”⁷² Nowak, in recognition of the need for “practice” not to include every action or omission motivated by religion or belief, says, “Religious practice may thus be said to be only that conduct obviously related to a religious conviction.”⁷³

⁶⁷The UN Declaration (1981), cited above at note 16

⁶⁸ Peter W. Edge, Legal Responses to Religious Differences, The Hague/ New York: Kluwer Law International, (2002), p. 36

⁶⁹ Macmillan Dictionary, cited above at note 62 , p. 158

⁷⁰ General Comment No. 22: cited above at note 49, Para. 4, it read as, “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.”

⁷¹ Carolyn Evans, Freedom of Religion under European Convention on Human Rights, Oxford University Press, (2003), p.106; see also Peter W. Edge, cited above at note 68 p. 36

⁷² General Comment No. 22: cited above at note 49, Para. 4

⁷³ Nowak, cited above at note 46, p. 321

2.1.2.4. Freedom of Teaching

The freedom of everyone to manifest his religion includes the freedom of teaching it. Without religious teaching, through oral, written or both, the continuity of faiths would be at stake.⁷⁴ So, freedom of teaching is an important element of manifestation of religious belief. Teaching of religion or belief includes, "...the freedom to establish seminaries or religious schools and the freedom to prepare and distribute religious texts and publications."⁷⁵ The above explanation basically, embedded two different but corresponding activities. On the one hand, it involves formal religious education for adherents of the same faith.⁷⁶ On the other hand; it encompasses proselytism, including the distribution of texts and publications to outsiders.⁷⁷ The right to teach one's religion embraces the right to propagate the faith among the uninitiated; in other words, there is a right to proselytize or undertake missionary activities in order to gain converts,⁷⁸

The other important issue connected with religious teaching is "does the right include hate speech about other religions?" As it is mentioned below, it is the protection of the society which necessitates the limitation on freedom of religious teaching. Thus, allowing religious teaching up to criticism of other belief conflicts with the aim of the limitation.

2.1.3. Limitations on the Exercise of Religious Freedom

Limitations on the individual religious freedom are basically necessitated by the requirement of public interest i.e. "society's value, aspirations and objectives,"⁷⁹ that an individual must do or refrain from doing certain acts. Its exercise, having social dimension entails certain necessary limitations. The legal recognition of the right is not an absolute one and hence: it is specifically subject to those explicit constitutional limitations imposed on its exercise and generally these restrictions pertain to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.⁸⁰

Because the public manifestation of religion has the potential to interfere with the rights of others or to pose a danger to society, it is not absolute. The UDHR under art 29(2) allows the

⁷⁴ Y. Dinstein, cited above at note 50 , p. 153

⁷⁵ General Comment No. 22: cited above note 49, Para. 4

⁷⁶ Peter, cited above at note 68 , p. 36

⁷⁷ Ibid, see also Tad Stankle, "Proselytism and Freedom to Change Religion in International Human Right Law", Brigham Young University Law Review, (1999), p.251, available at: www.reililaw.org accessed on march 25, 2016

⁷⁸ Dinstein, cited above at note 50, p.154

⁷⁹ Encyclopedia of Social Sciences, (1963), Vol. 13, p.164

⁸⁰ Berg, cited above at note 48

maintenance of ‘the general welfare in a democratic society’ as a justifiable ground to limit freedom of religion. Using slightly different language, Article 18 of the ICCPR subject the manifestation of religion or belief to such limitations that are “prescribed by law”, and are necessary in the interests of public safety to protect public order, health, or morals, or to protect the fundamental rights and freedoms of others.⁸¹The General Comments to Article 18 say that these limitations are to be strictly interpreted such that only the listed restrictions are allowed.⁸²Further, 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.”⁸³One author points out that almost all of the ICCPR limitation clauses use the word “necessary,” indicating that restrictions on rights “are permissible only when they are essential, i.e., inevitable.”⁸⁴ However, FDRE Constitution is ‘distinct’ in that, it adds ‘the principle of secularism and education’ as justifiable grounds for limiting the freedom to public manifestation of faith. Apart from the expressly provided ones, there are no other grounds to restrict the right to freedom of religious expression. In other words, the lists provided under Art 27(5) are exhaustive as it says -“freedom to express or manifest one’s religion or belief may be subject only to such limitations ...”

2.4. Justification of Religious Freedom

This section made a brief look at reason raised in defense of freedom of religion. The justifications for religious freedom as illustrated in this section are different. Certain arguments are identified as a rationale for religious freedom. The idea that all human beings are entitled to religious freedom has arisen primarily as a byproduct of democracy and the belief in the dignity of the human person.⁸⁵ However, the enforcement of religious uniformity became commonplace in the world especially the western. World history reveals a high level of religious intolerance, persecution, inquisitions, and religious wars.

⁸¹ The ICCPR (1966), Art 18

⁸² General Comment No. 22: cited above at note 49, Para. 8. “Read as, in interpreting the scope of permissible limitation clauses, States parties should proceed from the need to protect the rights guaranteed under the Covenant, including the right to equality and non-discrimination on all grounds specified in Articles 2, 3 and 26.”

⁸³ Ibid

⁸⁴ Alexandre C. Kiss, Permissible Limitations on Rights, in the International Bill of Rights: The Covenant on Civil and Political Rights 308 (Louis Henkin ed., 1981), p. 233

⁸⁵ Derek H. Davis, “The Evolution of Religious Freedom as a Universal Human Right: Examining the Role of the 1981 United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief” ,Brigham Young University Law Review 217, (2002) Available at: <http://digitalcommons.law.byu.edu/lawreview/vol2002/iss2/2> accessed on January 2, 2016

John Locke argued that in the case for religious freedom the states authorities are not any more competent or qualified than individuals in matters of religion. Locke believed that religion was more private than public and that a major reorientation of government was in order. He believed that all humans have fundamental rights that government is responsible for protecting, such as the free exercise of religion. The role of government was not to promote religion but, instead, was to protect the right of each citizen to pursue religious truth on his or her own.⁸⁶

Thus, in the West, there is a long history of religious persecution, witch hunts, inquisitions, and religious wars, all perpetrated in the name of promoting a common religion, the absence of this, it had been always believed, would result in social chaos. Locke thought there was a better way and that society would actually survive letting people choice their religion. He thought the linkage between religious zeal and civil power must end that history must close the chapter on the union of church and state.⁸⁷ This trait of common humanity potentially recognizable by people of all faiths or no faith can provide a justification for religious liberty understood as the freedom to live in accord with one's conscience or belief. The other ground for religious freedom justification is that of importance of religious freedom as a means of achieving religious tolerance.⁸⁸This approach or justification may be acceptable to society where the existential reality involves coexistence of various religious beliefs.

2.5. Separation of State and Religion

The very nature of religion being a sensitive area makes rational solution to religious disagreements very hard. Which follows there is a need to have limits on the extent where by religious issues and disagreements brought into political system.⁸⁹On the top of that, only secular matters should be the role of the government.⁹⁰Although, it is not clearly declared by any one of International Human Rights Instruments, the FDRE Constitution has provided for separation of state and religion in its Chapter two, as the fundamental principle of constitution under Article 11.This provision has ended, once and for all, the traditional symbiotic relation between state and religion.

⁸⁶ Leo Pfeffer, Church, State and Freedom, (Rev. ed., Beacon Press, Boston, 1967), p. 26. See also Hennery J. Abraham and Barbara A. Perry, Freedom and the Court: Civil Right in the United State, Oxford University Press, New York,(6th ed.,1994), p.226

⁸⁷ Ibid

⁸⁸ Evans, cited above at note 71, p.22

⁸⁹ Berg, cited above at note 48, p.16

⁹⁰ Ibid

The separation of state and religion would seem face some theoretical and practical difficulties in its appreciation. The full version of Art 11 (3) read as, “The state shall not interfere in religious matters and religion shall not interfere in state affairs.”⁹¹ According to the principle of separation of state and religion, state and religion are two different entities.⁹² The ‘wall’ which is built by this principle, forbids internal affairs involvement between religion and government.⁹³ Which implies neither of the two would have an official role so as to direct the internal governance of each other.⁹⁴ In effect this principle primarily helps to protect minority faith’s and faithless by keeping religious activity out of government interference;⁹⁵ as it helps to avoid a state recognized religious domination of a certain faith in a religious pluralistic nation. However, the practical situation is contrary to this very principle of separation of state and religion.

2.6. The Role of the State in Protection of Religious Freedom

The right to choice and practice a certain religion or belief is an important part of an individual’s life and a fundamental human right. Freedom of religion or belief means that, the state has an obligation to safeguard this right. International conventions are legally binding on the states parties, but only on these states. Some states also make reservations when they become party to conventions. The conventions to which the host country is a party and any reservations it has made should thus be checked.⁹⁶ However, many of the obligations under human rights conventions constitute customary international law, and thus are also binding on non-member states. The member countries to the instruments are duty bound and expected to protect and implement the religious freedom. Ethiopia also ratified such Universal Human Rights Instruments and become the integral parts of the laws of the country in accordance with Art 9(4) of FDRE Constitution and under Art 13 (2) of the same constitution; human rights interpretation in Ethiopia has to conform to the spirits of these Universal Human Rights Instruments.⁹⁷ Therefore, Ethiopia has duty bound to protect and respect religious freedom and prohibits religious discrimination during enacting the laws and in practical implementation.

⁹¹The FDRE Constitution (1995), cited above at note 19, Art 11(3)

⁹² Berg, cited above at note 48, p.15

⁹³ Id, p.16

⁹⁴ Id, p.15

⁹⁵ Id, p.16

⁹⁶Protection and Promotion of the Rights and Freedoms of Persons belonging to Religious Minorities, Guidelines for the Norwegian Foreign Service, available at:<http://www.regjeringen.no/en/dep/ud/selected-topics/human-rights.html?id=1160> accessed on March 15, 2016

⁹⁷The FDRE Constitution (1995), cited above at note 19, Art 9(4) and Art 13(2)

CHAPTER THREE

INTERNATIONAL, REGIONAL AND NATIONAL HUMAN RIGHTS LEGAL REGIME/Framework FOR THE PROTECTION OF RELIGIOUS FREEDOM

3.1. Introduction

There are several international treaties, declarations and human right instruments relevant to the protection of religious freedom. As a party to several such instruments, and Ethiopia has an obligation to comply with in the international laws.⁹⁸This chapter addresses the most significant developments in international and regional human right instruments with respect to religious freedom in general and protection to indigenous religion in particular. The first section treats provisions pertaining to protection of freedom of religion in the UDHR, ICCPR and other international human right instruments. The second and the final section deals and surveys with the provisions with the regional human right instruments and national laws respectively. Under this all instrument, I will examine the protection afforded to freedom of religion in general and the protection and status given to African indigenous religion in particular.

3.2. International Human Rights Laws

Freedom of thought, of conscience, and of religion or belief is, as we know, proclaimed and recognized by the most important legal instruments of the international community.⁹⁹Freedom of religion or belief has been incorporated in a number of international human rights laws. Tahzib noted that, the Charter of United Nation is widely considered the constitution of the international community and the foundation upon which a large body of international human rights law has been built in the post-world war two periods.¹⁰⁰ Moreover, at its first session General Assembly mentioned the principle of religious non-persecution and non-discrimination.¹⁰¹

⁹⁸ The FDRE Constitution (1995), cited above at note 19, Art 9(4) and Art13 (2)

⁹⁹ E. Odito Benito, Key Note Address, in Religious Liberty and Human Rights in Nations and Religions. ed. L. Swidler, Philadelphia/New York: Oxford University Press (1986), p. 1

¹⁰⁰ Tahzib, cited above at note 42, p.66

¹⁰¹ Ibid

As it is provided by Tahizb, in its Resolution of November 1946,¹⁰² the General Assembly marked that:-

*It is in the higher interest of humanity to put an immediate end to religious... persecution and discrimination, and calls on the governments and responsible authorities to conform both to the letter and to the spirit of the charter of United Nations, and to take most prompt and energetic step to that end.*¹⁰³

Thus, the explicit reference made at the first session of the General Assembly shows how much greater attention the UN gave to the avoidance of religious discrimination. Abandoning discrimination based on religion/belief is the result of recognition of whatever religion/belief one follows. Except for prohibiting the discrimination of persons on religious grounds, the United Nations Charter does not deal specifically with religious rights.¹⁰⁴

However, the General Assembly continued its effort by adopting human rights declaration and covenants which incorporate provisions on freedom of religion or belief. Moreover, it remains a question whether the issue adopted by human rights corpus on the freedom of religion or belief, and conscience under the international human rights instruments took into account indigenous religions. In this part, I shall briefly examine what protections, is given to indigenous religions (Waaqeffannaa) in international human rights regime and in regional and national human rights instruments.

3.2.1. Universal Declaration of Human Rights (UDHR)

The 1948 Universal Declaration of Human Rights (here after referred to as UDHR), the first United Nations instrument to address the subject was adopted by the General Assembly of the United Nations.¹⁰⁵ It is one of the four major international documents that have universalized the principle of religious freedom in this century; by far the most central is the Universal Declaration of Human Rights. Among the thirty articles that UDHR comprises the relevant parts that concern about the promotion and protection of freedom of religion or belief includes Articles 1, 2, 16, 18 and 26 as well as the preamble. To look at the selected Provisions, in the part of the preamble

¹⁰² Ibid

¹⁰³ Ibid

¹⁰⁴ Natan Lerner, "The Nature and Minimum Standards of Freedom of Religion or Belief", *BYU L. Rev.* 905 (2000), p. 910 available at: <http://digitalcommons.law.byu.edu/lawreview/vol2000/iss3/10> accessed on February 30, 2016

¹⁰⁵ Ibid

which states the basis for the protection of human rights, specifically second paragraph, it is stated, “the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people”¹⁰⁶. From the above quote one can infer that freedom of religion or belief is one of the motivations for the enactment of the declaration.

Article 1 of the UDHR in part states, all human beings are “equal in dignity and rights and are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.”¹⁰⁷ This means the freedom of every individual should be respected as it is the gift of nature. This includes human beings’ desire of freedom of belief and worship of whatever religious doctrine s/he wants to profess.¹⁰⁸ Article 1 of the UDHR also recognizes the equality of all human beings in dignity and rights. This implies all forms of discrimination, including religion, should be avoided.

Article 2 stipulates non-discrimination guarantee based on religion, inter alia.¹⁰⁹ The application of non-discrimination principle on religious grounds presupposes historical backdrop of religious persecution. It was only a few years back where people were killed due to their religious identity among other things.¹¹⁰ Again the significance of non-discrimination is further buttressed by the application of Article 7 which prescribes equality before the law. It reads as, “[a]ll are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.”¹¹¹

Article 16 is devoted to the right one has in cases of marriage and its dissolution. According to this article, as far as the man of the woman is of full age their marriage should not be prohibited owing to their religious back ground.¹¹²

¹⁰⁶ The UDHR (1948), cited above at note 13, preamble, Para. 2

¹⁰⁷ Id, Art 1

¹⁰⁸ Gedeon Sisay, The Rights to Proselytize in a Religiously Diverse Society: The Case of Ethiopia,(2010), (Unpublished LL.M Thesis, Addis Ababa University), p.14

¹⁰⁹ The UDHR(1948), cited above at note 13, Art 2

¹¹⁰ Davis, cited above at note 85,p.221

¹¹¹ The UDHR (1948), cited above at note 13, Art 7

¹¹² The UDHR (1948), cited above at note 13, Art 16

From among the provisions of the UDHR which incorporate rights under freedom of religion or belief, Article 18 is worth mentioning. Kenyan legal scholar Mutua noted, “UDHR does not especially recognize indigenous religions in relation to dominant faith or culture; and even do not refer to them.”¹¹³ He further noted, Article 18 simply provides that the rights of everyone “to freedom of thought, conscience and religion” and this right include 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”.¹¹⁴ According to him the non-consideration of African indigenous religion by UDHR for special protection makes the constitutional silence and an “absolute refusal to acknowledge the existence of African religions or cultures” in the many African states.¹¹⁵ Moreover, Mutua contends that, the “liberal generic protection of religious freedoms,”¹¹⁶ with its guarantees of the right to manifest, propagate, and change one’s religion, favors mission-related religions and is ultimately inimical to indigenous African religions and lifestyles.¹¹⁷ However, I have not agreed with Mutua’s argument, because UDHR neither ignore the recognition of African Traditional Religion nor provides specific recognition of other dominant religion of the world. From the very perspective of religious freedom justification, the UDHR provides protection to religious freedom in general. For instance, if we look at Art 18 of UDHR the phrase ‘everyone’ indicate all individuals on the world and followers of any religion or belief has a right to religious freedom. Hence, the UDHR adopted after past persecution of religious minority and in order to provide individuals protection of religious freedom and equal protection before the law without any discrimination.

3.2.2. International Covenant on Civil and Political Rights (ICCPR)

The Universal Declaration was followed by two treaties that created binding obligations on those states (including Ethiopia) that became parties to them. The most pertinent of these from the point of view of protection of religious freedom was the International Covenant on Civil and Political Rights (here in after the ‘ICCPR’),¹¹⁸ which includes a non-discrimination provision in Arts 2, 20, 24 and 26 and a specific protection clause of religious freedom in Art 18. Article 2(1)

¹¹³ Makau Wa. Mutua, “Limitation on Religious Rights: Problematizing Religious Freedom in the African Context”, in Religious Human Rights in Global Perspective. Kluwer Law International Printed in the Netherlands,(1996),p.431

¹¹⁴ Ibid

¹¹⁵ Ibid

¹¹⁶ Ibid

¹¹⁷ Ibid

¹¹⁸ The ICCPR (1966), cited above at note 15

of the ICCPR is similar to Art 2 (2) of the ICESCR which prohibits discrimination on the grounds of religion.¹¹⁹ Art 26 of the ICCPR also grants equality before the law and forbid discrimination on any grounds such as religion.¹²⁰ While Art 18 of the ICCPR is based on Art 18 of the Universal Declaration, there are a number of distinctions that reflect the growing controversy in the international community over the scope of religious freedom between the drafting of the two instruments.

Article 18(1) of the ICCPR provides that the rights of everyone “to freedom of thought, conscience and religion” and Art 18 (2) prohibits the use of coercion to impair the freedom of other to have or to adopt a religion or a belief of their choice. Furthermore, Art 18(3) provides, the freedom to “manifest one’s right or belief may be subject to such limitations as are prescribed by law” or limited to protect public “morals or the fundamental rights and freedom of others.” According to Mutua, this provision prohibits the use of force to make converts as was the case in early European crusades in Africa and the conquest of part of the continent by Arab Muslims.¹²¹ It would also appear to disallow using state resources such as educational, health, and other services to disadvantage particular faith.¹²² Other than this, Mutua argues, limitations on religious freedom for reasons of “public morality” and “public health” target the elements of traditional religious practice that many colonial states found problematic, even abominable.¹²³ According to him, in sub-Saharan Africa, harassment is generally linked to accusations of witchcraft, ritual sacrifice, and charlatanistic healing practices.¹²⁴ However, in my view though it is arguable, I don’t think that the limitation clause on religious freedom provided by ICCPR was targeted against the elements of African Traditional Religion’s value.

Article 18 of ICCPR is a more detailed provision for the protection of religious freedom than the provisions in the Universal Declaration of Human Right. Some points of particular note in the distinctions between the ICCPR and the Universal Declaration are as follows. The unambiguous protection of the right to ‘change’ religion in the Universal Declaration has been replaced with the less clear ‘have or adopt’ in the ICCPR, although the consensus among scholars working in

¹¹⁹ The ICCPR (1966), cited above at note 15, Art 2(1)

¹²⁰ Id, Art 26

¹²¹ Mutua, cited above at note 113, P.432

¹²² Ibid

¹²³ Ibid

¹²⁴ Ibid

this area is that this formulation still includes the right to change religion.¹²⁵ “This use of milder language is thought to be a compromise in order to enable more states to adopt the Covenant.”¹²⁶ Most of the Islamic States insist that Islam does not permit change from the religion. It is also thought to protect individuals against zealous proselytizers and missionaries.¹²⁷ In addition, a prohibition against coercion has been included. Both of these changes reflect some concern about missionary activities in developing countries and the first also reflects some controversy in certain Muslim countries about whether conversion out of Islam is permitted.¹²⁸

As it is clearly provided, Article 18 of the ICCPR also guarantees freedom, either individually or in community with others and in public or private, to manifest one’s religion or belief in worship, observance, practice and teaching.¹²⁹ This has been defined by the Human Rights Committee in the General Comments on Art 18. It states inter alia that:

*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.*¹³⁰

Article 4 of the ICCPR excludes any derogation from the rights guaranteed under Art 18 during a state of emergency making it more fundamental right.¹³¹ Derogation generally refers to abrogation of rights up on the exceptional occasion or emergencies that threaten the existence of a nation. It is usually more severe measure than limitation because it can go as far as total banning of the rights.¹³² Article 4 of the ICCPR permits states parties to avail themselves of the right of derogation to cope with “officially proclaimed” public emergencies that threaten the life of the nation.

¹²⁵ Carolyn Evans, Legal Aspects of the Protection of Religious Freedom in Australia: an overview of certain legal issues, (2011), p. 11; see also, United Nations Human Rights Committee, General Comment 22: cited above at note 19

¹²⁶ Okenu, Buihe P., The Right to Freedom of Religion vis a vis Religious Intolerance in the New Millennium, (2002), (Unpublished LL.M Thesis and Essays. Paper 37), p. 7
available at: http://digitalcommons.law.uga.edu/stu_llm/37 accessed on August 16, 2016

¹²⁷ Ibid

¹²⁸ Tahzib, cited above at note 42, p. 82

¹²⁹ The ICCPR (1966), cited above at note 15, Art 18(1)

¹³⁰ UN General Comment No. 22: cited above at note 19, Para.4

¹³¹ The ICCPR (1966), cited above at note 15, Art 4

¹³² Kiss, cited above at note 84, p. 291

Art 18 (4) of the ICCPR provides, “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.”¹³³ The Human Rights Committee has stated in its General Comments on Art 18 (4) that instruction in a particular religion or belief as a part of public education is inconsistent with Art 18 (4) unless provision is made for non-discriminatory exemptions or alternatives which would accommodate the wishes of parents.¹³⁴ The article permits public school instructions in subjects such as the general history of religion and ethics if it is given in a neutral and objective way.¹³⁵

The Universal Declaration does not define religion. It however uses the terms “religion or belief”. The inclusion of belief has been interpreted as being incorporated to protect non-religious convictions such as atheism or agnosticism. The Human Rights Committee in its general comments declared that Article 18 of the ICCPR protects theistic, non-theistic and atheistic beliefs, as well as the right not to believe or have a religion.¹³⁶

Art 27 of the ICCPR grants protection to religious minority groups. It states:

*In those States in which ethnic, religious or linguistic minorities exist persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.*¹³⁷

In relation to this provision of ICCPR, the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities is a very important document for the protection of minorities. Art 1(1) provides “States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity.”¹³⁸

¹³³ The ICCPR (1966), Art 18(4)

¹³⁴ General Comment No. 22: cited above at note 19, Para.6

¹³⁵ Ibid

¹³⁶ General Comment No. 22: cite above at note 19, Para.2

¹³⁷ The ICCPR (1966), cited above at note 15, Art 27

¹³⁸ The Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities was adopted by the United Nations General Assembly in resolution 47/135 of 18 December 1992. Available at: <http://firewall.unesco.org/most/rr4dec92.htm> accessed on July 20, 2016

3.2.3. Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, (1981)

The general protection of religious freedom in the ICCPR intended to be followed by a more detailed treaty on religious freedom and non-discrimination. To date, however, there has not been sufficient international consensus or political will to allow for such a treaty to be drafted.¹³⁹ Instead, the General Assembly of the United Nations has passed a non-binding declaration on religious freedom: the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief of 1981 ('1981 Declaration').¹⁴⁰In its 1981 Declaration on the Elimination of all Forms of Intolerance and of Discrimination Based on Religion and Belief, the United Nations did not address the subject of indigenous religions.

Furthermore, Evans noted much of the 1981 Declaration overlaps with and repeats, little more than an elaboration of the provisions of Art 18 of the ICCPR.¹⁴¹However, Okeno states 1981 Declaration uses the words "religion or whatever belief". The term 'whatever' is also used in the preamble. Further he pointed; it was included in order to satisfy some Communist Countries and Eastern European States, who wanted better protection for atheists.¹⁴²With this regard, Odio Benito states, "the 1981 Declaration without repeating the Universal Declaration or the International Covenant word for word encompasses the right to change one's religion or belief and to adopt another or to have none at all."¹⁴³ It thus expands the right to freedom of religion to include freedom from religion. Sometimes it develops those rights, for example by including not only a right to non-discrimination on the basis of religion,¹⁴⁴ but also creating a positive obligation on States to 'take effective measures to prevent and eliminate discrimination on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, economic, political, social and cultural life'.¹⁴⁵ It further elaborates on the right of parents/guardians to have their children educated according to their religious beliefs and includes the right to organize family life according to religious

¹³⁹ Carolyn Evans, cited above at note 125, p. 11

¹⁴⁰ Ibid

¹⁴¹ Ibid

¹⁴² Okeno, cited above at note 126, p.19

¹⁴³ Benito, cited above at note 99, p. 50

¹⁴⁴ The UN Declaration (1981), cited above at note 16, Art 2

¹⁴⁵ Id, Art 4(1)

beliefs.¹⁴⁶ However, it adds the limitation that ‘[p]ractices of a religion or belief in which a child is brought up must not be injurious to his physical or mental health or to his full development’.¹⁴⁷ This can be seen that preference is given to the wishes of the parents; however the best interest of the child is the guiding principle.¹⁴⁸

The most important development in the 1981 Declaration is that a more detailed list of manifestations of religion is set out in Art 6 in addition to the traditional formulation of ‘worship, observance, practice, and teaching’ set out in the Universal Declaration and ICCPR. The manifestations set out in Art 6 are inclusive, rather than comprehensive, and thus only represent a sub-section of the possible range of manifestations that are protected in international law.¹⁴⁹ The manifestations set out are particularly focused on the rights of religious groups and organizations, including the right to autonomy in the selection of clergy.

Article 2(1) of the 1981 Declaration provided in more details that one shall not be subject to discrimination by any state, institution, group of persons or person on grounds of religion or other belief. This prohibition of discrimination goes beyond conducts attributable to the states, and thus gives wider protection than the Universal Declaration and the International Covenants.¹⁵⁰

Art 2 (2) of the 1981 Declaration also defines intolerance and discrimination based on religion or belief as “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.”¹⁵¹ Intolerance and discrimination are defined together, but Art 4 (2) suggests that they have different meanings. It states: “All States shall make all efforts to enact or rescind legislation where necessary to prohibit any such discrimination and to take all appropriate measures to combat intolerance on the grounds of religion or other beliefs in this matter”. It has been remarked that intolerance refers to “...conduct manifesting hatred or prejudice based on religion or belief...”¹⁵² Therefore, the 1981 Declaration is an important document because it has

¹⁴⁶ Id, Art 5(1)

¹⁴⁷ Id, Art 5(5)

¹⁴⁸ Okeno, cited above at note 126, p.14

¹⁴⁹ Evans, cited above at note 125, p. 12, see also the UN Declaration (1981), Art 6

¹⁵⁰ Okeno, cited above at note 126, p.15, see also The Declaration (1981), cited above at note 16, Art 2(1)

¹⁵¹ Ibid

¹⁵² Ibid

more detail provision than any other instrument in the evolution of religion or belief in the UN framework even though, not legally binding document.

3.2.4. Other Significant International Human Rights Instruments Deals with Religious Freedom

The 1981 Declaration is, at least in part, an attempt to elaborate further the treaty obligations set out in Art 18 of the ICCPR.

Some more recent developments indicate a willingness to provide further protection for indigenous religions within the ambit of the United Nations. Mutua stated, through the relentless and focused advocacy of indigenous peoples and their supporters, the General Assembly in 1992 instructed the Working Group on the Indigenous Populations to draft a Declaration on the Rights of Indigenous Peoples for consideration by the Commission on Human Rights.¹⁵³ He further noted the Draft Declaration, which now awaits action by the commission on Human Rights, explicitly provides protection of indigenous religions and goes further than any other United Nations document in recognizing the rights of indigenous peoples and protecting their indigenous religions.¹⁵⁴

According to Mutua, the Draft Declaration would find unacceptable the philosophical and theological assumptions propagated by missionaries in African; the demonization of African religions as backward and inferior would violate the letter and spirit of the document.¹⁵⁵ Elsewhere, the Draft Declaration protects indigenous peoples from any “adverse discrimination, in particular based on their indigenous origin and identity.”¹⁵⁶ More importantly, the Draft Declaration prohibits ‘cultural genocide’ and disallows “any forms of assimilation or integration by other cultures or ways of life imposed on them...”¹⁵⁷ In sweeping assertion of sovereignty, the Draft Declaration appears to prohibit all forms of advocacy or proselytization by agents external to the indigenous culture when it calls for the “prevention of and redress for” among other things, any forms of propaganda directed at them [that is, indigenous people]. The objective of this reasoning is to create space in which indigenous peoples and their cultures are

¹⁵³ Mutua, cited above at note 113, p. 432

¹⁵⁴ Id, p.433

¹⁵⁵ Ibid

¹⁵⁶ Ibid

¹⁵⁷ Ibid

left alone by external agents. If adopted, the Draft Declaration would provide guidance for the human rights movement in understanding indigenous religions and creating processes to protect them.¹⁵⁸

Other than the above, almost all of the international human right instruments incorporated the non-discrimination clause on the basis of religion or belief in the protection of religious freedom. Among these, Art 2 (2) of the ICESCR says that the states parties undertake to guarantee the exercise of the rights enunciated without discrimination as to race, color, sex, language, religion, etc.¹⁵⁹ In addition to this, International Covenant on Economic Social and Cultural Rights proclaim about religious freedom of children and Art 13(3) of ICESCR states that:

*The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians, to choice for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.*¹⁶⁰

This therefore ensures that children receive religious and moral education in accordance with their parents or legal guardian's wishes. The other one is the International Convention on the Elimination of All Forms of Racial Discrimination also forbids discrimination on the basis of religion or belief.¹⁶¹ Art 5 states:

In compliance with the fundamental obligations laid down in Article 2 of this Convention, States Party undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the rights of everyone, without distinction as to race, color, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

¹⁵⁸ Ibid

¹⁵⁹International Covenant on Economic, Social and Cultural Rights, opened for signature 16 December 1966, 999 UNTS 3 (entered into force 3 January 1976). Art 2(2)

¹⁶⁰ Id, Art 13(3)

¹⁶¹International Convention on the Elimination of All Forms of Racial Discrimination, opened for signature 7 March 1966, 660 UNTS195, Art 5(7) (entered into force 4 January 1969) Art 5

To some up, the UN Charter and International Human Right Instruments concentrated more on the protection of freedom of religion or belief and prevention of religiously motivated discrimination. Thus, they are the most important instruments that protect one's own freedom of choice as to the faith or belief s/he desired to profess.

3.3. Regional Human Rights Instruments

Protection of the right to freedom of religion is also recognized in major regional human rights instruments. Differences between formulations of the right in these documents indicate different perceptions of this right as a right of individuals or of groups and of its place in the state. In addition, its geographical situation matters its jurisdiction to their respective region.

3.3.1. European Convention on Human Rights and Fundamental Freedoms (ECHR)

Art. 9 of the European Convention on Human Rights and Fundamental Freedoms contains the provision on the right to freedom of religion, and adopts similar wording with the Universal Declaration as regards the freedom to change one's belief. Article 9(1) reads, "everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom other alone or in community with other and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance."¹⁶² It consists of both the internal (*forum internum*) and external (*forum externum*) aspects of freedom of religion.¹⁶³ While the *forum internum* is not subject to limitation, Art 9(2) specifies grounds of limitation that apply to the *forum exterum*.¹⁶⁴ The essential difference with UDHR is that specific limitation clause incorporated under the European Convention. In addition, unlike the ICCPR, under ECHR freedom religion or belief is not included in the list of non-derogable rights in times of public emergency.¹⁶⁵

3.3.2. The American Convention on Human Rights

The American Convention on Human rights is another significant regional human right instrument in which freedom of religion or belief is incorporated and consists of sixty eight articles. The right of freedom of religion or belief is incorporated under Article 12 that

¹⁶² The European Convention on Human Rights; ECHR (1950), Art 9(1)

¹⁶³ Jim Murdoch, "Protecting the Right to Freedom of Thought, Conscience and Religion under the European Convention on Human Rights": Council of Europe Human Rights Handbooks, Strasbourg. (2012),p.21

¹⁶⁴ Id, p. 18

¹⁶⁵ Dalia Vitkauskaitė-Meurice, The Scope and Limits of the Freedom of Religion in International Human Rights Law, Jurisprudence, (2011), p. 847

constitutes both internal and external aspects of religious freedom and it is similar with Article 18 of ICCPR except that, “freedom to maintain” is expressly stated in the American Convention.¹⁶⁶ Article 12(1) reads, “Everyone has the right to freedom of conscience and of religion. This right includes freedom to maintain or to change one’s religion or beliefs, and freedom to profess or disseminate one’s religion or beliefs either individually or together with others, in public or in private.”¹⁶⁷ Gedeon noted that, “out of the two aspects of freedom of religion, the forms of external manifestation of religion or belief are less poorly pronounced than both UDHR and ICCPR. However, especially the term ‘disseminate’ particularly describes the right to proselytism which is an important right within the continuum of freedom of religion.”¹⁶⁸

As to the limitation imposed on the right of freedom of religion or belief, the American Convention is exactly similar with Article 18(3) of ICCPR. Article 27(2) of the American Convention is worth mentioning. Because, it guarantees that freedom of conscience and religion or the internal aspects of religious freedom should not be suspended even at the time of state emergency.¹⁶⁹

3.3.3. African Charter on Human and Peoples’ Rights

The adoption of the African Charter shows the beginning the commitment made by African states concerning human rights protection. It was the western powers that intervened for the protection of human rights in Africa previously.¹⁷⁰ “The exception to the general disregard of the African past is the African Charter on Human and People’s Rights, the continental human rights instrument adopted by the Organization of African Unity in 1981.”¹⁷¹ As a result, the African Charter on Human and People’s Rights is special and important instrument in the history of African human rights system. African Charter consists sixty one Articles. The preamble and Article 2, 8 and 28 of the Charter are devoted to the recognition and protection of rights under freedom of religion or belief.

¹⁶⁶ Okeno, cited above at note 126, p. 8

¹⁶⁷ The American Convention on Human Rights (1978), Art 12(1)

¹⁶⁸ Gedeon, cited above at note 108, p. 20

¹⁶⁹ The ACHR (1978), cited above at note 167, Art 27(2)

¹⁷⁰ Cees Flinterman and Catherine H. “African Charter on Human and Peoples’ Rights”, In an Introduction to International Protection of Human Rights: A Text book, ed. Raija Hanski and Markku Suksi, (2nd ed. Turku/ Abo: Abo Academy University Institute for Human Rights, 2000), p. 387

¹⁷¹ Mutua, cited above at note 113, p.434

According to Mutua, the African Charter recognizes in its preamble, the “virtue” of African’s traditions and its civilization. He further states, although it neither spells out those values nor mentions African religions, it imposes upon individual Africans the “duty to preserve and strengthen positive African values”.¹⁷² According to Mutua however, “its use of the word ‘positive’ betrays a Eurocentric bias and implies that there is much that is negative in African culture. The only reference to religion is a boiler plate provision, taken mainly from the ICCPR that protects religious freedom.”¹⁷³

Moreover, unlike the preceding instrument, the African Charter religious freedom clause is aphoristic. The preamble under its paragraph 7 and Art 2 of the charter devoted with non-discrimination of rights of religious freedom based on religious grounds.¹⁷⁴ Article 8 of the ACHPR reads as “freedom of conscience, the profession and free exercise of religion shall be guaranteed. No one may, subject to law and order, be submitted to measures restricting the exercise of these freedoms.”¹⁷⁵ The provision does not contain freedom to change or adopt religions. It seems to be focused on the external aspects of religious freedom as ‘profession’ and ‘free practice’ is specifically guaranteed.¹⁷⁶

The restriction clause grounds are law and order. These are less elaborate than, for example American Convention on Human Rights where the list of grounds is long. On the other hand the peculiar provision that imposes duties on the individual and the general limitation clause broadens the possibility of restriction.¹⁷⁷

¹⁷² Ibid

¹⁷³ Ibid

¹⁷⁴ The African Charter on Human and Peoples’ Rights (1981), Art 2, which reads “Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.”

¹⁷⁵ Id, Art 8

¹⁷⁶ Ibid

¹⁷⁷ The ACHPR (1981), cited above at note 174, Art 27

3.4. National laws

3.4.1. The Constitution of the Federal Democratic Republic of Ethiopia (FDRE Constitution)

The current Ethiopian Constitution was ratified on December, 8, 1994, and took effect on the 21st, August, 1995. This Constitution officially replaced the nation's centralized unitary system of governance with a federal arrangement proclaiming the birth of the "Federal Democratic Republic of Ethiopia" (FDRE).¹⁷⁸ The Constitution has eleven chapters and two main parts, the Human Rights part and Democratic Rights part and it contains the preamble and 106 Articles. Among these Articles; Art 3, 11, 25, 27, 29, 30, 31, 34, 90 and the preamble devoted with the protections of freedom of religion or belief. This Constitution guarantees a number of fundamental human rights and freedoms, including freedom of religion, belief and opinion.

All the above mentioned international and regional human rights instruments do not require any pattern of relationship between state and religion. They do not particularly demand separation of state and religion as guarantee to religious freedom. However, the FDRE Constitution incorporated the principle of separation as well as guarantee of religious freedom. It is clear that, the wording of Article 11 that the constitution envisages strict secularism.¹⁷⁹ The state is not supposed to favor or disfavor any religion nor interfere in matters of religion but, whether it is practically implemented is left questionable.

Paragraph 2 of the preamble of the FDRE Constitution stipulates the need to respect "individual and people's fundamental freedoms and rights, to live together on the basis of equality and without any religious or cultural discrimination."¹⁸⁰ Furthermore, in its paragraph 5 of the preamble the Constitution provided how to rectify historically unjust and to develop best values.¹⁸¹ Article 3 guarantees equality of religions, and as per Article 25 discrimination based on religious grounds is constitutionally prohibited and it guarantees equal protection of the law.¹⁸²

¹⁷⁸ The FDRE Constitution (1995), cited above at note 19, Art 1

¹⁷⁹ Id, Art 11 "State and religion are separate; there shall be no state religion; the state shall not interfere in religious matters and religion shall not interfere in state affairs."

¹⁸⁰ Id, preamble Para.2

¹⁸¹ Id, preamble Para.5

¹⁸² The FDRE Constitution (1995), cited above at note 19, Arts 3 and 25

Article 27 of the FDRE Constitution which guarantees religious freedom is a substantial copy of Article 18 of ICCPR.¹⁸³ Article 27(1) not only protects religion but also, thought and conscience. This implies the religion or belief of an individual is respected as being his/her own domain of right. Do to this combination; it can be argued that, the FDRE Constitution protects atheists and other non-believer as well.¹⁸⁴ Moreover, the phrase ‘...freedom to hold or to adopt a religion or belief of his choice ...’ under Art 27 (1) of the FDRE Constitution further guarantees these rights. This freedom of choice involves two aspects of freedom, i.e. freedom to maintain one’s existing religion or belief and freedom to change the previous religion or belief and it extends to freedom to free from religion or belief.¹⁸⁵

It protects both internal and external aspects of freedom of religion or belief. Pursuant to Art 27 (3) of the FDRE Constitution, the internal aspects of freedom of religion or belief of an individual shall not be subject to coercion or other means of which would restrict or prevent this freedom.¹⁸⁶ Belief is something related with the inner part of individual. Limiting this aspect of right is meaningless unless it is externalized by action. That is why it becomes absolute right in the Constitution.¹⁸⁷

The external aspect of religious freedom which is guaranteed under the FDRE Constitution is freedom to manifestation of religion or belief, either individually or in community with others, and in public or private in worship, observance, practice and teaching. As it is clearly pointed by Girmachew, “States have not considered it difficult to allow their citizens the freedom to think. The difficulties start when we come to the right to express one’s conviction...”¹⁸⁸

Freedom to act in accordance with one’s belief is the back bone of freedom of religion. Like all other freedoms, religious freedom is not an absolute right. In particular, the external aspect of the right, i.e., the public manifestation of faith may be subject to limitation by law where the

¹⁸³ Id, Art 27

¹⁸⁴ Id, Art 27(1) reads 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.”

¹⁸⁵ Tahzib, Cited above at note 42, p.73

¹⁸⁶ The FDRE Constitution (1995) cited above at note 19, Art 27(3) reads as “No one shall be subject to coercion or other means which would restrict or prevent his freedom to hold a belief of his choice.”

¹⁸⁷ Girmachew Alemu, Ethiopian Human Rights Hand Book, Oxford University press,(January 2013) p.100

¹⁸⁸ Ibid

restriction is “necessary to protect public safety, peace, health, education, public morality or the fundamental rights and freedoms of others, and to ensure the independence of the state from religion” as prescribed by the law.¹⁸⁹ As per this provision, the freedom to express one’s religion or belief in the form of worship, observance, teaching and practice should not contradict the wider views of public morality (though subject to debate), affect the peace and stability of the country, health and education of the society and violate the rights of others. Moreover, the functional independence of the state should be ensured from religious influence. The restriction on religious freedom ‘to ensure the independence of the state’ affirms the secularity principle proclaimed in the constitution.¹⁹⁰

However, this ground of restriction is ‘discrete’ to Ethiopia which might be subject to mistreatment. It has never been mentioned in other regional and international legal instruments such as UDHR, ICCPR, ECHR, ACHPR, etc.¹⁹¹ The UDHR under Art 29(2) allows the maintenance of ‘the general welfare in a democratic society’ as a justifiable ground to limit freedom of religion. The ICCPR under Art 18(3), on the other hand, specifies the limitation only on the manifestation part of freedom of religion ‘to protect public safety, order, health, morals or the fundamental rights and freedoms of others’.¹⁹²

The FDRE Constitution is ‘distinct’ in that, it adds ‘the principle of secularism and education’ as justifiable grounds for limiting the freedom to public manifestation of faith. Apart from the expressly provided ones, there are no other grounds to restrict the right to freedom of religious expression. In other words, the lists provided under Art 27(5) are exhaustive as it says “freedom to express or manifest one’s religion or belief may be subject only to such limitations ...” But it is subject to derogation at the time of state of emergency making it less fundamental at least than freedom of equality and prohibition of inhuman treatment.¹⁹³ This may contradict with Art 4(2) of the ICCPR in which derogation of freedom of religion is clearly forbidden.

Moreover, in additions of the above pertinent provisions of the FDRE Constitution, freedom of speech, assembly and association are some of the fundamental human rights that have direct

¹⁸⁹ The FDRE Constitution (1995), cited above at note 19, Art 27(5)

¹⁹⁰ Mohammad, cited above at note 1, p. 2

¹⁹¹ Ibid

¹⁹² The ICCPR (1966), cited above at note 15, Art 18(3)

¹⁹³ The FDRE Constitution (1995), cited above at note 19, Art 93(4)

relation with the freedom of religion. Without the right to speak, or write, come together in group, we can say that it is difficult or impossible to exercise freedom of religion.

Art 29 of the FDRE Constitution guarantees freedom of expression which includes the expression of opinions and facts by words of mouth. According to the FDRE Constitution, everyone has the right to freedom of expression without any interference and the rights include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any media of his choice.¹⁹⁴ When we see these rights from religious freedom perspectives, any religious group can express their religion by word of mouth and can preach, propagate and teach their religion in any ways they like. Freedom of association is also one of the basic fundamental human rights recognized under Art 31 of the FDRE Constitution. It states that “every person has the right to freedom of association for any cause or purpose.”¹⁹⁵ Hence, adherents of any religious denominations have freedom of association as per Art 31 of the FDRE Constitution.

3.4.2. Subsidiary Legislations

Almost every constitutional right mentioned above and as included in the FDRE Constitution to get full application and protection, subsidiary legislations to meet the standards set by the FDRE Constitution. Among such laws the major ones are the 1960 Civil Code, the 2004 Penal Code of Ethiopia and the others.

3.4.2.1. The 1960 Civil Code of Ethiopia

The Civil Code of Ethiopia, Arts 394 et seq. under the title of its Administrative Organs and Church (Art 394 and Art 398), the Ethiopian Orthodox Church is given automatic legal personality.¹⁹⁶ According to Art 399 of Civil Code, the church can also use these rights for Orthodox dioceses, parishes and monasteries. But Art 407 of Civil Code under the title Religion and Association says, except for the Ethiopian Orthodox Church, all religions in Ethiopia are treated as ordinary non-governmental association. And special laws may be made for this purpose and in the absence of the laws; they are regulated by this Civil Code.¹⁹⁷ The said law was not made in

¹⁹⁴ The FDRE Constitution (1995), cited above at note 19, Art 29(2)

¹⁹⁵ Id, Art 31

¹⁹⁶ The Civil Code of Ethiopia (1960), Art 398

¹⁹⁷ Id, Art 407

the past 50 years. So the fate of other religions except Orthodox Religion was to be considered as ordinary association.

This principle emanates from the principle of the 1955 Revised Constitution that establishes only one religion as State Religion.¹⁹⁸ Even today while these provisions of Civil Code which are discriminatory is against the principle of the FDRE Constitution, the Ministry of Justice previously and now the Ministry of Federal and Pastoralist Development Affairs for about twenty years is strictly enforcing the application of Arts 394ff of Civil Code. And based up on this law, the government regulatory body had interfering in each and every matters of other religion except the Orthodox Church. The Imperial regulations regarding the registration of religious communities now were put into practice, resulting in the first official recognition of many Protestant, especially Pentecostal churches and *Waaqeffannaa*. However, the laws pertaining to the registration of religious organizations with the government may also be seen to contradict the constitutional provisions of religious freedom and equality. The EOC is still exempt from registration, whereas for all others registration is a legal mandate.

3.4.2.2. The 2004 Federal Criminal Code of Ethiopia

The FDRE Constitution is establishing new legal system in the country making the former penal code consistent with the principle and fundamental human rights is not questionable. As it is mentioned in the preamble of the Code, one of the basic reasons that necessitated the changing of the former Penal Code is, to make consistent with the FDRE Constitution.¹⁹⁹ And it is the law which enforces the provision of FDRE Constitution. Hence, regarding the acts which infringe and violate religious rights and liberties the new penal law has tried to address such issues in different ways.

Other than those provisions of criminal code which has general penalty against criminal acts, there are the provisions of criminal code which penalize acts which infringe religious freedom of individual and religious groups. In this regard, Article 492 of the 2004 Criminal Code of Ethiopia imposes penalty for an act violating the free exercise of religious rights. It reads as whoever publicly preventing the solemnization of, or disturbs or scoffs at, an authorized religious ceremony or office or profanes a place; image or object used for religious ceremonies is

¹⁹⁸ The Revised Constitution of Ethiopia (1955), Art 126

¹⁹⁹ The Criminal Code of Ethiopia (2004), preamble Para.1

punishable with fine not exceeding one thousand birr or with simple imprisonment not exceeding two years.²⁰⁰

The 2004 Criminal Code, contain punishments for participating in, or leading the activities of an unregistered association. Under a new press law adopted on December 4, 2008, it is a crime to incite one religious group against another. The law also allows defamation claims involving religious leaders to be prosecuted as criminal cases.

²⁰⁰ Id, Art 492

CHAPTER FOUR

THE SCOPE OF PROTECTION ACCORDED TO *WAAQEFFANNAA* UNDER THE CONSTITUTION OF THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA

4.1. Overview of *Waaqeffannaa*

When we speak about *Waaqeffannaa*, we refer to Oromo indigenous religious belief and practice which is one of the Traditional African Religions. It is a monotheist and religion of ancient black people²⁰¹ which originated in the home land of the early human race, the Cushitic people who have lived in the Horn of Africa. It is a religion that has existed before any of the alien religions²⁰² and resulted from the sustaining faith held by the forebears of the present Oromo people.²⁰³ In most African countries, Indigenous Religions have been pushed to the margin because of a number of factors. Those factors which contribute to a range of negative stereotypes about African religions (example, uncivilized, barbaric and conflict-generating) is the fact that many of them have been orally transmitted from generation to generation and lack of written major holy books unlike the world religions and its failure under the hands of colonialism for long period of time.²⁰⁴

Any issue having to do with the rights of the Oromo people to exercise its culture, religion, use its language within the Ethiopian state should be positioned within the historical trajectories that brought the birth of the modern Ethiopian state.²⁰⁵ Following the military conquest of the different hitherto autonomous states of the South by the army of Menelik II in the late 19th century, the Amhara ruling group imposed its culture, language, religion and political dominance over the subjugated nations and nationalities.²⁰⁶ In the area of religion, Orthodox Christianity was installed as the only legitimate religion while other religious practices were

²⁰¹Dirribi, cited above at note 37. p. 29, see also, Workineh, cited above at note 6, p. 22

²⁰² Ibid, see also, Tesema Ta'a, "Religious Beliefs among the Oromo: *Waaqeffannaa*, Christianity and Islam in the Context of Ethnic Identity, Citizenship and Integration," *EJOSSAH* Vol. VIII, No.1 (2012) p. 90

²⁰³ Bedassa Gabissa Aga, "Oromo Indigenous Religion: *Waaqeffannaa*", *IJRSL*, Volume III, Issue IV (2016),p. 4

²⁰⁴Dirribi, cited above at note 37, p. 25

²⁰⁵Mohammed Hassen, "Exploring New Political Alternatives for the Oromo in Ethiopia", Report from Oromo workshop and its after-effects,(ed. by Siegfried Pause Wang), *CMI REPORT*, (2009) p.27available at: www.cmi.no/publications accessed on September 14, 2016

²⁰⁶ Ibid

denigrated, discouraged, and at times, banned. For instance, Orthodox priests took the place of the Oromo *Qaalluu* and other religious leaders.²⁰⁷ The Oromo religious and cultural practices became targets of state repression during and after the time of conquest. *Irreecha* rituals and pilgrimage to *Muudaa* were very restricted and were portrayed by state backed Orthodox Christian Church as a practice of devilish worship.²⁰⁸

The *Derg* regime, that overthrew the imperial regime in 1974, initially seemed to have tolerated traditional cultural practices, language diversity and religion, but its communist orientation and ‘modernist’ discourse had placed the regime at odds with these fundamental rights of the peoples of the country-their rights to cultural and religious practices.²⁰⁹ While it outlawed ‘religion’, Orthodox Christianity still did not face state persecution as other religious sects, it labeled traditional religious practices *Waaqeffannaa* and *Irreecha* festival as ‘backward’ and obstacles to development and revolutionary ethos of the regime.²¹⁰ As a result, *Waaqeffannaa* and *Irreecha*, the Oromo religious and cultural practices were banned by the *Derg*.

It is imperative to mention two fundamental motives behind state suppression of *Waaqeffannaa* and *Irreecha* (as common to other Oromo cultural practices) during those eras. First, successive Ethiopian regimes had subtle and overt policies of establishing culturally, linguistically and religiously ‘homogenized’ Ethiopia in their quest to build Ethiopian nationalism as a replica of Abyssinian identities. Secondly, the Ethiopian state was built on a cultural and political identity that depicted Abyssinian cultural/political superiorities.²¹¹ The myth of ‘great tradition’ that portrays the North as cradle of ‘civilization’ and conversely demotes the South to the opposite was in the center of Ethiopian state identity. This myth has been used to legitimize the exclusionary policies of the Abyssinian state against the people in the conquered areas.²¹²

²⁰⁷ Ibid,

²⁰⁸ Tesema Ta’a, “Religious Beliefs among the Oromo: *Waaqeffannaa*, Christianity and Islam in the Context of Ethnic Identity, Citizenship and Integration,” *EJOSSAH* Vol. VIII, No.1 (2012) p. 90

²⁰⁹ Tekaligne Fanta, *Managing Religious Conflicts, A Study of the Legal Framework with Particular Reference to the 2006*

Muslim-Christian Conflict in Oromiya, (2008) (Unpublished Thesis, Addis Ababa University), p.62

²¹⁰ Dirribi, cited above at note 37, pp.31-32

²¹¹ Jeylan Wolyie Hussein, “A Critical Review of the Political and Stereotypical Portrayals of the Oromo in the Ethiopian Historiography”, *Nordic Journal of African Studies* 15(3), Alemaya University, Ethiopia (2006), p.261-265

²¹² Ibid

Denigrating the culture or religion of the conquered people, ‘others’ as ‘backward’ was instrumental in placing their own religion on the privileged position.

Based on its historical order and the challenges it faced through the passage of time, Dirribi has described the development *Waaqeffannaa* has undergone into three. These are Early *Waaqeffannaa*, Second Generation *Waaqeffannaa*, and the Third Generation *Waaqeffannaa*.²¹³ According to Dirribi, Early *Waaqeffannaa* was full-fledged religion. Its *safuu* (set of principle), its *Ayyaantuu* (Religious leaders), *Haadha caacuu* (Holy mothers); its sacred religious arte-facts like, *caaccuu*, *kallachaa*, *callee* and *irbooraa*; and its holy sacred and place of worship like *Ardaa-jila* (Venue of assembly), *Tulluu* (mountain), *Malkaa* (river bank), etc. were protected and respected.²¹⁴ However, colonizers and other alien forces suppressed all these values. They confiscated and established their own religion institutions at the shrine places of *Waaqeffannaa* such as *Tulluu*, *Malkaa* etc. They purposely eliminated the *ayyaantuus*, tortured them inhumanely and finally destroyed the institution of *Waaqeffannaa*. According to Dirribi, all the above listed acts of suppressions have been imposed on *Waaqeffannaa* and continued for centuries started from early period of imperial regime to the time of the *Derg* regime.²¹⁵

The second Generation *Waaqeffannaa* resumed in 1998 after several years of uninterrupted suppression.²¹⁶ After many ups and downs, *Waaqeffannaa* Religion Followers Association was formed in December 2003.²¹⁷ The very objectives of second Generation *Waaqeffannaa* were to restore *Waaqeffannaa*. In their effort to restore *Waaqeffannaa* the members tried to get legal personality from the Federal government. However, let alone giving legal personality, the government took the measure of banning WRFA and imprisoned the foundering members.²¹⁸

Even though *Waaqeffannaa* had faced ever-increasing challenges under the successive Ethiopian regimes, it has never been abandoned by Oromo people.²¹⁹ Among the Oromo people *Waaqeffannaa* is viewed not merely as an expression of spirituality, but also as a foundation of Oromo traditions, cultural heritage, symbol of identity, and a pillar of the *Gadaa*

²¹³ Dirribi, cited above at note 37, pp.29-30

²¹⁴ Id, p. 30

²¹⁵ Ibid

²¹⁶ Id, p. 34

²¹⁷ Ibid

²¹⁸ Ibid

²¹⁹ Bedassa, cited above at note 9, p. 8

system.²²⁰ *Waaqeffannaa* is the bedrock that underlies the entire Oromo life aspects and many Oromo have paid with their lives to preserve these values, and ensured the survival of the Oromo indigenous religion down to the 21st century.²²¹

According to Dirribi, after the FDRE Government had cancelled and banned the legal personality of WRFA, the third Generation *Waaqeffannaa* took its turn and made a relentless effort to restore *Waaqeffannaa*.²²² Consequently, *Waaqeffannaa* has got legal personality as a religious faith. *Waaqeffannaa* is now spreading fast and restoring its former status in nearly all parts of the country under the third Generation *Waaqeffannaa*.²²³ As data from the Central Committee of the WRFA shows, currently the WRFA is clustered around five main centers. This clustering /classification is for the sake of harmonizing ways across different *galmoota* or worship centers, to facilitate smooth relations among followers 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.²²⁴

The five clusters are found at various locations in Oromia. The center for the Central Cluster, seated at *Malkaa Ateetee* in ‘Buraayyu’. The center for the Western Cluster, seated at ‘Naqamtee’. The center for the Eastern Cluster placed at ‘Boosat’, Walancitii district. For the Northern Cluster, the seat is at ‘Gabra Gurraachaa’ in Northern Shoa. Center for the Southern Cluster is located at ‘Dirree Arraabii’ (Gujji-Diillaa border).²²⁵

4.2. The Status of *Waaqeffannaa* under the Constitution of the Federal Democratic Republic of Ethiopian (FDRE Constitution)

Before discussing the scope of protection accorded to *Waaqeffannaa* in Ethiopia, it is necessary to see its legal status as a belief system. Whatever legal status the state accords to religion, including according it no formal legal status (which is also a type of legal status); it must make choices between according this right to individuals, to groups or to subgroups.²²⁶ The UN Human

²²⁰ Ibid

²²¹ Ibid

²²² Dirribi, cited above at note 37, p. 50

²²³ Interview with Tolassa Kishe, Elder and members of the central boards of *Waaqeffannaa* Religion Followers Association (WRFA), on 22 December 2016, see also Bedassa, cited above at note 9, p. 8

²²⁴ Interview with Tolassa Kishe

²²⁵ Interview with Tolassa Kishe, see also Bedassa, cited above at note 9, p. 8

²²⁶ Interview with Tolassa Kishe

Rights Conventions and the 1981 Declaration are silent on the subject of what is a permissible status of religion in the state.

According to Article 11 of the FDRE Constitution, Ethiopia is a secular state. Religious associations shall be separated from the state and shall be equal before the law, and no religion may be established as a state religion.²²⁷ This provision is one of the fundamental principles of the FDRE Constitution.²²⁸ Along the FDRE Constitution, in Ethiopia, there are a large number of laws regulating the status of religious associations. Some of these laws do this indirectly as they are not adopted to regulate the status of such organizations as their main objective. They contain discrete elements of the legal status like the counter terrorism law which places restrictions on religious freedom.²²⁹ In addition to Arts 27, 11, 25 of the FDRE Constitution, the 1960 Ethiopian Civil Code has an important place in the regulation of questions of realization of freedom of religion, including its collective forms.²³⁰ Still the provisions of the Civil Code treats religious group during registration and it puts legal mandate to be registered on religious groups in Ethiopia. The 2004 Criminal Code of Ethiopia in its part contains punishments for participating in, or leading the activities of an unregistered association.²³¹ Furthermore, the Legal Notice of 1966, which still governs the process of registration, states that an application may be denied if the purposes of the association are found to be “unlawful or immoral,” or “against national unity and interests”.²³² However, this stringent requirements and procedure of 1966 Legal Notice and provisions of the Civil Code that authorize a status to certain organizations is contradictory and against the freedom of religion. For instance the phrase “against national unity and interests” provided by 1966 Legal Notice as grounds of limitation contradicts with both Art 18(3) of ICCPR and Art 27(5) of FDRE Constitution.

It has taken *Waaqeffannaa* religion a long time to enjoy the constitutionally guaranteed rights under the FDRE Constitution. As we have seen under Chapter One of the paper, although *Waaqeffannaa* started to be practiced among Oromo people at a very early period in time, past

²²⁷ The FDRE Constitution (1995), cited above at note 19, Art 11

²²⁸ Ibid

²²⁹ Balancing Counter Terrorism and Human Rights, available at: <http://www.ezega.com/News/NewsDetails.aspx?Page=heads&NewsID=3292> accessed on June 08, 2015

²³⁰ The Ethiopian Civil Code (1960), cited above at note 196, Art 404

²³¹ The Criminal Code of Ethiopia (2004) cited above at not 199, Art 482

²³² “Legal Notice No. 321 of 1966: Regulations Issued Pursuant to the Control of Associations Provision of the Civil Code of 1960.” *Negarit Gazeta* 26, no.1 (1966):1–10), here Art 8(1)

political subjugation, injustice and other factors continued to deny its recognition even in post 1991 Ethiopia.²³³ Though it looks that the FDRE Constitution created conducive environment for its revitalization, *Waaqeffannaa* face so many challenges practically.²³⁴ The government still continued to restrict and ban the activities of *Waaqeffannaa* religious group and its adherents. As data gathered from study areas shows, in practice, although the followers of *Waaqeffannaa* 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 application.²³⁵ For instance, as it is written by Dirribi, Oromia Justice Bureau denied giving license when having fulfilled the requirements, the WRFA asked for legal personality.²³⁶

After relentless efforts made to restore *Waaqeffannaa*, WRFA got its first legal personality on December 16, 2003 from the Federal Ministry of Justice upon fulfilling the requirements.²³⁷ However, the same Ministry revoked the license on February 12, 2004 after 51 days of the granted legal personality on a pretext that WRFA went beyond its legal mandate and declaring that its movement was unlawful.²³⁸ In addition to revoking the license, the letter instructed the police to detain anybody who may call a meeting or participate in the assembly held under the name of *Waaqeffannaa*.²³⁹

According to the data collected, WRFA appealed to the Minister of FDRE Ministry of Justice claiming that the action taken by Registration Officer under the Ministry was against their constitutional rights of religious freedom and it violated the substantial part of their rights to free exercise of religion of their choice. The WRFA alleged that the registration officer revoked the license without good cause only on the mere suspicion without any evidence to prove that the

²³³ Bedassa, cited above at note 9, p. 9

²³⁴ See the FDRE Constitution (1995), cited above at note 19, Art (27,11, and 25)

²³⁵ Interview with Dirribi Demissie Bokku, on December 16, 2016 in 'Buraayyu'

²³⁶ Dirribi, cited above at note 37, p. 44

²³⁷ The FDRE Ministry of Justice: Certificate. It reads as, "this is to certify that all provisions of the civil code of Ethiopia of 1960 and the Association Registration Regulation, Legal Notice No.321 of 1966, have been complied with and accordingly this Certificate of Registration is hereby issued to the 'Yewakefena Eminent Teketayoch Mahiber' and has been registered by the ministry bearing the number 1390 on December 17, 2003 and shall be valid until December 16, 2006"

²³⁸ The FDRE Ministry of Justice, the letter issued on February 4, 1996 E.C by Ref. No. 11/4562/10-1390.

²³⁹ Ibid

WRFA had committed crime or broken any law.²⁴⁰ However, the then FDRE Ministry of Justice Minister Harqa Haroye rejected the claim of the WRFA and approved the cancellation stating that, from the very beginning the registration certificate in the name of WRFA was issued by mistake and we have found information that the WRFA had a hidden agenda (‘ስ ጢር ኣ ላ ማ’) beyond its legal mandate. He concluded that the action taken by the Registration Officer was correct and the license was issued by mistake.²⁴¹

In the case WRFA v. Ministry of Justice, WRFA instituted its claim alleging that the Ministry cancelled its legal personality, prohibited the association from any function and restrict the rights to religious freedom of followers of *Waaqeffannaa* without any prior-notification and good cause. The WRFA asked the court to revoke the cancellation and restore its legal personality.²⁴² The Ministry of Justice on the other hand alleged that the WRFA had no legal personality and not capable of instituting a suit and asked the court to reject the suit. The court ruled against the WRFA by raising Art 462 (1) and (2) of the Civil Code and based its argument only on the capacity to suit. Ultimately, the court ruled against the WRFA and thus rejected the suit.²⁴³

When we analyze the court’s ruling, the court has been passed its decision in favor of the Ministry of Justice based on legal grounds although the real facts are quite different. For one thing, the laws having to do with the establishment and registration of churches, religious groups, religion association and its dissolution was the provisions of 1960 Civil Code which is discriminatory by nature and against the freedom of religion and equal protection provision of the FDRE Constitution. More importantly, as it is clearly stated under Art 9 (1) of the FDRE Constitution, any law, customary practice or a decision of an organ of state or a public official which contravene this constitution shall be of no effect.²⁴⁴

Furthermore, the justification given by both the registration officer and the Minister of Ministry of Justice contradicts each other and had no any legal base. For instance, the Registration Officer presented the reason for the cancellation of the certificate-the WRFA going beyond its mandate

²⁴⁰The *Waaqeffannaa* Religion Followers Association (WRFA), Application letter written for Minister of FDRE Ministry of Justice, on February 30, 1996 E.C

²⁴¹The Ministry of Justice, the letter issued on December 3, 1997 E.C by Ref. No. 01/ሌ ማሃ /2655/112

²⁴²*Waaqeffannaa* Religion Followers Association (WRFA) v. FDRE Ministry of Justice, File No. 22605

²⁴³Ibid

²⁴⁴The FDRE Constitution (1995), cited above at note 19, Art 9(1)

and unlawfulness of its religious practice. Whereas, the Minister of Ministry of Justice in his response, stated that the registration certificate was issued to the WRFA by mistake and its hidden agenda has been disclosed. This clearly shows that the reasons provided by Minister of the Ministry of Justice and Registration Officer contradicted each other. Both could not provide any evidence and could not specifically indicate the unlawful activities of the WRFA. The WRFA on its part claimed that the Ministry of Justice canceled the registration certificate and prohibited the rights to religious freedom of followers of *Waaqeffannaa* unlawfully. In spite of clear provisions in the FDRE Constitution that guaranteed the free expression of one's religious beliefs, the decision was restrictive of constitutionally guaranteed religious freedom. Failure to protect constitutionally guaranteed rights would infringe substantial part of the religious freedom, that of thought, conscience, religion and belief which in effect erodes the entire freedom. This would also have the effect of eroding the constitutionally guaranteed freedom to manifest religion or belief either individually or in community through religious body institutions.

As stated by Bedassa, government officials argue that, lack of legal personality did not affect its adherents from exercising the rights to religious freedom guaranteed by the FDRE Constitution and other relevant human rights instruments ratified by Ethiopia underscoring that, some religious sects are yet not registered. As an example, they refer to Ethiopian Orthodox Church (EOC) which in their view has never registered and has never faced the ramifications of not registering.²⁴⁵ Because they argue that EOC has been historically an official religion in the country for centuries and it does not need legal protection. However, this argument not holds water. The facts on the ground shows that the government has banned and prohibited any religious movement and practice in the name of *Waaqeffannaa* and has even arrested adherents of *Waaqeffannaa* at different time when they tried to exercise their worship rights.²⁴⁶ In reality, the fact that *Waaqeffannaa* is being denied legal recognition is a clear indication of the continuation of the past inequality and discrimination between followers of different religions which is coextensive of political marginalization to which the Oromo are subjected.

²⁴⁵ Bedassa, cited above at note 9, p.9

²⁴⁶ Interview with Tolassa Kishe on December 22, 2016 in 'Buraayyu'

According to one of my informants, the Ministry of Justice denied a license to *Waaqeffannaa* because it suspected that the group has connection with the banned Oromo political organization, the OLF for which it had no concrete evidence.²⁴⁷ This idea of an informant conforms to the reports made by different international organizations. The International Religious Freedom Report of 2005 and of 2014 have documented that the Ministry of Justice denied license to *Waaqeffannaa* without offering any reason for its action because the government presumably suspects the group of covert collaboration with the OLF.²⁴⁸

My informant had the view that this unreasonable and groundless suspicion of the government has led to the total disregarded and violation of rights to religious freedom and other related fundamental human rights for mere unfounded political reasons.²⁴⁹ In addition to the denial of license, based on the groundless suspicion, the government took series of crack down measures on the followers of *Waaqeffannaa*. For instances, in 2004, immediately after banning the WRFA, the government made announcement to take necessary measure on those movements, activities and any function in the name of *Waaqeffannaa*. Subsequently, Federal Police arrested some followers of *Waaqeffannaa* including the spiritual leaders.²⁵⁰ These were detained by the Federal Police on the pretext that they had linkage with the OLF. The harassments and detentions have often been made by the security force and federal police without any legal warrant²⁵¹ by violating Article 27 of the FDRE Constitution which provides that believers are entitled to follow religion of their preferences and to teach about their religion.

According to Bedassa, *Waaqeffannaa* was being practiced in the forms of its various *Ayyaanota* (plural form of *Ayyaana*), including the *Irreecha*, *Ateete* and *Gubaa* celebrated in a generally disorganized way at different localities before the Transitional Period.²⁵² During the Transitional Period, *Irreecha* festival came to be celebrated more publicly at ‘Bishooftuu’ *Hora Arsadi* under the auspices and coordination of the OLF. Thereafter, the Government continued to associate *Waaqeffannaa* with the OLF.²⁵³ Although *Waaqeffannaa* is an ancient religion of Oromo people,

²⁴⁷Interview with Tolassa Kishe, on December 22, 2016 in ‘Buraayyu’

²⁴⁸ International Religious Freedom Report for 2005 and 2014 Ethiopia, p. 4 available at: <http://www.refworld.org/docid/437cgcb1d.html> and <http://www.state.gov/documents/organization/238426.pdf> respectively, accessed on August 14, 2016

²⁴⁹Interview with Tolassa Kishe on December 22, 2016 in ‘Buraayyu’

²⁵⁰ Interview with Dirribi Demissie Bokku on December 16, 2016 and Tolassa Kishe on December 22, 2016 in ‘Buraayyu’

²⁵¹Interview with Dirribi Demissie Bokku on December 16, 2016 in ‘Buraayyu’

²⁵² Bedassa, cited above at note 9, p.10

²⁵³ Ibid

the government and some non-Oromo's started to identify its activities with the political act of the OLF since the Transitional Period.²⁵⁴ However, this kind of generalization cannot serve as a justification for the violation of constitutionally guaranteed fundamental human rights. A person's ideological orientation cannot prevent him from lawfully professing any religion of his/her own preference. Hence, in our case, labeling followers of *Waaqeffannaa* as members of OLF without any justifiable ground was a clear and naked violation of religious freedom.

As the data from study areas reveals, *Waaqeffannaa* remained unrecognized as a religion until September 2013 and followers of *Waaqeffannaa* have been denied their right to freedom of religion.²⁵⁵ The banning of *Waaqeffannaa*, in one or another way, will have impact on the development of Oromo socio-cultural and politico-legal institution. *Gadaa* system and *Waaqeffannaa* have strong connection in Oromo society. *Waaqeffannaa* was the pillar of *Gadaa* system, which represents the socio-cultural and politico-legal institution of Oromo.²⁵⁶ For instance, when UNSECO registered Oromo *Gadaa* system in 2016, *Waaqeffannaa* was taken as one element of *Gadaa* system owing to its being an indigenous religion of the Oromo.²⁵⁷ But if non-recognition of *Waaqeffannaa* and its banning continues, registering the *Gadaa* system will be meaningless. The banning of *Waaqeffannaa* will lead to the gradual destruction of *Gadaa* system and all institutions associated with *Gadaa* including the *Qaalluu* institution. This will erode away the spiritual foundation of the society. The loss of spiritual values would mean loss of the people's social and cultural capital which leads to loss of collective identity.

Waaqeffannaa was not merely restricted to its manifestation, rather it also lost its legal recognition, which violates the *Waaqeffataa*'s right to hold or to have a religion, which is entitled and expected to be respected absolutely. Article 27(3) of the FDRE Constitution avows the non-coercion of freedom to hold a religion or belief of one's choice.²⁵⁸ In line with these existing legal frameworks, prohibition of *Waaqeffannaa*'s legality is beyond a reasonable limitation. It seems an act performed against Art 18(2) of the ICCPR and Art 8 of ACHPR and also against Art 27(3) of the FDRE Constitution itself. I argue that failure to protect this freedom

²⁵⁴ Ibid

²⁵⁵ Interview with Galaane Abdissa Baalli, Follower of *Waaqeffannaa*, on January 10, 2017 in 'Bishooftuu'

²⁵⁶ Interview with Chala Sori, the Secretariat of Oromo *Gadaa* council, on January 2, 2017 in 'Bishooftuu'

²⁵⁷ *Gadaa* system, an indigenous democratic socio-political system of the Oromo, available at: www.unseco.org/culture/ICH, 11.COM 10.b.11, accessed on December 6, 2016

²⁵⁸ The FDRE Constitution (1995), Art 27(3)

would hurt substantial part of the freedom of thought, conscience and religion or belief there which is internal freedom by reducing in to none. Moreover, the Constitution guarantees freedom to manifest religion or belief either individually or in community through religious body institutions.

4.3. Freedom to Manifest *Waaqeffannaa* under the Federal Democratic Republic of Ethiopia Constitution (FDRE Constitution)

Freedom to manifest religion or belief is another aspect of religious freedom that pertains to *forum externum*. As it is discussed in chapter two of the paper it is the reflection of internal personal belief when manifested outwardly. 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 freedom to manifest one's religion or belief either individually or in community with others and in public or private. It is externally manifested in the form of worship, observance, practice and religious teaching. As illustrated by General Comment, the freedom to manifest religion or belief in worship, observance, practice and teaching encompasses a broad range of acts.

According to Oromo world view, *Waaqeffannaa* can be manifested through different religious activities and practices. Followers of *Waaqeffannaa* perform religious manifestation through worship which takes the form of praying, conducting different ritual acts, constructing places of worship, conducting seminars and conferences, pilgrimages to *muudaa*, celebrating *Ayyaanotaa* (holydays); and performing religious observance and practices according to the myths of *Waaqeffannaa*.²⁵⁹ Pursuant to Art 27 of FDRE Constitution, adherents of *Waaqeffannaa* have full rights to manifest their religion whether in private or by community in public within the constitutional limits. The question is to what extent are the followers of *Waaqeffannaa* practically enjoying these rights in Ethiopia? As revealed by the data gathered from the study area, the rights of adherents of *Waaqeffannaa* to manifest their religion have been unlawfully restricted for more than two decades.²⁶⁰ Among these rights; right to worship, rights to land for religious purpose, right to observance and to celebrate holydays are the few.

²⁵⁹ Interview with Chala Sori on January 2, 2017 in 'Bishooftuu'; see also Dirribi , cite above at note 37, pp.87-88

²⁶⁰ Interview with Chala Sori on January 2, 2017 in 'Bishooftuu'

4.3.1. Freedom to Worship

Debates about religious freedom often center on the tension between an individual or group's right to worship (or to refrain from worship) as they please, versus the state's interest in maintaining order by imposing or favoring a particular religious culture supportive of the state. The individual's right to worship by himself in private does not raise any serious problem; however, worship normally takes place “in community with others” and “in public”.²⁶¹ 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 and other Regional Human Rights Instruments never define freedom of worship. However, as we discussed under Chapter two of this paper, freedom of worship includes, ritual and ceremonial acts giving direct expression to beliefs 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 holydays and days of rest. It is an act of devotion exercised by adherents of a religion.²⁶²

Freedom to worship performed by adherents of every religion have their own doctrine and transactions.²⁶³ As a belief system, *Waaqeffannaa* has its own worship procedure in its doctrine. The worship is conducted both individually and in community with others and in public as well as private forum.²⁶⁴ At individual level every *Waaqeffataa* may hold *Waaqeffannaa* worship as his/her spiritual sentiment. Followers of *Waaqeffannaa* exercise different ritual activities within their daily life. For instance, whenever challenged by life problems, a *Waaqeffataa* profess by saying: “*Waaq abbaan keenya eessa dhaqeeetu*” (why our God being far away), denoting that we need help from our *Waaqa* because we faced challenges and problems and to help his children.²⁶⁵ According to *Waaqeffannaa* faith, the *Waaqeffataa*'s ways of life depends on the virtue of *Waaqeffannaa*. That means in all his/her daily life *waaqeffataa* call and pray to his *Waaqa*. At

²⁶¹Anat Scolnicov, “Freedom of Religion or Belief: Group Right or Individual Right?”, [MI U222042](#), University of London (2005), p. 42

²⁶²General Comment No. 22: cited above at note 49, Para. 4

²⁶³ Bedassa, cited above at note 9, p. 11

²⁶⁴Focused Group discussion with, followers of *waaqeffaannaa* at ‘*Galma Malkaa Sabbataa*’, on December 25, 2016 in Sabbata, see also Dirribi, cited above at note 37, pp. 53,72-74

²⁶⁵ Focused Group discussion with, followers of *waaqeffaannaa* at ‘*Galma Malkaa Sabbataa*’, on December 25, 2016 in Sabbata

the community level followers of *Waaqeffannaa* have various religious rituals which they perform together at the *galma* as well as at public spaces.²⁶⁶

According to Dirribi, praying in group is not a new phenomenon; it is part of daily life of *Waaqeffataa*. For instance, “the ‘Booranaa’ descendants who lived in ‘Maccaa’ areas, the ‘Tulamaa’, the ‘Booranaa’ of South Oromia and the ‘Gujii’ used to worship God together at ‘Madda Walaabuu’. Descendants of ‘Baarentuu’, the ‘Sikkoo Mandoo’, ‘Arfan Qal’oo’ and ‘Ittu-Humbanaa’ used to pray together at mount ‘Mormor’.”²⁶⁷ Thus, the culture of worshipping in-group together is not a new experience. This indicates that worship in public place in-group was a normal *Waaqeffataa* practice even during the early period.²⁶⁸

Different manifestations of worship are a normal practice among different religious groups with individual worship included.²⁶⁹ Many religions oblige their followers to worship in a certain place, temples, mosques or churches, which carries institutional, social and communicative dimensions.²⁷⁰ *Waaqeffannaa*'s worship is manifested through celebrating various *ayyaanota*, performing different ritual acts like, *dalaguu* (anthem), *irreensa kennuu* (green leaf for gift), *wareeguu* (offering), *hamachiisaa* (blessing babies), *kadhachuu* (praying), etc. at *galma*; pilgrimage to *Muudaa*, shrine place like *Malkaa* and *Tulluu* to conduct *Irreecha Malkaa* (river side thanksgiving) and *Irreecha Tulluu* (hill top thanksgiving), respectively and performing ritual acts at *Arda-Jila*.²⁷¹ Based on the data from the study area, we can look at the entire setting of the rights of worship in *Waaqeffannaa* by dividing it into two stages. Stage one is pre 2013 *Waaqeffannaa* which is the stage that manifestation of *Waaqeffannaa* was totally restricted by government and the second stage is the post 2013 *Waaqeffannaa* the stage when it is legally recognized and got legal personality.

From 1991 onward Ethiopia avows the freedom of religion and the freedom to pursue religion of one's choice. However, *Waaqeffattootaa* have been facing so many challenges and their rights to

²⁶⁶ Focused Group discussion with, followers of *Waaqeffannaa* at ‘*Galma Malkaa Sabbataa*’, on December 25, 2016 in ‘*Sabbata*’

²⁶⁷ Dirribi, cited above at note 37, p.53

²⁶⁸ Ibid

²⁶⁹ Bedassa, cited above at note 9, p.11

²⁷⁰ Ibid

²⁷¹ Interview with Chala Sori, on January 2, 2017 in ‘*Bishooftuu*’

freedom of religion became adversely restricted by the government of Ethiopia.²⁷² According to my informant, despite the challenges and the restrictions; *Waaqeffataa* have been exercising various religious practices through different means secretly. Among these forms of religious worship, ritual ceremonies, seminar and religious conference are the main ones.²⁷³ During the early *Waaqeffannaa*, religious seminars and conferences have been conducted at *Arda-Jila*, at *Qaaluu* institutions (the spiritual institution of Oromo) and at the five *Odaa* of Oromo the shrine places where different religious practices and observances have been conducted.²⁷⁴ These places are where the Oromo from different corner of Oromia come together and practice their religion. As described by Dirribi, in their effort to revitalize *Waaqeffannaa*, the *Waaqeffataa* faced so many challenges. The endeavors made by followers of *Waaqeffannaa* to teach the people about the *Waaqeffannaa* and the challenges faced have been described by Dirribi as follows;

*[th]e Ada'aa Liban youth- organized a conference and exhibition in Afaan Oromo at Oromia level for the first time on February 3, 2002. They collected cultural arte-facts from many districts and zone of Oromia and displayed them to the public. While over 15,000 people were visiting the display, government security forces suddenly raided that historical gathering and dispersed the people brutally. Without enjoying foods and drinks prepared for the occasion, without closing the event with the traditional blessing of elders and without communicating the significance of conference and exhibition to the invited participant, that huge gathering... was dispersed in disarray, in fact, in tears and agony. Children, adults, intellectuals, and elders wept and cried to God that He would look at the truth and the injustice.*²⁷⁵

More importantly, according to informant from 'Sabbata', overt restriction was imposed over *Waaqeffataa*'s freedom to worship either in private or in public. He told me that identifying oneself as a follower of *Waaqeffannaa* resulted in being criminalized on the mere suspicion of being members of one of the Oromo opposition political organizations.²⁷⁶ The idea obtained from another informant from 'Buraayyuu' and Ambo corroborates with that of 'Sabbata'. For instance, Dirribi told me that, all acts of worship, different ritual ceremonies in the name of *Waaqeffannaa*

²⁷²Interview with Mammo Abdissa Baalli, on December 25, 2016 in 'Sabbata'

²⁷³Interview with Mammo Abdissa Baalli, on December 25, 2016 in 'Sabbata'

²⁷⁴Interview With Chala Sori, on January 2, 2017 in 'Bishooftuu'

²⁷⁵ Dirribi, cited above at note 37, p. 38

²⁷⁶Interview with Mammo Abdissa Baalli, on December 25, 2016 in 'Sabbata'

were banned and everyone who participated in the practice of any ritual ceremonies became unlawful up on the cancelation of WRFA in 2004.²⁷⁷ As elsewhere, even then, adherents of *Waaqeffannaa* practiced their worship secretly and have succeeded in securing and systematizing owing to which the precepts of their religion survived.²⁷⁸ However, worshiping and performing different ritual acts according to one's religion doctrine is the right granted by Art 27(1) of FDRE Constitution and the total banning by government is against the Constitution and in case there is legal means to punish those individuals who commits crime in cover of one's religion. This act of government violates rights to freedom of religion of *Waaqeffataa* guaranteed by both the International Human Rights Laws and the FDRE Constitution and against Art 9(2) of FDRE Constitution.

Adherents of *Waaqeffannaa* were celebrating a few *ayyaanota* (holydays) in the public square prior to its legalization. For instance they are continually exercising *Irreechaa* festival as one ritual act of their religion. However, all the religious worship of *Waaqeffannaa* were prohibited to be celebrated publicly, before its recognition, except *Irreecha Malkaa* (River side thanksgiving), sometimes called *Irreecha Birraa* (Spring *Irreecha*) which is celebrated at *Hora Arsadii* of 'Bishooftuu'.²⁷⁹

According to Tolassa one of my informant, from the date of its recognition, leaders and followers of *Waaqeffannaa* strongly continued the revitalization process in order to exercise their constitutional rights for two consecutive years from 2013-2015.²⁸⁰ As a result many *galmoota* have been opened across the country the numbers of which has reached about 121.²⁸¹ In the years 2013-2015 except adherents of few *galmoota* ('*Galma MalkaaTajii*', South Western Shoa, '*Malkaa Shugute*' and '*Jalduu*', Western Shoa and '*Galma Malkaa Fiiche*', Northern Shoa), almost all of my respondents confirm they started to teach their religious values at their respective *galma* and they are enjoying the right to assembly to discuss their ritual issues at different levels.²⁸² For instance, they conducted different conference at national level after its recognition. The first and second conference was held at 'Naqamtee' town in November 2013

²⁷⁷ Interview with Dirribi Demissie Bokku, on December 16, 2016 in 'Buraayyu'

²⁷⁸ Interview with Chalchissa Ajemma, Followers of *Waaqeffannaa*, on December 13, 2017 in Ambo

²⁷⁹ Interview with Tolassa kische, on December 22, 2016 in 'Buraayyu'; See also Bedassa, cited above at note 9, p. 11

²⁸⁰ Interview with Tolassa kische, on December 22, 2016 in 'Buraayyu'

²⁸¹ Interview with Tolassa kische, on December 22, 2016 in 'Buraayyu'

²⁸² Interview with Chalchissa Ajemma, on December 13, 2016 in Ambo; see also Bedassa, cited above at note 203, p.11

and the third was held at ‘Boosat’ in January 2014. On ‘Boosat’ Conference they celebrated ‘*Ayyaana Abbaa Oromo*’ (holy day of Oromo ancestor); the fourth conference was conducted after three weeks at ‘Maqii’, Eastern Shoa Zone and the fifth conference was held in ‘Finfinnee’ at the end of February 2014.²⁸³

However, after those brief two years of its recognition by the federal government, local government agents and security forces resorted to abuses the rights to freedom of religion of followers of *Waaqeffannaa* in different parts of the country. As a result many centers of *Waaqeffannaa* and *galmoota* in different parts of Oromia have been closed currently. As Tolassa Kishe, an informant from ‘Buraayyu’ told me, except adherents of few *galmoota* (*Galma Boosat* in east shoa, ‘*Galma Malkaa Sabbata*’, ‘*Galma Malkaa Arsadi*’ in Bishooftuu, ‘*Galma Malkaa Muger*’ in West Shoa, ‘*Galma Malkaa Kuyyu*’ in North Shoa), many have been prohibited to worship, practice, observe and teach their religious value at their respective *galmootaa*.²⁸⁴ Almost all of my informants were reluctant to confidently say that the right to freedom of religion of *Waaqeffataa* is currently being protected. One of my informants told me that significant numbers of the followers of *Waaqeffannaa* were arrested in different parts of the country. According to him, in the year 2015, five person arrested by police officer without any warrant from ‘*Galma Malkaa Mugar*’ of ‘Ada’aa Bergaa’ district in West Shoa Zone while worshipping their religion in *galma*.²⁸⁵ In the same year, police arrested six people in ‘Kuyyu Gicce Kebele Meettaa Roobii’ district of West Shoa Zone while they have been worshipping in their *galma*. In the same manner, the police arrested followers of *Waaqeffannaa* from ‘Kuyyu’ and Fiche town in North Shoa Zone, and East ‘Hararge’ Zone in 2015 without good cause.²⁸⁶ This practice of local government is against the very principle of separation of state and religion guaranteed by Art 11 of FDRE Constitution and violates the free exercise of religious rights provided by Art 27(1) of FDRE Constitution.

In general, although the government has given recognition to *Waaqeffannaa* as a religious association, in Ethiopia it has failed to protect the right to freedom of religion guaranteed by the FDRE Constitution. Almost all the interviewed followers and leaders of *Waaqeffannaa* informed

²⁸³ Bedassa, cited above at note 9, p.12

²⁸⁴ Interview with Tolassa Kishe, on December 22, 2016 in Buraayyu

²⁸⁵ Interview with Tolassa Kishe, on December 22, 2016 in Buraayyu

²⁸⁶ Interview with Tolassa Kishe, on December 22, 2016 in Buraayyu

me that there has been abuse and violation of their rights by government agents and local actors. On the focused group discussion made with the followers and leaders of ‘*Galma Malkaa Sabbata*’, they told me that the police force and local security intimidated and mistreated them daily whenever they tried to exercise their religion. They concluded that their right to free exercise their religion is restricted unlawfully by local government official.²⁸⁷ This shows rights to religious freedom of followers of *Waaqeffannaa* infringed by government actors.

4.3.1.1. Freedom of Access to Land for Place of Worship and Cemetery

Throughout human history, land has been recognized as a primary source of wealth, social status, and power. It is the basis for shelter, food, and economic activities; it is the most significant provider of employment opportunities in rural areas and is an increasingly scarce resource in urban areas.²⁸⁸ In Ethiopian history, land has great religious, cultural and legal significance. According to the FDRE Constitution, rural and urban land is under the exclusive ownership of the State and the People of Ethiopia. As a common property it cannot be sold or exchanged.²⁸⁹ In actual fact, land has become a saleable property. In many countries, 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.²⁹⁰

However, the data from the study areas reveals, although *Waaqeffannaa* religion group recently registered in Ethiopia as a religious group and unexpectedly expanded throughout different parts of the country, it has faced serious problem in getting land for religious purpose and cemeteries.²⁹¹ According to the data obtained from the central board of WRFA; even if it has grown in number to about 121 *galmoota* within a year, the number declined significantly. Majority of these *galmoota* were private rental houses which the owners have been forced to close because of the fear of local government official intimidation and because of lack of land to construct *galmoota*.²⁹²

²⁸⁷ Focused Group Discussion with followers of ‘*Galma Malka Sabbata*’, on December 25, 2015 in ‘*Sabbata*’

²⁸⁸ Berhane, cited above at note 8, p. 157

²⁸⁹ The FDRE Constitution (1995), Art 40(3)

²⁹⁰ International Religious Freedom Report, 2015 Ethiopia, P.3 available at:

<http://www.stste.gov/documents/organization/256235.pdf> accessed on August 14, 2016

²⁹¹ Interview with Tolassa Kishe, Dirribi Demissie, Mammo Abdissa, and Chalchissa Ajemma at different time and different place

²⁹² Interview with Chalchissa Ajemma on December 13, 2016 in Ambo

Among these *galmoota*, only ‘*Galma Boosat*’, which is found at Walanciti in the Eastern Shoa Zone, has legally obtained free governmental land at the end of 2013, to build a *galma* and with licensed cemeteries.²⁹³ Other than this, as yet almost all *galmoota* of *Waaqeffannaa* do not own land for religious purpose. The fact that *Waaqeffannaa* has been in existence before sixty century ago, *Waaqeffannaa* religion is perceived as new comer by government actors.²⁹⁴ As such, when compared to the Ethiopian Orthodox Church, the Ethiopian Islamic religion and even the Evangelical Churches which are new comers, *Waaqeffannaa* still remained disadvantaged in the allocation of land. After its spiritual institutions have been destroyed by the Imperial rules and the successive regimes and replaced by institutions of other religious denominations, *Waaqeffannaa* lost its *galmoota* (worship places), *malkaa* and *tulluu* (shrine places) and *hujuba* (cemetery).²⁹⁵ Hence, as yet, as the data collected from the entire study area exhibits, except *Galma Boosat* of Eastern Shoa Zone, none of them own their own house and land to build *galma* or cemetery. With regard to freedom to access a land to cemetery, one key informant told me a sad story about the problem the followers of *Waaqeffannaa* have been facing throughout the country. The story has got to do with denial of a burial place for followers of *Waaqeffannaa*. He narrated the tragedy as follows:-

*Three years ago (2014) one of the followers of Waaqeffannaa called Maaramee Harqaa Kaasa who lived in Finfinnee died at Finfinnee. She was a follower of Waaqeffannaa and from Waaqeffannaa family. We lost a piece of land to bury the body of deceased for three days. We faced unspeakable challenge to bury the dead body of our fellowship. We asked the Orthodox Church and the protestant cemetery to bury dead body of our fellowship, but they refused to allow burial place saying that it is against their doctrine. Later on we appealed to the Addis Ababa city Administration to bury the body of the deceased. Then the body was taken to Addis Ababa and buried at a cemetery place known as ‘bahitawar mekabir’ which was prepared by Addis Ababa City Administration.*²⁹⁶

Similar incidents occurred at different places across the country. For instance, four years ago, when one of the members of *Waaqeffannaa* died in ‘Hoolota’ town, he was buried in a similar

²⁹³Interview with Tolassa Kiche , on December 22, 2016 in ‘Buraayyu’

²⁹⁴Interview with Meganassa Lenjiso, on December 25, 2016 in ‘Sabbata’

²⁹⁵Interview with Chala Sori, on January 2, 2017 in ‘Bishooftuu’

²⁹⁶ Interview with Dirribi Demissie Bokku, on December 16, 2016 in ‘Buraayyu’

manner by Addis Ababa City Administration upon application by his family. The same incident also occurred in ‘Ada’aa Liiban’ district East Shoa.²⁹⁷

An additional problem being faced by *Waaqeffannaa* is the conflict between *waaqeffannaa* adherents and other religious denominations concerning shrine places like *Malkaa, Tulluu*, and etc. According to my informant, conflict occurs frequently in ‘Ada’aa Liiban’ district between *Waaqeffannaa* and Orthodox Church on the claim of the place of worship. *Waaqeffannaa* religious faith claim that the sacred place known as *Tulluu Cuqaala* (Mount Cuqaala) was their historically sacred place of worship where the *Irreecha Tulluu* (Hill top thanksgiving) or *Irreecha Arfaassa* (Autumn thanksgiving) festival has been performed every year from time immemorial. The Orthodox Church oppose and resist any ritual ceremonies conducted by *Waaqeffannaa* followers claiming that the place was its property, and they have been legally given the place for centuries and any other religious activity practiced at that sacred place is against the doctrine of their church.²⁹⁸ Similar claims are recurrent in many parts of the country that have contributed to local level land disputes and tensions between religious communities. All these instances adversely affected the rights to exercise freedom of religion, say to manifest religion worship collectively and to bury the body of diseased followers of *Waaqeffannaa* religion.

4.3.1.2. Irreecha Festival

As mentioned in Chapter two of this thesis, the scope of religious manifestation, religious practice and observance includes celebration of holydays and ceremonies in accordance with the percepts of one’s religion or belief. As lawful forms of manifestations of religious freedom, the celebrations of all these ceremonies are guaranteed in all the international and regional human rights instruments like the UDHR, ICCPR, ECHR, ACHPR and the FDRE Constitution. These legal instruments leave limited room for states to restrict freedom of religion under certain exceptional circumstances when necessary.²⁹⁹ The restrictions are mainly limited to public manifestation of faith that has a bearing on public safety, national security, public morals or the fundamental rights and freedoms of others. Moreover, it is stated that, limitations must be

²⁹⁷ Bedassa, cited above at note 3, p. 12

²⁹⁸ Interview with Chala Sori, on January 2, 2017 in ‘Bishooftuu’

²⁹⁹ The UDHR (1948), Art 29(2)

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.³⁰⁰

Since a number of decades, it has become evident that Oromo people across religious, political and geographical boundaries have converged together in celebrating an annual ritual/festival called *Irreecha*. Historically, *Irreecha* has been understood and practiced within the context of Oromo religion which is *Waaqeffannaa* (a belief in one supernatural power called *Waaqa*).³⁰¹ However, before delving into some historical trajectories that shaped *Irreecha* to be the way it is practiced today, I will briefly clarify some conceptual understandings of the ritual itself. With a view to understand the very nature, philosophical background and process of the *Irreecha* since its rejuvenation, I have interviewed some prominent elders and educated elite. According to Oromo elders, *Irreecha* forms an integral part of Oromo religious and cultural thinking.

Irreecha is a word derived from the root word *Irree*, the upper muscle in the upper hand of a human being. It is one of the strongest and toughest muscles that help humans to lift heavy weights and perform harder duties. A man with a power who can influence others is sometimes referred to as '*irre-qabeessa*' literally, the owner of *irree*, semantically, 'the powerful' or 'the mighty'.³⁰² As of my informant an extension of this, in daily language use, it signifies power, strengths, indomitability, dominance, mighty, omnipotence, and invincibility, among other meanings. Thus the practice of *Irreecha* is the honoring of the powerful, the strong, the indomitable, the omnipotent *Waaqa* (God) who created all natural manifestations (water, trees, human, *coqorsa*, *kelloo*) and is responsible for their rhythmic and cyclical regulations.³⁰³ The orderly interactions of those phenomena are only possible by the very '*irree*' and wisdom of the *Waaqa Tokkicha* (The One God). As the chants and hymns in *Irreecha* song goes '*irreessatti godaannaa, irree kee sodaannaa yaa Waaq*', which could roughly be translated as 'we are marching to the place of *Irreecha* for *irreeffannaa*, because we fear/respect Your might, oh God!'³⁰⁴

³⁰⁰ General Comment No. 22: cited above at note 49 Para. 8

³⁰¹ Interview with Dirribi Demissie Bokku and Tolassa kische at different time in 'Buraayyu'

³⁰² Interview with Chala Sori on January 2, 2017 in 'Bishooftuu'

³⁰³ Interview with Chala Sori on January 2, 2017 in 'Bishooftuu'

³⁰⁴ Interview with Tolassa Kische on December 22, 2016 in 'Buraayyu'

There are two major *Irreecha* ceremonies among the Oromo.³⁰⁵ One is the *Irreecha-Tullu*, which is carried out in the Autumn season, in one of the mountains to honor the Almighty for His benevolence over the past dry season and pray for the upcoming rainy season, which will bring both fortunes (seeds, green meadows, water, etc.) and also dangers such as flood, storm, snow and disease).³⁰⁶ The other *Irreecha* is called *Irreecha Malkaa* (*Irreecha* on the river side). This is like the one carried out at *Hora Arsadi*. The *Irreecha Malkaa* is conducted after the recession of the hard, heavy, and fearful rainy season and the beginning of *Birraa* (Spring Season), which is ‘bright’, ‘clean’, and a ‘smiling’ season. The *Birraa* season brings new hope. It sheds off the hard rainy season and signals the coming of a new harvest. Thus the *Irreecha-Malkaa* marks the transition from the hard past to the easy future; from the dark to the bright season.³⁰⁷

Traditionally, the Oromo practiced *Irreecha* ritual as a thanksgiving celebration twice a year (in autumn and spring) to praise *Waaqa* (God) for peace, health, fertility and abundance they were given with regards to the people, livestock, harvest and the entire Oromo land. *Irreecha* is a big holiday of *Waaqeffannaa* and celebrated as a sign of reciprocating *Waaqa* in the form of providing praise for what they got in the past, and is also a forum of prayer for the future.³⁰⁸

In Oromia, the core center of *Irreecha* celebration has been around *Hora Arsadi* in ‘Bishooftuu’ town, some 45kms to the south of *Finfinnee*/Addis Ababa, the capital city. According to my informant annually, particularly during the spring season in September or October, the Oromo from different parts of the country come together and celebrate the ritual.³⁰⁹ According to my informant, in the past few decades, *Irreecha* celebrations have been expanded both in its acceptance as well as geographical and demographic representations. Apart from the *Hora Arsadi*, *Irreechaa* festival has been celebrated across different parts of the country. For instance

³⁰⁵ Ibid , see also Dirribi, cited above at note 37, p. 87 and Gemachu J. Geda, Pilgrimages and Syncretism: Religious Transformation Among the Arsi Oromo of Ethiopia, (2013) (Unpublished Thesis, University of Bayreuth Germany), pp. 173-175

³⁰⁶ Ibid

³⁰⁷ Interview with Tolassa Kische on December 22, 2016 in ‘Buraayyu’

³⁰⁸ Interview with Dirribii Demissie Bokku, on December 16, 2016 in ‘Buraayyu’

³⁰⁹ Interview with Chala Sorii on January 2, 2017 in ‘Bishooftuu’, see also Gemachu J. Geda, Pilgrimages and Syncretism: Religious Transformation Among the Arsi Oromo of Ethiopia,(2013) (Unpublished Thesis, University of Bayreuth Germany), p. 173-175

next to *Hora Arsadi*, the biggest one is *Irreecha* festival of *Malkaa Ateete*, in ‘Buraayyu’ town. It is also celebrated in ‘Sabbata’ town at *Malkaa Sabbata*, in Jimmaa, Wallagaa and etc.³¹⁰

Under the imperial Ethiopian governments, the *Irreecha* festival was banned along with *Waaqeffannaa*. It was often portrayed as “pagan” or “devil” worship.³¹¹ The *Derg* government kept the ban claiming to liberate people from the tyranny of local traditions. It wasn’t until 1992 that *Irreecha* was organized for the first time.³¹² Under the 1995 FDRE Constitution whose provisions celebrated the respect of religious rights and freedom, previously marginalized ethnic and religious identities were recognized and began to be celebrated as identities. *Irreecha* festivals were restarted in *Hora Arsadi* in mid 1990s under the initiative and organizational leadership of the Macha-Tulama Association (MTA).³¹³ As the period was the heyday of Oromo nationalism and self-consciousness, *Irreecha* became not only a religious practice as in the past; rather it served as an arena where the Oromo people across religious boundaries could meet and share their common identity.³¹⁴ And hence, it became one of the religious rituals that burst into the public sphere as part of the identity of the Oromo nation.

In the subsequent years, *Irreecha* became transformed from an esoteric event dismissed as a “pagan and primitive” to a festival marking the end of the century-old political marginalization and cultural alienation of the Oromo. Reconstituted as a spiritual and cultural revival, *Irreecha* symbolizes the triumph of an authentic Oromo spiritual and cultural heritage. It is an institution that plays a significant role in the manifestation and preservation of Oromo unity and national identity.

Though recognized as a religious event, it is important to note here that the Oromo celebrate the *Irreecha* irrespective of their religious backgrounds. Christians, Muslims and *Waaqeffataa* participate in the festival without inhibition or fear of alienation, because many Oromo who converted to Christianity and Islam does not forget his/her ancestor’s religion.³¹⁵ The Oromo flock in millions to *Hora Arsadi* to experience and share in an authentic Oromo culture

³¹⁰Interview with Chala Sori on January 2, 2017 in ‘Bishooftuu’

³¹¹ Interview with Dirribi Demissie Bokku on December 16, 2016 in ‘Buraayyu’

³¹²Interview with Dirribi Demissie Bokku on December 16, 2016 in ‘Buraayyu’

³¹³Interview with Dirribi Demissie Bokku on December 16, 2016 in ‘Buraayyu’

³¹⁴ Interview with Dirribi Demissie Bokku on December 16, 2016 in ‘Buraayyu’

³¹⁵ Gemachu J. Geda, *Pilgrimages and Syncretism: Religious Transformation Among the Arsi Oromo of Ethiopia*, (2013) (Unpublished Thesis, University of Bayreuth Germany), p. 178

symbolized in the festival's prayers, blessings, songs, dances, artifacts, collective practices and a shared vision.

However, it soon became a contested space between different actors, mainly between political parties (the ruling party and opposition political parties and movements). According to my informant from 'Buraayyu', the ruling party was confronted by two ambivalent developments on its side with regard to *Irreecha* and other Oromo cultural revitalization movements. Firstly, the constitutional provisions it enacted grants, in theory, the right of nations and nationalities to exercise their culture, religion, language and history. On the other hand, people's exercise of such rights—like the case of *Irreecha*, music, language, etc. would inevitably raise the level of self-consciousness of the people that would in the long run challenge the *status quo*.³¹⁶ For instance, using the constitutional right as a legal protection, many participants on *Irreecha* used to decorate themselves with material culture and symbol that reflect the flags of *Abbaa Gadaa* rather than that of the Oromo People's Democratic Organization (OPDO). According to the respondent, in the year 2003/04, the government of Ethiopia started to heavily scrutinize *Irreecha* festival and tried to manipulate it for its own political objective.³¹⁷ Since then, the celebration of *Irreecha* in Oromia fell under the total control of the government. While such intervention gave *Irreecha* more publicity on the one hand, as the celebration was at times given huge coverage on state media, on the other hand, it has added a political dimension to it.³¹⁸ It should be noted, however, that the contestability of this cultural and religion festival still persists despite strong state intervention. Because the government's aim is to generalize *Irreecha* only as cultural festival and to diminish its spiritual character in order to cut it from *Waaqeffannaa* for its political purpose through interfering at different instance.³¹⁹

The other instance of government intervention, according to my informant is local government interference to arrange the procedure of the festival. For instance, different ritual ceremonies and religious practice performed around the *Hora Arsadi* like, *dadarbaa* (tossing), *arsaa* (slaughtering), *dhibaayyuu* (libation) etc. were prohibited by local government as could not practice during *Irreechaa* Festival labeling as back ward, devilish and paganism. According to

³¹⁶ Interview with Tolassa Kishe on December 22, 2016 in 'Buraayyu'

³¹⁷ Interview with Tolassa Kishe on December 22, 2016 in 'Buraayyu'

³¹⁸ Interview with Tolassa Kishe on December 22, 2016 in 'Buraayyu'

³¹⁹ Interview with Chalichissa Ajemma and Tolassa Kishe on December 13 and 22, 2016 respectively

my informant starting from 2015 the police forces prohibited these and the like ritual ceremonies practiced during *Irreecha* festival, and confiscated their religious material.³²⁰ However, these acts of local government violate Art 11 of FDRE Constitution which prohibited the interference of the State in religious matter.

Almost all of my respondents agreed that the government's intervention and restriction on the rights of freedom of religion has become unparalleled. As stated by my informants on October 2, 2016 *Irreecha* festival, the *Abba Gadaa* Council issued a statement barring all participants from bringing to the event anything that overtly symbolizes the presence of any political organization and disallowed any political statements on the spiritual festival so as to comply with the Constitution. However, the Oromia Regional Government and the ruling party of the Region failed to abide by the request of *Abba Gadaa* Council. To make matters worse, the cultural/spiritual space was invaded by security forces. The police force thrown tear gas on largest gathering of people and caused the death of many innocent people.³²¹ According to one of my informants, the government prohibited celebrations of *Irreecha* festival to be celebrated following *Hora Arsadi* like, *Irreecha Malkaa Ateete* of 'Buraayyu', *Malkaa Sabbata* and others throughout Oromia. In this informant's view, this action of the government is against Art 11 of FDRE Constitution and violates the very rights to freedom of religion.³²²

4.4. Religious Discrimination against *Waaqeffannaa*

One of the important topics that need the constitutional protection is equality before the law and the equal protection of the law. The concept of equality is recognized under Art 1 of the UDHR, Art 26 of the ICCPR, Article 2 of the Declaration on the Elimination of All Forms of Intolerance and Discrimination based on Religion or Belief, Art 2 and Art 3 of the ACHPR and Art 25 of the FDRE Constitution. When we consider freedom of religion as human rights, there is no reason to make discrimination between individuals and between religious groups. This is the right granted to every human being without discrimination as to religion, race, sex, color, and discrimination of any origin. All individual followers of any religious faith and religion groups should be treated equally without any discrimination. However, in contrast to the equal protections of religion and

³²⁰ Interview with Dirribi Demissie Bokku, on December 16, 2016 in 'Buraayyu'

³²¹ Interview with Chala Sori, on January 2, 2017 in 'Bishooftuu'

³²² Interview with Tolassa Kishe on December 22, 2016 in 'Buraayyu' and Interview with Galaane Abdissa Baalli, Follower of *Waaqeffannaa*, on January 10, 2016 in 'Bishooftuu'

religious institution guaranteed by the International Human Rights Instruments and the FDRE Constitution there is obviously practical discrimination by government and its actors on *Waaqeffannaa* religious group and its adherents. Among the areas of discrimination the few are discrimination in case of registration, land allocation, celebration of holy days and etc. we will discuss one by one as follows:-

4.4.1. The Registration

As it is obviously known Freedom of association is also one of the basic fundamental human rights, recognized under the FDRE Constitution as well as in International and Regional Human Right Instruments. However, contrary to the provisions of equality, still the provisions of the Civil Code of Ethiopia which contradict with the FDRE Constitution treats religious groups upon registration. For instance the requirements and treatment of the registering organ of the Ministry of Federal and Pastoral Development Affairs base its practice on Art 404ff of the Civil Code of Ethiopia.³²³ As it is discussed under Chapter Three of this study, the 1960 Civil Code was made under the 1955 Revised Constitution of Ethiopia. The spirit in the Constitution was the Established Church and State model.³²⁴ This in effect hinders the exercise of the right to freedom of association of religious groups in particular *Waaqeffannaa* religious group which guaranteed by the FDRE Constitution. In the country where state and religion are separate (Art 11) previously the Ministry of Justice, currently Ministry of Federal and Pastoral Development Affairs is giving a detailed guideline and sample memorandum of association, for religious institutions based on the provisions of 1960 Civil Code and 1966 Legal Notice. For instance, there have been problems with the registration process that have undermined this right. As mentioned previously, the EOC was not punished for its refusal to register with the government. Other religious groups and *Waaqeffannaa* are required to re-register with the government every three years. These minority religious groups like WRFA complain that the registration policy of the Government contradicts with the principle of equality among religious groups.³²⁵

The sample memorandum of association made by the FDRE Ministry of Justice previously and the Ministry of Federal and Pastoral Development Affairs currently, the procedures, registration requirements and controlling mechanism that take position in the above provisions of Civil Code

³²³ Interview with the official of Ministry of Federal and Pastoral Development Affairs, on January 3, 2017

³²⁴ The Revised Constitution of Ethiopia (1955), cited above at note 198, Art 126

³²⁵ International Religious Freedom Report for 2009, 2012, 2014 and 2015 Ethiopia

of Ethiopia which stand for the implementation of the 1955 Revised Constitution of Ethiopia is strictly applicable today.³²⁶ However, this practice is quite contradictory to the basic principle of secularism, equality and separation of state and religion enshrined in the FDRE Constitution. The registration requirements, strict renewal procedure and the sample of memorandum of association made for other NGOs directly shows how deeply the Ministry of Justice had interfered the matters of religion against the spirits of Art 11 and Art 25 of the FDRE Constitution.

According to my informant, some religious groups (e.g. Orthodox Christianity and Muslim) without any expressed reason are neither asked to register, nor follow the sample memorandum of association prompting some religious groups to complain of a double standard. The justification for this type of discrimination is only history and practices nothing to do with today's Constitution of the country.³²⁷ According to Dirribi, *Waaqeffannaa* face so many challenges during the registration process in order to acquire legal personality thought it has been one of the indigenous religion of Eastern Africa. He state that, even though Art 9(1) of FDRE Constitution says that any laws, decision of organ of state that contravenes with the provision of the FDRE Constitution is null and void, the law discriminately applied and the practice of the Ministry also contradicts with the FDRE Constitution.³²⁸

4.4.2. Land Allocation

The other areas of discrimination among religion groups, the problems related with the use of land for religious purpose and cemeteries and are emerging as the basic cause of conflict among the groups. As Tekalign stated, these issues are very clear when we see the content of Decree No. 3/1942 made during the imperial regime of Ethiopia. Though the law is repealed today its effect cannot easily changed.³²⁹ For example the especial benefit given based upon this decree left on the hands of Ethiopia Orthodox Church. The change only rests on the change of the laws. Furthermore, he stated, the historical imbalance created at that time because of the consideration Orthodox Church as State Church at least passed leaving unjust distribution of resource among

³²⁶ Interview with Official of Ministry of Justice on January 9, 2017

³²⁷ Interview with Official of Ministry of Justice on January 9, 2017

³²⁸ Interview with Dirribi Demissie Bokku ,on December 16, 2016 in 'Buraayyu'

³²⁹ Tekaligne, cited above at note 209, p.66

different religious groups.³³⁰ So, in short these historical imbalances cumulatively challenge the practicability of the equality of religion sated under the FDRE Constitution.

The current legislation may lead to government discrimination and interference with religious activities pertaining to land use. All land is owned by the State according to article 40 (3) of the FDRE Constitution, but the relevant legislation governing the lease of urban and rural land does not address issues related to religious bodies, such as how to prioritize applications, whether to lease land to very small religious communities, or how churches, mosques, or cemeteries should be placed within the infrastructure of a settlement. All of these decisions are delegated to local governments where the influence of a religious majority may guide decisions.³³¹

On the other hand, to exercise freedom of religion, say to manifest religion worship collectively, it basically require worship place. And also to bury the diseased followers of a given denomination, it is basically requires cemeteries. According to Tolassa my informant from ‘Buraayyu’, though *Waaqeffannaa* have got legal personality three years ago and opened its branch (*galma*) throughout the country, it does not get a piece of land for religious purpose and cemeteries, except that of *Galma* Boosat which got land for cemeteries.³³² *Waaqeffannaa* alleged inequities in treatment by local officials when seeking land for churches and cemeteries, as compared to the EOC, the EIASC and the protestant.

As a result, followers of *Waaqeffannaa* blame local administrator’s for their unwillingness to respond to their repeated land request. According to them, usually, the officials tend to respond quickly to the request of religious institutions to which they belong. One *Waaqeffannaa* religious leader also approved that when they go to the *woreda* office to get different services the officials do not treat them equally. Officials at the zonal level also show similar discriminatory approach and alleged that there is a visible inequity in treatment and access by local officials regarding land for *galma* and cemeteries³³³. Ministry of Federal and Pastoral Development Affair characterized the perceived inequities as a result of poor governance at the local level and zoning

³³⁰Ibid

³³¹Jorg Haustein and Terje Ostebo, “EPRDF's Revolutionary Democracy and Religious Plurality: Islam and Christianity in post *Derg* Ethiopia”, *Journal of Eastern African Studies* 5/4 (2011), p. 4

³³² Interview with Tolassa Kishe on December 22, 2016 in ‘Buraayyu’

³³³ Interview with Tolassa Kishe on December 22, 2016 in ‘Buraayyu’

regulations that govern a property's proposed and existing communal use functions.³³⁴The Ministry began a new effort to standardize the management of land through the issuance of directives.

All my informants had the view that this unfair land allocation by government is in violation of their rights to religious freedom. Freedom of religion, religious equality and liberty rights are included under the fundamental human rights category. Under Art.27, the 1995 FDRE Constitution has given guarantee to freedom of religion. The principle of separation of religion and state has been provided under Art.11 and Articles 25 and 3 proclaim equality of religion and equal protection by law. Furthermore, the Constitution prohibits discrimination based on religion, and affirms equal treatment and opportunity from the government's side so as to redress the past injustice which inflicted harm upon religious minorities.

But the problem is, despite the fact that the FDRE Constitution gives recognition to religious freedom and equality of rights, there is problem of implementation. Local governments have failed to respect the constitutionally guaranteed rights of followers of *Waaqeffannaa* for which the concerned government have been reluctant to give remedy so far. They treated them discriminately in violation of the Constitution. The view that is commonly shared by all respondents is that, all organs of government at all levels have an obligation to respect and enforce fundamental human rights provided in the FDRE Constitution without any discrimination rights.

4.4.3. Holy Days

The other area perceived as discriminatory is that of government failure to recognize and respect the Holy days and days of rest for *Waaqeffannaa* religion group. For instance, in addition to recognize, Saturday and Sunday as the rest day for Christians; the government mandates a two-hour break on Fridays for Muslim prayers.³³⁵ The government observes the following religious holydays as national holydays: Epiphany, the Birth of the Prophet Muhammad, Good Friday, Easter, *Meskel*, *Eid al-Adha*, *Eid al-Fitr*, and Christmas.

³³⁴ Interview with Official of Ministry of Federal and Pastoralist Development Affair on January 3, 2017 at the office

³³⁵ International Religious Freedom Report for 2012 Ethiopia, p. 2 available at: <http://www.state.gov/documents/organization/208360.pdf> accessed on August 11, 2016

According to my informant, under *Waaqeffannaa* religion there are three big *ayyaanota* (holy days) namely *Irreecha Malkaa* (River side thanksgiving), *Irreecha Tullu* (Hill top thanksgiving) and the *Gubaa*.³³⁶ These three holy days are very popular among followers of *Waaqeffannaa* and it has both spiritual and cultural aspects. *Irreecha Malka* has been continually celebrated at public as a festival starting from 1990s till now. However, the government never gave recognized calendar day according to the doctrine or myths of *Waaqeffannaa*. Throughout the passage of time peoples became confused because of the non-respect of date of holy day by the government on the calendar.³³⁷

Whether they are a minority or followers of a dominant religion, a traditional or a newly adopted religion, discrimination on any aspect may violate Art 25 of the FDRE Constitution and provision of the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief ratified by Ethiopia. Hence all these discriminatory acts of government are against these laws.

4.5. The Impacts of Non-Protection of Religious Freedom to *Waaqeffannaa*

As it is clearly known in history, “Imperial government exploits and controls the human and natural resources of Oromo people with little or no resistance to their policies.”³³⁸ According to Dugassa,

*Indigenous Religion and institutions of Oromo such as Siinqee, Qaaluu and Gadaa leadership have been either totally banned or incapacitated. The teaching of Oromo worldviews and perspectives are either totally banned or hampered. The denial of both construction and transmission of Oromo centric knowledge has disrupted their relations with the social, natural world and divine power.*³³⁹

³³⁶ Interview with Mammo Abdissa Baalli and Chalchissa Ajemma on different time at different place

³³⁷ Interview with Mammo Abdissa Baalli, on December 25, 2016 in ‘Sabbata’

³³⁸ Dugassa Benga Fufa, “Reclaiming Oromo Indigenous Organizational Structures and Fostering Supportive Environments for Health”, Archives of Business Research, Vol. 2 No. 1 (2014), 23-45, pp. 25-26

³³⁹ Ibid

As Dirribi stated, for the Oromo people, spirituality is considered as part of their past, present and future life. Moreover, it is believed as theoretical lenses through which people can understand the social and natural world.³⁴⁰

The worldview of a particular society informs the members to name the problem, what to do about it and how to do it. Thus *Waaqeffannaa* worldview sets norms in social relations and informs members as to what constitutes proper social order, ethically rightness or dishonorable behavior.³⁴¹ The Ethiopian government banned *Waaqeffannaa* and its religious institutions and this has created fertile ground for other religion denominations to convert adherents of *Waaqeffannaa* through religious conversion.³⁴² According to Aguilar, “Religious conversions are seizing and reprogramming their mind. Reprogramming minds leads to losses of accumulated knowledge, wisdom and experiences. This causes the loss of spiritual and social capital, leads to confusion, disorganization, instability, and several other social problems.”³⁴³

According to my informant, majority of *Waaqeffataota* are being converted to the newly introduced Protestant religion due to social problem and challenges either by their free choice or having no other chance.³⁴⁴ Owing to the non-recognition of *Waaqeffannaa* by Ethiopian government, even after 1995, followers of *Waaqeffannaa* faced so many spiritual and social challenges. This has been caused by, among other things, lack of religious institutions, *hujuba* (cemeteries), *galma* (worship place), etc. and the restriction of *Waaqeffataa*'s rights to religious freedom. All these common factors have forced them to shift their faith.³⁴⁵ For instance, a *Waaqeffataa* of *Galma Malkaa Sabbata* stated that majority of adherents of *Waaqeffannaa* shifting to Orthodox, Muslim or Protestant on account of social problem especially for the lack of burial places (cemeteries) for the *Waaqeffannaa* followers families.³⁴⁶

Furthermore, though Art 27(4) of the FDRE Constitution gives parents and legal guardian the rights to bring up their children ensuring their religious and moral education in conformity with

³⁴⁰ Dirribi, cited above at note 37, p.

³⁴¹ Interview with Dirribi Demissie Bokku, on December 16, 2016 in ‘Bishooftuu’, see also Dugassa, cited above at note 135, p. 27

³⁴² Ibid

³⁴³ Aguilar Mario, *The Politics of God in East Africa, Oromo Ritual and Religion*. The Red Sea Press, Inc, Trenton NJ, USA. (2009), cited in Dugassa, cited above at note 135

³⁴⁴ Interview with Chalchissa Ajemma, on December 13, 2017 in Ambo

³⁴⁵ Interview with Tolassa Kishe, on December 22, 2017 in ‘Buraayyu’

³⁴⁶ Interview with Mammoo Abdissa Baalli, on January 2, 2017 in ‘Sabbata’

their own convictions;³⁴⁷ followers of *Waaqeffannaa* could not enjoy this right even now. For instance, one of my informants told me that, as a result of spiritual, moral and social destruction begging which had been taboo in Oromo culture has now become common.³⁴⁸ Hence Government's failure to practically implement the constitutionally guaranteed right has resulted in spiritual, moral and social destruction to *Waaqeffannaa* adherents.

On the whole, the efforts made by conscious religious elders and elites of *Waaqeffannaa* to revive their religion formally have been obstructed by the current regime's failure to practically implement constitutionally guaranteed religious freedom.

³⁴⁷ The FDRE Constitution (1995), Art 27 (4)

³⁴⁸ Interview with Mammo Abdissa Baallii, on January 2, 2017 in 'Sabbata'

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.1. Conclusion

The purpose of the study has been to examine the scope of protection accorded to *Waaqeffannaa* religious belief under the FDRE Constitution. The study's aim was to explore the current status and condition of *Waaqeffannaa* in Ethiopia and examining the scope of protection given to religious freedom as applied to *Waaqeffannaa* based on data gathered from selected centers of *Waaqeffannaa* and the concerned offices of government actors. As the study focused on the implementation of the law, it assessed the gap between the law and the practice with the hope of making some recommendations.

Freedom of religion is an integral part of the dignity of human beings and their freedom of thought and conscience. As a universal human right, freedom of religion or belief safeguards respect for diversity. It's free exercise directly contributes to democracy, development, the rule of law, peace and stability. Violations of freedom of religion or belief would encourage intolerance and often constitute early indicators of potential violence and conflicts. The dozen international and regional human rights instruments affirm freedom of religion as fundamental freedoms and rights conferred on every individual irrespective of nationality, status, color, ethnic, age, political opinion, religion and race. Thus, every state in the world is duty-bearer to promote, protect and fulfills, the right to religious freedom of their citizens.

The transformation of Ethiopia from a unitary state to an ethnic federal state in 1991 opened a new era of human rights including religious freedom. The FDRE Constitution affirms the right to freedom of religion as fundamental and basic rights. Besides, it further guarantees the entire human rights convention ratified by Ethiopia as integral part of the Ethiopian law. Despite the introduction of a new human rights friendly constitution and ratification of international and regional human rights conventions, as many human rights organizations reports and the informant views show, the practice is otherwise with regard to protection of *Waaqeffannaa* religious belief.

Under successive Ethiopian rulers *Waaqeffannaa* have not secured religious status for more than a century because of assimilation policy. Large numbers of adherents of *Waaqeffannaa* were converted either by force or by embracing Christianity and Islam. These and other factors had prevented *Waaqeffannaa* religion from achieving a status of religion at the state level and develop an understanding and deeper knowledge of *Waaqeffannaa* world view at the societal level.

After 1991 the government revoked the WRFA legal certificate and arrested its adherent without any justifiable ground. For about a decade all the activities of *Waaqeffannaa* and its adherents have been banned and prohibited by curtailing the expansion and spread of *Waaqeffannaa*. This action of the government violated the constitutionally guaranteed rights to freedom of religion and other human rights of followers of *Waaqeffannaa*. During these period, any religious activities both the internal faith and external religious manifestation of *Waaqeffattoota* have been restricted by the government of Ethiopia.

Adherents of *Waaqeffannaa* have been struggling for revitalization of *Waaqeffannaa* and have made tireless efforts to enjoy their recognized religious status based on the spirit of the FDRE Constitution. The commitment of Ethiopian government both at federal and regional level to practically implement the constitutionally guaranteed rights to freedom of religion on equal basis without any discrimination has been very superficial. The government's action of prohibition and ban of *Waaqeffannaa* religious group not to exercise rights to religious freedom for about twenty year substantially abridged the inherent freedom and rights to hold religion of one's choice.

As revealed from the data gathered, the FDRE Government has given legal recognition to *Waaqeffannaa* and registered it in 2013. However, local government authorities are still infringing the constitutionally guaranteed rights of *Waaqeffattoota* with impunity. The FDRE Constitution affirms religious freedom in accordance with the international and regional human rights norms. It allows the freedom to hold/adopt religion, the freedom to manifest one's religion through worship, observation, practice and teaching. However, in practice the observance of these freedoms at federal, regional, zonal and local government level exhibit the violations. For instances, even after it is registered with the Ministry of Federal Affairs as a recognized religion, it has not yet come to enjoy freedom to worship, observance, practice and teach its doctrine at their *galmoota* and freedom to access land to build *galmoota* and cemeteries. Large number of

followers of *Waaqeffannaa* have been intimidated, mistreated and arrested by local government actors; when they performed religious worship at their *galmoota* in different parts of Oromia. Adherents of *Waaqeffannaa* have been facing trouble and been hampered psychologically and morally on account of lack of cemeteries to bury the body of deceased followers of *Waaqeffannaa*.

Irreecha festival which is one of the big holidays of *Waaqeffannaa* was brought under the control of regional government throughout the year. In doing so, the rights to worship and practice of adherents of *Waaqeffannaa* to praise their God has been restricted by local government contrary to the clear provision of the FDRE Constitution. One of the best indicators of this was the 2016 *Irreecha* festival which was disrupted by government intervention and resulted with death of many innocent people.

In Ethiopia the law which governs the registration of religious group is discriminatory and against the ambit of Art 25 of FDRE Constitution. The laws pertaining to the registration of religious organizations with the government may also be seen to contradict the constitutional provisions of religious freedom and equality. This registration law has led to government interventions contradicting the legal provisions for religious freedom. *Waaqeffannaa* religious group is discriminated by local governments, with regard to land allocation for religious purpose and cemeteries as compared with other religious denominations in Ethiopia.

5.2. Recommendations

Based on the foregoing discussions and findings, the researcher would like to recommend the following few points to be seriously considered by the concerned bodies.

- Equality of religion has no other option to keep peace and security in one country and to keep protection of religious freedom; otherwise, conflict may arise among religion groups, where inter-religious equality not given constitutional as well as practical recognition. Hence, the Ethiopian government at any level should ensure the practical implementation of constitutionally guaranteed rights to religious freedom, equality and equal treatment of religion. All concerned bodies should play their role for the implementation and progressive realization of constitutionally guaranteed religious

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

- As it is clearly stated by Ethiopian legal policy all religious groups in Ethiopia has duty bound to register with the Ministry of Federal and Pastoralist Development Affairs to function as religious organization and gain legal standing, which is needed to open a bank account or fully participate in a court proceeding and to function as recognized religious association or organization. It also imposes the duty to renew their registration for every three years. However, the existing law and practices is discriminatory and contradicts with Art 25 of FDRE Constitution and against secularism principle. Thus, the Ethiopian government should make policy reform and amend the 1966 Legal Notice and Art 394, Art 398, Art 399 and Art 407 Of the Civil Code and enact pertinent law that obey the rules with the FDRE Constitution to treat religious groups equally during registration. On the other hand to exercise freedom of religion, say to manifest religion worship collectively, it basically require worship place. And also to bury the deceased fellows of the given religion, it is basically requires cemeteries. Nevertheless, it is not clear that non-discrimination is essential to ensure diversity, and, until equal rights are fully mobilized, diversity will not be attained, nor will *Waaqeffannaa* religion be revived to compete on their own terms in the free market place of faith. Hence the government, specifically the regional, zonal and local level of administrations, should avoid discrimination and properly discharges their institutional duty to equally treat *Waaqeffannaa* religious group in terms of land provision for religious purpose and place of cemeteries without any discrimination.
- It is clear that *Waaqeffannaa* is an ancient religion, which originated in the homeland of the early human race and the religion of Cushitic Oromo and believed ever to have lived in the Horn of Africa. The Oromo people guided its spiritual and social life according to the *Waaqeffannaa* world view for several centuries. *Waaqeffannaa's* pro-social principles, laws and values did and will contribute to building constructive relationships between communities. In addition to improving human relations, moral code, such as *safuu*, that emphasizes the need to maintain good relationship with nature, can be extended and used in areas of environmental conflict resolution, especially where climate change is threatening pastoralist and agrarian communities in many observable

ways today. Moreover it contributes to *nagaa* (peace), *fayyaa* (health), *haqaa* (justice) and *tasgabbii* (social order) between the societies. However, *Waaqeffannaa* have been pushed to the margin because of a number of factors. The implied and open relegation of *Waaqeffannaa* to the levels of inferiority and insignificance in world affairs by the past imperial rules not only undermines and stereotypes the examination of the unique contributions of this religion but also destroyed its institution. *Waaqeffannaa* is not only the heritage of Oromo and that of Ethiopia; but also heritages of Africa. Therefore the Ethiopian government should create conducive environment to redress the fate of disadvantaged religious communities in terms of land provision for religious purpose and cemeteries and in terms of restoring their sacred places and objects; and also through registering in UNESCO as intangible heritages.

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ANNEXES

Annex I

Af-gaaffii Dursitootaa fi Hordofoota Amantaa Waaqeffannaatiif qophaa'e (In Afaan Oromo)

Ani Taadassaa Yaadataa Univarsiitii Finfinneetti barataa seeraa digirii 2^{ffaa} (LL.M) gaaffilee armaan gaditti dhiyaataniif deebii ni ta'a jettaanii kan yaadan akka deebifan kabajaan isiin gaafadha.

Gaaffileen Af-gaaffii kanaa kan qophaa'an baruulee qo'annoo 'masters' koo kan yeroo amaa kana Universitii Finfinnee koolejjii Seeraa fi Bulchiinsaa jalatti dalagaa jiruf raga funaanuufi. Yeroo keessan mi'aawwaa ta'e arsaa gootanii af-gaaffii dhiyaateef deebii waan kennitaniif; akkasumas deegarsa barbaahisu hunda waan naaf gootaniif galatoomaa jechuun barbaada.

1. Bilisummaa amantaa, yaadaa fi amantii Heera Mootummaa Federaala Dimokiraatawwaa Ripapiliika Itiyooophiyaa ttiin wabii argatee jira. Hojiirra olmaa keeyyata kanaa keessattuu amantaa waaqeffannaa waaliin wal qabatee akkamitti madaalta?
2. Heeri Mootummaa Federaala Dimokiraatawwaa Ripapiliikaa Itiyooophiyaa amantaa Waaqeffannaaf beekkamtii fi eegumsa godhee jira jettee yaadaa?
3. Hordofoonni amantaa Waaqeffannaa mirgootaa fi bilisummaa amantaa Heera Mootummaa FDRI,n wabii argatan kana irraa fayyadamoo ta'anii jiru jettee yaadaa? Fayyadamoodha yoo jette maal fayyadamani? Lakki yoo jette maal dhabani?
4. Mootummaa fi Qaamoleen mootummaa mirgootaa fi bilisummaa bu'uuraa hordofoota amantaa Waaqeffannaa Heera Mootummaan argatan kana faalaa seeraatiin yeroo itti daangesse jira jettee yaadaa?
5. Adeemsa amantaa Waaqeffannaa Ministeera Haqaa Federaala jalatti galmeesisuuf gootan keessatti waan sin mudatte jiraa? Maaliin ibsama? Haal-dureewwaan qaama seerummaa argachuu (galmaa'uu) dhaabilee amantaa irratti yaanii/dhaamsi qabdu maali? Haal-dureewwan kunniin dhaabilee amantaa hunda irratti wal qixa hojiirra olaa jira jettee yaadaa?

6. Wal-qixummaan amantaa Itiyooophiyaa keessatti Heera Mootummaan keewata 25 jalatti mirkanaa'e hojiira olee jira jettee yaadaa? FKN amantaa Waaqeffannaa fi amantaawwaan beekammoo akka Kiristaana fi Islamaa giduu? Yoo hin jiru jette maaliin ibsama?
7. Sababa enyummaa amantaa keerraan ka'e qoodinsi ykn loogummaan si muddatee beekaa? Namoota biroo isaan irratti raawwate beektaa?
8. Akaataa qoodinsi lafa bakka amantaa fi awaalchaaf barbaachisan itti raawwatu irratti yaani qabdu maali? Amantaa Waaqeffannaa fi dhaabilee amantaa biro waliin wal bira qabdee yoo madaaltu qixa fayyadamoodha jettee yaadaa?
9. Heeri Mootummaa Federaala Itiyooophiyaa, Mootummaa fi Amantaan gargari; mootummaan waan amantaa keessa hin seenu; amantaanis dhima Mootummaa keessa hin galu jechuun tumee jira. Hojiirra olmaa keewwata kanaa akkamitti madaaltu? Keewwanni kun amantaa Waaqeffannaa keessatti hojiirra olee jira jettee yaadaa?
10. Yeroo amantaa dhuunfaa kee gageeffattu keessatti wanti akka atti bilisaan hin gaggeeffanne si dhorke jiraa? Yoo jira jette maalidha?
11. Hordoftoota amantaawwan garagaraa biyya keenya keessa jiran gidduu wal kabajuu fi wal danda'uun jira jettee yaadaa? Yoo hin jiru jette, haali kun hordoftoota amantaa gara garaa gidduutti walitti bu'insaa ummuu danda'a jettee yaadaa?
12. Haali qabatamaa yeroo amaa amantaa Waaqeffannaa maal fakkaata?

Interview Guide to leaders and followers of *Waaqeffannaa* religion at selected centers.

I Tadesse Yadeta LL.M student at Addis Ababa University, kindly requests _____ to prepare or inscribe your answer for the following interview questions.

This interview guide is prepared for the purpose of gathering information for my Master's thesis that I am pursuing in AAU College of Law and Governance. I am grateful for your kind cooperation investing your precious time to respond for my interview. You can refrain from writing your name.

1. The FDRE Constitution has guaranteed the right to freedom of religion, belief and opinion. How do you evaluate the practical implementation of this right with particular reference to *Waaqeffannaa*?
2. Do you think that *Waaqeffannaa* religion got recognition and protection under the FDRE Constitution?
3. Do you think that adherents of *Waaqeffannaa* benefited from religious freedom recognized by the FDRE Constitution? If yes, what they benefited? If no, why?
4. Do you encounter a problem in the course of registering *Waaqeffannaa* at Federal Ministry of Justice? What is your opinion/comment with regard to the process of granting legal status or registration of *Waaqeffannaa*? Do you think the procedure equally applicable to all religious denomination in Ethiopia?
5. Do you remember the situation that the government and its officials restrict the constitutionally guaranteed rights of adherents of *Waaqeffannaa* contrary to the law?
6. Do you think in our country there is mutual respect and tolerance between different denominations and between followers of different faiths? For instance between followers of *Waaqeffannaa* and other faith? If you say no, do you think it may result conflict between the different religious denominations?
7. Do you think that religious equality guaranteed by FDRE Constitution under Art 25 practically applicable in Ethiopia? For instance, between *Waaqeffanna* and other dominant religions like Christianity and Islam?
8. Have you ever encountered any discrimination or mistreatment because of your religious identity? Do you know such incident encountered on others?

9. Is there any factor that hinders you to freely exercise your own faith? If yes what are they?
10. What is your comment with respect to allocation of land for religious purpose and cemeteries, allowing public places for religious purpose and recognizing religious holy days for *Waaqeffannaa* denomination by government?
11. The FDRE Constitution proclaims that state and religion are separate, and the state shall not interfere in religious matters, like wise religion shall not interfere in state affairs. Do you think that this principle practically implemented in the case of *Waaqeffannaa*? Do you observe the time when government interferes in the *Waaqeffannaa* matter?
12. What is the current situation of *Waaqeffannaa*?

Annex II

Interview guide questions to concerned government official.

I Tadesse Yadeta LL.M student at Addis Ababa University, kindly requests.....to prepare or inscribe your answer for the following interview questions.

This interview guide is prepared for the purpose of gathering information for my Master's thesis that I am pursuing in AAU College of Law and Governance. I am grateful for your kind cooperation investing your precious time to respond for my interview. You can refrain from writing your name.

1. Freedom of religion, belief and opinion is guaranteed by the FDRE Constitution. What is your assessment in terms of practical implementation of these rights with particular reference to *Waaqeffannaa*?
2. Religious Equality has guaranteed by the FDRE Constitution. Do you think that this constitutionally recognized right to equality is practically implemented in Ethiopia? For instance with regard to *Waaqeffannaa*.
3. Related with question No. 2 above how is the government practically implementing the allocation of land between religion organization for the purpose of place of worship and cemeteries? For instance, the adherents and leaders of *Waaqeffannaa* complain that, though they apply to concerned government sectors land for the purpose of cemeteries and place of worship again and again; they could not get positive response .How do you see this complaint?
4. The FDRE Constitution proclaims that, State and Religion are separate, and the state shall not interfere in Religious matters, like wise Religion shall not interfere in State affairs.
 - a) What is the advantage of this principle?
 - b) How you evaluate the practical application of the principle especially concerning *Waaqeffannaa* religious group?
5. What is your opinion concerning the registration for legal personality and renewal of religious organization in Ethiopia?
6. What is the role of government and its officials to ensure religious equality and prohibit religious based discrimination?

ቃለ-መጠይቅ

ይህ ቃለ-መጠይቅ በአዲስ አበባ ዩኒቨርሲቲ የህግ ፋኩልቲ ለማስተረስ ዲግሪ መመረቁ የጥናት ጽሁፍ ማሟያነት የሚውል ነው። ለሁሉም ቃለ-መጠይቅ ጥያቄዎች በወደዱት መልኩ ምላሽዎን እንዲልኩልን በአክብሮት እየጠየኩ ከውድ ጊዜዎ ቀንሰው ቃለመጠይቁን በመመለስዎ ስላደረጉልኝ ትብብር በጣም አመሰግናለሁ።

1. በኢ/ፍ/ድ/ሪ ሕገ-መንግስት የሐይማኖት የእምነትና የአመለካከት ነፃነት ተረጋግጧል። ይህ የህገመንግስቱ ድንጋጌ በዋቁፈና ሀይማኖት ተከታዮች ዘንድ በትክክል ሥራ ላይ ውሏል ይላሉ? በምንስ ይገለጻል?

2. በኢ/ፍ/ድ/ሪ ሕገ-መንግስት የሐይማኖት እኩልነት ተደንግጓል። ይህ የህገ መንግስት ድንጋጌ በአገራችን እየተተገበረ ነው ብለው ያምናሉ? ለምሳሌ ለማሳያነት ከዋቁፈና ሃይማኖት ጋር በማያያዝ።

3. ከቁጥር 2 በተመለከተው ጥያቄ ጋር በተያያዘ የሀይማኖት ተቋማት የአምልኮ ቦታዎች መስሪያ የመቃብር ቦታዎች የሚያስፈልጋቸው የመሬት ክፍፍል እንዴት እየተተገበረ ነው? ለምሳሌ የዋቃፈና እምነት ተከታዮች ለአምልኮ ቦታ መስሪያ አስመልክቶ የመንግስት ተቀቋማትን ደጋግመን ብንጠይቅም አሉታዊ ምላሽ አላገኝንም ይላሉ። ይህንን ቅሬታ እንዴት ይመለከቱታል?

4. በኢ/ፍ/ድ/ሪ ሕገ-መንግስት መንግስትና ሀይማኖት የተለያ ስለመሆናቸውና መንግስት በሀይማኖት ጉዳይ ጣልቃ እንደማየገባ፤ ሀይማኖትም በመንግስት ጉዳይ ጣልቃ መግባት እንደሌለበት ተደንግጓል ።

ሀ/የዚህ መርህ ጠቀሜታ ምንድን ነው ይላሉ?

ለ/የዚህ መርህ አፈፃፀም በተለይም በዋቁፈና እምነት ጋር እንዴት ያዩታል?

5. የህጋዊ ሰውነት ምዝገባ ወይም እድሳት በተመለከተ ያሎቱን አስተያየት ቢገልጹልን።

ቁጥር 11/2765/W-1390
 Ref No
 ቀን 13/04/96
 Date

**ለየዋቱሬና እምነት ተከታዮች ማህበር
አዲስ አበባ**

ማህበሩ እንደ አንድ አገር በቀል ማህበር ተመዝግቦ ለመሥራት የሚያስፈልጉትን ሠነዶች በማሟላት ሕጋዊ ሰውነት እንዲያገኝ መጠየቁ ይታወሳል።

በመሆኑም ማህበሩ ከሰርተፍኬቱ ጋር በተያያዙ አባሪ የፈቃድ መግለጫ ሁኔታዎች፣ የማህበራት ሥነ-ምግባር መመሪያ እና በጽ/ቤቱ በፀደቀው የማህበሩ መተዳደሪያ ደንብ መሠረት ሥራውን በአግባቡ እንዲያከናውን መመዘገቡን እየገለጸን፣ በተጨማሪም የማህበሩ ጻመታዊ የሥራ ክንውንና የአዲት ሪፖርቶች በጠቅላላ ጉባዔ ፀድቀው በየጻመቱ ለጽ/ቤቱ መትረብ እንደሚገባቸው ለማስገንዘብ እንወዳለን።


 ከሰላምታ ጋር
 የጻፉት ገጽ 4
 የማህበራት ምዝገባ ጽ/ቤት
 የፍትሕ ሚኒስቴር

ግልጻዊ፣

- ለሚኒስትሩ ጽ/ቤት ፍትሕ ሚኒስቴር
- በደህንነት ኢምግራሽንና ስደተኞች ጉዳይ ባለሥልጣን የውስጥ ደህንነት ጥበቃ ዋና መምሪያ
- በአዲስ አበባ ከተማ አስተዳደር የማህበራዊና መንግሥታዊ ያላሠኑ ድርጅቶች ጉዳይ ጽ/ቤት አዲስ አበባ

ቲሌ ፋክስ ፈ.ግ.ቁ. ስልክ አዲስ አበባ - ኢትዮጵያ
 FAX _____ P.O BOX 1370 Tel. 51-50-99 Addis Ababa-Ethiopia



የኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ
 የፍትሕ ሚኒስቴር
 The Federal Democratic Republic of Ethiopia
 Ministry of Justice

11/4562/10-1390

ቁጥር 11/4562/10-1390
 Ref. No.

ቀን 04/06/96
 Date

04/06/96

ለየዋቂ ስም አጠቃላይ ተከታዮች ማህበር
 አዲስ አበባ

ማህበሩ እንደ አንድ አገር በቀል ማህበር ተመዝግቦ እንዲንቀሳቀስ በ13/4/96
 ዓ.ም. በቁጥር 11/2765/ሠ.1390 በተጻፈ ሽጊ ደብዳቤ ቁጥር 1390 የምስክር
 ወረቀት የተሰጠው መሆኑን እናስታውሳለን።

ይሁን እንጂ ማህበሩን ከመዘገብነው በኋላ የሚያደርገው እንቅስቃሴም ሆነ
 ዓላማው ሕገወጥ ሆኖ ስላገኘነው የምዝገባ ፈቃዱ የተሠረዘ መሆኑን
 እናስታውቃለን።

የሚመለከታቸው መንግሥታዊ አካላትም ይህንኑ አውቀው የምዝገባ ፈቃዱ
 ከተሠረዘ በኋላ እንቅስቃሴ ሲያደርግ ቢያገኙት ተገቢውን እንዲወስዱ ይህ
 ደብዳቤ በግልጭ ተመዝግቦላቸዋል።



አስላምታ ጋር

[Handwritten signature]
 የፍትሕ ሚኒስቴር
 ጽ/ቤት

ግልጭ፡

- ለሚኒስትሩ ጽ/ቤት
- ፍትሕ ሚኒስቴር
- በደህንነት ኢምግራሽንና ስደተኞች ጉዳይ ባለሥልጣን
 የውስጥ ደህንነት ጥበቃ ዋና መምሪያ
- በአዲስ አበባ ከተማ አስተዳደር የማህበራዊና መንግሥታዊ
 ያልሆኑ ድርጅቶች ጉዳይ ጽ/ቤት
- ለአዲስ አበባ ፖሊስ ኮሚሽን
- አዲስ አበባ

ፋክስ

ፖ.ሣ.ቁ.
 P.O.Box 1370

ስልክ
 Tel. 51-50-99

አዲስ አበባ-ኢትዮጵያ
 Addis Ababa - Ethiopia

በኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፖብሊክ
የፍትህ ሚኒስትር *ጠቅላይ ሚኒስትር*
ሰነድ ሚኒስትር *30/6/96*
አዲስ አበባ

አመልካች የዋቁሬና እምነት ተከታዮች ማህበር
አደራሻ፡- አ/አ

ክቡር ሆይ

አመልካች ማህበር አሰራሪውን ሁሉ በሚሟላት ከሚኒስትር መሥሪያ ቤቅ የማህበራት ምዝገባ ጽ/ቤት ተመዘገቦ በቁጥር 1390 የሆነ የምዝገባ ስርተሬክት በ13/4/96 በቁጥር 11/2765/ሀ. 1390 ደብዳቤ ሸኚነት ተስጥቶት በሕግ ጥላ ስር እየተንቀሳቀሰ የሚገኝ ነው።

ይህ በእንዲህ እንዳለ የሚኒስትሩ የማህበራት ምዝገባ ጽ/ቤት ማህበሩ የሚያደርገው እንቅስቃሴም ሆነ ዓላማው ሕግ ወጥ ነው በማለት በ04/06/96 በቁጥር 11/4562/ሀ. 1390 በተባራ ደብዳቤ የምዝገባ ፈቃዱን ሰርሟል።

ማህበሩ አደረገ የተባለው ሕግ ወጥ እንቅስቃሴም ሆነ ዓላማው ምን ዓይነት ሕግ ወጥ እንደሆነ የተነገረው አንዳችም ነገር የለም። ማህበሩ በበኩሉ የሀገሪቱን ሕግና ደንብ አክብሮ በሕግመንግሥቱ አንቀጽ 27 ሥር የሀገሪቱ ዜጎች ሁሉ በተገናፀፋት መብትና ነጻነት መሠረት ሕጋዊ ሆነን ተግባር በግልፅ ከማካሄድ በስተቀር ዓላማውም። እንቅስቃሴው አንዳችም ሕግ ወጥነት የለውም ምንም ማስረጃ አልቀረበም።

በእንጻፍ ያለአንዳች ምክንያት የአባላቱን ሕግመንግሥታዊ ነጻነት መገደብ ትክክል አይደለም።

በመሆኑም ክብርነትዎ ባሰብዎት ሃላፊነት በገዳዩ ጣልቃ ገብተው የሚኒስቴር መሥሪያ ቤት የማህበራት ምዝገባ ጽ/ቤት የሰጠው ውጤት እንዲሻርልን በዳ/ሕ/ቁ 462(2) መሠረት ማህበሩ ይህንን የይግባኝ አቤቱታ ከታላቅ አክብሮት ጋር ሰነድነትዎ ያቀርባል።

ከሠላምታ ጋር
[Signature]
የማህበሩ ሊ/መንበር
ነጋ አባሬጣ

አ/ከተማ ክ/ከተማ ቀበሌ 16 የቤት ቁጥር 796
ሰልክ ቁጥር 11 99 90

ግልባጭ

ለፍትህ ሚኒስትር የማህበራት ምዝገባ ጽ/ቤት
አዲስ አበባ

[Signature]
30/6/96



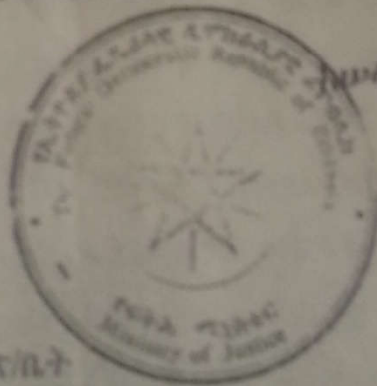
ለዋቁፊና እምነት ተከታዮች ማህበር መሪዎች
አዲስ አበባ።

**ጉዳዩ፡- ስለ የምዝገባ የምስክር ወረቀት መሰረዝ ለቀረበ
አቤቱታ የተሰጠ መልስ**

ታህግሥ 13 ቀን 1996 ዓ.ም. በቁጥር 1390 ተመዝግቦ የተሰጣችሁ የምዝገባ የምስክር ወረቀት የካቲት 4 ቀን 1996 ዓ.ም በቁጥር 11/4562/ሠ.1390 በተጻፈ ደብዳቤ የተሠረዘ መሆኑን በመገለጽ ውሳኔው እንዲሻር የካቲት 30 ቀን 1996 ዓ.ም. አቤቱታ ግትረግቻህ ይታወሳል።

በተረጋጋው አቤቱታ መሠረት በተደረገው ማጣራት በቁጥር 1390 ተመዝግቦ ለግህዳሩ የተሰጠው የምስክር ወረቀት በስህተት የተሰጠው መሆኑንና ግህዳሩም ከተመሠረተበት ዓላማ ውጭ ስወር ዓላማ እንዳለው መረጃ በመገኘቱ የምዝገባ የምስክር ወረቀቱ መሰረዝ ተረጋግጧል።

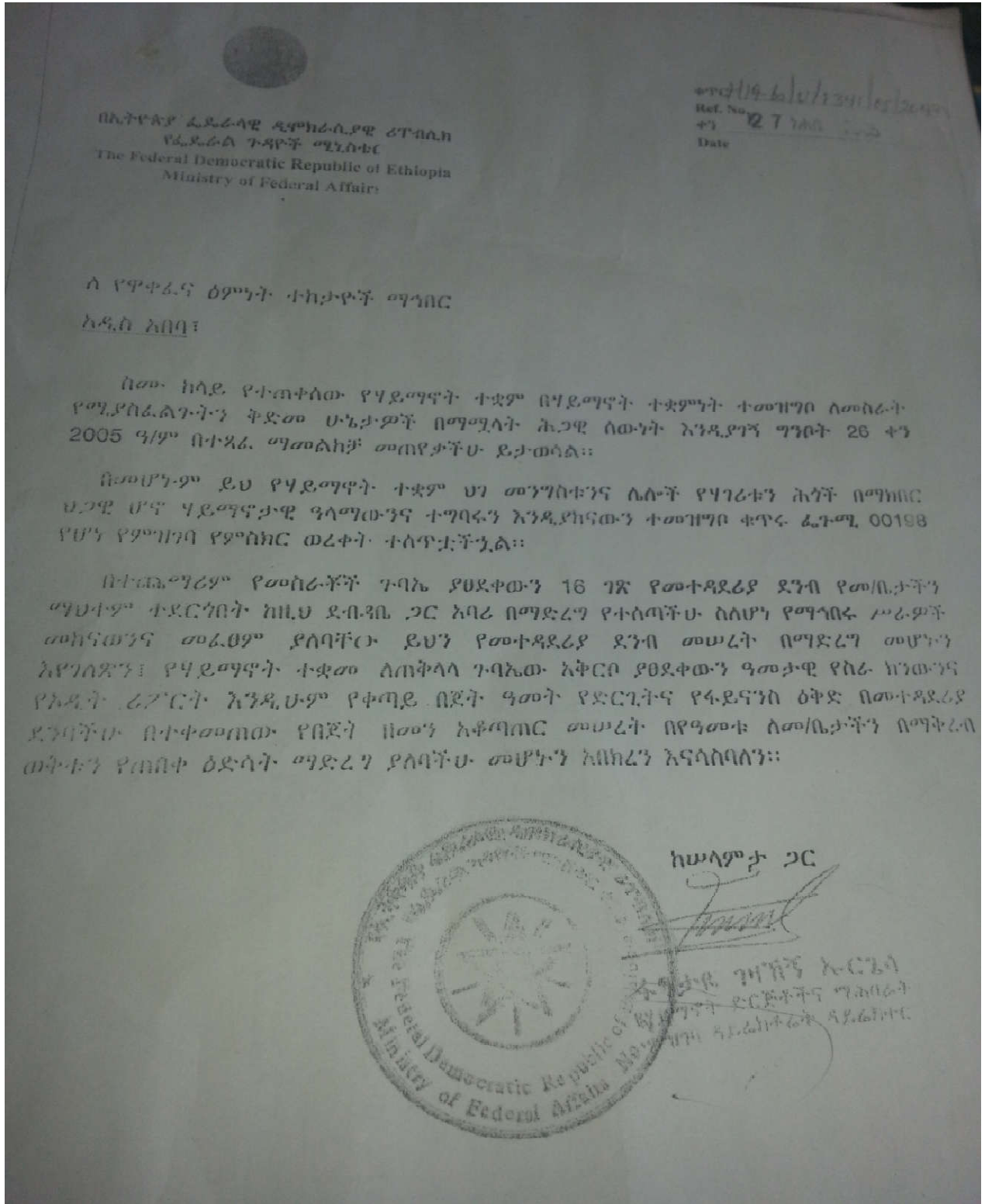
ለዚህም የግህዳራት ምዝገባ ጽ/ቤት በስህተት የተሰጠውን የምስክር ወረቀት መሰረዝ ትክክልና ውሳኔውም ሊሻር የግዴታው መሆኑን አስታውታለሁ።



አሁንም ታ ጋር
-/-/- ህ. ህርፉ
ሐርታ ሐርቶ
ሚኒስቴር

ገልጻዊ፡-

- ለግህዳራት ምዝገባ ጽ/ቤት
 - ለፍትህ ሚኒስቴር ጉዳዮች ማኅበር
- ፍትህ ሚኒስቴር
አዲስ አበባ።



የኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ
የሥነ-ልቦና ጥናት ሚኒስቴር



THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA
MINISTRY OF FEDERAL AFFAIRS

የምዝገባ የምስክር ወረቀት

CERTIFICATE OF REGISTRATION

በፊደል ቁጥር 691/2003 በተሰጠው ሥልጣን መሠረት የደብዳቤ
ቁጥር 198/2013 ተገታ የሚገኝ
በሚኒስቴሩ የተመዘገበ መሆኑን ለማረጋገጥ ይህ
የምዝገባ የምስክር ወረቀት ተሰጥቷል።

This is to certify that WAGEFANA 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 SEPT. 2, 2013 and shall
be valid until SEPT. 1, 2018.

ይህ ቁጥር 691/2003 የሆነው የምዝገባ
የምስክር ወረቀት በ ህዳር 27 ቀን
2005 ዓ.ም የተሰጠ ሲሆን እስከ ህዳር
26 ቀን 2010 ዓ.ም. ድረስ ብቻ የፀና
ይሆናል።

691/Signature
አድራሻ / Address of the Ministry ስ.ቁ./Tel. 011 5 51 00 00 ስ.ቁ./Fax: 011 5 53 73 77 / 011 5 51 12 00 / 011 5 51 26 39 /
E-mail: Mofa@telecom.net.et / rass@telecom.net.et አድራሻ / Addis Ababa/Ethiopia