

ADDIS ABABA UNIVERSITY
COLLEGE OF LAW AND GOVERNANCE
CENTER FOR HUMAN RIGHTS

**THE IMPACT OF PRISON REFORM PROGRAM ON THE TREATMENT
AND RIGHTS OF CONVICTED PERSONS IN FEDERAL MAXIMUM
SECURITY PRISON**

By TIBESO BEZABIH

A Thesis Submitted in Partial Fulfilment of the Requirements of MA in Human
Rights at Addis Ababa University,

Centre for Human Rights

June 2016

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ADVISOR:

Dr. WONDEMAGEGN TADESSE

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MA THESIS PARTIAL FULFILLMENT OF MASTERS OF ARTS IN HUMAN RIGHTS

By:

Tibeso Bezabih Petros

bezabih.tibeso@yahoo.com

Approved by:

Board of Examiners

1 Dr. Wondemagegn Tadesse
Advisor	Signature	Date
2.
Internal Examiner	Signature	Date
3.
External Examiner	Signature	Date.

This thesis is dedicated for those who's going away in
unreformed prison

DECLARATION

I, Tibeso Bezabih, declare that this thesis is the result of my own work and all sources or materials used for this thesis have been appropriately acknowledged. This thesis is submitted in partial fulfilment of the requirements for the award of degree of Masters of Arts in Human Rights to the Collage of Law and Governance, Addis Ababa University, through the Centre for Human Rights. I confidently declare that this thesis has not been submitted to any other institution.

Tibeso Bezabih Petros

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LIST OF ACRONYMS

ACHPR	African Commission on Human and Peoples' Rights
BPR-	Business Process Reengineering
BSC	Business Score Card
CAT	International Covenant for the Prevention of all forms of Cruel, Inhumane, Degrading Treatment or Punishment
CILC	Center for International Legal Cooperation
CJSRP	Comprehensive Justice Sector Reform Program: Baseline Study
EHRC	Ethiopian Human Rights Commission
FDRE	Federal Democratic Republic Ethiopia
GTP	Growth and Transformation Plan
ICCPR	International Covenant Civil and Political rights
ICESR	International Covenant Economic Social and Cultural Rights
ICERD	International Convention on Elimination of All Forms of Racial Discrimination
JSRP	Justice Sector Reform Program
NHRAP	Ethiopian National Human Rights Action Plan
SMR	Standard Minimum Rules for the Treatment of Prisoners
UDHR	Universal Declaration of Human Right
UN	United Nations

Abstract

The purpose of the thesis is to evaluate the implementation of the Reform Program in the Ethiopian Federal Prison Administration. It is essential to assess its progress since the implementation of multiple rights and the better treatment of convicted persons relied on the Reform's performance. Although, there are numerous objectives by the reform, the research addresses rights related to health, food, security, visit and complaint mechanism.

To achieve its objectives, the thesis, through in-depth interview analyzes the perspectives of the target inmates as well as key government actors from the Maximum Security Prison and other stakeholders. These are cross-checked with personal observation of the researcher. Related laws, policies and reform discourses of the country are also reviewed.

The thesis identifies gaps and concerns and presents critique in light of human rights normative standards and contemporary approach to Prison Reform. It also identifies issues that need attention by policy makers and implementers for further improvement, which would lead to better treatment of inmates.

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Chapter One: Introduction

1.1. Introduction

The Federal Constitution of Ethiopia sets to establish a political community based on the rule of law, laid on the respect to individual and peoples' rights. Under such objective a protection of human rights would be one of the fundamental tasks of a transparent and accountable government. Following such commitment, the Constitution recognizes several human and democratic rights, which are then promoted and protected by different institutions that are also established by the Constitution. Beside these human rights provisions, the Constitution recognizes the application of regional and international human rights instruments ratified by the Country as part and parcel of the law of the land.¹

One of the rights recognized both in the Constitution and under applicable international human right treaties are the proper treatment and human rights of convicted persons.² Any person convicted and sent to prisons forthwith for violations of criminal laws is still entitled to exercise the human and democratic rights except those rights justifiably deprived by the judiciary.³ This is fundamentally important because these people have only been convicted and consequently imprisoned, yet they are and will always remain human beings like everyone. As the result they are entitled to dignified treatments to exercise their rights during their entire prison terms.⁴

Moreover, the FDRE Constitution explicitly advocates the observance of specific rights of convicted persons under Articles 18 and 21. Similarly such form of recognition is to be found under several regional and international human rights instruments, which Ethiopia has ratified. As the result of this, both the federal and regional government organs, i.e. the legislature, the executive and the judiciary have a fundamental Constitutional obligation to respect, protect and fulfill the rights of convicted persons.

The Federal government has established among other relevant organs, the Federal Prison Commission whose fundamental task is to implement all judicial decisions by undertaking

¹ FDRE Proclamation of the Constitution No. 1/1995. Article 9/4/

² FDRE Proclamation of the Constitution No. 1/1995. Chapter three

³ UN Economic and Social Council, *Standard Minimum Rule for Treatment of Prisoners*, Resolution no 663 C (XXIV) of 31 July, 1957 and 2076 (LXII), May 1977, Rule 57.

⁴ Piet Hein van Kempen: Positive Obligation to ensure the Human Right of Prisoners. Safety, healthcare visits and Possibility of founding a family under the ICCPR, the ECHR, the ACHR and the AfChHPR, at p.21

"...the functions of the custody, reformation and rehabilitation of prisoners...."⁵ Carrying out the function, the commission is expected to adhere to the Constitution including the human rights provisions and all other laws which include international human rights instruments that are part of the Country's legal system. Under the law, the Commission has legal and professional independence⁶ which is highly important in order to carry out all of its functions effectively designated as Federal Prisons Administrator. Implementing custody, reformation and rehabilitation, the commission needs to invoke the Constitutional provisions as the fundamental standards on which it conducts its functions. Particularly, Articles 18 and Article 21 of the Constitution provide sufficient guidance as well as hold the commission under Constitutional duty, which it must respect, protect and fulfill.

1.2. Statement of the Problem

A sentence of imprisonment constitutes only a deprivation of the basic right to liberty. This does not entail any restriction of other human rights, except for those that are naturally restricted by the very fact of being in prison.⁷ Prison reform necessity may differ from one state to another due to particular historical, cultural and security experiences, uniqueness and priorities. This distinctiveness may arise from the issue of overcrowding, lack of strategic plan or failure to build successful social reintegration programs and poor organizational structure as well as slow pace on institutional progress.⁸ In this regard, regular prison reform is necessary to ensure the protection and respect of the human rights of prisoners, so that their humanity is recognized.⁹

Accommodating detainees separately on the basis of duration of sentence, age, sex and health status does not only facilitate the correction and rehabilitation process but also help to reduce rate of human rights violation.¹⁰ Separate accommodation of detainees is an essential precondition in stopping transfer of communicable diseases in prison, avoiding unacceptable influence on healthy detainees by close personal contact with those having bad behavior, facilitating social renewal of detainees, and proper upkeep and treatment of detainees.¹¹ This is in

⁵ FDRE Prison Commission Establishment Proclamation No. 365/2003, preamble,

⁶ FDRE Prison Commission Establishment Proclamation No. 365/2003, Article 3 (2).

⁷ UN General Assembly, *Basic Principles for the Treatment of Prisoners* Resolution 45/111 of 14 December 1990

⁸ Shelby Quast (2008), *Justice Reform and Gender*: Geneva Center for the Democratic Control of Armed Forces, Rahat, Dar, at p. 1

⁹ *ibid*

¹⁰ EHRC (2012) *Human Right Protection Monitoring in Ethiopian Prisons Primary Report July*, Addis Ababa. ¹⁵ at p.48

fact an essential human rights guarantee when it comes to children, women, persons with special needs, persons imprisoned for civil matters and persons convicted for serious crimes.¹²

According to various Ethiopian laws separate accommodation is explicitly prescribed. The Criminal Code Article 110,¹³ the Federal Prison Commission Regulation and the Federal Prison's Commission Directive for Prisoners' Code of Conduct reiterate the intention of the international standard for the need of segregation with the term of imprisonment. Following these laws, therefore, the Federal Prison Commission accommodates persons who are convicted of crimes that are punishable with 15 years imprisonment up to death sentence separately.¹⁴ This prison facility is referred as Maximum Security Prison.¹⁵

The situation in Maximum Security Prison is different from the other forms of accommodation. Such difference is visible both on the manners of treatments and on the ability of convicted persons to exercise their constitutional rights. Given the justifications on the needs to have separate accommodation that leads among others to Maximum Security Prison system, the human rights of convicts in this prison, particularly rights related to their basic needs, administrative issues and social affairs raise serious concern. Often these concerns grow and reach to the point of allegations of serious human rights violations due to the government's ill-treatment of those detained.¹⁶ Meanwhile, the government with its comprehensive mandate under the Constitution took an important program to improve the prison administration system along with other justice institutions.¹⁷ This has been done through the Comprehensive Justice System Reform Program.¹⁸

Findings from the baseline study uncovered several reform programs were designed and have been implemented in all institutions within the justice sector.¹⁹ The Prison Administration, being part of this sector, has been subjected to the reform as one of the target institutions.²⁰

¹² FDRE Prison Commission Establishment Proclamation No. 365/2003, Article 22(3) and 25

¹³ FDRE Criminal Code Proclamation No 414/2004

¹⁴ FDRE Federal Prison Administration, *Directive for the Admission and Registration of Prisoners* No. 1/ 2013/14, Article 4 (2)

¹⁵ *ibid*

¹⁶ Human Rights Watch (2014), "*Arbitrary Detention and ill Treatment*", at p 121, The Report, indicate that Addis Ababa Prison denied prisoners access to legal counsel and no monitoring on the organization undertakings-

¹⁷ FDRE Ministry of Capacity Building (2005), *Comprehensive Justice system reform program: Baseline Study*.

¹⁸ *ibid*.

¹⁹ World Bank (2004), *Ethiopian Legal and Judicial Sector Assessment*, Legal Vice Presidency, Washington, DC. at p 41

²⁰ See on the baseline Study; that the Justice sector did not end at the court and police station. The penitentiary, the legal education were also considered as the parcel of the justice sector.

Accordingly several programs were implemented to restructure the Prison Administration, which was granted new authority in order to carry out the mandates provided under the program.

After many years since the reform program has been implemented, however, there are still serious problems within the prison administration. Particularly the administration of Maximum Security Prison is still full of allegations especially with regard to the rights and mistreatments of convicted persons' under this separate accommodation.²¹ Given the potential tensions between the requirements of Maximum Security Prison and the human rights of convicted persons, this research has undertaken an investigation on the impacts of the Prison Reform Program focused on the treatment and rights of convicted person within Federal Maximum Security Prison.

It is one thing the government launched the Comprehensive Justice System Reform Program, but whether this reform program has in fact made any tangible impacts on the treatments and rights of prisoners is uncovered.

As one of the goals of the reform program is to improve the justice sector so that it promotes and protects human rights in the Country,²² there arises an imperative to evaluate whether the reform program has achieved its goals in relation to prison administration. Therefore, a theoretical assumption can be inserted, whether inappropriate implementation of reform program can result for abuse of human right.

The investigation in this research focuses only on four important human right aspects: access to health and food, security, family visit and access to prompt justice mainly in relation to pardon. These rights are respectively linked to multiple administration structure are installed by the government to bring an overall change on the protection and realization of inmate's rehabilitation and reformation. It is unimaginable for a convicted person to be rehabilitated without the ability to maintain relationship with one's family, health and the ability to access all available administrative and judicial means to deal with the terms of prison.

Notwithstanding the focal areas of this assessment, the need for attention to other existing issues and challenges, such as law harmonization, education and trainings should not be disregarded or minimized. There is a clear need for in-depth research to be undertaken in order to

²¹ Human Rights watch, Supra note 16 at p. 119

²² World Bank (2004), Supra note 19

gain a deeper understanding of the complex relationship at different layers of the system. Further, there is a need for a comprehensive investigation regarding Persons under Death Penalty.

1.3. Objective of the research

1.3.1. General Objective

The main objective of the research is to evaluate the implementation of the Prison reform program in Maximum Security Prison in view of human right standards.

1.3.2. Specific objectives are

- To assess the impact of the prison reform program in accomplishing the basic human rights of inmates in Maximum Security Prison;
- To evaluate the extent to which the reform program has enhanced treatment of person in Maximum Security Prison;
- To assess the challenges and opportunities attached to the Prison reform program particularly with respect to inmate's dignity, health, food, visit and complaint mechanism;

1.4. Basic Research Question

The study has attempted to answer the following questions:-

1. What are the impacts of the reform program on the rights of convicted person in Maximum Security Prison?
2. To what extent has the reform program met the human rights standards?
3. How has the reform program enhanced the rights of inmate's dignity, health, food, visit and complaint mechanism?
4. What are the challenges and opportunities attached to the prison reform program?

1.5. Research Methodology/Method

The impact of prison reform should be dealt in a systematic and coherent approach. In order to attain the objectives indicated above, the overall study has employed qualitative research methodology.²³ As qualitative research is a formative evaluation and it is one of the methods to

²³ John. Creswell (2003), Research Design: Quantitative and Mixed Approaches, 2nd Edition, at p.22

study social problems. Undertaking an evaluation during the implementation of program helps to determine the progress with the basic rights attached. In particular it is a systematic identification and assessment of issues generated by programs having effects on human rights protection.²⁴ In view of this consideration, this research work evaluates the discourse of the reform program focused on Maximum Security Prison system.

1.5.1. Method of Study

The study has used both primary and secondary data sources so as to obtain the desired information that would answer the stated research questions. Primarily data collection was undertaken through in-depth interview with fourteen convicted persons, interview of eleven key informants who have knowledge about the issue under the study, and through observation around the study area. Most important, the official document of the baseline study, on the reform of the Federal Prison Administration to re-engineer the aspired achievements, is used to measure the pragmatic stance of the reform.

A secondary data was obtained from studies, documents, reports, publication and discussion papers that had been conducted by individual researchers, government and non-government organizations to see the accuracy and relevance of the data.

1.5.2. Sampling techniques and procedures

Research studies could not cover all relevant circumstances, events or people intensively but have to choose samples on which they can undertake the research work effectively. Thus, by using a combination of snowball sampling and purposive techniques fourteen prisoner respondents were addressed. On the other hand, eleven key informants were selected using judgment/purposive sampling technique. The sampling is used to gain deep insights, where information is difficult to obtain as well as to strengthen information obtained from inmates with the assumption that a bond that exist among the target prisoners.

This sampling technique was taken as the best option, because prison officers act as the ultimate “gatekeepers” to prisoners and those prisoners selected as suitable for interview by prison officers may differ from other prisoners in number of ways.²⁵ There is the potential for selected prisoners to have an agenda they have been asked to push, or for ‘selected’ prisoners

²⁴ Yitayew Alemayehu and Wondemagegn Tadesse (2013), *Human Rights Research: A Practical Guidebook on Methodology and Methods*, Addis Ababa University, Centre for Human Rights. at p.157

²⁵ Lynne Roberts and David Indermaur, *The Ethics of Research with Prisoners*, at p. 3

seek to cooperate in order to obtain or retain favor with the prison officer.²⁶

Moreover, the fact that respondents' conviction rate were for longer period, it was challenging to find prisoners, who could openly respond on the manner of treatment of prisoners inside the facility. Thus, for myriad ethical concerns regarding the civil rights of vulnerable parties, a combination of purposive and snow ball sampling techniques were taken to see the deeper fact in Maximum Security Prison.

By employing these techniques the fourteen inmates were contacted as source of first hand information to oversee the impact of the prison reform program in Maximum Security Prison based on the rights; access to health and food, security, family visit as well as prompt justice for complaints made.

1.5.3. Tools of Data Collection

The following qualitative data collection methods were used in the research.

1.5.3.1. In-depth interview

In-depth interview is useful to obtain information on particular practice from the perspective of the respondents. Therefore, in order to gather a qualitative data for the study an in-depth interview were conducted with those who agreed to discuss the condition of their detention and the difficulties they encounter on daily basis. The interview of convicted persons is conducted in two categories under Section "I" and Section "II".

The first seven informants are convicted persons who stayed in Federal Maximum Security Prison for more than five years and in the second section there were seven inmates' who are convicted and stayed in prison for the last ten month or so but still less than four years.

The rational for employing different category is to evaluate the discourse of administrative services given for inmates before and after the reform program was endorsed. The in-depth interview has attempted to gather detailed information on the inmates experiences related to the reform program during their detention.

1.5.3.2. Key informants interview

Interview of key personnel was carried out to identify problems or issues with their experiences in relation to inmates' rights; access to health and food, family visit, good order for

²⁶ ibid

dignified treatment of inmates as well as prompt justice mainly in relation to pardon and internal complaint mechanism. The interview of key personnel supplemented information gained from inmates and was used to cross-examine or to gain a deeper insight on the information gathered.

The key informants included; a prison guard, four personnel from three core process of the reform program, a middle rank officer from Inmates Pardon and Parole Administration Department, two members from Federal Maximum Security Prison reform baseline study group, the change management department and two personnel from Federal Public Service Justice Reform Program and Ministry of Justice Reform Department respectively.

1.5.3.3. Personal observation

The research has also used observation as an additional way of collecting data. Observation can be defined as a qualitative, non-numerical data collection technique used widely in various areas of research. This technique involves all human senses, where reliability rests on the researcher rather than on other external sources.²⁷ An observation check-list were prepared to collect information focused on the physical infrastructure of the prison facility, admission and registry procedure, meals and the overall physical condition of inmates during the study.

The observation has covered all cells of the Maximum Security Prison to examine the standard of the prison. Convicted persons' daily meal menu was also examined to measure the adequacy of food.

1.5.3.4. Document analysis

The study has conducted a thorough analysis of available literature to get background information on the reform impacts among prisoners in Maximum Security Prison. It has also attempted to evaluate policy/program/ legal instruments and institutional framework of the Country to access their relevance to govern and implement the program. The legal instruments included conventions, declarations, the Constitution, proclamations and guidelines.

1.6. Description of the study area and Site selection

1.6.1. Description of the Study Area

The Federal Maximum Security Prison Administration is located 25 km away from the center of Addis Ababa in Kality Sub City.²⁸ The Addis Ababa Prison Administration includes

²⁷ Fox, N. (1998). How to use Observation in Research Project: Trent focus group, at p. 24

²⁸ https://en.wikipedia.org/wiki/Kaliti_Prison

Maximum Prison Security, Remand Prison and Women's Prison Administration. The prison population during collection of primary data that was on October 14, 2014 from federal prison administration data base system uncovers 3891 inmates with 290 criminal counts,²⁹ where 38 of them are on death sentence, 285 of them on life imprisonment, 3084 of them sentenced below 25 years, 430 prisoners with long term sentence on appeal process, and the rest 54 are prisoners on remand. Thus, 807 inmates from the total number of prisoners make up the Maximum Security Prison.³⁰

1.6.2. Site Selection

The Federal Maximum Security Prison is the largest and most populated prison in Ethiopia, which provides a general experience of other similar institutions setbacks and opportunities. Moreover, the institution has been practicing the Business Process Reengineering for the last four years which makes it more eligible than other prison facilities

1.7. Scope of the Study

The study is limited to the Federal Maximum Security Prison Administration and has only targeted male prisoners who are convicted for at least fifteen years. The research work restricted its subject taking in to account three considerations. First, the Directive issued pursuant to Regulation on the treatment to Federal Prisoners clearly stipulated that the Federal Maximum Security Prison Administration can only receive prisoners who are sentenced for more than fifteen years of imprisonment or death.³¹ Second, female prisoners were not included in the study because, the reform program that was implemented after 2010/11 established the Female Prison Administration as an autonomous entity.³² Third, the research restricted itself on the right to health, food, security, visit and access to justice in relation to complainant made with respect to pardon to have a deeper understanding on specific matters.

1.8. Significance of the study

Reform Programs in the public sectors became one of the major commitments by the incumbent's transformational program. The government has overstretched its objectives in the

²⁹ FDRE Federal Prison Administration Data Base System: accessed on October 14, 2014.

³⁰ Note that prisoners whose sentence is below 25 years will include; prisoners on appeal of any category, prisoners who kept in maximum security due to their medical consideration, or below 3 month sentence and foreigners. To this effect the research only took prisoners clearly defined as Maximum Prisoners.

³¹ FDRE Federal Prison, supra note 14 at Article 4/2/

³² FDRE Federal Prison, supra note 14 at, Article 4(6)

development programs that have been criticized for being hastily implemented without adequate monitoring, cohesion and participation.³³

The authority did not capitalize on reliable structure that ponders for the better treatment of inmates. Hence, it is assumed the new arrangements may either adversely or positively affect the treatments of inmates. Therefore, this study has evaluated the existing prison reforms' pros and cons in the context of the human right protection of inmates. So in the ongoing prison reform, the institution could enhance the knowledge about the issue at stake and give remedies to findings obtained from the study. First of its type in the Country, the research work has emphasized on the prison reform program within the context of human rights in Maximum Security Prison system.

1.9. Ethical Consideration

It was expected Long Term Prisoners and Persons under Death Penalty are in fear as they could be a target on the long run for participating or expressing their deepest beliefs. In other circumstances, Key informants would be in distress to condemn failures at their work place. Throughout the research work it was important to win over their trust and reveal facts that are only relevant to entertain research questions raised on the thesis work.

To this end, the research work do not disclose the names of the respondents and informants, to make sure continuing evaluations that could be made on Maximum Security Prison will not be jeopardize.

1.10. Limitation of the research

The research work was limited to reports properly endorsed and documented by the Maximum Security Prison. Although, there were reports from multiple sources that could have been utilized by the research, the lack of proper preparation to indicate the issuance of the date and year on the reports that are qualified as institutional undertaking has limited the information base for the research.

The research evaluate only two core processes from the prison reform that has encompassed three core processes which are Basic need core process and Security and Inmates Administration as well as Rehabilitation and development. The first reason is to gain a deeper

³³ IMF Country Report No. 04/37, The Democratic Republic of Ethiopia: Poverty Reduction Strategy Paper Annual Progress Report, 2004. Washington, DC. ²³

understanding that is relevant to address specific issues that could hinge upon multiple undertakings in the Federal Prison. Second, it is noted the achievement in the selected core processes are pillar for the achievements of the third core process. As a result the research work was limited to Basic need core process and Security and Inmates Administration reform programs.

1.11. Organization of the study

This thesis work is highly structured under five chapters. The first chapter, introduce the background of the study, statement of the problem, objective of the study, basic research question, methodology, scope, significance and limitation of the study. In chapter two, literatures related to rights and treatments to convicted person reviewed with some selected rights. In chapter three, the national setting of the Maximum Security Prison reform program dealt accordingly. On the fourth chapter, a thorough analysis made to evaluate the reform progress on the treatment of Long Term Prisoners and Persons under Death Penalty peculiarity. Finally, the conclusion and recommendation of the study are dealt in chapter five.

Chapter Two: The Concept of Human Rights and Normative Framework of Convicted Persons under International and Regional Human Rights Instruments

2.1. Operational Definition of Terms

- **Convicted Person:-** is a person who has been tried before a court of law and found guilty and sentenced for specific period or for life and serving sentence as passed by a court authorized by law.³⁴
- **Maximum Security Prison:** - Prisoners for whom high conditions of security are necessary and for whom escape must be made very difficult.³⁵
- **Business Process Reengineering and Balance Score Card:-** are a set of tools that are prepared and implemented to enable the administration goals and vision to translate them in to action.
- **Core Process:-** is a key activity or cluster of activities which must be performed in an exemplary manner to ensure a firm's continued competitiveness because it adds primary value on output.³⁶
- **Basic Need Core Process:** - is a new concept projected with Business Process Reengineering /BPR/ to scale up the function of the service delivery. These include the "Prevention and Curative Medical Service Program", "Basic Subsistence Process" and "Facility Construction and Expansion Program".
- **Security and Inmates Administration Core Process:-** is an administrative design that manages the physical security, judiciary and non judiciary complaint of the convicted Person.
- **Unit:-** is a compound where specific type of inmates held collectively;³⁷
- **Accommodation:-** is placing the prisoner or convicted person to their respective Unit and the Personnel called "*Accommodator*"³⁸
- **Case Officer:-** is a prison officer within a particular Unit, who is in charge on the routine encounter among convicted person;³⁹

³⁴Huber, W. (1988). Penitentiary and Probation Law cited in Imprisonment in South Africa Maximum Security Prison, South Africa, at p. 36.

³⁵ Government of Western Australia Department of Corrective Services: Adult Custodial Rule 8, Assessment and Sentence Management of Prisoners, at p. 3

³⁶ www.businessdictionary.com/definition/core-process.html.

³⁷ Government of Western Australia Department of Corrective Services, Supra note 35. Their classification can be made with respect of gender, term of sentence or nature of crime

³⁸ FDRE Federal Prison, *Directive on Accommodations and Administration of Inmates in Federal Prison* (2013/14)²⁵ June. Article 2/1/

- **Unit Manager:-** is a middle level rank Lieutenant (officer) managing the multiple blocks/cells in a Unit;
- **Unit Coordinator:-** is an administrator who manages different categories of Units.
- **Head Administrator:-** is the senior officer trusted with different arrangements installed for prisoners and convicted persons.

2.2. Concept of Human Rights on Convicted Person

The conceptual foundation of human right has based itself on the commencement of human dignity.⁴⁰ This dignity refers to simply being worthy or deserving of respect. These respect and dignity to others should not necessarily mean the "deserve" for such respect.⁴¹ These are inherent entitlements that come to every person as a consequence of being human, and are founded on respect for dignity and worth of each person.⁴² The bases for dignity are laid in the autonomy of self and self-worth that is reflected in every human being's. It is thus universal and unfringeable by the state or private parties.⁴³

For such reason, a state has an obligation towards its citizens to protect, respect and fulfill the recognized human rights.⁴⁴ However, due to unlimited human needs and scarcity of resources, conflict of interests may arise in turn leads to the creation of conflicts between two or among more individuals. Thus, disputes are settled through a means of adjudication either to condemn the act or reform the person.⁴⁵ If certain criminal act has occurred and the offender found guilty and convicted by a court of law, the offender should properly be rehabilitated.⁴⁶ Hence, prisons should be administered as institutions to correct and rehabilitate criminals. Even more to rehabilitate, educate and change the criminal attitude of the offender to non offender citizen, prisons should be administered with respecting the dignity of prisoners.⁴⁷

⁴⁰ Jack Donnelly (2009), Protecting Dignity: An Agenda for Human Rights, *Human Dignity and Human Rights*, Swiss Initiative to Commemorate the 60th Anniversary of the UDHR, University of Denver, June. at p. 8

⁴¹ Amanda Plogh (2012), Why Dignity Matters: *Dignity and the Right (or not) to Rehabilitation from International and National Perspectives*, *International Law and Politics*. Vol.44:887, at p. 895

⁴² Rex D.Glensy, (2011), The Right to Dignity, *Colombia Human Rights Law Review*, Drexel University College of Law,[43:65]. at pp. 67-68

⁴³ *ibid.*

⁴⁴ Chirwa, D. M (2010). *State Responsibility for Human Rights, International Human Rights Law :Six Decades after the UDHR and Beyond* :Ashgate Publishing, Ltd.

⁴⁵ Ministry of Justice (2010), Government Response to the Justice Select Committee's Report: "Role of the Prison Officers", Office of Public Sector Information, Information Policy Team, Kew, Richmond, Surrey TW94DU or: licensing@opsi.gsi.gov.uk at pp 9-11

⁴⁶ K. D Gaur (2003), *Criminal Law and Criminology*, Deep and Deep publications PVT LTD, New Delhi. at p. 33

If a prisoner is treated inhuman and failed to be rehabilitated, he may develop negative attitude and may become a criminal after serving the sentence.⁴⁸ Due to this, the dignified treatment of prisoners has always been considered as one of vital issue in the areas of human rights and human rights protection.⁴⁹

There are different international, regional and national legal documents dealing about the rights, treatments and protections of convicted persons as shown below.

2.3. International and Regional Laws

2.3.1. Normative Framework for the Rights of Convicted Person

The United Nations has issued several instruments which are important for the protection of the rights of persons under custody and those who are already convicted. The manners on which these international instruments protect these groups of individuals is often dealt with rendering specific provisions directly or indirectly based on the recognized human rights protection of convicted person. These protections are in fact very important with the treatments and human rights protections of convicted prisons as a human being.⁵⁰

Some of these international instruments are, United Nation Charter, 1945; Universal Declaration of Human Rights, UDHR, 1948; International Covenant on Civil and Political Rights ICCPR,1966; International Covenant on Economic, Social and Economic Rights, 1966, ICESCR; International Covenant for the Prevention of all forms of Cruel, Inhumane, Degrading Treatment or Punishment, 1984, CAT; International convention on the Rights of the Child, 1989, CRC; United Nations Standard Minimum Rules for the Treatment of Prisoners, SMR,1957; Basic Principles for the Treatment of Prisoners 1957; the Body of Principles for the Protection of All persons under Any form of detention or imprisonment, 1988 and the code of Conduct for Law enforcement Officials, 1979.

The United Nation Charter Article 1.3 endorsed a principle to achieve in solving human right problems and fundamental freedoms for all people without a distinction as to race, sex, language, religion ⁵¹or other status.⁵²

⁴⁸ Ministry of Home affairs (2003), Model Prison Manual for the Superintendence and Management of Prison India. at p. 225

⁴⁹ Paras and Diawan (1998), *Human Rights and The Law*, New Delhi, India. at p. 48

⁵⁰ The Association for the Prevention of Torture, (2004), *Monitoring Places of Detention a Practical Guide*. Geneva, at p. 22

This recognized the right in the charter was also included in the ICCPR⁵³ articles 9 and 10 of the covenant. It is stipulated the penitentiary system should underscore the protection of the rights of convicted person to achieve the reformation and rehabilitation of convicts. Further, Article 7 of the convention prohibits any form of inhuman or degrading treatments⁵⁴ against convicted persons and the need to accommodate convicted persons with their legal status.

This dignified protection for prisoners reoccurs on Article 1 of CAT by prohibiting the intimidation and coercion of individuals by persons acting in an official capacity that could affect physical and mental pain.⁵⁵ These prison officers are in full response to respect and protect human dignity and to uphold human rights of persons under their control.⁵⁶

From this perspective, the General Comment No.21 on Civil and Political Rights addresses on persons deprived of their liberty by constituting "... *respect for the dignity of prisoners must be guaranteed under the same conditions as for that of free persons. Persons deprived of their liberty should enjoy all the rights set forth in the Covenant, subjects to the restrictions that are unavoidable in a closed environment.*"⁵⁷

In addition, paragraph 5 of the Basic Principles for the Treatment of Prisoners, recoils the same thought by stipulating;

"except for those limitations that are demonstrably necessitated by the fact of incarceration, all prisoners shall retain the human rights and fundamental freedoms set out in the Universal Declaration of Human Rights, and, where the State concerned is a party, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights and the Optional Protocol thereto, as well as such other rights as are set out in

⁵³ UN General Assembly, *International Covenant on Civil and Political Rights*, Resolution no. 2200 A (XXI), December 1966. Article 9

⁵⁴ see more on the definition given on Principle 7 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, stated that; "*The term "cruel, inhuman or degrading treatment or punishment" should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental, including the holding of a detained or imprisoned person in conditions which deprive him, temporarily or permanently, of the use of any of his natural senses, such as sight or hearing, or of his awareness of place and the passing of time.*"

⁵⁵ UN General Assembly, *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, Resolution 39/46 of 10 December 1984 entry into force 26 June 1987, in accordance with article 27 (1)

⁵⁶ UN General Assembly, *Code of Conduct for Law Enforcement Officials*: Resolution 34/169 of 17, December 1979. Article 5: Stipulates that "No Law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhumane and degrading treatment or punishment ..."

⁵⁷ UN Human Rights Committee (1992) General comment No. 21 Replaces general comment 9 concerning humane treatment of persons deprived of liberty (Art. 10) : . 10/04/92. CCPR General Comment No. 21, paragraph 28 (General Comments) (available at: <http://www.unhchr.ch/tbs/doc.nsf/0/3>)

other United Nations covenants."⁵⁸

Moreover, the 1955 Congress which was held in Genève referred as the first United Nations Congress on the Prevention of Crime and the Treatment of Offender provides internationally accepted standards of treatments and prison administrations. This document which was taken as Preliminary Observation, advocated the non discrimination of groups of individuals due to their race, sex, color or any other status.⁵⁹ The resolution under its article 8 and 67 require the separation of prisoners taking into account their criminal record or bad influence to other prisoners. The same instrument has also required the provision of information on regulations governing the treatment of prisoners under ones category, as well as the discipline measures by the institution and the methods of making complainant so that one can adapt life in the institution.⁶⁰

With respect to regional instrument, we find similar provisions of protection and promotion of human rights of convicted persons either directly or indirectly.⁶¹ The most important regional instruments are the African humans and Peoples rights charter and the African charter for the rights and welfare of the child.

Under Article 5 of the African Human Rights Charter, the state parties are under obligations to protect the natural human dignity of persons from any forms of abuse and exploitations as well from torture, cruel, inhuman and degrading treatments and punishments. Likewise, Article 17(2) of charter on the rights and welfare of the child, recognizes the human rights protection of children to be put in separate prisons from those convicted persons and protection from torture and inhumane treatments and punishments.⁶²

In addition, the African Youth Charter Article 2 provides the non discrimination of every young person to the rights recognized by the Charter irrespective of race, ethnic group, color,

⁵⁸ UN General Assembly, Supra note 7

⁵⁹ UNESC, Standard Minimum Rules for Treatment of Prisoners, Supra note 3.

⁶⁰ *ibid* Article 35

⁶¹ The African Commission on Human and Peoples' Rights meeting at its 17th Ordinary Session held from 13 to 22 March 1995, Lomé, Togo: Consider on its paragraph 2 that, the African Charter on Human and Peoples' Rights extend to all categories of persons including prisoners, detainees and other persons deprived of their liberty

⁶² African Charter on the Rights and Welfare of the Child. OAU Doc. CAB/LEG/249/49 (1990), entered in to force Nov.29,1999. See more on Resolution on Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (2002), Article 36, require states: " to take steps to ensure juveniles, women, and other vulnerable groups should be held in appropriate and separate detention facilities."

sex...or other status.⁶³ On the same Charter, it stipulated under Article 18 "*Every young person accused or found guilty of having infringed the penal law shall have the right to be treated with humanity and with respect for the inherent dignity of the human person.*"⁶⁴

Among multiple rights recognized on the international and regional human right instrument four important rights are discussed in detailed manner on the subsequent part. These specific rights are the right to health and food, the right to be visited by family members, good order to dignified treatments of inmates and access to prompt justice in relation to pardon and complaint mechanism.

2.4. Specific Rights in Relation to the Treatment of Convicted Persons under Human Rights Frame Work

In this section of the research, selected rights of convicted person are assessed in terms of their rights to health, food, security, visit and complaint mechanisms. The rationale behind for selecting these aspects is because these rights are respectively linked to multiple administrative apparatuses installed for the rehabilitation of convicted person.

2.4.1. The Right to Health

Convicted persons share the same right to health and well being as any person.⁶⁵ Since prisoners mostly come from socially disadvantaged segments of the communities, they may carry a higher burden of communicable and non communicable diseases compared to other community members.⁶⁶ States have special sovereign duty of care for prisoners. They are accountable for all avoidable health impairments to prisoners caused by inadequate health care measures or inadequate prison conditions with regard to hygiene, catering, space, heating, lighting, ventilation, physical activity and social contacts.⁶⁷

Further, prisoners' health issue is public health concern because they are closely linked to communities. It is through receiving visitors, contact with prison officer or during going back to the community while released.⁶⁸ Thus, the fact that prisoners eventually re-integrate to the

⁶³ Assembly of Heads of State and Government of the Union, *African Youth Charter*, Adopted by the Seventh Ordinary Session by the Assembly, Article 2

⁶⁴ Assembly of Heads of State and Government of the Union, *African Youth Charter*, on Article 18 (1)

⁶⁵ UNODC (2006), *Custodial and Non-Custodial Measures*, The Prison System, Criminal Justice Assessment Toolkit, New York. at pp. 13-14

⁶⁶ *ibid*

⁶⁷ Lines R.(2008), The Right to Health of Prisoners in International Human Rights Law, *International Journal of Prisoner health*, at pp. 43 - 52

⁶⁸ UNODC (2006), *Supra* note 65

society and prison personnel constantly communicate between prisons and their communities justify for the rational of accession of prison health as public health, due to its wider effect to the community.⁶⁹

In terms of the normative standards the Right to health would find multiple binding instruments. The UDHR, ICESR, CRC, CEDAW are some of the most but not all important instruments that recognize the fundamental privileges of convicted persons.

Article 25 of the UDHR stipulated that everyone has a right to health and well being of himself, including medical care and social services. To this effect; article 12 of ICESCR stated that: "*The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.*" These physical and mental treatments were believed to be provided for all without discrimination or their legal situation.⁷⁰

With regard to the scope of treatment the General Comment No. 14 stated that "*...the right to health must be understood as a right to the enjoyment of the various facilities, goods services and conditions necessary for the realization of the highest attainable standard of health.*"⁷¹ Accordingly, to the Committee define the scope of public health and healthcare facilities, goods and services have to meet the requirements of *availability, accessibility, acceptability and quality.*⁷²

Since the thesis is interested in the treatment of prisoners with their right to health, the following statements by the committee are very essential. The first two refer to states parties' obligations as to the right to health. It stated that: "*States are under the obligation to respect the right to health, by inter alia, refraining from denying or limiting equal access for all persons, including prisoners and detainees..., to preventive, curative and palliative health services*", and that "*States parties are also obliged to fulfill (provide) a specific right contained in the covenant when individuals or a group are unable to realize that right themselves by a means at their disposal.*" A third statement explicitly includes in the right to health indicate that, "*right to be free from torture.*"⁷³

⁶⁹ Ibid at p. 51

⁷⁰ UN General Assembly, Supra note7, Principle 9

⁷¹ UN ICESR Committee General Comment No. 14, the Right to the Highest Attainable Standard of Health.

⁷² *ibid.*

Among other international standards that can be raised from right to health is Principle 24 of the Body of Principle for the Protection of all Persons under Any Form of Detention or Imprisonment. It stipulated that; "*a proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge.*"⁷⁴

Moreover SMR Rule 24 stipulates that, prison medical officers enclose an obligation to examine the physical and mental status of a prisoner, upon arrival of the prisoner. They are required to protect the prison compound from potential new infection or contagious conditions that may come with newly admitted prisoner. This protection realized by segregating the affected prisoner from the other prisoners.⁷⁵ Hence, the prison facilities are required to acquire a qualified medical officer with knowledge to determine the psychiatry of inmate status.⁷⁶

In other circumstances, a Life Sentenced and Long Term imprisonment could develop a problem of de-socializing effects because, they are institutionalized for substantial period of time. They may experience a range of psychological problems (including loss of self-esteem and impairment of social skills) and become increasingly detached from society.⁷⁷ To this effect, the SMR Rule 22/1/ require that, at least in every prison institution there should be a qualified psychiatrist who could render medical service.⁷⁸

Thus, a state that passes long term imprisonment up on inmate should succeed in compensating the psychiatry trauma in a positive and proactive manner⁷⁹. The UN Recommendation on Life Imprisonment, 1994 recommends that, states should provide life sentence to convicted persons with "*opportunity for communication and social interaction and opportunities for work with numeration, study and religious, cultural, sports and other leisure activities.*"⁸⁰

Bearing in mind the international normative protection for the right to health, the regional human right frame work has also adhered to the right to health care for prisoners. The African

⁷⁴ UN General Assembly, *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, Resolution 43/173 of 9 December 1988. Principle 24.

⁷⁵ UNESCO, Standard Minimum Rules for Treatment of Prisoners Rule, Supra note 3; Rule 24

⁷⁶ *ibid* Rule 22

⁷⁷ UNODC (2006) Supra note 65, at p.31.

⁷⁸ UNESCO, Standard Minimum Rules for Treatment of Prisoners Rule, supra note 3 Rule 22

⁷⁹ *Ibid*

⁸⁰ UN Recommendation on Life Imprisonment, 1994

Youth Charter require member states to ensure the separate treatment and provide appropriate education, health as well as programs that could ensure the reformation of young offenders in conflict with the law.⁸¹ In addition, the African Resolution on Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhumane or Degrading Treatment or Punishment, provided that, persons who are deprived of their liberty by public order must be offered appropriate medical care and examination during imprisonment.⁸²

More to this, the Ouagadougou Declaration and Plan of Action on Accelerating Prisons and Penal Reform recommend that, prison institutions are ultimately responsible to maintain the dignity and health of the convicted persons in spite of the institutions financial constraint. To assure this protection, prisons are expected to foster their internal income, adopt appropriate system, promote transparent management and able to facilitate training for prison staff.⁸³

From all the above principles one can deduce, convicted persons have no alternative but to rely on prison authorities to protect and promote their health.⁸⁴ To safeguard the right to health of convicted persons, international law and regional instruments subordinate the state a legally enforceable duty of care. If not complied a state can be held accountable for failure to prevent all forms of avoidable health impairments or damage to the well being of its convicted persons, unless state bodies proved that they didn't cause the harm directly and (cumulatively) that it has taken all reasonable measures of safeguarding and prevention.⁸⁵ Failing to do so, would represent a violation of human rights and setback for good order.

Alongside with this fundamental right, which applies to all persons, convicted persons have got additional safeguards as a result of their status. When a state deprives people their liberty, it takes on a responsibility to look after their health in terms both of the conditions under which it detains them and the individual treatment that would be necessary.⁸⁶ Prison administrations are not only responsible to ensure effective answer for prisoners to medical care

⁸¹ Assembly of Heads of State and Government of the Union, Supra note 61. Article 18 (2) /b/c/d/e/ with cumulative to Article 16

⁸² ACHPR, *Guidelines and Measures for the Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa*, Resolution no. 61 (XXXII) 2002, Article 20 /b/ and 50 /a/

⁸³ The Ouagadougou Declaration on Accelerating Prison and Penal Reform in Africa, adopted at the at the second pan-African Conference on Prison and Penal Reform in Africa, held in Ouagadougou, Burkina Faso between 18–20 Sept. 2002

⁸⁴ See more UN ICESR supra note 71, which gave guidance how member states should pursue to the fulfilment of right of health.

⁸⁵ WHO (2008), Fact Sheet No. 31: The Right to Health, OHCHR, Geneva, Switzerland. at p .31

⁸⁶ OHCHR (2005), Human Rights and Prisons: *Manual on Human Rights Training for Prison Officials*, NY. at p. 63

but also to establish conditions that promote the well-being of both convicted persons and prison itself. This applies to all aspects of prison life, especially to healthcare.⁸⁷

In general, convicted persons imprisonment must include accommodation, which offers enough space, light and fresh air, good hygiene and clean sanitary facilities, clothing and heating suitable for the climate and adequate nutrition adapted to individual needs.⁸⁸ Prison health services shall adhere to access a doctor at any time of detention with undue delay, equivalence of care, the patient's consent and confidentiality, preventive health care, humanitarian assistance to vulnerable prisoners, professional independence and professional competence.⁸⁹

2.4.2. The Right to Food

Once we establish the determinant need of good hygiene and nutrition for better health care of convicted persons, the hygienic aspect realized through provision of adequate food in terms of calories, proteins and other specific nutrients.⁹⁰ Although, convicted persons are deprived of their liberty, it couldn't constitute any kind of maltreatment in respect to their dignity. Their liberty should be seen by state compliance on the provision of adequate food, drinking water, accommodation, clothing and bedding. ⁹¹ Article 11/2//a/of the ICESCR substantiate the need for "*adequate food*" by stipulating that member states should utilize scientific knowledge and agrarian system.⁹² This scientific standard is binding for states who are signatory to the covenant, where Ethiopia is one.

Furthermore, the Office for High Commissioner for Human Rights /OHCHR/ defines "*food*" by emphasizing the elements of "*availability*", "*accessibility*" and "*adequacy*" of food.⁹³ Where "*availability*" is about food should be found on natural resources from markets, "*accessibility*" was defined that everyone should able to obtain it in economical and affordable manner for all people including prisoners.⁹⁴ The "*adequacy*" of food was interpreted as dietary

⁸⁷ *ibid* at p. 65

⁸⁸ Lines R.(2008), *Supra* not 67, at p.32

⁸⁹ *ibid*

⁹⁰ OHCHR, CESCR General Comment No 12: The Right to Adequate Food: Adopted at the Twentieth Session of the Committee on Economic Social and Cultural Rights, on May 1999. (Contained in Document E/C.12/1999/5) paragraph,6.

⁹¹ UN General Assembly, *Universal Declaration of Human Rights*, Resolution 217 A (III) of 10 December 1948. article 25; CRC, article 27; Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhumane or Degrading Treatment or Punishment in Africa, Para 34.

⁹² UN General Assembly *Supra* note 52

⁹³ FAO (2010), *The Right to Adequate Food*, OHCHR, Geneva, at p.2

⁹⁴ *ibid* at pp. 2- 3

need that is necessary for the physical and mental development as well as essential to medical necessity.⁹⁵

This nutritional aspect for fulfillment of "*food*" was conferred in the regional instrument on Africa Youth Charter, Article 16/2//h/ by requiring state parties to pursue for the full implementation of the right to food security for all and especially for people living with HIV/AIDS.⁹⁶

In this respect, it is observed the manner and extent of achievement obtained by the Federal Maximum Security Prison adequacy of the standard of human right, in relation to exigency administrative attentiveness for the fulfillment of calories, proteins for both convicted persons and specific nutrient needs for prisoners with medical care. Thus, failure to take deliberate, concrete and targeted reform is disregarding for the principal obligation for the progressive realization of food.⁹⁷

2.4.3 Regulating Security and Punishment to preserve the dignity of Inmates

This section of the research work only deals with security in terms of physical security of prisoner and the prison itself. The concept of security in prison has been evolving overtime, with the changing perception of safety, risk and threats.⁹⁸ Nevertheless, it is essential to maintain the balance among security, control and justice to administer a prison. It is underscored the proper treatment of prisoners with humanity and fairness, would not only reduce effective security and control.⁹⁹ Security, control and justice are inextricably linked, it is noted the balance the issue in administration of Prison.¹⁰⁰ Therefore, the objective of this section is to demonstrate, three main elements that could achieve moderate environment to preserve good order while respecting dignity. These are appropriate security, control and disciplinary measures.

2.4.3.1 Physical Security to Preserve for Dignity of Convicted Person.

Physical Security measure refers to the human action that the prison authorities take to

⁹⁵ Ibid at p. 3

⁹⁶ Assembly of Heads of State and Government of the Union, supra note 63 on the, Article 16/2//h/

⁹⁷ Amnesty International, Human Right for Human Dignity (2005), A Primer on Economic, Social and Cultural Rights, Amnesty International Publication, United Kingdom, www.amnesty.org. at p. 20

⁹⁸ SDC (Editor) and Contributor (2008), *Rule of Law, Justice Sector Reforms and Development Cooperation*: Concept Paper, Swiss Federal Department of Foreign Affairs. at p. 9

⁹⁹ A.Coyle, (2nd ed., 2009) *A Human Rights Approach to Prison Management*: Handbook for Prison Staff, publisher International Center for Prison Studies, UK. at p.58

¹⁰⁰ ibid at pp. 59-60

deter escaping without causing harm to the dignity of convicted person.¹⁰¹ This understanding projected on multiple international and regional instruments among them;

Article 5 of the UDHR, Article 1 of CAT and Article 7 of ICCPR provides; "no one should be subjected to torture or cruel, inhumane or degrading treatment or punishment." However, the absolute prohibition of all form of torture has consequences for the use of force and weapons by prison staff with a due consideration of necessity, legality and proportionality. Article 3 of the Code of Conduct for Law Enforcement Officials provides that "*law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty*".

Furthermore, the same understanding reiterated by the Basic Principles on the Use of Force and Fire arms by Law Enforcement Officials Principle 9; which stipulates "*Law enforcement officials shall not use firearms against persons except ... to prevent his or her escape, and only when less extreme means are insufficient to achieve this objective.*"

This extreme measure could only utilized where instrument of restraint such as handcuffs, chains..., did not succeeded while applying to prevent as precaution against escape, for medical purpose or in cases for to prevent the convicted person from injuring himself or others or damaging property.¹⁰²

Prevention of escape is the very nature of prison, it is essential to utilize separate accommodation to certain groups from others in order to protect their basic rights. It is essential to acknowledge a good utilization of prison facilities cannot be disassociated from good offender population management, including the use of a good classification system.¹⁰³

SMR Rule 8 and 10 describes the international standard and norms for different categories of prisoners' accommodation. It is stipulated the separation of categories of prisoners, shall be made taking into account of their sex, age, criminal records or special needs they require.¹⁰⁴ The accommodation on their dormitories shall meet all the requirements of health and at all times every inmate should be kept in registration book with respective prisoner.¹⁰⁵

¹⁰¹ UNODC (2010), *Handbook for Prison Leaders: A Basic Training Tool and Curriculum for Prison Managers* Based on International Standard and Norms, Criminal Justice Handbook Series. NY, at p.99

¹⁰² UNESC, Standard Minimum Rules for Treatment of Prisoners Rule, Supra note 3 Rule 33

¹⁰³ UNODC (2010) Supra note 101, at p.65

¹⁰⁴ UNESC, Standard Minimum Rules for Treatment of Prisoners Rule, Supra note 3 Rule 8

¹⁰⁵ See more on the SMR Rule 43 and 44 which stipulates that; the registration should also involve all valuables and belongings which is not allowed to retain within prison upon admission and such registered properly shall be returned to the prisoner on release.

From the regional instrument, the physical security of the convicted person is not implicated directly. However, the banju charter Article 5 prohibits that, "*all forms of degrading treatment or punishment are prohibited in every individual.*" Furthermore, the guidelines and measures for the prohibition and prevention of Torture, Cruel, Inhumane or Degrading Treatment or Punishment in Africa (the Robben Island Guidelines), Guideline 11 has shown that, no one cannot invoke orders of superior as an excuse for an act of degrading treatment of punishment. Therefore, both international and regional instruments promote dignified treatment while maintaining physical security.

2.4.3.2 Good order and Control for better Treatment

Good order involves much more than physical control. It has evolved with procedural aspect. Procedural aspect presumes the existence of set of rules and regulations which govern the daily lives of those who are in prison in order to ensure that everyone - staff, convicted person and visitors - could go about their business without fear for their personal safety.¹⁰⁶ Safety measures in prison refers to the action, that the prison authorities take to maintain good order and control in prison to prevent convicted persons being disruptive and to protect vulnerable convicted persons.¹⁰⁷

Some of the most important procedures concerned with searching takes-up both physical spaces and individuals. In prison there should be a clear set of procedures which describe in detail the circumstances in which, how frequent and when would search carried out. These procedures must be designed to prevent escape and also to protect the dignity of prisoners and their visitors. The approach encourages prisons to own a regular procedure for searching all places where prisoners live, work or congregate.¹⁰⁸

Depending on the security category of the prisoner, his or her personal property should also be subject to search from time to time. A prison staff to this effect needs to be specially trained to carry out these searches in such a way as to detect and prevent any escape attempt or secretion of contraband.¹⁰⁹

Beyond regular procedural scheme, prevention of escape would require a qualitative

¹⁰⁶ A.Coyle, (2nd ed., 2009), Supra note 99, at pp. 59 and 67

¹⁰⁷ UNODC (2010) Supra note 101, at p. 99

¹⁰⁸ A. Coyel, (2nd ed., 2009), Supra note 99 at p. 59

¹⁰⁹ *ibid*

security called dynamic approach.¹¹⁰ This is achieved where, prison staffs become informed about what is going on the prison and participate actively in a positive way by creating a regular contact with inmates.¹¹¹

To capitalize this concept the basic international instruments, Rule 27 of the SMR provides that "... order shall be maintained with firmness, but with no more restriction than is necessary for safe custody and well-ordered community life." Furthermore, Principle 25 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment stipulates that, a convicted person should only be subjected to reasonable conditions of security and good order in the place of imprisonment.

Thus, it is vital to determine the level of conditions of reasonable "control" to bring good order within a prison so that prison staffs could perform their task with upholding professional integrity and due respect to the human rights of prisoners.¹¹²

2.4.3.3 Discipline and Punishment

The third element for ensuring good order prison with dignified treatment in prison is the utilization of the Discipline and Punishment Procedure. Prisons by their nature are closed institutions in which large groups of people are held against their will in confined conditions.¹¹³ From time to time, it is inevitable that some convicted persons will break the rules and regulations of the prison in a variety of ways. This may be by attacking another person physically, by taking something which does not belong to them, by refusing to follow the daily routine, by disobeying a legitimate order, by attempting to smuggle in to prison items which are not allowed or in some other way.¹¹⁴ Under, these circumstances the disciplinary mechanism has to set out a clear set of procedures for dealing with such incidents.¹¹⁵

The fairness of disciplinary procedures in the international instrument seen in the Body of Principles for the Protection of All Persons Under any Form of Detention or Imprisonment, Principle 30 provides that;

"1. The types of conduct of the detained or imprisoned person that constitute disciplinary

¹¹⁰.ibid

¹¹¹ ibid

¹¹² UNESCO, Standard Minimum Rules for Treatment of Prisoners Rule, Supra note 3, Rule 46/2/

¹¹³ A. Coyel, (2nd ed., 2009), Supra note 99 at p.79.

¹¹⁴ ibid

¹¹⁵ UNESCO, Standard Minimum Rules for Treatment of Prisoners Rule, Supra note 3, Rule 28

offences during detention or imprisonment, the adoption and duration of disciplinary punishment that may be inflicted and the authorities competent to impose such punishment shall be specified by law or lawful regulations and duly published.

2. A detained or imprisoned person shall have the right to be heard before disciplinary action is taken. He shall have the right to bring such action to higher authorities for review.”¹¹⁶

In addition, Rule 29 of the SMR for the treatment of convicted persons requires the authority to facilitate for an accused person at any fault to be informed for all matters that is necessary for his litigation and enable him to understand both his rights and his obligations.¹¹⁷

As a result, the extent of punishment should be just and proportionate to the offence committed by the convicted person and only those punishment sets down in the legal document that approved by the authority.¹¹⁸

This meant all disciplinary punishment can only be taken after a formal hearing conducted according to the procedures formulated by the authority to investigate guilt. Such hearings should be conducted on an individual basis even when there is a mass refusal to obey a rule or an assault involving a number of prisoners.¹¹⁹ In addition Rule 28 of the SMR completely prohibits prisoners functioning in a disciplinary capacity.¹²⁰ These measures taken by the prison administration shall promptly be reported to the competent authority about the allegation and punishment for infringement.¹²¹

The international instrument connotes that administrative punishments could include a formal recorded warning, exclusion from work, forfeiture of wages (where these are paid for prison work), restriction on involvement in recreational activities, restriction on use of certain personal possessions, restriction on movement in the prison.¹²² In the mean time, prison discipline should not be retributive but reformatory; not repressive but curative; and should be carried on with a view to foster the basic values of life and humanity.¹²³ Further, these punishments were not expected to include any restriction on family contact, either by letter or by visit because such restriction also amounts to punishment against family and friends of the

¹¹⁶ UN General Assembly, Supra note 74 Principle 30.

¹¹⁷ UNESC, Standard Minimum Rules for Treatment of Prisoners Rule, Supra note 3, Rule 29

¹¹⁸ UNESC, Standard Minimum Rules for Treatment of Prisoners Rule, Supra note 3, Rule 30/1/

¹¹⁹ A. Coyle, supra note 99 at pp. 82-83

¹²⁰ UNESC, Standard Minimum Rules for Treatment of Prisoners Rule, Supra note 3, Rule 28

¹²¹ UNESC, Standard Minimum Rules for Treatment of Prisoners on Rule 30/2/

¹²² OHCHR (2005) Supra note 86 at pp.91-94

¹²³ Ministry of Home affairs (2003) Supra note 48 at p. 225

convicted person.¹²⁴

In regional instance, the Ogadugu Declaration; recommends that, prison administration procedures for implementation punishment should only apply to a clear set of rules that govern the right and duties of the prisoner. And prison officials should also maintain a due consideration for the rule of law while enforcing a disciplinary measure.¹²⁵ It has asserted that these decisions made by the administration organ could be reviewed for its fairness by independent body.¹²⁶

Thus, one can perceive both the regional and international human right instruments adhere to the prevalence of equality before the administrative body. In consequence, transparency and accountability could be observed through rule of law while rendering a decision up on convicted person.

2.4.4 Convicted Persons and the Right to Visit

The right to visit is not to be adventurously lost by a convicted person up on conviction. Indeed it has been recognized that, while the family life is inevitably restricted for an individual while incarcerated, it is of particular importance that convicted persons are able to maintain family connection through family visits and other communications.¹²⁷ Prisons and laws must give special attention to the maintenance of such relationships between a convicted person and his /her families are desirable in the best interest of both.¹²⁸ Visits are crucial to sustain relationship with close relatives, partners and friends. Their imprisonment should not emphasize on their exclusion from the community, but rather on their continuity being part of it.¹²⁹

To achieve this, the international normative standards articulate multiple protection clauses for such observance. Among them; the UDHR, Article 12 stipulates that “*No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence...*”¹³⁰ Article 23 of ICCPR confirms such privilege by providing, “*The family is the natural and fundamental group unit of society and is entitled to protection by society and the state.*”¹³¹

¹²⁴ OHCHR (2005) Supra note 86 at p. 117

¹²⁵ The Ouagadougou Declaration on Accelerating Prison and Penal Reform in Africa, adopted at the at the second pan-African Conference on Prison and Penal Reform in Africa, held in Ouagadougou, Burkina Faso between 18–20 Sept. 2002.

¹²⁶ *ibid*

¹²⁷ Pier Hein van Kampen, Supra note 4, at p 22. This correspondence may include postal service and telephone calls

¹²⁸ *ibid*

¹²⁹ Ministry of Home affairs (2003) Supra note.48 at p. 225

¹³⁰ UN General Assembly Supra note 91, Article 12

Moreover, the same entitlement was protected under Principle 19 of the Body of Principles for the Protection of All Persons under Any form of Detention Imprisonment. It is stipulated an imprisoned person should have a right to be visited by and correspond with, in particular, members of his family and must be given for adequate opportunity to communicate with the outside world.

The same instrument under Principle 20 stipulates that an imprisoned person shall be kept in a prison reasonably near to his residence, so that his relation to his family could be intact. In addition SMR Rule 39 promotes prisoners to be informed regularly with more important news items by ways of reading of news paper, periodicals or special institutional publications as authorized or controlled by administration so that they can retain a contact with outside world. Aside from personal visit and publications, letters are considered the most practical and cheapest way to maintain contact with the family¹³²

Promoting inmates to become crime free persons is also observed under the Ogadugu Declaration. The recommendation 3 by the declaration required member states to utilize a great effort for the positive program that focuses on comprehension of the reintegration of offenders. Accordingly, the recommendation promotes maintaining contact with family through physical and other appropriate mechanisms. Furthermore, it specifies the implementation should be made taking into consideration the standards that is underpinned under the international bill of rights.

To this effect one can see the compliance with both the international and regional instruments in relation to convicted persons contact with the outside world could be made through visit, letters or news papers. Thus, both standards have given a due consideration into inmate's future opportunity and motivate to maintain relations with the outside as that may enhance for the best interests of their family and their own social reintegration.¹³³

2.4.5 Complaint Mechanism

The other basic tool for prompt justice within prison facilities is a right to grievance. It is important to acknowledge, the rule of law does not end at the prison gate,¹³⁴ and having effective system will strengthen human right protection.¹³⁵

¹³² OHCHR (2005) Supra note 86, at p. 119.

¹³³ UNESC, Standard Minimum Rules for Treatment of Prisoners Rule, Supra note 3, Rule 80

¹³⁴ Howard Sapers,(2011), Correctional Investigation of Canada: Criminal Justice and Correction. March University of Alberta. 41

¹³⁵ Digby Griffith (2016). National Offender Management Service. Equality, Rights and Decency Group.

The basis in the international instrument can be seen on ICCPR Article 2/3/ which provides that, *Each State Party to the present Covenant undertakes:*

1. *To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; to ensure that any person claiming such a remedy shall have his rights thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State,;"*

Moreover, the Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment provides under; *Principle 33:*

1. A detained or imprisoned person or his counsel shall have the right to make a request or complaint regarding his treatment, in particular in case of torture or other cruel, inhuman or degrading treatment, to the authorities responsible for the administration of the place of detention and to higher authorities and, when necessary, to appropriate authorities vested with reviewing or remedial powers.¹³⁶

This understanding on bringing complaints to higher competent authority has projected on the SMR Rule 55. Which stipulates that, there shall be a regular inspection of the penitentiary for observing the rules and regulations that govern the adjudication made within the correction services.

Thus, the complaint mechanism can be made for internal administrative authority or for independent body that is committed to entertain the complaint by the convicted person. This Rule has been endorsed in the regional instrument as well. The Robben Island Guidelines 19 require states, to ensure the establishment of readily accessible and fully independent mechanism to which all persons could bring their allegation of torture and ill treatment to the competent organ.

Therefore, it became apparent, both international and regional settings for the right to lodge a complaint against any protections guaranteed to convicted person can be remedied through internal or external competent authority. And this can be realized either by inmates

¹³⁶ UN General Assembly, Supra note 74, Principle 33

themselves or through their representative or close family.

2.4.6 Insertion of Long Term Prisoners and Persons under Death Penalty as Special Category with Specific Claims.

Juveniles, Women, Mentally ill, and Long Term convicted persons as well as Persons under Sentence of Death are taken as special category in the prison confinement¹³⁷. However, due the scope of the study, the research work entertained for convicted persons who are Long Term Convicted, Life Sentenced and Persons under Death Sentence.

In relation to Death Sentenced inmates the Economic and Social Council proposed the protection of the rights of those facing the Death Penalty by urging member states in which the death penalty carried out to apply the penalty with a minimum possible suffering.¹³⁸ Moreover, the resolution encourages the alteration or substitution of death sentence to a lesser level through commutation of sentence by the state reviewing mechanism. The review mechanism can be pardon or any installed procedure by the state.¹³⁹ The Pardon aspect is widely accepted and practiced by a way of alteration penalty. Thus, the subsequent part will deal with the issue in constructive manner.

2.4.6.1 Access to Pardon

Pardon is the action of the execution to mitigate or to set aside the punishment given upon an individual with a condition or unconditional requisite.¹⁴⁰ Where Long Term Prisoners¹⁴¹ and Persons under Sentence of Death¹⁴² are considered as Special Category, their claims also require special attention. Security being so much tight and totally different from other separate accommodations, convicted persons in Maximum Security Prisons may face higher chance of human rights violations, because of the presumption that they provoke serious security threats to the public in general.¹⁴³

Under the ICCPR Article 14/6/ stipulates that, a convicted person who is permitted to

¹³⁷ OHCHR (2005), Human Right and Prisons: *A Pocketbook of International Human Rights Standard for Prison Officials*. United Nations New York. at pp13-17 See more on UN Economic and Social Council, Safeguard 7

¹³⁸ UN Economic and Social Council, *Safeguards Guaranteeing Protection of the Rights of those Facing the Death Penalty*, Resolution no. 1984/50 of 25 May 1984. Article 9;

¹³⁹ UN Economic and Social Council, *Ibid* at Article 7

¹⁴⁰ "Pardon and Parole" available online at <<http://www.uslaw.com/pardon/>> march 2003

¹⁴¹ UNESC, Standard Minimum Rules for Treatment of Prisoners Rule, *Supra* note 3, Rule 8, Rule 82

¹⁴² UNESC, *supra* note 138

¹⁴³ Marc Mauer Ryans, King, and Malcolmc. Young (2004) *The Meaning of "Life" Long Prison Sentences* ⁴³ *In Context*, The Sentencing Project: Washington D.C. May. at p.30 www.sentencingproject

access Pardon can be compensated with the suffer he/she incurred due to the unjust punishment. However, others argued that pardon is not only to rectify the person due to the unjust punishment, but rather to relive the offender from the consequence of the sentence, while he/she is guilty.¹⁴⁴

The claim also enjoyed by Persons under Sentence of Death which stipulated as: *"Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases."*¹⁴⁵ The provisions validate that Persons under Death Penalty should enjoy this privilege as a mandatory requisite. Because pardon and commutation for Persons under Death Sentence is a last resort and ought to be observed as a right.¹⁴⁶

The reason why pardon should become compulsory for Death Penalty is due to the non retrospective effect of the execution. Safeguard 7 of the Safeguards Guaranteeing Protection of the Rights of those Facing the Death Penalty, stated that: *"Anyone sentenced to death shall have the right to seek pardon, or commutation of sentence; pardon or commutation of sentence may be granted in all cases of capital punishment."*¹⁴⁷ The same concept was strengthened by UN Economic and Social Council, Resolution 1989/64, by recommending that, there should be a *"mandatory appeals or review with provisions for clemency or pardon in all cases of capital offence"*¹⁴⁸

Therefore, most normative and soft laws of human right instrument avowed, for *"... imposition of death sentences without the possibility to seek pardon or commutation of the sentence is incompatible with the International Covenant on Civil and Political Rights."*¹⁴⁹ Thus, it would be eloquent and mandatory for prison reform programs to give a due emphasis to normative and soft law standards that were and put forward. If not, putting Persons under Death Penalty for indefinite period could only be taken as degrading and inhuman treatment.¹⁵⁰

¹⁴⁴ Dorothy Laird, (1959) *How the Queen Reigns: An Authentic Study of the Queen's Personality and Lifework*, Hodder and Staughton London, at p.205.

¹⁴⁵ UN General Assembly, Supra note 53, under Article 6 /4/

¹⁴⁶ UNODC (2006), Supra note 65, at p. 32.

¹⁴⁷ UNESC, supra note 138 at Article Safeguard 7

¹⁴⁸ UN Economic and Social Council, Resolution 1989/64, adopted on 24 May 1989,

¹⁴⁹ Concluding observations of the Human Rights Committee: Yemen, UN document CCPR/CO/75/YEM, 26 July 2002, Para. 15

¹⁵⁰ EU Guideline on the Death Penalty: revised and updated version, Part III, It declares that, where states insist on maintaining the death penalty, the length of time spent after having been sentenced to death is a factor as a minimum

2.5. Nature of State Obligation towards Convicted Person

States have the obligation to respect and ensure the implementation for the international human right law. Member states have the duty to take appropriate legislative and administrative and other appropriate measures to prevent violations.¹⁵¹ The necessity of human right being universal, indivisible and interdependence and interrelated requires the international community to enforce it on the same footing and the same emphasis.¹⁵² This could be made by taking appropriate legislative and administrative as well as appropriate measures to prevent violation under all circumstances.¹⁵³

State responsibility to fulfil for the respect recognized rights in the international laws includes but not only, to ensure effective implementation of the Principles of Medical Ethics particularly Physicians. Providing and facilitating such physical and psychological treatment taken as obligation of the state.¹⁵⁴ If there is any perpetration, the state must guarantee a mechanism for detainee for a prompt justice, thorough and impartial investigative capacity within its domestic law.¹⁵⁵

¹⁵¹ UN General Assembly, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violation of International Human Rights LA's and Serious Violation of International Humanitarian Law*, Resolution 60/147 A/60/509/Add.1, March 2006. Section II

¹⁵² United Nations the World Conference on Human Rights, *Vienna Declaration and Program of Action*, Vienna 25 June 1993. Chapter I paragraph.5

¹⁵³ APF, APT and OHCHR (2010), *Prevention Torture: An Operational Guide for National Human Right Institution*, May, at p 12.

¹⁵⁴ United Nations the World Conference on Human Rights, *supra* note 152, paragraph 58.

¹⁵⁵ UN General Assembly, *supra* note 151, on section II

To realize their claims, victims should be provided by member states the modality of remedies available either through judicial or administrative procedures.¹⁵⁶ In the mean time, States also required developing a mechanism, how victims could be benefited from the installed mechanisms. Among that, information to the public general and particularly for victims, how to pursue their legal or administrative complaint must be communicated.¹⁵⁷ But most important, the Vienna Declaration and Program Action Plan paragraph 61 encourages for the regular visit of detention places as well as promote for the existence of national monitoring methods to the compliance of human rights application within Prison institutions to eradicate torture, inhuman and degrading treatment.

Unit Summary

As this chapter has been extensively indulge itself with the international and regional standards for the treatment of convicted persons. It has also addressed the normative and non normative standards with respect to health and food, security, visit and complaint mechanisms.

It has become evident that inmates' treatment should comprehend the period from their admission up to their premature release. The highest attainable health could be recognized under the normative and soft laws of international and human right instruments such as UDHR, ICESR, SMR and Body of Principles for the Protection of All Persons under Any form of Detention or Imprisonment. These have developed significant norms for treatment of convicted persons physical and mental well being.

The prisoners well being could be achieved through separation of categories with term of imprisonment or special needs they require. Thus, Long Term Prisoners and Persons under Death Penalty considered under a special category. In the mean time, international practice requires member state to balance the need of security and safety in order to achieve a dignified treatment for an effective control over the prison.

Therefore, regulating security and punishment in prison should enable the realization for good order required in prison life. This helps to realize transparent and prompt justice. For realizing an effective and reformed prison, the existence of set of rules on discipline procedure,

¹⁵⁶ UN General Assembly, supra note 151, *ibid*, on section VIII

¹⁵⁷ UN General Assembly, supra note 151, *ibid*, on section X

visit or access to pardon can enhance for protection of convicted persons endowed upon them.

In general promoting and enforcing these normative and soft laws standards in comprehensive manner could bring a better treatment of convicted person. If not, prisons would lose their purpose in correction and rehabilitation of public offenders.

Unit Three: The Legal Framework and Other National Instruments on Treatment of Convicted Persons in Ethiopia.

3.1 Ethiopian Legal Framework

3.1.1 Introduction

In modern Ethiopia, the prison regime has been shaped by four main legal instruments and other subsidiary laws. These major legal frameworks are the FDRE Constitution 1995, the Revised Criminal Code No.414/2004, Proclamation No. 365/2003 on the establishment of a Federal Prison Commission and the Council of Ministers Regulation on the Treatment of Federal Prisoners.

Accordingly, this chapter addresses domestic obligation in complying with the undertakings ratified by the international and regional human right treaties. The common methods are entrenchment of the rights under the constitution, criminalizing the perpetration by the criminal Law and preparation of administrative directives that could enhance the better implementation of the supreme legal framework. Thus, the writer investigates the existing legislation and subordinate directives impact and harmonization with respect to the convicted person humanly treatment.

3.1.2 Treatment of Convicted Person under the FDRE Constitution

The most relevant human right document in Ethiopia is the federal Constitution, which in unprecedented manner covered more than thirty provisions covering human rights and democratic rights. In its Chapter Three, Bill of rights section, the Constitution stipulates several rights of freedoms that each person is entitled. It stated that everyone without any discrimination to sex, religion, age, ethnicity, language or any other grounds has the right to exercise these Constitutional rights.¹⁵⁸

Under this supreme law, the aforementioned international and regional human rights instruments are already ratified by Ethiopia and considered as integral part of the legal system. Therefore, all rights and freedoms incorporated within the constitution and applicable human rights treaties are the natural entitlements of everyone. Moreover, international treaties serve as the interpretation guideline for the constitutional rights as this is stipulated under Article 13(2) of

¹⁵⁸ FDRE Proclamation of the Constitution No. 1/1995, Article 25,

the constitution.

Looking into specific category of persons, all persons that are convicted or imprisoned as the result of their crime are first protected by the general provisions as well as by Articles that explicitly recognize the rights of convicted persons. Given the peculiar circumstances under which convicted persons are in, i.e. imprisonment as the result of deprivation of certain rights as a punishment for their criminal acts, the application of human rights provisions will require proper consideration of other circumstances including separate accommodation which is also required under human rights instruments.

The FDRE Constitution recognizes specific protection on the treatment and rights of convicted persons. For instance, Article 18 of the Constitution prohibits inhumane, degrading, cruel treatments and punishment of any human being. Such prohibition is not allowed for restriction even during state of emergency, therefore, no limitation is allowed even during criminal convictions. Article 21 provides the rights of persons who are under custody, convicted and to those who are in remand. Accordingly, persons under custody have the right to visit by their own family members, close relatives, friends, religious persons, doctors and lawyers.

The same forms of rights are provided under all regional state Constitutions. These regional Constitutions confer the duty upon all organs of the government among others to make all laws to be consistent with the Federal Constitution and respect, protect and fulfill the rights of convicted persons.

3.1.3 The FDRE Criminal Code

One of the most important reforms under the Justice Reform is the Federal Criminal Law, which replaced the 1957 Penal Code. On the current Criminal Code, there are provisions which respond to the treatments and the rights of convicted persons as regulated by the Constitution and international treaties ratified by Ethiopia. According to Article 110 of the Criminal Code the imprisonment of convicted persons /must be/ shall be separated based on sex, age, sentences and those who are still under judicial process and those imprisoned for civil matters /cases/.

The type of punishment passed on the person found guilty varies from imprisonment to capital punishment.¹⁵⁹ These sentences made either to deter or permanently to prevent

¹⁵⁹ FDRE Criminal Code Proclamation No 414/2004. Article 106, Article 108 and Article 117.

wrongdoers from committing further crimes. Similarly, the Code requires the regulation that prepared the execution of the Code should aim to achieve the purpose of the determination of the penalties.¹⁶⁰ It prescribed that, while determining the admission, segregation and communication with the outside of prisons, it is expected to enhance the education and spiritual welfare of the convicted persons.¹⁶¹

One of the treatments incorporated on the Criminal Code is Pardon.¹⁶² It prescribed as Pardon should apply to all penalties to be remitted in whole or in part or commuted in to lesser gravity by an act of Pardon.¹⁶³ The manner of application was left to subsidiary enactments that should be made to this effect. Accordingly, the repealed Proclamation to Pardon was promulgated on the same year on the revised Criminal Code.¹⁶⁴ The content and effect of the Pardon proclamation on the treatment of Long Term Prisoners and Persons under Death Penalty will be addressed on forthcoming part of the thesis.

3.1.4 Federal Prison Establishment Proclamation and Regulation on the Treatment of Convicted persons

Since the central theme for this research is convicted persons, it would be relevant to analyze specific convicted persons protection principles laid in the national laws. According to Article 5 of the Federal Prison Commission Establishment Proclamation, the objective of the commission is to admit and ward detainees, and provide them with correction and rehabilitation service in order to enable them achieve attitudinal and behavioral changes and becoming a law-abiding, peaceful and productive citizens.

These services are being provided without distinction to gender, language, religion, political opinion, nation/nationality, social status or citizenship.¹⁶⁵ From this aspect we can see prison compound are required to fulfill basic adjustments that help building a productive citizen without distinction and respect the dignity of a convicted person. Thus, prisons should not be used to restrain inmates and restrict their movement but also a place to become reformed.

¹⁶⁰ FDRE Criminal Code Proclamation No 414/2004 Article 1. It specify also that; the aim of the code among listed ones is to reform the offender

¹⁶¹ FDRE Criminal Code Proclamation No 414/2004, Article 109

¹⁶² FDRE Criminal Code Proclamation No 414/2004, Article 229

¹⁶³ FDRE Criminal Code Proclamation No 414/2004

¹⁶⁴ These were Proclamation number 395/2004 and the new Amendment Proclamation No 840/2014.

¹⁶⁵ FDRE Council of Minsters Regulation on the Treatment of Federal Prisons No. 138 /2007/, on Article 3

Moreover, Article 18 of the Proclamation for Establishment of Federal Prison, require prison wardens to carry out their duties by taking in to consideration the international human right principles recognized for convicted persons. Their responsibility includes, being faithful to the fundamental principles of the Constitution and to function to lawful orders that are necessary only to carry out their duty.¹⁶⁶ This lawful order to maintain peace and security within a prison may include a reasonable use of force. Hence, a prison guard can exert the use of force not as punishment but to prevent escape and harm to oneself or to another inmates.¹⁶⁷

Additionally, Article 3 of the Regulation of Federal Prisoners Treatment stipulated that, convicted person human dignity should be observed unless it is restricted by the penalty imposed by the competent authority. If not restricted by law, the regulation upholds the fulfillment of every rehabilitative opportunity for all convicted person without discrimination on any ground.

Furthermore, the same regulation prompts the sustainable registry of inmates up on admission in prison.¹⁶⁸ Article 4 stipulated any convicted person should have personal file that contain his/her detail personal as well as medical information.¹⁶⁹ During admission an inmate should also be enlightened about the rules and regulations of the prison either orally or in written form.¹⁷⁰

The national legislative setting encourage for the provision of adequate health and food for inmates during their imprisonment. Although, adequacy of basic need is subjective to interpretation, the domestic realm obliged the authority to fulfill those privileges in timely and in sufficient manner.¹⁷¹

In addition the right to visit by close relatives is one of the Constitutional rights recognized as entitlement. To this effect the regulation on treatment of prisoners sets conditions how visitation should be undertaken and its safety mechanisms.¹⁷² This privileges can also be accessed with inspected correspondence through letter as well as transfer to the locality.¹⁷³

The regulation on the Treatment of Federal Prisoner stipulated good order and Security

¹⁶⁶ FDRE Council of Minsters Regulation on Federal Prison Wardens Administration No. 137 /2007/, on Article 32

¹⁶⁷ FDRE Council of Minsters Regulation on Federal Prison Wardens Administration No. 137 /2007/, on Article 33

¹⁶⁸ FDRE Council of Minsters Regulation on the Treatment of Federal Prisons No. 138 /2007/, on Article 50

¹⁶⁹ FDRE Council of Minsters Regulation on the Treatment of Federal Prisons No. 138 /2007/, on Article 4

¹⁷⁰ FDRE Council of Minsters Regulation on the Treatment of Federal Prisons No. 138 /2007/, on Article 27

¹⁷¹ FDRE Council of Minsters Regulation on the Treatment of Federal Prisons No. 138 /2007/, on Article 4, 10 & 11

¹⁷² FDRE Council of Minsters Regulation on the Treatment of Federal Prisons No. 138 /2007/, on Article 13

¹⁷³ FDRE Council of Minsters Regulation on the Treatment of Federal Prisons No. 138 /2007/, on Article 18 and 19

can be attained from regulating clear set of rules which govern daily lives of those who are in prison. The regulation has specified the type and classification of disciplinary procedures as well as the penalties.¹⁷⁴

Most important protection prescribed under Article 28 provides that inmate's has right to lodge a complaint orally or in writing for any grievance they encountered during their imprisonment.¹⁷⁵ However, unlike the international principle and norms, the regulation limited the opportunity to lodge a complaint by prisoner. Article 22 and 24 of the Proclamation for the Establishment of Ethiopian Human Right Commission stipulated that family members, representatives or by the commission itself an investigation can be instigated.¹⁷⁶ We should bear in mind the Ethiopian Human Right Proclamation has been functional before seven years to that of the federal prisoners regulation. Hence, the restriction by the federal prisoner's regulation could adversely affect the pragmatic treatment of inmates. Because Long Term Prisoners would stay for longer period and they might require multiple administrative remedies. To this effect, the regulation should broaden the manner of complaint mechanism either at personal level or from family and representative prospect.

Consequently, there are multiple directives that are implemented to ensure the operation of the regulation standards. Namely; Directive on Admission and Registration, Directive on Accommodation and Administration, Directive on Discipline and Punishment Procedures, Directive on Transfer to Locality as well as Directive on Health Service.

3.1.4.1 FDRE Directive on Admission and Registration of Prisoners and Convicted persons 2013/14

This directive could show the institutional framework of the Federal Prison Administration in general. The directive consists of four main sections and eighteen Articles. Although the directive lacks to show neither the purpose nor the objective of the enactment in its preliminary section¹⁷⁷, the second section has dealt with the manner in which convicted persons treated within the institution.¹⁷⁸ The directive on its multiple provisions has dealt with security,

¹⁷⁴ FDRE Council of Ministers Regulation on the Treatment of Federal Prisons No. 138 /2007/Article 36,37,38 & 39.

¹⁷⁵ FDRE Council of Ministers Regulation on the Treatment of Federal Prisons No. 138 /2007/, on Article 28

¹⁷⁶ FDRE Human Right Commission Establishment Proclamation No. 210/2000 Article 22 &24

¹⁷⁷ Office of Legislative Council (2013), *A Guide to Legislative Process in British Columbia*, Ministry of Justice Province of British Columbia. p. 9. It was stated that; besides to the need for defining words and expressions used in the Act, a certain legislative process should indicate the purpose of the directive. at p. 9

¹⁷⁸ FDRE Prison Administration, Supra note 14, Article 5

health and food, visit and complaint mechanism.

To begin with, under Article 4 of the directive it is stipulated the new reformed institutional setting in the prison compound in different categories taking different aspect.¹⁷⁹ These classifications created to realize human treatment of inmates.¹⁸⁰ These standards are:-

- Male Remand Prison:- it comprises all type of criminal counts with a court appointment detainee /Kilinto/
- A Maximum Security Prison: - basically it is intended to hold convicted persons with a sentence from fifteen years up to death sentenced. However, for multiple social reasons the compound also required to hold convicted persons above the age of fifty-five, persons with medical attention, convicted person under three month period and convicted persons with mental sickness /kality/;
- A Medium Security Prison¹⁸¹:- are those convicted persons with sentence from five years up to fourteen years and eleven month and twenty nine days as well as convicted persons under the age fifty five placed under Prison in Zeway;
- Minimum Security Prison:- is a facility that hold convicted persons from three months sentence up to five year conviction rate and placed in Shwarobit Prison;
- Dire Dewa Comprehensive Prison:- is a prison facility which takes-up male and female remand and convicted persons as well as Life Sentenced prisoners;
- The Female Prison Administration: - it has two Units. The remand section is further divided in to two – one section for nursing mothers and expectant women and rest for the other remand detainee. The second Female Prison Unit is for convicted

¹⁷⁹ Before the endorsement of the directive all the federal prison administration did not have a standard that enables them to administer inmates with consideration of the international Minimum Standard: Rule 67 which requires all inmates should be categorized by criminal records, character, age, gender, bad influence or for the purpose of rehabilitation

¹⁸⁰ FDRE Prison Administration, supra note 14. See more on the preamble states that the institution is committed to observe the human rights of inmates while they are imprisoned and to provide them with food, bed and health services for all categories.

¹⁸¹ Government of Western Australia Department of Corrective Services: Supra note 35, They are defined as: *Prisoners who cannot be trusted in open conditions. Whilst these prisoners cannot be trusted in an open prison they do not present as having the resources or will to make a determined escape attempt from a secure prison. Defined as presenting a low to moderate risk of escape and/or a moderate risk to the safety of the public in the event of an escape.*

persons and it takes all range of sentenced prisoners without giving a due consideration for the term of imprisonment, age or seriousness of crime or any.¹⁸²

Apart from these classifications made by the directive, the relevant issues inserted in the instrument related to right to health. Under Article 5/9/ it is stipulated that, during admission of any detainee or convicted person, there has to be a medical personnel at all times and examine the health status of the convicted person. And up on its finding declare inmates status on his/her personal file and require for any further diagnosis if there is any problem implicated.¹⁸³ With a responsibility for personal and communal hygiene adherence,¹⁸⁴ the directive stated that convicted person will obtain progressive adequate food, space, lighting and ventilated sleeping area.¹⁸⁵

In relation to the right to correspond with the outside world, the directive stipulated a convicted person has a right to be visited by close relatives, friends, religious counselors, medical doctors and their legal counsel. Moreover, a convicted person has a right to correspond through letters and be informed with important information about the outside world through news paper and television.¹⁸⁶ This has indicated the commitment by the directive to comply with the international and national standard to accommodate convicted person participation for their own rehabilitation by retaining knowledge about the community at large.

With regard to opportunity to lodge a complaint Article 8 /O / the directive declares that a convicted person will have a right to file a complaint and seek for remedies on the conditions of his/her prison life. However, unlike the international standard, the national directive has failed to endorse the possibility to lodge a complaint through representative or by close family members.

3.1.4.2 FDRE Directive on Accommodation and Administration of Prisoners and Convicted persons 2013/14

This instrument also enforced after the pronouncement of the reform program to complement human treatment of prisoners with respect to Federal Maximum Security Prison.¹⁸⁷

¹⁸² FDRE Prison Administration, Supra note 14 Article 4/6/. Gender is the only request that is observed in the administration.

¹⁸³ FDRE Prison Administration, Supra note 14 at Article 5/9/ and 7/8//J/,

¹⁸⁴ FDRE Prison Administration, Supra note 14 at Article 9/2//h/

¹⁸⁵ FDRE Prison Administration, Supra note 14 at Article 8/b/ and /c/

¹⁸⁶ FDRE Prison Administration, Supra note 14 at Article 8/d/ and /k/

¹⁸⁷ FDRE Prison Administration, Supra note 38, preamble

The Directive structured with four sections, twelve articles and fifty five sub articles.

The said directive stipulated, convicted persons will be accommodated with food, bed and mattress in queue. The effectiveness of the accommodation was observed by Case Officers in collaboration with Unit Manager. Both prison officers are required by the directive to follow-up daily behavior of inmate and keep records for further administrative consumption.¹⁸⁸

Furthermore, the directive recognized convicted persons to engage in social affair, especially for family funeral and pension. Nevertheless, Article 7/2//c/ narrowed the privilege by prohibiting, " ... *Persons in remand, Under Death Penalty, Life Sentenced Prisoners, Prisoners who are convicted with criminal count of Terrorism, Crime against Public Security, Treason, Aggravated Assault, Genocide, Aggravated Homicide, Crime against Children and women as well as Corruption wouldn't gain permission to attend family funeral and collect pension while imprisoned.*"¹⁸⁹

Although, the scope of the research restrict to explore the issue deeply, a moral indict obliged the research process to reflect on the general gaps sought in this aspect. To begin with, why did the directive rely on specific counts and disregard severity? Wouldn't subjective standard might broaden the burden of convicted person? Wouldn't this contradict with the international and national human right standards?

"Yes it does!" First, when we see the UDHR article 7, ICCPR Article 2 and 26 stipulated that all persons should be equally treated before the law and must be entitled to equal protection of the law irrespective of any ground or status. These protections were strengthened on the SMR Rule 80. The Rule stipulated social relation of the special categories must consider encouraging and maintaining relations with persons outside the institution both to the best interest of his/her family and his/her own social rehabilitation.

From the national aspect, the FDRE Constitution Article 25 protects everyone for equal treatment before the law and protects them from cruel inhuman and degrading treatment or punishment. On the other hand, the Criminal Code Article 108 also stipulated rigorous imprisonment should only result for severe imprisonment but not in any other circumstance.

¹⁸⁸ FDRE Prison Administration, Supra note 38, on Article 6

¹⁸⁹ FDRE Prison Administration, Supra note 38 on Article 7/2//b/ and /c/

However, the directive prohibits specific types of count from eligibility to attend family funeral. One should bear in mind there might be offences that can be consider as severe and harsh by incumbent but not included in the directive exceptions. For instance the Urban Land Holding Registration Proclamation No. 818/2014, Article 48/a/ stipulated that crimes related to contravention of the provision of the proclamation could be punished from five to fifteen years.¹⁹⁰ Yet, the directive did not categorize this offence even though it can be penalized fifteen years or so. Thus, as the writer believes enumerating specific type of offence could result for deferential treatment among inmates if not handled carefully and cautiously. Even more, having a subjective standard to forbid rights installed in international and national standard could adversely affect the equal treatment ought to be provided.

It is evident Life Sentenced Prisoners would lose their pension right by law.¹⁹¹ But the concern here is what is the rational for prohibiting the noted offences on the directive that may not fall under death or life sentence? Because, SMR Rule 61 stipulated, treatment of Prisoners should not emphasize their exclusion but their opportunity to continue being part of the community.

If the rational for prohibition to attend funeral is the issue of escape or security purpose! The directive should design a mechanism that can avert such threat, rather than to take subjective standard to discriminate without justification. Since, the Criminal Justice System is geared up with the principle of “*nulla poena sine lege*” - No penalties other than prescribed by law.¹⁹² To this effect, the directive should not broaden the burden of convicted person’s privilege and hamper their equal protection.

The ability to grieve on the loss of close relative has a potential positive effect on the imprisonment of inmate. However, failure to balance between security and safety would constitute ill-treatment on respecting dignified treatment over inmate. As a result, the research insists for comprehensive investigation for essentiality of law harmonization in prison.

¹⁹⁰ FDRE, Urban Landholding Registration, Proclamation No. 818/2014.

¹⁹¹ FDRE Criminal Code Article 123; stipulates that, subject to exercise of pardon and Amnesty or reinstatement persons with rigorous imprisonment will lose their civil right for Life.

¹⁹² The FDRE Criminal Code 414/2004, Article 2/2/ stipulates that no punishment should be imposed on act of omission that are not prescribed by law.

3.1.4.3 FDRE Directive on Discipline and Punishment Procedures for Prisoners and Convicted Person No.4 (2013/14)¹⁹³

Having a clear set of rules and procedures on the manner of behavior and consequence for certain conduct and act could materialize for good order and security. The Federal Prison Administration has implemented the fourth successive directive that governs the type of discipline and duration of punishment within Prison. As the previous reviewed directives, this instrument has also absconded to show both the objective and the purpose for the amended directive.¹⁹⁴

On section two of the existing directive, offences were categorized as simple and serious offences that could entail penalties.¹⁹⁵ Both categories of offences were presumed to be undertaken with written charge and the defense statement.¹⁹⁶ Pursuant to this, it is stipulated on the directive that a Case officer will have a final authority over disciplinary measure that could result reprimand and admonishment.¹⁹⁷ The Unit Manager will be given autonomy to pass written warning, to subdue inmate for fortnight public sanitation and to review decisions made by the Case officer.¹⁹⁸

On the other hand, the Case team Personnel who have the capacity to "Accommodate prisoners to their respective Unit" could pass punishment for 30 days forced labor¹⁹⁹ and he could also prohibit inmates from family visit for 20 days as well as solitary confinement for 10 days period.²⁰⁰

However, the concern here is whether simple penalties should constitute prohibition for

¹⁹³ FDRE Prison Administration, *Directive on Discipline and Punishment Procedure* 2013/14.

¹⁹⁴ During the preparation of the research, it was tried to locate predecessor instruments, and major findings that was able to retrieve were; the existence of Discipline Committee of prisoners, no clear level of disciplinary punishment for specific misconduct, no clear proceeding on the handling of alleged accusation, no clear defense mechanism and evidence gathering system and there were no period of limitations for the disciplinary measures taken on the prisoner.

¹⁹⁵ FDRE Prison Administration, Supra note 193 Article 10 (a) and (b). See more on the Regulation of Treatment of Prisoners No.138/99 Article 37 and 38.

¹⁹⁶ FDRE Prison Administration, Supra note 193, Article 5 of the Directive on Discipline and Punishment Procedure. It specifies that a charge will be made to the accused within two days and he should prepare his Statement of Defense within one day.

¹⁹⁷ FDRE Prison Administration, Supra note 193 Article 5/2//a/

¹⁹⁸ FDRE Prison Administration, Supra note 193 Article 5/2/2b/

¹⁹⁹ FDRE Prison Administration, Supra note 193, Article 10/a/

²⁰⁰ FDRE Prison Administration, Supra note 186. See on Simple Penalties on the Directive for Discipline and Punishment Procedure(stipulates on Article 10 /a//3//5/ It is important to note the decision making can be made one of the three.

family visit and forced labor related. It is constructive to have a clear set of rules on types and duration of punishment. And the existence of family links and to the community members are some of the key tools and potentially reduce the harmful effects of imprisonment and help them for reintegration.²⁰¹ Restricting family visit and rendering forced labor for simple offence could be taken as an extreme measure which exceeds the necessary level for safe custody. Thus, it is very important for the research work to evaluate whether the directives given due consideration for human right standard to realize safe prison.

Apart from this, the Units Coordinator has the last say for decisions given by Unit manager and will pass decisions on matters that could be punishable for one month obligatory physical labor, placing in solitary confinement for a month and forbidding 1/2/ of the probation period.²⁰²

At last, the Head Administrator of the facility will have the power to review the decision given by his immediate subordinate and decide whether the convict can at all benefit from probation or not.²⁰³ From here, we can see the Chief Administrator, has the final say on the serious penalties. These are offences that could result for three month solitary confinement or prohibition of probation from the period of 3/4 up to whole period of entitlement of probation.²⁰⁴

Yet, the issue that is needed to be addressed is whether the directive is in line with the human right standard. Since the SMR Rule 36 asserts that, each week the director of the institution or his representative should be available for requests or complaint by the convicted person without censorship. The above arrangement installed by the Maximum Security Prison directive seems to narrow the opportunity. Because if final decision given up on convicted person from Unit Manager level, the inmate may lose its access to complaint in early stage. Therefore, it is very important for this research to assess, how frequent the Head Administrator avail himself in person to receive complaint without censorship. And whether there is any inspectoral activity by competent authority to overview any disciplinary punishments passed by the office. Because from reviewing the directive, one can see forced labor and restriction for family visit is given starting from simple offences.²⁰⁵

²⁰¹ UNODC (2006), supra note 65 at p. 17

²⁰² FDRE Prison Administration, Supra note 193. See more on Directive Article 10/a/, we can see a Personnel with the authority to prohibit 1/2 of prohibition can pass decisions on every simple penalties. And this penalty range from prohibiting a prisoner from one month family visit and up to twenty days solitary confinement.

²⁰³ FDRE Prison Administration, Supra note 193 Article 5/2//e/

²⁰⁴ FDRE Prison Administration, Supra note 193 Article See the penalties under the Directive Article 10/b//1-20/

Apart to this, the other important aspect seen under the revised directive is the introduction of Period of Limitation.²⁰⁶ On the instrument, there are two aspects how the Period of Limitation enforced. The first one related to "*limitation to persecution*" and the other concerned with "*limitation to penalties*".

In relation to "*limitation to prosecution*" for simple disciplinary offences the period of limitation to charge a convicted person with disciplinary suit shall be made within one month. Where the offence result a rigorous penalty the prosecution should be made within two month period of time.²⁰⁷ If not, the convict will not be hold accountable.

With respect to "*limitation on the Period of Penalties*" the directive is organized under three categories within the Maximum Security.

The first arrangement only governs for convicted person who are sentenced for life imprisonment. It is stipulated simple disciplinary penalties a year and half is the limitation to reinstate them, and three years for rigorous penalties.²⁰⁸

The second arrangement on "*period of limitation for penalties*" governs for those persons who are convicted from the period twenty years up to twenty five years. In this category for simple penalties the limitation last within a year and three month of period and two years and half for rigorous penalties.²⁰⁹

The last classification in this arrangement is for persons convicted from fifteen years up to nineteen years and eleven month and twenty nine days. In this category a simple penalty will have a limitation within one year and two years for penalties resulting in rigorous punishment.²¹⁰

Aside to disciplinary accountability the directive has made it clear the above Period of limitations either on Prosecution or Penalty should observe the principle and effect installed in the FDRE Criminal Code.²¹¹

However, one substantial issue that ought to be addressed here is how could one govern a Long Term Prisoner who has been delinquent until the date of the maximum period of limitation

²⁰⁶ FDRE Prison Administration, Supra note 193, Article 9 and 11.

²⁰⁷ FDRE Prison Administration, Supra note 193, Article 9

²⁰⁸ FDRE Prison Administration, Supra note 193, Article 11

²⁰⁹ FDRE Prison Administration, Supra note 193 Article 9/1/ &/2/

²¹⁰ FDRE Prison Administration, Supra note 193 Article 11

²¹¹ FDRE Prison Administration, Supra note 193, Article 9/3/

on penalty? For example, if a twenty year sentenced convicted person is eligible for probation up on completion of two third of his sentence? How could the directive rule out rigorous penalties that was passes before ten years and eleven month period.²¹² Thus, the directive should be able to govern recidivist, in order to make the other convicted person life better and safe.

At last, the directive has also stipulated the manner of appeal by stating two days for simple and four days for serious penalties to invoke for grievance to the concerned body. However, the directive did not indicate the possibility for an independent complainant authority with a power to review a decision made by the penitentiary.

Especially for decisions considered to constitute torture, cruel and inhumane or degrading punishment there should be a system to handle such grievance. In our legal system the Ethiopian Human Right Commission have a jurisdiction to entertain a case either with complaint or by its own initiation to investigate on human right violation.²¹³ Further, Ethiopia has considered the recommendation by the Human Right Council to establish an independent national preventive mechanism for cases that constitute for ill- treatment in detention places.²¹⁴

Apparently, the research should look into the existence of independent authority that could scrutinize potential ill-treatment. Its assumed failure to do so would jeopardize transparent mechanism that could enhance the fulfillment such remedy.

3.1.4.4 FDRE Revised Directive on Transfer for Convicted Persons No.2. (2013/14)

The instrument that has a close effect on the right to visit is the directive on Transfer. Where the above all directives are applicable to both prisoners and convicted Persons, this specific instrument could only be utilized to convicted persons. The said instrument has included twenty two provisions and hundred twenty one sub articles in four sections.

The directive distinguished the manner how transfer should be made. Where the first one is made by request of inmate,²¹⁵ the other is initiated by the institution itself.²¹⁶ The institutional

²¹² Note that a twenty year imprisoned person can have six year and eight month probation period, and the directive stipulate that two years and half is the "Limitation for Penalties".

²¹³ FDRE Human Right Commission Establishment Proclamation No. 210/2000, Article 24. Note that: on Article 22 stipulates that a complaint can be submitted by the person itself, spouse, family member, representative or third party.

²¹⁴ Report of the Working Group on Universal Periodic Review Ethiopia Addendum (A/HRC/27/14/ADD.1, 17 September 2014, Human Right Council, Twenty Seventh Session, Agenda item 6), Recommendation 183.

²¹⁵ FDRE Council of Minsters Regulation on the Treatment of Federal Prisons 138/2007/, on Article 19

²¹⁶ FDRE Prison Administration, *Directive on the Revised Directive on Transfer No.2 (2013/2014) Section 3*

transfer made from Federal to Regional Prisons or among the Federal prisons district with the standard set by the *Directive for the Admission and Registration of Prisoners* No. 1/ 2013/14, Article 4 (2).²¹⁷

In the case of Transfer from Federal to Regional aspect, there are some requirements that are needed to be observed. The first condition is a Long Term Prisoner could only be eligible to such privilege when there is the same level of Maximum Security Prison on the Region.²¹⁸ The other requisite is the inmate should have the capacity to cover all the expense for its own Transfer.²¹⁹ If not the convicted person cannot enjoy the opportunity of transfer.

Apart from the above, there is a concern encountered during review of the directive Article 4/2/ (a) up to (m)²²⁰. The directive enumerates several counts that were not allowed to claim to Transfer to locality. The directive under its Article 4 has attempted to justify the rationale for its exclusion of specific offences by referring, the Regulation on Treatment of Prisoner Article 19. This reads: "*Any person who is serving a final sentence....may upon his request, be transferred ...*" The phrase that needs a close look in the provision is, "... may...". It is true when there is a clause that implies the possibility "to be" or "not to be" it should be elaborated by the subsidiary laws the inclination of the right in question.

To this effect, the research argument relies on the principle of legality and rule of interpretation projected under Article 2/4/ and /5/ of the FDRE Criminal Code. Since the Judiciary is an impartial organ, that could only rely on the findings obtained by the due process of law. An accused person and the public prosecutor could have an opportunity to bring all the available evidences before the court during criminal proceedings. By the same token, courts will eventually require the prosecutor and the accused to bring all mitigating and aggravating circumstances to render Justice.²²¹ Therefore, Judgment by court could only be reached through observing rigorous procedure that should result proportional legal punishment that is accurate to the perpetrator act.

²¹⁷ FDRE Prison Administration, *ibid.* Note that the standard is the FDRE Federal Prison Administration, *Directive for the Admission and Registration of Prisoners* No. 1/ 2013/14, Article 4 (2)

²¹⁸ FDRE Prison Administration, *supra* not 216, Article 5

²¹⁹ FDRE Prison Administration, *supra* not 216, Article 6

²²⁰ These are: Genocide, Terrorism, Treason, Crime Against Constitutional Order, Crime Against Religion, Espionage, Grave Assault, Forgery of the Legal Currency, Traffic in Military Material, Human Trafficking, Corruption, Crime Against Public Safety and Security of Communication, Crime Against Women's, Children and Disabled Person

²²¹ Imperial Criminal Procedure Code No. 185/1961, Article 149

Bearing in mind to this, matters in relation to criminal aspect should be interpreted restrictively not to burden the subject than warranted by literal meaning of the statute. And where there is unclear intent of the legislator, it is important to identify the intention of the legislator. Thus from the above stipulation we start to dwell on, the directive for inmates transfer prohibits specific criminal counts by presuming those specific offences construed the interest of the public and the government. In fact not!

The reason to disagree with the content of the directive is because, most of the criminal counts that was excluded by the directive, extracted from the Part II of Book III of the Criminal Code. However, there are many offences on the same section that may out rate the danger of the enumerated offences. For instance, "*aggravated homicide*" is not included on the directive. This would defy the credibility of the directive in balancing its rational on threat to the public and the need for control. Therefore, subjective standard could only entail ill-treatment on convicted person, since court decisions are supposedly given with due process of law.

To conclude, the interpretation for the phrase, "... may..." should be seen light of the true intent of the legislator. One can find the intent under Article 3 of the Regulation on the Treatment of Prisoners. It declared the treatment convicted persons, should base itself with a principle of non discrimination. Thus, the phrase "...may..." only meant the need for standard of guiding principles on the manner how one can access the rights installed within the regulation but not a reason for discrimination.

Furthermore, it is worth to note the existing capacity of Amhara region in Bahirdar and Debrbrihan as well as Tigray region in Mekele attained a Maximum Security Prisons standard.²²² Ignoring this fact potentially jeopardize the prospect to enjoy right to family for Long Term Prisoners.

3.1.4.5 FDRE Directive on Health Service (2013)

This directive is relatively well organized and structured from the previous reviewed instruments. These can be sought from the directive ability to disclose the objective of the legislation and projecting the guiding principles for health services.²²³

²²² FDER Prison Administration, Joint Council Report on Federal and Regional Prison Commission (2014/15). The report asserted that the Amhara region in Bahir-dar and Debrebrihan have built a standard prison that can utilize for all level of Convicted person since 2012/13 and 2014/15 respectively. Whereas the Tigray Regional State has been functional since 2005/06

The directive is organized under six parts and thirty one Articles. The third part of the directive dedicates itself with the application of the "*prevention*" and "*control of communicable and non communicable diseases*", so that the highest attainable health care could be achieved. The directive stipulates convicted person upon admission will cut his hair and provided with clotting and receive a soup in every month.²²⁴

Furthermore, on Article 5/2//9/ stipulates that, the minimum space has required healthy environment in two meters square for each person will be accommodated for bedding purpose. In addition, for proper environmental wellbeing the directive fixed, there should be a toilet for fifty inmates and one tap water for 100 inmates as well as a shower for fifty convicted person.²²⁵

In relation to Prevention for potential health issue, Article 13 specifies there will be health advocacy for thirty minutes for new admitted prisoners and monthly awareness lesson for all prisoners within their respective Units.²²⁶ Consequently, it worth to study the extent of compliance of the practice up to the standard.

In Chapter four of the directive, the right to health application is defined as a part of Curative medical treatment. It stated that, convicted persons can enjoy free physical or mental treatments while in detention.²²⁷ However, the standard for the implementation of this directive did not indicate on the manner of any preventive mechanism for the possible mental health problem that could create while imprisonment. Because it is inevitable the consequence of de-socializing for longer period result the loose of self esteem and impairment of social skills. Hence, the directive should stipulate an Article to design a mechanism for the prevention of Psychological problems.

In addition Article 17/c//3/, of the directive stipulates the manner in which referral patient administration. It provides that, the Maximum Security Prison health officer to review the referral detainee within their Units. Yet, the concern here is how a health officer could have the knowledge/capacity to review referral patients. Because, patient who came to Maximum Security Prison, before coming to the prison they exhaust available treatments in their previous penitentiary. Therefore, the medical diagnosis has required different skills of treatment.

²²⁴ FDRE Prison Administration, *ibid*, Article 5

²²⁵ FDRE Prison Administration, *supra* note 221, on Article 5/2//5/ -/7/

²²⁶ FDRE Prison Administration, *supra* note 221, on Article 13 or p. 26

²²⁷ FDRE Prison Administration, *supra* note 221, on Article 14 /1/ and /5/

However, the directive didn't make clear on the manner of treatment required for referral patients medical expertise need in Maximum Security Prison.

Furthermore, the directive in its last part, has modestly dealt with the manner of collaboration with other stakeholders for the enhancement of better service delivery. Article 22 on the directive has underscored the manner of complainant mechanisms for the beneficiaries. However, the impact on the ground should closely be seen and evaluated, because golden laws by themselves are not an achievement.

3.1.5 FDRE Proclamation for Procedure for Pardon No. 840/2014

The research has been reviewing multiple set of rules that are installed for better treatment of convicted person. Among that, the Proclamation for Procedure for Pardon is a prime one. Accordingly, the subsequent part dwells on the effect of the proclamation with respect to Maximum Security Prisoners.

To begin with, Ethiopia has been practicing Pardon and Commutation since the period of Axum Dynasty.²²⁸ The first modern legal recognition was found on the Article 16 of the Imperial Constitution of 1931.²²⁹ It has clearly stipulated that the Emperor has the right to grant pardons, commute penalties and reinstate. This evolvement takes up to a new development on the 1987 EPDRE Constitution, where Pardon is left to head of the state and Mercy was given to the Legislator /Shengo/.²³⁰

To this date, Pardon is left to the mandate of the President.²³¹ Although, there are arguments why Pardon is entrusted to the President,²³² to our focus, it is important to review the national legal instruments in respect of the treatment of Convicted Persons.

The FDRE Constitution under Article 71/7/ stipulates that the President in accordance with the conditions and procedures established by law could grant Pardon. Moreover, under

²²⁸Justice and Legal Research Institute (2014/2015), Pardon, Suspension of Penalty and Probation in Ethiopia, Ethiopian Justice and Legal Research Institute p.17. The research discloses that, in our legal system the Mercy and pardon were used to be seen interchangeably.

²²⁹ Imperial Constitution of Ethiopian. July 1931. See more on Article 35 of the Revised Constitution of 1955 which recognize the same treatment.

²³⁰ Ethiopian People Democratic Republic Constitution 1987, Article 86/3//d/ and Article 82/1//e/

²³¹ FDRE Proclamation of the Constitution No. 1/1995, Article 71/7/

²³² Justice and Legal Research Institute, Supra note 228, Some argue that, the reason Pardon is left to the President is because he is the head of the state, which indicate the people has the upper say than the lawyers /judges/. And even more, it was argued that, the fact that the President handles it in person, this will give the case due care and diligence.

Article 28 provided that persons who are sentenced with Death Penalty for a Crime against Humanity, the President could commute the penalty to Life Imprisonment, even though the offences are not barred with period of limitation. This indicates that, the supreme law of the Land has shown its modesty for commuting the perpetrator beside their vindictiveness. Which entails, the law would treat crimes that are less vicious with that respect.²³³

To assert this understanding we will see subsidiary national laws that engaged on premature release, specifically Pardon. Article 229 (1) of the FDRE Criminal Code provides that, unless prohibited by another law, prison sentences passed by courts could be terminated, partly or fully by pardon. Moreover, Pardon Proclamation No. 840/2014 Article 3 provides that, pardon will be given to "*...ensure the interest of the public, government and offenders by re-integrating criminal offenders in to the community and make them productive citizens upon asserting that they have repented and reformed.*"²³⁴ This application includes all the Judiciary of the Federal and the Military as well as final decisions reached by regional court. The scope rectified the previous multiple Death Penalty execution, which was used to be passed by the President and Prime Minister.²³⁵

Aside to this, in order to facilitate petitions made by convicted persons, a nine member board was established to submit recommendations to the President, so that the President can pass his decision. In contrast Article 22 of the same proclamation stipulated that, "*the President shall give his final decision based on the name and explanation submitted to Him.*" Hence, it seems there could be a contradiction among the two provisions application, whether the President has a prerogative power or not.

More to add, Persons under Death Penalty are parts of this proclamation. However, the proclamation did not clearly defined, weather the procedure for Pardon should begin before or after the decision had been confirmed by the President. We should bear in mind in our Legal System confirming the decisions on Death Penalty and Procedure for Pardon Sentence are two distinct matters. Due to this reason, there are three concerns that can be raised in relation to the

²³³ Indeterminate sentencing has both a historical and a philosophical basis in the belief that convicted offenders are more likely to participate in their own rehabilitation, if they can reduce the amount of time they have spend in prison.

²³⁴ FDRE A Proclamation to Provide for the Procedure of Granting and Executive Pardon, No 840/2014. Article 3.

²³⁵ Article 35 of the Defence Forces Proclamation 27/1996 gave the final say for the execution of Death Penalty to the Commander in-Chief. But Article 42 of the new amended Defence Force Proclamation 809/2013 repealed its previous setting and gave the President to confirm any execution of death sentence. The same principle inserted in the amended Pardon Procedure.

treatment of Persons under Death Sentence. These are:-

- the proclamation did not make any statement what should be made by the President, to take into consideration to confirm the court decision or to alter the gravity of the sentence. There is no clear stipulation or regulation that addresses these matters. Due to that Pardon decisions seems to be given with subjectivity standard. Which could result for the non observance of equal treatment before the law and may result inconsistent decision among the same court;
- The second reservation emanate from article 17 /1//a/ of the said Proclamation which states that, "...any person can lodge a petition at any time after the decision of sentence was given." This shows that a Pardon can be requested even after the President confirms the death Penalty. Thus, the Proclamation should include " a suspension clause on penalty " so that the Death Penalty will not be carried until the pardon result known because of the effect of the Death Sentence lack retrospective remedy;
- The third issue is that, the President may obliged to change the confirmation he gave for Death Penalty, if the board submitted to him Pardon should be given to the Person under Death Penalty.

In conclusion, the procedure Proclamation has lacked predictability in the operational system,²³⁶ due to the inconsideration of special nature and effect of Persons under Death Penalty.

These include:-

- the Proclamation Article 17/1//a/ specify that a petition can be made after the decision of a sentence. This seem workable for other crimes but not to the effect of Death Penalty;
- on the same Article 17/1/ /b/ states that, a plea can be made after the denial of previous petition. However, still this cannot be practical for Death Penalty;
- on Article 22(3) constitute that, penalties served before the decision would remain

²³⁶ EHRC (2012) Supra note10, at p 67

effective. The problem here is, since there is no a suspension clause on manners related to Death Penalty, the Procedure for Pardon lost its effect to these Special categories.

- Further, the proclamation would lose its purpose on matters related to sentences pardoned in part. Let's say if a person been pardoned from Death Penalty to Life Imprisonment, this person could also again be eligible to probation. Because since the law didn't say anything about Life Imprisonment without Parole is effective for Persons under Death Penalty.²³⁷ Consequently, death row individuals might be out from prisons within twenty years.

As it became evident that, all the subsidiary legal instruments are motivated to thrive for the better treatment of convicted person's dignity, these necessities were also indoctrinated in multiple national policies and programs which are dealt as follows.

3.2 Other National Instrument on the Treatment of Convicted Persons

3.2.1 FDRE Policies, Strategies, Action Plans and Programs on the Treatment of Convicted

3.2.1.1 Introduction

The normative standard of the treatment of convicted persons can be found from the legal framework. And the non normative aspect can be deduced from government policy, strategies and programs. Considering multiple paradigms gave the research a better and full-fledged outlook.

From multiple policies, strategies and programs that are implementing in Ethiopia, some are endorsed for this research. The Criminal Justice Policy, the Growth and Transformational Plan, the Ethiopian National Human Right Action Plan and the Justice Sector Reform Program will be dealt in this section and interpreted to the effect of Long Term Prisoners and Persons under Death Penalty.

3.2.1.2 The Criminal Justice Policy 2010/2011

The major Policy that is relevant to the right of convicted person in Ethiopian is the FDRE Criminal Justice Policy. This policy organized with the objective to protect, respect and

²³⁷ Edward Fitzgerald QC & Keir Starmer QC, (2007) A Guide to Sentencing in Capital Cases, at pp. 2-3

defend the public safety and interest during criminal proceedings. Aside to several targets of the policy, some of the policy goals are; to build for an efficient, transparent and predictable justice system. The policy has anticipated initiate reform programs and strategies that could bring a better implementation of the tasks within the Justice Sector.²³⁸ The Criminal Justice Policy has required the justice sector to build a data base system that could show the statistical reality of the justice system, so that the public at large as well as the sector could employ the information for further utility.²³⁹

Specifically part five of the Policy document address on the treatment of convicted persons, by stating treatment of convicted person should be made with respect to their human dignity. Prisons are required to formulate reform programs that could enable better treatment of convicted persons.²⁴⁰ Their execution was expected to be examined periodically by the Ministry of Justice, the Judiciary as well as other democratic institutes on the manner of the humanly treatment of convicted persons.²⁴¹

Furthermore, in order to implement the policy the Ministry of Justice executes a strategic plan to facilitate the prison reform.²⁴² Among multiple directions endorsed by the strategy, the sixth objective of the Ministry of Justice Reform Program was specifically targeted on right of convicted persons.²⁴³

It was endorsed that, there should be a commitment to improve the human rights protection of convicted persons through making frequent visits on prison administrations. Furthermore, the Ministry obliged itself to conduct assessment studies on the pardons giving practice and viability of pardon grant system conditions.²⁴⁴ In addition, the Justice bureau has planned to make appropriate arrangement to work in coordination with other concerned bodies, to help the ex-prisoners in re-joining them with the community in order to help them to refrain from future crimes.

²³⁸ FDRE Ministry of Justice (2010/11), Criminal Justice Policy. See the Criminal Justice Policy definition on the justice sector illustration; it describes the police, public prosecutor. Defense lawyers, courts and prison administration. at Pp. 4-9

²³⁹ *ibid* at p 15

²⁴⁰ *ibid* at p. 47

²⁴¹ *ibid*

²⁴² FDRE Ministry of Justice (2010). Justice in Changed Management, Employees and Institution, Ministry of Justice and Region Justice Bureaus, (2010/11-2014/15).

²⁴³ FDRE Ministry of Justice (2010), *ibid* at p. 92

²⁴⁴ Justice and Legal Research Institute, (2014/2015), *Supra* note 228, This was the study that undertaken for better the provision of Pardon

3.2.1.3. The FDRE Growth and Transformational Plan /GTP I and II /(2010 and 2015)

The other non legal framework that is relevant to the justice reform program is the incumbent Growth and Transformation objective. The government has been undertaking a series of reforms designed to encourage the economic and social development in the Country to reduce social injustice.²⁴⁵ In the mean time, it was perceived that economical strategy to be viewed in conjunction with the political process in order to achieve an effective poverty-reduction strategy.²⁴⁶ For this reason, the economic field progress was made to overhaul the justice system, in order to allow citizens to seek and obtain their rights that embodied and guaranteed by the FDRE Constitution.²⁴⁷

The GTP I, as the major pathway for the government multiple commitment towards its citizen, the treatment of convicted persons was one of its concern.²⁴⁸ On the Capacity Building and Good Governance for the Justice Sector chapter, it is indicated that there is a need to be addressed in terms of prisoners' treatment. These were; the need to have national standards on the appropriate rehabilitation of convicted persons, to improve inmates' accommodation, health, nutrition, communications and recreational services and efforts to improve the image of Prison.²⁴⁹

After the unfold of the first GTP, a second transformation plan was put in action.²⁵⁰ This document has envisaged the right in question to be realized through implementation of full-scale reform programs through deepening good governance and democratic system.²⁵¹ It was communicated on the Plan, that peace and security of the citizens should be ensured with good governance by employing public access to justice organs.²⁵²

²⁴⁵ Namely: Sustainable Development Program and Poverty Reduction Program (2002) and Plan for Accelerated and Sustainable Development to End Poverty, (2005/6-2009/10),

²⁴⁶ Ministry of Finance and Economic Development (2002), *Sustainable Development Program and Poverty Reduction Program*. at p. iii

²⁴⁷ Ministry of Capacity Building (2005), *Supra* note 17. at p11

²⁴⁸ Ministry of Finance and Economic Development (2010), Growth and Transformational Plan. Addis Ababa. at p. 62

²⁴⁹ *ibid*

²⁵⁰ Ministry of Finance and Economic Development (2015), Growth and Transformational Plan II. Addis Ababa.

²⁵¹ *Ibid* at p.44

²⁵² *ibid* at p. 45

3.2.1.4. Ethiopian National Human Rights Action Plan /NHRAP/ and Rights of Convicted Persons 2010/11-2014/15

The main objective of the NHRAP of Ethiopia is to develop a comprehensive and structured mechanism to advance the respect, protection and fulfillment of human and democratic rights guaranteed by the FDRE Constitution.²⁵³ The Action Plan reviews the present human rights situation of the country, identifies potential problems, and sets feasible solutions.

The specific objective of the Action Plan is to indicate strategic guidelines to promote human and democratic rights in the Country. It also strides to set forth comprehensive, structured and sustainable strategies to respect and protect human rights.

The plan has required the Federal Prison Administration to ensure and respect the dignity of convicted person and observe the rights of every prisoner by making an effort to accommodate juvenile offenders from adults and persons on remand form convicted persons in separate places by renovating and upgrading old facilities as well as construction of new centers.²⁵⁴ It continues in obliging the authority to improve the quality of inmates meal by making a need based assessment to upgrade the nutrition of inmate's food.²⁵⁵

As the Prison Administration as parcel of the Justice Sector the action plan require the Federal Prison Administration to implement a National Vital Records and National Identity Card registration procedures for inmate's administration in order to have clear and precise response for convicted person different claims.²⁵⁶

The Action Plan also requires the Prison Administration to made inmates to be aware of all their human rights and enable them to submit any complaints in relation to human right violation to the concerned body.²⁵⁷

The identified concerned bodies to fulfill the NHRAP objectives are the Prison Administration himself, the Ministry of Justice, Human Rights Commission and Federal Affairs. They are given a responsibility to make a regular inspection of the prison facilities to see for the fulfillment of human right responsibilities and monitor whether any human right violation

²⁵³ FDRE, House of People Representative (2012/13), National Human Rights Action Plan (2012/13-2014/15), at p. 2

²⁵⁴ FDRE, House of People Representative (2012/13), *ibid*, at p.24

²⁵⁵ FDRE, House of People Representative (2012/13) at p.27

²⁵⁶ FDRE, House of People Representative (2012/13 at p. 39

²⁵⁷ *ibid*

complaints have been appropriately and impartially handled.²⁵⁸

3.2.2 Treatment of Convicted Persons under Reform Programs

3.2.2.1 Introduction

Reform program helps to bring systematic and sustainable improvements by considering government priorities in the public sector administration, structure and their monitoring schemes.²⁵⁹ This is mandatory because public sectors have multiple functions and responsibility to satisfy the complex range of political, economic and social objectives.²⁶⁰ These reform programs could support the efforts to attain the rule of law and good governance, for better treatment of citizens. Therefore an innovative, flexible and streamlined service should be the heart of public sector reform programs.²⁶¹

To this reason, the central argument to uphold prison reform emanates from human rights consideration.²⁶² A prison system that is based on international standards and norms could help moderately achieve a better treatment of inmates in prison system.²⁶³ Thus, inmates physical and mental well being can be enhanced, when there are sufficient basic need accommodations, Right to family and access to justice are fulfilled.

Hence, the Justice Sector Reform Program became the parcel of the National Reform Program in order to alleviate the state from extreme poverty. Due to that incumbent has organized a multi-sectoral Reform Program among them, the Justice Sector Reform Program in Ethiopia was one of them.

3.2.2.2 Justice Sector Reform Program in Ethiopia

The government of Ethiopia, under the authority of the FDRE Ministry of Capacity Building establishes Justice System Reform Program /JSRP/ "*to assess the performance of the various institutions of justice and to propose appropriate reforms*". In March 2003, the Netherlands-based consultancy group called Center for International Legal Cooperation /CILC/ review the justice system and identifies shortcomings of the system and suggests apt remedies.

²⁵⁸ FDRE House of People Representative (2012/13), at p 40

²⁵⁹ DFID (2013), *Summary Report of the Public Sector Governance Reform Evaluation*: UKaid, at pp.1-3

²⁶⁰ World Bank (2000), *Reforming Public Institution and Strengthening Governance*, Washington D.C. at p. 171

²⁶¹ *ibid*

²⁶² UNODC (2012), *Prison Reform and Alternative to Imprisonment*: Justice Section, Division for Operation, at p .8¹

²⁶³ UNODC (2010), *Supra* note 101 at p. 1.

To give that the CILC formed five Working Groups of international experts for collating required information, studying relevant documents and interacting with officers from various segments of the Ethiopian justice system. The groups were: (1) Working Group on Law Making and Law Revision, (2) Working Group on Judiciary, (3) Working Group on Law Enforcement (Prosecution, Police and Penitentiary System), (4) Working Group on Legal Education, and (5) Working Group on Information Flow within and outside the Judiciary. These Working Groups after having intensive interactions with national experts in the field (identified by the JSRP) and stakeholders in the Ethiopian justice system, and looking into relevant documents and proclamations, formed their own opinions about “deficiencies” in the justice system and the possible “remedies”.

After successive discussion among the consultancy group and the government, later in February 2005, Ministry of Capacity Building published a ‘*Comprehensive Justice System Reform Program: Baseline Study Report*’/herein after CJSRP/.

"Justice System", as perceived by the CILC, comprises not only the courts, the institutions of law enforcement (the police & the prosecutors), and custodial penal institutions (prisons) but also the institutions that enact law (the Legislature) and teach law (University Law Schools/Law Colleges). *The baseline study*, accordingly, offers critical appraisal, structural and functional anatomy of these inter-linked institutions and highlights their major shortcomings and in-built weaknesses. With a view of comprehensive look at the Ethiopian justice system as a whole and its shortcomings, the CILC resorted to "vertical" as well as "horizontal" analysis of these institutions. Where the former resort concentrated on the description and analysis of each of the constituent institutions of the justice system separately and proposes a reform by highlighting their shortcomings. While the latter, concentrated on the analysis of inter institutional relationship, the system-related issues, and shortcomings and barriers for cooperation among the Justice Sector.

The document highlighted the most blatant deficiencies in the existing justice system in Ethiopia. The major problems are: (1) the insufficient number of qualified judges and public prosecutors, (2) outdated and inefficient methods and procedures of the justice delivery system, (3) lack of clarity and coherence in the existing laws.²⁶⁴ The Reform Program also hinted the

²⁶⁴ FDRE Ministry of Capacity Building (2005) Supra note 17, at p. 49

"measures" and "reform programs" that are needed to be taken to overcome the problems.

Accordingly, the National Justice Sector Reform Program endorsed from the findings of the Justice Sector Base Line Study and measures were taken by the Government.²⁶⁵ It was endorsed alongside to the national reformation discourse during the launch of Plan for Accelerated and Sustainable Development to End Poverty.²⁶⁶ The general out sated focuses for the Justice Sector Reform Program were:-

- Legal Education and Training Reform Program;
- Law Reform and Harmonization;
- Court Administration Reform Program and
- Law Enforcement Officials Capacity Building Reform Programs were the out sated government undertakings.²⁶⁷

The prison administration, being part of this sector has been reformed as it is one of the target institutions in order to bear the mandates provided under the program. From 54 Reform Program Projects, 30 of them were concerned with law enforcement capacity building reform relevance.²⁶⁸ And the Federal Prison Administration encloses three road maps for the reform of the Prison Administration. ²⁶⁹ These strategic directions for the reform of prison are "*Basic need Provision*", "*Security and Inmates Administration*" and "*Rehabilitation and development*" were taken as the core processes to promote remedies that sought as deficiency in the sector.

3.2.2.3 Federal Maximum Security Prison Administration Reform Programs.

The overall Reform setting was designed to realize by 2020 "*an institution that adhere Good Governance, Rule of Law, Respect for Human right and to release a Rehabilitated and Productive persons*".²⁷⁰ Prison Reform have intensified through the application of Business Process Reengineering (here after BPR), leading to a set of new approaches including

²⁶⁵ FDRE Ministry of Finance and Economic Development (2005), *Plan for Accelerated and Sustainable Development to End Poverty*, (2005/6-2009/10)

²⁶⁶ Ibid at p.181

²⁶⁷ Ibid at pp. 181- 182

²⁶⁸ FDRE Ministry of Justice (2010/11), *National Justice Reform Program*, (2010/11-204/15), at p. 18

²⁶⁹ FDRE Prison Administration (2012/13), *Business Scorecard: Official Document*, July 2012/13. at p. 29

²⁷⁰ ibid at pp 8-9, Note here: For all the BPR documents which utilized by the BSC explicitly enclose that the reform procedure will be employed with due consideration of Human Right.

benchmarking best practice, designing new process, revising organizational structures and a selection of key process (3 core and 1 support Process). The BPR is a country led multi-sectoral undertaking implemented within the Government Civil Service Reform.

The BPR process informs a fundamental rethinking and requires a purposeful and radical redesign of prison business process to achieve dramatic improvements in critical, contemporary measures of performance such as cost, quality, service and speed.²⁷¹ The purpose of the BPR in the Prison sector is to establish customer focused /detainee and family/ focused institution, rapidly scaling up rehabilitation and enhancing the quality of treatment, thereby improving the prison status of Ethiopia people as desired in the mission of the sector.²⁷²

Following a deep and systematic analysis of the "as is"²⁷³ situation at all level of the prison system, including treatment of convicted persons, the administration has introduced a number of innovative approaches. These new approaches indicated above are the "Basic need", "Security and Inmates Administration", "Rehabilitation and development and "Plan, Finance and Human Resource". However, due to the out sated research scope, the subsequent section will deal only the "Basic need core process" and "Security and Inmates Administration Core Process". The reason to deal with two Prison pillars is because both have an impact on the rehabilitation and better treatment of a convicted person.

3.2.2.3.1 Basic Need Provision Reform Program

Under the Basic Need Core Reform Program, there are three sub-section structures that are organized to scale up the treatment of inmates. These are the "Prevention and Curative Medical Treatment Service Program", "Basic Subsistence Department" and the third is "Facility Construction and Expansion."²⁷⁴ However, due to maintain the scope of the research, only the prior two programs will be assessed in detail.

A. Prevention and Curative Medical Treatment in Maximum Security Prison

The FDRE Constitution article 41/4/ provides that, the state has the obligation to allocate

²⁷¹ FDRE Ministry of Health (2010), *Health Sector Development Program IV*, (2010/11-2014/15), at pp 27-30

²⁷² FDRE Prison Administration (2012/13), *Business Scorecard*: Supra note 269 at p.p. 1 and 2.

²⁷³ "As is" see the illustration on every BPR base line studies objective part, which justified as, "the previous administrative scheme that was designed but failed to meet the national objective as well as the interest of the beneficiaries."

²⁷⁴ FDER Prison Administration (2010/11), *Business Process Reengineering for Basic Need Study*, Official Document, December, 2010/11.

ever increasing resources to provide to the public health services. It further adds in Article 90/1/ the extent the country's resources permit, policies shall aim to provide all Ethiopians access to public health.

The prison as one of public institute undertook the government vision and the international standards to fulfill the highest attainable health service for inmates. Accordingly, the authority has made an intensive study coming up with constructive solution that could enhance the national objective. The identified problems on previous institutional setting were;

- failure to pursue prevention and control over communicable and non communicable diseases;
- inability to treat convicted persons with prevention and control of HIV/AIDS;
- problem on accountable system for transparent provision for medical care;
- problems of administration of outpatient and admitted ones either in Physical or Mental²⁷⁵ treatment;
- insufficient laboratory or Pharmaceutical services and
- problem on administration of emergency patients ²⁷⁶

From the overall assessment obtained by the task force on the previous institutional setting a new common themes were adopted to bring an equitable and efficient service to the beneficiaries. These commitments are:-²⁷⁷

- preparation for operational standard document for Health provision;
- organizing a case team for hygiene and environment health awareness within Unit Prison;
- organizing a case team for communicable and non communicable disease prevention;
- provision of effective curative medical treatment within a Unit and efficient

²⁷⁵ FDER Prison Administration, *ibid* at p.20

²⁷⁶ FDER Prison Administration, *ibid* at pp 17-21

²⁷⁷ FDER Prison Administration, *ibid*

referral²⁷⁸ and emergency handling;

- automation the medical system and registry and
- fulfilling laboratory equipments and qualified medical personnel's.²⁷⁹

B. Basic Subsistence Reform Program

Although this research scope is only limited to the food aspect, it worth to note multiple tasks the reform program included. The reform objectives are motivated to fulfill adequate provision of food and water, shelter and clothing.²⁸⁰ To this respect, the BPR base line study discovered several setbacks that were considered to hinder the better treatment of convicted persons in the Maximum Security Prison. These are:-

- new arrived convicted persons were unable to find food in days;
- unable to supply enough food for all convicted persons;
- inadequate provision of diet food for HIV/AIDS patients;²⁸¹
- unavailability of vegetables and meat;²⁸²
- very poor quality on the preparation of meals;
- inadequate space and shelter to accommodate inmates in one facility;²⁸³
- un able to prepare nutritious food for all convicted persons (specifically 2589.89 calories);
- no provision of prison cloths in respect to the status of their conviction and

²⁷⁸ EHRC (2012), Supra note 10 at p. 121, asserted that the Federal Prison Administration has a problem in provision of adequate medical treatment for referral cases.

²⁷⁹ FDER Prison Administration, supra note 274 at pp. 86-91

²⁸⁰ FDER Prison Administration (2010/11), supra note 274 ibid.

²⁸¹ EHRC (2012), supra note 10 at pp 104 and 168. The report disclosed that there is lack of uniformity in detention centers that provide support to detainees living with HIV/AIDS.

²⁸² EHRCR (2012), supra note 10, at p 105. The report findings indicate that inmates reported that the food is not sufficient and poor in quality.

²⁸³ EHRCR (2012), Supra note 10 at pp. 111- 114. It reported that most detention centers including the Federal Prisons are congested, devoid of sufficient air and light. Moreover there is limited effort made by the prison administration to improve these conditions of the shelters.

- building a standard prison that have a dining room, training holes and visitation site as well recreational places.²⁸⁴

Therefore, the study endures to address the discourse and achievements in relation to provision of highest attainable health and adequate food fulfillment for the inmates, since the endorsement of the reform program.

3.2.2.3.2 Security and Inmates Administration Reform Program

Article 3 of the Code of Conduct for Law Enforcement Officials, Principle 9 of the Basic Principles on the Use of Force and Fire arms by Law Enforcement Officials and Article 32 of the Federal Prison Wardens Regulation provides that, prison officers to maintain safety and good order within prison shall only pursued to the extent necessary to the performance of their duty.

In order to enhance these protections, the maximum security has covered two aspects in the reform. These components related to the physical and non physical inmate administration of the convicted person. Therefore, the subsequent part reviewed the reform program orientation.

A. Security and Order Reform in FDRE Maximum Security Prison

This reform program engaged itself on upgrading the security and safety of inmate's management by respecting the human rights of inmates.²⁸⁵ This section reviewed the reform commitment in relation to physical and procedural realm of the Safety and Security in Maximum Prison Security.

The reform has enumerated several setbacks the prison setting failed to fulfill before the endorsement of the new reform on the physical security aspect. These are;

- due to poor registration the Prison officers were unable to locate inmates in person when need for court proceeding or other accommodation services;
- due to the maximum facility is poorly constructed, it gave an opportunity for inmates to escape from the facility;
- physical assault due failure to induct the prisoner how they should lead their life in prison,
- prisoners committee were found participating in disciplinary measures,²⁸⁶

²⁸⁴ FDER Prison Administration, supra note at 274, at pp. 21-24

²⁸⁵ FDER Prison Administration (2012/13), *Business Scorecard* Supra note 269, at p. 30

²⁸⁶ EHRC (2012) Supra note 10 at p. xix. Reported on its executive summary, that disciplinary actions were taken by

- immediate rivalry raised due to overcrowding;
- lose of inmates personal belongings, due to improper registration and
- poor electrical installation that could easily result arson.²⁸⁷

From the Procedural aspect the Reform indicates that,

- no standard on the manner how to pursue tentative search procedure and
- there are no any equipment to search the physical space and individuals.²⁸⁸

From the dynamic aspect

- the reform indicate that there is no sufficient wardens to guard the facility and
- even the officers in task are not well trained and equipped with appropriate knowledge.²⁸⁹

Due to these; illegal products were smuggled in side prison Units, convicted persons easily escape from the facility and prisoner's personal properties usually got stolen by other inmates within Units.²⁹⁰ Thus, the reform indicates that there should be multiple set of rules to govern the interaction among the inmates' within the Prison compound. It was endorsed, there should be special trained prison warden to execute the identified task and new technological equipments were believed to excel the security and good order within prison.²⁹¹

B. Discipline Procedure in Maximum Prison Management

The other aspect sought in bringing the dignified treatment for convicted person is the Discipline and Punishment Procedure. The BPR finds multiple improper procedures that did not comply with the principles recognized under the regulation for treatment of prisoners in Federal Prison. To begin with, the regulation classified offences that could result in simple and rigorous penalties under Article 37 and 38 respectively.²⁹² It also described the manner how these disciplinary measures should be taken.²⁹³

However, the reform program indicates these legal entitlements were not observed adequately on the previous setting. For instance EHRC 2012 report shows that detainees who have committed serious disciplinary offences were being penalized by detainees' Disciplinary

²⁸⁷ FDER Prison Administration (2010/11) *Business Process Reengineering for Security and Inmates Administration*, Official document. at pp 64-66

²⁸⁸ FDER Prison Administration, *ibid* at p. 67

²⁸⁹ FDER Prison Administration, *ibid*.

²⁹⁰ FDER Prison Administration, *ibid* at p 67

²⁹¹ FDER Prison Administration, *ibid*

²⁹² FDRE Regulation on the Treatment of Federal Prisoners No. 138/2007, Article 37 and 38

²⁹³ the prisoner notified for the alleged offence and been given an opportunity to challenge for such allegation through writing and after decision he will be notified to a right to appeal.

committee.²⁹⁴ Subject to argument in previous setting on the reform indicate that a decision on discipline procedure it used to take up for four days.²⁹⁵

On the other hand, the new approach on the BPR Reform Program intends to render a fair disciplinary procedure with due process of law and only measures that are legally approved and proportionate to the offence committed.²⁹⁶ Moreover, it aims to shorten the disciplinary period to 55 minutes and to upgrade the quality level from 49% to 100% by 2019/20.²⁹⁷

Thus, it is essential to deal with the manner and efficiency on discipline procedure with respect to Long Term Prisoners. Because their protection rely on the effective and fair discipline procedure discourses as it is observed in international and national standards.

3.2.2.3.3 Right to Visit

The Federal Maximum Security Prison recognizes the necessity of family visit as one of fundamental right of an inmate. As the FDRE Constitution Article 21 /2/ provides that "*all person shall have the opportunity to communicate with, and to be visited by, their spouses or partners, close relatives, friends, religious councilors, medical doctors and their legal counsel*" at all time. The same principle reiterated in the BPR reform program. It was well perceived that, the previous prison scheme visitation was:-

- only restricted for two days in one week;
- failure to find family member in the facility due to lack of proper registry;
- the existence of heavy conjunction and long waiting time during visit hour and
- unethical treatment by police members to family member.²⁹⁸

Moreover, a single visit by a family member to inmates used to take 2:45 hours and the service quality was measured as 59.5% satisfaction for both inmates and their family. As a result, this has caused the right to family visit impossible to be obtained in timely and suitable manner. Therefore, the reform targeted by 2020 to bring down the waiting time to 25 minutes and to raise the efficiency up to 100% for family members and inmates satisfaction.²⁹⁹

In addition, the reform indicates the correspondence with the outside world through letter

²⁹⁴ EHRC (2012) Supra note 10 at p. xix.

²⁹⁵ FDER Prison Administration, Supra note 287, at p. 62

²⁹⁶ FDER Prison Administration, Supra note 287, ibid

²⁹⁷ FDER Prison Administration, Supra note 287 ibid

²⁹⁸ FDER Prison Administration, ibid at p. 57

²⁹⁹ Federal Prison Administration; Citizen Charter, p.6

will be guided with rules and the services were intended to be made free of charge for all inmates.³⁰⁰ Furthermore, the reform dedicated itself to accommodate the inmates with important information about the outside world through adequate news papers and periodicals in library. Accordingly, the research looked in to how functional the reform program in accommodating the right to correspondence with the outside world in Maximum Security Prison setting.

The other element that can realize for the right to correspondence with the outside world is transfer to the local area. Before the endorsement of the reform, transfer used to undergo from twenty five procedures up to minimum of fourteen bureaucracies. Where, the previous long due discourse took when the claim is made by the convicted person and the latter is where it's made by court order.³⁰¹ The reform recognized the failure of the previous scheme, in transferring inmates to their local areas even though they are qualified.³⁰²

Subject to argument, the standard has indicated the transfer used to take up to for three days to be fulfilled and the quality of the performance was measured as 36.75%. The reform intends to bring the level of satisfaction to 100% by performing the transfer within an hour and nine minutes by 2020. Thus, it would be essential to examine the reality on the ground because Long Term Convicted Persons could significantly benefitted, if they are imprisoned in their local area. It worth to cross examine the utilization of the present scheme on accommodating Amhara /Bahirdar and Debrbrihan/ and Tigray /Mekele/ Maximum Security Prisons setting that are enforced since the year of 2012/13 and 2005/06 respectively.³⁰³

3.2.2.3.4 Complainant discourse in the Maximum Security Reform

As we have been substantiating the legal needs of convicted persons are neither singular nor static. Some of the reasons we justify the peculiarity of the fact can be inferred from complaint mechanism. Although, the issue of the grievance handling is not directly entertained by the Maximum Security Prison Reform but we could deduct the manner of handling complaint through appeal process by Long Term and Prisoners and Persons under Death Sentence.

Article 8 /o/ of Directive on Admission and Registration, Article 6/2/ and /3/ of Directive on Accommodation and Administration, Article 8 of Directive on Discipline Procedure and

³⁰⁰ FDER Prison Administration, *ibid* at p.43

³⁰¹ FDER Prison Administration, *supra* note 287 at pp. 25-28

³⁰² FDER Prison Administration, *supra* note 287 at p.60.

³⁰³ FDER Prison Administration, *Supra* not 222.

Article 22 on the Directive of Health Service provides for complaint mechanisms. Accordingly, this research assesses the manner of complaint mechanism projection on the Directives.

With respect to the international and national normative standard, they required the condition of investigation by complaint itself or by application of close relative or representative. This complaint should also be made without supervision by anyone when it is made inside a prison. And when the administrative made decisions upon the complaint, it will be scrutinized by the Ministry of Justice, Human Rights Commission and Federal Affairs.³⁰⁴

These institutions made a memorandum of understanding to overview the activity of the penitentiary especially with respect to human right violation. Thus, the research has evaluated how adequate the reform program met the human right standard by going through primary and secondary data.

Beside to the need of appropriate mechanism to entertain for human right violation, one of the most identified facts for complaint in Maximum Security is the issue of pardon.³⁰⁵ The EHRC denote pardon as one of a contentious area in Prison due to its unclear procedure.³⁰⁶ In addition the Maximum Security Prison Reform Program indicate that the failure to adhere for coalition among stake holders escalate for this complaint. Due to that, it is morally compelling to assess the discourse of the utilization of Pardon reform program within the Maximum Security Prison with that of the international and national standard.³⁰⁷

Unit Summary

The national normative standards to respect, protect and fulfill could be found in Articles 18 and 21 of the FDRE Constitution, Article 110 of the Criminal code, Articles 5, 18, 25, 26 and 27 of the Federal Prisons Establishment Proclamation No 365/2003 and Articles 3, 5, 10, 11, 13,

³⁰⁴ The National Human Right Action Plan as well as the BPR signed among the Justice Sector during the year 2010/11 disclose that, there should be a regular inspection of the prison facilities to see for the fulfilment of human right responsibilities and monitor them, whether any human right violation complaints have been appropriately and impartially handled.

³⁰⁵ EHRC,(2012),Supra note 10, p.69

³⁰⁶ EHRC,(2012),Supra note 10 p. 70

³⁰⁷ FDER Prison Administration, Supra note 280, p. 61 The reform program has sorted problems that are need to be addressed and require an immediate attention. These are; to scale up the coordination and collaboration with the Ministry of Justice in pardon provision so that equity can be observed, to give a timely response for claims raised by inmate, transferring the documents pursuant to the prescribed manner and to bring down the 40 days duration⁸¹ transfer the documents to 1 day and 10 hours level by 2020.

28, 36-39, and 48 of the Regulation on the Treatment of Federal Prisoners No. 138/2007, which specifically regulates the treatment of convicted persons particularly Long Term Sentenced Prisoners and Persons Under Death Penalty. .

These standards are backed and supplemented by the Country's multiple policies, strategies and reform programs. Moreover for its implementation, the Prison Administration utilizes multiple directives that aspire to accomplish the highest attainable health service, adequate food provision and moderate prison atmosphere.

Accordingly, a new systematic approach has been introduced with the findings projected by the baseline study on the BPR document. A new reform program was designed (for Maximum Security Prison) to scale up and improve the quality and services on health and food provision, visit, complaint mechanism and pardon in general.

Consequently, convicted persons have been categorized by the terms of their sentence, new structures have been installed and descriptive stipulations were enforced to bring the intended development.

CHAPTER FOUR: The Impact of Prison Reform Program in the Maximum Security Prison Administration: Analysis and Finding.

4.1. Introduction

This chapter presents the different sections of the reform program's impact in the Maximum Security Prison. It aims at providing an analysis compared to the international, regional and national human rights standards on the prison reform. Doing so validates whether the proper implementation of the reform program enhance the better realization of human right protection for convicted person or not. Thus, the subsequent part of the research substantiates the theoretical assumption of the reform program effect reality on the ground.

4.2. General Description of the Respondents and Informants

As indicated in the methodology part of the study (section 1.5.3.1), the research employed in-depth interview under two sections of fourteen convicted persons of the research area. The utilization of two sections will enable the research to examine the reality before and after the employment reform program. The following table describes inmates' type of offence, term or kind of sentence, date of entry, and remarks to any alteration to the decision given upon

them.

Section "I" List of Respondents

Respondent . No	Criminal Count	Kind/Term Sentence	Date of Entry	Remark
1	Aggravated Homicide	Death Penalty	2/10/93	
2	Aggravated Homicide	Death Penalty	2/10/93	
3	Aggravated Homicide	Death Penalty	09/09/01	Life Imprisonment
4	Aggravated Assault	20 years	22/08/03	
5	Homicide	Life Imprisonment	22/06/03	
6	Genocide	20 years	3/11/08	
7	Homicide	Death Penalty	09/09/96	Life Imprisonment

Table. 1 Convicted Persons before the endorsement of the Reform

Section "II" List of Respondent

Respondent No	Criminal Count	Kind/Term Sentence	Date of Entry	Remark
1	Forgery and Falsification of Public Document	25 years	18/09/10	6 counts
2	Aggravated Homicide	Life Imprisonment	02/01/11	
3	Aggravated Assault	20 years	13/10/11	
4	Homicide	Life imprisonment	13/10/11	
5	Homicide	Death Penalty	09/09/10	
6	Genocide	20 years	17/05/13	
7	Forgery and Falsification of Public Document	18 years	23/05/12	4 counts

Table.2 Convicted persons after the endorsement of the Reform

The informants' in-depth interview has helped to qualify, cross examine or gain a deeper insight on the gathered information. The following table describes their respective institutions and occupation.

No	Institution	Occupation	Number
1	Maximum Security Prison	Prison guard	1
2	Federal Prison Administration	The head of Basic Need Core Process base line study team	2
		Executive Secretary of the Basic Need Core Process	
3	Federal Prison Administration	The Secretary of Security and Inmate Administration Core Process base line study team	1
4	Federal Prison Administration	The head of change management department	1
5	Maximum Security Prison Administration	Representative of Head of Basic Need Core Process Administration	1
6	Maximum Security Prison Administration	Head of Security and Inmate Administration	1
7	Maximum Security Prison Administration	Senior Expert on Rehabilitation and development Core Process Administrator	1
8	Maximum Security Prison Administration	Pardon and Parole Officer in Maximum Security	1
9	Ministry of Justice	Justice Reform Department Coordinator	1
10	Federal Public Service Minister	Head of Public Justice Reform Program	1

Table.3. Informants position and Occupation

4.3. Issues Relating to Basic Needs Provision Effect on the Rights of Convicted Person

4.3.1. Findings on the Issue Related to Quality of Health Service

Article 12 of ICESCR, article 22-26 Of UN SMR for the Treatment of Prisoners, Article 27 of the Federal Prisons Establishment Proclamation No 365/2003 and Article 11 of the Regulation on the Treatment of Federal Prisoners No. 138/2007 has stipulated that health rights of prisoners to be given a highly attainable health care either on physical or mental well being.

To this effect, the new reform should not put inmates in worse condition but rather enable

them to enjoy the highest attainable standard of medical care. Medical services basically incorporate prevention and curative health services.³⁰⁸ Accordingly, the subsequent part demonstrates the findings on both aspect of medical care.

A. Framework of Health Services in Maximum Security

Committee of the block/cell /inmate/→ Unit health representative/inmate/→ Unit Health Officer/
Nurses → Maximum Security Clinic→ FDRE Prison Administration General Hospital.

B. Maximum Security Clinic Professional Matrix

No	Professional Status		Number	
			Before 2010/11	After 2010/11
1	Junior Nurse		5	1
2	Clinical Nurse		5	8
3	Senior Professional Nurse		2	5
4	Psychiatry	Masters	-	2
		Nurse	2	1
5	Laboratories	Senior	-	2
		Technician	2	2
6	Pharmacist	Senior	-	1
		Druggist	1	2
Total			17	24

Table 4. Professional Matrix before and after 2010/11.

³⁰⁸ See the Vision of the Mission of Ethiopian Health Sector which reads: "to reduce morbidity, mortality....⁸⁵ providing and regulating a comprehensive package of promotive, preventive, curative and rehabilitative health service...."

NB: During both term there are two specialized Doctors of Psychiatry one as part time and the other permanent occupation up to date.

4.3.1.1. Findings on Preventive Health Service Impact on the Treatment of Convicted Persons.

In preventive stance, the research evaluated the reform schemes in the Maximum Security Prison, first in light of the medical screening, second the existence of health advocacy for physical and mental health and last endeavors that is made to control physical and mental wellbeing within the prison.

The research attested several modifications with regard to health services since the endorsement of the reform program.

With regard to medical screening, the BPR required the implementation of screening for both communicable and non communicable diseases. And the researcher witnessed that, all newly admitted convicted persons go through a medical screening with respect to communicable disease before they are categorized under their respective Units.³⁰⁹ All respondents who are admitted after introduction of the reform program confirm that, they all had gone through a medical screening process, while all respondents in Section "I" suggest otherwise. However, the concern here is the international standard and the reform program require observance of both communicable and non communicable screening but the practice revealed that all Section II respondents are made to take two piece of 100 milligram of Doxycycline, without being asked whether they have any non communicable medical complication.

Second, in relation to the existence of health guidance or advocacy, the research attested that the practice is not as that of the intention of the out sated reform objective. As literature shows that communicable disease could be prevented and controlled by implementing personal and environmental hygiene. The interview undertaken from both section respondents shows that, they hadn't been received any education or guidance about how to undertake personal or group hygiene, neither by the health induction officer nor nutritionist.³¹⁰ These personnel are assigned by the Prison to teach and monitor the personal and group hygiene of the inmates. However, all the respondents replied that, they did not take any lesson or observe a monitoring scheme by the prison health officials during their imprisonment.

³⁰⁹ The representative of the Head of Maximum Security Basic Need Core Process explained that, even when there is a problem to review the inmates in due time, they will put in a quarantine that is destined to keep the prisoners until screened by the medical personnel. 86

³¹⁰ FDRE Prison Administration (2013), *Prevention and Curative Standard*, Basic Need Directorate. July. pp. 15-19.

To cross examine the issue, the representative of the Head of Basic Need Core Process in Maximum Security contacted and he replied that, there has been a problem by the office to develop a relevant instrument that fills in the knowledge gap among prisoners. He stated that some may have good capacity to understand the value of personal and group hygiene and other may lack basic literacy to understand the concept. Yet, the office has not done anything to accommodate both types of prisoners.

Moreover he said, preventive health program is resource intensive. Thus, these lessons require proper accommodation and different settings to implement the advocacy and guidance. But most important he suggested inmates representative within the prison should be capitalized properly by activating them to function beyond liaison purpose. He added that, the prison guards believed this undertaking was irrelevant and not their duty. Consequently, they did not participate or help the medical personnel for the achievement of the advocacy.

In cases for prevention to psychiatry problem, the Head of Basic Need Core Process base line study team informant acknowledged there should be a lot of work to be done by the administration. Problems related to anxiety or depression could have been averted, if there was a proper service. He stated that although currently there is a specialist, two at Masters of Arts Degree level, and a nurse to treat these patients, they only function in curative capacity and not as preventive stance. When he elaborates he explained that, this task undertaken by the Rehabilitation and Development Core Process. However he said, although there are five launched manuals in relation to Social Life skill, Correctional Counseling Manual, Drug manual, Life Skill manual and Civic and Ethical Education manuals³¹¹ these materials have not been properly utilized.

The senior expert on Rehabilitation and Development Core Process strengthened the idea by explaining, the problem emanated from:-

- absence of proper work area to consult convicted persons.
- lack of qualified professionals and even poor induction for assigned freshman graduate on the special feature of Maximum Security Prison and
- lack of professional courtesy to fellow professionals by other prison officers.³¹²

³¹¹ These instruments were primed by Federal Prison Administration by the year of 2011/12/ but to make it a national document it was improved and standardize with a collaboration of Addis Ababa University psychology and Sociology Departments and United Nations Office for Drug and Crime, which lunched December 2014. 87

³¹² Interview with the Head of Basic Need Core Process base line study team, October 22, 2014

To this respect the same informants has asserted that the institution should work diligently in respect of intra-institutional barriers. Failure to organize a preventive mechanism for potential psychiatric problems could jeopardize the better treatment of inmates.

4.3.1.2 Finding and Analysis on Curative Medical Service Impact on the Treatment of Convicted person

The curative element on health service is the second aspect on medical service. The research evaluated the impact of the new reform program, from the success of documentation or registry, second with treatment of outpatients and admitted patients, third ethical observation on provision of medical cases, in fourth handling of psychiatry treatment and last the efficiency of laboratory service and pharmaceutical services are dealt.

In relation to right to health with respect to documentation and registry, one may ask how this could be a parcel of a curative medical aspect. The fact relies on the need of accurate profile to the better treatment of convicted persons. This is to say, when there is a clear medical history registered to an inmate record file, this record will benefit the inmate's ongoing treatment. The BPR has found multiple setbacks that ought to be improved. The major problems identified on documentation were failure of confidentiality, loss of medical history and inability to locate prisoners' registry card.

From the gathered data with respect to problems which involves missing registry card is not anymore a problem after a new prison officials were allocated to handle only the respective prisoners. The representative of Head of Basic Need Core Process indicated that there are still problems in relation to medical result. He said that there are instances where inmates are required to take the same test over and over.³¹³ And personnel who are responsible for such misconduct were reprimand for their non observance. Thus, he asserted that the clinical data system could be the solution, because automation is inevitable from the government point of view,³¹⁴ but most importantly, it will bring a sense of accountability on handling inmates' profile.

The second point on curative medical treatment was the concern of the treatment of

³¹³ This issue was on the beginning was raised where an interview is made with Section "II" Respondent 6. He claimed that there was an instance where he was told to take stool test because his previous result lost during discourse.

³¹⁴ There is a memorandum of understanding between Addis Ababa University Information Science and Technology Faculty and the Federal Prison Administration, since the year of 2012/13. It has an objective to utilize a clinical data base system that comprehends all the medical discourses taken by the prisoner until release. And it was observed during the research that the Federal Prison Administration General Hospital implemented such system to administer its beneficiaries.

outpatients and admitted patients. The reform program evaluated the previous performance and found that medical treatment was made by clinical nurses, in the end aiming treatment by Medical Doctors.³¹⁵ But all respondents from both sections showed that there is barley treatment by Doctors and most of the medical treatment is still given by Health officers or Nurses.

Due to that, the respondents believe that the curative treatments are still subjective and amateur. They assert their argument by projecting the congestion on the Maximum Security Prison. They said there are long overdue referral patients with in the compound.³¹⁶ The respondents elaborate that, the fact that referral patients come to Maximum Prison Security to receive better medical review, yet due to lack of expertise or professional hierarchy to oversee the result reached by subordinate health officers from the regional or district prison, the Maximum Security Prison, becomes congested with patients that require medical attention.³¹⁷

However, the Head of the Basic Need base line study for Maximum Security replies otherwise. He stated that, unlike the previous setting, currently there are two medical personnel destined for single Unit. Where one is a Health Officer the other is a Nurse. But in previous setting there was no professionals assigned for each Unit. Nevertheless, he accepted there are long overdue cases in the clinic, because of prolonged medical result. This occurred due to some medical treatment such as Magnetic Resonate Image/MRI/, Pathology investigation, Orthopedic Cases and Neurology cases are entertained by Health Center outside the Prison. He said this has also contributed to the congestion in Maximum Security Prison as well. The researcher witnessed visiting the Units, there were a significant number inmates who came from regions and other level of Federal Prison Administration for referral purpose and kept for more than two years and above just for medical treatment. Aside to the above informant justification, respondents also asserted there are many instances where prison liaisons failed to facilitate for referral appointments and negligence bringing medical results in time. And these has impacted regressively for the Long Term Prisoners imprisonment.

From the issue of ethical consideration on medical service, the research attested that there is no or little done on bringing transparent and accountable health provision. All respondents

³¹⁵ FDER Prison Administration (2010/11), Supra note 274, see on Section 3, Redesigning the Process, p. 47

³¹⁶ Interview with the Head of Basic Need Core Process base line study confirms that, there is a severe congestion problem in Maximum Security Prison and to lighten the problem, the Clinic in Maximum Security Prison distinguish, 195 long overdue referral cases and allocate Doctors to entertain the case. So that, this patients can be returned to their respective region or category.

³¹⁷ Bear in mind; both the regional or district health officers have the same hierarch of medical expertise as to that of Maximum Security health officers. This created a problem for the referral patients to receive any new treatment by the health officers in Maximum Security.

from both sections stress that, many times health officers or nurses diagnose patients while listening music or radio program through their earphone. Moreover, they complained that many health officers examine inmates without utilizing their thermometer or sphygmometer /BP apparatus/ to diagnose patients.³¹⁸ Accordingly, they criticized that they don't think whether they are properly diagnosed by the health officers. In further they claimed that, they have always posed their complaint to their Unit health representative to demonstrate their concern with the clinic coordinator for such misconduct. However, they hadn't witnessed any measures by the administrative office to complement their grievance.

The researcher posed the question to Representative of Maximum Security Basic Need Coordinator and he replied that " there is a growing concern about the professional ethics of the health officers but he was not informed about such problem"³¹⁹ The issue that is needed to be addressed in this respect emanates from international and national standards on the manner of provision of health service.

In view of the General Assembly Resolution on Principles of Medical Ethics, the decisions made by medical officers are extremely sensitive and could adversely affect the faith of an inmate so that physician action should always fall under the professional ethics.³²⁰ With respect to national standard, the Directive on Health service, Article 4 has stipulated that at all times a health officer must observe his Oath and perform his duty by exerting an exemplary figure.

In this regard, a proper execution of quality medical service could be offered when the professional ethics and moral norms are observed.³²¹ If these standards and norms are not enforced, having a mere reform program cannot bring the intended quality service in Maximum Security Prison peculiarity.

Therefore, a Maximum Security Prison must enforce the code of conduct as well as need to build a further channel aside to the representative of inmates. The communication between the inmate and the institution must be broadened and enhance a sustainable manner, so that the institution can be informed about the concern of the beneficiaries. The fact that the existence of inmate health representatives within Units helps the coordination, the office must create a

³¹⁸ Reports on Change management form January up to February of 2013/14, infer that, due to the existence of Ethical incompetence within the health service, the administration facilitate for a training on the manner of professional excellence.

³¹⁹ Interview with representative of Head of Basic Need Core Process Administration of Maximum Security, October 24, 2014.

³²⁰ UN General Assembly, supra note 73 on principle 1

³²¹ DFID (2007), Governance, Development and Democratic Politics p. 5

mechanism that should ponder a sustainable link between the prison and convicted person. Doing so will promote the achievement of the highest attainable health standard.

In forth instance, the research evaluated the curative aspect of psychiatry treatment. As the Maximum Security Prison professional matrix indicates the endorsement of the reform program, there were only two clinical nurses and a Psychiatrist on part time level. But at this time, there are a specialist, two professionals at Masters Level and a nurse to handle cases. However, the fact that, these personnel are not only engaged with Long Term Prisoners and Persons under Death Sentence, it makes the treatment scarce.

From the gathered data on the curative psychiatry treatment, the official report from the year 2010/11-2012/13 did not indicate the progress or achievement of the treatment. Although, there is a moderate professional allocation for the treatment, the impact is unknown or insignificant from the aspect of Long Term Prisoners or Persons under Death Penalty aspect. The research believes there should be a comprehensive undertaking to investigate the extent of the aesthetical value of the treatment for such category.

Findings in relation to laboratory services revealed that, the services are modernized and fairly accessible when needed. Respondents from Section "I" stated that during the former setting they remembered that the laboratories were not equipped with necessary facilities and no qualified personnel. But now there are reasonably enough personnel, who can handle the load. But again they add that there is still a problem of missing test of convicted persons.

In relation to pharmaceutical service, both sides of respondents sadly comment that, for different medical problems the same drugs were given out. They stress that the prison clinic most of the time provides them with same type of antibiotics for different types of medical conditions. To clarify this issue, the Head of the Basic Need Core Process base line study confronted the issue and he responded by enumerating multiple professional justifications for probable cause.

However he admitted that "in many occasions, there might be a shortage of drugs and health officers may prescribe medications that are in stock". In many circumstances these would result incompatibility between the diagnosis and the medication. This could arise for many abandoned medications in Unit garbage's and inmates' dormitory sleeping area". The researcher has witnessed the informant's response while visiting the cells and blocks. It was observed that there were many packed medications which thrown away in garbage canes without been taken. The office should diligently react on the matter otherwise its neither benefiting the inmates nor

the state expense on effective pharmaceutical coverage.

4.3.1.3. Accommodation arrangement on Maximum Security Prison

Although the topic is not the scope of the study, but due to its impact on the health and nutrition, it is worth note taking the findings on the accommodation. From the personal observation undertaken inside the Maximum Security Prison, the two Units with 6 blocks undertake a total of 807 long term and death row prisoners.³²² This overcrowding seems to trouble inmate's term of imprisonment because pursuant to the reform program, the sleeping arrangement was intended to the extent of 1.96 m² per person.³²³ However, findings from interview from Section "I" exposed the current sleeping accommodation in each block is otherwise. For instance, the Head of Security and Inmate Administration in Maximum Security Prison disclose that in Unit II block 2 there are 157 beds for 280 convicted persons. This entails the sleeping arrangement is 1.78 m². Thus, this has contradicted the pre arranged new reform intentions, and also impaired the realization of hygienic aspect of the congested prisoners.

Moreover on Article 2.7 of the Directive for health, stipulates that for every 50 inmates, there should be a shower within a Unit. However, respondents from Section "I" expose that there are only 2 shower in a one block/cell which holds around 280 inmates. They also disclose that inmates' maintain the broken showers from their own contribution.

4.3.1.4 Conclusion

The researcher assessed the right to health in Maximum Security Prison through primary and secondary data interpretation in light of the international or national standards. There is undeniable positive inclination towards a sense of responsibility by the prison official progress. Such advancement emanates from the realization of classification of Maximum Security Prison as well as the issuance of multiple directives that govern for the accommodation of the new arrangement.

As a result, prison officials were allocated for the undertakings designed by the reform. However, the research finds numerous instances, where the reform failed to meet the standard of the human right or did not impact to the extent of the beneficiaries' importance.

To begin with the FDRE health policy for utilizing health right is through preventive

³²² FDRE, Prison Administration Data Base System, accessed October 20, 2014. The data base also shows that a total of 3084 inmates who are sentenced less than 25 years are either awaiting to transported to other level prison or came to maximum security to follow their medical treatment from other facility. 92

³²³ FDRE Prison Administration, supra note 274 at p.108.

aspect. However, the reality on the ground is far from the objective at national level. The allocated health officers to undertake nutritional and hygienic advocacy were not capitalized or complied as it should be. The Unit representative that was organized to facilitate the health service should be upgraded from mere liaison capacity.

Furthermore, the reform program on non communicable disease prevention scheme hasn't been implemented. Especially the psychiatry realm is below satisfaction. Due to that, the preventive design is far from realization and did not pursue to the direction to achieve the highest attainable health care, which in return created a burden to curative health service.

Findings on curative aspect of health service imprinted several setbacks. Since Maximum Security Prison receives referral convicted persons from either regional or district prisons, the medical personnel who review referral case did not have professional capacity or hierarchical authority to oversee the diagnose. Thus, the Maximum Security Prison continued to be congested due to the failure to implement qualified professionals below the standard set under reform program as well as Article 4 of the Directive on Admission and Registration of Convicted Person.

Moreover, a special attention must be given for professional psychiatry who are assigned for health service. The Maximum Security Prison must focus on the balance between the need of wide-range of medical treatment and necessity of Control. There should be intra-institutional remedy that could accommodate complex demand needed to enhance better treatment of convicted person of Maximum Security Prisoners. Failure to observe the essentiality of these protections could constitute a degrading and inhuman treatment.

Last but not least, a due consideration must be given for Medical ethics observance. The fact that, professional services should be given the same quality as those of outside of the prison, and health officers should comply with the required ethical excellence. Rules governing their behavior should be enforced in order to achieve the highest attainable health service.

4.3.2 Findings in relation to provision of "Adequate food" in Maximum Security.

According to Article 11 of the ICESR defines "*adequate food*" as technical and scientific knowledge that has a nutritious principle attached to it. Article 27 of the of the Federal Prisons Establishment Proclamation No 365/2003 and Article 10 of the Regulation on the Treatment of Federal Prisoners No. 138/2007 proclaim that, prison centers have the duty to provide convicted persons with sufficient dietary and adequate food.

Accordingly, the Prison reform plan was intended to bring the nutrition of every convicted person food to 2938.94 calories.³²⁴ However, the assessment made in 2013/14 revealed that the calories level per inmate was less than 2500 calories.³²⁵ Among other reasons the insufficient fund allocated by the Federal prison is a major setback identified by the Ethiopian Human Rights Commission.³²⁶

Before the endorsement of the new reform, it was condemned by the BPR the institution could not provided to food on new arrival in prison. However, from the attended interview with Section "II" Respondents asserted that they all receive food upon arrival. But Respondents from Section "I" said otherwise. They stated that, before the endorsement of the reform new convicted persons used to share meal of other inmates' for days.

And yet, what need to be addressed hear is the issue of adequacy of the food nutrient. To this respect, the response of both section respondents was shocking and call for an immediate solution. It is confirmed by observation that, their weekly menu involves only two types of meal with no seasoning at all.³²⁷

Both Section respondents added that, many of convicted person abscond their meal due to the absence of seasoning on the prepared meal. Moreover, they said, there are no vegetable given to them even in month.

The other sad thing that needs attention in this regard is dietary Food necessity for persons with health problem, especially persons who live with HIV/AIDS, Tuberculosis and Cancer Patients. To this date, there are around 249 enrolling patients who follow Anti Retro Viral Treatment /ART/ and 51 patients with PRT capacity. Further, there are also 50 tuberculosis patients who need dietary food and 8 Cancer patients with chemotherapy follow-ups under the Maximum Security Prison.³²⁸

Here it worth to note taking, the SMR Rule 20 has stipulated that every convicted person need to be provided with food of nutritional value that is essential to his health and strength. The data collected from informant response revealed that only 70 persons who are under ART supplemented with food but not other eligible convicted persons.³²⁹

³²⁴ FDRE Prison Administration (2014), Assessment on the Prison Food Provision Reform, August, 2014. at p. 51

³²⁵ . ibid

³²⁶ EHRC (2012), Supra note 10

³²⁷ From the observation made in the Maximum Security Prison, the type of meal given out for convicted person are only beans and plain stew.

³²⁸ Interview with Executive Secretary of the Federal Prison Administration for Basic Need Core Process. He stated, that there are 150 patients in Maximum Security, the other are located either in Minimum or Medium Security

³²⁹ Interview with Executive Secretary of the Federal Prison Administration for Basic Need Core Process, October

As the Executive Secretary of Basic Need elaborates, he said prisoners with Cancer and TB patient are supposedly needed to acquire a mandatory dietary food. However, due to lack of sufficient budget, the prison could not provide with the needed dietary food for the inmates.

In this respect it is clear that the Federal Maximum Security Prison as one of the paramount penitentiary system has failed for consecutive four fiscal years to observe the dignity of inmates. As the ICESR General Comment no.12 elaborate the context of adequate food to be interpreted in narrow and restrictive sense, so as the state could realize the minimum package calorie. In prison setting inmates' who are patients of HIV/AIDS and other critical medical patients have not been provided with adequate food required for Medical purpose.³³⁰

During the interview undertaking, the informant indicated the Ziway Medium Security Prison in a good trend engaged prisoners with medical needs to generate incomes by capacitating them to earn money through indoor games fee. This arrangement helps the prisoners to assist themselves and afford supplementary calories from the market.³³¹

To conclude, how a country treats its offenders is a reflection of its overall view approach to human right, particularly on basic food provision.³³² As the international and national as well as directives installed to govern the accommodation of inmates stressed the need to nutritious food for both inmates and patients, the reality on the ground is disturbing and heart breaking. Although, all prisoners receive meal upon arrival, the quality and variety is under satisfactory.

The fact that adequate food is a progressive right, it should not take more than four fiscal years to get improved. Up to date the food budget per person is still 8:80. It is noted from reality in Maximum Security Prison aspect, vegetables are more scarce than ever, there is no seasoning on daily meal and the preparation of food is very poor and deteriorating by day. Nutritious foods that are necessary for medical purpose are not available or accessible.

Thus, we can wrap up by saying, the fact that the administration failed to pursue a deliberate, concrete and targeted reform to realize a progressive food, it continued to constitute to degrade treatment for Long Term Prisoners and Persons under Death Penalty. Because, progressive right does not entail indefinite period for its realization but rather a standard of procedure for its achievement.

4.4 Security, Safety and Justice Administration Reform Program Impact on the Right of

³³⁰ Interview with Executive Secretary of the Federal Prison Administration for Basic Need Core Process, October 23, 2014.

³³¹ Ibid

³³² UNODC (2010) supra note 101, at p. 69

Inmates

The research work has attempted to investigate the security, safety and justice administration by the reform program and its impact on the rights of inmates. This required the need and the essentiality of regulating security and punishment could result in better and dignified treatment of inmates as well as good order in prison. The first section deals with the issue of physical administration of inmates, the second part reported the manner in which the discipline discourses facilitates to achieve good order in prison.

4.4.1 Findings in Physical Security and Safety Reform Program Impact in FDRE Maximum Security Prison

The study examined the capacity established to maintain the balance among security, control and justice to upraise the treatment of inmate. A prison official should not miss-conceptualize treatment of prisoners with humanity and fairness could lead to reduction of security and control.³³³

Some of the issues were raised on the baseline study of the BPR on Physical Security and Safety in Maximum Security Prison were; the impossibility to locate inmates within the Unit due to poor registration, Second no induction for inmates how to lead their lives in prison, third poor book keeping on prisoners personal belongings, fourth a security threat due to severe congestion and lastly the existence prisoners with disciplinary capacity. From this point of view, detailed data were obtained in order to evaluate the discourse of the reform program to date.

In Rule 7 of the SMR stipulated that everyone under imprisonment should be kept in registration book³³⁴ with detailed information.³³⁵ To this respect from the observation made on 20th of October 2014, 11 am, it was attested that the registration made with the help of Prison Data Base System respondents 1, 6 and 7 from Section "II"³³⁶ revealed that the fact that they have been on appeal process after imprisonment, the existence of data base system registration helps them to follow their court proceedings successfully.

In contrast Respondents from Section "I" stated that, due to the existence of multiple categories of inmates on previous settings, it was uncertain whether they are going to appear before court or not. Most reported they were unable to attend court appointment due to

³³³ UNODC (2010) supra note 101, at p. 58

³³⁴ UNESC, supra not 3, at Rule 7

³³⁵ OHCHR (2005), supra note 86 at p.41

³³⁶ Section "II" Respondent 1, 6 and 7. Note that Respondent 1 and 7 are sentenced 25 and 18 years with 6 and 4 criminal counts respectively. This shows, they have been in court adjournments for several times.

inappropriate registration of court adjournment. Even for such misconduct, the Prison liaisons officers were not held accountable for their failure because they always absconds their responsibility by stating they don't have a material jurisdiction to undertake matter back and forth to respective inmate courts.³³⁷

In relation to induction, respondents from Section "II" indicated by the time entry, they were all communicated by the prison officers and been oriented with their rights and duties. But one issue they raised was, the fact that the induction and registration took place simultaneously with other tasks, it was difficult for inmates to grasp the full knowledge how they could fit life in prison. It was confirmed that the registration process includes oral interrogation on life history, photograph, medical screening, luggage check point and registering personal belongings at the same time.³³⁸ This has indicated the induction discourse given a lesser focus on other tasks undertaken by the prison officers.

The other major concerns rose on the base line study on security and safety was with respect to registration of personal belongings. Respondents from both section explains that the prison mechanism in keeping belongings is not clearly defined or administered appropriately. All respondent of Section "II" stated that the law and the practice is not the same. They said that, the recording mechanisms are not prepared in light of proper store management. All retained property was accommodated without proper tagging to access them latter or upon release and/ or during confinement. e.g. respondents from section II reported they were required to leave their cell phones before entering to Units. However, by the time when their families appear to acquire the belongings they were notified that the prisoner officers were unable to differentiate which cell phone belong to whom. Most of the time, the prison officers who registered the belongings of detainees may desert their occupation or transfer to other prison task without clearing their occupation. All the Respondents agreed that, there is no clear procedure on the manner of handling their belongings. Moreover, they said Maximum Security Prison administration did not entertain their complaint accordingly.

To cross examine the issue an informant was contacted³³⁹ and replied that, the basic problem with respect to inmates' personal belongings is the absence of clear set of rule that

³³⁷ Interview with Secretary of Security and Inmate Administration Core Process base line study team, October 23, 2014. The material jurisdiction refers to liaisons been given a specific court bench under their observation. However, liaisons were used to carry different level of court bench with need base crisis.

³³⁸ Interview with Secretary of Security and Inmate Administration Core Process base line study team, October 23, 2014

³³⁹ Interview with Head of Security and Inmate Administration in Maximum Security Prison, October 23, 2014

govern the property of the prisoners. Although Article 6/2//b/ of the Directive on the Admission and Registry stipulated in general form, the need for prison store, there are no rules on how and what should be done for belongings who died in prison transferred to another facility or deserted properties.

Moreover, the informant stated that there should be a standard what should be fulfilled by families who claimed to receive inmate's belongings. He also confirmed that, due to shortage of space to accommodate the prisoners belongings on few occasions the personal belongings are kept among institution property. He informed that this section of the service found to be the most known area for grievance. And he asserted that, the administration started to distinguish for belongings that are not anymore claimed due to release or death of the prisoners among the bundled belongings. However, to the researcher beliefs temporary solutions could not relieve the ongoing task of registration of personal belongings. The administration should focus on building a standard of procedure how to entertain such complaint in sustainable manner.

Fourth, from issues related to procedural and dynamic aspect of security, the BPR reform program has indicated the absence of trained man power and concerns with insufficient technological equipment to guard the facility. Accordingly, the researcher witnessed the current security setting been upgraded to a level of multiple type of prison wardens who are destined to specific tasks in prison. In previous setting a warden will undertake both the court escorting and compound control. Upon the reform program pronouncement, the two tasks were divided and restructured under distinct departments and specific officials were assigned with respective specialty.

After the introduction of the new scheme, the Head of Security and Inmates Administration informed there is a very little attempt for escape. Because the administration committed to organize the two sections with distinctive specialty. Where the first structure is special force that is trained to escort inmates to courts and the other sections are wardens who are trained to secure only prison facility. Moreover, the informant said "the allocation of a Case Officer within Units, helped the administration to render prompt administrative solution". It's noted this would help the Maximum Security Prison to build a regular contact with the inmates so that the institution realized qualitative security. Further, it was learnt the compound control had been supported by high tech cameras, 3D body scanner and metal detector to enable a better and effective control.

Although, escape in prison has dramatically decreased, failure to set of rules on how to undertake search of both the facility and individuals has opened the opportunity for smuggled products in prison. The reason behind reported was both the special force and compound warden haven't provided with on job training which has adversely affected the human treatment of inmates. Due to these facts, sometimes the special force during escort or performing search may use unnecessary physical assault on prisoners or visitors.

To substantiate the issue of Use of Force, a prison guard stated "I may coerce a prisoner to keep in order". The researcher asked him whether, if he has a knowledgeable about the principle of legality, necessity or proportionality of Use of force? He replied "as long as he brings back the prisoner in to compound, he will do anything what he thinks appropriate but not with the principle of legality or proportionality stance. He has also commented " he hasn't taken any training or orientation with regard to the principles raised since his recruitment 2012/13". Furthermore, an informant from head of Security and Inmates Administration in Maximum Security Prison confirmed, there are many instances where visitors had been subject to ill-treatment specifically battery in security check points. Because of lack of standard procedure and knowledge gap upon the prison guard how to undertake their responsibility. This shows there is a lot to do in indoctrinating multiple set of rules how to undertake search and ethical code of conduct enforcement on the prison guards.

4.4.2 Discipline Procedure Effect for Good Order in Maximum Prison Management

Prison discipline should not be retributive but reformatory; not repressive but curative; and should be carried out with a view to foster the basic values of life and humanity. To this effect, Principle 30 of Body of Principles for Protection of All Persons under Any form of Detention or Imprisonment and SMR article 27-32 and Federal Prisoners Treatment Regulation Article 36-39, clearly defines the manner and the extent of the Discipline and Punishment Procedure. Accordingly, this part of the research work has provided with how discipline procedures could directly impact for the better treatment of inmates.

The first point that was raised during the discussion made with each respondent was focused on the issues of inmates with disciplinary capacity. The respondents in Section "I" agreed they are knowledgeable about such capacity and a Respondent told he was one of the exclusionist during that time. However, Respondents from Section "II" described that they did not have any knowledge with inmates with disciplinary capacity. But both Respondents from

both sections agreed that simple penalties did not entertain in written form as it is prescribed in the Directive for Discipline Procedure Article 5/1/.

In view of, cases related to the control of recidivist, all the respondents attested that many notorious inmates have the knowledge when they are going to lose their probation privilege or the limitation of the penalty. Due to that most of the respondents agreed that there is no safety for law abiding inmates with that of the disruptive ones. Because there is no order of mechanisms that is installed within the directive to govern the recidivist with that of the non-delinquent ones. This is to say the Directive on Discipline Procedure did not entertain the recidivist's inmates' behavior and for that reason the respondents believed there is no legitimate protection for their entitlement.

With respect to effective disciplinary discourses, the international standard requires punishment should be taken after formal hearing is conducted. However, from both section of respondents testified that they have witnessed frequent capricious disciplinary measures by the Prison officers. In order to confirm the allegation, the question posed to the informant of the Head of Security and Inmates Administration in Maximum Security Prison uncovered, the fact that the Case Officers have usually encountered convicted persons on routine bases, there might be frustration by the officials to take matters on their hands. He also commented that, this kind of behavior is not tolerable by the office. However, when he was confronted whether any disciplinary measures had been taken by the office for such misconduct? He replied; up to date there had not been any disciplinary measures taken specifically on human right violation."

The last point raised was on the relation to discipline was the issue of punishment. The SMR Rule 33 has provided that handcuffs, chains or shackles should never be used as punishment. However, the respondents from both sections disagree for the observance of the minimum Standard. Even more, during the research discourse, it was witnessed two youngsters in Unit two shackled from behind in Maximum Security Prison.

The issue was communicated to the head of Security and Inmates Administration but the concern was neither denied nor justified. The informant explained the fact that simple offences occur frequently, there is a need to use retributive punishment so that other could deter by seeing the consequence on the delinquent inmates. However, he said in other instances disciplinary decision given on inmates usually made within two days and records will be attached to the file of the convicted person for probation and pardon petition. The researcher in this respect, have

witnessed the records attached on the prisoners personal file. Nonetheless, youngsters who were observed in Unit two should not put under cuffs for penalty purpose, doing so is against human right standards and needs to be improved.

4.4.3 Conclusion

The opportunities attached to the reform program in relation to Security and Inmates Administration of the Maximum Security Prison can be seen from the realization of good order in Prison. The introduction of Prison Data Base System helps the prisoners as well as the authority to locate prisoners duly and process their court proceedings accordingly. The existing registration is well advanced and encouraging.

However, the research findings indicate that a lot remains to be done in relation to registration of personal belongings of inmates. The office should not focus on distinguishing whether family members or the prisoner could claim the property in any future. But rather it should engage itself how the institution could succeed in building a sustainable and accountable mechanism. This can be achieved through enforcing a manual on how to undertake the task or by requiring the officers who are assigned on such occupation to clear their term with internal audit or by requiring them to provide sufficient warranty during assignment.

Second, facts related to induction should not be carried while multiple tasks are undertaken. Although, the introduction of induction has helped the convicted persons to have a glimpse where they are getting into, the office should take the service seriously and make the orientation as productive as possible. So that it can supplement for the good order of prison.

The other impact sought by the reform program is the introduction of special force. From this aspect, although escape in Maximum Security Prison has substantially decreased, the manner in which security is ensured should not be disproportionate with the need to exercise physical control. The office must issue a search and security standard to make an effective control over the prison. The existence of standards could truly substantiate the inclusion of international norms in national prison system. Even more both special force and compound warden could also perform their obligation inline to the standard. In addition, there should be continues on-job training for all prison officials to enable them to internalize the responsibility they carry towards for the fulfillment of human right. The fact that wardens spend their daily interaction with inmates, they should be informed regularly about their duty and consequence for the non observance of rules enforced in Prison.

Furthermore, the introduction of Case officers among prisoners gave the institution to gain a better look to monitor the physical instances. These seem to be the reflection of the reform's adoption of a dynamic security to bring a system that has engaged with inmates for good order in prison. However, when there is misconduct by the Case officers, there should be accountability, which will certainly bring a sustainable improvement. Thus, the administration should strengthen the monitoring mechanism of its officials otherwise all the efforts would lost its purpose and out sated reform objective.

Finally, inmate monitoring mechanism through adoption of procedure of discipline and punishment is highly appreciated and up to the standard of the international norms. But capricious measures must not be tolerated. Moreover, the directive must be tailored to control recidivists' behaviour. Additionally, handcuffs and shackles shall not be used as punishment for simple disciplinary offences but only to prevent harm to oneself or others. Failure to observe this could constitute inhuman and cruel and degrading treatment. This in reverse could also adversely affect the positive image the institution thrives to build through its reform program.

4.5 Right to Visit Reform Program Impact on the Right to Convicted person

UDHR Article 12, ICCPR 17 and FDRE Constitution Article 21 as well as Article 13 of Treatment of Federal Prisoners', have shown clearly that, right to family is the most valuable privileges protected by the bill of rights. It is wise to govern this aspect in a very productive way. While the family life is inevitably restricted for an individual while incarcerated, it is one of a particular importance that convicted persons are able to maintain family connection through family visits or other means and ways of communications.

From the data gathered, family visit is one of the successful reform discourses that met inmate's satisfaction. Before launching of the reform program, convicted persons used to be allowed to receive visitors only twice a week and took long awaiting period.³⁴⁰ This has created a problem for inmate's family and the prisoner itself. However, both section of respondents revealed that the existing reality is encouraging and pleasing. All respondents are very thankful for full week family visit and comfortable to their visitors. During observation, it was witnessed that a family member who passes the security check point could visit his family within 15 - 25 minutes.

³⁴⁰ Section "I" Respondents all replied in the same manner.

Aside to this, both section respondents revealed that, other type of communication is under threat and impossible to access. They have explained that "Letters" and "important information about the outside through newspaper or periodicals" were not addressed appropriately. In relation to Letter to family both section respondents agreed that, they could not able to send letters to their beloved ones. But these are only accessible when there are any volunteers who approach them and help them to send Letters on their own expense. Informants from Maximum Security Rehabilitation and development Core Process confirmed that currently the Prison did not provide a mail accommodation due to insufficient manpower. Due to that, the respondents accused that, this has created for deferential treatment among those who could afford postal fee than those who could not. This in turn, refute with the principle of equality before administrative remedies.

Moreover, the informant from the Maximum Security Rehabilitation and development Core Process reported that TV program is the only mechanism available for inmates to retain information about the outside world. He mentioned "although there is a weekly news magazine of the administrative since October 2013, the office hadn't been given out the publications to inmates." So that inmates could enhance their consciousness on the existing realm of the Country. He asserted that facilities in relation to letter and national news paper have been stopped since 2012/13. Yet possible internal weekly news magazines should have been disseminated among inmates as alternative communication apparatus with the outside world.

Therefore, the research evaluated that the prison administration is undertaking its responsibility inconsistent with the principles of Minimum Standard Rule 39 and even with the directive for Admission and Registration Article 8/k/ as well as Maximum Security Prison Reform Program objective. Since Long Term Prisoners would probably spend substantial period of time in prison, fulfilling institutional weekly news magazine could bring progressive effect on the rehabilitation and reintegration of inmates upon release.

The other factor that was considered under the right to enjoy family is related to inmates being imprisoned near to their residence or locality. The fact that imprisonment to a nearby prison of family could nurture the prisoner rehabilitation process and enable the inmate to participate for its own rehabilitation upon release, this opportunity should consider as vital prospect for correction. Bearing this in mind, respondent 4 from Section "I" and Respondent 3 from section II" claim that their Constitutional right has been infringed by the prison

administration when they are forbidden by the authority to be imprisoned in their local area.

Respondents stated that, they are not clear why their criminal act is considered grave from that of aggravated homicide³⁴¹ or any other offence that perpetrated to the public safety. The respondents have justified their claim by arguing, since they are sentenced with due process of law, the Maximum Security Prison should not punish them by restricting with absurd legal fallacy.

On the other hand, the member of the base line study for the Security and Inmates Administration responded that, he believes, that the listed criminal counts on the Transfer Directive are crimes that potentially constitute for great danger to the community, but he accepted the same concern was raised during his consultation with Ministry of Justice Legal Research and Induction department.

The research finds this prohibition undermines the Constitutional right as well as inconsistent to the rule of law. The justification relied on principle of legality because, if the respondents gone through rigorous due process of law their right to family should not be restricted with subjective standard. The fact that Respondent 4 from Section "I" and Respondent 3 of Section "II" will spend twenty years in prison, forbidding them for such privilege is taken as refuting their Constitutional right and punishing both inmates to their enjoyment to right to family. It is not clear why the directive on transfer forbids "aggravate assault" for such privilege and allows "aggravated homicide" to enjoy transfer to their respective community.

Thus, the directive of Transfer can be said inconsistent both with the international human right standards and national normative laws. When we see Article 3 of Regulation on the Treatment of Federal Prisoners it s clearly stipulated that inmates treatment should not based on discrimination but rather granted with humanly dignified manner. Therefore, the prohibition by the directive is illogical and legally absurd as well as constitutes double jeopardy on inmates.

To conclude, the reform program on right to correspond with outside the prison specifically weekly visit should be appreciated and promoted. In relation to "letter to family" and "public newspapers" should be provided to all specially for inmates under Long Term Imprisonment and Persons under Death Penalty. But most importantly the directive on transfer must be challenged and reviewed because subjective prohibition could result degrading treatment

³⁴¹ Note that: the Directive on Transfer of Convicted Person Article 4/2/(a) up (m), enumerate, Criminal Counts that constitute for non eligibility for transfer. Respondents stated that, when their Criminal count considered threat to public safety, they are not clear why Aggravated Homicide were not included as threat on the Directive. Thus they stated that, the subjective standard set by the Directive for certain type of criminal count, resulted for inability to transfer to their locality.

and discrimination. This could adversely affect the reform progress.

It's worth note taking the administration need to bear in mind, the capacity to take-in Maximum Security Prisoners in Amahara Regional States and Tigray Regional States. Thus, aside to the subjective prohibition, there should be a due consideration for potential recipients. Not observing this will continue to contribute for congestion in the Federal Maximum Security Prison, which results in scarcity of resources and to degrade treatment as well.

4.6 Complaint Mechanism Impact in Maximum Security

ICCPR Article 2/3/, Body of Principles of All Persons Under any Form of Detention or Imprisonment Principle 33, SMR Rule 35, as well as the Robben Island Guideline 19 and FRDE Establishment of Federal Prison Article 20 provide that there shall be a right to lodge a Complaint. Moreover the SMR Rule 55 broadened the protection by stipulating, there should be a regular inspection of the penitentiary manner of complaint adjudication. Accordingly, the NHRAP required democratic institutions and the Ministry Justice to overlook decisions given on complaints against human right violation. Thus, the research evaluated the manner and extent of the compliance of the national setting on the ground.

The research works has reviewed some of the complaint mechanisms installed in the Maximum Security found on multiple instruments. These are Article 8 /o/ of Directive on Admission and Registration, Article 6/2/ and /3/ of Directive on Accommodation and Administration, Article 8 of Directive on Discipline Procedure and Article 22 on the Directive of Health Service provide the manner of complaint mechanisms.

During the discourse of the research we have seen the manner of international standard in investigating complaints could be made through the application of individual, close relative as well as their representative. The research evaluated the legal frame work and the practice on the ground. Accordingly, neither the regulation on treatment of federal Prisoner nor all subordinate directives dealt during the research prescribe the opportunity to lodge any complaint by a representative. However, on the ground there is a practice to receive a complaint through monthly meeting with a family member. Hence, this practice shall be supported by appropriate procedure in order to give the trend a sustainable and accountable effect³⁴².

The study has also undertaken overview of the issue of appearing before the head administration without supervision. And respondents from both sections revealed that, the Head

³⁴² Interview Head of the Change Management Department. October 24, 2014

Administrator has never made himself available to the inmates. Inmates could only encounter the head Administrator when the authority initiates the access. These initiatives are only occur when the office want to mobilize the inmate for certain objective. Hence, the Minimum Standard Rule is not observed in relation to Maximum Security Prisoners under this case in point.

Moreover, the democratic institution and the justice bureau that were given a task to inspect and monitor for any violation of human right did not make themselves available to the Maximum Security Prison situation. Informants from the Ministry of Justice, elaborated that, although the joint committee is required to inspect the Maximum Security Prison every three month, but from the year 2010/11-20012/13 the inspection was made only once on Maximum Security Prison.³⁴³

At last, one of the identified reasons for complaint is the issue of Pardon. Pardon is determinant hope for Long Term Prisoners and Persons under Death Penalty. Because their imprisonment segregate them from the outside world for longer period. Having an effective pardon procedure would have an enormous positive impact on the rehabilitation of Maximum Prison Security Inmates. Due to that, the prison under its reform program endorses the need for the better utilization of pardon for inmates.

Findings from the study shows that the previous settings have lacked coordination among stake holders, with very prolonged discourse and poor knowledge of execution as well as insufficient clear manual how to handle the process.

Up to date the problem seems to transcend after the prouncement of the reform program. Respondents from Section "I" added they have been submitting a petition three times by the repealed proclamation and once by the amended one for the Ministry of Justice to be granted for Pardon. However, they have not been given any clear response from the Prison or the Justice Bureau. They have also confirmed information they had been given that, "*they have been denied*". However, the statement did not give them the appropriate requirement about what they need to improve or need comply with the opportunity in the future.

There is substantial international jurisprudence on the special nature of Persons under Death Penalty retrospective necessity. And denying them the opportunity with structural abuse can only be interpreted as the non observance of the ICCPR 6/4/ and the safeguard 7 of the Safeguards Guaranteeing Protection of the Rights of those facing the Death Penalty.

³⁴³ See the FDRE House of People Representative (2012/13), Supra note 253. p. 40 it includes the Ministry Justice, Federal Affairs, Human Right Commission and Federal Prison Administration itself for periodical inspection.

In addition respondents 3 from Section "I" stated that a Sentence to Death penalty by the Federal High Court was reversed by the appellate court to Life Imprisonment on July 2006. Furthermore, on August 2006, the pardon board gave once more a decision that the sentence been commuted to Life imprisonment. The respondent argues that, pardon is only relieving the offender from the consequence of the sentence, while the beneficiary is still in guilty.³⁴⁴ Hence, this could narrow the benefit that he could gain from the appellate court altered decision. Because when the Federal Supreme Court passes a decision it presumed the act of the offender for lesser danger or severity unlike Pardon.

Therefore, we could conclude that, the theoretical argument raised on the 3.1.5 could really see the effect on respondent 3 from section "II". Meant, when we analyze the given case the lack of provisions on the Proclamation on Procedure regarding Persons under Death Penalty under the proclamation on Procedure for Pardon resulted for dual decisions upon the inmate. The Respondent has also added he has been communicating the issue to the concerned authority but up to this date no response were given to him.

On the reverse scenario a respondent 7 from Section "I" explains that he was Sentenced Death Penalty nineteen years ago and his sentence was commuted in part and become Life Imprisonment even if he did not reconcile with the offended party. The respondent explained that, due to the period of his imprisonment he applied for probation but the court replied he is not eligible because the court has the statistic the respondent is still on Death row, still!!

In view of this consideration, the research work has undertaken the matter to the pardon officer in Maximum Security and posed the issue. The informant responded that there is no clear manual that could help to facilitate the Procedure Proclamation on Pardon, due to that, the department analyzed the application subjectively. He continued by stating most of the time the Pardon petition is sent to the Ministry of Justice during holidays and with the purpose to alleviate the prison from congestion.³⁴⁵ The informant also reflected there is week collaboration between the Prison Administration and Ministry of Justice. This hampered the possible better treatment that could be provided for this specific category.

Most surprisingly, the documentation of inmates file in the Ministry of Justice uncovered that a single crime made by two accomplices in one criminal count, a pardon was given for the one and denied for the other. This has unveiled a concern how article 17/2/ of pardon

³⁴⁴ Dorothy Laird, (1959) *Supra* note 144, at P.205

³⁴⁵ Interview with Pardon and Parole Officer in Maximum Security October 24, 2014

Proclamation No. 840/2014 could be subject to multiple interpretation. On the Proclamation "...*interest of public and government...*" was left for discretion interpretation by the board to define, whether a certain act is a threat to the public safety or to the national security.

Due to that, one can conclude that, Long Term Prisoners and Persons under Death Penalty treatment with humanly and in dignified manner was not be observed but rather regressively affected by cross institutional unproductive collaboration. Thus, the reform program must focus to scale up the integration and effective cooperation among stake holders to bring about a change in light of the rights of prisoners under this special category.

Chapter Five: Conclusion and Recommendations

5.1. Conclusion

The states treatment of its offender is a reflection of its overall view and approach to human rights, particularly its commitment on provision of services for prisoners. To uphold this, a mandatory reform program has been carried out in Ethiopia. The reform has been based on international standards and norms that require member states to pursue legislative and administrative measures for the realization of the human rights of persons in prison. Accordingly, a systematic and comprehensive prison reform program was put into operation to improve the treatment of convicted persons.

As innovative, flexible and streamlined services are at the heart of reform program, the Federal Maximum Security Prison has established the framework and approaches to achieve a dramatic improvement on the treatment of convicted persons. This new arrangement gave an opportunity for the research to identify what is implemented to meet the objectives set. The findings are only intended to appeal to the administration and policy makers to devise better ways of implementing the program to bring about sustainable reform on the Maximum Security Prison.

Some of the positive impact of the reform can be seen from the endorsement of several legal enactments to administer the different setup put forward to accommodate the manner and kind of services given out for inmates. The existence of clear set of rules brings a sense of accountability and predictability on the undertakings of the institution.

Among progressive impacts of the reform program, the pronouncement of the Maximum Security itself is the prime one. The Maximum Security Prison is the largest and well known facility, having a clear set of rules helps the administration to discharge its mandate in focus. However, non compliance to such out-sated standards have resulted congestion and resource scarcity that ought to be invested for Long Term Prisoners and Persons under Death Penalty.

The achievements that are noted with the new arrangement concerned with mandatory medical screening before admitted in to Units. In addition keeping records for communicable diseases has helped to keep the safety of the prison as well as for continued follow-ups. Aside to this, the automated registration helped inmates to access their duly court appointment and app~~er~~^{er}

process. Furthermore, the new arrangement has enabled the inmates as well as their families to enjoy visit throughout the week. However, these numerous achievements of the reform program fall short of the full enjoyment of human rights standards and they must tracked to sustainable manner.

From the organization structural aspect, although there are number of personnel assigned to the Maximum Security, the impact seems less or slow in progress. The reason to say this, health services for physical and mental well-being are not implemented in a manner of the reform settings. The preventive health service on the reform setting and the fact on the ground are discouraging and need a special attention. As the governments reform priority is to prevent, than to cure, problems regarding functionalizing the case team installed within the Units and administrative level must be promoted. Where adequate medical personnel and sufficient pharmaceutical services are limited, ignoring this prospect is failure to highest attainable right to health of prisoners with their physical and mental well being.

On top of that, disregarding total psychiatry prevention treatment is adversely affecting the rehabilitation process. Because since FDRE criminal justice system continues to pass long term imprisonment, the state is required to compensate this pressure through positive reinforcement. Even more problems that could potentially debilitate conditions in long-term detachment did not receive any attention by the health officers and prison wardens.

With regard to food and dietary food for medical purpose should be fulfilled immediately. This negligence continued to constitute degrading treatment on inmates. This compromises the state multiple normative ambitions as well as the GTP, NHRAP and the reform purpose itself. The fact that adequate food is a progressive right should not constitute for non-steadfastness. The federal government must allocate adequate budget that is compatible with the rising coast of the market price. So that inmates can access acceptable quality of food.

For dietary food provision the state must take immediate action. It is imminent and morally compelling to accommodate the need for medical necessity. If not complied in time, FDRE Medium Security Prison solution should be adopted in Maximum Security Prison. So that inmates access extra calories when they are given a chance to raise money through participation in different services within prison. Otherwise, the life of this vulnerable group will continue to be under great danger.

The ethical consideration by health and Case officers in Units has been tolerated beyond the required professionalism. It is essential for the office to hold accountable the irregular behavior displayed by health officers as well as guards. Otherwise, all the normative standards implemented within Maximum Security Prison would miss its target and purpose. These in return will affect the achievement of the highest attainable health service and the reform program objective.

The good impact of the registration and induction for admitted inmates is worth note taking. However, the documentation on registry of personal belongings should be supported by transparent mechanism. Otherwise, it continues to be a reason for complaint for both inmates and their family.

On the other hand standard procedure should be enforced with respect to physical and compound search. This clear set of rules will help the administration to measure the extent of compliance by prison guards while enforcing the rules and standards. However, before criminalizing the guards there should be on job training on the necessity, legality and proportionality of "Use of Force" to execute orders. But most important, the reform could achieve its goal when there is a comprehensive involvement and interdependence between the guards and professionals.

To date, the coordination among inter-institutional programs is at minimum stage. If there is no mainstreaming for the essentiality of prison guards as a tool for the rehabilitation of inmates, the reform program cannot achieve its goal not today or ever. That is why we say reform programs are streamlined and interdependent.

The disciplinary procedures on inmates create a growing benefit on ensuring good order within the prison. However, recidivist and capricious measures should clearly be entertained by the enactments or remedied by tentative follow-ups. Instances where cuffs and chains are used as a punishment for simple offence should be avoided and discouraged. Punishment should always be given to those prescribed by the directive. Most important forbidding inmates for family visit for simple disciplinary offences must be rethought carefully. The fact that final decisions are given by the directive starting from Unit Manager, this ultimately could constitute for potential degrading treatment.

Issues relating to family visit must be in line with human rights standards, because such entitlement is essential for rehabilitation purpose. Although, this undertaking is by far well entertained by the reform program, concerns with respect to transfer to locality must sought carefully. The transfer to a prison to a local area will enhance the right to family and enable inmates to participate on their reintegration progress.

Nevertheless, the directive on transfer that forbids criminal counts without justification must be rethought. Omission of "aggravated homicide" and other offences perpetrated to the public are not clearly justified for their less deterrence to public safety than "aggravated assault". Thus, a subjective standard used by the directive constitutes discrimination and result inconsistent effect to international or national human rights protections. Moreover, the inconsideration of Amhara and Tigray regions capacity to take up Maximum Security Prisoners broaden the burden of Life Sentenced Prisoners and Persons under Death Penalty.

Furthermore, the directive on Accommodation and Administration Article 7 should not also forbid multiple criminal counts from social affair attendance with subjective standard. Since the law functions with the principle of legality and due process of law, inmates should not be punished twice for the crime they committed. Thus, the administration should embrace the principles and balance between security, control and good order.

Multiple directives enforced to accommodate the reform program set a complaint mechanism through appeal or grievance handling. This approach may substantially undermine the inmates' opportunity to appear before the central administration without censorship. As international standards require complaint mechanism either personally or through representative, this privilege should not be compromised with rigorous structure. As the findings show, there is no normative standard for close family or a representative to lodge a complaint. On the other hand, the head administrator inspects the compound only to mobilize the inmates for institutional undertakings. Hence, the rigorous long bureaucracies substantially undermine the right of inmates to exercise their prompt justice before the administration.

The head administrator should be accompanied by individuals appointed by competent authority in carrying out inspection over the penitentiary. So that inmates could have more doors to present their claims and petition. However, regarding this matter international norms have not been observed by the Maximum Security Prison reform discourse. There is no scrutiny by the

competent authority on the activities of the prison performance. The EHRC did not periodically conduct visit over the penitentiary. Even more the Ministry of Justice or the Federal Affairs as required in the NHRP did not tentatively avail themselves for the detainees. Failure to undertake these inspections has continued to create grievance in Maximum Security. As a result pardon is continued to be ignored by cross-institutional undertaking.

Since pardon is an important concern for Long Term Prisoners and Persons under Death Penalty, it should have been given the appropriate attention by the prison as well as the Ministry of Justice and FDRE President office. Up to date there are 38 Persons under Death Penalty and 285 Life Sentenced Prisoners. Thus, keeping them without having a system that could ponder the special interest of this special category resulted for cruel inhuman and degrading treatment. Findings show that the existing Pardon Procedure has failed to entertain the special feature of Persons under Death Penalty. The Maximum Security as guardianship seems to take no interest or failed to prop up this category in general.

Generally, imprisonment should not entail any restriction other than naturally restricted by the very fact of being in prison. The reform goals were to promote and respect human rights in Maximum Security Prison. Nevertheless, the mistreatments are still going and reform program impact is in slow pace and inconsistent to human rights standards. Especially there is no timely monitoring mechanism on the activities of Prison performance.

Aside to all the limitation and question of sustainability, categorizing Long Term Prisoners and Persons under Death Penalty as an entity will enable the government to work towards specific commitment. The Prison Data Base System that introduced the registration will help to increase knowledge and understanding to expand on evidence base operations.

5.2. Recommendations

The following recommendations are forwarded to enhance the implementation of the reform program in Maximum Security Prison:

- The Business Process Reengineering /BPR/ must be endorsed by the staff members as an apparatus to achieve their objective, than an imposed technocracy. The administration should assist the staff and capacitate them with the standards and objectives of the reform program. The gap between the BPR instrument and the prison staff must be narrowed.

Many undertook their occupation with "as is" mentality than with the reform stamina. So a lot has to be done with equipping the staff with the reform program intention on bringing a dramatic change by improving prison status through better treatment of convicted person.

- In order to attain highest attainable health service, the reform program objective in relation to preventive measures must be complied by the institution. The non-communicable screening undertaking must be encouraged to facilitate future medical profiling. Giving Doxycycline for convicted persons should be broadened by examining for non-communicable medical service.
- Inmate representatives appointed for organizing convicts within the Units must function more than liaison purpose. Doing so will enable the administration to fill in the gap and helps to accommodate the preventive health service on the ground level. Furthermore, there should be a guideline that helps to teach personal and group hygiene in prison. Ignoring this will incapacitate inmate participation to make realize healthier environment. Thus, the maximum security prison diligently should introduce a guideline that helps personal and group hygiene and execute them either by his staff members or inmate representatives within the Unit.
- Problems that may occur from long term dissocializing should be enhanced through preventive Psychiatry treatment. To attain physical and mental well being, there should be a preventive treatment procedure that helps to ease anxiety or depression.
- Failure to pursue a deliberate, concrete and targeted reform program with respect to fulfilment of adequate food provision continue to degrade the treatment of both convicted persons and medical food dietary. The office must craft a short-term plan on how to comprehend the identified gaps and uphold institutions to comply with the steering committee structured by the National Human Rights Action Plan. Thus, if right to food is among progressive rights, it could only be the primary one from other attainable rights.
- The EHRC 2012 recommendation for Federal Prison Administration on food must be observed. The government shall allocate sufficient budget that accommodate the rising cost of living so that convicted person can access quality of food. Aside to this, the reform settings require for sufficient budget in order to implement the reform effectively. The government must support the reform discourse with sufficient budget either for

human resource or other administrative cost.

- Clear set of rules should be prepared to guarantee proper registration of personal belongings as well as rules relating for periodical search for persons and physical compound. Devising a standard of procedures should enable the institution to build a transparent mechanism. Accordingly, the Security and Inmate Administration core process shall issue a directive to facilitate both undertakings.
- Rules that are inconsistent with international standards and supreme law of the land should be amended. Subjective exclusion of transfer to locality and prohibition to attend family funeral must be improved and made in line with the equal treatment and consistent with the rule of law and principle of legality.
- The Code of Conduct of health officers and nurses in Units must be enforced. The non-existence of accountability could substantially obstruct quality of the medical services. The failure to enforce the Code of Conduct is jeopardizing the proper execution of quality medical service. Thus, there should be an ongoing follow-ups and accountability for non-observance by health officers. The same liability should extend to Case officers as well. The prison officers shall keep their professional oath and perform their responsibility according to reform dedication.
- Complaint mechanism is an essential tool for the achievement of the reform program. Families and representatives should be given a chance to lodge a complaint to the administration. It is noted the Ethiopian Human Right Commission Proclamation gave the opportunity for the family to institute to a grievance related to human right violation. Thus, there should be a legal harmonization among the regulation of Federal Prisoners treatment as per the Ethiopian Human Rights Commission Establishment Proclamation standard.
- The trainings to prison guards should accompany beyond law enforcement capacity. Prison guards should commit themselves for their essential input on multifaceted prison reform objective. A stringent literacy program should be given to wardens to meet the complex work demand and understanding of the peculiarity of Long Term Prisoners and Persons under Death Penalty.
- The support core process under the Department of Plan, Research and Budget should make periodical evaluation on the reform program and gives direction to the

administration to make a proper arrangement on the reform progress. This can be either by advocating for removal of achieved objectives or instigate for new program that emerge during the implementation the existing reform program.

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Annex- Data Collection Tools

1. In-depth interview Guideline for Respondents

Background Information

Case _____ Age _____ Year of Imprisonment _____

I. Access to Basic Needs /health and food/

1. Is the prison health service include preventive, curative and palliative?
2. Is your health service begins on admission or else?
3. What types of preventive treatment given for Physical and Psychiatry treatments?
4. How functional the Case Team for Hygiene and environmental health advocacy within Unit?
5. Is there any special health treatment for Long Term Prisoners and Persons Under Death Penalty?
6. Is there a Medical Specialized Psychiatry for Maximum Security?
7. Is the curative medical treatment fulfilled the problems related to communicable and non-communicable health problems?
8. How adequate are the service related to laboratory and Pharmaceutical services?
9. How prompt referral patients treated? /If not what are the consequence there to?/
10. How is the treatments related to prevention and control of HIV?AIDS?
11. Is there special diet given to prisoners with medical necessity?
12. How is the Food provision in general?
13. Are there vegetables available on weekly food?/ If not when?/
14. How is the quality of food preparation?
15. Do you say there is nutritious food ?
16. Can you say is there a growing improvement on basic need provision on Maximum Security?
17. How transparent the accountability system of health officers observation on their code of conduct?

II. Questions in relation to Security and Inmates Administration?

1. How is the registration undertaken?

2. What are the benefit and set back on the existing Registration?
3. Is there induction taken for admitted prisoners? /If yes how it is undertaken?/
4. Is the Maximum Security appropriately categorized as the standard requires?
5. If not, what are the clear omission of the administration on categorizing inmates as the standard?
6. What are the popular threats for Maximum Security good order?
7. Do Prisoners participate on Disciplinary capacity?
8. How does the prison officers entertain disciplinary procedures?
9. Is there a tentative channel between the prison officers and inmates?

III. Question in relation to Family correspondence?

1. Is there any progress on the provision of family visit?
2. Is there different treatment among other prisoners visit standard due to the sentence term?
3. What type of other accommodation installed to enjoy right to family?
4. Is their opportunity to gain important information about the outside?
5. How is transfer undertaken?
6. What are the side effect of the Directive on transfer on Long Term Prisoners?
7. What are the remedies for such prohibition?

IV. Complaint Mechanism

1. What are the types of complaint mechanism available in Maximum Security?
2. How adequately utilized by an inmate?
3. Is having a Case Officer in Unit helps for prompt justice?
4. If there any problem to lodge a complaint, due to confirmation on appeal decision?
5. How frequent a Head Administrator make available himself to Inmates?
6. Is there a clear set of rules known by the inmates for accountability mechanism?
7. Was there any circumstance a complaint by inmate constitute for accountability?
8. What are the major area for Complaint?
9. Have you been able to initiate a complaint to an independent authority by yourself, by close family or representative?
10. What is the practice of pardon in the prison?
11. Are there any directives that facilitate for application of pardon?

12. How is pardon given in the prison?
13. How diligently the pardon committee thrives to fulfil its responsibility vested in him by the state? Is there accountability for non-observance?
14. Is there any clear manual to the utilization of pardon?

V. Questions Only for inmates with more than five years of imprisonment on Prison Reform Program

1. What are your experiences with the service and support given to you in prison before the period of 2010/11?
2. Do you have knowledge about the Reform Program in Prison? If Yes, explain
3. Is there any experience different from the previous prison environment?
 - a. Prison Culture & Facilities
 - b. Treatment by guards, police officers and the staff
4. Is there any benefit for becoming independent facility as Maximum Security Prison Administration for better treatment of prisoners?/If Yes , Explain/
5. How was delinquents entertained by the Prison Officers before the year of 2009/10?
6. What kind of services given for the correction and rehabilitation of prisoners before and after the endorsement of the reform?

2. Key Informant Interview Guideline

I. General Information

a. Occupation

b. Work Experience

II. Question in relation to basic need provision specifically on Health and Food

1. What are the Reform undertaking with respect to health and food provision?
2. Are there any directives or standards prepared for the implementation of quality health and adequate food provision?
3. When type of Medical Services are given for Prisoners?
4. When do the treatment begin in Prison?
5. What are the manner of treatment on communicable and non communicable diseases?
6. Is there Psychiatry treatment in prison?/If yes, when does the treatment begin and provided?/
7. How proportionate is the number of medical Personnel to the number of prisoners?
8. What have been done in relation to preventive?
9. How is the efficiency of Laboratory and Pharmaceutical services?
10. How is the referral and emergency treatment administration in Maximum Security?
11. What are the procedures taken by the administrative to facilitate and treatment of HIV/AIDS.
12. Is there special diet given to prisoners due to medical necessity?
13. How is the provision of food in general?
14. What is the progress reached to the fulfilment of adequate food?
15. What is the monitoring mechanism on the performance of prison health service?
16. Are there provision of equipments that is helpful for personal and community hygiene?
/eating, drinking and cleaning/
17. Is there a qualified nutritionist?
18. How effective the inter-institutional undertaking in order to achieve the reform program?

III. Questions in relation to Security and Inmates Administration

1. What are the impacts of the arrangement of Federal maximum Security Prison as entity?
2. Are there any legislative undertaking to upgrade the treatments of prisoners in Maximum Security? Is so what are they?

3. How adequate the prison categorized Long Term Prisoners and Persons Under Death Penalty to that of other categories?
4. What are the undertakings that have been made by the prison administration to better treatment of prisoners?
5. How the balance between security and safety have been undertaken by the administrative office not to infringe the dignity of the Maximum Security Prisoners with that of the need of strong Control ?
6. What are the impacts of Data base system Registration?
7. Is there any mechanism implemented to comprehend for registration of personal belongings?
8. What are the achievements of induction in prison?
9. What are the detailed manuals developed to implement procedural security in prisons?
10. Are there procedures to undertake regular search of the dormitories and individuals?
11. Are there any qualified guard and skill to realize dynamic security?
12. How frequent do you take training about prisoners human dignity?
13. Is there solitary confinement as punishment?
14. How is disciplinary procedures taken on inmates?
15. What are the positive and negative impact of Directive on Discipline and Punishment Procedure of Federal Prisoners?
16. Do the prison Police take lesson about how to use disciplinary measures?
17. Is there any Use of Force training?
18. Is Inmates participate on disciplinary capacity?
19. Are there identified gaps in the existing reform program in the fulfilment of inmates rights?
20. Is there periodic review mechanism on the justice reform program success on the Maximum Security prison?
21. How is vertical and horizontal coordination pursued for the success of the reform?

IV. Question in relation with Family Visit

1. What are the impact of the reform program on Family visit
2. Are there any other mechanism utilized to maintain relationship with family?
3. What is the formality to access postal service?

4. How is Transfer undertaken?
5. What are the basic formalities for inmates to be eligible to transfer to its locality?
6. What are the impact of Transfer on Long Term Prisoners?
7. What are the benefit and set backs of the Transfer Directive?

V. Question in relation to Complainant mechanism

1. What are the mechanism installed for complaint and grievance handling in Maximum Security?
2. How often the Head administrations to Maximum Security inspect prison issues in person?
3. Is there possibility for complaint mechanism by close relatives and representative? /if any what kind of services been given?
4. How are the inter-institutional and collaboration with other justice sector helps to achieve to entertain complaints of inmates?
5. How is Pardon been undertaken by the Maximum Security Prison?
6. Are there specific manuals and guidelines that govern pardon?
7. If No, what are the accountability and transparency procedures for the undertaking?
8. How does Persons Under Death Penalty entertained by the Pardon Procedure and what ought to be done?

2. Observation Guideline

1. The reality of two Units and 6 blocks with regard to accommodation,
2. The manner of registration and induction undertaking,
3. The arrangement of the referral patients in Units,
3. Adequacy of daily menu of the inmates,
4. The special force court escort manner