

**THE HUMAN RIGHTS OF DETAINED PERSONS
IN ETHIOPIA
CASE STUDY IN ADDIS ABABA**

**A THESIS SUBMITTED TO ADDIS ABABA UNIVERSITY, SCHOOL OF GRADUATE
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DECLARATION

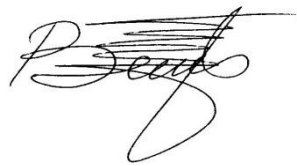
I, Addisu Gulilat Teshama, hereby declare that this dissertation is original and has never been presented in any other academic institution. Where other people's works have been used and or referred to, acknowledgments have been duly made.

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ACRONYMS

ACHPR	African Charter on Human and Peoples Rights
ACmHPR	African Commission on Human and Peoples Rights
CAT Treatment	Convention against Torture or Other Cruel, Inhuman or Degrading or punishment
CPT	European committee for the prevention of torture
ECHR	European Convention on Human Rights
ECtHR	European Court on Human Rights
EHRC	Ethiopian Human Rights Commission
HRW	Human Rights Watch
IACHR	Inter American Convention on Human Rights
IACmHR	Inter American Commission on Human Rights
IACtHR	Inter American Court on Human Rights
ICCPR	International Covenant on Civil and Political Rights
OHCHR	Office of High Commissioner for Human Rights
OPCAT	Optional Protocol to CAT
PRI	Prison Reform International
SR	Special Rapporteur
UDHR	Universal Declaration on Human Rights
UN	United Nations
UNHRC	United Nations Human Rights Committee

ABSTRACT

The ICCPR under article 10 expressly provides that detained persons should be treated with respect to their dignity. Moreover, the respective supervisory organs of the international and regional human rights instruments make it clear through their jurisprudence that deplorable detention conditions constitute violation of torture, cruel, inhuman or degrading treatment or punishment. This approach broadens the horizon of protection of human rights abuses in detention places as torture with all its forms is prohibited in many of human rights instruments such as, UDHR, ICCPR, ACHPR, ECHR and ACHR. For this end, a series of minimum standards for treatment of detained persons are adopted both internationally and regional which are serving as thresholds to find violation of human dignity.

Likewise, the Ethiopian legal system has equivalent set of legislations for the treatment of detained persons. The 1995 constitution guarantees that detained persons shall be treated with due respect to their dignity. Federal Prisons Commission Establishment Proclamation, 365/2003 points out the mandate, structure and objective of prisons where it expressly provides that prisons have to endeavor to ensure the rehabilitation of detained persons. More importantly the minimum standards for treating detained persons is promulgated by Federal Detainees Treatment Regulation No 138/2007 which provides for Accommodation, Personal hygiene, Clothing and bedding, Food, Medical services, complaints mechanisms and avenue, Inspection, sport and exercise, education and training, separation of accommodation and work conditions.

With respect to the practice, however, the study found that treatment of detained persons in Ethiopia failed short of compliance to minimum expectations as it found challenges such as high levels of overcrowding, disease, malnutrition, unhygienic condition, lack of separate treatment based on sex, age, illness and nature of criminal; lack of organized and continuing education and training and absence of viable compliant hearing mechanism. The study, finally, makes recommendations that could rectify the existing challenges.

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CHAPTER ONE: INTRODUCTION

1.1 Background

Ensuring human rights for those behind bars sometimes seems nearly impossible because of the isolation from the society and the lack of interest of the outside world and mostly because of the sometimes conflicting goals that Correctional Law and Human Rights Law seem to have.¹ At present the situation in prisons and other places of detention in several States Parties is characterized by recurrent challenges such as high levels of overcrowding, disease, malnutrition, torture and ill-treatment of inmates and long pre-trial detention periods.²

The above problems are exacerbated by the fact that there is a high level of official secrecy regarding what goes on in prisons and detention centers thus prison conditions are therefore shielded from public scrutiny.³ Furthermore, most prison and law enforcement authorities are still ignorant about the provisions of human rights instruments on the treatment of people deprived of their liberty and the material and financial resources available to them are in most cases inadequate.⁴ When it comes to Africa, including Ethiopia, the economic constraints exacerbate the detention condition of detained persons.⁵

The United Nations Charter under its preamble underscored that recognition of human dignity; inter alia, is one of the very reasons that necessitated its formation.⁶ By virtue of this objective of the UN, the Universal Declaration of Human Rights (herein after UDHR)⁷,

¹ J. Sarkin, "an overview of human Rights in Prisons worldwide" in J. Sarkin (ed.), Human rights In African Prisons, (2008), p.4. see also F.Vilion, "The Special Rapporteur on Prisons and Conditions of Detention in Africa: Achievements and Possibilities," Human Rights Quarterly, Volume 27, Number 1, February 2005, p.125-171; Association for the Prevention of Torture (APT), Torture in International Law: A guide to jurisprudence, (2008) Jointly published in 2008 by the Association for the Prevention of Torture (APT) and the Center for Justice and International Law (CEJIL).

² ACmHPR (48th and the 49th Ordinary Sessions of the African Commission 2011), 30th Annual Activity Report, (www.achpr. Org) last visited on 12 January, 2012

³ J. Sarkin, cited above at note 1, p.6.

⁴ Id, p.4

⁵ C.Tapscott, "Challenges to good Prison Governance," in J. Sarkin (ed.), Human Rights in African Prisons, (2008.), p.67

⁶ The UN Charter contains several references to human rights. Besides the preamble, some of these references are enshrined in substantive provisions [Articles 1.3, 55 (c) and 56]. The preamble states: "We the people of the United Nations, determined . . . to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small."

⁷ Universal Declaration of Human Rights, Adopted and proclaimed by General Assembly Resolution 217 A(III) of 10 December 1948.

International Covenant on Civil and Political Rights (herein after ICCPR)⁸, International Covenant on Economic, Social and Cultural Rights (herein after ICESCR) and a number of other human rights instruments came into existence with detailed political, civil and socio economic rights with one common goal, giving effect to the human dignity. Coming to the normative content on the detained persons rights, International human rights instruments proclaim that persons who are detained or imprisoned do not cease to be human beings, no matter how serious the crime of which they have been accused or convicted. For instance, ICCPR under article 10 provides that “All persons deprived of their liberty shall be treated at all times with humanity and with respect for the inherent dignity of the human person.”⁹ UNHRC stated in this regard that “Persons deprived of their liberty enjoy all the rights set forth in the Covenant, subject to the restrictions that are unavoidable in a closed environment.”¹⁰

Irrespective of these legal protections, the focus of this study which is the ‘ Human rights of Detained Persons’, is one of the contemporary challenging human rights arena for the reasons summarized bellow by special Rapporteur on prisons to South Africa;

In many countries, the high levels of official secrecy that made prisoner numbers impossible to determine are equally effective in cutting off information about even the most egregious prison abuses. By barring human rights groups, journalists, and other outside observers access to their penal facilities, prison officials seek to shield substandard conditions from critical scrutiny. Places of detention or incarceration remain largely impermeable to the outside world. Inaccessibility and lack of accountability, coupled with indifference of the public towards prisoners lead to gross violation of prisoners’ human rights.¹¹

⁸ International Covenant on Civil and Political Rights, adopted 16 Dec. 1966, G.A. Res.2200 (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 (entered into force 23 Mar. 1976)

⁹ See also, “All human beings are born free and equal in dignity and Rights.” (UDHR, preamble and article 1); “Human rights derive from the inherent dignity of the human person” (UDHR, preamble and article 1); “All persons deprived of their liberty shall be treated at all times with humanity and with respect for the inherent dignity of the human person” (Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, principle 1; Basic Principles for the Treatment of Prisoners [hereinafter, principle 1.)

¹⁰ OHCHR, UNHRC General Comment 21, para.3

¹¹ ACmHPR (2004), Report of the Special Rapporteur on Prisons and Conditions of Detention in Africa Mission to the Republic of South Africa ([http://old.achpr.org/english/Mission_reports/South%20 Africa /Special %20Rap_ Prisons_South%20Africa.pdf](http://old.achpr.org/english/Mission_reports/South%20Africa/Special%20Rap_Prison_South%20Africa.pdf)) last visited on 12 December 2011

Ethiopia is not an exception when it comes to prevalence of human rights abuses against detained persons. International human rights monitoring bodies have in a number of occasions expressed their concern that the state has failed to present evidence of its accomplishments to realize human rights in prison centers. The UN Human Rights Committee has expressed its concern about prison conditions in Ethiopia that the prison conditions remain alarming, in particular for women and children, and not compatible with the United Nations Standard Minimum Rules for the Treatment of Prisoners.¹² Similarly, the Committee against Torture condemned Ethiopia for the lack of implementation of the recommendations contained in the 2008 Correctional Facilities Monitoring Visit Report of the EHRC, lack of information about any unannounced visits to places of deprivation of liberty by independent mechanisms. The Committee concerned the International Committee of the Red Cross has no access to ordinary detention centers and prisons and was expelled from the Somali Regional State in 2007.

The African Commission on Human and People's Rights, upon hearing Ethiopia's 1st, 2nd and 3rd periodic report, expressed its concern about the country's failure to provide information on prison conditions recommended that the state shall "Provide information on conditions of prisons and places of detention in Ethiopia, and ensure that prisoners are held in humane conditions."¹³

The Special Rapporteur on Prisons to Ethiopia (2004) also asserted that in many of the prisons of Ethiopia there is overcrowding forcing the cells to hold inmates more than twice than their actual capacity. According to the report, many of the detention centers were primarily built for other purpose than they are serving today; the premises are not friendly for sanitation and entertainment expansion. The overcrowding has, in turn, implications on health care, food, clothing and poor living conditions.

The Report discloses that there is no enough allocation of budget for food. It has been revealed that the daily budget for food per person is in average not more than 4 birr which in

¹² UNHRC (2011) Consideration of reports submitted by States parties under article 40 of the Covenant: Concluding observations of the Human Rights Committee Ethiopia, Para 23. (<http://www.unhcr.org/refworld/pdfid/4fb2488d2.pdf>) last visited on 5 February 2012.

¹³ ACmHPR, Concluding Observations and Recommendations on the Initial 1st, 2nd, 3rd and 4th Periodic Report of the Federal Democratic Republic of Ethiopia, Para. 84 (www.achpr.org) last visited on 5 February 2012.

the context of today's cost of living does not afford bread with tea which should have been for normal breakfast only. In its report, the Human Rights Commission added that there is a lack of well established health centers and those that exist do not have trained health personnel.

US Department of States recently disclosed that the accommodation, the health care, sanitation and quantity and quality of food realities within the existing detention centers in Ethiopia are by far below the international minimum standards.¹⁴ The Commission's report shows there is overcrowding within each cell.

Ethiopia is state party to almost all of human rights instruments that has relevance to the protection of rights of prisoners and it has, by and large, domesticated such rights in its prison legislations under the umbrella of the Constitution. This endeavor on the normative framework, as is the case in other human rights issues, is, however, not backed by implementation.

1.2 Research Questions

All the sources about prison condition in Ethiopia reveal that human rights protection in this arena is at stake which calls for comprehensive research. This research, accordingly, aims to answer the questions:

- Are there adequate international and national human rights legal instruments to protect detained persons?
- If any, what types of obligations are imposed by these instruments?
- What rights of a prisoner are forfeited by reason of deprivation of liberty?
- How much has Ethiopia adhered to these human rights obligations?
- What could Ethiopia do to effectively implement the available rights of detained persons?

¹⁴ US Department of States, Country Reports on Human Rights Practices (2012): Events of 2011 Ethiopia, (<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=186196>) last visited on 5 January, 2012: according to the report, "Prison and pretrial detention center conditions remained harsh and in some cases life threatening. Severe overcrowding was common, especially in sleeping quarters. The government provided approximately eight birr (\$0.60) per prisoner per day for food, water, and health care. Many prisoners supplemented this with daily food deliveries from family members or by purchasing food from local vendors. Medical care was unreliable in federal prisons and almost nonexistent in regional prisons. Water shortages caused unhygienic conditions, and most prisons lacked appropriate sanitary facilities."

1.3 Objectives of the Study

- To analyze the legal frame work pertaining to protection of human rights of persons under detention and to flesh out the scope and content of this rights as well as to examine the nature of limitations in light of international standards.
- To explore the practical challenges against the implementation of human rights within detention centers internationally in general and in Ethiopia in Particular.
- To manipulate the good practices of other countries on the area so that it can be input to Ethiopia.
- To clarify the ambiguity that prisoners are still human persons and for these reason that their human dignity remains with them which is contextualized by the implementation of their socio economic, civil and political rights with the exception of those that cannot be exercised by reason of deprivation of liberty.
- To analyze how detained persons can best fight abuses in a world where their inherent rights are increasingly ignored in the name of security.
- To make comparison between international system and a national one by discussing the shared human rights framework provided by international instruments.
- To look into the case law and the evolving principles for detained person’s protection in international discourse and in Ethiopia, the abuses that take place there in and finally, how these abuses are addressed and remediated by the authorities.

1.4 Significance of the Study

The traditional thinking is that the criminal justice system should revenge the criminals on behalf of the society which is against the modern model that the purpose of criminal justice be reformation and rehabilitation. ¹⁵By virtue of this attitude of society and by the very nature of officials to violate human rights which will be exacerbated in absence of checking by the society, detention places quite often been where human rights violation is experiencing. ¹⁶

In Ethiopia the constitution, crudely, proclaims, “All persons held in custody and persons imprisoned upon conviction and sentencing have the rights to treatments respecting their human dignity.”¹⁷

¹⁵ J.Sarkin, p.2, Cited above at note 1.

¹⁶ *ibid*

¹⁷ Art. 21 of constitution of FDRE (1995)

The statutes¹⁸ proclaimed for the implementation of these constitutional rights also recognize the elements of UN minimum standards for the treatment of prisoners. Nevertheless, as indicated earlier, practically, the condition of prisons is far below the legal expectations. This mainly is attributed to attitudinal problems on the side of the community, prison officials and inmates themselves which adds fuel to the prisoners' vulnerability. This can be evidenced by the fact that, in the prevalence of the violations, no one can trace any jurisprudence on this right. For many reasons, there is no significant research on the area.

The significance of the study, therefore, is that:

- It will be an icebreaker on the experienced silence directed against human rights violations in prisons.
- it will help to reflect on the problems that are frequently occurring in detention centers
- It brings attitudinal change among the society in general and prison authorities in particular. It also draws the attention of human rights advocates to this forgotten theme.
- It may provide concerned government officials and decision makers relevant and research based information for further action
- It serves as reference to further research
- It contributes knowledge to the existing discourse on the issue.

1.5 Research Methodology

In general, the methodology of this study will employ both primary and secondary sources. Addressing relevant human rights instruments takes first hand in the study while the study is also supported by structured and non-structured interviews, and questionnaires as well as observations and real cases. To this end, it consults, inter alia, books, journals, and other relevant publications. It assesses the international legal frame and the national legal accommodations pertaining to treatment of prisoners. UN Human rights bodies' jurisprudence will be consulted; regional human rights jurisprudence also will be referenced as to its relevance.

¹⁸ See Federal Prisons Commission Establishment Proclamation, no.365/2003, Council Of Ministers Regulations On The Treatment Of Federal Prisoners, no.138/2007

1.6 Scope of the Study

The study comprises both legal and practical analyses with regard to detained person's rights in our country's legal frame work. Effort will be made to assess the adequacy of legal protection made to detained persons both internationally and domestically. The practical analysis covers condition of detention both in prisons and police detention centers and emphasis is made to the scenario in police detention conditions in Addis Ababa. The practical analysis is made mainly in light of the minimum rules for the treatment of detained persons: Accommodation, Personal hygiene, Clothing and bedding, Food, Medical services, complaints mechanisms and avenue, Inspection, sport and exercise, education and training, separation of accommodation and work conditions.

While Detainee kinds include asylum seekers and other immigrants and Psychiatric detention, this paper, however, focuses exclusively on detention in the criminal justice system. Regarding Ethiopia, the practical analysis is essentially confined to the EPRDF regime while a quick review will also be made to previous regimes.

1.7 Limitations of the study

As, repeatedly, revealed by advocates of rights of prisoners, data gathering in prisons is challenging. As noted by the Special Rapporteur to prisons of South Africa (2004), prison officials bar access to human rights groups, journalists, and other outside observers to their prison to shield substandard conditions from critical scrutiny. Due to similar reasons interviews, questionnaires dissemination and observation is conducted only for pretrial detainees in police custody. The research in prisons is confined to international human rights practice reports and essentially to the African special Rapporteur Ethiopian prison visit report (2004) and the Ethiopian Human Rights Commission Prison visit reports (2008 & 2012). In addition, due to financial and time constraint the study is geographically limited to the capital, Addis Ababa.

1.8 Terminology

In this discourse the terms detained persons, prisoners awaiting charges, awaiting trials, convicted and sentenced persons are used interchangeably. For instance, UN Standard Minimum Rules for the Treatment of Prisoners uses 'prisoners' to denote different categories as indicated that "Part I of the rules covers the general management of institutions,

and is applicable to all categories of prisoners, criminal or civil, untried or convicted, including prisoners subject to "security measures" or corrective measures ordered by the judge."¹⁹

Similarly, in this work 'detained persons' and 'prisoners' are used interchangeably to denote those awaiting charges, awaiting trials, convicted and sentenced persons.

Moreover, For the purpose of this work 'Prisons in Addis Ababa' and 'Federal prisons' are employed interchangeably to refer to those prisons including those located in outskirts of the city of Addis Ababa such as Kaliti (Remand prison); Zeway prison; Shewa Robit prison; Maximum Security Kilinto prison and Women's prison .

¹⁹ Article 4(1)

CHAPTER TWO: THE LEGAL FRAMEWORK FOR THE PROTECTION OF DETAINED PERSONS

2.1 Introduction

The ever severe atrocities that mankind experienced by the two world wars have caused the establishment of the UN. One of the principles of the Charter²⁰ of the UN is protection of human dignity. The preamble of the Charter provides the determination of its member states “to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small...”²¹

Series of instruments with detailed rights are endorsed by states to achieve this objective of the United Nations. The UDHR, ICCPR, ICRSCR and Convention Against Torture (CAT), are singled out for this effect. Detained persons are vulnerable categories of society due to the amount of the control the state have over them. For this reason the aforementioned instruments have specifically recognized their rights. This chapter, accordingly, assesses the degree that each instrument gives recognition to protection of detained person’s rights.

Parallel human rights protection system has been developing in the regions also since the conception of the idea of human rights protection. The European Human Rights system, the Inter- American Human Rights System and African Human Rights system have been playing significant role in human rights protection parallel to the UN Human Rights protection system. This Chapter also tries to evaluate the place of detainees’ rights under each regions human rights system.

2.2 UN Legal Framework on the Protection of Detainee’s Rights

2.2.1 The Universal Declaration on Human Rights

The Universal Declaration on Human Rights is the founding instrument that came up with elaborated human rights to give effect to the human rights objective set under the United Nations Charter. Under its article 5 it prohibits torture, cruel, inhuman or degrading treatment or punishment. Though it is a declaration which has no binding effect, it is the first human rights instrument ratified by almost all states of the world. It is also incorporated by

²⁰ United Nations Charter,1945

²¹ Id preamble

constitutions of many of the states. This status of the UDHR, gives it the status of customary international law.²² Thus, Treatment or punishment of detainees inhumanly is the violation of this instrument.

2.2.2 The International Covenant on Civil and Political Rights

The ICCPR which is binding upon member states play significant contribution on the protection of the rights of detainees. UN member states failed to adopt the UDHR as binding instrument for the ideological reasons: the westerns adherence to civil and political rights and the eastern attachment to socio economic rights only.²³ This debate is later culminated with the formation of the ICCPR and ICESCR as binding instruments in 1966. The ICCPR reaffirmed article 5 of the UDHR under its article 7:“no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.”

As human being; therefore, detainees are protected from torture or cruel, degrading or inhuman treatment or punishment by reason of their status. In addition, unlike the UDHR, the ICCPR has addressed the rights of detainees specifically under article 10. It states all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. It also envisages the segregation of arrested persons from convicted ones and juvenile offenders from adults and it calls for their separate treatment based on this status. Traditionally there are different theories on the objective of punishment.²⁴ The ICCPR has expressly adopted that the objective of punishment is reformation and social rehabilitation: “The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation...”²⁵

Ethiopia has ratified this instrument which obliges it to take the necessary steps to adopt laws or

²² E. Domínguez-Redondo, “Role of the UN in the Promotion and Protection of Human Rights” in Rahman Chowdhury and Hossain Bhuiyan (eds.) An introduction to international human rights law ,(2010),p.128: ‘Since it was passed as a resolution of the General Assembly the Declaration is not binding by itself. However, the full Declaration, or at least part of its content have, in supervening years, become part of customary law. The Declaration is the basic text of reference for the activity developed by UN organs in human rights.’

²³ F. Viljoen, “Africa's contribution to the development of international human rights and humanitarian law,” African Human Rights Law Journal, vol.1,no.1 (2001),p.20

²⁴L. Zaibert Punishment and Retribution (2006), p.177

²⁵ ICCPR, art 10(2)

Other measures as may be necessary to give effect to these rights of detainees.²⁶

2.2.3 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

The rights of detainees are mainly addressed through Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Accordingly, State parties have to make review of arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment.²⁷ State parties are obliged to make conducive environment to victims of torture to make compliant for redress. The convention obliges the states to include education against using torture in the training of their law enforcement personnel.²⁸ Art 11 maintains that methods, practices and arrangements as well as treatment of people in custody should be held under observation, with the express purpose of preventing acts of torture.²⁹

A Subcommittee against Torture, with a mandate to visit detention centers in the party states and evaluate the treatment provided there, is created by an optional protocol to this convention.³⁰ The UN came up with the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) to protect persons deprived of their liberty from being subjected to torture.

2.2.4 UN Standards and Principles Pertinent To Rights of Detained Persons

In addition to the main human rights instruments, such as the ICCPR and the ICESCR which are legally binding on all states which have ratified or acceded to them and contain references to the treatment of people who are deprived of their liberty, there are a number of international instruments which deal specifically with prisoners and conditions of detention. These are detailed standards which are set out in principles; minimum rules or guidelines which provide a valuable complement to the broad principles contained in the legal treaties.³¹ As the jurisprudence of the human rights bodies discloses, which is discussed in the next

²⁶ Id ,art 2

²⁷ Id , art 11

²⁸ Id ,art 10

²⁹ Id ,art 13

³⁰ Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, GA Res 57/199, UNCATOR, 2003, UN Treaty Series, vol 2375 at 237. [OPCAT]

³¹ A.Iftene, Convicts and Human Rights: a Comparative Study on Prison Treatment in Europe and Canada, master of law thesis, Queen's University, Canada, August, 2011

chapter, these standards serves as thresholds to enforce ‘general provisions’ embodied under the respective binding human rights instruments.

2.2.4.1 The Standard Minimum Rules for the Treatment of Prisoners

The Standard Minimum Rules for the Treatment of Prisoners is the first of such instruments that was devoted specifically to protect the rights of persons under any form of detention. Though UDHR, earlier, prohibited cruel, inhuman or degrading treatment or punishment, it was general principle which calls further clarification to be invoked as rights by the alleged victims.³² In addition the latter doesn’t address exclusively the detainees as beneficiaries of the provision. The Standard Minimum Rules for the Treatment of Prisoners, on the other hand, exclusively addresses the detainees and the provisions are so elaborated to easier application.

Among other things, the rule requires states to keep register of newly admitted detainees. The standard begins that custody of any person shall not be arbitrary. The need for registration presupposes failure to do so is violation of all the rights that could be effected only on the bases of entrance of the identity of each prisoner. Art 7 of the Rules expressly proclaims that prisons must have the registration book with the ‘identity’, ‘reason of commitment’, and ‘day and hour of his admission and release.’

Article 8 of The Standard Minimum Rules for the Treatment of Prisoners envisages the creation of segregation of prisoners based on sex, age, criminal record, the legal reason for their detention and the necessities of their treatment. In doing so, state parties are obliged to ensure establishment of separate institutions for men and women, untried prisoners and convicted prisoners, civil prisoners and criminal prisoners and young prisoners and adults.

With regard to accommodation the Standard Minimum Rules for the Treatment of Prisoners under article 9 points out that accommodation could be in the form of cells or dormitories. When prisons are using cells, two prisoners shall not be held together, unless, for temporary overcrowding reasons. For prisons which use dormitories, the prison administration is required to make careful selection of inmates that suits to one another and this must also be

³² *ibid*: “Indeed, European Human rights system has well developed jurisprudence where it applies this theme against torture and inhuman treatment and punishment in ‘prisons’ though detainees are not specifically addressed under article 3 of the European Convention on Human Rights[similar to arts 5and 7 of UDHR and ICCPR respectively],”

supported with regular supervision by night, in keeping with the nature of the institution. All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation.³³ There shall also be regard to sanitary considerations to the accommodations where Adequate bathing and shower installations shall be provided so that every prisoner may be enabled and required to have a bath or shower, at a temperature suitable to the climate, as frequently as necessary for general hygiene according to season and geographical region, but at least once a week in a temperate climate.³⁴

The standard proclaims that Prisoners must be provided with water and toilet article to keep their person clean. They must also be provided with utensils to take care of their hair and beard to maintain their dignity. Where prisoners don't have to wear their own clothing, they shall be provided with wearing which is suitable to the climate and adequate to keep the health of the inmate. Inmates should be provided with bed and bedding. Drinking water must be available at all times .Detainees shall be served with food with due consideration to its quality and quantity.

At least one hour per day of outdoor exercise is required, while Young Offenders are to receive recreational training. Also, every institution must have at least one qualified doctor on staff to offer proper treatment for each convict and a psychiatrist to assist in cases of mental health issues. However, when special medical care is necessary, prisoners shall be transferred to special institutions or civil hospitals. It is specifically stated that “corporal punishment, punishment by placing in a dark cell, and all cruel, inhuman or degrading punishment for disciplinary offences” are forbidden. As well, the use of handcuffs, straitjackets, irons and chains as punishment is not allowed. Irons and chains are not acceptable even as restraints. Nevertheless, it is stated that each weekday, every convict must be provided with the opportunity to make complaints regarding the conditions and the treatment in prisons to the director of the institution or other appointed person, to the prison inspector during inspections, and to judicial authorities. These complaints must be promptly

³³ *ibid*

³⁴ *ibid*

dealt with. There are also sets of rules regarding the educational, labor and social rights of the prisoners.

There are also other principles worthy of mentioning, though not within the scope of this study, regarding detainee's rights that have been developed by the UN in instruments that followed the basic conventions.³⁵ They are complimentary to the main conventions already dealt.

2.3 Europe Legal Instruments on Detained Persons Rights

2.3.1 European Convention on Human Rights

The main legal source in Europe is the European Convention on Human Rights and, in particular, art 3 of this Convention. The article is very similar to article 5 of the UDHR stating that "no one shall be subjected to torture or inhuman treatment or punishment."³⁶ This article is the basis for all allegations concerning cruel treatment and punishment in prisons and, indeed, is complemented by many other instruments.

2.3.2 The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment³⁷ is adopted to make the meaning of the former article clear and easier to apply to prison conditions. This act constituted the Committee for the Prevention of

³⁵ It includes "Body of Principles for the Protection of all Persons under Any Form of Detention or Imprisonment, 1988", Generally, the principles maintain a detainee's rights to counsel, to be properly informed and to be heard by a judicial authority. It also forbids the use of force during interrogation. As well, principle 24 recognizes a detainee's rights to medical care. Principle 23 assures the rights of a prisoner to make requests or complaints regarding his treatment, especially in cases of torture or cruel and unusual punishment, to the authorities of the prison and to higher authorities with reviewing or remedial powers. Also, according to principle 34 any death or disappearance that has occurred in custody must be thoroughly investigated.

"Basic Principles for the Treatment of Prisoners (1990)" states in art 5 that except for the limitations implied by the incarceration, no other limitations of the prisoners' human rights as provided by the UN conventions are acceptable. Also, principle 9 assures that the detainees must have access to medical care without any discrimination due to their legal status;

"Principles of Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment", "Code of Conduct for Law Enforcement Officials", "Principles of Medical Ethics relevant to the Role of Health Personnel particularly Physicians",

³⁶ Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950, 213 UNTS 221 at 223, Eur TS 3 [ECHR]

³⁷ European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Council of Europe, 26 Nov 1987.

Torture, as a response to the limits of CAT.³⁸ The CPT has the mandate to make regular and ad hoc visits to all detention institutions and file reports regarding the state of prisons.

2.3.3 Standard Minimum Rules for the Treatment of Prisoners

Standard Minimum Rules for the Treatment of Prisoners³⁹ is very similar to the one provided by the UN. The rules were not intended to be compulsory, but they are constantly referred to by the ECtHR and the CPT which increases their binding value. The European Prison Rules are periodically revised by the Committee of Ministers which is influenced at each revision by the ECtHR and the CPT work.⁴⁰ The standards recommended refer to the living conditions, recreation, health, abuses - covering all aspects of life in prison.⁴¹ Having these rules as a starting point, the CPT builds its Minimum Standards on the observed facts, updating them yearly with the Annual General Reports.⁴²

2.4 Africa Legal Instruments on Detainees Rights

2.4.1 African Charter on Human and Peoples' Rights

All forms of inhuman treatment are also prohibited under Article 5 of the African Charter on Human and Peoples Rights which provides “every individual shall have the rights to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.”

2.4.2 Ouagadougou Declaration and Plan of Action on Accelerating Prison and Penal Reform

The African Commission on Human and Peoples' Rights, which since 2002 has operated under the auspices of the African Union, has played a significant role in improving prison conditions throughout Africa.⁴³ Ouagadougou Declaration and Plan of Action on Accelerating Prison and Penal Reform in Africa contain recommendations on reducing

³⁸ R.Schmuck, The European Committee for the Prevention of Torture and Inhuman or Degrading treatment or Punishment (CPT) Fundamentals, Structure, Objectives, Potentialities, Limits (2002) (www.ucmo.Edu/cjinst/ journal 0102. pdf) last visited on 1 march 2012

³⁹ Standard Minimum Rules for the Treatment of Prisoners, Council of Europe, Committee of Ministers, 1973.

⁴⁰ Open Society Foundations, Pretrial Detention and Health: Unintended Consequences, Deadly Results (2011), p.27

⁴¹ ibid

⁴² ibid

⁴³ J. Sarkin, cited above at note 1

overcrowding, making prisons in Africa more self sufficient, promoting rehabilitation and reintegration programs, making prison administrations more accountable for their actions, encouraging best practices, promoting the African Charter on Human and Peoples' Rights, and supporting the development of a Charter on the Basic Rights of Prisoners from the UN.

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2.4.3 The Robben Island Guidelines

The Robben Island Guidelines, adopted by the Commission in 2002, encourages African nations to treat detained persons in conformity with international standards, mainly UN Standard Minimum Rules for treatment of Prisoners, on prison conditions and give detailed instructions on how to achieve them. The guide lines, in its preamble, take note of art 55 of the United Nations Charter, art 5 of UDHR, art 7 of ICCPR and art 2(1) and 16(1) of UNCAT. The guidelines urge states to support the work of the Special Rapporteur on Prisons and Conditions of Detention in Africa. It also recommends states to take steps to ensure that the treatment of all persons deprived of their liberty is in conformity with international standards. The guidelines also include specific recommendations for combating many of the challenges outlined in this article, including physical conditions of prisons, the use of alternative sentencing to mitigate overcrowding, the role of NGOs, judicial independence, increasing awareness and training of staff, and the separation of such vulnerable groups as women and children. Finally, the Guidelines established an important follow-up committee to distribute information about the Guidelines within Africa.

2.4.4 Special Rapporteur on Prisons and Conditions of Detention

African Commission on Human and Peoples' Rights has appointed Special Rapporteur on Prisons and Conditions of Detention (SRP)⁴⁵, 1996. The role of the SRP is to inspect and

⁴⁴ There are several methods by which African nations can meet the standards set forth in the Commission's resolutions. For example, alternative sentencing, restorative and traditional justice, and connections between the customary and formal criminal justice systems would help solve the problem of overcrowding in African prisons. Overcrowding can also be alleviated by decriminalizing some minor offenses, making attempts to accelerate trials, making cost orders against lawyers to punish for delays, and restricting time in police custody to 48 hours. Prisons could become more self sufficient if, as the Plan of Action suggests, staff were better trained.

⁴⁵ The SRP is empowered to: Examine the state of the prisons and conditions of detention in Africa and make recommendations with a view to improving them; Advocate adherence to the African Charter and international human rights norms and standards concerning the rights and conditions of persons deprived of their liberty, examine the relevant national law and regulations in the respective States Parties as well as their implementation and make appropriate recommendations on their conformity with the African Charter and with

report on prison conditions in order to protect the rights of those held therein. The SRP researches prison conditions, communicates with African governments regarding the state of their penal systems, entertains individual complaints about prison conditions, and reports to the Commission on a yearly basis. The SRP also proposes solutions to challenges facing African prisons. Lastly, the SRP also trains law enforcement personnel, police, prison guards and administrators, and lawyers to improve prison conditions. The Special Rapporteur carries out his work by visiting countries, inspecting their prisons, and reporting on conditions found therein. Sometimes he also conducts follow-up visits. The SRP first meets with government leaders and holds a press conference prior to visiting various prisons, police holding cells, and reform schools for approximately 10 days. ⁴⁶

2.5 Inter-American legal instrument on detainees rights

2.5.1 American convention on Human Rights

The Inter American convention on Human Rights has addressed the rights of detainees. Like the UDHR and ICCPR, art 5 of the convention prohibits torture or cruel, inhuman, degrading punishment or treatment. It specifically proclaims that those who are deprived of their liberty shall be treated with due regard to their inherent human dignity. segregation of detainees as to their status is envisaged by the convention where Accused persons shall, save in exceptional circumstances, be segregated from convicted persons, and shall be subject to separate treatment appropriate to their status as unconvicted persons and Minors shall be separated from adults and brought before specialized tribunals, as speedily as possible, so that they may be treated in accordance with their status as minors.

international law and standards; At the request of the Commission, make recommendations to it as regards communications filed by individuals who have been deprived of their liberty, their families, representatives, by NGOs or other concerned persons or institutions; Propose appropriate urgent action; Conduct studies into conditions or situations contributing to human rights violations of prisoners deprived of their liberty and recommend preventive measures. The Special Rapporteur shall co-ordinate activities with other relevant Special Rapporteurs and Working Groups of the African Commission and United Nations; Submit an annual report to the Commission. The report shall be published and widely disseminated in accordance with the relevant provisions of the Charter.

⁴⁶ The SRP has visited Ethiopia prisons once so far, 2004.

2.5.2 Inter-American Convention to Prevent and Punish Torture

Inter-American Convention to Prevent and Punish Torture, serves as complimentary to American convention on Human Rights. The torture convention makes an attempt to define torture:

Torture shall be understood to be any act intentionally performed whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation, as a means of intimidation, as personal punishment, as a preventive measure, as a penalty, or for any other purpose. Torture shall also be understood to be the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish.

This definition of torture makes the application of torture in the protection of prisoners' rights clear and easier as is the case in the international and the European System. No circumstance and specifically, the dangerous character of the detainee or prisoner, nor the lack of security of the prison establishment or penitentiary shall justify torture. In the training of police officers and other public officials responsible for the custody of persons temporarily or definitively deprived of their freedom, special emphasis shall be put on the prohibition of the use of torture in interrogation, detention, or arrest.

The system was reinforced with the appointment of the Special Rapporteur on the Rights of Persons Deprived of their Freedom of the Inter-American Commission in 2004. His mandate includes, inter alia, Gathering and obtaining information about the conditions of detention of persons deprived of their liberty in the OAS Member States; Carrying out (unannounced) visits to places of detention or centers for the deprivation of liberty of minors, and holding interviews in private with detainees as well as with staff members of those places of detention and relevant authorities; Preparing reports and making recommendations on the basis of those visits for the Inter-American Commission; Making recommendations to Member States on the conditions of detention; Promoting the adoption of legislative measures to guarantee the rights of persons deprived of their liberty; and Coordinating verification and follow-up activities of Ombudsmen or National Human Rights Institutions with regard to conditions of detention.

2.5.3 Principles and Best Practices on the Protection of Persons Deprived of Liberty

In March 2008, the Inter-American Commission on Human Rights adopted the ‘Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas’ (the Principles).⁴⁷ The Principles advocate, among other things, the use of independent institutions and organizations to carry out visits and inspections to places where persons are deprived of their liberty. This is similar to the approach that lies at the heart of the Optional Protocol to the UN Convention Against Torture (OPCAT), which is to prevent torture and other forms of cruel, inhuman or degrading treatment or punishment, through the establishment of two-pronged system of visits to places of detention.⁴⁸

The Principles’ Preamble recognizes the rights of all persons deprived of liberty to humane treatment, and to have their dignity, as well as their life, and their physical, mental, and moral integrity respected and ensured. The Preamble also points to over 30 international and regional human rights and international humanitarian law and soft law instruments that have direct bearing on the subject. Paragraph 6 of the Preamble refers in particular to the OPCAT. Principle XXIV on Institutional Inspections, states that “[...] regular visits and inspections of places of deprivation of liberty [which] shall be conducted by national and international institutions and organizations, in order to ascertain, at any time and under any circumstance, the conditions of deprivation of liberty and the respect for human rights.”

Principle XXIV also reaffirms the role of the Special Rapporteur on the Rights of Persons Deprived of their Liberty and the Inter-American Commission to carry out visits to “verify the respect for the dignity and the fundamental rights and guarantees of persons deprived of liberty in Member States of the Organization of American States.”⁴⁹

The Principles promote the use of national bodies or institutions to carry out visits to places of detention, although it does not further detail how these institutions should look like or what type of mandate they should have. The Principle XXIV embodies some of the elements found in the OPCAT with regard to the functional characteristics of national visiting bodies,

⁴⁷ Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, OAS Doc. OEA/Ser/L/V/II.131 doc

⁴⁸ The Inter-American Commission on Human Rights’ Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas and the Optional Protocol to the Convention Against Torture (www.oas.org/en/iACHR/.../20.Persons%20deprived%20of%20liberty.p) last visited on 25 march 2012

⁴⁹ Principle XXIV

like requirement to have full access to places of deprivation of liberty and its documentation as well as the possibility of conducting interviews in private with persons deprived of their liberty and the personnel of the detention facilities.

CHAPTER THREE: THE RIGHTS OF DETAINED PERSONS IN INTERNATIONAL CASE LAW

3.1 Introduction

In the previous chapter a highlight is made on the normative standards pertaining to rights of detained persons. Accordingly, it is found that there are hard laws which are binding upon state parties like the ICCPR and soft laws mainly standards and principles which are not literally binding. In the previous chapter it is also found that there is no clear prohibition on the demeaning detention conditions of detained persons. This section, hence, endeavors to address the position of law interpreting organs in the UN and Regional human rights system on the concerns raised. The section specifically deals with scope of prohibition of torture, cruel, inhuman or degrading treatment or punishment vis-a-vis demeaning condition of detention centers. Moreover, an effort will be made to find the status of the soft laws, standards and principles, such as UN Standard Minimum Rules on the Treatment of prisoners in the UN and Regional human rights jurisprudence. On one hand, Article 7 of ICCPR prohibits torture, cruel, inhuman or degrading treatment or punishment, on the other the ICCPR under article 10 requires specifically that persons deprived of their liberty be treated in regard to their human dignity. This section lastly, therefore, deals with the experience of the UNHRC on how to make compromise to apply the two articles.

3.2 The Rights of Detained Persons in UN Case Law

Both the UNHRC and the CAT recognize that conditions of detention may themselves constitute ill treatment or, in extreme cases, torture.⁵⁰ The UNHRC recommends states to treat detained persons in accordance with international standards “States parties are under an

⁵⁰ J. Méndez, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment: Mission to Kyrgyzstan (2012), (http://www.ohchr.org/Documents/HRBodies/UNHRCouncil/RegularSession/Session19/A-UNHRC-19-61-Add2_en.pdf) last visited on 10 November 2012. Similarly, the special Rapporteur found inhuman and degrading treatment “Conditions in pretrial detention facilities are far from compliance with international standards and amount to inhuman and degrading treatment.” (Para 60) after finding “Most facilities visited were characterized by unsanitary conditions and poor or non-existent ventilation or daylight; most lacked heating. In temporary detention facilities built as early as 1923, inmates are confined for 23 hours a day to their poorly illuminated cells with little or no ventilation and minimum food and water. Cells contain four to six mattresses on the floor or on bunk beds and provide little space for movement. In most temporary detention facilities, showers with no hot water were located at an outside court and access to them was restricted to once a week. In some temporary detention facilities, detainees are allowed to use the toilet only twice a day at scheduled times; it is also their only opportunity to walk. Access to water for washing is extremely restricted. Meals are of very poor quality, and in most facilities, consist of only one serving a day, plus hot water for tea. Families are allowed to bring supplementary food supplies.” para 78

obligation to observe certain minimum standards of detention, which include provision of medical care and treatment for sick prisoners, in accordance with rule 22 of the Standard Minimum Rules for the Treatment of Prisoners.”⁵¹

Communication No. 1818/2008⁵² is of particular interest in that the committee dealt with many scenarios of violations of art 7 and 10 of the ICCPR. On July 2005 Mr. Bradley McCallum, along with his inmates were sprayed with water, beaten by the warders with batons, shock boards, broomsticks, pool cues and pickaxe handles. As a result of the shock and fear, inmates urinated and defecated on themselves and on those linked to them in the human chain. Thereafter, the inmates were ordered to return to their cells. This however created chaos, as the floor was wet with water, urine, feces and blood and some inmates fell over each other. The Correctional Facility was locked down after the incident Mr. Bradley McCallum was held incommunicado for a month without access to a physician, a lawyer or his family. He was not allowed to see a doctor his injuries until September 2005.

The human Rights Committee argued that holding the victim in incommunicado after the aforementioned incident violates art 7 of the ICCPR. For this regard the Committee referred to its General comment 20 which recommends: “that States parties should make provisions against incommunicado detention and notes that the total isolation of a detained or imprisoned person may amount to an act prohibited by article 7”⁵³

The author requested HIV testing for fear of having contracted the virus from other inmates’ bodily fluids on 17 July 2005. However, he was unable to obtain it. The committee held in

⁵¹ Communications No. 1502/2006 , CCPR/C/99/D/1502/2006 (<http://tb.ohchr.org/default.aspx>) last visited on 7 April 2012. In the instance case Mr. Mikhail Marinich, alleges that during the incarceration he was held in five different cells, none of which was larger than 5 square meters. These cells were originally designed for one or two people, but in fact were populated by four or five people. The cells were not equipped with artificial ventilation and there was no source of fresh air from the outside. Thus, the air reeked of sweat, urine and excrement. In summer, the cells were excessively hot and the inmates had to be half naked. Their clothes were always damp due to high humidity. In autumn, the cells were cold and moist. There was no natural light and the cell was lit by a single bulb. Thus, the cell was always in semi-darkness. The light, which was not switched off at night, did not penetrate the lower bunks and it was impossible to either read or write, while people on the upper bunks found it difficult to sleep. He claims that meals at the remand prison were very meager. Oatmeal was served for breakfast, a soup and porridge for lunch and boiled unpeeled potatoes and herring for dinner. The ration never included vegetables, fruit or meat. Inmates were entitled to two monthly food packages sent by relatives. However, the packages were controlled tightly. He claims he lost 10 kilograms in six months. He adds that his inmates were heavy smokers and the prison administration did nothing to limit smoking or separate those who smoked from those who did not.

⁵² Communication No. 1818/2008, CCPR/C/100/D/1818/2008 (<http://tb.ohchr.org/default.aspx>) last visited on 7 April 2012

⁵³ Id, Para 6.5

this specific scenario that: “the Committee finds that the prevalence of HIV in South African prisons as well as the particular circumstances of the incident of 17 July 2005 warrants the finding of a violation of article 7, of the Covenant.”⁵⁴

Similarly the Committee has found violations of Article 10(1) arising from, inter alia, overcrowding, a lack of natural light and ventilation, inadequate or inappropriate food, a shortage of mattresses, no integral sanitation, unhygienic conditions, inadequate medical services (including psychiatric treatment), and a lack of recreation or educational facilities.⁵⁵

With regard to the author’s complaint alleging a denial to access to medical care after the author’s ill-treatment on 17 July 2005, the Committee in Communication No. 1818/2008 noted that the rights of detainees remains with them as human beings : “The Committee reiterates that persons deprived of their liberty may not be subjected to any hardship or constraint other than that resulting from the deprivation of liberty, and that they must be treated in accordance with, inter alia, the United Nations Standard Minimum Rules for the Treatment of Prisoners. The Committee reiterates that it is the State party’s obligation to provide for the security and well-being of persons deprived of their liberty.”⁵⁶ The committee held the delay of medical service by the prison authorities after request by the author amounts violation of art 10 of ICCPR.

In its General Comment on Article 10, the UNHRC indicated that the humane treatment of detainees required by this article implies compliance with existing UN standards in this area.⁵⁷The UNHRC, In *Mukong v Cameroon*, stated that the obligations under Article 10 are absolute and immediate without regard to a State Party’s level of development laying out absolute minimum standards that must be observed. “These include, in accordance with rules 10, 12, 17, 19 and 20 of the Standard Minimum Rules for the

⁵⁴ Id, Para 6.6

⁵⁵ See, for example, *Mika Miha v Equatorial Guinea*, UNHRC Communication No. 414/1990, 8 July 1994; *M’Boissona v the Central African Republic*, UNHRC Communication No. 428/1990, 7 April 1994; *Lan-tsova v the Russian Federation*, UNHRC Communication No. 763/1997, 26 March 2002; *Madafferi v Australia*, UNHRC Communication No. 1011/2001, 26 July 2004.

⁵⁶ Id, Para 6.8

⁵⁷ The standards specifically referred to in the General Comment are: the Standard Minimum Rules for the Treatment of Prisoners (1957); the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988); the Code of Conduct for Law Enforcement Officials (1978); and the Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1982).

Treatment of Prisoners, minimum floor space and cubic content of air for each prisoner, adequate sanitary facilities, clothing which shall be in no manner degrading or humiliating, provision of a separate bed and provision of food of nutritional value adequate for health and strength.”

Furthermore the UNHRC has developed jurisprudence on the nexus between articles 7 and 10 of the ICCPR. Under General Comment No. 21 the committee stated that “Article 10, paragraph 1, imposes on States parties a positive obligation towards persons who are deprived of liberty.” The committee continued that article 7 and 10 are complementary to each other whereby the former is negative obligation and the later is positive obligation “Article 10, paragraph 1, imposes on States parties a positive obligation towards persons who are particularly vulnerable because of their status as persons deprived of liberty, and complements for them the ban on torture or other cruel, inhuman or degrading treatment or punishment contained in article 7 of the Covenant.” Accordingly, persons deprived of their liberty are protected from article 7. In addition they are also protected from “any hardship or constraint” other than that which are ‘unavoidable’ in a closed environment “Persons deprived of their liberty enjoy all the rights set forth in the Covenant, subject to the restrictions that are unavoidable in a closed environment.”

In other cases Committee tends to apply Article 10(1) to general conditions of detention, reserving Article 7 for situations where an individual is subjected to specific attacks on his or her personal integrity.⁵⁸ In *Kennedy v Trinidad and Tobago*, for example, the Committee considered that beatings to which the author was subjected while in police custody amounted to a violation of Article 7, whereas the general conditions under which he was held, which included overcrowding while on remand and solitary confinement while on death row, violated Article 10(1).⁵⁹ To support a finding of a violation of Article 7, on the other hand, a detainee must show that he or she has been subjected to worse treatment than other detainees. In *Pinto v Trinidad and Tobago*, the author complained about appalling conditions of

⁵⁸ M.Nowak, U.N. Covenant on Civil and Political Rights: CCPR Commentary (2nd ed.2005), NP Engel, Strasbourg

⁵⁹ *Kennedy v Trinidad and Tobago*, UNHRC Communication No.845/1998, 26 March 2002, para.7.7–7.8. In this case, the author was kept on remand for a total of 42 months with between five and ten other detainees in a cell measuring 6 by 9 feet. Following his trial, he was detained for a period of almost eight years on death row, during which he was subjected to solitary confinement in a small cell with no sanitation except for a slop pail and no natural light. He was allowed out of his cell only once a week, and provided with wholly inadequate food that did not take into account his particular dietary requirements.

detention, but “failed to provide details on the treatment he was subject to, other than by reference to conditions of detention that affected all inmates equally.”⁶⁰

In contrast, in *Mukong v Cameroon*, the fact that the author was “singled out for exceptionally harsh and degrading treatment,” including being “detained incommunicado,... threatened with torture and death and intimidated, deprived of food, and kept locked in his cell for several days on end without the possibility of recreation” led the Committee to find a violation of Article 7.⁶¹ It may be argued that a violation of Article 7 in respect of a person deprived of liberty automatically entails a violation of Article 10(1). In *Linton v Jamaica*, for example, the Committee considered that “The physical abuse inflicted on the author..., the mock execution set up by prison warders and the denial of adequate medical care after the injuries sustained in the aborted escape attempt... constitute cruel and inhuman treatment within the meaning of article 7 and, therefore, also entail a violation of article 10, paragraph 1, of the Covenant.”⁶² In other instances the committee argued that article 10 and 7 are redundant provision due to the fact that article 10 reaffirmation of article 7 to give emphasis to detained persons. In *Sandy Sextus V Trinidad and Tobago* the committee noted that “In the light of this finding in respect of article 10, a provision of the Covenant dealing specifically with the situation of persons deprived of their liberty and encompassing for such persons the elements set out generally in article 7, it is not necessary to separately consider the claims arising under article 7.”⁶³ Accordingly, violation of article 10 entails violation of article 7.

Like the UNHRC, the CAT has expressed concern about conditions such as overcrowding, violence among prisoners, lack of separation of different categories of detainee, excessive periods of detention in facilities equipped only for short-term detention, lack of natural light or ventilation, unhygienic conditions, inadequate medical services or undue delays in the provision of medical services, and lack of recreation or educational facilities.⁶⁴ Again like the

⁶⁰ *Pinto v Trinidad and Tobago*, UNHRC Communication No. 512/1992, 16 July 1996, para.8.3.

⁶¹ *Mukong v Cameroon*, UNHRC Communication No. 458/1991, 21 July 1994, para.9.4

⁶² *Kalashnikov v. Russia* (2002), *Linton v Jamaica*, UNHRC Communication No. 255/1987, 22 October 1992, para.8.5, *Bailey v Jamaica*, UNHRC Communication No. 334/1988, 31 March 1993, para.9.3;

⁶³ *Sextus v. Trinidad and Tobago*, UNHRC Communication No.818/1998, 16 July 2001, para.7.4

⁶⁴ See, for example, CAT, *Concluding Observations on Japan*, UN Doc. CAT/C/JPN/CO/1, 2007; *Concluding Observations on Croatia*, UN Doc. CAT/C/CR/32/3, 2004; *Concluding Observations on Chile*, UN Doc. CAT/C/CR/32/5, 2004; *Concluding Observations on Moldova*, UN Doc. CAT/C/CR/30/7, 2003; *Concluding*

UNHRC, the CAT also makes direct reference to the Standard Minimum Rules for the Treatment of Prisoners, recommending that States end all practices that are contrary to these rules.⁶⁵

The CAT also considers that solitary confinement may constitute ill treatment or torture.⁶⁶ For example, in its inquiry into indications of systematic torture in Peru, the Committee expressed the view that the solitary confinement regime, which included “sensorial deprivation and the almost total prohibition of communication cause[d] persistent and unjustified suffering which amount[ed] to torture ,” and recommended that the Peruvian authorities put an end to the situation.⁶⁷

The CAT has found violations based on conditions of detention during its visits to places of detention.⁶⁸ Following its visit to Turkish prisons, for example, the Committee called on the authorities “to demolish immediately and systematically all the solitary confinement cells known as ‘coffins’, which in themselves constitute a kind of torture. These cells measure approximately 60 by 80 centimeters, they have no light and inadequate ventilation, and the inmate can only stand or crouch.”⁶⁹

Observations on the Russian Federation, UN Doc. CAT/C/CR/28/4, 2002, especially para.6(i) which explicitly categorises the conditions of detention of children in institutions as inhuman or degrading

⁶⁵ See, for example, CAT, Concluding Observations on the Democratic Republic of the Congo, UN Doc. CAT/C/DRC/CO/1, 2006, para.11; CAT, Concluding Observations on Togo, UN Doc. CAT/C/TGO/CO/1, 2006, para.19.

⁶⁶ Association for the Prevention of Torture (APT), Cited above at note 1; CAT, Concluding Observations on Denmark, UN Doc. A/57/44, 2002, para.74(c) – (d); CAT, Concluding Observations on Denmark, UN Doc. CAT/C/DNK/CO/5, 2007, para.14; 198 CAT, Concluding Observations on Japan, UN Doc. CAT/C/JPN/CO/1, 2007, para.18.

The assessment of whether solitary confinement amounts to torture and other cruel, inhuman or degrading treatment or punishment should take into consideration all relevant circumstances on a case-by-case basis. These circumstances include the purpose of the application of solitary confinement, the conditions, length and effects of the treatment and, of course, the subjective conditions of each victim that make him or her more or less vulnerable to those effects. In this section, the report discusses a few circumstances where the use of solitary confinement constitutes torture and other cruel, inhuman or degrading treatment or punishment. General assembly, Interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment(2011) ([http://daccess-dds-ny.un.org/doc/ UNDOC/ GEN/ N11/445/70/PDF /N1144570.pdf? OpenElement](http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N11/445/70/PDF/N1144570.pdf?OpenElement)) last visited on November 10, 2012.

⁶⁷ CAT, Summary account of the results of the proceedings concerning the inquiry on Peru, UN Doc. A/56/44, 2001, para.186.

⁶⁸ Under Article 20 UNCAT, the CAT has the power to request that a State Party allow such a visit where there is “reliable information which appears to it to contain well-founded indications that torture is being systematically practised in the territory of a State Party.” The CAT has yet to find a violation based solely on conditions of detention, but has indicated that such violations are, however, possible. See, for example, *Attia v Sweden*, CAT Communication No. 199/2002, 17 November 2003.

⁶⁹ CAT, Summary account of the results of the proceedings concerning the inquiry on Turkey, UN Doc. A/48/44/Add.1, 1993, para.52

3.3 The Rights of Detained Persons in the Regional Human Rights System Case Law

3.3.1 European Human Rights System Case Law

The European Court has long considered the general conditions of detention as a potential source of violations of Article 3. In *Kalashnikov v. Russia* (47095/99), Valeriy Kalashnikov spent almost five years in pre-trial detention where his cell was overcrowded – on 17 square meters 24 inmates were held –, that being surrounded by heavy smokers, he was forced to become a passive smoker, that it was impossible to sleep properly as the TV and cell light were never turned off, that the cell was overrun with cockroaches and ants, and that he contracted a variety of skin diseases and fungal infections, losing his toenails and some of his fingernails as a consequence. The Court considered in this case that the conditions of detention had amounted to degrading treatment in violation of Article 3 “in particular the severely overcrowded and insanitary environment and its detrimental effect on the applicant’s health and well-being, combined with the length of the period during which the applicant was detained in such conditions, contributed to this finding.” The court found violation of article 3 considering the cumulative effect of the prisons conditions on the detainee. In *Modârcă v. Moldova* (14437/05), the Court concluded that “the cumulative effect of the conditions of Mr. Modârcă’s detention and the time he was forced to endure them amounted to a violation of Article 3.”⁷⁰

Like the UN bodies, the Court held that detained persons shall not be subjected to distress or hardship exceeding the ‘unavoidable level of suffering’ inherent in detention.⁷¹ In *Strucl and others v. Slovenia* (5903/10, 6003/10 and 6544/10), the court found violation of article 3 arguing

“The distress and hardship endured by the applicants had exceeded the unavoidable level of suffering inherent in detention and had therefore amounted to degrading treatment.”

⁷⁰ V.Modârcă, who suffers from osteoporosis, spent nine months of his pre-trial detention in a 10m² cell with three other detainees. The cell had very limited access to daylight; it was not properly heated or ventilated; electricity and water supplies were periodically discontinued. Mr. Modârcă was not provided with bed linen or prison clothes; the dining table was close to the toilet, and the daily expenses for food were limited to EUR 0.28 for each detainee.

⁷¹ The applicants were held for several months in cells in which the personal space available to them was 2.7 square metres and in which the average afternoon temperature in August was approximately 28° C. They had to spend most of their time in the cell.

The Court will consider on the facts of an individual case whether the prisoner's state of health is compatible with continued detention. In *Mouisel v France*, the applicant needed prolonged chemotherapy for his leukemia, and a medical report had recommended that he be placed in a specialized unit, but the prison authorities had merely transferred him to a prison closer to a hospital. Only one year after this transfer was the applicant granted conditional release based on his need for regular hospitalization. The Court therefore examined the period between the report recommending transfer to a specialized unit and the conditional release, considering whether the continued detention of the applicant gave rise to "a situation which attained a sufficient level of severity to fall within the scope of Article 3 of the Convention."

The Court has held isolation from other prisoners for security, disciplinary or protective reasons do not automatically amount to inhuman treatment or degrading punishment. In *Ramirez Sanchez v France*, a period of more than eight years of solitary confinement was not found to be excessive, "having regard to the physical conditions of the applicant's detention, the fact that his isolation is 'relative,' the authorities' willingness to hold him under the ordinary regime, his character and the danger he poses," whereas in *Mathew v the Netherlands*, a period of approximately 19 months was considered excessive in light of the poor conditions of detention and the health problems of the applicant.⁷²

In *Florea v. Romania* (application no. 37186/03), Gheorghe Florea was detained in prison in Botasani, Romania, from 2002 to 2005. Suffering from chronic hepatitis and arterial hypertension. For about nine months he had to share a cell with only 35 beds with between 110 and 120 other prisoners. Throughout his detention he was kept in cells with other prisoners who were smokers. The Court found Mr. Florea's detention conditions to have been in breach of Article 3. The State had to ensure that prisoners were not subjected to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that their health was not compromised.

This also extends to cases where insufficient attention was paid the mental condition of a detainee who subsequently committed suicide (*Keenan v. United Kingdom* 2001; *Trubnikov v. Russia* 2005). In one recent case, where a detainee was diagnosed as HIV positive and developed AIDS and further complications while awaiting trial, the court found not only that

⁷² *Mathew v the Netherlands*, no. 24919/03, ECHR 2005-IX, judgement of 29 September 2005

his medical treatment had been inadequate to an extent that was inhuman and degrading, but that his continued detention in his weakened condition was not justified (*Aleksanyan v. Russia* 2008). It held that he posed no serious escape risk and, given the inadequate treatment that he had suffered in detention, ordered that he be released from pretrial detention so that he could be treated in an outside hospital.

3.3.2 American Human Rights System Case Law

The Inter-American commission on Human Rights and Inter-American Court have also adopted similar line of arguments with the European Court of Human Rights to protect Detained persons Rights where it rules that the violations of UN standard minimum rules for protection of prisoners rights is interpreted as violation of prohibition of torture or to cruel, inhuman, or degrading punishment or treatment under article 5 of Inter American Convention on Human Rights.

The Court has found that overcrowding, a lack of ventilation or natural light, inadequate bedding, inadequate sanitary conditions, inappropriate or inadequate food, inadequate physical activity, inadequate access to education or recreation, a lack of psychological or medical attention, and isolation or undue restrictions upon the visiting schedule constitute violations of the rights to humane treatment under Article 5 of the IACHR.⁷³

The court considers duration of the hardship and the vulnerability of applicant to find violation of article 5 as stated that “poor conditions of detention, depending on their intensity, length of detention and personal features of the inmate,... can cause hardship that exceed[s] the unavoidable level of suffering inherent in detention, and... involve humiliation and a feeling of inferiority” in breach of Article 5 of the IACHR.⁷⁴

According to the court ensuring adequate conditions of detention is an immediate obligation; “States cannot invoke economic hardships to justify imprisonment conditions that do not respect the inherent dignity of human beings.”⁷⁵

⁷³ See, for example, *Caesar v Trinidad and Tobago* (2005), op. cit., para.96; *Raxcaco Reyes v Guatemala*, IACHR (Series C) No. 134, judgement of 15 September 2005, para.95; *Berenson-Mejia v Peru* (2004), op. cit., para.102; *Tibi v Ecuador* (2004), op. cit., para.150; *Juvenile Reeducation Institute v Paraguay* (2004), op. cit., para.151; *De la Cruz Flores v Peru* (2004), op. cit., para.130. See also the UN Standard Minimum Rules for the Treatment of Prisoners.

⁷⁴ *Montero-Aranguren and Others v Venezuela* (2006), para.97

⁷⁵ *Montero-Aranguren and Others v Venezuela* (2006), para.85

In *Berenson-Mejia v Peru*, the Court explicitly related the conditions and the aims of detention, stating that conditions of detention which adversely affect the physical, mental and moral integrity of detainees are “contrary to the ‘essential aim’ of the penalty of imprisonment, as established in [Article 5(6) of the IACHR]; in other words, ‘the reform and social readaptation of the prisoners.’”⁷⁶

The Inter American Commission recommends detention condition of persons deprived of their liberty shall be in compliance to the International Minimum Standard Rules “Mr. Goodman's claims, in relation to his post conviction conditions of detention, should be evaluated in light of minimum standards articulated by international authorities for the treatment of prisoners, including those prescribed by the that United Nations. More particularly, Rules 10, 11, 12, 15, and 21, of the United Nations Standard Minimum Rules for the Treatment of Prisoners (UN Minimum Rules) provide for minimum basic standards for prisoners in respect of accommodation, hygiene, exercise, and their treatment and punishment during detention and incarceration.”⁷⁷.

The commission found violation of article 5 in case of solitary confinement taking other circumstances into consideration. In Report N° 35/96, the commission argued that “Mr. Lizardo was suffering from a gastrointestinal illness resulting from the conditions of his imprisonment. The solitary confinement lasted longer than was prudent (seven days) and was extreme in that he was deprived of food and drink and was not allowed access to sunlight,” the commission continued “ given the specific circumstances of this case, Mr. Lizardo's solitary confinement falls within the concept of torture defined by the Inter-American Convention on Torture.”⁷⁸

⁷⁶ *Berenson-Mejia v Peru* (2004), op. cit., para.101; *Baena-Ricardo v Panama*, IACHR (Series C) No.72, judgement of 2 February 2001, para.106.

⁷⁷ Report N° 78/07 Case 12.265 Merits (Publication) Chad Roger Goodman Commonwealth Of The Bahamas 15 October 2007, Inter-American commission on human rights, organization of American states (<http://www.oas.org/en/iACHR/pdl/decisions/iACHR.asp>) last visited on 10 April 2012, in the instance case Mr. Goodman, who has been detained on death row, is only given 10 minutes of exercise four days per week (Monday, Tuesday, Wednesday, and Friday) and on all other days, including holidays, he is confined to his cell for the full 24 hours. He is only allowed to shower on the days when he is allowed to exercise. These observations, together with the length of time over which Mr. Goodman has been held in these conditions, from May 6, 1993, to the present time.

⁷⁸ Report N° 35/96 Case 10.832 Luis Lizardo Cabrera Dominican Republic February 19, 1998, Inter-American commission on human rights, organization of American states (<http://www.oas.org/en/iI/pdl/decisions/iACHR.asp>) last visited on 10 April 2012

The commission creates a link between article 5 of the convention and international minimum standards for the treatment of prisoners stating “a comparison of Mr. Myrie’s prison conditions with international standards for the treatment of prisoners also suggests that his treatment has failed to respect minimum requirements of humane treatment.”⁷⁹

The commission make also a link between physical, mental and moral integrity and the concept of cruel, inhuman and degrading treatment or punishment to find violation of article 5 in case of poor detention conditions stating “the IACHR finds that the conditions of detention to which Mr. Lendore has been subjected fail to respect his physical, mental and moral integrity, as required under Article 5(1) of the American Convention, and, in all of the circumstances, constitute cruel, inhuman and degrading treatment or punishment contrary to Article 5(2) of the American Convention.”⁸⁰

3.3.3 African Human Rights System Case Law

The African Commission, like other regional and international bodies, has found that conditions of detention may in themselves amount to cruel, inhuman or degrading treatment under article 5 of ACHPR.⁸¹ The commission got Violations of article 5 in a number of cases due to overcrowding, unhygienic conditions, insufficient or poor quality food, lack of access to medical care, deprivation of light, excessive light, lack of fresh air, and shackling within cells.⁸²

78 Nelson Iván Serrano Sáenz V Ecuador, Report No. 84/09 Case 12.525 Article 51 (Publication) August 6, 2009, Inter-American commission on human rights, organization of American states (<http://www.oas.org/en/iACHR/pdl/decisions/iACHR.asp>) last visited on 10 April 2012

⁷⁹ Report N° 41/04 Case 12.417 Merits Whitley Myrie Jamaica October 12, 2004, Inter-American commission on human rights, Organization of American States (<http://www.oas.org/en/iACHR/pdl/decisions/iACHR.asp>) last visited on 10 April 2012

⁸⁰ Dexter Lendore V Trinidad And Tobago, Report N° 28/09 Merits (Publication) Case 12.269, March 20, 2009. In this case Mr. Lendore had been held in confined and crowded conditions sharing 9’ x 6’ cell with, on average, 10 other prisoners and where, on occasion, there were as many as 15 other prisoners sharing the cell. In those conditions a single plastic bucket was provided for as a toilet and washing facility for all the prisoners in the cell. As a result prisoners were forced to defecate and urinate in the cell itself. A single bunk bed without mattress was provided which resulted in Mr. Lendore spending most, if not all, nights sleeping on the floor. Mr. Lendore spent 23 hours of his prison day living in these conditions, without ventilation and without natural light.

⁸¹ Association for the Prevention of Torture (APT), Cited above at note 1.

⁸² See, for example, Achutan (on behalf of Banda) and Amnesty International (on behalf of Orton and Vera Chirwa) v Malawi (1995); Malawi African Association and Others v Mauritania (2000); Huri-Laws v Nigeria (2000); Malawi African Association and Others v Mauritania (2000); Media Rights Agenda v Nigeria (2000); Achutan (on behalf of Banda) and Amnesty International (on behalf of Orton and Vera Chirwa) v Malawi (1995); Malawi African Association and Others v Mauritania (2000); Civil Liberties Organisation v Nigeria (1999); Achutan (on behalf of Banda) and Amnesty International (on behalf of Orton and Vera

The Commission has found solitary confinement to violate Article 5 of the ACHPR on a number of occasions.⁸³ While in the existing jurisprudence, the solitary detention has always been accompanied by other violations of Article 5, the Commission considers that “[o]f itself, prolonged... solitary confinement could be held to be a form of cruel, inhuman or degrading punishment and treatment.”⁸⁴

The commission made it clear that ‘states assume responsibilities to look after the welfare of persons who have been deprived of their liberty including prisoners and detainees.’⁸⁵ The commission has underlined the absolute nature of prohibition of torture, cruel, inhuman or degrading treatment or punishment and for this effect it has made reference to European convention jurisprudence on the ‘minimum level of severity’ required.⁸⁶

In addition, the commission in its jurisprudence developed a nexus between torture, cruel, inhuman or degrading treatment or punishment on one hand and the concept of dignity on the other hand where it has interpreted, in a number of cases, the violation of dignity, integrity and welfare as violation of art 5 of the charter. In a series of case against Rwanda,⁸⁷ the commission found that the conditions of detention in which children, women and the aged are held violates their physical and psychological integrity and, therefore, violates art 5 of the ACHPR.

Unlike the ECtHR, the commission doesn’t appear to have applied a hierarchy of seriousness to different elements of art 5 of the charter, whether it is torture, cruel, inhuman or degrading. Similarly, in communication 232/99 John D. Ouko vs. Kenya the complainant was detained

Chirwa) v Malawi (1995); Malawi African Association and Others v Mauritania (2000); Ouko v Kenya (2000); international Pen and Others (on behalf of Ken Saro-Wiwa Jr.) v Nigeria (1998); Achutan (on behalf of Banda) and Amnesty International (on behalf of Orton and Vera Chirwa) v Malawi (1995); International Pen and Others (on behalf of Ken Saro-Wiwa Jr.) v Nigeria (1998); Media Rights Agenda v Nigeria (2000)

⁸³ See, for example, Achutan (on behalf of Banda) and Amnesty International (on behalf of Orton and Vera Chirwa) v Malawi (1995), op. cit., para.7; Malawi African Association and Others v Mauritania (2000), op. cit., para.115; Media Rights Agenda v Nigeria (2000), op. cit., para.70.

⁸⁴ Zegveld and Ephrem v Eritrea (2003), op. cit., para.55.

⁸⁵ R. Murray, “African Commission’s approach to prisons,” in Jeremy Sarkin (ed.) Human Rights in African Prisons (2008.), p.204-205

⁸⁶ ACmHPR communication 225/98 Huri-laws/Nigeria Para 41

⁸⁷ Communication 49/91, the communication states that over 1000 people including women, children and the aged are held in deplorable conditions. A large number of villages have been destroyed and villagers, mostly Tutsis, have been massacred. The commission crudely ruled that “conditions of detention in which children, women and the aged are held in the instant case violate their physical and psychological integrity and therefore constitutes of violation of Article 5.”

in the cells of a secret service department head quarter in a two-by-three meter cell in the basement with a 250 watt pulb which was left on during his 10 month detention. He was also denied access to bath room facilities. The commission held in this case that the detention situation of Mr. Ouko violates the rights to respect of his dignity and hence constitutes inhuman or degrading treatment or punishment under art 5 of the charter.

In one case⁸⁸ detainees were forced to lie on the floor and being soaked with cold water; confining four groups of individuals in cells 1.8 meters wide and one meter deep, deliberately flooding cells to prevent detainees from lying down, forcing individuals to face mock executions, and prohibiting them from washing. Other accounts describe burning with cigarettes and the deliberate banging of doors at frequent intervals throughout the night to prevent sleeping. Individuals were bound with rope such that circulation was cut off to parts of their bodies, beaten severely with sticks, and had battery acid poured onto open wounds.

In this case ACmHPR ruled without detail reasoning that the acts committed constitute violations of Article 5 of ACHPR: “Every individual shall have the rights to the respect and dignity inherent in a human being...All forms of...degradation of man particularly...torture, cruel, inhuman or degrading treatment and punishment, shall be prohibited.”

In communications 64/92 Krishna Achutan (On behalf of Aleke Banda), 68/92 Amnesty International on behalf of Orton and Vera Chirwa 78/92 Amnesty International on behalf of Orton and Vera Chirwa v. Malawi, the Chirwas was given extremely poor food, inadequate medical care, shackled for long periods of time within their cells and prevented from seeing each other for years with The conditions of overcrowding and acts of beating and torture. The ACmHPR declared the acts violate art 5 of ACHPR.

In communication 224/98 Media Rights Agenda vs. Nigeria the complaint avers that while Mr. Malaolu was in detention, he was subject to such cruel, inhuman or degrading treatment as having his legs and hands chained to the floor day and night. From the day he was arrested and detained until the day he was sentenced by the tribunal, a total period of 147 days, he was not allowed to take his bath. He was give food twice a day, and while in detention, both

⁸⁸ 48/90 Amnesty International vs/Sudan, 50/91 Comité Loosli Bachelard vs/Sudan, 52/91 Lawyers Committee for Human Rights vs/Sudan, 89/93 Association of Members of the Episcopal Conference of East Africa vs/Sudan

in Legos and Jos before he faced the Special investigation Panel that preceded the trial at the Special Military Tribunal, he was kept in solitary confinement in a cell meant for criminals. The compliant submits farther that the treatment meted out to Mr. Malaolu contravened article 5 of the charter. The commission declared also this act is in violation of art 5 the charter.

3.4 Conclusion

International and regional human rights treaty bodies contribute to broaden standards on the treatment of detained persons. At the UN level UNHRC and CAT have developed significant norms for the treatment of detained persons. The UNHRC, for instance, stated in a significant number of cases and general comments that the treatment of detained persons be in accordance with international standards, such as, UN Standard Minimum Rules for the Treatment of Prisoners early in 1951, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988).

The UNHRC maintained that violation of the one or more of the aforementioned standards; depending on all the circumstances of the case, such as the nature and context of the treatment, its duration, its physical or mental effects and, in some instances, the sex, age, state of health or other status of the victim, could amount to the violation of prohibition of torture, cruel, inhuman or degrading treatment or punishment under article 7 of the ICCPR. The UNHRC also adopted that any form of hardship or distress inflicted on detained persons in violation of international standards which is supposed to be below the threshold of severity to account violation of article 7 of the ICCPR could amount to violate article 10 of the ICCPR which requires treatment of detained persons with due respect to their human dignity.

When it comes to regional human rights treaty bodies, the ECtHR take the lions share role in formulating comprehensive standards through massive number of cases. The court uniformly reflected in its jurisprudence that detained persons shall be treated in accordance with international standards, such as, UN Standard Minimum Rules for the Treatment of Prisoners early in 1951, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988). According to the court's jurisprudence failure to do so could amount to violation of article 5 of ECHR which prohibits torture, cruel, inhuman or degrading punishment or treatment. To this end, ECtHR adopted a hierarchy of seriousness

to the different elements of article 5, torture, cruel, inhuman or degrading punishment or treatment.

The ACmHPR, on the other hand does not have that deep and precise jurisprudence on the case. Like the above bodies, the available cases shows the commission held that detained persons shall be treated in accordance with international standards. Treatment of detained persons in violation of such standards is held violation of article 5 of ACHPR (Prohibition of torture, cruel, inhuman or degrading punishment or treatment).

Unlike the ECtHR, the ACmHPR does not create distinction among elements of article 5, torture, cruel, inhuman or degrading punishment or treatment in its finding for the violation of the provision; the commission simply finds violation of the provision without stating what particular element is violated, torture, cruel, inhuman or degrading punishment or treatment. It, however, worth appreciating the link made between torture, cruel, inhuman or degrading punishment or treatment and the concepts dignity, integrity and welfare. In some cases the commission found that the conditions of detention in which detained persons held violates their physical and psychological integrity and therefore constituting violation of article 5.

The IACmHR also contributed to development of standards for treating detained persons through its jurisprudence by and large in the same fashion to the above bodies.

CHATER FOUR: ETHIOPIAN LEGAL FRAMEWORK ON DETAINEES RIGHTS

4.1 Introduction

States parties to the international human rights instruments are obliged to take steps to realize enforcement of the rights that they undertake to protect. This can be by making legislative, administrative and other measures. The common methods are entrenchment of the rights under the constitution, criminalizing the act by criminal laws and preparing policies and programs for enforcement sake. The writer, accordingly, investigates the Ethiopia's legislations including the constitutions vis-à-vis adequacy of the available legislations to protect detained persons.

Accordingly, this section addresses: The 1931 Constitution, Proclamation No. 45/1944, Relating to Prisons, The 1957 Criminal Code, The 1995 FDRE Constitution, Federal Prisons Commission Establishment Proclamation, Council Of Ministers Regulations on the Treatment of Federal Prisoners, and The Revised Criminal Code (2004).

4.2 The 1931 Constitution

This is the first written constitution in Ethiopia. This constitution, for the first time in the history of Ethiopian Human Rights, came up with some human rights stipulations. The article which has relevance to detained persons prohibits arbitrary arrest, sentence and imprisonment of persons: "No Ethiopian subject may be arrested, sentenced, or imprisoned except in pursuance of the law." This provision, however, does not have clear provision on treatment of detained persons.

4.3 Proclamation No. 45/1944, Relating To Prisons

Though history of prisons in Ethiopia is traced back long before 20th century, draft law on the administration of prisons is began only by the promulgation of proclamation No. 45 of 1944 titled a proclamation Relating to prisons. This proclamation remains to be one of the bases for correctional administration along with the 1957 penal code up to 1990s in Ethiopia. This proclamation envisaged the segregation of detained persons based sex and medical reasons (article 6 of the proclamation).

According to article 8 of the prison proclamation, prisoners serving sentences are under obligation to participate in some work in the prison and this type of work is considered to be

“an essential element in the sentence”. The type of work should also be suitable to the prisoners’ ability and “shall be of such nature as to reform and educate the prisoner and to be conducive to his rehabilitation”. If the work the prisoner does and his conduct are satisfactory, he is entitled to receive compensation for the work he does. The mode and amount of payment was supposed to be governed by prison regulations.

4.4 The 1957 Criminal Code

This criminal code had provisions on the administration of prisons and treatment of prisoners. The code, accordingly served to supplement the proclamation on the administration of prisons. The criminal code, inter alia, describes manners of separation of prisoners; the separation of the sexes and the general classification of prisoners are provided for, as indicated below, in Article 109 of the penal code of 1957.

- i. Prisoners of different sexes shall serve their sentences in different buildings or in different sections of the same building and prisoners of one sex shall not be allowed to mix with prisoners, of other sex.
- ii. Prisoners, who are a danger to others, prisoners of bad character and recidivists sentenced to rigorous imprisonment or interment shall be kept separate from prisoners under the age of 18 years or from prisoners who are serving a sentence of simple imprisonment for the first time.
- iii. Prisoners on remand or prisoners detained for civil debts shall be kept separate from prisoners serving sentences.

4.5 The 1995 FDRE Constitution

Chapter three of the EFDR constitution⁸⁹ is exclusively dedicated to Human rights titled “Fundamental Rights and Freedoms”. The chapter is divided into two parts as: ‘Human Rights’⁹⁰ and ‘Democratic Rights’⁹¹. Everyone is entitled to the rights entrenched in the

⁸⁹ Proclamation of the Constitution of the Federal Democratic Republic of Ethiopia, 1995, proc.No 1,Neg. Gaz.year 1,No 1

⁹⁰ Id ,Rights to life (art 15), the Security of Person(art 16) and Liberty(art 17), Prohibition against Inhuman Treatment (art18), Rights of Persons Arrested (art19), Rights of Persons Accused (art 20), The Rights of Persons Held in Custody and Convicted Prisoners (art21), Non-retroactivity of Criminal Law (22), Prohibition of Double Jeopardy (23), Rights to Honour and Reputation(art 24), Rights to Equality(25), Rights to Privacy(26), Freedom of Religion, Belief and Opinion(art 27), Crimes Against Humanity(art 28)

⁹¹Id, Rights of Thought, Opinion and Expression(art 29), The Rights of Assembly, Demonstration and Petition(art 30), Freedom of Association(31), Freedom of Movement(art32), Rights of Nationality(art 33),

constitution. Detained persons as human beings, therefore, are also entitled for these constitutional rights, except those limited explicitly as natural consequence of deprivation of liberty. For instance, the rights to life can be limited as a punishment for a serious criminal Offence determined by law:⁹² “No person may be deprived of his life except as a punishment for a serious criminal offence determined by law.” Art 14 grants the rights to liberty and this rights is taken by law obviously as punishment for crime. The said article at the same time, however, prohibits arbitrary arrest and detention without charge or conviction. Article 18 verbally adopted art 5 of the UDHR and article 7 of the ICCPR stating “Everyone has the rights to protection against cruel, inhuman or degrading treatment or punishment.”⁹³It specifically prohibits ‘forced or compulsory labor’ and exceptionally detained persons are required to perform forced or compulsory labor.

The constitution on ‘The Rights of Persons Held in Custody and Convicted Prisoners’⁹⁴ reaffirmed that detained persons are entitled to the rights guaranteed by the constitution,” all persons held in custody and persons imprisoned upon conviction and sentencing have the rights to treatments respecting their human dignity.”⁹⁵The provision continues: “All persons 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.”

The EFDR constitution has adopted the monist approach on incorporation of international law.⁹⁶ Art 9(4) of the constitution stipulates that “All international agreements ratified by

Marital, Personal and Family Rights(art 34) Rights of Women(art 35), Rights of Children(art 36), Rights of Access to Justice(art 37), The Rights to Vote and to be Elected(art 38), Rights of Nations, Nationalities, and Peoples(art 39), The Rights to Property(art 40), Economic, Social and Cultural Rights(41), Rights of Labour(art 42), The Rights to Development(art 43), Environmental Rights(art 44)

⁹² Id , art 15

⁹³ Id ,art 18(1)

⁹⁴ Id , art 21

⁹⁵ The constitution envisages the treatment of prisoners with due regard to their inherent dignity. Dignity is a general concept and for the purpose of treatment of prisoners, law enforcing organs have to rely, among others, on the UN Minimum Standards for the treatment of Prisoners. Ethiopia has adopted these standards through ‘Council of Ministers RegulationsNo.13812007 on the Treatment of Federal Prisoners.’ It requires regard to , inter alia, registration of Prisoners(article 4),Separate Accommodations of Prisoners(article 5), Conditions of Premises(article 6), Clothing(article 7), Bedding(article 8), Sanitation(article 9), Food(article 10), Medical Services(article 11), Pregnant and Female Prisoners with Children(article 12).

⁹⁶ Sisay Alemahu Yeshanew, “The Justiciability of Human Rights in the Federal Democratic Republic of Ethiopia”, *African Human Rights Law Journal*, Vol. 8, (2008) no. 2 see also Rahel Mesele *Enforcement of human rights in Ethiopia* (2002), (<http://www.apapeth.org/Docs/ENFORCEMENT%20OF%20HR.pdf>) last visited on 10 November 2011

Ethiopia are an integral part of the law of the land.” Hence, International instruments that are ratified by Ethiopia are subject to enforcement before domestic courts without the need for further act for domestication.⁹⁷ Accordingly, international human rights instruments in general and those exclusively dedicated to detained persons rights can be invoked by detainees so long as ratified by Ethiopia.⁹⁸

4.6 Federal Prisons Commission Establishment Proclamation

Federal Prisons Commission Establishment Proclamation⁹⁹, adopted by the house of people’s representatives to give effect to the principles envisaged by the constitution regarding persons in custody, is the next important instrument which deals with detainees rights. The preamble of the proclamation stipulates that reformation and rehabilitation are the objectives of punishment. Art 5 of the proclamation also states that the objective of the commission is reformation and rehabilitation:

The objectives of the Commission shall be to admit and ward prisoners, and provide them with reformatory and rehabilitative service in order to enable them make attitudinal and behavioral changes, and become law abiding, peaceful and productive citizens.

Art 6 of the same proclamation on “Powers and Duties of the Commission” provides that the commission shall maintain prisoners' health care; and provide prisoners with free medical treatment, food and shelter. It will undertake and encourage tasks, services and activities necessary for the physical and mental well-being of prisoners. To this end, the proclamation stipulates enactment of regulation and directives by relevant authorities.¹⁰⁰ The duty of the commission also includes, inter alia, providing prisoners with academic education, vocational training, and social work services and counseling services to facilitate their post-release rehabilitation.¹⁰¹

The proclamation provides that prisoners shall be treated with due regard to their human dignity.¹⁰² It also suggests that remand and civil prisoners shall be presumed innocent and

⁹⁷ Ibid

⁹⁸ Detainees can invoke, inter alia, Universal Declaration on Human Rights,, The African Charter on Human and Peoples’ Rights, ICCPR, since Ethiopia ratified these instruments.

⁹⁹ Federal Prisons Commission Establishment Proclamation, 2003, proc No 365,Neg. Gaz. Year 9,No.90

¹⁰⁰ Id art 6(3)

¹⁰¹ Id art 6(4)

¹⁰² Id art 22

treated differently from convicted prisoners.¹⁰³ It prohibits adverse discrimination on grounds of gender, religion, political opinion, nation, nationality, of social origin.¹⁰⁴ The proclamation makes it clear that female detainees shall be provided with separate premises¹⁰⁵ while segregation on the basis of age, offences and similar factors is subject to 'to the extent that circumstances allow.'¹⁰⁶ Prison premises and compounds shall not be hazardous to health; and they shall have fresh air and sufficient lights.¹⁰⁷ It allows variation among accommodations based on degree of willingness to reform and repentance.¹⁰⁸ There shall be provision of food free of charge which is sufficient and of nutritional value.¹⁰⁹

4.7 Council Of Ministers Regulations on the Treatment of Federal Prisoners

Council Of Ministers Regulations on The Treatment of Federal Prisoners¹¹⁰ is issued to implement Federal Prison Commission Establishment Proclamation No. 365/2003 as envisaged by art 39(1) of the same proclamation.¹¹¹ The regulation starts by setting its principles,

The treatment of prisoners shall be based on the basic principles of:¹¹²

- 1/ no 'discrimination on grounds of gender, language religion, political opinion, nation, nationality, social status or citizenship;
- 2/ respect to their human dignity unless restricted by the penalties imposed on them;
- 3/ ensuring that the executions of penalties are educative and rehabilitative,

Following the principles, it elaborates the manner of Admission and Registration of prisoners, Separate Accommodations of Prisoners, Conditions of Premises, Clothing, Bedding, Sanitation, food, Medical Services.

¹⁰³ *ibid*

¹⁰⁴ *Id* art 24

¹⁰⁵ *Id* art 25

¹⁰⁶ *ibid*

¹⁰⁷ *Id* art 26

¹⁰⁸ *ibid*

¹⁰⁹ *Id* art 27

¹¹⁰ Council of Ministers Regulations on the Treatment of Federal Prisoners, 2007, Reg. no 138, Neg. Gaz., Year 13, No. 47

¹¹¹ This regulation more or less reflects the UN Standard Minimum Rules on the Treatment of Prisoners. This regulation is binding which avoids the argument on the enforceability of the UN Standard Minimum Rules on the Treatment of Prisoners. Domestic courts, therefore, can refer to the regulation along with the constitution when it comes to treatment of detained persons without the need to resort to the UN rules.

¹¹² *Id* art 3

This regulation is interesting in that it is similar to the UN Standard Minimum Rules for the Treatment of Prisoners. It requires the prison authorities to make registration of a newly admitted prisoner which is prerequisite to enforce the rights of a prisoner.¹¹³ Upon registration, there shall also be entry of the health condition of the new prisoner which suggests the line of responsibility for the state's failure on caring the health of the prisoner.

There shall be separate premises for male and female prisoners.¹¹⁴ Within prisons, too, the degree of vulnerability is greater in case of female prisoners who could be subjected to rape based on their sex status. Accordingly, in addition to separate premises they shall also be supervised with female wardens and officials, exceptionally, male medical personals and teachers can carry out their activity within the female prisoner's premises¹¹⁵. The regulation also states that there should be separate accommodation for prisoners on death roll¹¹⁶ without any condition while there must be separate accommodation for juvenile prisoners¹¹⁷ under the age of 18, persons detained upon judicial remand¹¹⁸; convicted prisoners¹¹⁹; prisoners with records of serious crimes, recidivists, indecent and prisoners with communicable disease and mental cases¹²⁰ based on the circumstances.

Premises shall have windows large enough to allow adequate light and fresh air and shall be supported with artificial light which is not hazardous for night reading. Prisoners shall be provided with cloths and additional ones when recommended by medical doctor. There shall be bed and bedding. There must be access to adequate water and necessary materials for cleanness and toilet materials. Every prisoner shall be provided with balanced and sufficient diet. Prisoners with health problems shall be provided with special food at the recommendation of a medical officer. Sufficient and clean drinking water shall be made available for every prisoner.

¹¹³ Id art 4

¹¹⁴ Id art 5

¹¹⁵ ibid

¹¹⁶ ibid

¹¹⁷ ibid

¹¹⁸ ibid

¹¹⁹ ibid

¹²⁰ ibid

4.8 The Revised Criminal Code (2004)

The significance of the existing criminal code¹²¹, which repealed the 1957 penal code, of Ethiopia will not be overlooked when we deal with a law that governs prisoner's rights in Ethiopia. Article 1 of the criminal code on 'object and purpose' of the criminal law of Ethiopia stipulates that the purpose of the criminal code is ensuring order, peace and security. To this end, the aim of the law is mainly prevention of crime by giving due notice on the types of prohibited acts and the amount and nature of punishment that the violation of them entails. The purpose of punishments passed against those who failed to adhere to the law is not retribution. It is to deter others not to involve with the same act and at the same time it endeavors to make reformation of the criminals through different measures. The reformation and rehabilitation objective of the law is best provided, specifically regarding prisoners, under its preface. The preface upholds article 1 of the code:

*The fact that wrongdoers, 'instead of being made to suffer while in prison, take vocational training and participate in academic education, which would benefit them upon their release, reaffirms the great concern envisaged by the Criminal Code about the reform of criminals.'*¹²²

Book II of the criminal code is entirely dedicated to 'the criminal punishment and its application.' The principle of this book urges law enforcement organs to take note of the objective of the law under article 1 of the code. It also provides penalties and measures shall be in conformity with human dignity. In a nut shell, punishments and their enforcement is divided based on age: punishment for adults and young offenders. Punishments applicable to adults can have form of Fine, Confiscation, Sequestration, Compulsory Labour and imprisonment.

Imprisonment is again divided into simple imprisonment¹²³ and rigorous imprisonment¹²⁴ based on the gravity of the crime. The code requires that the conditions of

121 Proclamation of the Criminal Code of the Federal Democratic Republic of Ethiopia, 2005, proc. no.414/2004,Neg.Gaz,

¹²² Id, preface para.8

¹²³ Id, Art 106: "Simple imprisonment is a sentence applicable to crimes of a not very serious nature committed by persons who are not a serious danger to society. Simple imprisonment may extend for a period of from ten days to three years."

¹²⁴ Id, Art 108: "Rigorous imprisonment is a sentence applicable only to crimes of a very grave nature committed by criminals who are particularly dangerous to society. ...The sentence of rigorous imprisonment is

enforcement of rigorous imprisonment are more severe than those of simple imprisonment.¹²⁵ Accordingly, there must be different prisons to serve rigorous and simple imprisonment.¹²⁶ Nevertheless, both form of prison shall have one common aim¹²⁷ i.e. Reformation and rehabilitation as envisaged in article 1 of the code. The criminal law also envisages enactment of regulation which point out the manner of execution of sentences, the admission to prison, the segregation of prisoners, and the contact of prisoners with persons outside, the internal discipline in the prisons, and for the education and spiritual welfare of the prisoners.¹²⁸

Art 110 of the criminal code provides the segregation of prisoners based on their status: Prisoners of different sexes shall serve their sentences in different prisons and, in default of this,

prisoners of different sexes shall be kept in different sections of the same prison and shall not be allowed to mix with prisoners of the other sex; Prisoners who are sentenced to rigorous imprisonment or special confinement shall be kept separate from prisoners under the age of eighteen years or from adult prisoners who are serving a sentence of simple imprisonment; Prisoners awaiting judgment or persons detained for civil debts, or public servants who, by virtue of their official duty, had contact with prisoners and who are imprisoned for a crime or detained for civil debt shall be kept separate from prisoners serving sentence.

Art 112 on 'Variation of Conditions of Imprisonment' provides for the forms of executions of sentence. It gives discretion to the prison administration as to when to impose solitary confinement:

The prison administration may, whenever it appears necessary so to do, impose solitary confinement at the beginning or in the course of the execution of the sentence for a maximum of three months. Before imposing solitary confinement, the prison administration shall determine the measure and duration of such confinement after consultation with a medical doctor and, where necessary, a psychiatrist¹²⁹

normally for a period of one to twenty-five years. But where it is expressly so laid down by law it may be for life.”

¹²⁵ Art 108(2) Para 2

¹²⁶ Id, Para 1

¹²⁷ Id, art 109

¹²⁸ ibid

¹²⁹ Id, art 112(1)

This article also allows discrimination on the treatment of prisoners as regards food, access to visitors ... as to the conduct of prisoners:

Good conduct prisoners may be given more favourable treatment as regards food, access to visitors, nature of work and leisure and treatment may be further improved with improved conduct of the prisoner and with the approach of the prisoner's release.

The criminal law has laid down all the principles¹³⁰ for the treatment of young criminals. In case of youngsters between the age of 9 and 15, the law suggests the court to order curative, educational or corrective measures for the rehabilitation and reformation of young criminals. Imprisonment will be employed as a last resort when a young criminal has committed a serious crime which is normally punishable with a term of rigorous imprisonment of ten years or more or with death and if the young criminal is incorrigible and is likely to be a cause of trouble, insecurity or corruption to others. When detention is ordered, accordingly, the treatment of the child shall take place under the regime of simple imprisonment'(Art. 106) In the case of a crime committed by a young person belonging to the intermediary age group extending from the end of criminal minority (15 years) to legal majority (18 years), the court will apply the ordinary law that works for adults. The privileges' designed for these young criminals is that the age status they are in is a ground to mitigate sentence. The law, however, prefers segregation of young criminals in general (9yrs-18yrs) from adults in their stay in prison.

Finally, the criminal has criminalized acts of torture directed against persons who are under custody.¹³¹

¹³⁰ In the criminal law Infants who have not attained the age of nine years shall not be deemed to be criminally responsible(art 52); Where a crime is committed by young person's between the ages of nine and fifteen years, shall not be subject to the ordinary penalties applicable to adults nor shall they be kept in custody with adult criminals (art 53); If at the time of the commission of the crime the criminal was over fifteen but under eighteen years of age, he shall be tried under the ordinary provisions of this Code(art 56).Nevertheless the court has to take into account the age of the person in assessing sentences.

¹³¹ Article 424(1): "Any public servant charged with the arrest, custody, supervision, escort or interrogation of a person who is under suspicion, under arrest, summoned to appear before a Court of justice, detained or serving a sentence, who, in the performance of his duties, improperly induces or gives a promise, threatens or treats the person concerned in in improper or brutal manner, or in a manner incompatible to e with human dignity or his office, especially by the use of blows, cruelty or physical or mental torture, be it to obtain a statement or a confession, or to any other similar end, or to make him give a testimony in a favourable manner is punishable with simple imprisonment or fine, or, in serious cases, with rigorous imprisonment not exceeding ten years and fine ..."

4.9 The New Draft Criminal Procedure Code

As discussed in chapter two, the Ouagadougou Declaration and Plan of Action on Accelerating Prisons and Penal Reforms in Africa recommends that Criminal justice agencies should work together more closely to make less use of imprisonment. This instrument has adopted variety of strategies to rectify prison population. Accordingly, Strategies for preventing people from coming into the prison system include: Use of alternatives to penal prosecution such as diversion in cases of minor offences with particular attention to young offenders and people with mental health or addiction problems; Recognition of restorative justice approaches to restore harmony within the community as opposed to punishment by the formal justice system - including wider use of family group conferencing, victim offender mediation and sentencing circles; Use of traditional justice as a way of dealing with crime in line with constitutional guarantees and human rights standards; Improving referral mechanisms between the formal (State) justice system and the informal (non State) justice system; Decriminalisation of some offences such as being a rogue and vagabond, loitering, prostitution, failure to pay debts and disobedience to parents.

Strategies for reducing the numbers of unsentenced prisoners include; Co-operation between the police, the prison services and the courts to ensure trials are speedily processed and reduce the delays of remand detention through: regular meetings of caseload management committees including all criminal justice agents at the district, regional and national levels; making of costs orders against lawyers for unnecessary adjournments; targeting cases of vulnerable groups; Detention of persons awaiting trial only as a last resort and for the shortest time possible, including: increased use of cautioning; improved access to bail through widening police powers of bail and involving community representatives in the bail process; restricting the time in police custody to 48 hours; setting time limits for people on remand in prison; Good management of case files and regular review of the status of remand prisoners; Greater use of paralegals in the criminal process to provide legal literacy, assistance and advice at a first aid level.

As per this articulation 'general inhuman detention condition' will be punishable only when it is perpetuated with initiation of a public servant. Practically, officials do not do this unless it is directed against single or category of detained persons. see UNHRC General Comment 21 for this effect

In addition Strategies for reducing the numbers of sentenced prisoners include: Setting a target for reducing the prison population; Increased use of proven effective alternatives, such as community service and exploring other sanctions such as partially or fully suspended sentence, probation and correctional supervision; Imposition of sentences of imprisonment only for the most serious offences and when no other sentence is appropriate, i.e. as a last resort and for the shortest time possible; Consideration of prison capacity when determining decisions to imprison and the length and terms of imprisonment; Review and monitoring of sentencing practice to ensure consistency; Powers to courts to review decisions to imprison, with a view to substituting community disposals in place of prison and Early and conditional release schemes, furloughs and home leave - criteria for early release should include compassionate grounds based on health and age.

The new Draft criminal procedure code has wide range of provisions that reflect this plan of action. The articles from 222-235 deals about alternatives to ordinary criminal litigation process. The objective of the diversion system will be : it saves times and resource; it enables the offender to easily reintegrate to the society; it mitigates the enmity that could be created between the victim and the offender and finally it gives the offender a chance to repent and take self learn.

Article 223 empowers the court and the prosecutor to refer a case to an alternative dispute resolution mechanism when they found it necessary for the effective disposal of the case. When deciding accordingly, the court or the prosecutor has to give consideration to public interest, the competing interests of the victim and the offender and other circumstances of the case.

Article 224 specifically provides that alternative dispute resolution mechanisms will be employed when the alleged crime is simple or medium and if it is committed in a condition where: the accused is young, female or old; hearing the matter in the ordinary criminal litigation could bring physical or psychological harm to the victim or the witnesses; if the accused is in a serious physical or mental illness during commission of crime or during hearing and if the accused is ready to make good the damage he caused to the victim.

In addition, the code empowers the Prosecutor General to identify crimes that have to go to alternative dispute resolution mechanism. For this end, the Prosecutor General has to take into account, as provided under 229, the magnitude, nature and type of crime; the condition and mechanism under which the crime is committed; behaviour and past record of the accused; age and social condition of the accused; magnitude and type of harm on the victim; the age, sex and other social conditions of the victim and other relevant matters.

The other peculiar feature of the draft criminal procedure is it has clearly provided the duty and power of prisons. It among other things obliges them to provide convicts or awaiting trials with food, medical care, accommodation and cloth free of charge. More interestingly, reading article 21 between the lines shows that the prisons have the duty to provide similar treatments for those who are remanded to police custody for further investigation. This interpretation is reinforced by reading article 20 which limits the power of Police Commission to prevention and investigation of crime without indication on the manner of treatment of suspects who are remanded to police custody for further investigation. It also provides that prisons have to facilitate the rehabilitation and reintegration to society of prisoners by providing them with work, counseling and arrangements for conciliation of the prisoner and victim.

CHAPTER FIVE: THE PRACTICE OF TREATMENT OF DETAINED PERSONS IN ETHIOPIA

5.1 Introduction

The rise of prisons as an agency for punishing convicted persons was a slow and gradual process which extends over several centuries, from crude beginnings in sixteen century (Holdsworth 1938:567-568). A distinguishable feature of the earliest prisons is the lack of a systematic policy concerning imprisonment of convicted criminals. Until the latter years of the 19th century the accustomed method of dealing with convicted offenders was to impose fines or to mete out to them some more or less brutal form of corporal punishment, such as execution, banishment, public humiliation in the stocks, flogging, branding and mutilation.

Similarly unorganized form of imprisonment in Ethiopia is traced to the 17th century. The early history of prisons in Ethiopia is highly related to detention of royal families who were potential rivalries of the king's throne.¹³² According to the available sources those people were detained in inaccessible mountains. A place Wahinie Amba¹³³ in the Gondar and Semen region served such function. Abtohune Yohanes who was crowned in 1660 after death of famous King Fasiledes of Gondar detained potential claimants of the throne in this place. The other important imprisonment practice worthy of mentioning in the discussion of history of prisons in Ethiopia is the detention of the British Diplomatic mission at Meqdela by Emperor Tewodros in 1862.¹³⁴ This sort of practice also continued till the first quarter of the 20th century. For instance, Emperor Lej Iyyasu, the heir of Emperor Menelik, was detained in a place called Fiche, north of Addis Ababa in 1920's.

According to EHRC (2012) prison report, Italians built many prisons in their five year stay which are still in operation; but it lacked clearly defined mandate or objectives. In general the

¹³² A. Francisco, d-ca.1540, The Prester John of the Indies, translated by Lord Stanley of Alderley (1881) Rev. and edited with additional material by C.F Buckingham and G.W.B Hemingford, Vol. 1, , 1961, p. 240-24

¹³³ P. Thomas, An Ethiopian Adventure,(1959), p. 161: On Mount Wehni prisoners can have little relief from the monotony of daily life on the mountain except possibly in the ceremonies of the church of St. Mariam. Here the princes must have spent much of their days either praying for resignation to their fate or praying that their hopes of succession might be realized. The situation of Mount Gishen and Deber Damo was more miserable than words can describe.

¹³⁴ At this place detainees were segregated based on sex. They all were chained or shackled hands and feet. The prisoners were kept indoors from sundown to sunrise. They depend for food either on either dignitaries or their families. There was overcrowding of 600 prisoners and out of these 80 were died of fever.

Ethiopian prison system is created after the Italians were driven out of the country in 1942. Ethiopia saw a dramatic progress in legal development during the reign of Emperor Haile Selassie (1931-1942). Among other things the establishment and administration of prisons is systematized by the promulgation of proclamation 42/1944 for the first time. The prison legal regime reinforced by the 1957 criminal code which further set out manners of enforcement of imprisonment.

This chapter is dedicated to explore the practice of treatment of detained persons in Ethiopia. Accordingly, the practice during the Emperor and military regime will be looked at glance and focus will be made to the practice in the present regime.

5.2 Treatment of Detained Persons during the Reign of Emperor Haile Selassie (1942-1974)

As discussed in the previous chapter, the idea of prison and treatment of prisoners is legally established for the first time during the reign of Emperor Haile Sellassie by proclamation 42/1944 ‘relating to prisons. About 70 prison centers are built from 1927-1974 (EHRC, 2012).

In this era overcrowding was one of the serious problems in Ethiopian. The rooms were unsanitary and not airy.¹³⁵ There was practice of separation of detainees based on their nature: awaiting trial were kept separate from other prisons; Female prisoners were kept in a separate ward; Except for Ababa, there were no separate institutions for juveniles; Prisoners sentenced to the death penalty were separated from the rest of the prison population; Those sentenced for life imprisonment were also separated from the rest of the prison population; Those dangerous and escape risk prisoners and condemned prisoners were kept separately and were exempted from labor.¹³⁶ The prisons provided food to the prisoners but the quality

¹³⁵ Andargachew Tesfaye, the Crime Problem and its Correction (2004),vol. II,p.234

¹³⁶ Andargachew Tesfaye, Ethiopia in Dae H.Change (ed) (1976a, Unpublished,AAU law library), I , p .431 (as cited ibid) “The dormitories did not have enough system of ventilation and enough toilets for night use. One or two big metal barrels were kept in a corner of each dormitory for the prisoners to use during the night. It was also the case in Addis Ababa prisons. One could easily conclude that it was not an uncommon sight for these barrels to overflow because the colors of floors had not only changed but there was also the telling reek as one enters the enterprising. They bury small bellow materials (a piece of reed, plastic hose or metal rubes, etc) in the sandy floor of the dormitories, under their tiny “mattresses” through which they urinate to relieve themselves for the night. The sand absorbed the urine but not the smell”

of food was very poor.¹³⁷ Most prisoners were assigned in tedious and non payable works to keep them busy.¹³⁸

Many of the larger prisons provided literacy and elementary education irregularly, through the use of literate prisoners as teacher.¹³⁹ The prisoners were provided free medical treatment. In the larger prisons, there were health clinics. In some of the larger central prisons there were visiting medical doctors who assisted prisoners with serious ailments. If some prisoners needed hospitalization, they were referred to government hospitals, under guard.¹⁴⁰

Recreational activities were limited because of the fear of escapes. The most common sports were football, volleyball and some athletics were available to the less dangerous prisoners, as assessed by the guards. Beginning the later part of the 1960s, some of the central prisons established reading rooms with local newspapers and some books, mostly collected from donors. Some prisons did allow limited radio programs centrally monitored¹⁴¹

5.3 Treatment of Detained Persons during the Dergue's Regime (1974-1991)

It is evident that this regime is characterized by mass incarceration and human rights violations, mainly, targeting the youth group who were revisiting the governance. Contrarily, the EHRC (2012) prison report revealed that only about 9 prison centers were built in this regime which raises the question of overcrowding having that incarceration rate.¹⁴² There is no any form of legal or practical reformation in this regime pertaining to treatment of

¹³⁷ Andargachew Tesfaye, Cited above at note 135, Most of the prisoners depend on food brought by family members and relatives, almost on a daily basis. Prisoners who received their own food usually shared with those who do not receive on regular basis or not receive at all, due to various reasons.

¹³⁸ Ibid, For example, at the Debre Brhan Awraja prison some of the prisoners were engaged in crushing and pounding a soft stone and sell to nearby people for building. However, the prisoners were never paid. In most of the larger (central) prisons and a few of the awraja prisons there were some training and work opportunities in Carpentry, Blacksmith and metal work, Weaving, Jewelry, Flour milling and baking. The training was not a privilege but an obligation

¹³⁹ Andargachew, p.436, cited above at note 135.

¹⁴⁰ Ibid

¹⁴¹ Id, 436-37

¹⁴²The EHRC(2012) prison report stated also that the innovations made to the then existing prisons by the regime “the Zeway Federal Detention Center established under the monarchy was completely upgraded in 1983 by the Derg; the Addis Ababa Prison was also established by the monarchy but was renovated along new lines as the Kallity Detention Center by the Derg.”

detained persons. The 1944 proclamation relating treatment of prisons and the 1957 criminal code continued to be source for prison management.

The Accommodation conditions remained harsh and severe. There were no further developments from the earlier buildings. The ever increase in number of prisoners without any expansion of buildings worsened overcrowding.¹⁴³ The food served in prisons was very poor, both in terms of quantity and quality. The prisoners, in the larger prisons received a loaf of bread and a cup of tea for breakfast, and a loaf of bread and a ladle full of some kind of watery sauce, mostly made of legumes, for their mid-day and evening meals.¹⁴⁴ The prisoners were never provided with local food, particularly in the big prisons. The prisoners received and ate their food in their dormitories. In some prisons the daily ration of food was issued once a day.

There is no any improvement in medical care in prisons. It was only in the Addis Ababa prison that a full time doctor was made available for about two hours a day, along with a number of health officers and nurses who mostly provided some medical health assistants who could only provide some primary health care. Even in these prisons there were no drugs and medical apparatus. Various contagious diseases such as diarrheal diseases, tuberculosis, typhoid, typhus, hemorrhoids, malaria etc. were very common due to poor personal hygiene and environmental sanitation, and contaminated water and food.¹⁴⁵

The prisons Administration did not provide clothing either for day or night use. The Administration does not provide prisoner with detergents or soap for the maintenance of personal hygiene. In some of the prisons there were no provisions for prisoners to have showers or to wash their clothing.¹⁴⁶

In most of the prisons in the country, there was no regular educational program. However, the prisoners were beneficiary of the compulsory literacy education of National Literacy

¹⁴³ Andargachew, cited above at note 135, There were prisoners who had to squat, by turn, to get some sleep while others stood up. The dormitories remained unsanitary. To the worst, there was no provision of adequate water for drinking and sanitation. Prisoners themselves fetched water either from wells or rivers which is not clean and adequate. Personal hygiene and sanitary accommodation is far from possible without adequate water.

¹⁴⁴ *ibid*

¹⁴⁵ *Id*,p.253

¹⁴⁶ *Id*,p.256

Campaign Program.¹⁴⁷ Through committees formed by prisoners and staff, inmate self-administration was introduced. As a result, a number of outdoor games, such as soccer, volleyball and basketball were practiced, more regularly, in some of the prisons where space conditions permitted. Some prisons had the program of listening to limited, internally monitored radio broadcasts, and a few prisons showed selected TV programs¹⁴⁸

5.4 Treatment of Detained Persons during EPRDF (1991- Present)

After the downfall of the dergue, EPRDF came to Power in 1991. During the transitional period (1991-1995); the government did not add any legal or practical change pertaining to prison.¹⁴⁹ The 1995 constitution, however, is progressive in light of rights of detained persons. It has clearly guaranteed that the treatment of detained persons shall be with respect to their human dignity.

The structure, objective and mandate of prisons are legally reformed only in 2003, after twelve years, by Federal Prisons Commission Establishment Proclamation No. 365/2003. The EHRC(2012) prison report attributed this delay stating “evidently, due to prevailing conditions, some delays were observed in the process of Formulating and enacting various proclamations and directives by which to operationalize detention centers.” The commission maintained “nevertheless, correction and rehabilitation activities have been carried out regularly on the basis of provisions specified in the Transitional Government Charter, as well as the 1995 FDRE Constitution and regional State proclamations.” Proclamation No. 365/2003 elevated the prison legal regime by incorporating the idea of rehabilitation under article 5, “the objectives of the Commission shall be to admit and ward prisoners, and provide them with reformative and rehabilitative service in order to enable them make attitudinal and behavioral changes, and become law-abiding, peaceful and productive citizens.” In addition, Treatment of Federal Prisoners Regulations No. 138/2007 and Federal Wardens Administration Regulations No. 137/2007 are promulgated to reflect

¹⁴⁷ Id,p.257

¹⁴⁸ Id,p.261

¹⁴⁹ See, Council of Ministers Regulations on the Treatment of Federal Prisoners, 2007,Reg. no 138,Neg. Gaz., Year 13,No.

on, inter alia, UN Standard Minimum Rules on the Treatment of Prisoners.¹⁵⁰ The government's effort on this regard is appreciated even by UN Human Rights Treaty Bodies.¹⁵¹ Since EPRDF introduced federalist scheme of government, equivalent prison reform is made in the regional states.

Moreover, the EHRC (2012) prison visit report disclosed that out of the 114 visited prisons, 40 prisons are built by the existing government. The report also referred to prisons that made structural expansion after 1991. Accordingly, In Jimma Zone Detention Center, three more blocs containing 9 rooms were added through a prison expansion scheme; the Tercha prison of Dawro zone was rebuilt on a new site in 2004; The Maximum Security Federal Detention Center called Kilinto in Addis Ababa was completely renovated two years ago; The Mekele Detention Center has been fully renovated and is providing full-scale services as a high standard prison. According to this report, Reconstruction of Gondar, Bahir Dar and Debre Berhan detention centers is now in its final stage; Construction of a new detention center has been underway in Harar, Assosa and Arsi zons; Design work has been completed for reconstructing detention centers in Addis Ababa, Dire Dawa, Zeway and Shewa Robit on the basis of international standards with a 195 million Birr budget allocated by the Federal Government. Activities have begun for recruitment of contractors.

The above accomplishments, however, are not found sufficient for treatment of detained persons. Indeed, according to the available sources detention conditions, such as, the accommodation, health care, food, sport and exercise... conditions in detention centers is changing from bad to worse. International human rights NGO's, human rights treaty bodies and other institutions, time and again, are stating their concern on condition of prisons in Ethiopia, mainly, through, their periodic reports.

¹⁵⁰ CAT, Concluding observations of the Committee against Torture (2011):Ethiopia, CAT/C/ETH/CO/1,(available at <http://www2.ohchr.org/english/bodies/cat/sessions.htm>, last visited on janury,2012) “The Committee notes the State party's efforts to reflect the Standard Minimum Rules for the Treatment of Prisoners, the Basic Principles for the Treatment of Prisoners, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and the Code of Conduct for Law Enforcement Officials in its legislation and administrative regulations for the treatment of prisoners and detainees.”

¹⁵¹ *ibid*

For instance, US Department of State's Reports on Human Rights Practices states that Prison and pretrial detention center conditions in Ethiopia remained harsh and in some cases life threatening.¹⁵² According to the report severe overcrowding was common, especially in sleeping quarters. The government provided approximately eight birr (\$0.46) per prisoner per day for food, water, and health care. Many prisoners supplemented this with daily food deliveries from family members or by purchasing food from local vendors. Medical care was unreliable in federal prisons and almost nonexistent in regional prisons. Water shortages caused unhygienic conditions, and most prisons lacked appropriate sanitary facilities. Many prisoners had serious health problems in detention but received little treatment.

The Human Rights Watch World Report (2012)¹⁵³ on its part revealed that in Ethiopia Long-term pre-trial detention without charge, often without access to counsel, is common, notably under the Anti-Terror law, which allows police to request additional investigation periods of 28 days each from a court before filing charges, for up to four months. The report added that no independent domestic or international organization has access to all of Ethiopia's detention facilities; it is impossible to determine the number of political prisoners and others arbitrarily detained or their condition.

Amnesty International Report (2012)¹⁵⁴ revealed that there is ill-treatment of detained persons who are under investigation. The report specifically alleges the practice of isolated detention in darks and sleep deprivation in Maikelawi Detention Center: "Detainees reported beatings, including with pieces of wire, metal and furniture; suspension by the wrists; sleep deprivation; and being held in isolation and in complete darkness for prolonged periods."

The UN Human Rights Committee which is mandated to supervise the implementation of the ICCPR Considered the initial report submitted by Ethiopia under article 40 of the Covenant

¹⁵² US Department of States, cited above at note 14. The Department has been releasing the human rights practices of, inter alia, Ethiopia annually since 2000. Prison condition is one of the themes that the report has been addressing. Accordingly, all the reports have described the prison conditions in Ethiopia as severe and harsh. More over the present report rated the situation as 'life threatening'.

¹⁵³ Human Rights Watch, World Report 2012, (available at <http://www.hrw.org/world-report-2012>) last visited on 12 June 2012

¹⁵⁴ Amnesty international, World Report 2012: the State of the World's Human Rights, Amnesty international, United Kingdom

on 25 July 2011.¹⁵⁵ The committee stated its concern on a number of human rights themes and it specifically concerned that the present prison conditions in Ethiopia remain alarming, in particular for women and children, and not compatible with the United Nations Standard Minimum Rules for the Treatment of Prisoners.¹⁵⁶ The Committee also noted with regret that the International Committee of the Red Cross (ICRC) is not granted the rights of accessing prisons and other places of detention.

Similarly, the Committee against Torture stated its concerns on prison conditions in Ethiopia.¹⁵⁷ The Committee remains seriously concerned about consistent reports of overcrowding, poor hygienic and sanitary conditions, lack of sleeping space, food and water, the absence of adequate health care, including for pregnant women and HIV/AIDS and tuberculosis patients, the absence of specialized facilities for prisoners and detainees with disabilities, co-detention of juveniles with adults, inadequate protection of juvenile prisoners and children detained with their mothers from violence in prisons and places of detention in the State party.

The CAT finally stated its regret on the lack of information on civil court decisions awarding compensation to victims of torture and ill treatment, or their families, and the amounts awarded in such cases. The Committee also regrets the lack of information on treatment and social rehabilitation services and other forms of assistance, including medical and psychosocial rehabilitation, provided to victims.

At regional level, the African Commission On Human and Peoples Rights having considered the Initial, 1st, 2nd, 3rd and 4th Periodic Report of the Federal Democratic Republic of Ethiopia, 12 – 26 May 2010 stated its concern on the country's reluctance to provide information on the condition of detention centers.

Most recently, the African Commission on Human and Peoples' Rights adopted a resolution¹⁵⁸ on the Human Rights Situation in Ethiopia. The commission stated its deep

¹⁵⁵ UNHRC, concluding observations 2011: Ethiopia, CCPR/C/ETH/CO/1.

¹⁵⁶ Note: as discussed in the jurisprudence of international human rights supervisory bodies in the previous chapters, the argument for the binding nature of Standard minimum Rules for the Treatment of Prisoners, though are soft laws, is gaining momentum as indicated in this instance concluding observation by the Human Rights Committee.

¹⁵⁷ CAT, Concluding observations 2011: Ethiopia, CAT/C/ETH/CO/1.

¹⁵⁸ The African Commission on Human and Peoples' Rights (the African Commission), meeting at its 51st ordinary Session held in Banjul, The Gambia from 18 April to 2 May 2012

concern, inter alia, on: the frequent allegations of the use of torture in pre-trial detention in Ethiopia, particularly in the Federal Police Crime Investigation and Forensic Department of Maikelawi in Addis Ababa, where political prisoners are detained, interrogated and frequently subjected to torture or other forms of cruel, inhuman or degrading treatment or punishment; the difficulties encountered by independent monitors, legal representatives and family members to visit prisoners and to access places of detention in Ethiopia, which increases the risk of being subjected to torture and other forms of ill-treatment; the reported use of unofficial and ungazetted places of detention in Ethiopia, including military camps and private buildings, wherein torture is reported to take place, and the unofficial nature of which also increases the risk that detainees will be subjected to torture or other forms of ill-treatment.

Many of the condemnations made are essentially based on the, the EHRC Report (2008) of its Prison Visits. Taking in to account the questions being raised up on the independency of the commission, it holds water to argue that the conditions of detention centers is worse than aired. Even, the government itself admitted that enforcing detained persons rights based on the standards set out in UN Standard Minimum Rules for the Treatment of Prisoners is far from possible so far due to overcrowding and financial constraints, "...in practice, implementing all the minimum standards in prisons has proven to be difficult due to many constraints, mostly related to limited resources and the high number of prisoners."¹⁵⁹ Discharging this obligation, however, is not subject to the availability of resources.¹⁶⁰

5.4.1 Treatment of Detained Persons in Addis Ababa

This section is specifically devoted to look into the practice of treatment of detained persons in Addis Ababa.¹⁶¹ Basically, the study covers the practice both in prisons¹⁶² and police

¹⁵⁹ UNHRC, First periodic report of Ethiopia (2009), , CCPR/C/ETH/1, para 87

¹⁶⁰ See general comment 21 of UNHRC; "Treating all persons deprived of their liberty with humanity and with respect for their dignity is a fundamental and universally applicable rule. Consequently, the application of this rule, as a minimum, cannot be dependent on the material resources available in the State party." Para 4

¹⁶¹ As clarified in chapter one, for the purpose of this work 'Prisons in Addis Ababa' and 'Federal prisons' are employed interchangeably to refer to those prisons including those located in outskirts of the city of Addis Ababa such as Kaliti (Remand prison); Zeway prison; Shewa Robit prison; Maximum Security Kilinto prison and Women's prison

¹⁶² Persons who are convicted, awaiting trial and awaiting sentence are detained in prisons.

detention centers.¹⁶³ As stated time and again by many human rights organizations, Federal Prisons do not permit access to visitors; similarly the writer is denied access to the prisons.¹⁶⁴ Therefore, the study of the practice in prisons will essentially be confined to information gained from occasional reports and other sources.

With regard to police detention centers, the study is addressed through dissemination of closed ended and open ended questionnaire to detained persons, focal group discussion (here in after FGD), personal observation and interviews with detention center authorities.¹⁶⁵ To this end Addis Ababa Central Police Detention Center, Arada Sub City Police Detention Center and Yeka Sub City Police Detention Center are selected as study sites.¹⁶⁶

At the time of undertaking of the dissemination of questionnaires¹⁶⁷ for detained persons there were 97¹⁶⁸ detainees in Addis Ababa Central Police Detention Center, 108 detainees¹⁶⁹ in Arada Sub City Police Detention Center and 98 detainees¹⁷⁰ in Yeka Sub City Police

¹⁶³ Police detention centers accommodate those who are remanded under investigation. The Ethiopian Criminal Procedure code empowers the investigating police officer to request the court for remand up to fourteen days. The code provides that the police officer may ask additional time if he/she does not finish the investigation, however, it is not limited how frequently the investigating police officer can ask additional time. Accordingly, in the selected police detention centers the writer found inmates detained for 50 days without charge.

¹⁶⁴ Indeed, I had lodged my “letter of cooperation”, which was issued by Addis Ababa University, to Federal Prisons Administrative Authority. After series of adjournments I am told that my application is rejected for security reasons.

¹⁶⁵ Addis Ababa is divided into ten Sub Cities and in each of the Sub Cities there is one main police detention center for persons allegedly committed simple crime. In addition, persons who are arrested for crimes of serious nature are detained in a single police detention center named Addis Ababa Central Police Detention center.

¹⁶⁶ The first detention center, single in the city for detained persons allegedly detained for crimes of serious nature, is selected as the detained persons therein represent the whole persons in Addis Ababa. The second is selected based on the fact that the sub city is densely populated and it is center of business transactions where crime is thought to be relatively prevalent. The third, on the other hand, is randomly selected among those geographically remote from the former. And above all the writer is authorized by Addis Ababa Police Commission to work on three detention centers; accordingly the writer selected the aforementioned three areas based on the methodological justification forwarded.

¹⁶⁷ In fact, in the respective Sub Cities, in addition to the main Police detention center there are sub police detention centers which serve to gather new arrestees on the day time and deliver them to the main detention center on the same day. Inmates will not be provided with any treatment in their stay there. According to this structure; Piassa Police detention; Ras Desta Police detention center; Jan Meda Police Detention Centers and Arat Kilo Police Detention Center delivers their daily gatherings to Arada Sub city Police Detention Centers (Interview with V/ Inspector Bishat Mekonen, Security Group Leader of Arada Police Detention Center, on 17 June 2011). Yeka Sub City Police Detention Center on the other hand receives arrestees from: Meri, Lamberet, Abuarie and Kocham Police detention centers (Interview With V/Sagin Fekadu Teshome, Security Group Leader Of Yeka Police Detention Center, On 16 June 2011).

¹⁶⁸ This figure is found from the FGD of the detainees.

¹⁶⁹ Id, Interview with V/ Inspector Bishat Mekonen.

¹⁷⁰ Interview With Sagin Marta Shiferaw, Chief Administrator of Detainees Affairs of Yeka Police Detention Center, on 16 June 2011.

Detention Center. Accordingly, the questionnaires are disseminated and filled with 20 detainees in the respective detention centers; it was equally participatory to, among other things, female and young detainees.

5.4.1.1 Accommodation

Accommodation is one of the basic needs for human survival. The ICESCR under article 11 provided for “right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing.” Specifically article 10 of the ICCPR provides that detained persons must be treated in respect for their inherent human dignity. The UN Standard Rules For Treatment Of Prisoners points out minimum level of provision of accommodation stating “... the sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation.” Ethiopia ratified the aforementioned instruments, thereby, will be bound by the obligations. Moreover, Detained persons are guaranteed with similar legal protection in Ethiopian legislations. While article 21 of the constitution stipulate “all persons held in custody and persons imprisoned upon conviction and sentencing have the right to treatments respecting their human dignity,” Regulations No. 138/2007 on Treatment of Federal Prisoners also is the reflection of UN Standard Minimum Rules For Treatment Of Prisoners. Regarding accommodation the regulation says “Premises in which prisoners live or work shall have windows large enough to allow adequate light for reading and fresh air to circulate and artificial light for reading during the Night without causing hazard to the eyesight.” This provision is verbally copied from article 11 of UN Standard Minimum Rules for Treatment of Prisoners. Unfortunately, the legislature of the regulation left out the important things pertaining to accommodation. While the article is confined only to accommodation of light, it is silent about all requirements of health, cubic content of air, minimum floor space, heating and ventilation, sanitary installations under providing accommodation. While it is appreciating start to have the treatment regulation, the inadequacy of provisions on thematic issues like, accommodation can be understood as sign of lack of a whole hearted commitment in this area.

All kind of discussion on accommodation is inseparable from the persisting overcrowding problem. The UN Standard Minimum Rule for Treatment of Prisoners requires allocating a detained person with ‘minimum floor space’ without actually defining it. The International Committee of the Red Cross (ICRC) has recommended minimum space per prisoner of no less than 3.4 sq m and area within the security perimeter of 20-30sq m per person. The Council of Europe's CTP has also established four square meters per prisoner as a minimum in a communal cell, six square meters in single cells. In the United States the Federal Supreme Court adopted 18.18 square meters floor space for a prisoner. Yet, this approach is found debatable.

The accommodation condition of prisons in Ethiopia is addressed by the Special Rapporteur to Prisons to African Mission to Ethiopia (2004). The report pointed out that all the detention facilities visited, including the police stations, are overcrowded, some holding inmates more than twice their capacity. The overcrowding is attributed to the large number of un-sentenced prisoners. Specifically, in the Addis Ababa Prison, more than 3242 out of the 4835 inmates, about 68% of the total inmate population have not been sentenced. In all the prisons, there are no separate areas for inmates to store their belongings. Prisoners have therefore resorted to making holes on the walls to hang their things. This makes most of the cells very crowded, dark and less airy.

Moreover, the EHRC Report (2008) of its visit to prisons in Ethiopia including Addis Ababa Prison also made reference to accommodation condition of prisoners. Accordingly, in many of the prisons the rooms are getting overcrowded by increase of the prisoners. Many of the rooms are below the standard; their walls are made of mud, they are old and dusty. There is no sun light and the roof have no ceils. Prisoners sleep over the floors and at the night they are crowded where prisoners who want to excrete have to move over the inmates. During the night time, they have to urine in buckets which is source of bad smell. They are also full of luggage of inmates.

The ex- prisoner of Kaliti Prison Wosenseged Gebrekidan in his book “Secrets of Kaliti Prison”¹⁷¹ tried to show the accommodation condition of Kaliti prison. According to his

¹⁷¹ Wosenseged Gebrekidan, Secrets of Kaliti, (Amharic), (2nd ed, 2012)

account Kaliti Prison is divided into six sections called zones. The six zones are made up of large cells made of Zink called houses or blocks where he was assigned to a narrow zone of 30mx 50m area where there was crowds of about 400 prisoners. He adds that the room where he was allocated is so wide and filled with layers of beds where inmates could hardly move in between the beds. According to this book, the roof and the wall of the room is congested with the inmates luggage hanging thereof. He compared the condition of the room with one of the noisiest and crowded shopping veranda of Addis Ababa's biggest market 'Merkato'. He continued that inmates are served with their meal in the same room sitting in their respective beds. Newly coming prisoners who could not find unoccupied bed either share others bed or sleep on the floor in the congested area between the beds where others have to move over them.

According to EHRC (2012) prison report, out of 114 visited 41 prisons are highly congested while the other remaining detentions are insufficient to accommodate their detainees. most of the shelters are made of mud, the walls were falling apart, are devoid of sufficient air and light and don't have tiled floors. They have dirty earthen floors infested with pests. The report revealed that out of the six federal prisons 3 have old rooms, 2(Dire Dawa and Kaliti) are highly congested and the other two lacked sufficient air and light.

The finding from the FGD, interviews and personal observations of the writer reinforces the point. The accommodation condition in Arda Police Detention Center is far below the minimum standards for the treatment of detained persons. The rooms are overcrowded and the floor of the rooms is covered with plastic and inmates sleep on it. The rooms do not have windows for entrance of fresh air but natural light is accessed through the window -like openings which are closed by bar of metals.

Out of the available four rooms, three rooms are inhabited by 107 male inmates which means 35 male detainees are allocated in each room in average. The actual capacity of each room is thought to be 18 persons. There are also instances where the number of detainees increases more than this with the limited number of rooms. Fortunately the fourth room is held with only one female inmate. Since there are no wide windows, congestion of inmates created suffocation .The inmates severely complain on the difficulty of lice and fleas. The rooms are cleaned once a week by the inmates themselves.

The response of the respondents from the table below reinforces this finding. Accordingly, majority of the respondents rated the accessibility of natural light (35%), artificial light (55%) and sanitation (30%) good. Floor space per individual in the room is labeled as extremely poor by many of the respondents (35%) and accessibility of fresh air is rated poor by majority (30%).

scale	Natural light (%)	Fresh air (%)	Artificial light (%)	Sanitation (%)	Floor space (%)
no	10	10	5	5	25
Extremely poor	20	25	10	25	35
Very poor	10	10	0	5	15
poor	10	30	10	25	10
good	35	25	55	30	10
Very good	10	0	0	5	5
excellent	5	0	20	5	0

Table 1 condition of accommodation in Arda Police Detention Center

Likewise, in Yeka Sub city Police Detention Center, there are 94 male detainees; 23 or 24 in each room. The detainees say that this number reaches up to 50 per room while the officers admit that in some occasions it rises to 30. Four female detainees live in the fifth room with the same size to the other rooms. The rooms measures each 4x4 m2 size and with one door without ordinary windows each. The two wholes which are rose to the roof in each room allow entrance of little natural light. The windows are not suited to allow the entrance of fresh air to avoid suffocation resulted from this congestion of inmates. The rooms are overcrowded and unsanitary.

In addition, 30%, 40% and 50% majority of the respondents of natural light, artificial light and sanitation respectively rated all good. The availability of fresh air and floor space per person is rated as poor by 40% and 25% majority respondents respectively.

	Natural light	Fresh air	Artificial light	Sanitation	Floor
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scale	(%)	(%)	(%)	(%)	space (%)
no	10	5	0	5	20
Extremely poor	10	10	0	5	20
Very poor	5	0	10	0	15
poor	20	40	20	20	25
good	30	25	40	50	10
Very good	10	0	10	5	5
excellent	15	20	20	15	5

Table 2 condition of accommodation in Yeka Police Detention Center

In Addis Ababa Central Police Detention Center majority of the respondents rated the natural light, fresh air, artificial light, sanitation, floor space per person conditions of the rooms good with 40% ,55% of,55% , 40% ,40%) vote respectively.

scale	Natural light (%)	Fresh air (%)	Artificial light (%)	Sanitation (%)	Floor space (%)
no	5	5	10	10	15
Extremely	0	5	0	0	0
Very poor	0	10	0	0	5
poor	35	20	10	15	5
good	40	55	55	40	40
Very good	5	5	0	0	15
excellent	15	0	25	35	20

Table 3 Accommodation condition in Addis Ababa Central Police Detention Center

Generally, as EHRC(2012) indicated in its prison report “most shelters have several problems, in terms of construction, size, number of detainees accommodated, types of detainees in each room and their internal conditions.” The important thing to note here is on the interwoven implications of congestion as summarized by one author:

Overcrowding is recognized when we see situations where there is not enough room for prisoners to sleep; not the facilities to provide sufficient food, health care or any

*form of constructive activities; insufficient staff to ensure that prisoners are safe; the lack of accommodation to hold separately types of prisoners who should be kept apart - women from men, juveniles from adults; untried from convicted; or lack of capacity to receive any more numbers so that emergency measures have to be taken - in the form of amnesties , emergency accommodation or the holding of prisoners in police stations.*¹⁷²

The accommodation condition, hence, is below the international and national minimum standards violating UN Standard Minimum Rules for the Treatment of Prisoners, articles 9-14; Regulations No. 138/2007 on treatment of prisoners and therefore violating ICCPR, article 10; ICESCR, article 11 and article 21 of the EFDR constitution.

5.4.1.2 Clothing and bedding

UN Standard Minimum Rules for the Treatment of Prisoners through articles 17-19 provides that prisoners shall be provided with cloths that suited to the health of the prisoner and the prisoners clothing must always kept clean. Prison authorities have to also provide prisoners with separate bed and adequate bedding like blanket and sheet. They must always be clean and changed often enough to ensure its cleanness. Articles 7and 8 of Regulations No. 138/2007 on treatment of prisoners has similar provision.

Prisoners in Ethiopia are not provided with uniforms. They wear uniforms only when they go out to work in the farms or in the workshops. They provide their own clothing while in detention. In all the prisons, prisoners are not provided with either mattresses or blankets. They are required to provide for themselves. Other basic items such as soap, sheets, and detergents for clothes are equally not provided. Such items are either provided by NGOs or the Prisoners Committees.

From the personal observation and the questionnaires disseminated the writer learned that in all of the police Detention centers, the prison authorities do not provide detainees with bed, mattress or blanket or sheet. Detainees are not provided with cloths. They wear their own

¹⁷² R. Allen, Current Situation of Prison Overcrowding, (http://www.prisonstudies.org/info/downloads/Current_Situation_of_Prison_Overcrowding_paper.pdf) last visited on 10 august 2012

cloths. They are not provided with soaps and other detergents. Their cloths are dirty with bad odor.

As can be shown in the following table all the respondents (100% for all variables) in Arada police detention answered that there is no provision of bed, mattress and blanket.

In the other sites of the study there is the same finding. Therefore, the writer found it unnecessary to provide table of respondents for the theme under issue. The situation of Arada Police Detention Center is provided in the following table as illustration.

scale	bedding		
	Bed (%)	Mattress (%)	Sheet (%)
no	100	100	100
Extremely poor	0	0	0
Very poor	0	0	0
poor	0	0	0
good	0	0	0
Very good	0	0	0
excellent	0	0	0

Table 4 bedding condition in Arada Police Detention Cente

5.4.1.3 Personal Hygiene

Maintenance of personal hygiene, besides helping detainees to become citizens conscious of their health, also prevents the possibility of the outbreak of diseases given the congested and suffocated conditions in the detention centers. In view of that, Article 9 of the Federal Detainees Treatment Regulation No. 138/2007 and article13-16 of UN Standard Minimum Rules for the Treatment of Prisoners provide that detainees must have sufficient water and sanitary materials as well as toilets that are necessary for the maintenance of their personal hygiene.

the EHRC(2012) prison visit report shows that 79 (69%) prisons have rooms for bathing, with water brought in with jerry cans or buckets. The practice poses serious problems to the sick and the weak as they have to seek the support of other inmates to fetch them

water for bathing. 35 prisons (30%) have no rooms where detainees can take a bath. With respect to laundry facilities, the report reveals that the lower half of barrels and car tires with one side sealed, are improvised to serve as laundry tub in 90 detention centres, with 24 of them having none of even such improvised laundry tubs. All detention centres have toilets, but except for 26 of them, the rest are usable only during daytime. Even the toilets that are available are not fully utilized because of misuse and shortages of water. The only toilets in full and proper use are those in federal prisons, the Adama Vocational and Technical Training Institute for Detainees in Oromiya and those for female detainees that are usable during the night.

In the police detention centers that the study addressed it is found that the inmates are unhygienic. They wear their own shabby and tattered clothes. As can be seen from the following tables, in Yeka Police Detention Center majority of respondents (40%, 45%, and 40%) for places to wash cloths, availability of water and installation of shower respectively responded that the variables are rated good. Form the FGD and the personal observation it is found that inmates are not provided with laundry detergents to wash clothes neither there is laundry installation to wash cloths. The inmates said they wash their cloths in the installation made for hand wash which is not clean and not suitable to do so. There is only one shower room and the inmates complained that it is not always functioning which exacerbates the problem by the fact that it can be accessed only by prolonged turns when it works.

This is shown from the table below where the provision of soap is rated no by majority of respondents (80%) in the same detention center.

scale	Place to wash clothes (%)	Soap (%)	Water (%)	Shower (%)
no	20	80	0	20
Extremely poor	10	5	5	5
Very poor	10	0	0	5
poor	5	10	35	20
good	40	5	45	40
Very good	5	0	10	10
Very good	10	0	5	0

Table 5 condition of Personal hygiene in Yeka Police Detention Center

The personal hygiene condition of inmates in Arada Police detention Center is not different from Yeka. They wear their own shabby cloth inside and outside the center. In this center, there are two laundry installations made of cement for cloth washing. But, they are unsanitary which are filled with unclean water due to lack of sewage pipe. Since there is no provision of soap, inmates are not interested to wash cloths. Similarly, though there are two shower rooms, the overcrowding, lack of soap and occasional availability of water make difficulty to take bath.

Accordingly, majority of the respondents (65%), as shown in the table below, replied that there is no provision of soap for washing. The availability of place to wash cloths, water and shower rooms are rated good by majority of respondents(45%,30% and 40% respectively) of the questionnaire .

scale	Place to wash clothes (%)	Soap (%)	Water (%)	Shower (%)
no	10	65	25	10
Extremely poor	0	10	0	0
Very poor	0	5	10	5
poor	5	20	30	5
good	45	0	35	40
Very good	0	0	0	10
Very good	40	0	0	30

Table 6 condition of personal hygiene in Arada Police Detention Center

In Addis Ababa Police Central Detention Center hygienic installations are relatively better in terms of sanitations since it is a new building made for such purpose. However, there is no fund for detergents, as also indicated by majority of respondents (45%), which resulted in similar unhygienic inmates in this center, too. There is no installation for cloth washing as answered by majority (30%) of respondents of the questionnaire. The availability of shower room and water is rated poor by majority (40% and 30% respectively) of respondents of the questionnaire.

	Place to wash clothes (%)	Soap (%)	Water (%)	Shower (%)
no	30	45	0	0
Extremely poor	0	25	0	5
Very poor	20	10	10	15

poor	25	15	30	40
good	20	5	30	30
Very good	5	0	0	0
Very good	0	0	30	10

Table 7 condition of Personal hygiene in Addis Ababa Central Police Detention Center

Generally in many of prisons there is no proper provision of shower, toilet and laundry installations. In this respect federal prisons have better services. Unfortunately, there is no provision of laundry detergents in all prisons and police detention centers which makes the attempt of shower and laundry installations non sense. The reality, therefore, is far below the hygienic expectations under Article 9 of the Federal Detainees Treatment Regulation No. 138/2007 and article13-16 of UN Standard Minimum Rules for the Treatment of Prisoners.

5.4.1.4 Food and Water

Article 11 of ICESCR, Article 20 Of UN Standard Minimum Rules for the Treatment of Prisoners, Article 27 of the Federal Prisons Establishment Proclamation No 365/2003, and Article 10 of the Federal Detainees Treatment Regulation No. 138/2007 proclaim that detention centers have the duty to provide detainees with sufficient and healthy food. Drinking water shall be available to every prisoner whenever he needs it.

The available sources show that provision of food in Ethiopian prisons is at Stake. According to the Special Rapporteur (2004), the main dish in all the prisons is injera; the local bread and stew, which most of the time is made with beans, usually with no meat. Prisoners are fed three times a day with the same meal. In the Addis Ababa prison however, prisoners are provided with bread and tea for breakfast, vegetables twice a week, and meat twice a month. In Federal prisons, the budget allocated for each prisoner per day is 3.5 Birr.

EHRC Report (2008) stated that Addis Ababa prison raised food budget for each prisoner per day to birr 4.99 and this budget includes the expenses for cooking, electricity and water. The report recommended that this budget is not enough due to increase of cost of living.

After four years the EHRC (2012) found by its prison visit that many of regional prisons made little improvement to their food budget per prisoner per day, ranging from 5.00 birr to 8.80 birr in response to the recommendation in the earlier visit. Sadly, the federal prisons

which were cited for their better provision of food in earlier reports, maintain the 4.99 birr food budget per prisoner per day.

In the present cost of living it looks impossible to find a single meal by birr 4.99 let alone to afford three meals: breakfast, lunch and dinner. It is evident that no one can get a meal of average quality of any kind, being too fair, for less than 15 birr. Having this in mind, it will not be that difficult to imagine the quality and quantity of food for birr 4.99 or for the so called the highest 8.80 birr per day per prisoner. Accordingly, the report pointed out that most detention centers do not allocate budget, relative to the ever rising cost of living resulting in insufficient quantity, and, poor quality of food being supplied to detainees. It is also said that this situation is exacerbated with administrative malpractices, such as, Problem of transparency in the operation of the food grain purchasing Committee and Problem, in most cases to conduct purchases from sources (wholesalers, factories) that sell at discounted prices.

The reality in Police Detention Centers under the study is not different if not worse. According to FGDs and Interviews made at study sites, in all the Police Detention Centers studied the main dish is injera – the local bread – and stew (locally known as ‘shiro’), which most of the time is made with beans. Detainees from Arada and Yeka are fed two times a day with the same meal. In Addis Ababa Central Police Detention Center, however, detainees are provided with this meal only once a day, at the lunch time. In all the sites there is no provision of breakfast. There is also no possibility of getting other meal types like meat and vegetables in the detainees stay in the detention centers.

In all the sites of the study the same private contractor provides the aforementioned meal. Detainees in all sites complain that the meal is far below the local standard. They reveal that the injera is prepared by adulterating it with foreign materials like stone and the stew is also not up to the standard of the indispensable spices to make it edible. It lacks the minimum ingredients like salt and oil and generally not edible.

Similar condition is found from the respondents of the questionnaire as indicated in the table below. The majority respondents of the questionnaires in all Police Detention Centers have responded that the status of the implementation of ‘quality’ of food is poor .As it has been

provided under the table 50% from Yeka subcity,55% from Arada Sub City and 60% from Addis Ababa Central Police Detention Centers responded that the respective Police Detention Centers provides the detained persons with food of poor quality.

On other hand majority of the respondents of the questionnaire from Yeka (30%) rated the quantity of food as extremely poor whilst majority of the respondents from Arada (40%) and Central (35%) rated it as poor.

Similarly many of the participants of the questionnaire from Yeka and Arada (35% from each) replied that the drinking water supply is good. Contrarily, majority of the respondents from Central Detention (30) agree that the drinking water supply is poor.

With regard to drinking water, it is available, however, it is not hygienic since is not separated from the same source where detainees get for sanitation purpose.

scale	Yeka			Arada			Central detention		
	food		Drinking water (%)	food		Drinking water	food		Drinking water
	Quality (%)	Quantity (%)		Quality (%)	Quantity (%)		Quality (%)	Quantity (%)	
no	10	10	10	5	5	0	20	20	20
Extremely	20	30	0	15	30	10	5	20	10
Very poor	5	5	10	20	0	5	0	0	10
poor	50	15	20	55	40	25	60	35	30
good	10	25	35	5	25	35	15	25	20
Very	0	5	10	0	0	10	0	0	0
excellent	5	10	15	0	0	15	0	0	10

Table 9 condition of food and drinking water in Arada, Yeka and Addis Ababa central Police Detention Centers

Generally, the condition of food in Addis Ababa prisons is poor both in terms of quality and quantity. The situation in police detention centers is worse where there is no breakfast at all and where in some centers detainees are provided meal only once a day, for dinner or lunch.

UNHRC under general comment 21 recommends “persons deprived of liberty may not be subjected to any hardship or constraint other than that resulting from the deprivation of liberty; respect for the dignity of such persons must be guaranteed under the same conditions as for that of free persons.” The committee maintained “Treating all persons deprived of

their liberty with humanity and with respect for their dignity is a fundamental and universally applicable rule. Consequently, the application of this rule, as a minimum, cannot be dependent on the material resources available in the State party.”

Accordingly, this condition of food without doubt violates article 10 of the ICCPR, Article 11 of ICESCR, Article 20 Of UN Standard Minimum Rules for the Treatment of Prisoners, Article 27 of the Federal Prisons Establishment Proclamation No 365/2003 and Article 10 of the Federal Detainees Treatment Regulation No. 138/2007 article 21 of the EFDR constitution.

5.4.1.5 Medical Care

Article 22-26 Of UN Standard Minimum Rules for the Treatment of Prisoners, Article 27 of the Federal Prisons Establishment Proclamation No 365/2003 and Article 11 of the Federal Detainees Treatment Regulation No. 138/2007 provides the right of prisoners to adequate health care.

According to the Special Rapporteur (2004), in Addis Ababa Prison each zone has a small clinic that provides first aid medical services. Serious ailments are referred to the Prison’s main clinic run by four doctors (including one prisoner doctor) and twelve nurses. Cases that cannot be handled by the main clinic are referred to hospitals outside the prison. The main clinic has a well stocked drug store and dispensary. It also has a dental section, a Tuberculosis (TB) section, and a laboratory with modern equipments. The most common diseases are TB, hypertension, diabetes and HIV/AIDS. The Special Rapporteur added that In Kaliti prison; there is a small clinic in the prison that administers first aid treatment. There is no resident doctor or nurse.

The EHRC Report (2008) says the health care services are better in Federal prisons in terms of professionals and the services. According to the report in Addis Ababa Prison there are three medical doctors who are prisoners and ordinary employees, psychiatry nurse, other employees and prisoner nurses with a health center with 80 beds. The report added that even though, Addis Ababa Prison is singled out for its adequate budget for health care services including provision of medicine, due to the overcrowded rooms and inconvenience premises

there is no separate accommodation for patients like those who undergo operation, mental patients and TV patients after treatment.

The 2012 EHRC prison visit report reveals that out of the detention centers monitored, 76 detention centers have health service clinics and there is none in 38 of them. According to the report all federal prisons have clinics. The report says that the clinics in federal prisons are better equipped with manpower and laboratory facilities. The report regrets, however “although detainees received health services free of charge in all detention centers, the unavailability of prescribed medicine in detention centers premises forces detainees who can afford, to buy them privately, while those detainees who do not have the necessary money, will continue to suffer.”

In all the Police Detention Centers studied there are neither medical institutions like clinics nor medical personals. The participants of the study responded from the FGD and the open ended questionnaire that medical service is provided by the nearby government clinic or hospital.

Medical treatment is not an automatic service. It is scheduled once a week and it is also subject to quota (6 inmates per week). Accordingly, the detainees said that application for medical treatment may be delayed to the minimum of 15 days. The Detention officials attributed this problem to lack of enough number of wardens and cars.

Majority of the respondents(40%) of the questionnaire in Arada Police Detention Center responded that medical treatment is not charge free. Majority (40%) of the respondents from the same detention also replied that there is no provision of medicine for free. The officers of this Center argue that medical services are delivered for free by government clinics. Detainees, however, say that they have to even pay transportation and other allowance to the wardens to take them to medical institutions. They added that the clinics always say there is no medicine and they have to resort to finding money to buy from private Pharmacies.

Majority of respondents (50%) of the questionnaire in Yeka Detention center rated availability of free medical treatment service poor.40% majority on the other hand responded that access to medicine free of charge is good. Access to free medical treatment and medicine

in Addis Ababa Police Central Detention is ranked good by 30% and 35% majority of the respondents respectively.

scale	Yeka		Arada		Central	
	Free medicine (%)	Free treatment (%)	Free medicine (%)	Free treatment (%)	Free medicine (%)	Free treatment (%)
N0	10	15	55	40	25	20
Extremely	5	0	10	5	20	15
Very poor	10	5	0	0	0	0
poor	25	50	5	25	10	20
good	30	20	30	30	35	30
Very good	5	5	0	0	5	5
excellent	15	5	0	0	5	10

Table 10 condition of health care in Arada, Yeka and Addis Ababa central Police Detention Centers

To sum up, medical care is better in federal prisons: at least there are clinics in all prisons; the clinics have better professionals and laboratory equipments than the regional prisons. Nevertheless, the federal prisons clinics as well are not well organized as it is found that there is no separate accommodation for patients like those who undergo operation, mental patients and TV patients after treatment and the unavailability of prescribed medicine in detention centers premises.

In case of police detention centers, there is no medical care. In principle, detainees will get medical care in public medical institutions, however, the institutions can be visited only once in a week which also be subject to quota, not more than six persons in a week. It is apparent that the health care situation in police custody is worse than in prisons. In fact, given their legal status, which is that they have not been found guilty of any offence, remand prisoners should be treated differently from convicted prisoners.¹⁷³ Here is strong justification for arguing that, since they are legally innocent, they should have the best prison conditions available.¹⁷⁴ The reality is often the reverse.

These findings shows that the government is not giving due regard to prison health care. According to the sources there are no permanently recruited staffs; clinics are not well staffed

¹⁷³ UN Standard Minimum Rules on Treatment of Prisoners, article 95.

¹⁷⁴ A.Coyle, Understanding prisons,(2005), p.64

with medicine in federal prisons and it is in non existence in police custody. UN Standard minimum Rules on Treatment of prisoners require that “the medical services should be organized in close relationship to the general health administration of the community or nation.” In fact this important provision is not available in the Federal Detainees Treatment Regulation No. 138/2007 which creates gap on how to run prison healthcare. In England and Wales, for instance health care is provided by prison-employed doctors, nurses, and officers under Her Majesty’s Prison Service; latter The Department of Health assumed responsibility from Her Majesty’s Prison Service for health policymaking in 2000, and full budgetary and health care administration control were transferred by April 2006.¹⁷⁵

The condition of health care, therefore is below the standards provided under Article 22-26 Of UN Standard Minimum Rules for the Treatment of Prisoners, Article 27 of the Federal Prisons Establishment Proclamation No 365/2003 and Article 11 of the Federal Detainees Treatment Regulation No. 138/2007. Violation of the health standards can amount to violation of dignity of the prisoner as found by UNHRC “The Committee notes that States parties are under an obligation to observe certain minimum standards of detention, which include provision of medical care and treatment for sick prisoners, in accordance with rule 22 of the Standard Minimum Rules for the Treatment of Prisoners. It is apparent from the author’s account as well as from the medical reports provided that he was in pain, and that he was not able to obtain the necessary medication and to receive proper medical treatment from the prison authorities... the Committee finds that he was the victim of violation of article 7 and article 10, paragraph 1, of the Covenant.”¹⁷⁶

5.4.1.6 Sport and Recreation

Putting people in custody is intended only as a means of restricting their movement and not to bring any harm whatsoever to their physical and mental well being. Favourable conditions have to be created for developing the physical and mental well being of prisoners by removing anything that may cause them distress. Accordingly, article 24 of Regulation number 138/2007 on the Treatment of Federal detainees and the UN

¹⁷⁵ P. Hayton, MA, Dip HEd, and John Boyington, Reform Efforts in Public Services: Prisons and Health Reforms in England and Wales (<http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1586127/pdf/0961730.pdf>) last visited on 21 November 2012

¹⁷⁶ Communications No. 1502/2006, as noted above at note 53

Standard Minimum Rules for Treatment of Detainees in Article 21 provides for sports and physical exercises of detainees. In addition to sports, the Regulation on the Treatment of Federal Prisons No. 138/2007 Article 24(2) as well as Article 28 of the UN Standard Minimum Rules for Treatment of Detainees require all detention centers to create conditions for detainees to engage in various recreational activities.

The African Special Rapporteur (2004) to prisons found that recreational facilities are very inadequate in all the prisons in Ethiopia. Most of the prisons have only a volleyball court which is sometimes used for football. Apart from the Addis Ababa prison, there are no outdoor recreational facilities for female inmates due to the small space allocated to female inmates in all the prisons. In the Addis Ababa prison, the female section has a volley ball court and some in-door games.

The EHRC Report (2008) on prison visits similarly shows the inadequacy of recreational facilities. According to the report in all the prisons the available recreational facilities, such as, sporting games, library, cafeterias, television are insufficient when compared to the high number of prisoners. The report adds that these facilities are almost in non existence to female prisoners.

According to EHRC(2012) prison report sporting activities in prisons are underdeveloped due to lack of space, shortage of sports materials and mishandling of same by detainees. The sports materials available are the property of some detainees bought or rented as income generating activity and due to this those who can afford can participate. No arrangements have so far been made for female detainees to participate in sports activities. In addition, over 70% of detention centers including all federal detention centres prohibit detainees from engaging in category of sports especially gymnastics. Weight lifting and body building are not allowed in detention centers.

With regard to police detention centers, the only good thing that can be mentioned in all the police detention centers studied is that inmates have no problem of outdoor access. Inmates pass their day time out side of their dorm. They enter to their dorms during lunch time only (12am-2pm). There is no recreational facility at all. The available place outside the room is

not more than 10m x 10m wide. In this small area there no any sort of installation. Some inmates talk in groups while many others look stressed sitting here and there lonely.

As shown in the following table, majority of the respondents (30% from Yeka, 60% from Arada and 50% from Central Police detention) responded that access to outdoor air is good. The availability of space and equipments is answered ‘no’ by majority of the respondents (50% from Yeka, 80% from Arada and 40% from Central Police detention) of the questionnaire.

scale	Yeka Sub city		Arada sub city		Central detention	
	Access to outdoor air (%)	Space and equipments (%)	Access to outdoor air (%)	Space and equipments (%)	Access to outdoor air (%)	Space and equipments (%)
NO	10	50	5	80	20	40
Extremely	0	30	10	10	0	15
Very poor	5	0	5	5	0	0
poor	10	15	10	5	0	30
good	30	5	60	0	50	15
Very	20	0	5	0	10	0
excellent	25	0	5	0	20	0

Table 11 condition of sport and exercise in Arada, Yeka and Addis Ababa central Police Detention Centers

As indicated by the respective prison reports sport and recreational activities are underdeveloped and in non existence for female prisoners. In respect to police detention centers there are no sporting and recreational activities. This is violation of article 24 of Regulation number 138/2007 on the Treatment of Federal detainees and article 21 and 28 UN Standard Minimum Rules for Treatment of prisoners. In fact UNHRC found violation of the ban on torture, cruel, inhuman or degrading treatment or punishment under article 7 of the ICCPR for failure of a state party to provide a detainee with, among other things, recreational facilities.¹⁷⁷

¹⁷⁷ Mukong v Cameroon, UNHRC Communication No. 458/1991, 21 July 1994, para.9.4

5.4.1.7 Religion

According to Article 41 of the United Nations Standard of Minimum Rules for the Treatment of Detainees and Article 26 of the Federal Prisons Treatment Regulation No. 138/2007 detainees have the right of freedom to religion and belief. Accordingly Access to a qualified representative of any religion shall not be refused to any prisoner; every prisoner shall be allowed to satisfy the needs of his religious life by attending the services provided in the institution and having in his possession the books of religious observance and instruction of his denomination.

According to the Special Rapporteur (2004), in the Addis Ababa prison there are two well constructed buildings for Muslims and Orthodox Christians. There is however, no building for Protestants. Clergymen come from outside the prison to preach on specific days. On other days, lay preachers from amongst prisoners themselves are allowed to preach. The Human Rights Report (2008) also found that there is no problem in all prisons pertaining to religious practice.

In this regard, EHRC(2012) prison report confirmed that detainees' right of freedom of religion and belief is respected in federal and regional detention centers. It is found that In federal and Tigray regional detention centers, the right of detainees to pursue their own religion individually is fully respected but places of worship have not been allocated; in other detention centers though, we have been able to observe that places of worship have been allocated, especially for Orthodox Christians, Muslims and Protestants.

In all the Police Detention Centers of the study there is no any arrangement to religious practice. There is no any building to practice religious services. There is no also any person appointed to provide any religious activity.

A questionnaire is distributed among the inmates on the availability of religious freedom in the detention centers. As can be seen from the following table majority of the respondents (45%, 35%, and 45% from Yeka, Arada, and Central detention centers respectively) rated the religious freedom good.

scale	Yeka	Arda	central
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	Religious freedom (%)	Religious freedom (%)	Religious freedom (%)
no	20	25	30
Extremely poor	0	5	0
Very poor	0	0	0
poor	15	15	5
good	45	35	45
Very good	5	10	5
excellent	15	10	15

Table 12 Condition of religious freedom in Arada, Yeka and Addis Ababa central Police Detention Centers

With regard to religion all sources shows there is no interference by officials or by other detainees on the course of exercising this rights. However, religious satisfaction is one of the grounds to facilitate rehabilitation of an offender. To this end, prisons owe a positive obligation as well for facilitating provision of religious institutions, representatives and books depending number of followers of same religion. By any means there must be a place to pray. Hence, the prison authorities have much positive obligations to do for detained persons as provided under Article 41 of the United Nations Standard of Minimum Rules for the Treatment of Detainees and Article 26 of the Federal Prisons Treatment Regulation No. 138/2007.

5.4.1.8 Education and Training

Education and training are one of the rehabilitative mechanisms to bring about changes in the attitude, personality and health of inmates.¹⁷⁸ According to research this intervention makes offenders law abiding persons.¹⁷⁹ Moreover, researchers argue that spending time in prison actually decreases one's ability to cope in the community and maintain employment and the study also found that inmates who enrolled in these programs while incarcerated are more likely to maintain employment than those who do not attended the programs.¹⁸⁰

¹⁷⁸ A. Dissel, 'Rehabilitation And Reintegration In African Prisons' in J. Sarkin (ed.), Human rights In African Prisons, (2008),p.156

¹⁷⁹ *ibid*

¹⁸⁰ J.Contardo and M. Tolbert, Prison Postsecondary Education: Bridging Learning from Incarceration to the Community (n.d) (<http://www.urban.org/projects/reentry-roundtable/upload/Contardo.pdf>) last visited on 21 November 2012

For this reason the idea of rehabilitation of inmates is integrated to correctional policy of many states.¹⁸¹ similarly, Article 6 (4) of the Ethiopian Federal Prisons Commission Establishing Proclamation No. 365/2003, article 23 of Regulation number 138/2007 on the Treatment of Federal detainees and Articles 71(5) and 77 of the UN Standard Minimum Rules for Treatment of Detainees provide that detainees shall have access to academic education, vocational training and social work services to facilitate their post-release rehabilitation.

Coming to the practice, the EHRC (2008) prison report said that Addis Ababa prison provides formal education from grade three up to grad ten. Nevertheless, the report stated that female prisoners are not equally benefit from the available education.

According to the Special Rapporteur (2004) of African prisons, the Addis Ababa prison provides training in wood work, metal work, sewing, weaving, welding, computer training and home economics. The Human Rights Commission Report (2008), however, stated that the training is not comprehensive. According to the report, the training is not adequate due to lack of trainers and shortage of raw materials. For these reason, the available trainings are not given on uninterrupted basis. Moreover, the available training is not participatory to the female prisoners. The Kaliti prison also provides metal work and computer training to some prisoners. The authorities argued that because of inadequate resources and manpower availability, they could not provide training for both sexes at the same time.

The EHRC (2008) prison report stated its concern that the available trainings are not well organized. There is high disparity of commitment given to the training among prisons. The educational standard of trainers and the provision of the training are far from uniform which made the commission to raise question on the availability of policy and goal grounded on research.

The EHRC (2012) prison report similarly says that three federal prisons have schooling up to grade 10 and two prisons up to grade 8 while one prison, Kilinto, has no schooling. The report continued “Detainees have complained that they are unable to pursue classes properly due to shortage of exercise books and writing materials. As they cannot afford

¹⁸¹ A. Dissel, cited above at note 178.

buying these items, the detainees demanded that facilitative conditions be created for them. It was found out that there are no libraries in 71 detention centers representing 62.8% 1 of the centers. Some other detention centers have very small libraries that are in a rudimentary stage.”

As to trainings, the report found that federal prisons provides training in the field of Blocket production ,Woodworks ,Tailoring ,Embroidery ,Weaving ,Agriculture ,Metalwork ,Electricity and Livestock Production .The report worried, however, that the number of detainees obtaining training opportunities is insignificant compared to the size of the total detainee population; the majority of detention centers does not issue certificates of qualification or are not accredited to do so and training opportunities for women detainees are not only limited in some detention centers but are non-existent in others. In addition, no training is conducted in the maximum security prison at Kilinto.

In all the Police Detention Centers studied, there is no attempt for provision of education and training. According to the following table 100 % of the respondents from all the study sites replied in the questionnaire that there is no education and training.

scale	Yeka	Arada	central
	Education and training (%)	Education and training (%)	Education and training (%)
no	100	100	100
Extremely poor	0	0	0
Very poor	0	0	0
poor	0	0	0
good	0	0	0
Very good	0	0	0
excellent	0	0	0

Table 13 condition of education and training in Arada, Yeka and Addis Ababa central Police Detention Centers

In general it is found that, except in Kilinto prison all federal prisons provide detainees with education and training. According to the reports, however, the programmes are disorganized, mainly, in terms of quality and number of trainers and materials like text books. The programs are not all participatory. This is contrary to article 77(2) of UN Standard Minimum Rules on the Treatment of Prisoners which provides “So far as practicable, the education of

prisoners shall be integrated with the educational system of the country so that after their release they may continue their education without difficulty.” In this regard In the United States of America regional states budget for prison education programs comes out of different agencies — for example, the state education department, the state department of corrections, local school districts, local or country governments, and special districts.¹⁸² Similarly in England prison education is delivered in close cooperation with local education system. Until 1991 prison education was delivered by Local Education Authority adult education services and Further Education colleges under contract to the prison service and in 2001, responsibility for prison education was transferred to the Department for Education and Skills.¹⁸³ In addition women’s participation is minimal and there is neither education nor training in Kilinto prison and in all police custody.

Therefore, having the existing problems in the delivery of education and training, the practice in Addis Ababa prisons gets nowhere near to the minimum standards underlined under Article 6 (4) of the Ethiopian Federal Prisons Commission Establishing Proclamation No. 365/2003, article 23 of Regulation number 138/2007 on the Treatment of Federal detainees and Articles 71(5) and 77 of the UN Standard Minimum Rules for Treatment of Detainees. In this respect, UNHRC found violation of article 10 of the ICCPR stating “...he claims that he is confined to a 2 metre square cell for twenty-two hours each day, and remains isolated from other men for most of the day. He spends most of his waking hours in enforced darkness and has little to keep him occupied. He is not permitted to work or to undertake education... In these circumstances, the Committee finds that confining the author under such circumstances constitutes a violation of article 10, paragraph 1, of the Covenant.”¹⁸⁴ moreover as we have seen earlier, exceptionally in the Kilinto high security prison there is no attempt for provision of education and training ; this is not a justifiable discrimination. In fact the complainant in the above case is a prisoner on death row whom the UNHRC

182 Richard J. Coley, Paul E. Barton, Locked Up and Locked Out: An Educational Perspective on the U.S. Prison Population (2006),(<http://www.ets.org/Media/Research/pdf/PIC-LOCKEDUP.pdf>) last visited on 21 November 2012

183 A. Coyle, Understanding prisons,(2005),p. 188

184 *Freemantle v. Jamaica*, UNHRC Communication No. 625/1995, 24 March 2000, para.7.3

found victim of violation article 10 of the ICCPR for the state party's failure to provide him with ,inter alia, work and education.¹⁸⁵

5.4.1.9 Separate Accommodation for detained Persons

Article 8 on UN Standard Minimum Rules for Treatment of Prisoners, Article 25 of the Federal Prisons Establishment Proclamation No. 365/2003 and article 5 of the Federal Prisoners Treatment Regulation No. 138/2007 provides for separate accommodation of prisoners on the ground of their sex, age, criminal record, the legal reason for their detention and the necessities of their treatment. accordingly, Men and women shall so far as possible be detained in separate institutions; in an institution which receives both men and women the whole of the premises allocated to women shall be entirely separate; Untried prisoners shall be kept separate from convicted prisoners; Persons imprisoned for debt and other civil prisoners shall be kept separate from persons imprisoned by reason of a criminal offence; Young prisoners shall be kept separate from adults.

According to the African Special Rapporteur (2004), there is no differentiation between awaiting trials, convicted prisoners and death row prisoners in Ethiopian Prisons; they are all mixed and treated the same way. Similarly, the EHRC(2012) prison report in a similar vein states that Federal detention centers, some detention centers in Amhara and those in Mekele, Sodo and outside Jimma do not provide separate accommodation to detainees classified by types of punishment or other criteria.

The African Special Rapporteur (2004) found that the prison structure does not adequately take care of juveniles in Ethiopia; juveniles are put together with adults in all the prisons .While there is only one juvenile home in the whole country¹⁸⁶ and this was based in the capital, Addis Ababa. The EHRC(2012) prison report on the other hand states in some prisons Juvenile detainees of between 15 and 18 years of age are completely separated from those of other detainees and in some others, juvenile detainees spend the night in separate rooms but are allowed to mix with others in daytime. According to the report in

185 ibid

¹⁸⁶ J. Sloth, "Children in African Prisons," in J. Sarkin (ed.), Human rights In African Prisons, (2008), HSRC press, Cape Town, South Africa

other prisons including all prisons in Addis Ababa, juvenile detainees share the same premises and rooms with adults.

As to Police Detention Centers, basically, there are three kinds of separate detention centers on the basis of nature of crime that the suspects allegedly committed. Suspects of crimes which perpetuate Crimes against the Constitutional Order and the Internal Security of the State like Terrorism and Treason are held in Federal police Detention Center, commonly known as “Maikelawi”. Suspects arrested for other grave crimes, such as, genocide, Aggravated robbery, looting and aggravated breach of trust are detained in Addis Ababa Police Central Detention Center. Suspects of crime of less serious nature are kept in Police detention centers which are dispersed in each sub cities. Generally, in effect, there is categorization of suspects in different institutions.

Moreover, in all the Police Detention Centers under the study, female detainees are kept in separate cells. However, there is no further set up in the respective institutions under the study based on age, illness and behaviour. The writer in person observed that there are juveniles in Yeka and Arada Police Detention Centers who share rooms with adults.

As indicated in the following table, majority of the respondents (70% from Arada, 40% from Yeka and 85% from Addis Ababa Central Police Detention Centers) responded that there are no separate rooms for juveniles. Likewise, majority of the respondents (%60 from Arada, 45% from Yeka and 90% from Addis Ababa Central Police Detention Centers) replied that there is no separate accommodation for inmates with communicable diseases.

scale	Arada			Yeka			central		
	Woman (%)	juveniles (%)	Detainees with communicable disease (%)	Woman (%)	juveniles (%)	Detainees with communicable disease (%)	Woman (%)	juveniles (%)	Detainees with communicable disease (%)
no	15	70	60	0	40	45	20	85	90
Extremely	5	10	25	5	25	30	0	0	0
Very poor	5	0	0	5	5	0	0	0	0
poor	20	15	15	40	25	25	30	5	10
good	45	0	0	35	0	0	0	10	0

Very good	5	0	0	10	5	0	5	0	0
excellent	5	5	0	5	0	0	45	0	0

Table 14 condition separation of categories in Arada, Yeka and Addis Ababa central Police Detention Centers

From the aforementioned discussion we can conclude that it is taken for granted that there is no separate accommodation for detained persons who are awaiting trials from convicted persons which is the violation of the minimum standards enshrined under the international and national human rights instruments. This protection is reinforced by human rights jurisprudence as the UNHRC found violation of article 10 of the ICCPR by state party's failure to separate convicted prisoners and awaiting trials.¹⁸⁷ With regard to the need for separate treatment of juvenile detainees in addition to the standard minimum rules, ICCPR under article 10(3) expressly provided for their separate treatment. In the UNHRC found violation of article 10 of the ICCPR for the mere fact that a juvenile is held with adult detainees.¹⁸⁸

5.4.1.10 Compliant Procedure and Avenue

Detained persons have little power or control over many aspects of their lives, making their position especially vulnerable. An essential part of running correctional service and fulfilling human rights obligations under domestic law and international conventions, therefore, is to have an effective system for dealing with offenders' complaints.¹⁸⁹ In accordance with Article 28 of the Federal Detainees Treatment Regulation and Article 35 of the United Nations Standard of Minimum Rules for the Treatment of Detainees, detainees have the right of lodging complaints and appeals. Accordingly, every prisoner shall have the opportunity each week day of making requests or complaints to the director of the institution or the officer authorized to represent him. Moreover, it shall be possible to make requests or complaints to the inspector of prisons during his inspection.

To this end, article 55 of the United Nations Standard of Minimum Rules for the Treatment of Detainees envisages the establishment of Independent Prison Inspectorate stating "there

¹⁸⁷ Griffin v Spain , UNHRC Communication No. 493/1992, 4 April 1995,para.9.4

¹⁸⁸ Brough v Australia, UNHRC Communication No. 1184/2003, 17 March 2006, para.9.3&9.4

¹⁸⁹ Department of Corrections of New Zealand, Addressing Prisoners' Complaints and Grievances in New Zealand (2003) ([http://www.apcca.org/Pubs/23/New %20Zealand/ Discussion%20Paper%20-%20Agenda %20Item%20%20\(New%20Zealand\).PDF](http://www.apcca.org/Pubs/23/New%20Zealand/Discussion%20Paper%20-%20Agenda%20Item%20%20(New%20Zealand).PDF)) last visited on 21 November 2012

shall be a regular inspection of penal institutions and services by qualified and experienced inspectors appointed by a competent authority. Their task shall be in particular to ensure that these institutions are administered in accordance with existing laws and regulations and with a view to bringing about the objectives of penal and correctional services.” The prisoner shall have the opportunity to talk to the inspector or to any other inspecting officer without the director or other members of the staff being present. Every prisoner shall be allowed to make a request or complaint, without censorship as to substance but in proper form, to the central prison administration, the judicial authority or other proper authorities through approved channels. Unless it is evidently frivolous or groundless, every request or complaint shall be promptly dealt with and replied to without undue delay.

In New Zealand¹⁹⁰ prisoners lodge their complaints hierarchically to: staff employed by the Public Prisons Service or Probation and Offender Services¹⁹¹, the Prison Inspectorate¹⁹² and external agencies.¹⁹³ Similarly in South Africa, Netherlands, England and Canada Independent prison inspectorates and the oversight of prisons by laymen are designed to contribute towards improving prison conditions and protecting the human rights of prisoners.¹⁹⁴

The Ethiopian Federal Detainees Treatment Regulation on the other hand does not have provision on the establishment of independent prison inspectorate. According to the Special Rapporteur (2004) prison report, in all the prisons in Ethiopia, there are Prisoners’

¹⁹⁰ Ibid

¹⁹¹ Includes specialist staff, prison managers, and site managers

¹⁹² It is an independent body which Ensures that the functions of prisons are being discharged in the proper manner, meeting their responsibility of ensuring that prisoners’ are safely, securely and humanely contained. Its primary functions are: hearing and investigating offender complaints, which often results in inspectors providing advice and occasionally issuing instructions as a result of an investigation, special investigations for all prisoner deaths in custody, monitor and report on any local investigations about alleged abuses by an officer or an offender

¹⁹³ Alternatively, prisoners can also take their complaint directly to several external agencies at any time. It includes Ombudsmen, Office of the Privacy Commissioner, the Health and Disability Commissioner, the Human Rights Commission, and the Commissioner for Children. Offenders can access some of these agencies by free 0800 telephone numbers.

¹⁹⁴ S.Jagwanth, a Review Of The Judicial Inspectorate Of Prisons Of South Africa (2004)([http://cspri.org.za/publications/research-reports/A%20Review%20of%20the%20Judicial%20Inspectorate%20of%20Prisons%20of%20South%20Africa%20\(Research%20Paper%20No.%207\).pdf/download](http://cspri.org.za/publications/research-reports/A%20Review%20of%20the%20Judicial%20Inspectorate%20of%20Prisons%20of%20South%20Africa%20(Research%20Paper%20No.%207).pdf/download))last visited on 21 November 2012

Committees in all three levels of the prison structure – Cells, Zones and Compounds.¹⁹⁵ All matters regarding prisoners’ welfare, from allocation of cells to discipline are handled by the relevant committees.¹⁹⁶ However, the Special Rapporteur stated its concern on this arrangement of the prisons based on the fact that the Committee system allows the government to abandon its responsibility of providing basic necessities to prisoners.

Ethiopian periodic report (2009) to the Human Rights Committee states that prisoners can lodge complaints, in addition to the aforementioned committees, to EHRC and the International Committee of the Red Cross and higher officials of the prison administration while they conduct visit. Practically, however, the EHRC conducted visits to prisons only twice so far (2008 & 2012). As for the International Committee of the Red Cross, we have already discussed that the government denied the organization access to the Federal Prisons including Addis Ababa Prisons.

In all the Detention Centers studied, inmates stated that there is no body to hear their compliant. Basically, there are chief detention administrators in each of the detention centers. These officers highly concerns about security and receives complaints of formal court adjournments. They do not entertain complaints lodged regarding facilities. Complaints of this kind, my result in and intimidation and punishment like solitary confinement.

The table below shows that majority of the respondents (60% from Arada and 45% from Yeka) responded that there is no compliant mechanism and Avenue. The majority of the respondents (50%) in Addis Ababa Central Detention Center rated the availability of complaint mechanism and remedy poor.

scale	Arada	Yeka	Central
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¹⁹⁵ Accordingly, there are Audit and Inspections Committee, Food Committee, Liaison Committee, Reception and Cells allocation Committee, Health Committee, Job and Training Committee, Education Committee, Sports and Entertainment Committee, Justice Committee and Discipline Committee at Cells, Zones and Compounds.

¹⁹⁶ The independent committees do not have their own budget to run the prison. They cannot afford to provide fundamental facilities for, such as, food, health care, sport .practically; therefore, the committees work will be confined to the administration of the facilities provided by the prison authorities. The committees have neither adjudicative power like courts nor recommendation power like the Human Rights Commission. Hence, they are not the rights organs to receive complaints in the context of provision of prison facilities.

Indeed, this king of structuring in prisons is not a recent phenomenon. It is introduced during the Dergue regime where prisoners were empowered to administer themselves with the available facilities. See Andargachew at note 181.

	Compliant procedure and Avenue (%)	Compliant procedure and Avenue (%)	Compliant procedure and (%)Avenue
no	60	45	20
Extremely poor	10	10	10
Very poor	0	0	0
poor	15	20	50
good	5	20	20
Very good	0	0	0
excellent	10	5	0

Table 15 condition of complaint procedure and remedy in Arada, Yeka and Addis Ababa central Police Detention Centers

All prisoners' rights will be enforced only when there is a viable independent prison inspectorate like in the case of South Africa and western countries mentioned as illustration. In Ethiopia, all compliant matters are handled by prison authorities without an independent inspectorate. The only human rights institution that involves in prison inspection is the EHRC. This, commission, however, is ventured with other daunting human rights issues; it does not have specific department for detention matters. The commission, accordingly, is not that accessible to prisons. In police detentions, on the other hand, there is no compliant receiving Avenue at all. The point, therefore, is there remains much to do to attain the minimum standards embodied in Article 28 of the Federal Detainees Treatment Regulation and Article 35 and 55 of the United Nations Standard of Minimum Rules for the Treatment of Detainees.

5.4.1.11 Work

As mentioned earlier, the main objective of detention centers is to provide correction and rehabilitation services to convicted detainees and enable them become useful citizens. It is important that such detainees be engaged in some income generating activities as part of the plan to change their attitude towards work. According to Article 111 of the 2005 Criminal Law and Article 31 of the Federal Prison Commission Establishing Proclamation No. 365/2003, detainees shall be assigned to participate in development activities in keeping with their occupational interest and health status, and be remunerated for work done. The UN Standard Minimum Rules for Treatment of Detainees (Articles 71-76) and Federal

Detainees Treatment Regulation No 138/1999 (Art 30-34) define clearly the nature of income generating occupations and the work conditions that should be satisfied. Accordingly, all prisoners under sentence shall be provided with work to maintain or increase the prisoners, ability to earn an honest living after release. The organization and methods of work in the institutions shall resemble as closely as possible those of similar work outside institutions, so as to prepare prisoners for the conditions of normal occupational life where there must be remuneration.

EHRC(2012) prison report shows that detained persons in Ethiopian prisons involve in Prison-initiated works mostly weaving, agriculture, cattle fattening, construction, metal works, wood works and other minor and small-scale activities carried out by detainees' self-help associations. Detained persons ,specifically, in federal prisons are engaged in Weaving, Embroidery ,Tailoring ,Washing ,clothes ,Woodworks ,Tea/coffee ,vending ,Agriculture ,Vegetable ,gardening ,Livestock ,breeding ,Carpentry ,Carpet works ,Knitting ,Wood cutting ,Shoe shining ,Beekeeping ,Bakery and Traditional artifacts. Yet, all these beginnings are not accessible for female detainees as provided in the report “Women are by and large excluded from participation in income generating activities; they also play a very limited role in the activities created by the administration or by the cooperative associations. And even then, they are engaged only in menial jobs that are defined as ‘women’s work’.”

In the study sites, Police Detention Centers, the writer observed that there is no any form of work. Questionnaire is disseminated to inmates to know if there is force labor as shown in the table below. Accordingly, majority of respondents (75% from Arada, 60% from Yeka and 75 Addis Ababa Police Central Detention Centers) replied that there is no forced labor.

scale	Arada	Yeka	Central
	Forced labor (%)	Forced labor (%)	Forced labor (%)
no	75	60	75
Extremely poor	20	5	0
Very poor	5	0	0
poor	0	20	0
good	0	0	20
Very good	0	0	0
excellent	0	15	5

Table 16 condition of forced labor in Arada, Yeka and Addis Ababa central Police Detention Centers

Regarding work, like in the other cases women are not participatory in the available work opportunities and in police detention centers there is no work at all which is violation of The UN Standard Minimum Rules for Treatment of Detainees (Articles 71-76) and Federal Detainees Treatment Regulation No 138/1999 (Art 30-34). Deprivation of work could also amount as violation of the dignity of detained persons under article 21 of EFDR constitution and article 10 of the ICCPR.¹⁹⁷

5.5 Conclusion

Generally, as EHRC(2012) indicated in its prison report “most shelters have several problems, in terms of construction, size, number of detainees accommodated, types of detainees in each room and their internal conditions.” In many of prisons there is no proper provision of shower, toilet and laundry installations. There is no provision of laundry detergents in all prisons and police detention centers which makes the attempt of shower and laundry installations non sense. The condition of food in Addis Ababa prisons is poor both in terms of quality and quantity. The situation in police detention centers is worse where there is no breakfast at all and where in some centers detainees are provided meal only once a day, for dinner or lunch.

While health care in regional prisons is so poor, the federal prisons clinics as well are not well organized as it is found that there is no separate accommodation for patients like those who undergo operation, mental patients and TV patients after treatment and the unavailability of prescribed medicine in detention centers premises.

In case of police detention centers, there is no medical care. In principle, detainees will get medical care in public medical institutions, however, the institutions can be visited only once in a week which also be subject to quota, not more than six persons in a week. It is apparent that the health care situation in police custody is worse than in prisons.

¹⁹⁷ Freemantle v. Jamaica, UNHRC Communication No. 625/1995, 24 March 2000, para.7.3

Sport and recreational activities are underdeveloped and in non existence for female prisoners. In respect to police detention centers there are no sporting and recreational activities. In general it is found that, except in Kiliminto prison all federal prisons provide detainees with education and training. According to the reports, however, the programmes are disorganized, mainly, in terms of quality and number of trainers and materials like text books. The programs are not all participatory to female prisoners.

All prisoners' rights will be enforced only when there is a viable independent prison inspectorate like in the case of South Africa and western countries mentioned as illustration. In Ethiopia, all compliant matters are handled by prison authorities without an independent inspectorate. In police detentions, on the other hand, there is no compliant receiving Avenue at all.

The UNHRC states that persons deprived of their liberty may not be subjected to any hardship or constraint other than that resulting from the deprivation of liberty, and that they must be treated in accordance with, inter alia, the United Nations Standard Minimum Rules for the Treatment of Prisoners.¹⁹⁸ Accordingly, the Committee has found violations of Article 10(1) of ICCPR arising from, inter alia, overcrowding, a lack of natural light and ventilation, inadequate or inappropriate food, a shortage of mattresses, no integral sanitation, unhygienic conditions, inadequate medical services (including psychiatric treatment), and a lack of recreation or educational facilities.¹⁹⁹ In addition the cumulative effect of detention conditions could amount violation of the ban on torture, cruel, inhuman or degrading treatment or punishment.

Accordingly in Ethiopian prisons, the overcrowding, a lack of natural light and ventilation, inadequate or inappropriate food, a shortage of mattresses, no integral sanitation, unhygienic conditions, inadequate medical services (including psychiatric treatment), and a lack of recreation or educational facilities violates UN Standard Minimum Rules for the Treatment

¹⁹⁸ Id , Para 6.8

¹⁹⁹ See, for example, *Mika Miha v Equatorial Guinea*, UNHRC Communication No. 414/1990, 8 July 1994 ;*Yasseen and Thomas v Guyana* , UNHRC Communication No. 676/1996, 30 March 1998; *M'Boissona v the Central Afri-can Republic*, UNHRC Communication No. 428/1990, 7 April 1994; *Lan -tsova v the Russian Federation* , UNHRC Communication No. 763/1997, 26 March 2002; *Madafferi v Australia*, UNHRC Communication No. 1011/2001, 26 July 2004.

of Prisoners; Regulations No. 138/2007 on treatment of prisoners; article 18 and 21 of the EFDR constitution; article 10 and 7 of ICCPR and article 5 of the ACHPR.

CHAPTER SIX: CONCLUSION AND RECOMMENDATION

After the trauma and abuse of the World War II, governments learned that recognition of human dignity is a base for peace so that to avoid such atrocities in the future. In fact, Recognition of human dignity is put at the heart of the UN charter to bring long lasting peace as stated “We the peoples of the United Nations determined... to reaffirm faith in fundamental human rights, in the dignity...” Accordingly, in 10 December 1948, member states of the UN adopted UDHR on as a common standard achievement for all peoples and all nations towards the promotion of human dignity.

The concern for human dignity got momentum when the standards under the UDHR turned into binding obligations upon states through the adoption of ICCPR and ICESCR in 1966. The regime of human rights law is further broadened with the adoption of, among others, CAT, SEDA, CERD and CRPD.

Over time from the conception of human rights, special regimes of human rights law emerged with specific sections of society who are relatively vulnerable to abuse in mind. Detained persons are among such groups who got special attention so far. This is begun with adoption of UN Standard Minimum Rules for the Treatment of Prisoners early in 1951, forthwith the conception of human rights per se. Accordingly, states have to maintain the dignity of detained persons with the provision of inter alia, accommodation, food, health care, recreation, education and training. More importantly, ICCPR which is bind instrument under its article 10 specifically recognized that persons deprived their liberty shall be treated with due regard to their dignity.

The dimension of the struggle for protection of detained person’s dignity is diversified with the adoption of further standards pertaining to treatment of detained persons: the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988), the Code of Conduct for Law Enforcement Officials (1978) and the Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1982).

The regime of rights of detained persons is further enriched with jurisprudence of UN Human Rights Treaty Bodies, mainly, UNHRC and CAT. State parties undertake both negative and positive obligations under the ICCPR. Article 10 of the ICCPR obliges state parties to treat persons deprived their liberty in respect to their human dignity. Article 7 on the other hand prohibits torture, cruel, inhuman or degrading treatment. The UNHRC noted that the former obligation imposes positive obligations on state parties to treat detained by providing them with ,among others, food , health care, clean accommodation in line with UN Standard Minimum Rules for the Treatment of Prisoners. As regards the latter, the UNHRC endorsed that state parties owe to detained persons an obligation to abstain from ill-treatment. The committee recommended that state parties have to discharge their obligations under article 10 of the ICCPR in light of the UN standards applicable to the treatment of prisoners: the Standard Minimum Rules for the Treatment of Prisoners (1957), the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988), the Code of Conduct for Law Enforcement Officials (1978) and the Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1982).To this end, the committee requires state parties to reflect on these standards through their periodic report. This approach of the Committee gave the standards binding nature, albeit, original thought soft laws.

According to UNHRC, the assessment of minimum threshold of severity for violation of article 10(1) of the ICCPR depends on all the circumstances of the case, such as the nature and context of the treatment, its duration, its physical or mental effects and, in some instances, the sex, age, state of health or other status of the victim. Thus, The Committee has found violations of Article 10(1) arising from, inter alia, overcrowding, a lack of natural light and ventilation, inadequate or inappropriate food, a shortage of mattresses, no integral sanitation, unhygienic conditions, inadequate medical services (including psychiatric treatment), and a lack of recreation or educational facilities.

Moreover, UNHRC found General detention condition violating article 7 of the ICCPR (prohibition of cruel, inhuman or degrading treatment or punishment).In *Linton v Jamaica* , for example, the Committee considered that “The physical abuse inflicted on the author...

the mock execution set up by prison warders and the denial of adequate medical care after the injuries sustained in the aborted escape attempt... constitute cruel and inhuman treatment within the meaning of article 7 and, therefore, also entail a violation of article 10, paragraph 1, of the Covenant .”

At the region level, the European, African and American Human Rights System have developed their own regime of laws pertaining to treatment of detained persons. The ECHR, ACHPR and IACHR which are the binding instruments do not address treatment of detained persons specifically. However, in all of the three instruments Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is prohibited which is relevant when it comes to treating detained persons humanly. Interestingly, all the three regions have adopted significant number of standards, which are by and large the reflections of the standards at the UN level for the treatment of detained persons, pertaining to treatment of detained persons. In Europe The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and Standard Minimum Rules for the Treatment of Prisoners; in Africa Ouagadougou Declaration and Plan of Action on Accelerating Prison and Penal Reform and The Robben Island Guidelines; in America Inter-American Convention to Prevent and Punish Torture, Principles and Best Practices on the Protection of Persons Deprived of Liberty serve as standards.

According to the jurisprudence of the regions, state parties owe both negative and positive obligations towards detained persons under the prohibition of torture, cruel, inhuman or degrading treatment or punishment. Accordingly, state parties must abstain from inflicting any harm that violates the dignity and integrity of detained persons. In addition, state parties have to also provide detained persons with basic needs to maintain the dignity of detained persons. The ECtHR, ACmHPR and ACmHR all adopted through jurisprudence a clear position that condition of detention itself amounts violation of prohibition of torture, cruel, inhuman or degrading treatment or punishment when it reaches the minimum threshold of severity. According to the practice of the respective bodies this minimum threshold of severity, for detention conditions, for violation of prohibition of torture, cruel, inhuman or degrading treatment or punishment is assessed on case by case base taking the collective

effect of the nature and context of the treatment, its duration, its physical or mental effects and, in some instances, the sex, age, state of health or other status of the victim.

Ethiopia is a state party to; inter alia, UDHR, ICCPR and ACHPR. It therefore, has to treat detained persons accordingly. In addition the 1995 constitution of EFDR clearly provided that detained persons shall be treated humanely. The constitution also stipulates that international human rights instruments that Ethiopia ratified are part of the law of the land. Ethiopia also domesticated standards for the treatment of detained persons: Federal Prisons Commission Establishment Proclamation, Regulations on the Treatment of Federal Prisoners, and Federal Prison Wardens Administration Regulation interestingly as binding instruments by relevant law making organs.

The study assessed the practice of treatment of detained persons in Ethiopia with emphasis in the capital city, Addis Ababa, in light of human rights instruments. In a nutshell, the treatment of detained persons is far below the human rights standards. Treatment of detained persons in prisons is poor in all its aspects while treatment in police detention centers is almost in non existence.

Situation of detained persons in Addis Ababa prisons is relatively good. Yet, treatment of detained persons in Addis Ababa Prisons, too, is far to achieve the human rights standards. The rooms are unsanitary and congested with inmates and with their belongings. In all the prisons, prisoners are not provided with either mattresses or blankets. They are required to provide for themselves. Other basic items such as soap, sheets, and detergents for clothes are equally not provided. The recent EHRC Report (2008) stated that Addis Ababa prison allocates 4.99birr for each prisoner per day. This budget includes the expenses for cooking, electricity and water. Prisoners are fed three times a day. This budget is not enough due to increase of cost of living.

Though, Addis Ababa Prison is singled out for its adequate budget for health care services including provision of medicine, due to the overcrowded rooms and inconvenience premises there is no separate accommodation for patients like those who undergo operation, mental patients and TV patients after treatment. Female prisoners are not equally benefit from the available education. The training is not adequate due to lack of trainers and shortage of raw

materials. For these reason, the available trainings are not given on uninterrupted basis. Moreover, the available training is not participatory to the female prisoners. The educational standard of trainers and the provision of the training are far from uniform. The prison structure does not adequately take care of juveniles. Juveniles are put together with adults in all the prisons. Every aspect of prisoners' welfare has been left to the Committees. The committees receive complaints from the prisoners. The independent committees do not have their own budget to run the prison. They cannot afford to provide fundamental facilities for, such as, food, health care, sport .practically; therefore, the committees work will be confined to the administration of the facilities provided by the prison authorities. The committees have neither adjudicative power like courts nor recommendation power like the Human Rights Commission. Hence, they are not the rights organs to receive complaints in the context of provision of prison facilities. The prisoners in Ethiopia works in farms, but in most of prisons like Addis Ababa Prisons there is lack of space and farm land to develop farm. In prisons where is work, there is forced labor. There is also payment for the work done.

The study examined the treatment of detained persons in police detention centers through dissemination of questionnaire, FGD and personal observation in Addis Ababa. In Addis Ababa, in each of the ten Sub Cities, there is one main detention centre and up to four sub detention centers. Newly arrested persons will be held in the sub detention centers temporarily till they are forwarded to the main detention centre in the late afternoon on the same day. Due to this reason there no any facility in these subs centers.

In the main detention centers apparently there is budget for treatment of suspects. According to the study, however, the budget is short of meeting the minimum needs. The compounds and rooms of suspects are unsanitary. The premises of detention centers are very narrow where movement of suspects is highly limited. Due to this, recreational establishments like foot ball, volley ball, are unthinkable. Even other recreational types that could not require such space size, such as, TV, news papers, are not available.

The food provided is bellow the local standard both in terms of quality and quantity. Suspects are fed only with one kind of food, local 'injera' with 'shiro'. Provision of this food is outsourced to the private suppliers where there is serious allegation of food adulteration with foreign materials under its preparation which made it difficult to eat. This meal itself is

not equally accessed in the different centers. In some centers it is provided at lunch time only while in others it is accessed during lunch time and dinner time. In no case, suspects are provided with breakfast.

As to healthcare, there is no either hospital or clinics in the respective police detention centers under the study. Suspects are referred to the nearby clinics and hospitals for treatment. The serious problem with regard to healthcare is suspects have to wait up to two or more weeks to get to hospitals. This right is scheduled to be accessed once a week and also subjected to quotas, not more than 6 persons a week. Officials attributed this mainly to lack of budget for transportation and guards. Suspects will be given medicine for free only if it is available in the government hospitals. Otherwise they have they have to buy it from private pharmacies with their own money which is the case in oftentimes.

The available sanitary installations: bath rooms, toilets, water are very small when compared with the number of suspects and not all available are working.

Generally, the detention conditions in prisons and police detention centers violate international standards to which Ethiopia is party. It specifically amount torture, cruel, inhuman or degrading treatment or punishment violating article 5,7 and 5 of UDHR,ICCPR and ACHPR respectively.

The writer believes the following recommendations helps to rectify the above problems:

- ❖ The current food budget both in prisons and police custody is far below the ever increasing cost of living. The government has to update the budget periodically to this end. The study found that there is no regular organ assigned to inspect the quality of food provided by private contractors. The writer personally observed that only prison and police custody wardens apparently observe the food without actually tasting it. It is also learnt that the provision of this service is monopolized by a single person to all centres under the study which exposes to corruption. The prison and police commissions, hence, have to establish a system to check the quality of food. In addition, this service shall be provided by different institutions to create sense of competition.
- ❖ The study also uncovered the fact that there is no independent compliant hearing mechanism in prisons. Indeed, lots of committees of prisoners are available to handle

grievances on food, sport, etc. However, the committees supervise the provision of such services within the budget already allowed. For example, in New Zealand, South Africa, Netherlands, England and Canada, prisoners lodge their complaints hierarchically, in addition to staff employed by the Public Prisons Service or Probation and Offender Services, to the Prison Inspectorate and external agencies. In Ethiopia, however, everything is left to the prison administrators which would inevitably make the vulnerability of detained persons worse. The committees, therefore, has to be supported with an independent mechanism to ensure that prisons are administered in accordance with existing laws and regulations and with a view to bringing about the objectives of penal and correctional services.

- ❖ In prisons some steps are being taken to control overcrowding through further constructions .In police detention centers, however, there is no attempt to handle the existing overcrowding. The government, therefore, must make arrangements to reduce overcrowding in police detention centers.
- ❖ In general, to handle the ever increasing overcrowding, government has to take steps to implement, among other things, the action plan and strategies for reducing prison population recommended under The Ouagadougou Declaration and Plan of Action on Accelerating Prisons and Penal Reforms in Africa.
- ❖ The draft criminal procedure which is progressive due to the fact that it has a wide range of alternative punishment mechanisms other than the ordinary deprivation of liberty which definitely help to handle prison congestion. The mandated committee has to; therefore, facilitate the approval of the draft by the parliament.
- ❖ Government has to make arrangements to provide young offenders with separate accommodation both in prisons and police detention centers.
- ❖ The prison commission must work closely with local health departments as stated in UN Standard minimum Rules on Treatment of prisoners that “the medical services should be organized in close relationship to the general health administration of the community or nation.” This approach will rectify the existing problem regarding health professionals, equipments and medicine. Further movement also must be done to provide prison health care under the main stream Ministry of Health. For instance, In England and Wales latter

The Department of Health assumed responsibility of prison health care from Her Majesty's Prison Service by April 2006.²⁰⁰

- ❖ Personal cleanness must be made compulsory. Budget must be allotted for necessary materials accordingly. The commission must also monitor, after allocating the necessary budget, the situations of toilet and bathroom (shower), and the provision of water and other clearing materials in each prison. Particularly, the commission must consult with different NGOs and other sponsors for the provision of soap, brushers and the like to the prisoners.
- ❖ The pursuit for education in prisons must be mainstreamed to the policies and strategies designed by ministry of education. The study found that education in prisons is informal. There is no formal curriculum that fits the reality in prisons. Article 77(2) of UN Standard Minimum Rules on the Treatment of Prisoners which provides: “So far as practicable, the education of prisoners shall be integrated with the educational system of the country so that after their release they may continue their education without difficulty.” In this regard In the United States of America, regional states budget for prison education programs comes out of different agencies, for example, the state education department, the state department of corrections, local school districts, local or country governments, and special districts. Similarly in England prison education is delivered in close cooperation with local education system. Accordingly, a system must be created in Ethiopia so that the ministry of education can take over the business of education from prisons. Similar arrangement also must be made to reach education to the detained persons in police detention centres who have to, practically, stay there for weeks and months.
- ❖ Similarly, the available trainings in prisons are not comprehensive and continuing. They lack full time trainer and materials. These training are totally none existing in police detention in police custody. These trainings also shall be mainstreamed to the National Vocational and Technical education programme. For this end, the nearby technique and vocational schools shall be authorized to run the prison and police craft works.

²⁰⁰ Paul Hayton, MA, Dip HEd, and John Boyington, Reform Efforts in Public Services: Prisons and Health Reforms in England and Wales (<http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1586127/pdf/0961730.pdf>) last visited on 21 November 2012

- ❖ The situation of compliant hearing procedure is worse in police detention centres. In police custody there is no genuine complaint hearing mechanism. Inmates tell their compliance to the available wardens. According to the study any compliance to these wardens is not welcome; it results in intimidation and insult. In some occasion inmates will be punished with solitary confinement for mere exercise of this right. Hence, similar arrangement must be made within police custody as recommended for prisons.
- ❖ According to the study inmates both in prisons and police detention centres do not know their human rights. The scenario happens alike to the prison authorities. Therefore, there must be regular human rights training both to inmates and authorities.
- ❖ On holding human rights education emphasis must be given to procedural aspects on how to bring demeaning detention condition ‘as group rights’ to courts. To this effect arrangement must be made to allow civil society organizations to handle these cases as public interest litigation.
- ❖ Office must be available for civil society organizations including human rights commission in prisons and police custody so that inmates could easily lodge their grievance. The representatives in turn have to lodge the same to court on inmates’ behalf.
- ❖ It is evident in Ethiopia that there is no genuine budget for treatment of detained persons in police custody when compared to those under prisons. The logic may be suspects do not stay long in police custody. In practice however, suspects stay in police custody for days and months due to lack of clear legislation on duration of investigation. This mainly is against the ‘presumption of innocence’ guaranteed under the EFDR constitution per se. This discriminatory treatment between detained persons in prisons and in police custody has no legal ground and under international detained persons’ rights, too. In fact, it is paradox to presumption of innocence. Therefore, the government should treat them similarly.
- ❖ The realization of all the minimum rules for the treatment of detained persons will be possible only if prisons and police detention centres are landed on adequate area of land. All the proposed rights for treatment of detained persons require minimum areas for installing necessary equipments. Football, for instance, requires foot ball pitch. All study sites, however, are landed in extremely narrow areas. Further, prison developments;

therefore, has to give regard to adequate space size to accommodate, among other things, recreational centres, sanitary installations and dormitories.

- ❖ As adequacy of legal protection, it is found that the Federal Prisoners Treatment Regulation No. 138/2007 has left out important provisions that are available in the UN Standard minimum Rules for the Treatment of Prisoners. For instance, both instruments provide that detainees have the right of lodging complaints and appeals. For this effect, the latter, additionally, envisages the establishment of an independent inspectorate while the former left out it making realization of the very right of compliant meaningless. Accordingly, the regulation must be amended to fill such important gaps.

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ANNEX

A. English version of the questionnaire

Addis Ababa University, School of Post Graduates, Faculty of Law

This questionnaire is prepared to assess the situation of the accommodation, personal hygiene, food and water, health care, education and training, compliant procedure and avenue, sport and exercise, religious freedom, forced labor in Addis Ababa Police Detention Centers. To this end, I kindly request your cooperation to answer the following questions; ensuring you that the information obtained accordingly serves only as academic research purpose and will be held confidentially. You do not have to write your name. Thanking in advance

Name of police detention center _____

Age _____

Sex _____

How long have you been in the center _____

Please show the situation of the following treatment standards in the detention center by providing the mark (X) under the measurements adopted (no, extremely poor, very poor, poor, good, very good, excellent).

No.	Standards	no	Extremely poor	Very poor	poor	good		Very good	excellent
1	Food provision	quantity							
		quality							

2	Provision of drinking water									
3	Bedding services	bed								
		mattress								
		sheet								
4	Sport and exercise	Entrance of natural light								
		Sporting equipment and space								
5	toilet									
6	Entrance of natural light									
7	Clean and adequate air									
8	Artificial light									
9	Room hygiene									
10	Adequacy of floor space per individual									
11	Health care	Free treatment								
		Free medicine								
12	Laundry facilities	installation								
		soap								
		shower								
		water								
13	Separate accommodation	For women								
		For Children below 18 age								
		For Persons with communicable disease and disability								
14	Education and training									
15	Religious freedom									
16	Compliant procedure									
17	Forced labor									

18. Please explain the condition of accommodation, personal hygiene, food and water, health care, education and training, compliant procedure and avenue, sport and exercise, religious freedom, forced labor in the center_____

19. For how long do detainees stay in this police detention center(in days, months, years)
?what are the causes ? _____

B. Amharic version of the questionnaire

አዲስ አበባ ዩኒቨርሲቲ፣ የድህረ ምረቃ ት/ቤት፣ የህግ ፋኩልቲ

ይህ የጽሁፍ መጠየቅ በአዲስ አበባ ከተማ አስተዳደር ወስጥ ባሉ ፖሊስ ጣቢያዎች ወስጥ በጥበቃ ላይ ላሉ ሰዎች የሚሰጥን አጠቃላይ የምግብ፣ የንጽህና፣ የንጹህ መጠጥ ወሃ፣ የመጠለያ ፣ የመዘናኛ፣ የሽንት ቤት እና የህክምና፣ የትምህርትና ስልጠና፣ የሃይማኖት ነጻነት፣ የግዴታ ስራ እና የአቤቱታ ማቅረብ መብት አገልግሎቶችን አሰጣጥ ለመዳሰስ የተዘጋጀ መጠየቅ ነው። ወድ የጥናቱ ተሳታፊዎች የሚከተሉትን መረጃ ለትምህርታዊ ጥናት አገልግሎት ብቻ የሚውል እና በሚከተሉት የሚገኘው ይሆናል። የእርስዎ መልካም ትብብር እና ፈቃደኝነት ለጥናታዊ ጽሁፍ አስተማማኝነት ወሳኝነት አለው። ጥያቄዎችን አንድ በአንድ በመጥለስ እንዲሰተፉ በአክብሮት እጠይቃለሁ። ለሚገኙት ትብብር በቅድሚያ አመሰግናለሁ። በመጠየቁ ላይ ስም አይጻፍም።

የየፖ/ጣቢያዬ ስም- _____

ዕድሜ -----
ጾታ -----

ለምን ያህል ጊዜ በሚሟጁ ቤቱ/ፖሊስ ጣቢያዬ ወስጥ ቆዩ? _____

ከዚህ በታች የቀረቡት መስፈርቶች ምን ያህል የእርስዎን ሃሳብ እንደሚገልፁ ከቀረቡት አማራጮች (X) ምልክት በማድረግ እንዲመልሱ በአክብሮት እጠይቃለሁ።

ተቁ	መመዘኛዎች	የለም	እጅግ በጣም መጥፎ	በጣም መጥፎ	መጥፎ	ጥሩ	በጣም ጥሩ	እጅግ በጣም ጥሩ
1	የምግብ አገልግሎት							
	ት ጥራቱ							
2	የንጹህ መጠጥ ወሃ አገልግሎት							
3	የመኝታ							
	የአልጋ አገልግሎት የፍራሽ አገልግሎት							

	አገልግሎት	የአንሰላ አገልግሎት							
4	የመዝናኛ አገልግሎት	በየቀኑ በቂ የጸሃይ ብርሃን አገኛለዉ							
		የሰፖርት መስሪያ መሳሪያ እና ቦታ							
5	የሸንት ቤት አገልግሎት								
6	የእስር ቤቱ ክፍሉ ብርሃን								
7	የእስር ቤት ክፍሉ የንጹህ አየር አቅርቦት								
8	የእስር ቤት ክፍሉ መብራት								
9	የእስር ቤት ክፍሉ ንጽህና								
10	የእስር ቤት ክፍሉ ለእያንዳንዱ እስረኛ ያለዉ በቂ ቦታ								
11	የህክምና አገልግሎት	ነጻ ህክምና							
		ነጻ መድሀኒት							
12	የንጽህና አገልግሎት	የልብስ ማጠቢያ ቦታ							
		የሳሙና አቅርቦት							
		የሻዎር አገልግሎት							
		የዉሃ አቅርቦት							
13	ሴት ታሳሪዎችን ለይቶ ስለመያዝ								
14	ከ18 አመት በታች ሀጻናትን ለይቶ ስለመያዝ								
15	ተላላፊ በሽታ ያለባቸዉ ንእና የአእምሮ ሀመምተኞችን ለይቶ ስለመያዝ								
16	ትምህርት እና ስልጠና								
17	የምክር አገልግሎት								
18	የሀይማኖት ነጻነት								
19	አቤቱታ የማቅረብ መብት								
20	የግዴታ ስራ								

21. የማ/ቤቱ ወይም የፖ/ጣቢያዉ የምግብ፣ የንጽህና፣ የንጹህ መጠጥ ውሃ፣ የመጠለያ፣ የመዝናኛ፣ የሸንት ቤት ፣ የህክምና፣ የትምህርትና ስልጠና፣ የሃይማኖት ነጻነት፣ የግዴታ ስራ እና የአቤቱታ ማቅረብ መብት አገልግሎት አሰጣጥን ያብራሩ

22. ታሳሪዎች በጣቢያ ዉስጥ እስከ ስንት ጊዜ(በቀናት፣ ወራት፣ በአመታት ይግለጹ) ይቆያሉ ምክንያቶቹን ይግለጹ