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FREEDOM FROM TORTURE, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT: THE CASE OF SOME SELECTED PRISONS OF OROMIA NATIONAL REGIONAL STATE

Submitted to Addis Ababa University, School of Graduate Studies in partial fulfillment of
the requirement of the degree of masters in Human Rights Law

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DEDICATION

This work shall be dedicated to my beloved brother Hailegiorgis Tadesse.

DECLARATION

I, Tesfaye Tadesse Abebe, 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.

Tesfaye Tadesse

Date: _____

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ACRONYMS

ACHPR	African Charter on Human and Peoples Rights
ACHR	American Convention on Human Rights
BoP	[US Federal] Bureau of Prisons
BOP	Body of Principles for the Treatment of Persons under Any Form of Detention or Imprisonment (1988)
CAT	Convention against Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW	Convention on the Elimination of all forms of Discrimination against Women
CERD	Convention on Elimination of All Forms of Racial Discrimination
CPT	European committee for the prevention of torture
CRC	Convention on the Rights of a Child
ECHR	European Convention on Human Rights
ECmHR	European Commission on Human Rights
ECtHR	European Court on Human Rights
GAR	General Assembly Resolution
HRC	Human Rights Committee
HRW	Human Rights Watch
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
OPCAT	Optional Protocol to CAT
OSG	Oromia Support Group
SR	Special Rapporteur
UDHR	Universal Declaration on Human Rights
UN	United Nations
US	United States of America

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ABSTRACT

Freedom from torture, inhuman or degrading treatment or punishment is one of the few fundamental rights under international human rights law prohibited without any derogation. Violations against this right will inevitably destruct the core theme of human dignity. All dominant international and regional human rights law instruments such as UDHR, ICCPR, ACHPR, ACHR, ECHR and most importantly CAT, provide for the prohibition of violation against this freedom in strict terms. States are under international obligation to ensure the protection of this freedom in all circumstances. Ethiopia also, as a state party to most of these instruments, has a duty to realize the full enjoyment of this freedom under its territory. Oromia National Regional State is the largest region in Ethiopia that has the largest population size-population all deserving the enjoyment of this freedom. On the other hand, prisons are places alleged to be notorious sites where the right of individuals to freedom from torture, inhuman or degrading treatment or punishment can be vastly violated.

The present work, therefore, evaluated the protection of this freedom in some selected prisons of Oromia region in light of international human rights law. In doing so, the writer has analyzed various international, regional, and domestic legal instruments, and relevant cases dealing with the right. After defining the normative content of the right, the writer has assessed five prisons- Woliso, Shashemene, Ambo, Ziway, and Adama- and one center of training for prisoners- Dippo [Adama] Technical and Vocational Training Center. The data collection stage of the work has employed questioner, interview, and field observation as a method of gathering information from prisoners, prison warders, and prison authorities in which more than 200 respondents have been consulted. After conducting serious analysis, the writer has, eventually, reached to the following findings: Except for mild cases of Dippo center of training, the treatment of prisoners in all prisons covered under the study is poor; especially prisoners are suffering from impoverished conditions of accommodation, clothing and bedding, personal hygiene, medical care, sport and exercise, library and book, work, education and training, separation of categories, and lack of compliant procedures. There is grave violation against prisoners' right to freedom from torture, inhuman or degrading treatment or punishment, except in Dippo center of training. There is no well organized training program on human rights and treatment of prisoners arranged for prison warders. There is no experience in which persons (prison warders or authorities) who violated this freedom had been prosecuted. The work has, finally, recommended plausible solutions to strengthen the protection of this freedom in these prisons.

CHAPTER ONE

INTRODUCTION

1.1 BACKGROUND OF THE STUDY

The concept of International Human Rights Law was something entirely unrecognized in the ancient world history. All matters we condemn today as human rights violations had been highly respected practices of state agents in ancient civilizations. From this ancient history of mankind, the existence of cruel, inhumane and degrading treatment and punishment was uncontested. Recorded history tells us that ancient people had a culture of killing or selling in an open market their illegitimate child, stoning against woman who commit an adultery and other severe forms of punishment ranging from flogging to drawing and quartering.¹

The prevalent existence of torture, inhumane or degrading treatment or punishment is not something exclusively labeled for ancient peoples, rather it was vastly practiced by pre- modern and modern societies. Even though the French Declaration of the Rights of Man and of the Citizen and American Declaration of Independence have contributed a lot for the advancement of human rights, the means of punishment used by French leaders themselves, who wrote the Declaration, against criminals convicted of anti-French revolution, was much cruel and inhumane, especially the Guillotine method.

Even though the whole world were leading a miserable life because of the cruel and savage practices of states, the stance of the world states was, not limited to torture, inhumane or degrading treatment or punishment, but also concerning violations of all human rights, that these issues are entirely domestic in nature. State sovereignty against the need to protect human rights internationally had been a long debated issue. Pending its settlement, the world population suffered from a number of grave rights violations. It was after the horrors of the two world wars and the genocidal massacre of six million Jews and a half million of Gypsies, the need for international human rights standards became accepted.

¹ C. Devine, Cr. Hansen, & R. Wilde, Human Rights: The Essential Reference, The Oryx Press, Arizona, 1999, p. 10.

Universal Declaration of Human Rights (UDHR) of December 10, 1948 was the first codified international human rights document adopted by United Nations General Assembly. In its preamble, the UDHR declared the recognition of the equal and inalienable rights of all members of human family as the foundation of freedom, justice and peace in the world. It was then after that a number of universal and regional human rights instruments dealing with the fundamental human rights and freedoms came into being.

The subsequent instruments, International Covenant on Civil and Political Rights [ICCPR] and International Covenant on Economic, Social and Cultural Rights [ICESCR], constituting the international bill of human rights affirmed the protection of human rights and freedoms by imposing duty and responsibility on state parties. In addition to regulating the conduct of states and setting a limitation on the practice of states, these instruments also require states to take positive measures to prevent the abuse of human rights.

The International Covenant on Civil and Political Rights provides protection against torture, inhumane or degrading treatment or punishment. Article 7 of ICCPR provides that:

No one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

The covenant under its Art 4(2) provided the non-derogable nature of this right even in case of public emergency which threatens the life of nation and the existence of which is officially proclaimed. The prohibition of torture or cruel, inhuman or degrading treatment or punishment is absolute and unqualified and no express or implied derogation by states is permitted. Breaches cannot be justified by lack of resources or the need to fight terrorism or violent crime. It is therefore an absolute and unqualified guarantee which provides no scope for cultural relativism.

In addition, for the better protection of this right the United Nations General Assembly adopts the Convention against Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) on December 10, 1984. Unlike other instruments which are either general, regional or non-binding, this convention was the first binding specific international instrument dealing with freedom from torture, inhuman or degrading treatment or punishment.

It was the 1955 constitution that provides the protection for the right to freedom from torture, inhuman or degrading treatment or punishment for the first time in Ethiopia. The preceding constitution, of 1931, had no any component regarding this right. This failure was; among the reasons, the one that led the constitution to revision. It is believed that the 1955 constitution had been highly influenced by the adoption of Universal Declaration of Human Rights of 1948. The constitution of People Democratic Republic of Ethiopia (PDRE) of 1987 criminalizes violence or pressure against individuals in general, but it did not have an explicit provision prohibiting torture, inhuman or degrading treatment or punishment.

Presently, the constitution of Federal Democratic Republic of Ethiopia (FDRE) of 1995 provides for this right. Under its Article 18, FDRE constitution provides that *“Everyone has the right to protection against cruel, inhuman or degrading treatment or punishment”*. Above all, Ethiopia has accepted international instruments containing this right, such as UDHR, ICCPR and CAT. It is also notable that regional human rights instruments ratified by Ethiopia such as African Charter on Human and Peoples Rights (ACHPR) have included freedom from torture, inhumane and degrading treatment as one of rights worthy of protection. The FDRE Constitution, on the other hand, under its provision of Art 9(4) recognizes these international instruments ratified by Ethiopia as an integral part of the law of the land. Hence, all these instruments prohibiting torture, inhuman or degrading treatment or punishment are part and parcel of the law of our land. Having this legal framework in mind, when the life of Ethiopian people assessed, the practical case could happen to the contrary. Setting aside the pre- modern recorded miserable life of Ethiopian citizens, even in modern period the monarchial system and Dergue regime had left so many unforgettable records of torture, inhumane or degrading treatment and punishments.

Leaving history for historians, even now a days there are tremendous violations on this right. Highly respected human rights reports of states such as US State Department, international non-governmental organizations (INGOs) such as Human Rights Watch and Amnesty International, in addition to other local NGOs have shown that the right to freedom from torture, inhumane or degrading treatment or punishment is one of frequently violated human rights beside with illegal killings and forced disappearances, in Ethiopia. For that matter, it seems that there is a discrepancy between the legal content and the practice that requires real study.

1.2 STATEMENT OF THE PROBLEM

Human dignity, the core theme to be destructed up on violation of any of human rights, is a value deserving high level of respect and protection. It is the foundation of peace and justice in the world. States also confirmed this truth by UDHR, including our country Ethiopia. On the other hand, in circumstances where a considerable number of people suffer from torture, inhumane and degrading treatments or punishments, it is hardly possible to say that the inherent dignity of mankind is respected.

In the modern world where the issue of human rights protection reached its climax, countries have also used the issue as a standard for determining their foreign relation and initiating economic sanctions. These days the issue is not something left for domestic jurisdiction. According to the reports of US State Department, Human Rights Watch, Amnesty International and other various local NGOs one of the human rights being frequently violated in Ethiopia is the right of individuals to be free from torture, inhuman and degrading treatment or punishment.

The right to freedom from torture, inhuman or degrading treatment or punishment is one of the rights guaranteed under FDRE constitution. The constitution made this right non-derogable along with few other selected rights. International Human Rights instruments ratified by Ethiopia have also contained this right. But, all these do not necessarily mean that the right is being enjoyed properly in practice. Therefore, the actual situation requires practical assessment.

It is imperative to inspect and investigate both the legal and practical obstacles contributing for the limited enjoyment or non enjoyment of the right. In addition, it is the question of the day to prove or disprove the existence of the alleged violation of the right in issue in our country along with its cause. It is important to assess whether or not the vagueness of the right in itself, if any, creates a problem for implementation. If the manner in which the right had been incorporated in our law makes it difficult to enforcement, it should also be examined. It is also relevant to identify responsible organs for the violation of the right, if any, so that it will be easy to find solutions.

It is doubtless that everyone is responsible for the protection of this right in our country. All state and non- state actors must contribute their part for the full enjoyment of the right. The FDRE constitution, under its Art 13(1), states that all federal and state legislative, executive and judicial organs at all levels shall have the responsibility and duty to respect and enforce the provisions of this chapter [chapter 3, titled “fundamental human rights and freedoms”].

Therefore, the right to freedom from torture, inhuman or degrading treatment or punishment must be protected by any means. In the country where all dominant international and regional human rights instruments ratified and incorporated in to the law of the land, it is unpleasant to hear gross violation of human rights, especially the right at hand.

1.3 RESEARCH QUESTIONS

This paper attempts to analyze the normative standards of the right of individuals to be free from torture, inhuman or degrading treatment or punishment. The paper further investigates the Ethiopian legal frame work in relation to the right. Practical study in some selected prisons of Oromia National Regional State concerning the enjoyment of the right is one of the main tasks of the paper.

For the satisfaction of the matters mentioned above on the statement of the problem, this work will principally address the following questions;

- ◆ What is the meaning of the right to freedom from torture, inhuman or degrading treatment or punishment?
- ◆ What are the theoretical foundations of this right?
- ◆ What is the standard definition and main elements of torture?
- ◆ What is the difference between the three terms: torture, inhuman treatment/punishment and degrading treatment/punishment?
- ◆ What is the difference between treatment and punishment in the context of this right?
- ◆ What are the international and domestic laws containing this right?

- ◆ What is the nature of state obligation under international law? Is that only negative duty or does it including positive obligation?
- ◆ What is the nature of the right in FDRE constitution?
- ◆ What is the implication of the omission of the term “torture” from Article 18 of the FDRE constitution?
- ◆ What are, if any, prison rules and regulations dealing with the right in Ethiopia?
- ◆ What is the role of law enforcement agencies (especially prison officials) in ensuring and protecting the right?
- ◆ How is the right being protected practically in the selected prisons?
- ◆ What are the causes of violation, if there is any violation?
- ◆ What are the possible recommendations to avoid and prevent any violation against the right at hand, if any?

1.4 OBJECTIVE OF THE STUDY

Saving in mind all the issues mentioned under the background of the study and the statement of problem regarding the factors that motivated the researcher to work on the area, this research will have the following objectives as its core theme:

- ❖ To examine and analyze the normative standards of the right to freedom from torture, inhuman or degrading treatment or punishment under international human rights and humanitarian law.
- ❖ To ascertain whether or not the right has been incorporated in to our legal system properly and adequately.
- ❖ To evaluate the scope and degree of the violation of the right in Ethiopia, especially in some selected prisons of Oromia National Regional State, if any.
- ❖ To critically assess the role of law enforcement agencies, especially prison officials, in the protection of the right.
- ❖ To critically explore the cause of violation of the right, if there is any violation, so that the researcher can recommend possible way of preventing and rectifying any violation on the right, finally.

1.5 RESEARCH METHODOLOGY

Having the objective of dealing with the normative content of the right to freedom from torture, inhuman and degrading treatment or punishment and assessing its implementation or enjoyment in Ethiopia, especially in some selected prisons of Oromia region, the paper used the following methods:

- **Literature Review:** All available and relevant literatures have been reviewed in order to mention out the standard meaning and elements of the right to freedom from torture, inhuman or degrading treatment or punishment, clearly. The enforcement problems on this specific right, both nationally and internationally, are also the other issues that have been extracted from various available literatures. Further, the researcher has made a survey on other works dealing with the prison conditions of Oromia and other regions of Ethiopia.
- **Document Analysis:** International human rights and humanitarian instruments; constitutions of Ethiopia and of other countries for comparison, as necessary; and different general comments, recommendations, standards, guidelines, and reports having a link towards the right in issue have been analyzed and critically examined. Legislations, regulations and directives, as necessary, have been examined in order to evaluate the adequacy of the legal framework to protect the right.
- **Field Observation:** The researcher has conducted a limited field observation into those selected prisons of Oromia National Regional State. By doing so, the researcher has controlled and tried to avoid lack of genuineness in the paper.
- **Interviews:** Interview with prisoners (especially with those who cannot write and/or read) has been the main method employed throughout the data collection stage. Interview with all concerned government officials i.e. prison authorities of the Oromia National Regional State and of all concerned particular prisons covered under the study, has been held to collect necessary data and to evaluate the situation of prisoners from the other angle.

- *Case Analysis:* The researcher has examined some available cases related to the right concerned, including cases filed against individuals, departments or state agent for the violation of the right in issue.
- *Questionnaire:* Collecting data through questionnaire is one of the principal methods used by the researcher except in the case of illiterate respondent-prisoners and concerning issues that require detail elaboration.
- ✦ In the data collection, the sampling method employed in selecting prisons is deliberate sampling or purposive sampling which is used for the purpose of assessing the most violating and the most respecting prisons of the right in issue, as understood from the preliminary survey conducted by the researcher. At the same time the researcher has used simple random sampling to collect data from individual prisoners after selecting prisons purposefully.
- ✦ The analysis has been conducted through well accepted standard statistical formulas and methods. A minimum of 20 prisoners from each prison have been consulted as it is believed to be sufficient to represent the average number of prisoners detained in the prisons covered under the study. A total of 208 respondents - 172 prisoners and 36 prison warders- have been consulted from all five prisons and one training center of prisoners covered under the study.

1.6 SCOPE AND LIMITATIONS OF THE STUDY

In order to make the work manageable within the limited time and resources allocated for the researcher at this level, I have limited the scope of the work to some selected prisons of Oromia region. Even though it would be nice to assess the implementation of at least one single human right throughout a country, due to some limitations the work has been limited on some prisons of a region, namely Oromia. Further, the work gave much emphasis to UNCAT than other instruments dealing with the freedom. Especially, regarding the meaning of the term torture, the work limited its scope to the definition provided under Article 1 of UNCAT.

In the preliminary study, the researcher has observed that there are model prisons in Oromia region for their protection of the right in issue. As overviewed and designed by the researcher, the paper may, among others, focus on the notorious prisons of Woliso, Ziway, Adama, Shashemene and Ambo, and famous prison of Dippo [Nazreth] center of technical and vocational training for prisoners in the protection of the right to freedom from torture, inhumane or degrading treatment or punishment.

As a limitation there are some factors that tied up the researcher not to extend the scope of the work in to other areas. Among others, the time limitation and lack of resources (high cost needed for the work) are some of the factors forced the work to focus on one region .i.e., Oromia and even selected prisons of this region.

At the beginning of the study, due to the high political sensitivity of the subject matter, the researcher had a fear that sufficient primary data may not be available. But, latter when the actual work gets started this fear became untenable except in the case of Adama (East Showa) prison which refused to provide the necessary data. The authorities of this prison have requested to attend the interview to be held with prisoners and to investigate the questionnaire filled out by prisoners due to which the data collection became impossible to protect the privacy of the prisoners and/or the genuineness of the work. However, the researcher has used other options to get the required data from prisoners. There were a large number of prisoners of Adama (East Showa) prison in Dippo center of technical and vocational training who came there by transfer due to various reasons, such as to reduce the high over crowd in Adama Prison and due to the young age of the prisoners. Therefore, the researcher has collected all the necessary data from these prisoners about their previous prison, Adama (east showa) prison. The researcher, for the purpose of collecting reliable information, has selected prisoners who spent one year and above in Adama prison before coming to the center of training.

1.7 SIGNIFICANCE OF THE STUDY

This research will have considerable significance in promoting and protecting the right to freedom from torture, inhuman or degrading treatment or punishment. The findings of this paper will definitely benefit both government and individual citizens. If the paper reveals the failure

and weakness of government by listing out violations against the right in issue with its causes, the finding will help the government in rectifying its failures and in preventing any future violations thereby fulfilling its international obligations. Since the paper is supposed to reveal violations, if any, and its causes, it will help the government to avoid the root causes of the violation. Individual citizens of the country will be also beneficiaries of the finding of the research since the ultimate purpose of protecting the right and putting it as an international obligation of states is to secure their well-being.

If the finding reveals that there is a full enjoyment of the right in issue in that selected area, the government will use such finding as a bench mark for other areas of the country. The finding could be also used as one means of disproving, or showing improvements against, those alleged violations of the right on the area at the international level, even if the paper is not primarily designed to this purpose. Further, the paper could be used as a well developed literature on the normative content of the right to freedom from torture, inhuman or degrading treatment or punishment that makes the paper significant of both academic and practical matters. Finally, the paper will definitely help other researchers interested in the subjected matter of the study.

1.8 ORGANIZATION OF THE STUDY

This work consists of six chapters each of which is further divided into sections and sub sections. The first chapter is about the introductory part of the thesis. The second chapter deals with the normative content of the right to freedom from torture, inhuman or degrading treatment or punishment. The third chapter will discuss the relevant international and regional human rights and humanitarian instruments dealing with the right to freedom from torture, inhuman or degrading treatment or punishment. The fourth chapter is devoted to the Ethiopian legal framework in relation to the right at hand where constitutions and other documents are discussed. The fifth chapter will contain a report on the practical/case study conducted on some selected prisons of Oromia region, as tested in light of various international and regional relevant instruments. The last chapter contains the conclusion and recommendation part of the paper.

CHAPTER TWO

THE NORMATIVE CONTENT OF THE RIGHT TO FREEDOM FROM TORTURE, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

2.1 THE DEFINITION OF TORTURE, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Before dealing with the content of the right to freedom from torture, inhuman or degrading treatment or punishment in detail, it is worth defining the essential terms mentioned under this right. Generally this freedom contains three wide concepts: torture, inhuman treatment or punishment, and degrading treatment or punishment. The following discussion will provide for the meaning and definitions of these terms, starting with torture.

2.1.1 TORTURE

In the thirteenth century, the Roman lawyer Azo gave this definition:

“Torture is the inquiry after truth by means of torment.”

And in the seventeenth century, the civil lawyer Bocer said that:

“Torture is interrogation by torment of the body, concerning a crime known to have occurred, legitimately ordered by a judge for the purpose of eliciting the truth about the said crime.”

In the twentieth century, the legal historian John Langbein has written:

“When we speak of judicial torture we are referring to the use of physical coercion by officers of the state in order to gather evidence for judicial proceedings.... In matters of state, torture was also used to extract information in circumstances not directly related to judicial proceedings”.²

² Edward Peters, *Torture*, Basil Blackwell Inc., New York, 1985, p.1.

The literal dictionary definition provides that torture is ‘the infliction of intense pain to punish or coerce someone.’³ According to Black’s law dictionary, it is the infliction of violent bodily pain up on a person by means of the rock, wheel or other engine.⁴

One of the major human rights instruments dealing with torture that provides a definition is the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The UN convention against Torture definition provides that torture is:

*“any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising from, inherent in or incidental to lawful sanctions.”*⁵

In accordance with Article 1, the international concept of torture comprises five elements:

- Sever Pain or suffering, whether physical or mental; and
- Intentional infliction; and
- For specific purposes as obtaining information or a confession, punishing, intimidating or coercing, or for any reason based on discrimination of any kind; and
- Infliction by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity; and
- Exclusion of torture related to pain arising from lawful sanctions.

If one of these elements is missing, it is impossible to determine an act as torture, according to the Convention. These elements are somehow complex and difficult so as to clearly understand what the convention intends to mean, thereby in applying in particular cases. However, general comments of different UN committees, celebrated court decisions and leading commentaries on

³ Philip B. Gove (ed.), Webster’s Third New International Dictionary of English Language, G&C Merriam Company, Massachusetts, 1981.

⁴ Bryan A. Garner, Black’s Law Dictionary, 7th ed., West Publishing Company, 1999.

⁵ UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, GA. Resolution 39/46, opened for signature 10 December 1984, Article 1.

the subject matter have tried to elaborate these elements so that the definition become more meaningful and easily applicable in protecting the right as a whole. Accordingly, these elements are clarified as follows.

- *Public official capacity*: according to this definition, acts of torture covered under the convention must be committed by someone acting under the color of law. Thus, for example, if a private individual causes intense suffering to another, absent the instigation, or acquiescence of a public official, such action does not constitute “torture” for the purpose of CAT.⁶

However, the UN Human Rights Committee, in the General Comment No. 20, stated that Art.7 of the International Covenant on Civil and Political Rights (*i.e., No one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.*), applies to the acts prohibited whether inflicted by people acting in their official capacity, outside their official capacity or in a private capacity. Hereby what the committee needs to stress is that it is the duty of public authorities to ensure protection by the law and against such treatment even when committed by persons acting outside or without any official authority.

Many other human rights instruments also do not discriminate between the private or public status of the perpetrator to engage responsibility as they criminalize acts whether they are committed by private individuals or public authorities, as indicated in Art 7(2) (e) of the Rome Statute of the International Criminal Court, Art. 19(1) of the Convention on the Rights of the Child, and Art.1 and 2 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against women...⁷ It must be noted, however, that as a matter of scope, as mentioned under the previous chapter, this broad definition will not be applicable in this work; rather the present study will focus on the definition provided by Article 1 of UNCAT.

⁶ Michael J. Garcia, U.N. Convention Against Torture (CAT): Overview and Application to Interrogation Techniques, Congressional Research Service, USA, 2009, p.4.

⁷ Kersty Mc Court and Manuel Lambert, Interpretation of the Definition of Torture or Cruel, Inhuman or Degrading Treatment or Punishment in the light of European and International case law: The need to preserve legal and jurisprudential evolutions and acquis, A report presented to the EU Network of Independent Experts in Fundamental Rights, 2004, p.9.

- *Intentionally inflicted:* The CAT definition of torture requires that severe pain and suffering be “intentionally inflicted” on a person. In other words, were a victim suffered severe pain at the hands of a state official, but the official did not intend to cause the severe pain, the act would not amount to torture. This is the case if, for example, a prisoner experienced severe pain or suffering as a result of poor prison conditions but the officials did not intend the conditions to affect the prisoner so severely.⁸

The ECtHR (European Court of Human Rights) has made the intent requirement easier to satisfy by shifting the burden of proof from the victim to the government. For example, in *Selmouni V. France*, the ECtHR noted that “where an individual is taken in to police custody in good health but is found to be injured at the time of release, it is incumbent on the state to provide a plausible explanation of how those injuries were caused.”⁹

The intent element raises the general question what a torturer has intent to do? The CAT requires that the actor must intend to inflict severe pain or suffering, not simply to intend to do an act that in turn causes such harm. The use of the phrase “intent to inflict” implies that the torturer must have intended both an act and to cause a particular harm. Often, when analyzing the kind of intent required, lawyers turn to the terms “general intent” and “specific intent.” General intent is a less demanding standard, requiring merely that the actor intended to perform the conduct as opposed to intending to create a particular result in violation of the law. Specific intent requires acting with the intent to achieve a result or intending to commit a particular crime. The text of the CAT itself does not expressly require either specific intent or general intent.¹⁰

The United States’ formal understandings at the time of ratification of CAT included adding the word “specifically” to the intent element. Evidently the drafters of the U.S. understandings to the CAT, at least, were concerned that the CAT definition requires only general intent, as opposed to

⁸ Gail H. Miller, *Defining torture*, Floersheimer Center for Constitutional Democracy, Cardozo School of Law, 2003, p.13.

⁹ *Selmouni V. France*, 29 E.H.R.R. 403, 426, (2000).

¹⁰ *Supra* at note 8, p.14.

specific intent. In memos on the definition of torture, the U.S. Department of Justice (“DOJ”) maintains that specific intent is required, yet fails to define specific intent in this context.”¹¹

- *Severe Pain or suffering*: there are subjective standards to be applied for the term “Severe”. The element of infliction of severe pain or suffering considers the impact of the act on particular victim. Presumably, the same act could have different effects on different people depending on their natural susceptibility and threshold for pain. Thus, the victim’s physical or mental constitution will become relevant in cases where severity of the ultimate pain is at issue. The U.N. Special Rapporteur on Torture has pointed out that children and pregnant women are particularly vulnerable to torture. For example, children “may suffer graver consequences than similarly ill-treated adults.”¹²

- *Specific purpose*: the existence of a specific purpose is another requirement in the definition of torture, under CAT. An act of torture must be inflicted for a certain purpose; punishment, intimidation, getting information, or for any reason based on discrimination.

However, as far as some categories of disadvantaged people (children, women, minorities, indigenous people, etc) are concerned, purpose as a component of torture can be too restrictive. Because of their particular vulnerability, those categories require higher standards of protection than other groups and specific positive measures. In particular, the state must assume a higher degree of responsibility in cases of torture perpetrated against them. This means that, in some cases, it must be held responsible even though these acts may be perpetrated without any specific purpose.¹³

- *Exclusion of torture related to pain arising from lawful sanctions*: It is clear statement that the term torture does not include pain or suffering arising from, inherent in or incidental to lawful sanctions.

¹¹ The United States ratified the CAT with reservations, understandings, and declarations. Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Reservations, Understandings and Declarations Made by the United States of America, available at <http://www.unhcr.ch/tbs/doc.nsf/015d7ce66547377b1f802567fd0056b533>.

¹² Report of the Special Rapporteur, Sir Nigel S. Rodley, Submitted Pursuant to Commission on Human Rights Resolution 1995/37, E/CN.4/1995/34 at 10 (January 9, 1996) and 1992/32, E/CN.4/1996/35, at 21 (January 12, 1995).

¹³ Supra at note 7, p.11.

2.1.2 CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Unlike torture, acts of cruel, inhuman or degrading treatment or punishment are not expressly defined by the UNCAT or other instruments.

In their literal dictionary meaning “Cruelty” means the intentional and malicious infliction of mental or physical suffering on a living creature, esp. a human; abusive treatment; outrage.¹⁴ “Inhuman” means not worthy of or conforming to the needs of human beings; lacking the quality of kindness; barbarous, savage.¹⁵ “Degrading” means that degrades; that causes human character to become degraded [reduced for below ordinary standards of civilized life or conduct] or debased.¹⁶

On the other hand, cruel, inhuman or degrading treatment or punishments are also legal terms. The UN CAT simply refers to them as acts that cannot be considered to fall within the definition of torture as outlined in Article 1 of the convention. This can cause some ambiguity as to what other forms of ill-treatment actually encompass torture. Therefore, these acts have been largely defined by the jurisprudence of international and regional human rights bodies and human rights experts.¹⁷

Current interpretation considers that these terms refers to ill-treatment that does not have to be inflicted for a specific purpose, but there does have to be an intent to expose individuals to the conditions which amount to or result in the ill-treatment. Exposing a person to conditions reasonably believed to constitute ill-treatment will entail responsibility for its infliction.¹⁸ Nevertheless, under CAT in order to be considered cruel, inhuman or degrading treatment or punishment, unlike under the case of ICCPR, an act must still be inflicted by, or at the instigation or, with the consent or acquiescence, of a public official or a person acting in an official capacity.¹⁹

¹⁴ Supra at note 4.

¹⁵ Supra at note 3.

¹⁶ Ibid.

¹⁷ KUXING: Torture in Tibet, a Special Report, Tibetan Center for Human Rights & Democracy, 2005, P.9.

¹⁸ Conor Foley, Combating Torture, a manual for judges and prosecutors, Human Rights Center, Foreign & Commonwealth Office, London, 2003, p.12.

¹⁹ Supra at note 17, p.10.

Degrading treatment or punishment may involve pain or suffering less severe than for torture or cruel or inhuman treatment or punishment and will usually involve humiliation and debasement of the victim. Degrading treatment or punishment is that which is said to arouse in its victims feeling of fear, anguish and inferiority, capable of humiliating and debasing them. This has also been described as involving treatment such would to breaking down the physical or moral resistance of the victim, or as driving the victim to act against his will or conscience.²⁰

According to the ruling of ECtHR in the case *Ranninen V. Finland*,²¹ in considering whether a punishment or treatment is “degrading” within the meaning of Article 3 of European Convention on Human Rights, regards should be had as to whether its object is to humiliate and debase the person concerned and whether, as far as the consequences are concerned, it adversely affected his or her personality in a manner incompatible with Article 3. However, the absence of such a purpose cannot rule out a finding of a violation of Article 3.

Relative factors such as age and sex of the victim can have a greater impact in assessing whether treatment is degrading, in contrast to whether treatment is inhuman or torture, as the assessment of whether an individual has been subjected to degrading treatment is more subjective. In this context, the ECtHR has also held that it may well suffice that the victim is humiliated in his own eyes, even if not in the eyes of others.²²

Therefore, the essential elements which constitute ill-treatment not amounting to torture would, therefore, according to CAT, be reduced to:

- ◆ Intentional exposure to significant mental or physical pain or suffering; and
- ◆ By or with the consent or acquiescence of the state authorities.²³

²⁰ Aisling Reidy, *The Prohibition of Torture, a guide to the implementation of Article 3 of the European Convention on Human Rights*, Human Rights Hand Books, No. 6, p.16.

²¹ Judgment of 16 December 1997, ECtHR, 1997-VIII, p. 2821-22, para 55.

²² *Supra* at note 20, p. 17.

²³ *Supra* at note 18.

2.2 ORIGIN AND DEVELOPMENT OF THE FREEDOM FROM TORTURE, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

A number of surveys on the history of torture simply accept the idea that torture occurs in cycles of legalization and abolition; indeed, such a view easily presupposes the existence of torture as something with a natural history and makes the history of torture then an account of these cycles. In fact the history of torture can be quite specific. It is not, for example, clear to what extent the Greeks owed their procedures of torture to Egyptians and Persians, so it is possible and plausible to begin with what we know of the Greeks through Romans - because some of Greek's laws does seem to have influenced that of Rome, and the law of Rome that of medieval and early modern Europe.²⁴

The chief legal sources for the Roman law of torture are found in the code of Justinian (9.41) and in the Digest (48.18). The former consists of imperial constitutions, the latter of the opinions of Jurists.²⁵ The Romans used a number of terms to describe what we, somewhat indiscriminately, called 'torture'. The investigative process in Roman criminal procedure was called 'quaestio', which also referred to the court itself. 'Tormentum' originally referred to a form of punishment, includes the aggravated death penalty, to which, under the Republic, only slaves were subjected, although later freemen were also liable to it for certain crimes. When *tormentum* was applied in an interrogatory way, the technical term was *quaestio pertormenta*, or *quaestio tormentorum*, that is an investigation by means that had originally been strictly a form of punishment, and that of slaves only.²⁶

The third Century jurist Ulpian declared:

*"By quaestio we are to understand the torment and suffering of the body in order to elicit the truth. Neither interrogation by itself, nor lightly inspired fear correctly pertains to this edict. Since, therefore, quaestio is to be understood as force and torment, these are the things that determine its meaning."*²⁷

²⁴ Supra at note 2, P.6.

²⁵ Id, p.33.

²⁶ Id, P.28.

²⁷ Id, P.1.

For the ancient Greeks and the Romans who came after them, torture was not only acceptable, it was also standard practice. Between the second and the fourth centuries, the privilege of not being subjected to torture was being eroded, not only from the bottom of society up warded but, beginning with treason & slowly enlarging to include other offences including those determined by the pleasure of the emperor, it was also being eroded from the top down.²⁸ However, they were very discriminatory about who could be tortured. It was only slaves - not free citizens - who could be subjected to the whipping and the chain, most of the time. The reason slaves could be tortured was because of mistaken believe that slaves did not possess the faculty of reason and hence lacked the capacity to dissemble. And hence it was wrongly conclude and practiced that, if you want to know the truth about something, all you had to do was to torture a slave who, believed to be, unlike a free citizen, wasn't smart enough to lie to you.²⁹

In the Middle Ages also both civil and religious courts believed that it was unethical to convict someone of a crime on somebody else's word alone, that the only valid evidence of thievery or heresy or murder was a confession.³⁰ However, the flurry of successful abolishing movements during the eighteen and early nineteenth centuries abolished torture chiefly as a part of criminal procedures, and here those movements comprised not only rulers and legislatures, but the judicial profession itself, which remained procedurally liberal while often socially very conservative.³¹

During the century between the British and French Revolutions (1688-1789) an important shift of emphasis occurred in relation to human rights thought. Documents such as The Bill of Rights and The Claim of Rights promulgated by the English and Scottish parliaments in 1689 contain provisions which would not be out of place in modern human rights charters.³²

²⁸ Id, p. 32.

²⁹ William F. Schulz, What Torture's Taught me, Berry Street Lecture, Delivered June 21 at the Unitarian Universalist Association General Assembly, in St. Louis, MO, 2006, p.4-5.

³⁰ Id, p.5.

³¹ Supra at note 2, p. 6.

³² Christopher Gane and Mark Mackerel (Ed,) Human Rights and the Administration of Justice: International Instruments, Kluwer Law International, Leiden, 1998, p. XI.

The Bill of Rights (1689) is an English act of parliament with full title “An Act Declaring the Rights and Liberties of the Subject and Settling the Succession of the Crown.” It forms part of the law of England and some other commonwealth nations, such as New Zealand. A separate but similar document applies in Scotland: The Claim of the Right. The Bill of Rights, 1689, is largely a statement of certain positive rights that its authors considered citizens and/or residents of a free and democratic society ought to have. According to The Bill of Rights, an Englishmen, as embodied by parliament, possessed certain immutable civil and political rights including, freedom from royal interference with the law (the sovereign was forbidden to establish his own courts or to act as a judge himself); freedom from taxation by royal prerogative, without agreement by parliament; freedom for petition the king; freedom from a peace time standing army, without agreement by parliament; freedom to elect members of parliaments without interference from sovereign; freedom to bear arms (for protestants); freedom of speech in parliament (the basis of modern parliamentary privilege); freedom from fines and forfeitures without trial; and most importantly *freedom from cruel and unusual punishments*.³³

Despite the establishment of these human rights instruments in the medieval world, indeed, torture was such a reputable instrument of justice, that it was not until 1754 - only 256 years ago - that Prussia (now Germany) became, ironically enough in light of subsequent history, the first country to abolish the use of torture altogether.³⁴

There was also a development of human rights ideology, thereby a development in the freedom from torture, inhuman or degrading treatment or punishment, during the American and French revolutions which were influenced by diverse historic precedents such as the secularization of politics, the development of capitalism and colonialism and the democratic movements both on European Continent and the Americans.³⁵

³³ Bill of Rights; An Act Declaring the Rights and Liberties of the Subjects and Settling the Succession of the Crown, 1689. Available at http://www.constitution.org/eng/eng_bor.htm

³⁴ Supra at note 29, p. 5.

³⁵ Abadir Mohamed, The Human Rights provisions of the FDRE constitution in light of the theoretical foundation of human rights, AAU printing press, 2008, p. 5.

Not limited to the particular right to freedom from torture, inhuman or degrading treatment or punishment, but also concerning all fundamental rights and freedoms, the highly influential U.S. Declaration of Independence, under its preamble, stated that:

*“We hold these truths to be self evident, that all men are created equal, that they are endowed by their creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness. That to secure these rights governments are instituted among men, deriving their just powers from the consent of the governed. That whenever any form of government becomes destructive to these ends, it is the right of the people to alter or to abolish it...”*³⁶

Following this foundational declaration, on September of 1789, the first congress of the United States proposed to the state legislatures 12 amendments to the constitution. The first two proposed amendments were not ratified. Article 3 to 12, however, ratified by three-fourth of the state legislatures, constitute the first 10 amendments of the constitution, known as the Bill of Rights. Out of these 10 amendments, the 8th amendment provides that “excessive bail shall not be required, nor excessive fines imposed, *nor cruel and unusual punishments inflicted.*”³⁷

At first, the US Supreme Court was inclined to a historical style on interpretation, determining whether or not a punishment was “cruel and unusual” by looking at see if it or a sufficiently similar variants was considered “cruel and unusual” in 1789.³⁸ But in *Weems Vs United States*,³⁹ it was concluded that the framers had not merely intended to bar the reinstatement of procedures and techniques condemned in 1789, but had intended to prevent the authorization of “a coercive cruelty being exercised through other forms of punishment.” The 8th Amendment therefore was of an “expansive and vital character”⁴⁰ and, in the words of a later court, “it [cruel and unusual] must draw its meaning from the evolving standards of decency that mark the progress of a maturing society.”⁴¹

³⁶ Declaration of Independence, The Unanimous Declaration of the Thirteen United States of America, Adopted in Congress, 4 July 1776.

³⁷ The Bill of Rights, amendments to the US Constitution, The U.S. National Archives and Record Administration, <http://www.archives.gov/>.

³⁸ *Wilkerson V. Utah*, 99 U.S.130 (1878); *In re Kemmner*, 136 U.S. 436(1890); and *Weems V. United States*, 217 U.S.349, 368-72(1910).

³⁹ 217 U.S. 349(1910).

⁴⁰ *Id.*, para.376-77.

⁴¹ *Trop V. Dulles*, 356 U.S.86, 100-01(1958).

Even if difficulty would attend the effort to define, with exactness, the extent of the constitutional provision which provides that cruel and unusual punishments shall not be inflicted; but it is safe to affirm that punishments of torture [such as drawing and quartering, emboweling alive, beheading, public dissecting, and burning alive], and all others in the same line of unnecessary cruelty, are forbidden by that amendment to the constitution.⁴²

After all these worldwide efforts of condemning the practice of torture, inhuman or degrading treatment or punishment, however, in the twentieth century the practice began to raise its ugly head again. Much of modern political history consists of variety of extra ordinary situations that twentieth century governments have imagined themselves to face the extra ordinary measures they have taken to protect themselves. Paradoxically, in an age of vast state strength, ability to mobilize resources, and possession of virtually infinite means of coercion, much of state policy has been based upon the concept of extreme state vulnerability to enemies, external or internal.⁴³

This unsettling combination of vast power and infinite vulnerability has made many twentieth-century states, if not neurotic, but at least extremely ambiguous in their approach to such things as human rights and their own willingness (the states would call it ‘necessity’) to employ procedures that they would otherwise ostensibly never dream of. It is in this sense that torture, inhuman or degrading treatment or punishment may be considered as having a history, and its history is part of legal procedure as well as later governmental exercises of power, whether officially or unofficially.⁴⁴

2.3 THEORETICAL FOUNDATIONS OF THE FREEDOM FROM TORTURE, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

The underlying concept behind the right to freedom from torture, inhuman or degrading treatment or punishment is human dignity as by nature torture, inhuman or degrading treatment or punishment destructs the inherent dignity of mankind.

⁴² Wilkerson V. Utah, 99 U.S.130, 135(1878).

⁴³ Supra at note 2, p.7.

⁴⁴ Ibid.

The first definition of “dignity” in the Oxford English Dictionary, which goes back to the early thirteen century, is “the quality of being worthy or honorable; worthiness, worth, nobleness, excellence.” Other ethically and politically relevant senses include “honorable or high estate, position, or estimation; honor; degree of estimation, rank.” Dignity, in other words, indicates worth that demands respect. Dignity has, historically, usually been ascribed to an elite group; it has been tied particularly to high status or position and public recognition of rank. It was only recently-in the past two or three hundred years- has dignity been widely conceived as an attribute of all human beings.⁴⁵

The claim of human dignity is that simply being human makes one worthy of deserving of respect. Human rights are, according to the literal sense of the term, the rights that we have simply because we are human. Human rights would appear to have humanity or human nature as their source. Being human has been understood in various ways through history. Until recently, though, most understandings have stressed it as either being born into a particular group or living in a particular way. Today, in sharp contrast, by “human” we typically mean simply being a member of the species *Homo sapiens*. To have human rights, for example, to be free from torture, inhuman or degrading treatment or punishment, one need to be or to do nothing other than being a member of this species of *Homo sapiens*. Human rights can be understood to specify certain forms of social respect- goods, services, opportunities, and protections owed to each person as a matter of rights- implied by this dignity. And the practice of human rights provides a powerful mechanism to realize in the social world the underlying dignity of the person. Human rights thus are one particular mechanism- a particular set of practices- for realizing a certain class of conceptions of human dignity.⁴⁶

Human rights are not just abstract values such as liberty, equality, and security. They are rights, particular social practices to realize those values. A human right, for example, the right to be free from torture, inhuman or degrading treatment on punishment, thus should not be confused with the values or aspirations underlying it or with enjoyment of the object of the right. For example, prohibition against torture, inhuman or degrading treatment or punishment is an internationally

⁴⁵ Jack Donnelly, *Human Dignity and Human Rights, An Agenda for Human Rights*, Swiss Initiative to Commemorate the 60th Anniversary of the UDHR, University of Denver, USA, 2009, p.10.

⁴⁶ *Id.*, p. 9-11.

recognized human right. The fact that people are not tortured or treated inhumanly or degradingly, however, may reflect nothing more than a government's lack of desire. Even active protection may have nothing to do with a right (title) not to be tortured, or not to be treated inhumanly & degradingly.⁴⁷

Even though "human dignity" is alleged or criticized sometimes to be presented as a hopelessly vague notion, that itself is a vacuous - without bounds & ultimately is one incapable of explaining or justifying any narrower interest,⁴⁸ it is foundational, declaratory and undefined - something more like "a sort of axiom in the system or as a familiar and accepted principle of shared morality"; it is "a bedrock concept that resists definition in terms of something else."⁴⁹ In general, whatever the arguments may be, nobody contests that human dignity is a core foundational principle for the prohibition against torture, inhuman or degrading treatment or punishment.

☀ Is there good or bad torture. Inhuman or Degrading Treatment or Punishment?

Can 'preventive torture' be justified or excused in light of *the foundational principles of the freedom from torture, inhuman or degrading treatment or punishment*? Some argue that since torture, inhuman or degrading treatment or punishment is against human dignity which is the foundational value of all human rights; it cannot be justified or excused even if it is conducted for good reasons. Others argue that preventive torture must be permitted if it is done to protect an innocent person from severe damage or death. The latter have shown a tendency of classifying torture, inhuman or degrading treatment or punishment as good or bad while the former condemned the act at all.⁵⁰ Both of the arguments have tried to test the prohibition in light of its foundational principle or value.

⁴⁷ Ibid.

⁴⁸ Bagaric, Mirko and Allan James, The Vacuous Concept of Dignity, *Journal of Human Rights* 5(2), 2006, P.257-270.

⁴⁹ Supra at note 45, p. 83.

⁵⁰ Florian Jessberg, Bad torture - good torture? *Journal of International Criminal Justice*, Vol. 3, Oxford University press, 2005, p.1061.

For example; on 27 September 2002, law student Magnus Gaefgen kidnapped 11- year-old Jakob Von Metzler, the son of a senior bank executive, killed him in his apartment and hid the dead body close to a lake near Frankfurt. In accordance with his plan, he forwarded a letter to the boy's family in which he demanded one million Euro in return for the release of the child. Three days after the boy's disappearance, Gaefgen was arrested after being observed picking up the ransom. During his interrogation, the suspect gave evasive or misleading answers concerning his involvement in the abduction and provided no information about the whereabouts or health states of the boy. Finally, the day after the arrest, Frankfurt police Vice-President, Wolfgang Daschner, who was responsible for the investigation, ordered that pain be inflicted on the suspect, without causing injuries, under medical supervision and subject to prior warning, in order to save the life of the boy. Accordingly, a subordinate Police Officer told Gaefgen, who was still in police custody, that the police were prepared to inflict pain on him that "he would never forget" if he continued to withhold information concerning the whereabouts of the boy. Under the influence of this secret, Gaefgen gave full particulars of the whereabouts of the boy. The actual infliction of pain, which in fact had been arranged by a specially trained police officer, was not necessary. Shortly thereafter, police officers found the body of the boy.⁵¹ On 28 July 2003, Gaefgen was Convicted of extortionate abduction and murder, and sentenced to life imprisonment.⁵² Since Daschner has attached to the official record a report in which he acknowledged his order to use force, the incident rapidly became public and unleashed a stormy debate in Germany about police interrogation techniques. It was then the public including Politician, representatives of the judicial system, and scholars divided on the question of whether the threat to inflict pain in the Daschner case constituted a criminal act or was instead justified or indeed excusable.⁵³

Despite their hot debate, two premises were, however, shared by all commentators. First, it was generally accepted that the state has no authority to legalize acts of torture, whatever the circumstances. Secondly, there was consensus that 'preventive torture' infringes the dignity of the human being as laid down in Article 1(1) of the German Constitution and as specified, for example, in Article 104(1) of the constitution, Article 3 of the European Convention of Human

⁵¹ Ibid.

⁵² The court held that the threat to inflict pain was unlawful and violated Art.1 and 104(1) of the German Constitution and Art.3 of ECHR. Consequently, the information provided by Gaefgen under the impression of the unlawful threat was not admitted as evidence.

⁵³ Supra at note 50, p. 1062.

Rights (ECHR), and the Convention against Torture and Other Cruel and Inhuman or Degrading Treatment or Punishment. The point where commentators disagreed was about how to assess individual criminal responsibility in this situation.

A majority of scholars argued that, as a matter of principle, ‘preventive torture’ could not be justified or excused by the fact that it is applied in order to prevent the death of innocent persons. This view was based on two main arguments.⁵⁴ First, the dignity of the human being is inviolable under any circumstances, and torture is the most severe violation of human dignity. Human dignity not only ranks at the top of the basic human rights guaranteed in the German constitution, including the right to life, but it also may not be subjected to any balancing tests. The inviolability of human dignity leaves no room for balancing opposing interests, such as the right to life of a hostage. As a consequence for no reason is a state permitted to resort, through its agents, to actions infringing human dignity. Absolute prohibition on the infringement of human dignity establishes the foundation for the assessment of these situations under criminal law. Criminal responsibility for acts of torture cannot be excluded by the fact that the use of physical or psychological violence is required to prevent harm to other interests or rights. Secondly, any exception to this position would implicate the risk of abuse and open the door to a dangerously slippery slope. Only a clear position that establishes criminal liability for all acts of torture without exception can guarantee that torture is not routinely applied in difficult cases.⁵⁵

According to the opposing view, the application of ‘preventive torture’ may be justified or excused if it is the last resort to prevent the death of innocents. This opinion was mainly based on the assumption that the omission of torture in situations like the Daschner case infringes the human dignity of the hostage or the victim of the terrorist attack. It was submitted that not only does torture itself violate human dignity of the kidnapper, but the omission of torture also infringes the human dignity of the hostage. According to this view, the conflict between the dignity of the kidnapper and the dignity of the hostage has to be resolved in favor of the latter.⁵⁶

⁵⁴ *Id.*, p. 1063.

⁵⁵ *Ibid.*

⁵⁶ *Id.*, p. 1064.

Finally, the Frankfurt Regional Court, on 20 December 2004, pronounced a judgment - “*guilty, but not to be punished*” against Vice President Daschner and his subordinate after proving the non existence of reasons for justification or excuse; but having massive mitigating circumstances. The ‘*guilty, but not to be punished*’ verdict of the Frankfurt Regional Court deserves respect in its effort to balance the strict prohibition of torture under constitutional and international law, on the one hand, against the undeniable conflict with which state officials may be confronted if the use of physical or psychological violence against a suspect is, at least subjectively, the last resort to save innocent life.⁵⁷

This was an instance in which torture [inhuman or degrading treatment or punishment, for that matter] had been tested in light of its one of the core foundational values, i.e., human dignity. Beside human dignity, the value of ‘human security’ can also be properly considered as additional foundational principle of the prohibition against torture, inhuman or degrading treatment or punishment.

In common usage, the word “security” denotes freedom from various risks. The Oxford English Dictionary defines the word as, “the condition of being protected from or not exposed to danger; safety; freedom from anxiety or apprehension; a feeling of safety or freedom from or absence of danger.”⁵⁸ The idea of security thus contains two key elements; an orientation to future risks and a focus on risks of falling below some critical threshold of deprivation. Security is not synonymous with the average level of future well-being, but instead it also focuses on the risk of being severely deprived. Because security is based on the risk of severe deprivation, it depends heavily on the concept of poverty- a generalized poverty as the deprivation of any basic capabilities. For that matter, a person is in a state of generalized poverty - lost his/her human security - whenever he or she dips below the pre- defined threshold in any of the component areas of well being, including the exposure to the lack of freedom from torture, inhuman or degrading treatment or punishment, when a person treated below the minimum standards required under international law.⁵⁹

⁵⁷ Id, p. 1066.

⁵⁸ Gary King and Christopher J. L. Murray, Rethinking Human Security, Political Science Quarterly, Vol. 116, No. 4, 2001/02, p. 592.

⁵⁹ Id, p. 593-594.

Therefore, it can be perfectly stated that human security is one of the foundational value of the prohibition against torture, inhuman or degrading treatment or punishment, since it is through, among others, this freedom that the core principle, human security- for the satisfaction of which everyone exert its full effort- can be achieved.

2.4 THE NATURE AND CONTENT OF THE RIGHT TO FREEDOM FROM TORTURE, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

According to Black's Law Dictionary "freedom" means the state of being free.⁶⁰ Therefore, it is needless to define "freedom from torture, inhuman or degrading treatment or punishment" in another manner as it can be easily understood to mean the state of being free - or protected - from torture, inhuman or degrading treatment or punishment (as the latter terms defined under section 2.1). In general, this freedom has its own specific nature and content that can be discussed as follows.

✚ ***The nature of being generally prohibited:*** The prohibition of torture, inhuman or degrading treatment or punishment is found in a number of international human rights and humanitarian treaties. In addition to being mentioned under these general human rights & humanitarian treaties, a number of treaties have also been drawn up specifically to combat torture, inhuman or degrading treatment or punishment.

Torture is generally i.e. under all circumstances, and absolutely i.e. without reservation, prohibited under international law as it was considered to be an enemy of the whole human race. Domestic courts have also reflected this fact. In this regard it is sufficient to mention that in *Filartiga*⁶¹ a US Court held that 'the torturer has become, like the pirate or the slave trader before him, *hostis humani generis*, an enemy of all mankind'. This prohibition operates irrespective of circumstances or attributes such as the status of the victim or, if he or she is a criminal suspect,

⁶⁰ Supra at note 4.

⁶¹ *Filartiga V.Pena-Irala*, United States, US Court of Appeals, Second Circuit, 30 June 1980, 630 F2d 876 (2nd Circ. 1980).

upon the crimes that the victim is suspected of having committed.⁶² State officials are prohibited from inflicting, instigating or tolerating the torture or other cruel, inhuman or degrading treatment or punishment of any person. An order from a superior officer or a public authority may not be invoked as a justification for torture.⁶³

✚ ***The nature of non-derogability:*** The prohibition of torture, inhuman, or degrading treatment or punishment, i.e., the right to physical and spiritual integrity, has taken on a special status in the protection of human rights under international law. Not only it is non-derogable in the various regional and universal declarations and conventions, it is also ensured without any restriction whatsoever.⁶⁴

There are no circumstances in which states can set aside or restrict this obligation, even in times of war or other emergency threatening the life of the nation, which may justify the suspension or limitation of some other rights. Article 4 of the ICCPR, Articles 15 of ECHR and Article 27 of ACHR provide, in certain strictly defined circumstances, that states may derogate from certain specified obligations, to the extent that is strictly required by the exigencies of the situation. No derogations are permitted, however, with respect to articles prohibiting torture or cruel, inhuman or degrading treatment or punishment.⁶⁵ States are restricted from making derogations which may put individuals at risk of torture or ill-treatment, for example, by allowing excessive periods of incommunicado detention or denying a detainee prompt access to the court.⁶⁶

⁶² The UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Art 2. Further, it is explained on the Report of the Committee against Torture, *Mutambo V. Switzerland* (13/1993) GAOR, 49th session supplement No. 44(1994); *Khan V. Canada* (15/1994), GAOR, 50th session, supplement No.44 (1945); and *Ireland V. UK*, ECtHR Series A 25,(1978); *Chahal V.UK*, ECtHR, Judgment 15 November 1996; *Tomasi V. France*, ECtHR, Series A, No. 241-A(1993);*Selmouni V. France* ECtHR, Judgment 28July 1999.

⁶³ The UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Art 2; This principle was also enshrined in the charter of the Nuremberg and Tokyo Tribunals, 1946, and subsequently reaffirmed by the UN General Assembly. It can also be found in the Statutes of the International Criminal Tribunal for Rwanda and Yugoslavia and, with minor modification in the Statue of the ICC.

⁶⁴ Manfred Nowak, UN. Covenant on Civil and Political Rights; CCPR commentary, N.P. Engel Publisher, Arlington, 1993, p. 126.

⁶⁵ The African charter contains no emergency clause at all and therefore allows no such derogation.

⁶⁶ Human Rights Committee General Comment No. 29, Derogations during a state of emergency (Art.4), adopted at the 1950th meeting, on 24 July 2001, para 16.

Under ICCPR the prohibition against torture, inhuman or degrading treatment or punishment is provided in absolute and unqualified manner. It is worthy to mention “the Siracusa Principles” and “the Paris Minimum Standards” when we deal with the concept of derogation. The Siracusa principles were adopted in the year 1984 in Siracusa, Italy. International law experts from seventeen countries met, to consider the ICCPR’s limitation and derogation provisions.⁶⁷ The Siracusa principles, although are an outcome of a non-governmental conference, contains a valuable reference for the interpretation of the derogation clause provided in the ICCPR.⁶⁸ In 1985, the International Law Association adopted a set of minimum standards to govern the declaration and administration of a state of emergency. These Paris Minimum Standards are set with the purpose of providing a guideline to both government and non-governmental organizations in state of emergency.⁶⁹ Generally, a test in light of these and other standards have proved that the prohibition against torture, inhuman or degrading treatment or punishment is absolute and protected from being a subject of suspension in a state of emergency.

❏ ***The nature of being Jus Cogens:*** Jus Cogens is a technical name given to the basic principle of international law which states are not allowed to contract out.⁷⁰ The concept of jus Cogens is founded up on an acceptance of fundamental and superior values within the system and in some respects is akin to the notion of public order or public policy in the domestic legal orders. Some examples of Jus Cogens have been given particularly during the discussion by the International Law Commission on the topic, and they include unlawful use of forces, piracy, slave trading, and recently torture.⁷¹

For a rule to qualify as jus Cogens, a two stage approach is involved in light of the Vienna Convention on the Law of Treaties:⁷² the first is the establishment of the proposition as a rule of general international law and, second, the acceptance of that rule as a peremptory norm by the

⁶⁷ S. Dolezal, ‘Notes and comments, the systematic failure to interpret articles IV of the ICCPR: Is there a public emergency in Nigeria?’, *International Law Review*, Vol.15, American University, 2000, p.1163.

⁶⁸ Supra at note 64, p. 76.

⁶⁹ Supra at note 67.

⁷⁰ Vienna Convention on the Law of Treaties, adopted on 22 May 1969 and opened for signature on 23 May 1969 by the United Nations Conference on the Law of Treaties, entry into force 27 January 1980, Article 53, 64, and 71.

⁷¹ H. J. Steiner & P. Alston, *International Human Rights in Context: Law, Politics, Morals* (2nd ed.), Oxford University Press, 2000, p.77.

⁷² Supra at note 70, Article 53.

international community of states as a whole.⁷³ General international law is binding on all states, even if they have not ratified a particular treaty. Therefore, rules of jus Cogens cannot be contradicted by treaty law or by other rules of international law.⁷⁴

The fact that torture is a Jus Cogens has practical consequences for the community of states in general. It is indicated in many instances, including in Ex parte Pinochet Uguarte case [2000], that ‘the Jus Cogens nature of the international crime of torture justifies states in taking universal jurisdiction over torture whenever it is committed.’⁷⁵ The proper interpretation that can be given to the above observation is that every state has a duty to punish the crime of torture for so long as the perpetrators are within the jurisdiction of that state. It does not matter whether the offence was committed within that or in another state. It also does not matter whether the crime was committed against the national of a particular state or not.⁷⁶

☒ ***The nature of being a war crime:*** Torture and other ill-treatments of any person in the power of another party in times of armed conflict are also banned as a war crime under the laws of armed conflict (humanitarian law). War crimes include ‘grave breaches’ of the Geneva Conventions of 1949, committed in the course of an international armed conflict against persons or property protected by the conventions and, as confirmed by the International Criminal Tribunal for the former Yugoslavia (ICTY),⁷⁷ violations of common Article 3 of Geneva conventions. The prohibition against torture in humanitarian law is expressly found in common Article 3 of the Geneva Conventions and in various provisions of the four Geneva Conventions and ICC statute.⁷⁸

☒ ***The nature of being a crime against Humanity:*** Crimes against humanity are acts committed as part of a widespread or systematic attack against a civilian population, whether or not they are committed in the course of an armed conflict. Torture is also considered to be a

⁷³ Malcom Shaw, International Law (4th ed.): Grotius publications limited, Cambridge,1997, p.97.

⁷⁴ Supra at note 18, p. 8.

⁷⁵ Ex Parte Pinochet Uguarte (No.3)[2000] 1A.C 147,198 (HL 1999).

⁷⁶ Bacchus J, ‘The Garden’ 28 Fordahm International Law Journal, Vol. 308, January 2005, para 382.

⁷⁷ Prosecutor V. Tadic, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, case No. IT-94-I-AR72, 2 October 1995, para 134.

⁷⁸ See the sub section on “Humanitarian instruments”, below at p. 56.

crime against humanity when the acts are perpetuated as part of a widespread or systematic attack against a civilian population, whether or not they are committed in the course of an armed conflict.⁷⁹ Further, article 7 of the Rome Statute also includes torture and rape within the jurisdiction of ICC.⁸⁰

❏ ***The nature of being unworthy of immunities, amnesties, and statutes of limitation:*** The judiciary has a duty to carry out, within their realm of jurisdiction, the international obligations to investigate, bring to justice and punish the perpetrators of crimes of torture. No one should be allowed to claim exemption from this because of their official capacity. Amnesties and other similar measures which prevent the perpetrators of gross human right violations, such as torture, from being brought before the courts, tried and sentenced are incompatible with state obligations under the international human rights law, including the obligations to investigate, bring to justice and punish those responsible for gross human rights violations.⁸¹

The statute of the International Criminal Court (ICC) specifies that it ‘shall apply equally to all persons without any distinction based on official capacity. In particular, official capacity as a head of state or government, a member of a government or parliament, an elected representative or a government official shall in no case exempt a person from criminal responsibility under this statute, nor shall it, in and of itself, constitute a ground for reduction of sentence’.⁸²

The Human Rights Committee has also stated: “The committee has noted that some states have granted amnesty in respect of acts of torture. Amnesties are generally incompatible with the duty of states to investigate such acts; to guarantee freedom from such acts within their jurisdiction; and to ensure that they do not occur in the future”.⁸³ It has stressed that these types of amnesty help to create a climate of impunity for the perpetrator of human rights violations and undermine efforts to re-establish respect for human rights and the rule of law.⁸⁴ Further, the Vienna

⁷⁹ Antonio Cassese, *International Criminal Law*, (2nd ed.), Oxford University Press, New York, 2008, P.150.

⁸⁰ Rome Statute of the International Criminal Court, 17 July 1998, Art 7 (1) (f) and (6).

⁸¹ Supra at note 18, P.81

⁸² Supra at note 80, Article 27(1)

⁸³ Human Rights Committee, General Comment 20, para 15.

⁸⁴ Concluding Observations of the Human Rights Committee: Argentina, 5 April 1995, UN Doc CCPR/C/79/Add.46; A/50/40, para 146.

Declaration of the World Conference on human rights called on states to ‘abrogate legislation leading to impunity for those responsible for grave violations of human rights such as torture and prosecute such violations, thereby providing a firm basis for the rule of law’.⁸⁵

The Inter-American Court of Human Rights has stated that ‘it is unacceptable to use amnesty provisions, statues of limitations or measures designed to remove criminal liability as a means of preventing the investigation and punishment of those responsible for gross violations of human rights such as torture, summary, extra-legal or arbitrary executions and disappearances, all of which are prohibited as breaches of non-derogable rights recognized under international human rights law.’⁸⁶

The Statute of ICC provides that ‘immunities or special procedural rules which may attach to the official capacity of a person, whether under national or international law, shall not bar the court from exercising its jurisdiction over such a person.’⁸⁷ It further states that: ‘the crimes within the jurisdiction of the court shall not be subject to any statute of limitations.’⁸⁸ Although additional protocol II to the four Geneva Conventions assesses that states should grant ‘the broadest possible amnesty’ to persons who have participated in an armed conflict following the end of hostilities,⁸⁹ this is not believed to have been intended to provide immunity for acts amounting to war crimes as it is not in line with the general nature of the instrument.

Regarding the content of the right to freedom from torture, inhuman or degrading treatment or punishment, this right mainly encompasses the concepts of; [1] the prohibition against torture; [2] the prohibition against inhuman treatment; [3] the prohibition against inhuman punishment; [4] the prohibition against degrading treatment; and [5] the prohibition against degrading punishment. Since each of these elements covers wide and complex concepts worthy of being discussed in detail, the next successive sections will be devoted to deal with these contents, using different approaches.

⁸⁵ Vienna Declaration and Program of Action, World Conference on Human Rights, Vienna 14-15 June 1993, UN Doc. A/CONF.157/23, 12 July 1993, para 60.

⁸⁶ Case of Barrios Altos (Chumbipuma Aguirre and others V. Peru), Inter – Am Ct.H.R., Judgment 14 March 2001, para 41.

⁸⁷ Supra at note 80, Art 27 (2).

⁸⁸ Id, Art 29.

⁸⁹ Additional Protocol II (of 1977) to the Geneva Conventions of 1949, Article 6(5).

2.5 TREATMENT Vs PUNISHMENT

“Treatment”, in its ordinary dictionary definition, means ‘the action or the manner of dealing with something often in a specified way’ or ‘the act, manner or method of handling or dealing with someone or something.’⁹⁰ Thus, in our case, it can be defined as “the manner or method of handling prisoners or dealing with the administration of persons under detention or imprisonment.”

In its technical sense, treatment is best regarded not as a passive process applied only by a doctor but as any approved measure used by anyone or any group to change a person in a desired direction.⁹¹ In the full sense of the concept treatment, it is hoped that it will be the person himself who desires the change, otherwise the change must extend only to abandonment of unlawful or manifestly self as well as community damaging behavior. This definition of treatment clearly includes that variety of punishments (perhaps better called conditioning) which are rationally applied according to the rules of learning, and may sometimes includes solitary confinement.⁹²

According to Dr. Manfred Nowak, the term “treatment” is broader than the term “punishment”. However, in its legal sense treatment does not cover degrading or otherwise situations arising from socio-economic conditions. Thus, as well stated, “treatment” represents an act or an omission of an individual, one done at his request, or one that can at least be attributed to him or her.⁹³ Treatment and punishment are not opposites. There is no need to displace one by the other, rather than to use both rationally.⁹⁴

Punishment, in its literal meaning, can be defined as “the infliction of penalty: retributive suffering, pain or loss”.⁹⁵ The Black’s Law Dictionary defines punishment as a sanction- such as a fine, penalty, confinement, or loss of property, right or privilege -assessed against a person who has violated the law. “Punishment in all its forms is a loss of right or advantage consequent on a

⁹⁰ Supra at note 3.

⁹¹ P.D. Scott, Punishment or Treatment: Prison or Hospital; British Medical Journal, Vol. 2, 1970, p.168.

⁹² Ibid.

⁹³ Supra at note 64, p.128.

⁹⁴ Supra at note 91.

⁹⁵ Supra at note 3.

breach of law. When it loses this quality it degenerates into an arbitrary act of violence that can produce nothing but bad social effects". (Glanville Williams, Criminal law 576, (2nd ed. 1961).⁹⁶

The traditional utilitarian theory holds that acts productive of the greatest net good are right. Utilitarian differ regarding the states of affairs they consider good, but the good is usually equated with human happiness. In determining an act's rightness, only the goodness of the consequences is considered. Acts of punishment, like other types of acts are right if they produce well as much as possible. Many utilitarian maintain that the use of punishment is justified because it deters crime, isolates the criminal from society, aids in the criminals' reform, and satisfies society's desire for revenge.⁹⁷ However, there is a debate against utilitarian theory on the ground that since any punishment cause harm to those who receive it, it is necessary for the utilitarian to show that the good results of punishment outweigh the harm produced (including the debate over capital punishment).⁹⁸

Based on its purpose, punishment can be classified in to four; deterrent punishment, preventive punishment, reformative punishment and retributive punishment.

↳ *Deterrent punishment* - is a punishment the purpose of which is to deter others from committing crimes by making an example of the offender so that like-minded people are warned of the consequences of crime.

↳ *Preventive punishment*- is a punishment the purpose of which is to prevent a repetition of wrong doing by disabling or incapacitating the offender.

↳ *Reformative punishment*- is a punishment the purpose of which is to change the character of the offender.

↳ *Retributive punishment*- is a punishment the purpose of which is to satisfy the community's retaliatory sense of indignation that is provoked by injustice.⁹⁹

⁹⁶ Supra at note 4.

⁹⁷ Milton Goldinger, Punishment and human rights, Schenkman Books Inc, USA, 1991, p. 2.

⁹⁸ Ibid.

⁹⁹ Supra at note 4, p. 1248.

Saving all the above stated particular meanings and types of treatment and punishment in one hand, there are different views regarding the link between “treatment” and “punishment”, on the other hand. In “*The Judge 32-33 (1979)*” Patrick Delvin stated that:

*“In the treatment of offenders there is a clear and unmistakable line of division between the function of the judge and that of the penologist. I should modify that: the law is clear if it is first made clear in what sense the word ‘treatment’ is being used. For in this context the word can be used in two senses, one wide and the other narrow. Let me take the wide meaning first. The object of a sentence is to impose punishment. For ‘punishment’, a word which too many connote nothing but retribution, the softer word ‘treatment’ is now frequently substituted; this is the wider meaning. The substitution is made, I suppose, partly as a concession to the school which holds that crime is caused by mental sickness, but more justifiably as a reminder that there are other methods of dealing with criminal tendencies besides making the consequences of crime unpleasant”.*¹⁰⁰

Others also tried to show the difference between “treatment” and “punishment” by citing examples and elaborations. For instance, the difference between treatment and punishment can be explained through the difference of ‘degrading treatment’ and ‘degrading punishment’ in which while ‘degrading treatment’ can be considered to exist if the degrading acts are not being done for the purpose of punishing the victim for a prior act, such as for a criminal or other violation, ‘degrading punishment’ can be considered to exist if the degrading acts were done for the purpose of punishing the victim for his prior conduct, such as for a criminal conviction.¹⁰¹

2.6 THE DIFFERENCE BETWEEN THE THREE TERMS: TORTURE, INHUMAN TREATMENT/ PUNISHMENT, AND DEGRADING TREATMENT/ PUNISHMENT

The exact boundaries between ‘torture’ and other forms of ‘cruel, inhuman or degrading treatment or punishment’ are often difficult to identify and may depend on the particular circumstance of the case and the characteristics of the particular victim. Both terms cover mental

¹⁰⁰ Id, p.1247.

¹⁰¹ H. Victor conde’, A Handbook of International Human Rights Terminology, University of Nebraska Press, USA, 1999, p.32.

& physical ill-treatment that has been intentionally inflicted by or with the consent or acquiescence of, the state authorities.¹⁰²

In some case, certain forms of ill-treatment or certain aspects of detention which would not constitute torture on their own may do so in combination with each other. It is only the practice of the European Court of Human Right that explicitly uses the notion of relative severity of suffering as relevant to the borderline between ‘torture’ and ‘inhuman treatment’. The usual approach is to use the existence or otherwise of the purposive element to determine whether or not the behavior constitutes torture.¹⁰³

The Human Right Committee has stated that ‘The Covenant [ICCPR] does not contain any definition of the concepts covered by article 7, nor does the committee consider it necessary to draw up a list of prohibited acts or to establish sharp distinction between the different kinds of punishment or treatment; the distinction depend on the nature, purpose and severity of the treatment applied.’¹⁰⁴

Torture is understood as acts of public officials that intentionally inflict severe physical or mental pain or suffering in order to fulfill a certain purpose. Other actions or omissions are not considered to be torture but rather, depending on the kind, purpose and severity, cruel, inhuman or degrading treatment; in these case, a certain minimum of pain or suffering is imposed, but one or several of the essential elements of the term torture are lacking; intent, fulfillment of a certain purpose and/or the intensity of severe pain.¹⁰⁵

What the most difficult is the distinction of torture from cruel and inhuman treatment according to the degree of the severity of pain inflicted. Whether a physical or mental pain can be termed “severe” also depends on the victim’s subjective feeling. In this regard, the qualification can be made only in a given case by carefully balancing all circumstances, including the victim’s

¹⁰² Supra at note 18, p.12.

¹⁰³ Ibid.

¹⁰⁴ Human Rights Committee, General Comment 20, Article 7 (44th session, 1992), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc.HR 1/GEN/1/Rev.1.at 30 (1994), para 4.

¹⁰⁵ Supra at note 64, P.129-130.

subjective pain tolerance. For example, in the Northern Ireland case¹⁰⁶ the European Court of Human Rights classified the ‘five techniques’ [i.e. techniques used by British security forces during interrogations in Northern Ireland- these techniques include (1) hooding detainees, (2) subjecting them to constant and intense noise, (3) depriving them of sleep, (4) depriving them of sufficient food and drink, and (5) making them stand for long period on their toes against a wall in a painful posture] ‘only’ as inhuman treatment, holding that they “did not constitute a practice of torture since they did not occasion suffering of the particular intensity and cruelty implied by the word torture.”¹⁰⁷

There is also another example showing this classification, for instance, in one particular case an individual taken into custody in Austria and left unvisited by the supervisory authorities. He survived twenty days without food or water in constant fear of slowly starving to death. The decision of Austrian Supreme Court states that , ‘in view of the severe physical and mental pain suffered by the prisoner at the hands of the state agents, this is a case of inhuman or cruel treatment, but three elements are lacking for the offence of torture; active undertaking, intent & purposefulness.’¹⁰⁸ Note that, this decision can be interpreted to the effect that the “intent” requirement of torture is impliedly agreed to be “specific intent” rather than general intent which could be applicable for other ill-treatments.

If one person intentionally mistreats another person severally without there by pursuing some purpose (e.g. purely sadistically), then this is not torture rather cruel or inhuman treatment. The imposition of severe pain for the sole reason of discrimination is, however, torture.¹⁰⁹ Inhuman and/or cruel treatment include all forms of imposition of severe suffering that are unable to be qualified as torture for lack of one of its essential elements. They also cover those practices imposing suffering that does not reach the necessary intensity. Particularly harsh conditions of detentions may represent inhuman treatment.¹¹⁰

¹⁰⁶ Decision of the ECtHR of 18 January 1978 in the Northern Ireland case (Ireland V. United Kingdom), Series A. 25 (1978), para. 66.

¹⁰⁷ Supra at note 64, P.130-131.

¹⁰⁸ The decision of the Supreme Court of Austria, 20 May 1981, in EuGRZ 571.

¹⁰⁹ Supra at note 64, p. 130.

¹¹⁰ Id, p.132.

In two cases against Madagascar, where South African nationals were forced to spend several months incommunicado in tiny cells (1 and ½ x 2m), at times without light or chained to a bed spring, the committee (Human Right Committee) found inhuman conditions of detention within the meaning of Art.7 of ICCPR.¹¹¹ Also inhuman is detention in an overfilled cell illuminated constantly by artificial light and where during the rainy season water floods the floor up to 10cm high, as shown in *Buffo Carballal V. Uruguay*.¹¹²

Degrading treatment is the weakest level of violation in relation to the other two- torture and other cruel or inhuman treatment. The severity of the suffering imposed is of less importance here than the humiliation of the victim, regardless of whether this is in the eyes of others or those of the victim himself or herself.¹¹³ The Austrian constitutional court has consistently held treatment to be degrading when it is characterized by “a gross disregard for the victim as a person that interferes with human dignity”.¹¹⁴ In this regard, the pivotal point is the circumstances of the individual case and the principle of proportionality. In addition, the Austrian constitutional court has even deemed mere hand cuffing, slapping or hair pulling to be degrading treatment when this contradicts the principle of proportionality in light of the specific circumstances of the case. Moreover, it is well established fact that legislative or administrative discrimination may also represent degrading treatment.¹¹⁵ In *Conteris V. Uruguay*, the Human Rights Committee expressly designated as degrading treatment within the meaning of Art. 7 (of ICCPR) certain arbitrary prison practice in the “Libertad” prison in Montevideo aimed at humiliating prisoners and making them feel insecure.¹¹⁶

For more elaboration, the CAT contemplates torture as falling at the extreme end of a spectrum of pain inducing acts. This hierarchy of ill-treatment originated in the Greek case, a 1969 decision of the European Commission on Human Rights (ECmHR).¹¹⁷ Fifty three individuals, along with three governments [Denmark, Norway & Sweden] on behalf of their citizens, alleged torture and ill-treatment during detention by the Greek government in Athens, Piraeus, Salonica

¹¹¹ *Marais V. Madagascar*, No.49/1979; and *Wight V. Madagascar*, No.115/1982.

¹¹² *Buffo Carballal V. Uruguay*, No. 33/1978, and *Massiotti V. Uruguay*, No.25/1978.

¹¹³ *Supra* at note 64, p.133.

¹¹⁴ The judgment of the ECtHR of 25 April 1978 in *Tyres*, series A.26.

¹¹⁵ *Supra* at note 64.

¹¹⁶ *Id*, p.133.

¹¹⁷ The Greek case, Year Book of the European Convention on Human Rights, Vol. 12, 1969.

and Crete. The complaints relied on the European Convention on Human Rights, which prohibits both “torture” and “inhuman or degrading treatment or punishment,” though without defining those terms.

In its decision in the case, the commission elaborated on what distinguished “torture” from “inhuman or degrading treatment”: “It is plain that there may be treatment to which all these descriptions apply, for all torture must be inhuman and degrading treatment, and inhuman treatment also degrading. The notion of inhuman treatment covers at least such treatment as deliberately cause severe suffering, mental or physical, which, in the particular situation, is unjustifiable..... The word “torture” is often used to describe inhuman treatment, which has a purpose, such as obtaining information or confession, or the infliction of punishment, and is generally an aggravated form of inhuman treatment.”¹¹⁸

This progression of severity- from degrading treatment, through inhuman treatment to torture- create a hierarchy of harms with torture as the most egregious. Since the Greek Case, the ECmHR has utilized this hierarchy concept in a number of decisions. The ECmHR stated that “the distinction between torture and inhuman or degrading treatment derived principally from a difference in the intensity of the suffering inflicted... The term ‘torture’ attached a special stigma to deliberate inhuman treatment causing very serious and cruel suffering.”¹¹⁹

Unlike the European Convention, the CAT does define torture, but it too treats it as a particularly egregious subcategory of cruel, inhuman or degrading treatment. The first draft of the CAT defined torture as an “aggravated and deliberate form of cruel, inhuman or degrading treatment or punishment.”¹²⁰ While this explicit statement of the hierarchical relationship between torture and other cruel, inhuman or degrading treatment was removed from the later versions, the concept remains as partly explained through Art.16 of CAT.¹²¹

¹¹⁸ Ibid.

¹¹⁹ Supra at note 8, p. 13.

¹²⁰ Draft International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, submitted by Sweden, U.N.DOC.No. E/CN. 4/1285, Article 1, 1978. The 1975 Declaration included this same language.

¹²¹ Supra at note 8, p. 13.

Differentiating torture from other cruel, inhuman or degrading treatment carries legal repercussions as well as rhetorical ones. Under customary international law, torture is jus cogens- never permissible or justifiable under any circumstances. The CAT reaffirms this principle, providing that “no exceptional circumstance whatever may be invoked as a justification of torture.” However, other ill treatment does not hold this special legal status.¹²²

Concerning punishment which is cruel, inhuman or degrading ; since all punishments contain an element of humiliation and perhaps also inhumanity, an additional element of reprehensibility must also be present in order for it to qualify as a violation of the prohibition against torture, inhuman or degrading treatment or punishment. It is possible to raise corporal punishment as a violation of this prohibition, but it is question of the order public as to how long the death penalty, and also life imprisonment, can continue to be viewed as beyond the scope of application of Art.7 of ICCPR.¹²³

In General Comment 7/16, paragraph 2 and General Comment 20/44, paragraph 6 & 11, the Human Rights Committee indicated that prolonged solitary confinement, especially when the person is kept incommunicado, might violate Art.7. Similarly, particular circumstance of the death row phenomena may constitute cruel or inhuman treatment. In General Comment 20/44, paragraph 6, the committee stressed that the capital punishment “must be carried out in such a way as to cause the least possible physical and mental suffering”. With respect to the current language used in Article 6 and 9 of ICCPR, life imprisonment and capital punishment as such cannot be deemed a violation of Art.7 under a systematic interpretation of the covenant.¹²⁴

Under the current standard, such punishments as the pillory or caning¹²⁵ represent degrading punishment at the least. Further, the Human Rights Committee has placed under the prohibition of Art.7 excessive chastisement as an educational or disciplinary measure.¹²⁶ In addition, public

¹²² However, the ICCPR does not allow for exceptions in emergency situations for either torture or cruel, inhuman or degrading treatment or punishment. ICCPR, Arts. 4 & 7, G.A.Res. 2200 A (XXI), UN.DOC.A/6316 (1996), 999 U.N.T.S.171.

¹²³ Supra at note 64, p. 134.

¹²⁴ Ibid.

¹²⁵ Supra at note 114.

¹²⁶ Human Rights Committee General Comment 7/116, Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc.HR 1/GEN/1/Rev.1.at 30 (1982), para 2, and

executions contain an element of degradation now deemed a violation of Art 7. Severe corporal punishment as is recognized particularly under Islamic criminal law (amputation, castration, sterilization, blinding, etc.) without doubt qualifies as inhuman and/or cruel punishment. In especially cruel cases- in particular, with aggravated forms of carrying out a death penalty (e.g., stoning, and death on the wheel) the elements of torture are fulfilled since Art.1 of the UN Convention against Torture expressly lists punishment as one of the possible elements of the definition. In the application of Art.1 of the UN CAT, attention must, however be paid to the “lawful sanctions” clause set forth in the last sentence of Art.1. According to this, “Pain or suffering arising only from inherent in or incidental to lawful sanction” do not fall under the term “torture”.¹²⁷

2.7 KINDS OF TORTURE, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Article 1 of CAT provides for both physical and mental severe pain or suffering in defining torture. However, neither CAT nor other international instrument dealing with this right have mentioned a list of acts to be condemned as torture, inhuman or degrading treatment or punishment.

In its commentary on the Geneva Conventions, the International Committee of the Red Cross has stated ‘it is always dangerous to go into too much detail, especially in this domain. Whatever great the care taken in drawing up a list of all the various forms of infliction, it would never be possible to catch up with the imagination of future torturers who wished to satisfy their bestial instincts; the more specified and complete a list tries to be, the more restrictive it becomes. The form of wording adopted in relation to the prohibition of torture, inhuman or degrading treatment or punishment is flexible, and, at the same time, precise.’¹²⁸

General comment 20/44, Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc.HR 1/GEN/1/Rev.1.at 30 (1994) para 5.

¹²⁷ Supra at note 64, p.134.

¹²⁸ Jean Pietet, Commentary- IV Geneva Conventions relative to the protection of civilian persons in times of war, ICRC, 1958, p. 39.

Even if it is difficult and undesirable to list out all prohibited acts that can be considered as torture, inhuman or degrading treatment or punishment, exhaustively; the following acts can be considered as acts of torture, inhuman or degrading treatment or punishment. However, by no means this list of acts can be considered as comprehensive. Accordingly the acts include, but not limited to:

- *Physical acts that cause extreme and excruciating pain*, including prolonged and severe beating; poking and pinching, being dragged or lifted up by one's hair; being hung by one's legs or arms; having irritants like pepper blown in to one's eyes; being forced to remain in abnormal positions for prolonged periods of time while being kicked and hit; being scratched, marked and threatened with a knife or other sharp objects; burnt with cigarettes, hot light bulbs, and lit candles; having body limbs twisted/bent into abnormal and painful positions; exposure to cold and/or heat by being placed in a freezer for terrifying periods of time or being tied out in the hot sun for extended periods-sun burned; and, experiencing "falanga" which is beating to the soles of the victimized person's feet that causes severe and lingering pain which radiates up the legs in to the knees, hips, and back making walking difficult and painful.¹²⁹
- *Physical acts that cause extreme exhaustion* occurred with food and water deprivations; being kept wake all night; not allowed to sleep in a bed or have bedding for warmth; being placed in a room alone and bombarded with repetitive messages and/or glaring lights; subjected to prolonged and sever isolation, total silence, prolonged darkness and/or confined spaces; tied down for prolonged period of time; forced to slavery, etc.¹³⁰
- *Physical acts that can cause permanent disability, permanent loss, and/or disfigurement*, that can happen; for instance, when both ears of a victimized person are beaten at the same time as this causes severe pain and possible permanent hearing loss (telephono); with the twisting, pulling, or breaking of bones that can result in disability and/or disfigurement; with forced pregnancy or with forced abortions; and/or with the irreparable damage to a victimized child's woman's uterus that requires gynecological surgery, for instance, a hysterectomy.¹³¹

¹²⁹ Jeanne Sarson and Linda M. Donald, *Acts of Torture; Ritual abuse torture*, Truro, NS, Canada, 2003, p.7.

¹³⁰ *Ibid.*

¹³¹ *Id.*, p.7-8.

▪ *Physical acts that cause fear and terror of immediate death*; such as electrical shock suffering; suffocation to near death suffering; being choked to unconsciousness; treated with drawing by having one's face held under water or being submerged under water- in torture language this is called "submarino"; having a gun placed in one's mouth, vagina, and/or anus and hearing the clicking sound when the trigger is pulled; having a plastic bag placed over one's head and tied around one's neck- in torture language refers to having a dark bag or cloth tied over one's head as "hooding";¹³² being told to run out (for a child) into the traffic (if injury happens it will be called an accident); and/or being forced to inflict cruelty/killing of animals with the threat from the perpetrator that this could happens to the victim.¹³³

• *Sexualized acts inflicted on to victims* including using objects such as a gun, knife, broom or mop handle, tree branches, toys, plastic markers, and kitchen items such as a spoon or forks as tools of torture to forcibly penetrable the victimized person's body; using animals and fake and/or real insects, reptiles such as snakes and bugs to terrorize victims by placing these on/in the victim's body; forced bestiality with trained or "pet" dogs; and the forced exposure to and/or forced participation in the sexualized tortures of others; the use of body fluids as instruments of torture by forcing the victimized person to suck, eat, or drink animal and/or human vaginal fluid, sperm, blood, urine, feces; and/or forcing victimized persons to smear or be smeared with urine, blood, or feces; and rape.¹³⁴ In this regard it is important not to confuse purpose and motive of rape, especially in relation to determining rape as torture. The purpose of the rape is to humiliate the victim, and to intimidate others. It may be to obtain information from a third party. It is the reason the authorities have to condone or encourage the rapes, which are never purposeless. On the other hand, rape is committed for a combination of motives including the exercise of power, the infliction of humiliation, and lust, and even the perpetrator is not likely to know which is predominant.¹³⁵

It must be noticed that a recent study shows that the division of torture methods in to physical and non-physical (psychological) methods is artificial because, from the point of view of the

¹³² Thomas G., *Journey in to madness: Medical torture & the mind controllers*, Toronto: Banatam Press, 1988, p.1.

¹³³ *Supra* at note 129, p.8.

¹³⁴ *Supra* at note 129.

¹³⁵ Michael Peel (Edi.), *Rape as a Method of Torture*, Medical Foundation for the Care of Victims of Torture, 2004, p. 12.

psychological impact, both produce similar levels of symptoms.¹³⁶ However, it is also indicated under the study that the mental health consequences of torture to the individual are usually more persistent and protracted than the physical after effects.

While the most important physical consequence of torture is chronic and long-lasting pain experience in multiple sites; the *psychological problem* most often reported are psychological symptoms (anxiety, depression, irritability/ aggressiveness, emotional liability, self isolations, & withdrawal); cognitive symptoms (confusion/disorientation; memory and concentration impairment); and neurovegetative symptoms (lack of energy, insomnia, nightmares, sexual dysfunction, etc.). The most frequent psychiatric diagnoses are posttraumatic stress disorder (PTSD) and major depression, which have a high level of co-morbidity. Other anxiety disorders besides PTSD, such as panic disorder and generalized anxiety disorder, are frequently diagnosed. Further, longer-term effects include change in personality or world view, which are not adequately described in the diagnostic nomenclature.¹³⁷

The other category of acts, commonly named *pharmacological torture*, includes the administration of drugs to induce extreme pain or certain symptom of diseases. While drugs cannot force the truth, they can make one sick, chatty, relaxed, addicted, giddy, forgetful, restless, anxious, sleepy, sluggish, unconscious, incapacitated, uncomfortable or dead. They can cause pain. Brazilian tortures, for example, injected alcohol in to tongues (in 1940s) and in to the scrotum (in 1960s), and induces violent contradictions with drugs (in 1970s).¹³⁸

The specific classification of all the above acts as torture, inhuman or degrading treatment or punishment, however, requires the considerations of the particular case and the meaning accorded to torture, inhuman treatment or punishment, and degrading treatment or punishment on the above discussion.

¹³⁶ Quiroga J. Jaranson J., Torture, In Reyes G, Elhai JD, Ford JD., The Encyclopedia of Psychological Trauma, John Wiley & Son. Inc, 2008, p.2.

¹³⁷ Id, p.3.

¹³⁸ Darius M. Rejali, Torture & Democracy, Princeton University Press, New Jersey, 2007, p.390.

CHAPTER THREE

INTERNATIONAL AND REGIONAL LEGAL INSTRUMENTS DEALING WITH THE RIGHT TO FREEDOM FROM TORTURE, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT, AND THEIR ENFORCEMENT MECHANISMS

3.1 GENERAL INTERNATIONAL AND REGIONAL HUMAN RIGHTS AND HUMANITARIAN INSTRUMENTS DEALING WITH THE FREEDOM FROM TORTURE, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

The right to freedom from torture, inhuman or degrading treatment or punishment is found in a lot of international and regional human rights and humanitarian instruments. In addition to these general human rights and humanitarian instruments containing this freedom as one of their content, there are also a number of treaties that have been drawn specifically to prohibit torture, inhuman or degrading treatment or punishment. Those general international and regional human rights and humanitarian instruments dealing with the freedom from torture, inhuman or degrading treatment or punishment mainly includes, but not limited to, Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966), the African Charter on Human and Peoples' Rights (1981), the European Convention on Human Rights (1950), the American Convention on Human Rights (1978), the four Geneva Conventions (1949) and their Additional Protocols (1977), and the Rome Statute of International Criminal Court (1998). These instruments are, therefore, discussed in the next sections giving much emphasis to instruments under which Ethiopia is bound.

3.1.1 UNIVERSAL DECLARATION OF HUMAN RIGHTS

Article 5 of the Universal Declaration of Human Rights (hereinafter UDHR) provides that:

*“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”*¹³⁹

As it is the foundational instrument for the freedom from torture, inhuman or degrading treatment or punishment after which all the other instruments dealing with the freedom have been adopted, it is worthy of a little more discussion starting from its drafting process.

The declaration was a product of the United Nations legislative process, involving various UN bodies. The Economic and Social Council (ECOSOC) mandate its subjects, the eighteen - member Human Rights Commission (chaired by Elenor Rosevelt), to draft the International Bill of Rights. The Human Rights Commission setup a drafting committee to formulate a draft of the declaration, based on an outline of proposals and supporting documents prepared by the Human Rights Division of the Secretariat. The Human Rights Commission’s draft was then considered by ECOSOC. The next approved by ECOSOC was then proposed as a resolution before the General Assembly, the main legislative body in the UN where every member state has an equal vote, and adopted thereby.¹⁴⁰

This declaration, containing a provision prohibiting torture and other forms of ill-treatment as one of its essential elements, created a fully formed charter, setting out the complete range of rights applicable to all people in the world. Unlike the creation of a Bill of Rights on a national level, (as noticed under those English and American Bill of Rights), the declaration was the first time that rights had been articulated in a comprehensive manner on the international level. The declaration thereby puts the human being at the center of international law. The ultimate authority for the declaration is not states, but the qualities of humanity that all people of the world share. This is because, as the preamble states, “recognition of all the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of

¹³⁹ Adopted and proclaimed by General Assembly Resolution 217 A (III) of 10 December 1948.

¹⁴⁰ Supra at note 1, p. 60.

freedom, justice and peace in the world”. The focus away from the state to individuals is why the declaration is “Universal” rather than “International.”¹⁴¹

Although a declaration [note that UDHR is a declaration] is not enforceable under international law, it is perfectly argued that the Universal Declaration of Human Rights has subsequently become binding either by way of custom or general principle of law, or by virtue of being an authoritative interpretation of the UN Charter itself by subsequent practice.¹⁴² Because of this reality, the existence of the right to be free from torture, inhuman or degrading treatment or punishment in the UDHR as an essential element is crucially important.

3.1.2 INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

Article 7 of the International Covenant on Civil and Political Rights¹⁴³ provides that:

“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.”

Art 10(1) of the same covenant further provides that:

“All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”

This international covenant was adopted when the UN intends to promulgate a list of enforceable human rights, both in the manner in which these rights were set out, and in the mechanism adopted for their enforcement. This International Covenant on Civil and Political Rights was adopted in 1966 and came in to force ten years later on 1976. Unlike other previous instruments which were either domestic or non-binding, this instrument was adopted in the international level with full binding authority.¹⁴⁴

¹⁴¹ Id, p. 61-65.

¹⁴² Supra at note 35, p. 20.

¹⁴³ Adopted and opened for signature, ratification, and accession by General Assembly Resolution 2200 A (XXI) of 16 December 1966.

¹⁴⁴ Supra at note 32, p. xxvii.

The covenant seriously deals with the freedom from torture, inhuman or degrading treatment or punishment in the above stated two provisions, i.e., Art 7 and Art 10(1). However, these two articles have remarkable differences. First, whereas article 7 is of general application (lex-generalist), article 10 targets only persons in detention (lex-specialist). Second, and many be amazing difference is that whereas article 7 is non degradable- that is, states must comply with it even in time of public emergency, article 10(1) is not protected from infringement in times of crisis; measures of derogation may, however, only be taken to the extent strictly required by the exigencies of the situation and may not involve discrimination.¹⁴⁵ Saving these differences aside, however, the Human Rights Committee- a committee established under ICCPR¹⁴⁶, under General Comment 20/44 of April 1992, stated that the prohibition under article 7 is complemented by positive requirements of article 10(1) of the covenant. Despite neither Article 7 nor Art 10 of ICCPR contain definitions for the different terms and notions used, but the Human Rights Committee has set out its view on certain aspects - on general comment 20/44 of 1993 on Art 7 and on general comment 21/44 of 1992 on Article 10, as discussed under different sections of the previous chapter.

The unique feature of Article 7 of ICCPR rests with the second statement of the provision that reads “... *In particular, no one shall be subjected without his free consent to medical or scientific experimentation.*” In contrast to most other international and regional human rights instruments, Article 7 of the ICCPR expressly prohibits medical or scientific experimentation without free consent. The second sentence of Article 7 refers only to interference that takes on the character of medical or scientific experimentation (not normal medical treatment). Nevertheless, this is permissible in two cases: when the person concerned provides his or her free consent or when the very nature of this experiment cannot be deemed torture or cruel, inhuman or degrading treatment. The term “*without his free consent*” makes clear that the person concerned must himself or herself declare that he or she consents and that such consent must be rendered without impermissible external pressure (threat, extortion, etc). It follows from the words “in particular” (“*en particulier*”) at the beginning of the second sentence that only

¹⁴⁵ International Covenant on Civil and Political Rights, art 4(1) and (2). In particular, Art 4(2) of ICCPR provides that “No derogation from articles 6, 7, 8 (paragraph 1&2), 11, 15, 16 and 18 may be made under this provision (provision 4, dealing with derogation).

¹⁴⁶ *Id*, Art 28.

prohibited are such experiments that by their very nature are to be deemed torture or cruel, inhuman or degrading treatment.¹⁴⁷

3.1.3 AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS

Article 5 of the African Charter on Human and Peoples' Rights provides that:

“Every individual shall have the right 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.”¹⁴⁸

Unlike other instruments ACHPR seems to merge the value of human dignity with the rights to freedom from slavery, slave trade, torture, and inhuman or degrading treatment in a single provision. The charter puts torture in the same category as slavery and slave trade, and categorizes them as ‘forms of exploitation and degradation’. It expressly, in a single provision, i.e., Article 5, prohibits all forms of exploitation and degradation of man, in particular slavery, slave trade, torture, cruel, inhuman or degrading punishment or treatment. Most importantly, there is no fear of suspension of this right as there is no provision in the charter allowing states parties to derogate from their treaty obligations.¹⁴⁹

In relation to this freedom, the African Charter on Human and Peoples' Rights is also supported by other instruments of the region such as African Charter on Children's Rights and Security, which was adopted by OAU in 1990. Among other things, the African Children's Rights Charter, under its Article 17, provides that a child shall not be subjected to torture, inhuman or degrading treatment.

The African Charter on Human and Peoples' Rights established an African Commission on Human and Peoples' Rights.¹⁵⁰ In its jurisprudence, the commission considered a number of

¹⁴⁷ Supra at note 64, p. 140.

¹⁴⁸ African (Banjul) Charter on Human & Peoples' Rights, Adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered in to force 21 October 1986.

¹⁴⁹ Ralph Crawshaw & Leif Holmstrom, Essential Cases on Human Rights for the Police, Martinus Nijhoff Publishers, Leiden, 2006, p. 142.

¹⁵⁰ See below at section 3.4, p. 80.

communications in which states parties are alleged to have violated Article 5 of the charter in respect of the prohibition of torture and other cruel, inhuman or degrading treatment or punishment. Among other things, it is up on the efforts of the commission that the provisions mentioned under the charter got their well understandable form and attribute.¹⁵¹

As an example of showing how Article 5 of the charter had been implemented in protecting individuals from torture, inhuman or degrading treatment or punishment, it would be laudable if we raise the case *Krischna Achutan and Amnesty International V. Malawi*.¹⁵² In this case, three communications were considered jointly by the Commission. The first communication was filed with the commission by Krischan Achutan on behalf of Ale ke Banda, his father -in- law, and two others by Amnesty International on behalf of Orton and Vera Chirwa. The commission examined allegations of violations against the right to life, the right to fair trial, and the right to freedom from torture and other ill-treatment.¹⁵³

In 1981, Orton Chirwa, a prominent political figure in Malawi before independence, and his wife had been abducted from Zambia, where they lived in exile, and taken in to custody by Malawi security officials. They were subsequently sentenced to death for treason, later commuted to life imprisonment. It was alleged that Mr. and Mrs. Chirwa were held in almost complete solitary confinement, given extremely poor food, inadequate medical care, shackled for long periods of time within their cells and prevented from seeing each other for years. Amnesty International also described extremely poor prison conditions, including overcrowding and torture consisting of beating and electric shocks.¹⁵⁴

The commission held that conditions of overcrowding and acts of beating and torture that took place in prisons in Malawi contravened the prohibition in Article 5 of the charter of torture, cruel, inhuman or degrading punishment and treatment. Aspects of the treatment of Orton and Vera Chirwa, such as excessive solitary confinement, shackling within a cell, extremely poor quality of food and denial of access to medical care, were also in contravention of this article.

¹⁵¹ Supra at note 149.

¹⁵² Review of the African Commission on Human and People's Rights, Vol. 5, 1995, p. 186; communications No. 64/92, No. 68/92 and No. 78/92.

¹⁵³ Ibid.

¹⁵⁴ Ibid.

The commission in general concluded that there had been a violation of article 5 as well as of other articles of the charter.¹⁵⁵

In addition to all the above discussed international instruments, i.e., UDHR and ICCPR, and regional instruments, i.e., ACHPR to which Ethiopia is concerned, there are also other regional instruments dealing with this freedom, especially the instruments of European and American continent. To put it strictly, any discussion in relation to the freedom from torture, inhuman or degrading treatment or punishment is meaningless without the proper use of the European Convention for the Protection of Human Rights and Fundamental Freedoms, American Convention on Human Rights, and the interpretations forwarded thereto and decisions rendered based on them. These two regional instruments and the bodies organized for their enforcement have a well developed jurisprudence on the matter in issue. As it was proved under the previous chapter, it is not as such exaggerated to conclude that it is based on the comments and judgments made on these instruments, especially ECHR, that we can have something what we call it freedom from torture, inhuman or degrading treatment or punishment today. Therefore, it is necessary to discuss these instruments and the bodies established for their enforcement, briefly in the next sub sections.

3.1.4 EUROPEAN CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms provides that:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

The European Convention for the Protection of Human Rights and Fundamental Freedoms was adopted on 4 November 1950 by the Council of Europe and entered in to force on 3 May 1953. The convention is much more than just the text of the treaty. During the life of the convention, additional protocols broadening its scope have been adopted, and hundreds of cases have been resolved before the organs of the convention- namely the former European Commission of

¹⁵⁵ Supra at note 149, p.143.

Human Rights and European Court of Human Rights. In dealing with thousands of applications from individuals who alleged that their rights protected by the convention had been violated, the commission and the court developed sets of principles and guidelines on the interpretation of convention's provisions.¹⁵⁶

The convention, in addition to prohibiting torture, inhuman or degrading treatment or punishment in express words, makes the prohibition absolute. Article 15 of the convention provides for the non derogable nature of the right; even in time of war or other public emergency threatening the life of the nation a state party shall not take measures derogating from its obligation under Article 3.

Concerning enforcement organs, in addition to its well organized and relatively highly effective regional enforcement organ i.e. the European Court of Human Rights, the Council of Europe has also created a specific body for preventing torture in its member states. The European committee for the prevention of torture (CPT) was set up under the 1987 council of European Convention for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment. Currently all members of the council of Europe have also ratified the European Convention for the Prevention of Torture. The CPT conducts periodic and ad hoc visits in any place, under the jurisdiction of a contracting state where persons are deprived of their liberty by a public authority.¹⁵⁷ States parties are obliged to provide the CPT with access to its territory and the right to travel without restriction, full information on the places where persons deprived of their liberty are being held; unlimited access to any place where persons are deprived of their liberty, including the right to move inside such places without restriction, and other information which is necessary for the CPT to carry out its task.¹⁵⁸ Note that it is through collaborative effort of these organs i.e. the former ECmHR, ECtHR and CPT, that the well defined content of the freedom can be ultimately achieved.

¹⁵⁶ Supra at note 20, p. 5-6.

¹⁵⁷ Supra at note 18, p.15.

¹⁵⁸ Ibid.

3.1.5 AMERICAN CONVENTION ON HUMAN RIGHTS

Before dealing with the American Convention on Human Rights it is due to recall the provision of American Declaration of the Rights and Duties of Man which was adopted by the 9th International Conference of American States, at Bogota, Colombia, in 1948. The declaration under its Article XXV provides that *'every individual... has a right to humane treatment during the time he/she is in custody.'*

Following that, Article 5 of the American Convention on Human Rights provides that:

5(1): "Every person has the right to have his physical, mental, and moral integrity respected."

5(2): "No one shall be subjected to torture or to cruel inhuman or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the integrity of the human person."¹⁵⁹

The convention takes a strong position regarding the prohibition against torture, inhuman or degrading treatment or punishment by making it non-derogable right. Article 27 of the convention provides for the non-derogability of the freedom mentioned under Article 5 even in times of war, public danger or other emergency threatening the independence or security of the state party.

Concerning its enforcement organs, the Inter-American Commission on Human Rights (the Commission) was created at the Fifth Meeting of Consultation of Ministers of Foreign Affairs at Santiago, Chile, 1959. The American Convention establishes the Inter-American Court of Human Rights¹⁶⁰ with the jurisdiction to preside over 'all cases concerning the interpretation and application of the provisions of the Convention that are submitted to it.'¹⁶¹ This ensures that the right to freedom from torture is not only provided for under the treaty, but that mechanisms are put in place for its enforcement. And these mechanisms were important in making highly

¹⁵⁹ American Convention on Human Rights; opened for signature and ratification on 22 November 1969, entered in to force on 18 July 1978.

¹⁶⁰ Chapter VIII of the American Convention on Human Rights.

¹⁶¹ ACHR, Article 62 (3).

relevant interpretations for the provision, which is necessary not only for that particular region but also for the whole world.

3.1.6 OTHER UNITED NATIONS TREATIES CONCERNED WITH THE RIGHTS OF SPECIFIC GROUPS

A number of UN treaties concerned with the rights of specific groups expressly or implicitly protect the specific group's right to freedom from torture, inhuman or degrading treatment or punishment- such concerns have therefore been raised with the bodies overseeing the implementation of these treaties.

In this regard, article 37 of the UN Convention on the Rights of the Child determines that “*No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment*” and violations have been registered with the UN Committee on the Rights of the Child.¹⁶²

Torture may also be used in discriminatory fashion and target specific racial groups. In such circumstances it violates the International Convention on the Elimination of All Forms of Racial Discrimination (CERD).¹⁶³ This convention indirectly prohibits torture when it recognizes the right to security of person and protection by state against violence or body harm. Unlike in the case of Article 1 of CAT, all government officials, individuals and/or groups of individual are obliged to respect this right.¹⁶⁴

Just like children, women are also particularly vulnerable to forms of sexual torture including rape, and other forms of sexual violence. The Convention on the Elimination of All Forms of Discrimination against Women¹⁶⁵ does not directly prohibit torture but, among other things, it

¹⁶² Convention on the Rights of the Child, UN. General Assembly Document A/RES/44/25, 12 December 1989.

¹⁶³ International Convention on the Elimination of All Forms of Racial Discrimination, adopted and opened for signature and ratification by General Assembly Resolution 2106 (XX) of 21 December 1965 and entered in the force on 4 July 1969.

¹⁶⁴ Id, Art 5.

¹⁶⁵ It was adopted and opened for signature, ratification and accession by General Assembly Resolution 34/180 of 18 December 1979 and entered in to force on 3 September 1981.

outlaws gender based violence. In its general recommendation 19 on violence against women,¹⁶⁶ the committee on the elimination of discrimination against women (CEDAW Committee)¹⁶⁷ recommended that among the rights women are entitled to enjoy, is the right to freedom from torture, inhuman or degrading treatment or punishment.¹⁶⁸ Further, a Declaration on the Elimination of Violence against Women, passed by the General Assembly in December 1993, explicitly makes reference to the right of women not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment (article 3(h)).¹⁶⁹

Further, the International Convention on the Suppression and Punishment of the Crime of Apartheid, which was adopted and opened for signature and ratification by General Assembly Resolution 3068 (XXVIII) of 30 November 1973 and entered into force on July 18, 1978 (Convention on Apartheid) and the Convention on the Protection of the Right of All Migrant Workers and Members of Their Families, which was adopted by general assembly resolution 45/158 of 18 December 1990 and entered into force on 1 July 2003 have included the prohibition of torture, inhuman or degrading treatment or punishment as their particular concern.

3.1.7 INTERNATIONAL HUMANITARIAN LAW INSTRUMENTS

International humanitarian law has for a long period of time endeavored to ensure that limits are put to the manner in which an armed conflict (of both international and non-international) can be conducted and has, among other things, regarded the use of torture and inhuman treatment as inappropriate. Some of the humanitarian law instruments dealing with the protection of the right to freedom from torture, inhuman or degrading treatment or punishment include, the four Geneva Conventions (of 1949)¹⁷⁰ in the common article 3; art 12 and 50 of Geneva Convention I; Article

¹⁶⁶ CEDAW General Recommendation 19, A/47/38 (On violence against women).

¹⁶⁷ Established under Art 17 of CEDAW.

¹⁶⁸ Supra at note 166, para 7(b).

¹⁶⁹ Declaration on the Elimination of Violence Against Women, General Assembly Resolution 48/104 of 20 December 1993.

¹⁷⁰ The four Geneva Conventions include Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field; Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea; Geneva Convention (III) Relative to the Treatment of Prisoners of War; and Geneva Convention (IV) Relative to the Protection Civilian persons in Time of War: (all adopted in Geneva, 12 August 1949).

12 and 51 of Geneva Convention II; Article 13, 14, 87 and 130 of Geneva Convention III; and Art 27, 31, 32, and 147 of Geneva Convention IV; additional protocols to the four Geneva Conventions (of 1977)¹⁷¹ in the art 25 of AP I and art 4 of AP II. Further, Article 2 and 5 of the Statute of the International Tribunal for the Former Yugoslavia (ICTY);¹⁷² Art 3 and 4 of the Statute of the International Tribunal for Rwanda (ICTR);¹⁷³ and Article 7 and 8 of the Rome statute of the International Criminal Court (ICC)¹⁷⁴ have made a relevant references to the prohibition of torture and other ill treatments as a war crime and crime against humanity.

3.2 SPECIFIC INTERNATIONAL AND REGIONAL HUMAN RIGHTS INSTRUMENTS DEALING WITH THE RIGHT TO FREEDOM FROM TORTURE, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT; ESPECIAL EMPHASIS FOR CAT AND ITS OPTIONAL PROTOCOL

Beside those general international and regional human rights and humanitarian law instruments that provides for the protection of freedom from torture, inhuman or degrading treatment or punishment in one or few provisions, there are also a number of instruments that have been drawn up specifically to prohibit torture, inhuman or degrading treatment or punishment. These includes, but not limited to; the UN Declaration on the Protection of All Persons From Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1975, the Inter- American Convention to Prevent and Punish Torture of 1985, the European

¹⁷¹ Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (protocol I), 8 June 1977; Protocol Additional to Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977.

¹⁷² Statute of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia Since 1991, adopted 25 May 1993 by Resolution 827; as amended 13 May 1998 by Resolution 166; as amended 30 November 2000 by Resolution 1329.

¹⁷³ Statute of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of IHL Committed in Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighboring States, between 1 July 1994 and 31 December 1994; Adopted 8 November 1994 by Resolution 955.

¹⁷⁴ Rome Statute of the International Criminal Court, adopted by the UN Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court on 17 July 1998 [as corrected by the Procès - verbaux of 10 November 1998, 12 July 1999, 30 November 1999, 8 May 2000, 17 January 2001 and 16 January 2002].

Convention for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment of 1987, and most importantly the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984 (CAT) and its additional protocol of 2002.

3.2.1 DECLARATION ON THE PROTECTION OF ALL PERSONS FROM BEING SUBJECTED TO TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

The UN Declaration on the Protection of All Persons From Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was adopted by the general Assembly resolution 3452 (XXX) of 9 December 1975. The declaration contains 12 articles. Even though this instrument is not binding as a declaration, it has a fundamental and foundational importance in the struggle against torture, inhuman or degrading treatment or punishment. Most of those concepts contained in a binding manner later in the Convention against Torture have been stated in this declaration.

The declaration provides the definition for the term “torture” under its first article. The declaration, further, condemn the act of torture, inhuman or degrading treatment or punishment as it is an offence committed against human dignity. It provides for the non derogable nature of this freedom in any circumstance including a state of emergency and it notify states to take “effective measure” to prevent torture and other cruel, inhuman or degrading treatments or punishment. The declaration strictly states that each state shall ensure that all acts of torture are offences under its criminal law, and provides for redress when torture, inhuman, degrading treatment or punishment is committed by a public official. It also makes evidence obtained through the use of torture inadmissible in the court of law. The declaration is really praiseworthy effort to combat torture and other ill treatments as it lays a ground for CAT.¹⁷⁵

Before passing to CAT, which is the main concern of this work, it is also important to mention some other regional specific instruments governing the prohibition of torture, inhuman or

¹⁷⁵ Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by GA Resolution 3452 (XXX), 9 December, 1975, Art 1-12.

degrading treatment or punishment at regional level, namely the Inter-American Convention to Prevent and Punish Torture and The European Convention for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment. These instruments were adopted at the regional level in addition to European Convention for the Protection of Human Rights and Fundamental Freedoms and American Convention on Human Rights mentioned under the previous section. While The European convention on torture and inhuman and degrading treatment or punishment was signed by states members of the Council of Europe, at Strasburg, on 26 November 1987 and entered in to force on 1 February 1989; and amended by protocols No 1 and 2, on 1 March 2002; the Inter- American Convention to Prevent and Punish Torture was adopted at Cartagena de Indies, Colombia, on 9 December 1985, at the fifteenth regular session of the General Assembly and came in to force on 28 February 1987. Generally speaking, the contribution of these specific instruments for the today's well developed jurisprudence of the prohibition against torture, inhuman or degrading treatment or punishment is enormous.

3.2.2 UNITED NATIONS CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT AND ITS OPTIONAL PROTOCOL

The major international treaty dedicated wholly to fight torture is the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). The convention was adopted and opened for signature, ratification and accession by General Assembly Resolution 39/46 of 10 December 1984 and entered into force on 26 June 1987. One hundred forty seven states were party to the convention by October 2010.¹⁷⁶ This convention was unique with regard to prohibiting torture, inhuman or degrading treatment or punishment. Unlike other instruments which are either general or specific but regional or non binding, this convention was the first binding specific international instrument dealing with the right to freedom from torture, inhuman or degrading treatment or punishment.

¹⁷⁶ United Nations, Treaty Series, Vol. 1465, p. 85.

The convention defines torture and specifies that states parties must prohibit torture in all circumstance. Torture cannot be justified during a state of emergency or other exceptional circumstances nor because of superior orders received by an official.¹⁷⁷

- ***Liability of the state:*** Liability of the state for torture committed by agents of the state (e.g. police officer, soldier, prison guards, etc.) is clear under international law. The UN CAT explicitly provides for the prohibition of torture, inhuman or degrading treatment or punishment to be committed by public officials, in a manner that if committed it shall entail liability. However, the liability of states for acts committed purely in the hands of private individuals seems to be contested under CAT as its Article 1 limits itself with the acts in which there is an involvement, at least consent, of public officials.

- ***Duty not to expel or extradite (non refoulement):*** the convention prohibits the forcible return or extradition of a person to another country where he or she is at risk of torture.¹⁷⁸

- ***Duty to prosecute:*** States must ensure that all acts of torture are offences under its criminal law-including complicity and participation or incitement to such acts. States must also criminalize an attempt to torture.¹⁷⁹ States must establish jurisdiction over such offences in cases of torture where the alleged offenders are not extradited to face prosecution in another state, regardless of the state in which the torture was committed, or the nationality of the perpetrator or the victim ('universal jurisdiction').¹⁸⁰ In exercising universal jurisdiction states are obliged to take suspected perpetrators of torture in to custody, to undertake inquiries in to allegations of torture and to submit suspected torturers to the prosecuting authorities.¹⁸¹ States must also cooperate with one another to bring torturers to justice. This is one of the highly important features of CAT. Even if it prohibits the extradition of individuals to the place where they can be tortured, it obliges state parties to extradite torturers to the place where they can face justice.¹⁸²

¹⁷⁷ The UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; adopted and opened for signature, ratification, and accession by GA Resolution 39/49 of 10 December 1984, Art 1 & 2.

¹⁷⁸ Id, Art 3.

¹⁷⁹ Id, Art 4.

¹⁸⁰ Id Art 5.

¹⁸¹ Id, Art 6-8.

¹⁸² Id, Art 8 & 9.

- ***The right of victims to obtain redress:*** Victims of torture have a right to redress and adequate compensation.¹⁸³ Victims of torture and ill-treatment have the right to know the truth about what happened to them, to see those responsible being brought to justice and to have reparations awarded for the harm done to them.

The Special Rapporteur on the Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violation of Human Rights, Cherif Bassiouni, attached draft basic principles and guidelines on the right to a remedy and reparation for victims of violations of international human rights and humanitarian law (the Van Boven - Bassiouni principles) in his final report to the UN Commission on Human Rights in 2000.¹⁸⁴ The Van Boven- Bassiouni principles acknowledge the following forms of reparation:

↳ *Restitution* - steps should be taken to restore the victim to the situation he or she was in before the violation occurred, including restoration of his or her legal rights, social status, family life, place of residence, property and employment;

↳ *Compensation* - steps should be taken to compensate for any economically assessable damage resulting from violations including physical or mental harm, emotional distress, lost educational opportunities, loss of earnings, legal and/or medical costs;

↳ *Rehabilitation* - steps should be taken to ensure medical and psychological care if necessary as well as legal and social services;

↳ *Satisfaction and guarantees of non-repetition* - steps should be taken to ensure cessation of continuing violations, public disclosure of truth behind violations, official declaration of responsibility and/or apologies, public acknowledgment of violations, as well as judicial or administrative sanctions, and preventive measure including human rights training.

Sometimes victims need expensive long-term medical care or therapy. Sometimes they are unable to work as a result of their experiences or they find their lives fundamentally altered in other ways. If torture has been inflicted by state agents, or with their acquiescence, the state must, as far as possible, repair the harm it has done. Where it is within their discretion, judges

¹⁸³ Id, Art 14.

¹⁸⁴ UN Doc. E/CN.4/2000/62, 18 January 2000.

should ensure that victims of torture receive redress that fully reflects the grave and serious nature of the crime to which they have been subjected. If the victim dies as a result of torture, the person's dependants are entitled to redress.¹⁸⁵

In addition, the convention in clear terms provides that statements made as a result of torture may not be invoked in evidence except against the alleged torturer.¹⁸⁶ The convention obliges states parties to take effective measures to combat torture. States undertake to train law enforcement and medical personnel, and any other persons who may be involved in the custody, interrogation or treatment of detained individuals, about the prohibition of torture and ill-treatment.¹⁸⁷ Interrogation rules and custody arrangements are to be kept under review with a view to preventing any acts of torture and ill-treatment.¹⁸⁸ States must actively investigate acts of torture and ill-treatment even if there has not been a formal complaint about it.¹⁸⁹

Individuals have a right to complain about acts of torture and other forms of ill-treatments, to have their complaints investigated and to be offered protection against consequent intimidation or ill-treatment.¹⁹⁰ Acts of cruel, inhuman or degrading treatment or punishment that does not amount to acts of torture are also prohibited.¹⁹¹ Unlike in the case of torture, however, CAT does not expressly require states to criminalize acts of cruel, inhuman or degrading treatment or punishment that occurs within or outside their territorial jurisdiction.¹⁹²

It seems that the issue of jurisdiction under the convention requires a little more elaboration. Article 5(a) of the Convention requires a state party to establish jurisdiction over torture committed in any territory under its jurisdiction. This covers the areas under the military occupation or similar legal or de facto control of the state party, such as the control of the US over the detainees in Guantanamo. The same provision also includes the flag principle, whereby

¹⁸⁵ Supra at note 18, p. 84.

¹⁸⁶ Supra at note 177, Art 15.

¹⁸⁷ Id, Art 10.

¹⁸⁸ Id, Art 11.

¹⁸⁹ Id, Art 12.

¹⁹⁰ Id, Art 13.

¹⁹¹ Id, Art 16.

¹⁹² Supra at note 6, p.3.

the state's duty to establish jurisdiction applies to ships and aircraft regardless of the precise location where the crime is committed.¹⁹³

At the same time it must be noted that the requirement of taking effective measures to prevent acts of torture in "any territory under the state party's jurisdiction" under Article 2 does not mean that states are permitted to engage in torture in territories not under their jurisdiction. As the central objective of CAT is to criminalize all instances of torture, states have an obligation to criminalize such extraterritorial acts and impose appropriate penalties if not required to take proactive measures to prevent acts of torture beyond their territorial jurisdiction.¹⁹⁴

As for universal jurisdiction, the only pre condition for its exercise is the presence of the alleged torture on the territory under a state party's jurisdiction and reliable information being available to the government that the person has committed the crime of torture anywhere in the world.¹⁹⁵ Given that CAT is based on the desire to combat impunity for the crime of torture and eliminate safe havens for torturers, this requires states parties to establish jurisdiction without loop holes, as well as their cooperation in terms of extradition and judicial assistance. For this purpose, Article 8 of CAT is aimed at removing, as far as possible, legal obstacle for the extradition of alleged torturers from one state party to another.¹⁹⁶

There was fight regarding priority for jurisdiction. At the drafting stage of CAT, there were two different legal approaches. One approach was that of the order of priorities of the grounds of jurisdiction, leading to the duty to extradite the suspect to the state with a stronger title of jurisdiction. The other approach was giving priority to the duty of the state in possession of the suspect to prosecute, and extradite only if requested to do so. While some anti-terrorist conventions had already adopted the *aut dedere aut judicare* principle, the second of the above approaches prevailed in the shape of what are now Articles 7 and 8 of CAT. The kind of prosecution approach applied through CAT has an advantage in avoiding the lengthy and complex procedure of extradition; while the extradition approach can be more advantageous in

¹⁹³ Manfred Nowak and Elizabeth Mc Arthur, *The United Nations Convention Against Torture: A Commentary*, Oxford University Press, New York, 2008, p. 309.

¹⁹⁴ *Supra* at note 6, p. 2.

¹⁹⁵ *Supra* at note 193, p. 318.

¹⁹⁶ *Id*, p. 377.

the sense that the territorial state or the state of the nationality of the perpetrator may have better access to evidence than the state which exercises universal jurisdiction.¹⁹⁷ The torture convention, finally balances these approaches in a way that admits the possibility of the practice of the extradition approach if the state which has the suspect in custody is not interested in prosecution.

Of no less important than criminal prosecution is that of civil remedies and universal civil jurisdiction. Article 14 of the CAT provides that “each state party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation”. Some people may argue that as the convention says nothing expressly about the issue of jurisdiction in this regard, it does not include universal jurisdiction. This point relates to the cases where individual perpetrators are not physically in the country where the victim is and/or where prosecution can be conducted against them: for instance because of the lack of domestic procedural rules and legislation. As international law stands at present states parties are not obliged to adopt universal civil jurisdiction over torture.¹⁹⁸ However, the matter is not only how general international law stands, but also what the convention itself requires from states. The plain wording of Article 14 is framed as a mandatory obligation, and it does not include any limitation of territory. Thus, Article 14 does not deal with entitlements; it deals with duties, and does so without a territorial limitation. Further, it must be noticed that universal civil jurisdiction is consistent with the object and purpose of the torture convention and there is a duty on states to provide a solution for extraterritorial torture as the UN Committee on Torture concludes.¹⁹⁹

More or less this is the content of CAT- an international legally binding instrument fully devoted to the prohibition of torture, inhuman or degrading treatment or punishment. Finally, it would be relevant to mention the fact that there is a proposal for amendment on Article 17(7) and 18(5) of the convention, which particularly deals with the expenses of the committee and state parties. The proposal for amendment was filed by the Australian government on 28 February 1992, according to Art 29 of the convention, and endorsed by the General Assembly in Resolution

¹⁹⁷ Id, p. 378.

¹⁹⁸ Id, p. 502.

¹⁹⁹ Id, p. 493-495.

47/111 of 16 December. Even though it has been voted for by 28 states, it is not yet entered in to force as of October 2010²⁰⁰ since at least two third of the state parties should have ratified it.²⁰¹

*** *OPTIONAL PROTOCOL TO THE CONVENTION AGAINST TORTURE, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT***

This protocol was adopted on 18 December 2002 at the fifty seventh session of the General Assembly of the United Nations by resolution A/Res/57/1999.²⁰² Fifty seven states are parties to the protocol as of October 2010.²⁰³

This optional protocol is very important treaty in its prospect of combating the use of torture in detention facilities. The objective of the optional protocol is to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.²⁰⁴ A sub-committee on the prevention of torture (a sub-committee on prevention) has been established and states are required to co-operate with it for the implementation of the protocol.²⁰⁵

3.3 RELEVANT STANDARDS DEALING WITH THE RIGHT TO FREEDOM FROM TORTURE, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

In addition to international human rights law and the laws of armed conflict, a considerable range of other rules and standards, have been developed to safeguard the right of all people to protection against torture and other forms of ill-treatment. Although these instruments are not of

²⁰⁰ Doc. CAT/ SP/1992/ L.1.

²⁰¹ Supra at note 177, Art 29(2).

²⁰² The protocol is available for signature, ratification, and accession as from February 2003 (i.e., the date upon which the original of the protocol was established) at the United Nations Head quarter in New York; and entered in to force on 22 June 2006, according to its Article 28.

²⁰³ United Nations, Treaty Series, Vol. 2375, p. 237; GA Resolution A/RES/57/99 of 9 January 2003.

²⁰⁴ OPTC, GA Res. A/Res/57/199, Article 1.

²⁰⁵ See also below at section 3.4, p. 88.

themselves legally binding, they represent agreed principles which should be adhered to by all states and can provide important guidance for judges and law enforcement officials.

These other rules and standards include: Standard Minimum Rules for the Treatment of Prisoners (1957 as amended in 1977); Declaration on the Protection of All Persons From Being Subjected to Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment (1975), Code of Conduct for Law Enforcement Officials (1979); 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), Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985); Basic Principles on the Independence of the Judiciary (1985); Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) (1987); Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment (1988); Basic Principles for the Treatment of Prisoners (1990); Basic Principles on the Role of Lawyers (1990); Guidelines on the Role of Prosecutors (1990); Rules for the Protection of Juveniles Deprived of their Liberty (1990); Principles on the Effective Prevention and Investigation of Extra Legal, Arbitrary and Summary Execution (1990); Basic Principles on the Use of Force and Fire Arms By Law Enforcement Officers (1990); Principles for the Protection of Persons With Mental Illness and the Improvement of Mental Health Care (1991); Declaration on the Protection of All Persons From Enforced Disappearances (1992); and Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul protocol) (1999).

Even though all these instruments have great importance for the protection of individuals from torture, inhuman or degrading treatment or punishment, it is necessary to sort out and discuss in detail, some specific instruments that are highly recognized by states and have a direct and serious link to our case, i.e., the protection of the right to freedom from torture, inhuman or degrading treatment or punishment in prisons. For that matter, it would be laudable if a little of detail discussion may be provided on the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment of 1988 and Standard Minimum Rules for the Treatment of Prisoners (1957 as amended in 1977).

3.3.1 BODY OF PRINCIPLES FOR THE PROTECTION OF ALL PERSONS UNDER ANY FORM OF DETENTION OR IMPRISONMENT

The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, which is a non binding instrument, was adopted by General Assembly resolution 43/173 of 9 December 1988, having the protection of all persons under any form of detention or imprisonment the scope of the instrument. The Body of Principles (hereinafter “the BOP”) begins with the definition of some important terms. It defines “Arrest” as the act of apprehending a person for the alleged commission of an offence or by the action of an authority; “Detained persons” as any person deprived of personal liberty except as a result of conviction for an offence; and “imprisoned person” as any person deprived of personal liberty as result of conviction for an offence.”²⁰⁶

Due respect for human dignity was the first principle provided by BOP in which it states that any form of detention or imprisonment shall be treated in a human manner and with respect for the inherent dignity of the human person.²⁰⁷ In dealing with the protection from torture, inhuman or degraded treatment or punishment, BOP with strict terms states that no person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. The term “cruel, inhuman or degrading treatment or punishment” should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental, including the holding of a detained or imprisoned person in condition which deprives him, temporarily or permanently, of the use of any of his natural senses, such as sight or hearing, or of his awareness of place and the passing of time.²⁰⁸ No circumstance whatever may be invoked as a justification for torture or other cruel, inhuman or degrading treatment or punishment.²⁰⁹ Further, it states that no detained or imprisoned person shall, even with his consent, be subjected to any medical or scientific experimentation which may be detrimental to his health.²¹⁰

²⁰⁶ Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment; adopted by General Assembly Resolution 43/173 of 9 December 1988, “*the use of terms*” as introduction.

²⁰⁷ Id, principle 1.

²⁰⁸ It is elaboration on the first statement of principle 6, provided in the form of foot note at the edge of the document.

²⁰⁹ Supra at note 206, principle 6.

²¹⁰ Id, principle 22.

The BOP also provides for the right to make a request or complaint regarding one's treatment, in particular in case of torture or other cruel, inhuman or degrading treatment, to the authorities responsible for the administration of the place of detention and to higher authorities.²¹¹ This can be done by the victim himself, his legal counsel, by family members or anyone who has the knowledge of the fact.²¹² Confidentiality concerning the request or complaint shall be maintained if so requested by the complainant;²¹³ and complaint must be promptly dealt with and replied to without undue delay.²¹⁴

Moreover, the BOP deals with the presumption of innocence²¹⁵ and the need for separate treatment of detained persons from imprisoned persons.²¹⁶ Fair trial guarantee such as the right to be heard and defend himself,²¹⁷ and to have and to communicate a legal council²¹⁸ are also mentioned under the instrument. A duty to provide charge free medical examination and treatment for detained and imprisoned persons is also well mentioned under the BOP.²¹⁹ The right to a communication opportunity with the outside world, subject to reasonable conditions and limitation as specified by law, is also the other right provided under BOP.²²⁰

Among other things, BOP, further, deals with the application of the instrument itself. It prohibits any discrimination - of any kind- of sex, race, color, language, religion etc. -in the application of the instrument, and any destructive interpretation of the instrument against other legal instruments that have a wider application.²²¹ And, it request state to prohibit by law, of any violations of the rights and duties contained in the instrument.²²²

²¹¹ Id, principle 33(1).

²¹² Id, principle 33(2).

²¹³ Id, principle 33(3).

²¹⁴ Id, principle 33(4).

²¹⁵ Id, principle 36.

²¹⁶ Id, principle 8.

²¹⁷ Id, principle 11.

²¹⁸ Id, principle 17 & 18.

²¹⁹ Id, principle 24.

²²⁰ Id, principle 15 & 19.

²²¹ Id, principle 3 - 5.

²²² Id, principle 7.

3.3.2 STANDARD MINIMUM RULES FOR THE TREATMENT OF PRISONERS

When the state deprives a person of liberty, it assumes a duty of care to maintain the person's safety and safeguards the person's welfare. This places an obligation on all those responsible for deprivation of liberty and the care of the detainee.²²³

Standard minimum rules for the treatment of prisoners ("the instrument" here in after) was adopted by the first United Nations congress on the prevention of crime and the treatment of offenders, held at Geneva in 1955, and approved by the economic and social council by its resolutions 663c (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977. Before passing to detail discussions it is due to recall that these standard minimum rules are not intended to describe in detail a model system of penal institutions. They seek only, on the basis of the general consensus of contemporary thought and the essential elements of the most adequate systems of today, to set out what is generally accepted as being good principle and practice in the treatment of prisoners and the management of institutions.²²⁴

The standard minimum rules are not intended to be absolutely applicable under all circumstances throughout the world. In view of the great variety of legal, social, economic and geographical conditions of the world, it is evident that not all of the rules are capable of applications in all places and at all times. They should, however, serve to stimulate a constant endeavor to overcome practical difficulties in the way of their application, in the knowledge that they represent, as a whole, the minimum condition which are accepted as suitable by the United Nations.²²⁵ Further, the rules are not also designed to be fixed for ever. The rules cover a field in which thought is constantly developing. They are not intended to preclude experiment and practices, provided these are in harming with the principles and seek to further the purposes

²²³ Human Rights Committee, General Comment 21, Article 10 (Forty-fourth session, 1992), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HR1/GEN/1/Rev.1 at 33 (1994), para 3.

²²⁴ Standard Minimum Rules for the Treatment of Prisoners; adopted by first United Nations Congress on the Privation of Crime & the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolution 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977, Rule 1.

²²⁵ Id, Rule 2.

which derive from the text of the rules as a whole. It will always be justifiable for the central prison administration to authorize departures from the rules in this spirit.²²⁶

Generally, “the standard minimum rules for the treatment of prisoners” is divided into two parts. Part I concerns the general management of institutions, and is applicable to all categories of prisoners, criminal or civil, untried or convicted, including prisoners subjected to “security measures” or corrective measures ordered by the judge. On the other hand, part II contains five categories of prisoners and the rules applicable only to each of the categories. In this classification; section A contains rules applicable only to prisoners under sentence, section B contains rules applicable only to insane and mentally abnormal prisoners, section C contains rules applicable only to prisoners under arrest or awaiting trial (Untried prisoners), section D contains rules applicable only to civil prisoners, and section E contains rules applicable only to persons arrested or detained without charge. Nevertheless, the rules under section A, applicable to prisoners under sentence, B, C and D, provided they do not conflict with the rules governing those categories and are for their benefit.²²⁷

There are a number of extra ordinarily relevant standard minimum rules under part I, which is designed for general application, of the instrument, having different titles. As a basic principle, the rules provided under the instrument shall be applied impartially. There shall be *no discrimination* on grounds of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. On the other hand, it is necessary to respect the religious beliefs and moral precepts of the group to which a prisoner belongs.²²⁸ There is also a requirement for a *register* applicable under all cases. In every place where persons are imprisoned there shall be kept a bound registration book with numbered pages in which shall be entered in respect of each prisoner received: Information concerning his identity; the reasons for his commitment and the authority therefore; the day and hour of his admission and release. No person shall be received in an institution without a valid commitment order of which the details shall have been previously entered in the register.²²⁹

²²⁶ Id, Rule 3.

²²⁷ Id, Rule 4.

²²⁸ Id, Rule 6.

²²⁹ Id, Rule 7.

The instrument, under different headings, deals with a lot of highly important issues in the course of treating prisoners. Matters related to accommodation, food, clothing, bedding, medical services, personal hygiene, the need for separation of categories, exercise & sport, contact with the outside world, discipline & punishment, religion, books, and institutional personnel are some of the contents of the instrument designed as rules of general application- to all categories of prisoners whether convicted or untried, whether criminal or civil.

✚ **Accommodation:** Where sleeping accommodation is in individual cells or rooms, each prisoner shall occupy by night a cell or room by himself. If for special reasons, such as temporary overcrowding, it becomes necessary for the central prison administration to make an exception to this rule, it is not desirable to have two prisoners in a cell or room. Where dormitories are used, they shall be occupied by prisoners carefully selected as being suitable to associate with one another in those conditions. There shall also be 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.²³⁰

In all places where prisoners are required to live or work, (a) the windows shall be large enough to enable the prisoners to read or work by natural light, and shall be so constructed that they can allow the entrance of fresh air whether or not there is artificial ventilation; (b) artificial light shall be provided sufficient for the prisoners to read or work without injury to eyesight. 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. The sanitary installations shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner. All parts of an institution regularly used by prisoners shall be properly maintained and kept scrupulously clean at all times.²³¹

²³⁰ Id, Rule 9 – 10.

²³¹ Id, Rule 11-14.

✚ **Food:** regarding this essential element for survival, it is provided that every prisoner shall be provided by the administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served. Drinking water shall be available to every prisoner whenever he needs it.²³²

✚ **Clothing and bedding:** having respect to particular rules of prisons whether to allow or prohibit wearing of one's own cloth, every prisoner who is not allowed to wear his own clothing shall be provided with an outfit of clothing suitable for the climate and adequate to keep him in good health. Such clothing shall in no manner be degrading or humiliating. All clothing shall be clean and kept in proper condition. Underclothing shall be changed and washed as often as necessary for the maintenance of hygiene. In exceptional circumstances, whenever a prisoner is removed outside the institution for an authorized purpose, he shall be allowed to wear his own clothing or other inconspicuous clothing. If prisoners are allowed to wear their own clothing, arrangements shall be made on their admission to the institution to ensure that it shall be clean and fit for use.²³³ Every prisoner shall, in accordance with local or national standards, be provided with a separate bed, and with separate and sufficient bedding which shall be clean when issued, kept in good order and changed often enough to ensure its cleanliness.²³⁴

✚ **Medical services:** At every institution there shall be available the services of at least one qualified medical officer who should have some knowledge of psychiatry. It is also required that the medical services should be organized in close relationship to the general health administration of the community or nation. They shall include a psychiatric service for the diagnosis and, in proper cases, the treatment of states of mental abnormality. Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be a staff of suitable trained officers. The services of a qualified dental officer shall also be available to every prisoner.²³⁵

²³² Id, Rule 20.

²³³ Id, Rule 17-18.

²³⁴ Id, Rule 19.

²³⁵ Id, Rule 22.

✚ **Personal hygiene:** Prisoners shall be required to keep their persons clean, and to this end they shall be provided with water and with such toilet articles as are necessary for health and cleanliness. In order that prisoners may maintain a good appearance compatible with their self-respect, facilities shall be provided for the proper care of the hair and beard, and men shall be enabled to shave regularly.²³⁶

✚ **Separation of categories:** The purposes of classification shall be to separate from others those prisoners who, by reason of their criminal records or bad characters, are likely to exercise a bad influence and to divide the prisoners into classes in order to facilitate their treatment with a view to their social rehabilitation.²³⁷ The different categories of prisoners shall be kept in separate institutions or parts of institutions taking account of their sex, age, criminal record, the legal reason for their detention and the necessities of their treatment. Thus, 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; and; young prisoners shall be kept separate from adults.²³⁸

✚ **Exercise and sport:** Every prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily if the weather permits. Young prisoners, and others of suitable age and physique, shall receive physical and recreational training during the period of exercise. To this end space, installations and equipment should be provided.²³⁹

✚ **Contact with the outside world:** Every prisoner shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits. Prisoners who are foreign nationals shall be allowed reasonable facilities to communicate with the diplomatic and consular representatives of the State to which they belong. Prisoners who are nationals of States without diplomatic or consular representation in the country and refugees or stateless persons shall be allowed similar facilities

²³⁶ Id, Rule 15-16.

²³⁷ Id, Rule 67.

²³⁸ Id, Rule 8.

²³⁹ Id, Rule 21.

to communicate with the diplomatic representative of the State which takes charge of their interests or any national or international authority whose task it is to protect such persons. It is also provided that prisoners shall be kept informed regularly of the more important items of news by the reading of newspapers, periodicals or special institutional publications, by hearing wireless transmissions, by lectures or by any similar means as authorized or controlled by the administration.²⁴⁰

✚ **Religion:** If the institution contains a sufficient number of prisoners of the same religion, a qualified representative of that religion shall be appointed or approved. If the number of prisoners justifies it and conditions permit, the arrangement should be on a full-time basis. This qualified representative shall be allowed to hold regular services and to pay pastoral visits in private to prisoners of his religion at proper times. On the other hand, if any prisoner should object to a visit of any religious representative, his attitude shall be fully respected.²⁴¹

✚ **Books:** Every institution shall have a library for the use of all categories of prisoners, adequately stocked with both recreational and instructional books, and prisoners shall be encouraged to make full use of it.²⁴²

✚ **Discipline and Punishment:** Discipline and order shall be maintained with firmness, but with no more restriction than is necessary for safe custody and well-ordered community life. All conducts constituting a disciplinary offence, the types and duration of punishment which may be inflicted, and the authority competent to impose such punishment shall always be determined by the law or by the regulation of the competent administrative authority. No prisoner shall be punished except in accordance with the terms of such law or regulation, and never twice for the same offence. No prisoner shall be punished unless he has been informed of the offence alleged against him and given a proper opportunity of presenting his defense. The competent authority shall conduct a thorough examination of the case. Where necessary and practicable the prisoner shall be allowed to make his defense through an interpreter.²⁴³

²⁴⁰ Id, Rule 37-39.

²⁴¹ Id, Rule 41.

²⁴² Id, Rule 40.

²⁴³ Id, Rule 27-30.

Corporal punishment, punishment by placing in a dark cell, and all cruel, inhuman or degrading punishments shall be completely prohibited as punishments for disciplinary offences. Punishment by close confinement or reduction of diet shall never be inflicted unless the medical officer has examined the prisoner and certified in writing that he is fit to sustain it. The same shall apply to any other punishment that may be prejudicial to the physical or mental health of a prisoner. In no case may such punishment be contrary to the prohibition of all cruel, inhuman or degrading punishments. A medical officer shall visit daily prisoners undergoing such punishments and shall advise the director if he considers the termination or alteration of the punishment necessary on grounds of physical or mental health.²⁴⁴

✚ ***Instruments of restraint:*** Instruments of restraint, such as handcuffs, chains, irons and strait-jackets, shall never be applied as a punishment. Furthermore, chains or irons shall not be used as restraints. Other instruments of restraint shall not be used except in the following circumstances: as a precaution against escape during a transfer, provided that they shall be removed when the prisoner appears before a judicial or administrative authority; or on medical grounds by direction of the medical officer; or by order of the director, if other methods of control fail, in order to prevent a prisoner from injuring himself or others or from damaging property; in such instances the director shall at once consult the medical officer and report to the higher administrative authority. The patterns and manner of use of instruments of restraint shall be decided by the central prison administration. Such instruments must not be applied for any longer time than is strictly necessary.²⁴⁵

✚ ***Institutional personnel and Inspection:*** The prison administration shall provide for the careful selection of every grade of the personnel, since it is on their integrity, humanity, professional capacity and personal suitability for the work that the proper administration of the institutions depends. The personnel shall possess an adequate standard of education and intelligence. After entering on duty and during their career, the personnel shall maintain and improve their knowledge and professional capacity by attending courses of in-service training to be organized at suitable intervals. So far as possible, the personnel shall include a sufficient number of specialists such as psychiatrists, psychologists, social workers, teachers and trade

²⁴⁴ Id, Rule 31-32.

²⁴⁵ Id, Rule 33-34.

instructors.²⁴⁶ There 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.²⁴⁷

The instrument in addition to those rules of general application, under its Part II, deals with rules to be applied for *different categories of prisoners*, starting with prisoners under sentence.

Prisoners under Sentence: Unlike others prisoners under sentence must be provided with work, education and recreation. All prisoners under sentence shall be required to work, subject to their physical and mental fitness as determined by the medical officer. Sufficient work of a useful nature shall be provided to keep prisoners actively employed for a normal working day. Prison labor must not be of an afflictive nature. So far as possible the work provided shall be such as will maintain or increase the prisoners, ability to earn an honest living after release. Vocational training in useful trades shall be provided for prisoners able to profit thereby and especially for young prisoners. Within the limits compatible with proper vocational selection and with the requirements of institutional administration and discipline, the prisoners shall be able to choose the type of work they wish to perform.

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. The interests of the prisoners and of their vocational training, however, must not be subordinated to the purpose of making a financial profit from an industry in the institution. Preferably institutional industries and farms should be operated directly by the administration and not by private contractors. Where prisoners are employed in work not controlled by the administration, they shall always be under the supervision of the institution's personnel. Unless the work is for other departments of the government the full normal wages for such work shall be paid to the administration by the persons to whom the labor is supplied, account being taken of the output of the prisoners.²⁴⁸

²⁴⁶ Id, Section A; Rule 46-54.

²⁴⁷ Id, Rule 55.

²⁴⁸ Id, Section A; Rule 71-73.

The precautions laid down to protect the safety and health of free workmen shall be equally observed in institutions. Provision shall be made to indemnify prisoners against industrial injury, including occupational disease, on terms not less favorable than those extended by law to free workmen. The maximum daily and weekly working hours of the prisoners shall be fixed by law or by administrative regulation, taking into account local rules or custom in regard to the employment of free workmen. The hours so fixed shall leave one rest day a week and sufficient time for education and other activities required as part of the treatment and rehabilitation of the prisoners. There shall be a system of equitable remuneration of the work of prisoners.²⁴⁹

Regarding education and recreation, provision shall be made for the further education of all prisoners capable of profiting thereby, including religious instruction in the countries where this is possible. The education of illiterates and young prisoners shall be compulsory and special attention shall be paid to it by the administration. 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. Recreational and cultural activities shall be provided in all institutions for the benefit of the mental and physical health of prisoners.²⁵⁰

☒ Insane and Mentally Abnormal Prisoners: Persons who are found to be insane shall not be detained in prisons and arrangements shall be made to remove them to mental institutions as soon as possible. Prisoners who suffer from other mental diseases or abnormalities shall be observed and treated in specialized institutions under medical management. During their stay in a prison, such prisoners shall be placed under the special supervision of a medical officer.²⁵¹

☒ Prisoners under Arrest or Awaiting Trial: Unconvicted prisoners are presumed to be innocent and shall be treated as such. Untried prisoners shall be kept separate from convicted prisoners. Young untried prisoners shall be kept separate from adults and shall in principle be detained in separate institutions. Untried prisoners shall sleep singly in separate rooms, with the

²⁴⁹ Id, Section A; Rule 74-76.

²⁵⁰ Id, Section A; Rule 77-78.

²⁵¹ Id, Section B; Rule 82.

reservation of different local custom in respect of the climate.²⁵² An untried prisoner shall be allowed to wear his own clothing if it is clean and suitable. If he wears prison dress, it shall be different from that supplied to convicted prisoners. An untried prisoner shall always be offered opportunity to work, but shall not be required to work. If he chooses to work, he shall be paid for it.²⁵³

☒ **Civil Prisoners:** It is provided that, in countries where the law permits imprisonment for debt, or by order of a court under any other non-criminal process, persons so imprisoned shall not be subjected to any greater restriction or severity than is necessary to ensure safe custody and good order. Their treatment shall be not less favorable than that of untried prisoners, with the reservation, however, that they may possibly be required to work.²⁵⁴

☒ **Persons Arrested or Detained Without Charge:** Without prejudice to the provisions of article 9 of the International Covenant on Civil and Political Rights, persons arrested or imprisoned without charge shall be accorded the same protection as that accorded under part I and part II, section C. Relevant provisions of part II, section A, shall likewise be applicable where their application may be conducive to the benefit of this special group of persons in custody, provided that no measures shall be taken implying that re-education or rehabilitation is in any way appropriate to persons not convicted of any criminal offence.²⁵⁵

²⁵² Id, Section C; Rule 84-86.

²⁵³ Id, Section C; Rule 88-89.

²⁵⁴ Id, Section D; Rule 94.

²⁵⁵ Id, Section E; Rule 95.

3.4 INTERNATIONAL AND REGIONAL SUPERVISORY MACHINERY AND COMPLIANT PROCEDURES FOR THE INSTRUMENTS DEALING WITH THE RIGHT TO FREEDOM FROM TORTURE, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

All the above binding international and regional human rights and humanitarian instruments dealing with the freedom from torture, inhuman or degrading treatment or punishment, discussed under section 3.1 & 3.2, have their own monitoring organs and compliant procedures for the proper implementation of the convention. It is based on these organs that all those binding instruments, discussed under the previous sections, have got their proper meaning after efforts taken by the organs in avoiding all ambiguities as much as possible. Thus, this section will be devoted in introducing these monitoring organs and compliant procedures, at least briefly.

3.4.1 HUMAN RIGHTS COMMITTEE

The human right committee is established as a monitoring body by the International Covenant on Civil and Political Rights (ICCPR). The committee comprises 18 independent experts elected by the states parties to the covenant. It examines reports which states parties are obliged to submit periodically and issues concluding observations that draw attention to points of concern and make specific recommendations to the state. The committee can also consider communications from individuals who claim to have been the victims of violations of the covenant by a state party. For this procedure to apply to individuals, the state must also have become a party to the first optional protocol to the covenant. The committee has also issued a series of General Comments, to elaborate on the meaning of various articles of the covenant and the requirements that these place on states parties.²⁵⁶

²⁵⁶ Supra at note 18, p. 13.

3.4.2 THE UN COMMITTEE AGAINST TORTURE

The committee against torture is a body of ten independent experts established under the convention against torture.²⁵⁷ It considers reports submitted by states parties regarding their implementation of the provisions of the convention and issues concluding observations. It may examine communications from individuals, if the state concerned has agreed to this procedure by making a declaration under Article 22 of the convention. There is also a procedure, under Article 20, by which the committee may initiate an investigation if it considers there to be ‘well-founded indications that torture is being systematically practiced in the territory of a state party.’

The newly adopted optional protocol establishes complimentary dual system of regular visits to place of detention in order to prevent torture and ill-treatment. The first of these is an internal visiting mechanism, or a ‘sub-committee’ of ten independent experts who will conduct periodic visits to place of detention. The second involves an obligation on states parties to set up, designate or maintain one or several national visiting mechanisms, which can conduct more regular visits. The international and national mechanisms will make recommendations to the authorities concerned with a view to improving the treatment of persons deprived of their liberty and the conditions of detention.²⁵⁸

A number of regional human rights treaties have also been developed with unique approaches of enforcement mechanisms. These include the African Commission on, and the African Court of Human Rights, European Commission on and Court of Human Rights, and Inter American Commission on, and Court of Human Rights.

3.4.3 THE AFRICAN COMMISSION ON HUMAN AND PEOPLES’ RIGHTS

The African Commission is established under article 30 of the African charter with the mandate to promote human and peoples' rights by collecting documents, undertaking studies and research on African problems in the field of human and peoples' rights, organizing seminars, symposia

²⁵⁷ Supra at note 177 (CAT), Art 17.

²⁵⁸ Supra at note 18, p. 14.

and conferences, disseminating information, encouraging national and local institutions concerned with human and peoples' rights, and, where necessary, giving its views or making recommendations to governments.²⁵⁹

As mentioned above, one of the ways in which the African Commission is empowered to promote human and peoples' rights is by organizing seminars and conferences. If implemented properly, this could be one of the best mechanisms to combat torture, inhuman or degrading treatment or punishment. Seminars and conferences could be used to create awareness about the prohibition on torture, inhuman or degrading treatment or punishment and also to call upon governments to ratify the relevant international treaties for that matter. However, it can safely be stated that the African Commission is very weak in this area. Very few seminars or conferences have been organized to specifically deal with torture, inhuman or degrading treatment or punishment as indicated by a cursory look at the Annual Activity Reports of the African Commission on Human and Peoples' Rights (AARACHPR), and the same applies to those at which the African Commission has been represented.²⁶⁰ This could be attributed to factors like lack of sufficient funding²⁶¹ and also that there are many duties and powers in the charter that the African Commission, consisting of eleven members²⁶² (who do not work on a full time basis) has to oversee.

The Commission has the mandate to entertain both inter-state²⁶³ and individual communications.²⁶⁴ Like in the inter-American and European systems of human rights, the inter-state procedure is rarely resorted to by African states notwithstanding the fact that some

²⁵⁹ Supra at note 148 (ACHPR), Art 45.

²⁶⁰ In the Tenth AARACHPR, none of the 4 workshops organized by the Commission was on torture apart from the fact that it was mentioned at a workshop on prison conditions held in Kampala Uganda (Para 17); in the 11th AARACHPR, of the 7 seminars organized by the Commission, none was on torture. Torture is only mentioned in passing as one of the issues raised (Para 24); in the 12th AARACHPR, of all the 6 seminars and conferences the Commission organized none dealt specifically with torture and this applied to all the 6 seminars to which the Commission was represented; in the 13th AARACHPR, of all the seminars and conferences to which the Commission was represented torture was not on the agenda; in the 14th AARACHPR, of the 3 workshops (excluding those attended by the Chairperson of the Commission also none of which dealt with torture).

²⁶¹ The Commission has acknowledged in para 63 of the 17th AARACHPR, 2003-2004, that it lacks sufficient funding from the African Union.

²⁶² Supra at note 148 (ACHPR), Art 30.

²⁶³ Id, Art 47-54.

²⁶⁴ Id, Art 55-59.

countries grossly violate the provisions of the African charter.²⁶⁵ Traditionally, African states have tended to emphasize the principle of non-interference, which originates in the charter of OAU²⁶⁶ and was recently reintroduced by the Constitutive Act of the African Union.²⁶⁷ The African Commission, therefore, has no true practice in this respect.

On the other hand, many individual communications have been filed, by both individuals and NGOs, to the African Commission alleging the violation of the right to freedom from torture, inhuman or degrading treatment or punishment. These communications indicate the extent to which the right to freedom from torture, inhuman or degrading treatment or punishment is violated in Africa, the brutality of the methods used,²⁶⁸ the misunderstanding of the meaning of torture by the complainants,²⁶⁹ and the failure by the African Commission to define torture (to date the African Commission has not defined what torture is, though it has in numerous communications held that the right to freedom from torture has been violated).²⁷⁰ They also indicate the unfortunate instance where the Commission allowed a state to amicably settle with the victims in a communication that alleged torture.²⁷¹

²⁶⁵ For example Sudan in the case of Darfur. It is only in some cases that the Commission was seized with an interstate communication [Communication 227/99, Democratic Republic of the Congo v. Burundi, Rwanda and Uganda].

²⁶⁶ Article III (2) of the Charter of the OAU, adopted in Addis Ababa, Ethiopia, on 25 May 1963, entered into force on 13 September 1963, and replaced in 2001 by the Constitutive Act of the African Union.

²⁶⁷ Accepted in Lomé, Togo, on 11 July 2000, and entered into force on 26 May 2001. CAB/LEG/23.15.

²⁶⁸ In Communication 54/91 *Malawi African Association/ Mauritania*; 61/91 *Amnesty International/ Mauritania*; 98/93 *Ms Sarr Diop, Union Interafricaine des Droits de l'Homme and RADDHO/Mauritania*; 164/97 à 196/97, *Collectif des Veuves et Ayants-droit/Mauritania*; and 210/98 *Association Mauritanienne des Droits de l'Homme/Mauritania*, it was alleged that many villagers were arrested and tortured. A method of torture called 'jaguar' was used where the victim's wrists are tied to his feet, he is then suspended from a bar and thus kept upside down, some times over a fire and he is beaten on the soles of the feet. Other forms of torture involved beating the victim, burning them with cigarette stubs or with a hot metal and as for women they were just raped. Other methods included electric shock to the genital organs as well as burns all over the bodies.

²⁶⁹ In Communication 147/95 and 149/96 *Sir Dauda K Jawara/ The Gambia*, the complaints alleged the detaining of persons incommunicado and preventing them from seeing their relatives amounted to torture and this was rejected by the Commission.

²⁷⁰ The African Commission has not attempted to define the meaning of the term torture. In Communication 225/98 *Huri-Laws/Nigeria*, the Commission relied on standards laid down in the case of *Ireland v. The United Kingdom*.

²⁷¹ Communication 133/94 *Association pour la Defence des Droits de l'Homme et des Liberties/Djibouti*, which alleged that torture had been committed against members of the *Afar* ethnic group and indicated that 26 people had been tortured, the Commission opted for an amicable settlement because the government had requested so.

3.4.4 AFRICAN COURT OF HUMAN AND PEOPLES' RIGHTS

The court was established under the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and People's Rights.²⁷² In accordance with Article 3 and 4 of the protocol, the court is empowered to act both in adjudicatory and an advisory capacity. In accordance with article 11 and 15 of the protocol, the court is made up of eleven judges elected by the member states of the OAU for a six-year term of office which is renewable once only. Article 6, para 2, lays down that the court rules on the admissibility of cases submitted by individuals²⁷³ taking in to account the provisions of article 56 of the charter, which sets forth the conditions for admissibility of communications addressed to the African Commission on Human rights.

It is doubtless that the establishment of this court would be extremely important for the proper enforcement of the right to freedom from torture, inhuman or degrading treatment or punishment in particular and to all provisions of the African charter in general. However, the court could not come in to force until 25 January 2004 because of the reluctance of states to ratify it. In this regard, it is also important to mention the establishment of African Court of Justice in 2003.²⁷⁴ Finally, there is a recent protocol²⁷⁵ for the merger of African Court of Human Rights and African Court of Justice thereby to establish a single court called "the African Court of Justice and Human Rights". However, due to lack of sufficient ratification it doesn't come in to force yet.

²⁷² It was adopted on 9 June 1998 at the summit of Heads of states and government in Ugadugu, Burkina Faso.

²⁷³ It must be noted that Article 5 of the Protocol provides that "The following are entitled to submit cases to the court: (a) the commission, (b) the state party which has lodged a compliant to the commission , and (c) the state party against which the compliant has been lodged at the commission." Notwithstanding the provisions of Article 5, the court may, on exceptional grounds, allow individuals, non-governmental organization and groups of individuals to bring cases before the court, without first proceeding under Article 55 of the charter."

²⁷⁴ It was established under the Protocol of the Court of Justice of the African Union, adopted on 11 July 2003 in Maputo, Mozambique.

²⁷⁵ Adopted by the eleventh ordinary session of the Assembly, held in Sharm El- Sheikh, Egypt, 1st July 2008.

The European and inter American human rights systems have also their own highly enriched enforcement mechanism in which they can substantially developed the protection of the freedom from torture, inhuman or degrading treatment or punishment.²⁷⁶

3.4.5 OTHER MONITORING MECHANISMS UNDER THE INTERNATIONAL AND REGIONAL LEVEL

A number of other mechanisms have been developed to look at specific types of human rights violations whenever in the world they occur. These country specific and thematic mechanisms include special rapporteurs, representatives and independent experts or working groups. They are created by resolution in response to situations that are considered to be of sufficient concern to require an in depth study. The procedures report publicly to the Commission on Human Rights each year and some also report to the UN General Assembly.

◆ *The UN Special Rapporteur on Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment*

This mandate was established in 1985 by the commission on human rights. It is a non-treaty, UN charter based body the purpose of which is to examine international practice relating to torture in any state regardless of any treaty the state may be bound by. On the basis of information received, the Special Rapporteur can communicate with governments and request their comments on cases that are raised. He or she can also make use of an ‘urgent action’ procedure, requesting a government to ensure that a person, or group of persons, are treated humanely. The special rapporteur can also conduct visits if invited, or given permission, by a state to do so. The reports of these missions are usually issued as addenda to the main report of the special rapporteur to the UN Commission on Human Rights.

The special rapportuer reports annually and publicly to the UN commission on human rights (now to its successor UN human rights council) and to the UN General Assembly. The reports to

²⁷⁶ See also above at page 52 - 54 for the enforcement mechanisms of ECHR and ACHR.

the commission (the council after 2006) contain summaries of all correspondence transmitted to governments by the special rapporteur and of correspondence received from governments. The reports may also include general observation about the problem of torture in specific countries, but do not contain conclusion on individual torture allegations. The reports may address specific issues or are conducive to torture in the world, offering general conclusions and recommendations.²⁷⁷

◆ *The African Commission Special Rapporteur in Prisons and Prisons Condition*

The African Charter does not provide for the institution of Special Rapporteurs (SR). However, because this institution has been effective under the United Nations human rights system, the African Commission also decided to include it in order to strengthen its promotional and protectional roles of human and peoples' rights. The African Commission has appointed a special rapporteur on prisons and other conditions of detention.²⁷⁸ The Office of the Special Rapporteur on Prisons in Africa, in comparison with other Special Rapporteur of the African Commission, has been successful in its activities of promoting and protecting the rights of prisoners in Africa. This success has been measured by: the mandate of the Special Rapporteur; analyzing the work of the Special Rapporteur in comparison with other Special Rapporteurs of the African Commission; and by the investigating the impact on the situation in countries that have been visited.²⁷⁹

◆ *The International Committee of the Red Cross*

The international committee of the Red Cross is an independent and impartial humanitarian body with a specific mandate assigned to it under international humanitarian law particularly the four Geneva Conventions. It is active in providing many forms of protection and assistance to victims

²⁷⁷ Supra at note 18, p. 16.

²⁷⁸ The other Special Rapporteurs of the African Commission are Special Rapporteur on the Rights of Women in Africa; Special Rapporteur on Freedom of Expression in Africa; Special Rapporteur on the Situation of Human Rights Defenders in Africa; Special Rapporteur on Refugees, Asylum Seekers and Internally Displaced Persons in Africa; and Special Rapporteur on Extra-Judicial, Summary or Arbitrary Executions.

²⁷⁹ Jamil Ddamulira Mujuzi, *The Role of Civil Society in Protecting and Promoting Prisoners Rights Before the African Commission on Human and Peoples' Rights*, International Journal of Civil Society Law, Volume V, Issue III, July 2007, p.27.

of armed conflict, as well as situations of internal strife. In cases of international armed conflict between states party to the Geneva conventions, the ICRC is authorized to visit all places of internment imprisonment and labor where prisoners of war or civilian internees are held. In cases of non-international armed conflicts, or situations of internal strife and tensions, it may offer its services to the conflicting parties and with their consent, be granted access to places of detention. Delegates visit detainees with the aim of assessing and, if necessary, preventing torture and ill-treatment. The visit procedures require access to all detainees and places of detention, that no limit be placed on the duration and frequency of visits, and that the delegates be able to talk freely and without witness to any detainee.²⁸⁰

◆ *International Criminal Court and Tribunals*

A number of ad hoc international criminal tribunals have been established in recent years- including the International Criminal Tribunal for the former Yugoslavia (ICTY) and for Rwanda (ICTR). The International Criminal Court (ICC) has also been established in the Rome statute of 1998.²⁸¹ These organs (both the court and the tribunals) fought the offences of torture and inhuman treatment according to their statute. Further, ICC is promising in its capacity to combat torture and inhuman treatment in the future.

²⁸⁰ Supra at note 18, p. 17.

²⁸¹ The establishing instruments of both the court and the Tribunals provide for the prohibition of torture and inhuman treatment as discussed under section 3.1, above.

CHAPTER FOUR

THE RIGHT TO FREEDOM FROM TORTURE, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT UNDER THE ETHIOPIAN LEGAL SYSTEM

Not limited to the protection of the right to freedom from torture, inhuman or degrading treatment or punishment, but including other rights and freedoms the Ethiopia legal system and the legal framework can be properly divided in to two regimes: Pre- 1995 regime (old legal order) and Post- 1995 regime (the existing legal order).

4.1 PRE-1995 REGIME [OLD LEGAL ORDER]

4.1.1 *BEFORE 1931*

Even before the ancient well documented Ethiopian law, i.e. Fetha Negest, there were many uncompiled documents in Ethiopia designed to serve as a legal instrument in protecting the peace and security of the society. However, neither of these previous instruments nor Fetha Negest itself provided a protection for individuals against torture, inhuman or degrading treatment or punishment.

The Fetha Negest, the law introduced in Ethiopia during the regime of Zarayaqob (1434-1468), did not prohibit torture, inhuman or degrading treatment or punishment, rather these acts found the status of fair and legal punishment to those who happen to breach the principles in it.²⁸² For instance, the sections dealing with the crime of theft and adultery provides beating, making with hard-hot iron, and having head being shaved as a sanction.²⁸³

²⁸² Abba Paulos Tzadua, *The Fetha Nagest*: published by the faculty of law, Haile Selassie I University, Addis Ababa, 1968, p.5.

²⁸³ *Id.*, p. 290-302.

4.1.2 THE 1931 CONSTITUTION

The 1931 constitution was the first written constitution in the Ethiopia history. Chapter three of the constitution,²⁸⁴ titled “the rights accorded to the people by the emperor, and duties which it is incumbent up on the people to fulfill” provides a guarantee of protection for a lot of human rights such as the right to movement,²⁸⁵ the right to protection against unlawful arrest, sentence and imprisonment,²⁸⁶ the right to be heard and due process rights.²⁸⁷ However, to the misfortune of individuals who were as a matter of historical fact considered as subjects, were not guaranteed from torture, inhuman or degrading treatment or punishment. There is no any express right the constitution to protect individuals from torture, inhuman or degrading treatment or punishment.

4.1.3 THE REVISED CONSTITUTION (1955)

The 1955 revised constitution of Ethiopia was highly influenced by two factors; the adoption of Universal Declaration of Human Rights and the Establishment of federation between Eritrea and Ethiopia. Unlike the Fetha Negest and the written constitution of 1931, the revised constitution of 1955 made a great departure in that it clearly outlawed cruel and inhuman treatment. Save for the inadequacy and limited scope of the provision, it was the first instrument that prohibits cruel and inhuman treatment in the Ethiopia history. It clearly provides that “*No one shall be subjected to cruel and inhuman treatment*”.²⁸⁸

4.1.4 THE CONSTITUTION OF PEOPLE’S DEMOCRATIC REPUBLIC OF ETHIOPIA (PDRE) 1987

The 1987 PDRE constitution provides a guarantee for a number of human rights and fundamental freedoms. It prohibits any kind of discrimination on the basis of sex, religion,

²⁸⁴ Constitution of the Ethiopian Empire, 1931.

²⁸⁵ Id, Art 22.

²⁸⁶ Id, Art 23.

²⁸⁷ Id, Art 24.

²⁸⁸ The Revised Constitution of Ethiopia, proclamation No.144/1955, Negarit Gazette, Year 15, No. 2, Art 57.

occupation, social status etc...²⁸⁹ It also guaranteed the inviolability of human person and the prohibition of unlawful arrest.²⁹⁰ Even though the constitution criminalize or illegalize violence or pressure against individuals in general, it did not have a clear provision to the effect that torture, inhuman or degrading treatment or punishment is prohibited in particular.

4.2 POST -1995 REGIME [THE EXISTING LEGAL ORDER]

4.2.1 THE 1995 FDRE CONSTITUTION

The 1995 FDRE constitution gave wider recognition for human rights than those previous constitutions. The whole part of the chapter 3 of the constitution, titled “*fundamental rights and freedoms*,” is devoted to guarantee human rights. The constitution, with strict terms, stated that international instruments ratified by Ethiopia are an integral part of the law of the land.²⁹¹

Here, it is important to recall that Ethiopia ratified the following human rights and humanitarian instruments: UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 14 much 1994 [with no declaration for Art 21 (inter-state complain) and Art 22 (individual compliant), and no ratification to its optional protocol];²⁹² International Covenant on Civil and Political Rights on 11 June 1993 [but no ratification for its optional protocols];²⁹³ UN Children Rights Convention on May 1991;²⁹⁴ UN Convention on the Elimination of All Forms of Racial Discrimination on 23 June 1976;²⁹⁵ UN Convention on the Elimination of All Forms of Discrimination against Women on 10 September 1981;²⁹⁶ African Charter on Human and People’s Rights on 15 June 1998;²⁹⁷ the four Geneva Conventions on 02 October 1969;²⁹⁸

²⁸⁹ The Constitution of the People’s Democratic Republic of Ethiopia, proclamation No. 1, 1987, Nagarit Gazetta, Year 47, No. 1, Art 35.

²⁹⁰ Id, Art 43-44.

²⁹¹ The Constitution of the Federal Democratic Republic of Ethiopia, proclamation no. 1/1995, Negarit Gazetta, year 1, No. 1, Art 9(4).

²⁹² United Nations, Treaty Series, Vol. 2375, p. 237; GA Resolution A/Res/57/199 of a January 2003.

²⁹³ United Nations, Treaty Series, Vol. 999, p.171 and Vol. 1057, p.407.

²⁹⁴ United Nations, Treaty Series, Vol. 1577, p.3.

²⁹⁵ United Nations, Treaty Series, Vol. 660, p. 195.

²⁹⁶ United Nations, Treaty Series, Vol. 1249, p. 13.

²⁹⁷ Available at www.au.org, [Documents], Treaties, Conventions & Protocols; accessed on November 12, 2010.

and Additional protocol I and II for the Geneva Conventions on 08 April 1994.²⁹⁹ However, Ethiopia does not ratify the Rome Statute of ICC.

The FDRE constitution, in addition to incorporating all the above instruments in to the law of the land under its Article 9(4) as a general rule, provides that all fundamental rights and freedoms specified in the chapter 3 shall be interpreted in a manner conforming to the principles of the UDHR, international covenants on human rights and international instruments adopted by Ethiopia.³⁰⁰

Article 18 of the constitution expressly provides that “*no one shall be subjected to cruel, inhuman or degrading treatment or punishment*”. At the same time Article 93 (4(c)) of the constitution places Article 18 in a non- derogable rights list. Thus, according to this provision article 18 cannot be suspended at any time even in the declaration of state of emergency.

Despite the fact that the constitution prohibits cruel, inhuman or degrading treatment or punishment, just like the 1955 revised constitution it does not have any explicit provision which prohibits torture particularly. If that is the case, the question whether the provision of the constitution which prohibits cruel, inhuman or degrading treatment or punishment embraces torture requires appropriate response. The fact that the separate term “torture” is not found clearly in the constitution may serve as a ground for someone to argue that torture is not covered or contemplated in the constitution. However, writer of this paper does not agree with this kind of interpretation.

Interpretation must be constructive rather than distractive. Under this circumstance, a liberal interpretation must be used in which cruel and inhuman treatment can cover torture. Using strict interpretation in this situation makes the provision meaningless and fallacious. Is there any degrading or inhuman treatment painful or severe than torture? Logically speaking, if the constitution prohibits inhuman and cruel treatment, for the stronger reason it must prohibit torture as well. Therefore, the interpretation that must be applied for the case of Article 18 is

²⁹⁸ Available at www.icrc.org, [Resource Center], IHL Database, Treaty database and States parties; accessed on November 12, 2010.

²⁹⁹ Ibid.

³⁰⁰ Supra at note 291 (FDRE Constitution), Art 13(2).

liberal and constructive interpretation in which torture must be considered as one form of inhuman treatment. That is also the way of interpretation supported by the combined reading of article 9(4) and article 13(2) of the same constitution.

Further, Article 19 and 21 of the constitution have a lot of things to do with the protection of the right of prisoners to freedom from torture, inhuman or degrading treatment or punishment, whether directly or indirectly. Article 21 of the FDRE constitution, under the title “*The rights of persons held in custody and convicted prisoners*” reads:

“All persons held in custody and persons imprisoned upon conviction and sentencing have the right to treatments respecting their human dignity. All persons shall have the opportunity to communicate with, and to be visited by, their spouses or partners, close relatives, friends, religious counselors, medical doctors and their legal counsel.”

Article 19(5) of the constitution also reads:

“Persons arrested shall not be compelled to make confessions or admissions that could be used in evidence against them. Any evidence obtained under such coercion shall not be admissible.”

Further, Article 28(1) of the constitution clearly criminalizes torture as one of the crimes against humanity. It provides that:

“Criminal liability of persons who commit crimes against humanity, so defined by international agreements ratified by Ethiopia and by other laws of Ethiopia, such as genocide, summary executions, forcible disappearances or torture shall not be barred by statute of limitation. Such offences may not be commuted by amnesty or pardon of the legislature or any other state organ.”

4.2.2 THE REVISED CRIMINAL CODE (2004)

Article 424 of the criminal code of the federal democratic republic of Ethiopia foresees penalties when violence is inflicted by state agent. It reads that:

“Any public servant charged with the arrest, custody, supervisions, 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

this duties, improperly induces or gives a promise threatens or treats the person concerned in an improper or brutal manner, or in a manner which is incompatible 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 makes him give a testimony in a favorable manner is punishable with simple imprisonment or fine, or in serious cases, with rigorous imprisonment not exceeding ten years and fine.”

According to this provision torture can be interpreted by definition as not a very serious crime within the existing legislation. In addition to a fine, the perpetrator of the crime of torture can be punished with simple imprisonment. Crimes for which simple imprisonment can be imposed are defined in the code as ‘of not a very serious nature committed by persons who are not a danger to society.’³⁰¹ The designated sentence also runs only ‘from ten days to three years.’ These punishments are in no way appropriate for the committed violation and not in compliance with article 4(2) of the Convention against Torture.³⁰²

Further, there is no minimum penalty imposed in the provision. The perpetrator of a torture could theoretically look forward to an unstipulated minimum fine. It must be understood that the imposition of fine for the practice of torture is absolutely unacceptable under any circumstance.³⁰³

It is also obvious from the text of the code that the sanction foreseen for common crimes of violence is more serious than that of acts of torture. Article 555 of the criminal code sets out general protection measures: it reads that

“Whoever intentionally; (A) wounds a person so as to endanger his life or to permanently jeopardize his physical or mental health; or (b) maims his body or one of this essential limbs or organs, or disables them, or gravely and conspicuously disfigures him; or (c) in any other way inflicts up on another an injury or disease of a serious nature, is punishable, according to the circumstances

³⁰¹ The Criminal Code of the Federal Democratic Republic of Ethiopia, proclamation No. 414/2004, Art 106.

³⁰²Roberta Cecchetti, Rights of the Child in Ethiopia, Report concerning the application of the Convention on the Rights of the Child in the Federal Democratic Republic of Ethiopia, The World Organization against Torture (OMCT), 2001, p. 16.

³⁰³ Id, p. 17.

of the case and gravity of the injury with rigorous imprisonment not exceeding fifteen years, or with simple imprisonment for not less than one year.”

Rigorous imprisonment is a punishment, as defined under article 108 of the criminal code, for offences of a very grave nature. Given that torture often provokes the kind of outcome defined in the above-mentioned article what is the ground because of which torture can be treated in such easy manner?³⁰⁴

4.2.3 CRIMINAL PROCEDURE CODE (1961)

Even though the Ethiopian criminal procedure code of 1961 was proclaimed in 1961 (i.e. before 1995) to implement the substantive provisions of the repealed penal code (of 1957), it is better to categorized and deal with it under the laws of excising regime (post 1995) since there is no any newly proclaimed criminal procedure code to replace it. It is through this code that the revised criminal code is being implemented.

The code prohibits the acts of offering or using or causing to be offered, making or using any inducement, threat, promise or any other improper method by any police officer or authority to the effect that the person examined confesses or gives information.³⁰⁵ Even though this provision does not plainly put the term torture, it actually accords with the technical definition given to it in that all of the improper methods provided in the cited provision are aimed at obtaining information. The law also excluded any evidence obtained through the use of such improper methods.³⁰⁶

4.2.4 FEDERAL PRISONS COMMISSION ESTABLISHMENT PROCLAMATION

One of the very important laws related with the protection of individuals from torture, cruel, inhuman or degrading treatment in the Ethiopian legal system is the Federal prisons commission establishment proclamation number 365/2003.

³⁰⁴ Id, p.18.

³⁰⁵ The Criminal Procedure Code of Ethiopia, Negarit Gazette, Proclamation No. 185/1961, Art 31.

³⁰⁶ Id, Art 31.

The preamble of the proclamation, as one of the objectives of the proclamation, states that it is enacted to establish an organ of federal prisons which adheres to the constitution of the Federal Democratic Republic of Ethiopia and committed to laws enacted under it. For that matter, the proclamation intends to establish federal prisons which respect, among other things, individual's right to freedom from torture, inhuman or degrading treatment or punishment. The proclamation is also intended to be a means of executing decisions of courts through the carrying out of custody in reformatory and rehabilitative manners which is contrary to the practice of torture, inhuman or degrading treatment or punishment.

Further, the proclamation clearly imposes an obligation on all prison wardens to perform their duty by fully respecting human and democratic rights of individuals enshrined in the constitution and other international instruments adopted by Ethiopia.³⁰⁷ The proclamation also entitles all prisoners a right to be treated in such a way that their dignity is respected.³⁰⁸ In general terms, the proclamation takes a large part of substantial nature from the standard minimum rules for the treatment of prisoners which is discussed under the previous section.

Further, under the Federal Police Commission Proclamation No. 313/2003, any police officer has the duty to perform his responsibilities, among others, by fully observing human and democratic rights ensured by the Constitution. Specifically, any inhuman or degrading treatment or act is prohibited. Similarly, under the Federal Police Commission Administration Regulations No. 86/2003, violations of human and democratic rights stipulated in the Constitution would entail rigorous disciplinary measures, which include demotion and dismissal.

In general, the Proclamation on the Establishment of Federal Prisons Commission 365/2003, the Federal Wardens Administration Council of Ministers Regulations No. 137/2007, and the Treatment of Federal Prisoners Council of Ministers Regulations No. 138/2007 are three of the major instruments in the treatment of prisoners, at the federal level.

³⁰⁷ The Federal Prisons Commission Establishment Proclamation, Proclamation No. 365/2003, Federal Negarit Gazzeta, Art 18 (1).

³⁰⁸ *Id.*, Art 22(1).

4.2.5 OROMIA PRISONS ADMINISTRATION COMMISSION ESTABLISHMENT PROCLAMATION

States are allowed to establish their own police forces [and this may include prison commissions as a law enforcement agency].³⁰⁹ Even though the state prison commissions are functionally independent, they are obliged to cooperate with their federal counterparts in order to maintain improved conditions of prisons across the nation.³¹⁰

Based on this understanding the National Regional State of Oromia has established its own commission for the administration of prisons. There is no a separate legislation for the establishment of Oromia Prisons Administration Commission. It was established under Proclamation No. 87/2004 of *Megeleta Oromia*, a proclamation to provide for the reorganization and redefinition of the powers and duties of the executive organs of the Oromia National Regional State. Article 30 of this proclamation provides for a detail list of powers and duties of Oromia Prisons Administration Commission. The commission has a duty to ensure the respect for human rights of prisoners without any discrimination.³¹¹ The commission is under duty to design and implement a means to rehabilitate prisoners, for which it must facilitate the provision of regular and basic education and vocational training essential to the prisoners' life in addition to preparing different types of sporting games places necessary for the mental and physical well-being of prisoners.³¹²

The commission must cause the fulfillment of sanitary conditions of and basic social services for prisoners and give personal and environmental hygiene education, in addition to providing for good medical treatment of prisoners whether for ordinary disease or for an epidemic.³¹³ Moreover, the commission is under duty to provide sufficient food to prisoners, and particularly it must give special care for pregnant women and children who are living with their mother.³¹⁴ The follow up of prisoners' behavior reform and submission thereof with probation request to the

³⁰⁹ Supra at note 291 (FDRE Constitution), Article 52.

³¹⁰ Supra at note 307, Article 34.

³¹¹ A proclamation to provide for the reorganization and redefinition of the powers and duties of the executive organs of the Oromia National Regional State, *Megeleta Oromia*, Proclamation No. 87/2004 Art 30 (2) & (3).

³¹² Id, Art 30 (4), (5), & (6).

³¹³ Id, Art 30 (7), (8), & (9).

³¹⁴ Id, Art 30 (10).

competent court is also a matter expected from the commission, in addition to passing and following up questions and complaints or application of prisoners to different organs as addressed by them.³¹⁵ The commission, as one of its duties, must endeavor to cause prisoners to meet their families, legal professionals, advocates and others.³¹⁶ In addition to recruiting, training (including on work training) and placing workers to build the human resource of the prisons, the commission is also under duty to make relations with government organs, nongovernmental and aid organizations to improve and make prisons conducive for prisoners.³¹⁷

However, this proclamation which seems to be duly concerned with the rights of prisoners could not stay long on function. After it was amended by the proclamation No. 96/2005 and No. 105/2005, another proclamation came into force in 2007 to amend all the proclamation No. 87/2004, 96/2005 & 105/2005. The existing legislation, i.e., proclamation No. 132/2007- “a proclamation to amend the proclamation to provide the reorganization and redefinition of the powers and duties of the executive organs of Oromia National Regional State No. 87/2004 and its amending proclamations No. 96/2005 and No. 105/2005”- has a number of relevant provisions for the protection of prisoners’ rights.

Among others, the duties of the commission, which are directly relevant for the protection of prisoners’ rights includes, to facilitate conditions to give training, with a view to enhance performance capacity of its employees;³¹⁸ to cause prisoner’s right to be protected without discrimination while in prisons;³¹⁹ to cause the provision of basic, regular and technical & vocational education to be given, by establishing training center with a view to make prisoners productive citizens and improve their social life;³²⁰ to prepare different sport and recreation places;³²¹ to cause prisoners to take care of their personal hygiene and situation, and those who are sick to be kept and treated separately;³²² to supply enough food for prisoners by allocated

³¹⁵ Id, Art 30 (12) & (13).

³¹⁶ Id, Art 30 (14).

³¹⁷ Id, Art 30 (19) & (15).

³¹⁸ A proclamation to amend the proclamation to provide the reorganization and redefinition of the powers and duties of the executive organs of Oromia National Regional State No. 87/2004 and its amending proclamations No. 96/2005 and No. 105/2005, Megeleta Oromia, Proclamation No. 132/2007, Art 13 (2).

³¹⁹ Id, Art 13 (4).

³²⁰ Id, Art 13 (6).

³²¹ Id, Art 13 (7).

³²² Id, Art 13 (8).

budget, take special care of pregnant women and children with their mother in prison;³²³ to cause prisoners to meet with their family, physicians and legal counselors etc;³²⁴ to give support for prisoners to be organized and get income; to facilitate conditions to prisoners to participate in developmental activities; and to make arrangements through which prisoners be paid and utilize from income earned.³²⁵

There is no any doubt, finally, to conclude that these proclamations can play important role in protecting individuals form torture, inhuman or degrading treatment or punishment if implemented properly. It is based on all the above discussed international, regional, and domestic legal instruments that we will assess the practical situation of protecting individuals from torture, inhuman or degrading treatment or punishment in some selected prisons of the national regional state of Oromia.

³²³ Id, Art 13 (9).

³²⁴ Id, Art 13 (13).

³²⁵ Id, Art 13 (17) & (18).

CHAPTER FIVE

PRACTICAL STUDY: THE PROTECTION OF THE RIGHT TO FREEDOM FROM TORTURE, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT IN SOME SELECTED PRISONS OF OROMIA NATIONAL REGIONAL STATE

5.1 HISTORICAL BACKGROUND AND DEVELOPMENT OF PRISONS AND PRISONERS TREATMENT IN ETHIOPIA; *EMPHASIS TO OROMIA NATIONAL REGIONAL STATE*

Crime as a source of social evil emerged from biblical times. Societal ambivalence concerning crime, criminals, and punishment is not also a new issue. From the earliest accounts of societal responses to deviance, the issue of whether criminals should be punished by imposing the principle of “an eye for an eye” or by being treated compassionately and with understanding in order to salvage and rehabilitate them has been a matter of debate.³²⁶

As the socio- economic situation changes the nature and techniques of crime changed, and the state devised ways and means to cope up with the new wave of criminals. The ways and means devised were that, one offender is put on probation instead of imprisonment; another was fined instead of imprisonment etc. Yet, prisons as we know now are relatively recent penal sanctions. Therefore, until the 17th century criminal sanctions were compensatory, financial or corporal. There is a view that prisons as a means of social institution emerged in Pennsylvania, USA, in the last part of the eighteenth century. However, the Belgians, the Chinese, the Italians, and the Scandinavians dispute the priority of Pennsylvania. Actually it is always difficult to ascertain historical first in confidence. In general the need to reform young offenders, the detention of those politically in disfavor, banishment etc. contributed to the 19th century prisons. Such prisons

³²⁶ Alexander B. Smith and Louis Berlin, *Treating the Criminal Offender*, 3rd edi., Plenum Press, New York, 1988, p.4.

spread around the world as separate organizations for the punishment of criminals. From this time onwards imprisonment was considered as expulsion from the group.³²⁷

There is no any documentary or credible oral evidence showing the exact period when prisons were established in Ethiopia. As Ethiopia was not politically unified state in its ancient history, each region had its own ruler who has his own particular way of dealing with criminals. It is, therefore, in this situation that the early prisons of Ethiopia can be studied. The prisons of traditional Ethiopia were mainly used to confine the successors to the throne. These people were mostly placed on the mountains. The mountains were cold and big and are round on top and it takes fifteen days to go round it. Since these mountains are closed by one or two very strong gates there is no possibility to go out of it. In this particular place those who are nearest to the king are placed. Those with the nearest blood relationship are watched with care. Those who are descendants and already almost forgotten are not so much watched over. The would be kings were not permitted to associate themselves with the public so as to avoid that no one may have an opportunity of learning the secrets of the mountain.³²⁸

Mount Gishen of Wollo, Mount Wehni of Begemder and Mount Debre Damo of Tigray were among the prominent mountains that served as detention centers. 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.³²⁹ In addition to permanent detention of princes, temporary detention was also common. The king in order to preserve due respect and to impress the minds of his visitors used to detain them for a day or a week before they are permitted to see him.³³⁰

³²⁷ Noval Morris, "Prison in Evolution", *Criminal Law Review*, Vol. 29 Sweet and Maxwell Ltd., London, 1965, p. 22.

³²⁸ Alvares, 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, Published for the Hakluyt society of the University Press, Cambridge, 1961, p. 240-247.

³²⁹ Peken Ham Thomas, *An Ethiopian Adventure*, Weidenfeld and Nicolson, London, 1959, p. 161.

³³⁰ Harris W. Corn Wallis, *The Highlands of Ethiopia*, Longman- Brown Green, London, 1844, p. 363.

Except this treatment of the princes and visitors there was no any formal administration of justice for the general public. There were no organized offices, prison houses or courts through which criminals or debtors may pass through and get justice. In case of a debtor for example who owes money to the government, a band of soldiers is sent to feed on him till he pays what is due. The soldiers threat the debtor brutally and oblige him to provide them with the most expansive luxuries. If the person fails to pay the debt he is put in prison and chained by the arms. The iron which is placed round the wrist is merely a strong hoop, opened by force to allow the hand to enter and then hammered tight between two stones. After sometime, if the sum required be not forth coming it is knocked on little tighter and so by degrees till the hand dies, and the prisoner is at best maimed for life. Death sometimes results from this treatment.³³¹

While dealing with the history of prisons and treatment of prisoners in Ethiopia, it would be mistake for anyone if he left the prisons of Emperor Tewodros, established to detain the foreigners of English origin. Because of the misunderstanding created between Tewodros and Britain, he put all the foreign representatives in prison. The prison house where these prisoners were kept was a common jail for the political offenders, thieves and murderers. The prison rules were also in some respects severe in others mild.³³² The prisoners were leading a very simple life. The houses they lived in were furnished with two tanned cows' hides and a few old carpets presented by the king. As regards food, the prisoners were obliged to keep large staff of servants as they had to prepare everything for themselves. Some women were engaged to grind flour, and others to bring water or wood.³³³

Beside the detention history of the missionaries, there were also separate practices of treating criminals in the general public. Petty crimes in this period were treated severely. The country had no small jail and the corporal punishment rendered had an excellent effect. Mutilation was never done for the first offence; whipping was tried at first to break the offender or his bad habit or being put in chains and made to clean up the enclosure of the officials. In this period when a man is met minus a hand or foot, it was considered as a certain sign that he was or is a thief.³³⁴

³³¹ Perkyans Mansfield, *Life in Abyssinia*, Frank Cass and Co., London, 1966, p. 96.

³³² Stern A. Henny, *The Captive Missionary*, Cassell, Petter & Galpin, New York, 1869, p. 63.

³³³ *Ibid.*

³³⁴ Wylde B. Augustus, *Medern Abyssinia*, Mathew and co., London, 1901, p. 45.

During and after the reign of Emperor Minilik also the treatment of prisoners was not different from the previous periods. The punishments rendered were severe - capital punishment by hanging, the cutting off a hand for theft, flogging with a hippopotamus hide whip and similar penal measures were common. For him who takes another's' life by murder Moses' an eye for an eye and a tooth for a tooth still prevailed. However, a man guilty of murder or manslaughter can, if the dead man's family agree, secure his freedom by the payment of a sum which is fixed in accordance with the circumstances of both parties.³³⁵

Generally, even if the number and the exact situation of prisons remain unascertained in the post Minilik Ethiopia, Emperor Hailesilasse in his book pointed out that prior to 1925 E.C. the places where prisoners were kept were filthy and contrary to health.³³⁶ He further added that after 1925 E.C. he built from his own private purse prisons which have the necessary accommodation such as clinic, school and vocational training, and the chaining of prisoners was abandoned and permanent guards were posted to watch over prisoners.³³⁷ Therefore, it is at this point that we can with full confidence say the era of modern prisons began in Ethiopia.

After this time onwards the number of prisoners and prisons in Ethiopia has shown an increase dramatically. According to the report of the Special Rapporteur on Prisons and Conditions of Detention in Africa there were about 63,000 prisoners and 171 prisons in Ethiopia in 2004.³³⁸ While the number of prisoners increased to 80, 974 (including 2,123 female and 487 child living in prison with their mothers) in 2008, the number of prisons have shown a decrease to 120 at the same year.³³⁹ This could be due to structural arrangements.

There is no any separate document showing the emergence, development, condition and number of prisons in Oromia National Regional State.³⁴⁰ Partly, it is due to the reason that Oromia as a separate region has been established recently - just with the introduction of federalism in Ethiopia, 1995. As prisons of Oromia region in the present political system had been considered

³³⁵ Gieneral Virgin, *The Abyssinia I knew*, Macmillan and Co. Ltd., London, 1936, p. 92.

³³⁶ Emperor Haile Selassie, *Hiwotena Yethiopia Ermija*, (amharic), Baz, England, 1929, p. 52.

³³⁷ *Ibid.*

³³⁸ Report of the Mission of the Special Rapporteur on Prisons and Conditions of Detention in Africa to the Federal Democratic Republic of Ethiopia, 15 - 29 March, 2004, p. 7.

³³⁹ Prison Visit Report, Ethiopian Human Rights Commission, July 2008, p.2.

³⁴⁰ *Infra* at note 438 (Interview with Commissioner Commander Tilahun Kibre).

as an integral part of the whole Ethiopia (in the previous unitary state structure), there is no any study conducted to the effect of sorting out and mentioning the number and situations of prisons in Oromia region.³⁴¹ As discussed in the previous chapter, the prison administration commission of Oromia national regional state has been established recently, as a separate institution. The number of prisoners found in prisons of Oromia national regional state by 2006/2007 was 26, 269 male and 798 female.³⁴² Currently, as of November 2010, there are 35 prisons in the whole Oromia region, including all prisons organized at Woreda and Zone level.³⁴³

5.2 INTRODUCTION TO THE PRISONS COVERED UNDER THE STUDY, AND METHODS OF DATA COLLECTION AND ANALYSIS FOR EACH PRISON

As indicated under chapter one, this work covers five prisons and one center of technical and vocational training for prisoners in Oromia national regional state. These prisons are located under different parts of the region, except one prison and the other technical and vocational training center situated in one city, Adama/Nazreth. The method of data collection is almost similar to all areas covered under the study, with some exception adopted in studying East Showa zone /Adama/ prison due to some inconveniency. Saying these general statements, the detail introduction to each prison and the method of data collection and analysis employed in each prison will be provided us follows.

I. SOUTH WESTERN SHOWA (WOLISO) PRISON

This prison is located in Woliso town, 116 km far from Addis Ababa, in the Jimma road (commonly known Jimma beer). The South western Showa (herein after Woliso) prison was established in 1950s, as a residence of individuals, just for private purpose. It was later on that the place changed its purpose and started to serve as a prison in late 1950s.³⁴⁴ There are 900

³⁴¹ Ibid.

³⁴² CORE DOCUMENT FORMING THE INITIAL PART OF THE REPORTS OF STATES PARTIES ETHIOPIA, [12 September 2008], UNITED NATIONS HRI, International Human Rights Instruments Distr. GENERAL HRI/CORE/ETH/2008, Original: ENGLISH, 6 February 2009, Table 69, p.134.

³⁴³ Infra at note 438.

³⁴⁴ Interview with the Chief Administrator of Woliso prison, Woliso, November 5, 2010.

prisoners in this prison as of November 5, 2010, out of which up to five prisoners are insane.³⁴⁵ However, according to the chief administrator of the prison, the number of prisoners is highly fluctuating and there are times in which the number of prisoners had been raised up to 1700. The prison has a total of 90 staff members out of which around 30 are prison warders and 2 are nurses (1 psychologist), the rest are supportive, administrative and developmental works staff members.³⁴⁶

The educational level of prison warders covers a range from completing grade 10 to holding BA degree, with work experience extending up to 34 years. However, the prison has no, according to the chief administrator, well organized staff development programs in which short term training could be administered for prison warders, especially of human rights training.

The method of data collection employed in this prison was of three kinds: disseminating two kinds of questioner to prisoners and prison warders with short orientation; conducting interview with the top officials of the prison administration about the situation of the prison; and conducting general filed survey in the prison. In this activity, 34 prisoners - out of which 29 male and 5 female have filled out the questioner provided for them properly. Of the prison warders 10 - 7 males and 3 females, have been provided with a questioner and filed out properly.

II. WEST ARSI (SHASHEMENE) PRISON

This prison is located in Shashemene town, 251 km far from Addis Ababa, in the road to Awassa (commonly known in Harar Beer). The West Arsi (herein after Shashemene) prison, as a prison has been established recently on around January 1999. There were about 30 prisoners at the very begging who helped, by labor, for proper construction of the prison.³⁴⁷ Currently the prison receives prisoners from around 12 woredas in the surrounding including woredas of Arsi Negele, Aje, Siraro, Kofale, Shashemene town, Adaba, Dodola, Kore, and Kokosa.

³⁴⁵ The prison has no register or notice board showing the detail number of prisoners with sufficient classification.

³⁴⁶ Supra at note 344.

³⁴⁷ Interview with the Chief Administrator of Shasemene prison, Shashemene, November 1, 2010.

There are about 1175 prisoners (32 of them women and 4 of them are insane) in Shashemene prison, as of November 2, 2010, out of which 3 of them are convicted for death sentence, 11 of them are convicted for life imprisonment, 268 of them are convicted for rigorous imprisonment of 4 years and above, 8 of them are not convicted but have rest there until charge brought before the court against them (Gize ketero), 93 of them are un convicted but have a regular remand (as appointed by court) and 6 of them are children living with their mothers.³⁴⁸

The prison has a totality of 68 staff members, out of which 39 are prison warders and 1 medical staff, despite there is no clinic in the prison. The range of educational level of prison warders covers from 10th grade graduation to first degree level with long years of experience in different prisons.³⁴⁹ According to chief administrator of the prison, the prison has no sufficient facility for prisoners as it is new but there are attempts to improve the prison situation as soon as possible. He further added that there is serious discussion on work plans related to the treatment of prisoners with prison warders even if there is no well organized training program for the prison warders in detail. The writer also observed that there are attempts to improve the prison situation, especially as the prison administration is using efforts to provide prisoners with clean potable water, religious facilities and most notably sport and recreation center covering 60,144 care meters.

The data collection in this prison employed three methods, as shown in Woliso prison, i.e. first disseminating two kinds of questioner to prisoners and prison warders with short orientation; second, conducting interview with the top officials of the prison administration about the particular conditions of the prison; and third conducting a general filed observation in the prison. In this process, 32 questioners have been disseminated to and filed out correctly by prisoners. Out of the 32 respondent-prisoners 6 of them were female, while the rest 26 are male. A different questioner had been also distributed to 9 prison warders - 6 male and 3 female.

³⁴⁸ As indicated on the notice board of the prison, to be updated each morning. there is also almost successful attempt to launch a computerized registration system.

³⁴⁹ Supra at note 347.

III. ADAMI TULU JUDO KOMOLCHA (ZIWAY) PRISON

Before any further discussion on this prison, it must be duly indicated that this prison, as covered under this work, is absolutely different from Ziway Federal Prison located in Ziway Town. As the scope of this work is limited to prisons under the administration of Oromia national regional state in its Oromia prison administration commission, the federal prison located in the town of Ziway could not be covered under this work.

Saying this much about its distinct nature, Admi Tulu Jodo Kombolcha (herein after Ziway) prison is located in the town of Ziway, 163 km far from Addis Ababa, in the road to Awassa (commonly known in Harar Beer). The prison was established in the reign of Emperor Haile Selassie. However, as a prison of Oromia region it has lived short as it was established in 1996.³⁵⁰

The prison receives prisoners from different woredas including Alem Tena, Meki, Judo and Adami Tulu. There are 600 prisoners in the prison, 589 male and 11 female, and 1 insane person as of October 27, 2010. While the number of prisoners convicted to greater than 4 years imprisonment is about 500, the rest 100 are convicted for imprisonment of less than 4 years.³⁵¹ The prison has also 32 prison warders and a nurse. Most of the prison warders have an educational level beyond 10th grade with long years of work experience up to 24 years.³⁵² There is no regular training on human rights or other issues administered by the prison. However, according to one of the top officials of the prison, there are discussions about the treatment of prisoners with prison warders at least once per a week.

Concerning the data collection stage conducted in this prisons, it was of three types like the other two above mentioned prisons, i.e., field observation of a general nature, interview with the top officials of the prison administration and disseminating questionnaire of two kinds-one for prisoners and the other for prison warders, with brief orientation. The questionnaire was

³⁵⁰ Interview with vice chief administrator of Ziway prison, Ziway, October 27, 2010.

³⁵¹ It must be noted that there is no an official register in this prison indicating the number of prisoners with detail classification. All the statistics is collected from the interview, see note at 350.

³⁵² Supra at note 350.

distributed to and responded properly by 27 prisoners, of which 3 are women. The number of prison warders provided with questioner was 5 - of which 3 male and 2 female.

IV. WEST SHOWA (AMBO) PRISON

This prison is located in Ambo town, 125 km far from Addis Ababa, in the Nekemt road (commonly known Nekemt beer). There is no any historical document indicating the exact time in which this prison was established. However, for sure it was established during the reign of Emperior HaileSelassie, perhaps 50 years ago or around.³⁵³

The West Shewo (herein after Ambo) prison receives prisoners from various areas, including from woredas of Dendi, Jeldu, Cheliya and Tikurnchini. As of November 8, 2010 the prison holds 1824 prisoners, out of which 67 are female and 3 are insane persons. The specific list of persons detained in this prison indicates that, of these 1824 persons 2 of them are convicted for death sentence, 39 are convicted for life imprisonment, 561 of them are convicted for rigorous imprisonment of 4 years and above, 395 of them are convicted for imprisonment of less than 4 years, 67 of them are not convicted but have a rest there in the prison until charge may brought before the court against them (Gize ketero), 748 of them are unconvicted but have a regular remand (as appointed by court) and 12 of them are children living with their mothers.³⁵⁴

The prison has a total of 73 staff members including 26 prison warders, a nurse and a psychologist. The educational level of prison warders ranges from 8th grade completion certificate to diploma. According to one of the top officials of the prison, there are also short term trainings for prison warders as arranged by the prison administration.³⁵⁵

The data collection stage in this prison involves three kinds of activities, as usual as adopted in Woliso, Shashemene and Ziway prisons. The data had been collected by disseminating

³⁵³ Interview held with V/Commander Jiffar Hombobe, one of higher administrative staff of Ambo prison, Ambo, November 8, 2010.

³⁵⁴ Unlike Woliso and Ziway prisons in this prison there is a comprehensive board showing the number of prisoners with specific categorization.

³⁵⁵ Supra at note 353.

questioner of two types for prisoners and prison warders with brief orientation, by general field observation, and by conducting interview with top officials of the prison administration. The questioner was distributed to and correctly filled out by 38 prisoners -30 male and 8 female. The questioner specifically designed for prison warders had been disseminated to 12 prison warders- 8 male and 4 female.

V. EAST SHEWA (ADAMA) PRISON

This prison is located in Adama town (Nazreth), 98 km far from Addis Ababa, in the Harar Road (commonly known Harar Berr). Unlike the above mentioned prisons, the administration of East Shewa (herein after Adama) prison was not willing to give support in the course of data collection, as well mentioned under chapter one.³⁵⁶ Therefore, the time of establishment of the prison remained unknown as there is no any written documentary evidence for that matter.

It was impossible to conduct an interview with the administration officers of the prison and to disseminate questioner prepared for prison warders, as the researcher could not have authorization to do so. However, all the necessary and sufficient data have been collected from prisoners who have accommodation in Adama-Dippo technical and vocational training center, partly due to lack of enough space to accommodate them in Adama prison and partly due to the need of separate treatment for them, as most of them are in between 18 and 20 years old. The writer's short lived and perhaps general observation in the prison while he was moving from one office to the other begging for their (prison administrators) help should not also be underestimated, as he can skim the general situation of the prison during this time.

Questioner was disseminated to 21 prisoners of Adama prison - who for the above mentioned reasons detained in Adama technical and vocational center (hereinafter the *Dippo training center*). Additional information has also been collected from prisoners, with interview mechanism.³⁵⁷ Based on these information the prison receives prisoners from different areas including Mojo, Adama 13 and Adama 07 police stations; and there were around (as most of the

³⁵⁶ See also the section "Research Methodology" in chapter 1, section 1.5, p. 7-8.

³⁵⁷ A statement with signature and seal as evidence showing this state of fact is attached on Annex (I), p. X.

respondents mentioned) 2300 prisoners in Adama prison, as of the end of September, 2009. It must also be noticed that there is no female prisoner in Adama prison. According to the vice chief administrator of Deppo technical and vocational center³⁵⁸ all the female prisoners who are sentenced of any year of imprisonment in that area are immediately received by the Dippo training center rather than sending them to the Adama prison. Finally, it must be well understood that all the discussion about this prison, Adama prison, is mainly based on the information collected from those 21 prisoner-respondents of the prison who lived for more than a year in that prison before coming to the center of training.

VI. UNDER THE PRISONS ADMINISTRATION COMMISSION OF OROMYA NATIONAL REGIONAL STATE – ADAMA (DIPPO) TECHNICAL AND VOCATIONAL TRAINING CENTER OF PRISONERS

Unlike the above cases, this section is not going to deal with a prison. As the name indicates “Adama technical and Vocational training center of prisoners - under the prisons administration commission of Oromia national regional state” is not a prison, rather it is a center of technical and vocational training for prisoners.

The purpose of covering this center under the present study must be clear before any detail discussion. Under the preliminary survey the writer of this work was informed that this center is the best place for prisoners in the Oromia region, perhaps one of the best places in Ethiopia as a whole for ordinary prisoners. Having in mind that all prisoners, whether in this center or in other prisons of the region, are entitled to equal treatment and considering that all prisoners, detained in this center or other prisons, have been convicted for almost the same crimes, how this kind of substantial disparity in the treatment of prisoners could happen is a big question. Whatever the reason may be, there is a general understanding that prisons must be facilitated, nice enough as much as possible, to the best treatment of prisoners. The reason why this center is included under this study is, partly to show the treatment of prisoners in this center as being done in other places

³⁵⁸ Infra at note 361.

where prisoners reside, and partly to show what prisons should look like (for comparison), if the preliminary survey proved in affirmative.

The Adama technical and vocational training center of prisoners (as stated above shortly Dippo training center) is located at the heart of Adama/Nazreth town, 98 km far from Addis Ababa, in the Harar road (commonly known Harar beer). The training center was established in 2003- not as a center of technical and vocational training but as a temporary place of accommodation for the prisoners of extremely crowded Adama prison (The above discussed East Showa Prison).³⁵⁹ The place was established under the collaboration of Oromia prisons administration commission and Justice For All- Prison Fellowship Ethiopia.³⁶⁰ It was after three years, in 2006 that the place started its function as a center of technical and vocational training for prisoners. It started work with 216 prisoners who came from different 35 prisons of Oromia National Regional State.³⁶¹ As of November 3, 2010 the center holds 292 prisoners - 258 male and 34 female. The center has also another separate compound for young prisoners below 18 years old. The center has a staff member of 52 persons -50 military and 2 civilians who are medical practitioners.³⁶²

According to the judgment execution officer working in the center,³⁶³ prisoners who can attend training in this center are only those who complete 8th grade education and are convicted of imprisonment in between 3 and 5 years. While the training lasts for 10 months, the prisoners will be sent back to the prison from where they came, at the end of the training. There are variety of trainings and works in the center including but not limited to wood work, metal work, tailor/dressing, computer training, electricity and electric installation, coble stone and cattle fattening.

Regarding the data collection, the data from this center had been collected in three methods: first by detail field observation; second, by interview held with top officials of the center; and third,

³⁵⁹ See also above "East Showa Prison(Adama)", p. 118.

³⁶⁰ It is an NGO working on human rights issues, especially in the areas of prison, situated on the Bole road, behind Dembel City Center, Addis Ababa, Ethiopia.

³⁶¹ Interview with the Vice Chief Administrator of Adama (Dippo) technical and vocational training center of prisoners, Adama, November 3, 2010.

³⁶² Ibid.

³⁶³ Interview with judgment execution officer of Dippo technical and vocational training center, Adama, November 3, 2010.

by questioner disseminated to trainee-prisoners and detention warders. Twenty trainee- prisoners have been provided with questioner, of which 17 are male and 3 are female. Seven male detention warders have also filled out the questioner prepared specifically for that purpose.

5.3 THE PROTECTION OF THE RIGHTS OF INDIVIDUALS IN SOME SELECTED PRISONS OF OROMIA NATIONAL REGIONAL STATE

5.3.1 GENERAL INTRODUCTION TO THE PROTECTION OF THE RIGHT TO FREEDOM FROM TORTURE, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT IN ETHIOPIA, *EMPHASIS TO OROMIA NATIONAL REGIONAL STATE*

Ethiopia has no good record of human rights protection in history. Despite the fact that Ethiopia is among the founding members of various international and regional organizations that put the protection of human rights as one of their fundamental goals, the country's human rights records have been criticized by a number of human rights organizations.

Among others, Amnesty International, Human Rights Watch, the International Commission of Jurists (ICJ), the Committee to Protect Journalists, the Ethiopian Human Rights Council, International Federation of Human Rights (IFDH), Society for Threatened Peoples international, Reporters without Borders, Human Rights League of the Horn of Africa, US State Department reports on human rights practices of states and the European Union (EU) have mentioned their deep concern for and criticism on the human rights situation of Ethiopia in various occasions.³⁶⁴

According to the statements of Human Rights Watch, on its human rights report of the year- 1996, there are a numbers of cases of torture and other cruel, inhuman or degrading treatment on security detainees, in Ethiopia.³⁶⁵ Human Rights Watch/Africa has this to say about torture,

³⁶⁴ For further elaboration see Oromia Support Groups (UK); on Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment to Committee Against Torture, written information for the examination of the Ethiopia's initial report under Article 20(1) of the convention, 45th sessions, submission by Oromia Support Group (OSG), 2010, p.2 and ff, available at <http://www2.ohchr.org/english/bodies/cat/cats45.htm>

³⁶⁵ Human Rights Watch World Report: Events of 1996, Human Rights Watch, New York. Washington. London. Brussels, 1997, p. 27.

inhuman or degrading treatment or punishment situations in Ethiopia, especially in Oromia region.

*“We interviewed such former detainees who showed injuries consistent with their accounts of having been flogged, burnt with cigarettes, and having been cut with knives and bayonets by their captors. In what appeared to be a routine form of restraint, former detainees described having had their elbows tied behind their backs with plastic lards or wire, leading in some cases we observed both to scarring and to more severe and permanent disabilities. We have also interviewed former detainees from Oromia state’s Western Shewa, Borena, and Western Hozarge Zones who described torture or ill-treatment in rural detention camps and in some detention facilities under regional government or military control”.*³⁶⁶

There are also deep allegations related to the methods and severity of torture employed in Ethiopia. The Oromo Support Group (OSG) has mentioned so many severe methods of torture alleged to be employed in Ethiopia, in its written information submitted to committee against torture in 2010. This group citing the Amnesty International (AI)’s report of 1995³⁶⁷ and Sue Pollock report of 1996³⁶⁸ described a detail list of torture methods employed against prisoners in Ethiopia which includes tying the prisoner with plastic strings around the upper arms together behind the back, and leaving the victim tied up for several hours or even a few days, causing intense pain; swelling and paralysis of the fore- arms and hands, which may be permanent; tying prisoners in other ways, or hanging them up by ropes, then beating them, and beatings on the soles of the foot (also called falena); beating with sticks and guns butts and whipping with electric cable, while the victims are forced in the a kneeling or prostrate position; death treats with guns held at the head; electric shock; kicking and beating with guns, metal bars, and stones, whilst victim’s limbs are tied or manacled with chains and handcuffs; carrying a heavy rock 70-80 kg on back whilst going up and down stairs for several hours; hanging 2-3kg of weights on men’s testicles for hours; castration; being made to lie naked and still all-night under threat of shooting by guard if seen to move, removal of finger and toe nails; confined to a “small dark

³⁶⁶ Ibid.

³⁶⁷ Ethiopia: Accountability, Past and Present, Human Rights in Transition, Amnesty International INDEX: AFR/25/0695.

³⁶⁸ It is mentioned as published under The Glasgow Herald, 10th February, 2006.

room” in the same for up to 4 months and the rape of women.³⁶⁹ Note that this group (OSG) conducts its study mainly focusing on Oromia region as its name indicates.

Moreover, the US Department of State in its annual report on human rights practice of countries has alleged the prevalence of torture, inhuman or degrading treatment and punishment in Ethiopia. According to the report, there are numerous credible reports to the department of state to the effect of showing abuses including being blind folded and hung by the wrists for several hours, bound by chains and beaten, held in solitary confinement for several days to weeks or months, subjected to mental torture such as harassment and humiliation, forced to stand for more than 16 hours, and having heavy objects hung from the genitalia.³⁷⁰

However, most of these allegations have not been admitted by the Ethiopian government. In its submission to the Committee against Torture, for consideration of reports submitted by states parties under article 19 of the Convention against Torture, the Ethiopian government mentioned the whole well organized legal framework of the country in protecting the rights of individuals to be free from torture, inhuman or degrading treatment or punishment and encouraging practical situations.³⁷¹

In addition to this exhaustive list of laws of the country designed to prevent and prosecute torture, and other ill-treatments, the Ethiopian government included the summary of the reports of Federal Prison Administration and Ethiopian Human Rights Commission, regarding the situations of federal and state prisons, in its submission showing the moderate nature of the prison situations. Except on paragraph 72 (page 17) of the report submitted to committee against torture, the submission of the Ethiopian government has no any substantial reference and admission to the existence of torture and other ill treatments in prisons. Only in this paragraph the submission mentioned the existence of torture and other ill- treatments saying that “in some prisons, however, degrading insults and beatings by wardens and labor exploitation were

³⁶⁹ Supra at note 364, p.5.

³⁷⁰ 2009 Human Rights Reports: Ethiopia, 2009 Country Reports on Human Rights Practices, US Department of State, Bureau of Democracy, Human Rights and Labor, March 11, 2010.

³⁷¹ Committee Against Torture, Consideration of Reports Submitted by States Parties Under Article 19 of the Convention: Ethiopia, United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, CAT/C/ETH/1, 28 July 2009, p. 1-16.

observed. In few instances, beatings of prisoners, immersing them in to tankers full of water in order to prevent them from breathing, making them roll in the mud, flogging after putting them in water, and cutting were observed.”³⁷²

Generally, although this late state submission for the country’s CAT review does not include other instance than those described in the Ethiopian Human Rights commission’s prison visit report of July 2008, it has done well while mentioning the need to take a lot of measures to improve the situation of prisoners, in its last paragraph of the submission.

This state submission, however, was not free of shadow reports. Several shadow reports by a number of Human Rights advocates have been filed to the Committee against Torture as early as September 2010. While organizations like African Rights Monitor (ARM), a Washington DC-based non-governmental human rights advocacy organization has come up with a deep submission, annexed with a number of interviewed testimony of torture survivors, of showing wide spread violation against the right to freedom from torture inhuman or degrading treatment or punishment in Ethiopia, with a particular focus on the Oromo and Ogaden conflict region,³⁷³ others like Oromya Support Group in Australia (OSGA) has come up with a submission elaborating the situation of a single torture survivor who is an asylum seeker in Uganda.³⁷⁴

Further, the shadow report submitted by Human Rights Watch was detail enough to cover a very wide area of the country’s situation regarding the protection of the right in issue. The report starting its detail discussion on the patterns of torture by police, militia, and military engaged in law enforcement covers a wide range of situations including punishments for participation in protests such as the Addis Ababa University’s case of 2001; attacks on political opposition leaders such as severe attack on the members of All Amhara Peoples Organization (AAPO) and Oromo National Congress (ONC); torture and ill treatment of alleged supporters or members of

³⁷² Id, p. 17, para. 72.

³⁷³ See the full text: Submission from African Rights Monitor to the Committee against Torture in its 45th session, 1-19 November 2010, Geneva, Related to the discussion of the country situation in Ethiopia and its performance in upholding the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, African Rights Monitor, October 2010. Available at: <http://www2.ohchr.org/english/bodies/cat/cats45.html>.

³⁷⁴ Submission of Complaint on Current Human Rights Violation in Ethiopia, to Committee Against Torture and Committee on the Elimination of Discrimination Against Women, Oromia Support Group in Australia (OSGA), 26 October 2010. Available at: <http://www2.ohchr.org/english/bodies/cat/cats45.html>.

insurgent groups such as Oromo Liberation Front (OLF); torture of detainees with suspected links to terrorism such as torture of a person deported from Somalia; patterns of torture and ill treatment by the military in conflict zones such as violations in the Ogaden area of Somali region in 2007-2008 and violations in Gambella region in 2003-2004; and violations of the Convention (CAT) Articles 2, 5, 11 and 12- failure to investigate alleged violations promptly and impartially and to prosecute violation of the convention.³⁷⁵

There are also another shadow report submission to the Committee from an organization named Human Right League of the Horn of Africa (HRLHA), in which the organization mentioned the methods of torture employed in Ethiopia with a figure showing the number of torture victims in Ethiopia collected from its own source and URJIT News Paper. The submission of this organization, after discussing the laws of Ethiopia in relation to torture, inhuman or degrading treatment or punishments, mentioned that there were 184 torture victims in Ethiopia between the year 1994-1997 out of which 95 direct and 89 resultant death were recorded, and there were 345 torture victims between 2007-2010 - out of which 6 direct and 8 resultant deaths occurred.³⁷⁶

This is more or less the historical, more of recent, part of the protection of the right to freedom from torture, inhuman or degrading treatment or punishment in Ethiopian and in the particular region of Oromia-as especially reported by African Rights Monitor, HRW and OSG. It is just at the aftermath of all these quarrels that the present work is going to be finalized. The writer of this work is of a belief that the above discussion will have considerable importance to understand the forthcoming discussion and the findings of the study. However, it must be understood that these quarrels will have no effect on this work. Since the next sections will present an independent study based on self sufficient primary data, the series of allegations and rejections between government and NGOs will not be considered in any case in the next sections in the sense of proving, accepting or rejecting allegations made by prisoners.

³⁷⁵ Human Rights Watch, Ethiopia: Submission to the UN Committee against Torture, 2 November 2010, available at: <http://www.unhcr.org.refworld/docid/4cd7a0ca2.html> [accessed 15 November 2010].

³⁷⁶ Submission of Human Rights League of the Horn of Africa (HRLHA) to the Committee against Torture (CAT) on its 45th session (1-19 November, 2010, Geneva), Related to the discussion of the country situation in Ethiopia, submitted in October 2010. Available at: <http://www2.ohchr.org/english/bodies/cat/cats45.html>.

5.3.2 THE PROTECTION OF THE RIGHTS OF PRISONERS IN LIGHT OF THE STANDARD MINIMUM RULES FOR THE TREATMENT OF PRISONERS

As it was well discussed under the previous chapter, the standard minimum rules for the treatment of prisoners which is intended to be used as measurement of the conditions of prisoners in this section is not a binding instrument. The rules were compiled on the basis of the general consensus and the essential elements of the most adequate systems for the administration of justice at the time, with the aim of setting out what is considered as good principle and practice in the treatment of prisoners and the management of detention institutions. It is also important to remark that the drafters recognized that in view of the variety of legal, social and economic conditions in the world, not all the rules were capable of application in all places at all times. However, they could play a valuable role as a yardstick for the development of acceptable minimum conditions of detention.³⁷⁷

The conditions of detention in the above introduced prisons of Oromia National Regional State will be assessed in light of these rules covering the situations of accommodation, clothing and bedding, food and water, personal hygiene, medical care, sport and exercise, religious practice, library and book, work, education and training, separation of categories, contact with the outside world and complaint procedures provided for prisoners. The situation of each prison and the training center covered under the scope of this study, under each category of assessment, is measured and ranked as excellent, satisfactory and poor.³⁷⁸ Each category of assessment [accommodation, food and water, health care etc.] is ranked as excellent, satisfactory and poor in each prison after analyzing the data collected under each category of assessment, in each prison, and tested in light of the standard minimum rules for the treatment of prisoners. Among other sources, the questioner disseminated to and filled out by prisoners will be the main check list for that matter.

The status of prisons are provided as they are under the standard minimum rules, any ground of justification cannot be raised to object the status properly labeled to the prison, after the critical

³⁷⁷ Supra at note 224 (Standard Minimum Rules For the Treatment of Prisoners), Rule 1 & 2.

³⁷⁸ The measurements used to classify as “Excellent”, “Satisfactory” and “poor” are provided under each category of assessment.

analysis of the data collected from each prison. It was clearly and repeatedly mentioned that all rules as provided under the standard minimum rules for the treatment of prisoners are not intended to be applicable to all places equally. However, this does not mean that a state can claim to have an excellent or best treatment of prisoners because of its particular position. A state, or a particular prison for that matter, must accept its rank or status for the treatment of prisoners as excellent, satisfactory or poor based on the standard minimum rules. Then after, it could be understood if a state or particular prisons come up with reasons showing why that may happen as anybody, including the drafter of the rules can understand that different factors such as economic conditions of a state may affect the implementation of the standard rules.

It must also be understood that it is about at the bottom line of these standard minimum rules that those of degrading treatment or punishments get started. As the term “minimum rules” indicates when the situation of prison gets below this minimum rules, particularly when it is in “extreme poor” situations under the test of standard minimum rules in this study, it would be the point when degrading treatment will be commenced. When the violation or the departure to the standard minimum rules get wider and wider it will be the treatment and/or punishment gets closer and closer to inhuman treatment and/or punishment, with special test of its (inhuman treatment or punishment) elements. The big image - torture can also be reflected under the worst forms of the violation to the standard rules, considering all the particular indispensable elements of torture as discussed under chapter two.

It should be based on this understanding that the following assessment of the five prisons and one technical and vocational center of prisoners in Oromia national regional state will be conducted with each yardstick of assessment, starting from accommodation.

5.3.2.1 ACCOMMODATION

Prisoners or detainees must be provided with accommodation suitable to the length of their detention, with sufficient space to maintain the physical and psychological well-being of the number of persons accommodated. Prisoners or detainees must have adequate living space which is well ventilated and clean. Their quarters should also be appropriately heated/ cooled according

to the climate. Prisoners or detainees also need regular access to the open air with sufficient space to walk about and exercise, so as to maintain their good health and well-being.³⁷⁹

Prisons or places of detention should not also be overcrowded. Overcrowding is not merely a question of surface area available; it also depends on freedom of movement outside the cell and on the duration of daily access to the open air. Overcrowding creates unhygienic conditions and tense situations, conducive to the spread of disease and to increased violence, stress and some time even promiscuity among detainees. Overcrowding also places detention personnel under increased stress and can thereby increase tension between staff and prisoners.³⁸⁰ It is the responsibility of prison authorities to arrange for all the above mentioned situations and facilitate situations according to rule 9 -14 of the standard minimum rules for the treatment of prisoners.³⁸¹

The issue of accommodation of prisoners or detainees is addressed in this study for all of the five prisons- Woliso, Shashemene, Ziway, Ambo and Adama and in the Dippo training center of prisoner. Question number 11, 12, 13, 14 and 15³⁸² of the questioner administered for prisoners are used to test the situation of accommodation in each prison and the center covered under the study. The situation of accommodation is ranked as excellent, satisfactory and poor having regard to the responses of prisoners or detainees and the writer's field observation and the rules of the standard minimum treatment.

The accommodation situation can be ranked as poor, in this context, where a room/cell is allocated for more than 20 prisoners or detainees whatever the size of the room is; and/or the room or the cell has no or few windows with no air conditioner where there is extremely cold or hot natural whether; and/or where there is one lamp for large size rooms; and/or where the room is absolutely dirty; and/or where there is no any categorization in respect of prisoners accommodated in the room; and/or where the prisoners cannot get out of the room throughout the day due to lack of sufficient prison compound.

³⁷⁹ Charlotte Lindsey, *Women Facing War*, International Committee of the Red Cross, Study on the Impact of Armed Conflict on women, Geneva, 2001, p.179.

³⁸⁰ *Ibid.*

³⁸¹ See above at p. 71.

³⁸² See Annex I, questioner disseminated for prisoners, p. I & II.

The accommodation situation can be ranked as satisfactory, in this context, where a room is allocated for up to 20 prisoners where the size of the room is greater than or equal to 5 x 5m; and where the room has an average number of windows having regard to the size of the room; and where there has good (average) natural weather even if there is no air conditioner ; and where there are average number of lamps having regard to the size of room; and where the room is reasonably clean; and where there is moderate categorization in respect of persons accommodated in a single room (at least where women, children and insane prisoners are separated); and where prisoner can get out of the room and get fresh air moderately or for reasonable period of time.

The accommodation situation can be ranked as excellent, in this context, where a room is allocated for a single individual or few prisoners where the size of the room is large enough; and where the room has enough window, air conditioner, and sufficient lamp having regard to the size of the room; and where the room is perfectly clean; and where the prisoner is allowed to get out of the room throughout the whole day time.

Note that; in case of any imbalance between the requirements, for instance, if the room is large enough and accommodating a small number of prisoners while it does not have the required lamp and cleanness, then the situation of this room could be categorized as “satisfactory”. Therefore, in addition to its own qualities mentioned above, the rank “satisfactory” can be used as a middle ground and compromise between “poor” and “excellent” in any case of imbalance. Based on this, the situation of accommodation in prisons and training center of prisoners covered under the study is presented mathematically with some elaboration,³⁸³ as follows.

³⁸³ The mathematical presentation (percentage) of ranks [poor, satisfactory, and excellent] by itself is explanatory of the situation as how the rank has been stated is presented at the beginning of each category of assessment before discussing the particular situations of each prison. Therefore, the elaboration in the present sense is not indented to reintroduce the facts; rather it is to indicate some unique situations or facts recorded in a particular prison. Note that this statement is valid for discussions in all categories of assessment.

I. WOLISO PRISON

Strictly stating while 73.5% of prisoners in Woliso prison are living in a poor accommodation situations, the rest 26.5% are provided with satisfactory situation of accommodation. The prisoners indicated that there are about 85 up to 220 prisoners per room. There is one lamp for more than 200 prisoners, in most of the rooms. There is very hot weather, but there is no any air conditioner in their rooms. There are insects in most of the rooms, though no insecticide used ever. There are also mentions made to the effect that there is wide spread TB because of overcrowding. Note that most of “satisfactory” situations of accommodation are recorded in the women room where there are 11 prisoners per room with relatively better situations in all regards.

II. SHASHMENE PRISON

While 62.5% of prisoners in Shashemene prison are detained in poor accommodation situations, the rest 37.5% are provided with satisfactory situations of accommodation. Except for women who have a moderate size room for 29 persons, male prisoners are detained in an overcrowded manner - a room for 60 to 280 prisoners. There is no air conditioner despite the existence of very hot weather. The number of prisoners counted for satisfactory situation is more of women’s.

III. ZIWAY PRISON

While 66.7% of prisoners in Ziway prison are detained in poor accommodation situations, the rest 33.3% are provided with satisfactory situations of accommodation. There is an average of 40 to 145 prisons per room; an exception is for women who are detained being 11(including their children) in a room. Even though there is high temperature, there is no air conditioner at all. Due to the lack of insecticide and safety nets, there is growing wide spread of malaria.

IV. AMBO PRISON

While 71% of prisoners in Ambo prison are detained in poor accommodation situations, the rest 29% are provided with satisfactory situations of accommodation. The number of prisoners per

room varies from 50 to 300, except for women who are detained being 45 per room. There is an extreme hot whether as there is no any ventilator or sufficient windows. There are also some underground rooms to G-3 where prisoners are accommodated in poor situation.

V. ADAMA PRISON

While 90.5% of prisoners in this prison are accommodated in poor situations, the rest 9.5% are provided with satisfactory situations of accommodation. There are about 400 prisoners per room. No exception for women could be counted in this prison, as no women is imprisoned or detained in this prison. There is extreme high temperature and suffocation in rooms due to which an epidemic has been repeatedly occurred. However, no air conditioner has been introduced yet. Rooms are verminous ranging from insects to rats despite the fact that there is no any insecticide used to avoid it.

VI. DIPPO TECHNICAL AND VOCATIONAL TRAINING CENTER

Almost all 100% of trainee-prisoners in Dippo technical and vocational training center are accommodated in satisfactory situation. Except for reasonably large number of prisoners -some around 20 per room, the rest of accommodation facility for prisoners is so nice. Having in mind the situations related to the existence of TV, shower and toilet provided in each room, the writer believes that it is more than satisfactory, if not excellent.

5.3.2.2 CLOTHING AND BEDDING

Adequate clothing is necessary to preserve health and dignity and to ensure mobility outside the home. The prison authorizes must provide suitable clothing, appropriate to the climatic and living conditions, for all prisoners and detainees under their responsibility where prisoners or detainees are not allowed to wear their own clothing. Additional clothing should also be available to allow clothes to be washed, and clothing should be replaced when no longer fit for its purpose. Clothing provided by the authorities for female prisoners or detainees must be appropriate to ensure their privacy and dignity, especially in prisons where they may come in contact with men. Such clothing must comply with religious and cultural requirements. If

prisoners or detainees are allowed to wear their own clothing, arrangements shall be made on their admission to the institution to ensure that it shall be clean and fit for use.³⁸⁴

Each prisoner or detainee must also be provided with suitable bedding, in accordance with local conditions (bed/mattresses/pillow/ blanket, etc) which should be replaced when no longer fit for the purpose through normal wear and tear. The bed must be separate and the bedding must be clean when issued and kept in good order and changed often enough to ensure its cleanness.³⁸⁵ It is the duty of prison authorities to facilitate all the above situations and make an arrangement according to rule 17-19 of the standard minimum rules for the treatment of prisoners.³⁸⁶

Like the issue of accommodation, the issue of clothing and bedding of prisoners or detainees are also addressed under this study in all the five prisons-Woliso, Shashemene, Ziway, Ambo and Adama and in the Dippo center of training of prisoners. Question number 20, 21, 22 and 23³⁸⁷ of the questioner disseminated for prisoners or detainees are used as a test to the situations of clothing and bedding in each prison covered under the study. Like in the case of accommodation, in this topic also the situations of clothing and bedding is ranked as excellent, satisfactory and poor having regard to the responses of prisoners or detainees on the questioner disseminated for them (as a major tool) and the writer's filed observation and the rules of the standard minimum treatment of prisoners.

The clothing and bedding situation can be ranked as poor, in this context, where: a prisoner or detainee able to wear only clothes (whether personal or uniform) that is extremely deteriorated, so old and so dirty; and/or where a prisoner has no bed at all; and/or where a prisoner is forced to sleep in a crowd; and/or where she/he does not have mattress at all, and/or sleeping on dirty floor.

The clothing and bedding situation can be ranked as satisfactory, in this context, where a prisoner or detainee can wear only an average quality of cloth that is moderately new -whether

³⁸⁴ Supra at note 379, p. 184.

³⁸⁵ Id, p. 179.

³⁸⁶ See above at p. 72.

³⁸⁷ See Annex I, questioner disseminated for prisoners, p. II.

personal or uniform and clean; and where he/she has an individual bedding which is of average quality, even if there is no bed.

The clothing and bedding situation can be ranked as excellent, in this context, where: prisoners have either personal or uniform clothes with good quality and cleanness; and where prisoners have an individual/separate bed with all necessary bedding elements such as mattress, pillow, blanket etc. Note that, “Satisfactory” includes the situations of imbalances between “poor” and “excellent” in addition to its own requirements, for instance if a prisoner has a high quality bed and bedding but able to wear an extremely deteriorated clothing, this would be deemed as satisfactory situation of clothing and bedding. Based on this, the situation of clothing and bedding of prisons and the center of training for prisoners covered under the study is presented mathematically, with some elaboration, as follows.

I. WOLISO PRISON

About 67.6% of prisoners in Woliso prison are living with clothing and bedding situation that is poor. The rest 32.4% are provided with satisfactory situations of clothing and bedding. In this prison, there is health committee of prisoners established to monitor the bedding and clothing qualities of prisoners. Despite this fact, the writer observed that almost all prisoners wear extremely deteriorated clothing. Most of the respondents indicated that there is wide spread lice; there is no bedding at all and it is impossible to sleep (lay) with back because of the crowded. While prisoners who are convicted for short time imprisonment are allowed to buy bed by themselves, those prisoners convicted for long time are not allowed to do. However, surprisingly, there is quality family bed, with malaria defending net, for women.

II. SHASHEMENE PRISON

About 59.4% of prisoners in Shashemene prison are living with poor clothing and bedding situations. The rest 40.6% are, however, provided with satisfactory situations of clothing and bedding. Only two rooms, throughout the whole prison compound, have a bed facility. There are also vermin such as rat around the beds. It was also observed that there are a number of

particularly naked persons because of lack of clothing. There was also a mention to a situation in which an epidemic disease called RF occurred due to lack of purity in clothing and bedding.

III. ZIWAY PRISON

About 77.8% of prisoners in Ziway prison are living with poor clothing and bedding stations, while the rest of 22.2% are provided with satisfactory situations of clothing and bedding. Most of the prisoners are sleeping on a piece of timber and on bare floor. There are only few beds made up of wood. There were beds for females previously, though now destructed due to old age. There are large insects around the beds of male prisoners.³⁸⁸

IV. AMBO PRISON

About 68.4% of prisoners in Ambo prison are living with poor clothing and bedding situations, and the rest 31.6% are with satisfactory clothing and bedding situations. The situation here is not as such different from the above. Most of the respondents indicated that there is wide spread lice around there bed, though sprinkled with insecticide for this time.

V. ADAMA PRISON

About 95.2% of prisoners in Adama prison are living with poor clothing and bedding situation. The rest 4.8% are provided with satisfactory clothing and bedding facilities. Most of the rooms do not have a bed at all. In addition to the non existence of mattress, it is also impossible to sleep or lay with full back because of the crowed. The bedding area is virminious, but no insecticide has been used to avoid so. Because of suffocation that usually occurs in the sleeping time, there are a number of occasions in which epidemics have been occurred.

³⁸⁸ Surprisingly, there is one respondent-prisoner who reports as he is provided with extremely high quality bedding but poor clothing.

VI. DIPPO TECHNICAL AND VOCATIONAL TRAINING CENTER

About 90% of trainee-prisoners in Dippo technical and vocational training center are detained with satisfactory situations. The rest 10% of trainee- prisoners are provided with excellent clothing and bedding facilities. There are good quality beds and bedding facilities. There is uniform clothing at the time of work only. At the rest of the time prisoners wear their own cloths, of moderate quality but sometimes of poor.

5.3.2.3 FOOD AND WATER

The prison authorities are under an obligation to provide adequate and sufficient food to maintain the health and well-being of all prisoners and detainees, with supplementary provisions for nursing mothers and pregnant women. In case where prisoners receive remuneration from the prison authorities for work performed in prison, they can purchase food themselves with which, from prison shops or from local markets through the guards, the prison administration or, in rare case, “trusted” detainees. Local custom may require that prisoner’s families bring food to their relatives in prison. Such assistance from families should only be a supplement and does not relieve the prison authorities of their responsibilities.³⁸⁹

Poorly balanced diet (with insufficient quality, quantity and diversity of food) can lead to malnutrition, or out breaks of diseases, such as scurvy, beriberi, pellagra or Xerosis, owing to a lack of vitamins. Pregnant women and nursing mothers require a supplementary diet sufficient to maintain their own health and that of their babies. The prison authorities have also a duty to provide sufficient water suitable for drinking and food preparation. Specially breast-feeding women need additional fluids (drinking water) to maintain their health and milk production.³⁹⁰ Generally, drinking water should be available to every prisoner whenever he needed. It is the responsibility of prison authorities to make an arrangement for all the above situations and meet other requirements of standard minimum rules for the treatment of prisoners, especially rule 20.³⁹¹

³⁸⁹ Supra at note 379, p.181.

³⁹⁰ Ibid.

³⁹¹ See above at p. 72.

The issue of food and water provisions of prisoners is addressed in this study in all five prisons- Woliso, Shashemne, Ziway, Ambo and Adama and in a Dippo technical and vocational center of prisoners. Question number 18 and 19³⁹² of the questioner disseminated for prisoners are used as a test of the situation of food and water in each prison covered under the study. The situation of prisoners of food and water³⁹³ provision is ranked as excellent, satisfactory and poor having regard to the responses of prisoners and the writer's field observation and the rules of the standard minimum treatment of prisoners.

The situation of food and water provision can be ranked as poor, in this context, where: the prison adopts a meal program of less than 3 times per a day; and/or where there is no any variety of food at all - in particular such as where there is no meat in the menu at least once in a month; and/or there is no potable water at all; and/or where there is frequent interruption of potable water for long days.

The situation of food and water provision can be ranked as satisfactory, in this context, where: the prison adopts a meal program of 3 times per a day; and where there is an average variety of food-where there is a menu including vegetables, fruits and meat at least once in between fifteen days and a month; and where the amount (quantity) of food is sufficient for a reasonable man; and where there is potable water without interruption, if not sufficient in quantity.

The situation of food and water can be ranked as excellent, in this context, where: the prison adopts a meal program of 3 times or above per a day; and where there is sufficient variety of food with sufficient amount; and where there is potable water in sufficient amount without interruption. The rank "satisfactory" is the most important middle ground here since it is a compromising point between highly poor food and highly good water (as indicated in most of the general survey) provided for prisoners. It must be understood that if a prisoners is provided with poor quality/quantity food and high quality/quantity water, the situation of this prisoner will be counted as "satisfactory."

³⁹² See Annex I, questioner disseminated for prisoners, p. II

³⁹³ When we talk about water in this section, it does not include water to be used for shower and the like, it is the water needed for drinking and food preparation purpose only.

Vote for or against “*the existence of sufficient quantity and quality of food in your own view*” is another test provided under question 18 of the questioner in which the respondents are asked to state their own personal view about the quality and quantity of food, irrespective of the objective list of foods provided for them. Based on this, the situation of food and water provision in prisons and the training center of prisoners covered under the study is presented mathematically, with some elaboration, as follows.

I. WOLISO PRISON

While 8.8% of prisoners in Woliso prison are provided with poor food and water provision, the rest 91.2% are enjoying satisfactory food and water provision. There are complaints about lack of variety of foods; the “injera” is also mentioned to be so dark and mixed with sand. However, there is an extremely sufficient water provision. According to their personal view, all -100% of the respondents mentioned that they do not believe the food is of sufficient quantity and quality.

II. SHASHEMENE PRISON

While only 3.1% of prisoners in Shashemene prison are provided with poor food and water provision, the rest 96.9% are enjoying satisfactory provision of food and water. There are complaints that the food is not sufficient quantity, the sauce is not testy and there is unleavened bread (“*kitta*”) instead of bread-proper in the breakfast menu. However, it is indicated that the provision of water is extremely sufficient. According to their personal view, 9.3% of the respondents believed that the food is of sufficient quantity and quality.

III. ZIWAY PRISON

While 18.5% prisoners in Ziway prison are provided with poor food and water provision, the rest 81.6% are enjoying satisfactory provision of food and water. It is indicated that bread of the breakfast menu is so small, there is one kind of sauce (“*shiro wot*”) most of the time, and there is an interruption with water provision in some exceptional occasions. Women are provided with the whole amount of food, combining their lunch and dinner menu, once in the middle of the day

and they are allowed to develop it, using additional spices. No one voted for the sufficiency of food in quality and quantity according to his/her personal view.

IV. AMBO PRISON

While 7.9% of prisoners in Ambo prison are provided with poor provisions of food and water, the rest 92.1% are enjoying a satisfactory food and water provision. Even though there is huge complain regarding the variety of food, the potable water provision is in excellent situation. About 13.1% of prisoners believed that the quality and quantity of food they receive is sufficient.

V. ADAMA PRISON

While 33.3% of prisoners in Adama prison are provided with poor food and water provision, the rest 66.6% are enjoying a satisfactory level of food and water provision. There are a lot of complains that food is not provided for prisoners in a regular time. Most of the time the meal program may vary, for instance, as prisoners have commonly mentioned if injera arrived at 11:00AM the sauce will be there at 9:00PM. Due to which they are suffering from inconsistency and there are prisoners who get faint (unconscious) because of starvation. There is no also water in a nearby and allowed to have an access only twice per a day, in the early morning and late afternoon. No one has voted that the food is of sufficient quality and quantity.

VI. DIPPO TECHNICAL AND VOCATIONAL TRAINING CENTER

While only 15% of trainee-prisoners in the technical and vocational training center are provided with satisfactory provision of food and water, the rest 85% are provided with excellent food and water provision. Among other things, there is a committee of prisoners that supervise the amount and variety of food provision starting from the purchasing stage of raw materials. About 85% of prisoners, in their own view, believe that the food provided for them is of sufficient quantity and quality.

5.3.2.4 PERSONAL HYGIENE

By “hygiene” is meant the conditions, or practices carried out, for maintaining health and preventing disease in individuals.³⁹⁴ The prison authorities have a duty to provide sufficient sanitary facilities with safe access for the prison population. The prison authorities should also ensure that all quarters and facilities -toilets, showers, cells and yards, kitchens and storage areas, and installations for waste and water evacuation- are cleaned regularly.

Prison cells should be free from vectors of diseases (ectoparasities, rodents, insects, etc), which can cause the spread of malaria, bubonic plague rickettsiosis, etc. Prisoners should have regular access to toilet and washing facilities in order to maintain health and hygiene and to limit the spread of infections and illness. Because of their physiological needs, women as a rule require more water for washing than men. Toilet facilities for women and girls should also offer them privacy and security and should be separate from those of men.³⁹⁵ It is the responsibility of prison authorities, like the above mentioned issues, to fix all the above mentioned facilities for personal hygiene and to make an arrangement to meet the requirements of rule 15-16 of the standard minimum rules for the treatment of prisoners.³⁹⁶

As in the other cases, the situation of personal hygiene of prisoners is also addressed under this study in all the five prisons- Woliso, Shashemene, Ziway, Ambo and Adama, and in the Dippo center of training for prisoners. Question number 16, 17, and 27³⁹⁷ of the questioner dispersed for prisoners are used to test the situation of personal hygiene in each prison covered under the study. The situations of personal hygiene is ranked as excellent, satisfactory and poor having regard to the responses of prisoners on the questioner disseminated for them and the writer’s field observation, and the rules if the standard minimum treatment of prisoners.

The facilities provided for personal hygiene can be ranked as poor in this context, where: there is few or no toilet in the compound of the prison (considering the number of prisoners); and/or where there is few or no shower/bathroom facility; and/or where the toilet and/or bathroom

³⁹⁴ Supra at note 379, p.122.

³⁹⁵ Id, p. 192.

³⁹⁶ See above at p. 73.

³⁹⁷ See Annex I, questioner disseminated for prisoners, p. II.

facility is extremely dirty; and/or where there is serious time restriction on the use of toilet and/or bathroom; and/or where the entrance of cleaning materials (such as sweeper, mop and water) is forbidden.

The facilities provided for personal hygiene can be ranked as satisfactory in this context, where: there are average number of toilet and bathroom in the compound of the prison (considering the number of prisons); and where the toilet and both room facility is moderately clean; and where the restriction of time on the use of toilet and bathroom is moderate and somehow reasonable; and where the entrance of cleaning materials are allowed, at least with the cost of the prisoners.

The facilities provided for personal hygiene can be ranked as excellent in this context, where there are clean and sufficient number of toilets and bathrooms in the compound of the prison, if not in individual cells or blocks; and where there is no any time limitation on the use of these facilities; and where the cleaning materials (mop, sweeper and water) are provided by the prison authorities. In this case, since there are three requirements “toilet”, “bathroom” and “cleaning materials” the term “satisfactory’ can be used while at least two of the requirements are required in addition to its (Satisfactory’s) attributes mentioned above. For instance, if some mentioned the availability of clean and sufficient number of toilets and bathrooms without any time restriction but mentioned the prohibition of the entrance of any cleaning material, this case will fall under the category of “satisfactory”. Based on this, the situation of facilities for personal hygiene in the prisons and training center of prisoners covered under the study is presented mathematically, with some elaboration, as follows.

I. WOLISO PRISON

Those 11.8% of prisoners in Woliso are provided with poor facilities for personal hygiene while the remaining 88.2% are enjoying satisfactory facility for personal hygiene. It is indicated that the toilet is extremely dirty, the water for bathroom is interrupting frequently and there is also long queue for shower and privilege will be taken by those strong /powerful/ prisoners. It is also mentioned that there is time restriction to use toilet i.e. only up to 4:30 PM.

II. SHASHEMENE PRISON

Only 6.25% of prisoners in Shashemene prison are provided with poor facilities of personal hygiene while the rest 93.75% are enjoying satisfactory facility. It is mentioned that despite the toilet is clean enough, there is time restriction -on the day time only- for use. There is also interruption of water supply for bathroom, sometimes.

III. ZIWAY PRISON

Those 55.5% of prisoners in Ziway prison are provided with poor facilities for personal hygiene while the remaining 44.4% of prisoners are enjoying satisfactory facility. Some of the prisoners indicated that toilet is allowed only twice in a day while others said that there are a times in which it could be forbidden at all for unfounded reasons. It is also indicated by a large number of prisoners that there is no water supply for bathroom service in many occasions. One of the unique situation here in Ziway prison is that most of the prisoners indicated as there are two types of toilets in the prison, one dirty and other clean, and access to the clean toilet is allowed for those who can pay for it. It must be recognized that this situation does not have de jure recognition by prison authorities, most of the time it is practiced by boss of the prisoners, with somewhat de facto recognition by prison authorities, as mentioned by prisoners.

IV. AMBO PRISON

While only 10.5% of prisoners in Ambo prison are provided with poor facility of personal hygiene, the rest 89.5% are with satisfactory facility required for personal hygiene. There is serous time restriction, i.e. only before 5:00PM for the use of toilet. It is also mentioned that previously all necessary cleaning materials were provided by ICRC but now interrupted for unknown reason.

V. ADAMA PRISON

Those of 76.2% of prisoners in Adam prison are provided with poor facilities for personal hygiene while the rest 23.8% are enjoying satisfactory situation of facilities necessary for

personal hygiene. It is frequently mentioned that the toilet facility is extremely dirty; and the bathroom, in addition to severe lack of water, is full of noisy smell. Many of the prisoners also mentioned their witness for the occurrence of RF disease- an epidemic disease caused by lack of personal hygiene- in 2000 E.C killing 3 persons.

VII. DIPPO TECHNICAL AND VOCATIONAL TRAINING CENTER

While only 20% of trainee-prisoners in Dippo training center are provided with satisfactory facility for personal hygiene, the rest 80% are enjoying an excellent provision of facility required for personal hygiene. The prisoners are enjoying high quality toilet and bathroom in their cell rooms without any time restriction. However, some complains show that those cleaning material are not provided by the authority of the training center.

5.3.2.5 MEDICAL CARE

Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.³⁹⁸ The prison authorities have a responsibility to provide free medical care and medicines to all prisoners, either in medical facilities at the place of detention or, if the medical condition cannot be adequately treated there, in a suitable medical establishment. Medical care in this sense includes treatment for illnesses, diseases and injuries, including surgical operations; gynaecological, obsteric prenatal and postnatal health care; mental health care; dental care; and ophthalmic care. The health of the prison population can be particularly precarious because of overcrowding, the limited resources allocated for their care, and the possible deficiencies of medical care in prison. All prisoners need access to medical personnel and to appropriate medical facilities to treat their illness and injuries and those of their children, and to receive the necessary medicines.³⁹⁹ Like all the case of accommodation, clothing and bedding, food and water and facility for personal hygiene, it is also the responsibility of prison authorities to make an arrangement for the above mentioned issues of health and other

³⁹⁸ Supra at note 379, p. 110.

³⁹⁹ Id, p. 186.

requirements of medical care as stated under rule 22-24 of the standard minimum rules for the treatment of prisoners.⁴⁰⁰

The issue of medical care for prisoners is addressed in the present study for all five prisons Woliso, Shashemene, Ziway, Ambo and Adama and the Dippo training center of prisoner. Question number 26⁴⁰¹ of the questioner disseminated for prisoners or detainees is used to test the situation of medical care in each prison and the center covered under the study. The situation of medical care is ranked as excellent, satisfactory and poor having regard to the responses of prisoners and the writer's field observation and the requirements of the standard minimum rules for the treatment of prisoners.

The medical care situation can be ranked as poor, in this context, where; the prison has no clinic and at least one qualified medical practitioner; and/or has no at least moderately active access to medical treatment outside the prison for those in need; and/or where there is no medicine to be provide for patient at all.

The medical care situation can be ranked as satisfactory, in this context where the prison has; a clinic even if it may not working properly; and has at least one medical practitioner; and where there is a moderately active access to medical treatment outside the prison for those in need, even if there is no ambulance; and has moderate amount and variety of medicines.

The medical care situation can be ranked as excellent, in this context, where the prison has a clinic functioning properly; and has at least one more psychiatrist or psychologists in addition to other medical practitioners; and has sufficient amount and variety of medicine; and has a standby ambulance and immediate procedure for medicinal treatment outside the prison for those who faced severe illness; and has a procedure of medical checkup for prisoners to avoid epidemics.

The rank "Satisfactory" is used as a middle ground between poor qualities of one criteria and excellent quality of the other. For instance, if the prison has no clinic in its compound but has an instant procedure and ambulance for medical treatment outside the prison, this situation would be

⁴⁰⁰ See also above at p. 72.

⁴⁰¹ See Annex I, questioner disseminated for prisoners, p. II.

categorized as satisfactory. It must be noted that prisoners' response to medical treatment is highly affected by their personal illness and treatment experience such as the severity and type of disease they have faced. Based on these criteria, the situation of medical care in prisons and training center covered under the present study is presented mathematically, with some elaboration, as follows.

I. WOLISO PRISON

About 97% of prisoners in Woliso prison are provided with poor medical care facilities. The rest 3% are provided with a satisfactory facility of medical treatment. There are complains to the effect that there is a clinic that does not function properly and a nurse that prescribe medicine without any examination. There are patients of heart failure and TB who couldn't have medical treatment for long years. It is also mentioned that except in cases where someone get too close to death, there is no access to medical treatment outside the prison.

II. SHASHEMENE PRISON

About 12.5% of prisoners in Shashemene prison are provided with poor medical care facilities while the rest of 87.5% are enjoying satisfactory medical care situations. Surprisingly, there is no clinic in the prison compound but prisoners are enjoying better medical care treatment than some other prisons that have a clinic. There is a standby ambulance and extremely instant procedure for medical treatment outside the prison. When any one alleges to feel illness, he/she will be immediately sent to hospitals and health stations outside the prison.

III. ZIWAY PRISON

About 44.4% prisoners in Ziway prison have been provided with poor medical care situations. The rest of 55.5%, however, are provided with satisfactory situations. It is stated that there is clinic but it is not working properly, and has no sufficient medicine. Lack of immediate access to medical treatment outside the prison is the major problem of this prison. It is indicated that there is a prisoner who dies because of nose-bleed.

IV. AMBO PRISON

While 39.5% of prisoners in Ambo prison are provided with poor medical care facilities, the rest of 60.5% are enjoying satisfactory medical care facilities. It is mentioned that there is a clinic with no sufficient medicine; the medical practitioner prescribes medicine without due examination; most of the times and there is long queue for medical treatment longing up to three or four days even for those faced severe sickness.

V. ADAMA PRISON

About 57.1% of prisoners in Adama prison are provided with poor medical care facilities. And the rest of 42.9% are enjoying satisfactory situations of medical care. It is mentioned that there is no clinic at all in this prison. The only medicine provided for all prisoners by the prison authorities is paracetamol. There is no also an active access for medical treatment outside the prison. However, those prisoners who face serve illness will be sent to institutions outside the prison.

VI. DIPPO TECHNICAL AND VOCATIONAL TRAINING CENTER

While only 5% of the prisoners in this center have faced satisfactory care situations, the rest of 95% of prisoners are enjoying an excellent facility of medical care. The center is full of all requirements for sufficient medical care. There is well equipped clinic with two medical practitioners, there is laboratory, and there is sufficient amount and variety of medicine. There is also an immediate procedure to medical treatment outside the prison, for those in need.

5.3.2.6 SPORT AND EXERCISE

Prisoners who are not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily, if the weather permits. Prison authorities must enable young prisoners, and others of suitable age and physique, receive physical and recreational; training during the period

of exercise. The prison authorities shall provide the necessary space, installations and equipments, to this end.⁴⁰²

For instance, all prisons in the United States of America offer some form of fitness and leisure activities. Every prison offers organized sports; softball, flag football, soccer, volleyball, handball, racquet ball, and basket ball. Most prisons also offer bocce and horseshoes. Actually there are two areas in which federal prisons in the United States significantly differ from one another: weight equipment and musical equipment. The passage of the Zimmer Amendment in 1996 had the effect of prohibiting the inclusion of weights and electric instruments (i.e., guitars) in all of the new federal prisons added to the BOP (Bureau of prisons) since 1996. However, prisons do offer aerobic exercise equipment and acoustic instruments.⁴⁰³

The issue of sport and exercise (it must be understood that the term exercise in this context includes recreational activities) of prisoners is addressed in the present study in all five prisons Woliso, Shashemene, Ziway, Ambo and Adama, and in Dippo training center of prisoners. Question number 28⁴⁰⁴ of the questioner distributed for prisoners is used to test the situation of sport and exercise (including recreation) in each prison and the center covered under the study. The situation of accommodation is ranked as excellent, satisfactory and poor having regard to the response of the prisoners and the writer's field observation, the requirements of the standard minimum rules for the treatment of prisoners and the experience of other countries.

The situation of sport and exercise can be ranked as poor, in this context, where prisoners are absolutely prohibited to any kind of sport and exercise; or allowed to do few specifically mentioned sports and exercises with no any legal or logical background for selection; and/or where no facility is available for that matter. The situation of sport and exercise can be ranked as satisfactory, in this context, where prisoners are allowed to do or enjoy with all kinds of sports and exercises, even though there is no pace, equipment and installation for that matter. The situation of sport and exercise can be ranked as excellent, in this context, finally where prisoners

⁴⁰² See also above at p. 73.

⁴⁰³ Alan Ellis, *Federal Prison Guidebook*, Law Offices of Alan Ellis, Sausalito, CA, USA, 2002, p. 7-8.

⁴⁰⁴ See Annex I, questioner disseminated for prisoners, p. II.

are allowed to enjoy all kinds of sports and exercises with all facility- space, equipments and installation necessary for that matter.

Not that, “personal interest” is huge factor here in this issue. For instance, if a prisoners is not interested in hand ball, and a prison allows hand ball only, the situation of this person can be categorized as ‘poor’ as he may vote for non existence of sport and exercise. Based on these criteria, the situation of sport and exercise in prisons and the training center covered under the present study is presented mathematically- with only some explanation as follows. The presentation is in a table from as there is no substantial difference⁴⁰⁵ between prisons that require particular explanation for the rank they have got.

No.	Name of prison	Poor	Satisfactory	Excellent	Special Remark
I	Woliso	82.4%	17.6%	-	Some prisoners reported as allowed to do easy exercise
II	Shashemene	78.1%	21.9%	-	Facility is available for hand ball
III	Ziway	100%	-	-	—
IV	Ambo	73.3%	26.3%	-	There is hand ball filed without ball
V	Adama	100%	-	-	—
VI	Dippo center of Training	-	100%	-	Sports of recreational kind are allowed but no body building sports.

Table 1.1 The situation of sport and exercise

5.3.2.7 RELIGIOUS PRACTICES

Everyone needs the freedom to practice religion without persecution. This includes the freedom to observe religious days and to observe dietary restrictions and fasts.⁴⁰⁶ If the prison institution contains a sufficient number of prisoners of the same religion, a qualified representative of that religion must be appointed. Further, if the number of prisoners justifies it and conditions permit, the arrangement should be on a full-time basis.⁴⁰⁷ For instance, all prisons in the United States of

⁴⁰⁵ The writer tried to see whether there are formal rules for the administration of sport and exercise in all prison of Oromia National Regional State in the interview conducted with higher authority of Oromia Prison Administration Commission. It will be discussed under the summary part of this section.

⁴⁰⁶ Supra at note 379, p. 141.

⁴⁰⁷ See also above at p. 74.

America under the administration of BoP (Bureau of prison) have at least one chaplain and most of the institutions also offer contact rabbi and imam service.⁴⁰⁸ It is the duty of prison authorities to provide for this kind of facilities and other issues as discussed under rule 40-42 of standard minimum rules for the treatment of prisoners.

The issue of religious practices for prisoners addressed in the present study in all the five prisons i.e. in Woliso, Shashemene, Ziway, Ambo, and Adama, and in Dippo training center of prisoners. Question number 31,⁴⁰⁹ of the questioner distributed for prisoners is used to test the situations of facilities and practice in each prison and the training center covered under the study.

The situation of religious practice can be ranked as poor, in this context where the prison has no religious facility (church, Mosque, etc.) in the prison for those religions having large number of followers; and/or where the entrance of religious leaders such as priests, pastors or Dawa (Imams) is forbidden; and/or where prisoners are not allowed to pray or worship in a proper manner, having regard to the rules and regulations of the prison not to disturb peace.

The situation of religious practice can be ranked as satisfactory, in this context, where there are religious facilities for those religions having large number of followers in the prison; and the entrance of religious leaders is allowed, if not invited or employed; and there prisoners are allowed to pray and worship in a proper manner.

The situation of the prison can be ranked as excellent, in this context, where there are sufficient religious facilities for all religions having considerable number of followers in the prison; and where religious leaders are not only allowed to entrance but also appointed to reside in the prison or visit the prison with sufficient frequency.

Like the above cases here also “Satisfactory” can be used as a middle ground in addition to its own attributes; for instance, if there is no religious facility in the prison but religious leaders are appointed or contracted by the prison authorities to visit the prison with sufficient frequency.

⁴⁰⁸ Supra at note 403, p. 8.

⁴⁰⁹ See Annex I, questioner disseminated for prisoners, p. III.

Based on these criteria, the situation of religious practices in prison and center of training covered under this study is presented mathematically-with only some explanation, as follows. As there is no substantial unique nature on the issue recorded in particular prisons that require further explanation, the statistical data is presented in a table form.

No	Name of prison	Poor	Satisfactory	Excellent	Special Remark
I	Woliso	3%	97%	-	-There is facility for Orthodox, Muslim, and Protestant. Women do not have an access to these facilities. -There is visit by religious leaders at least once in a moth on average.
II	Shashemene	-	100%	-	- There is facility for Orthodox, Muslim, and Protestant . - Everything is good except the visit of religious leaders on regular basis and frequently.
III	Ziway	11.1%	88.9%	-	-There are religious facilities for Orthodox, Muslim, Catholic and Protestant. -Women do not have an access to facilities as the facilities are located in the male region/ward/.
IV	Ambo	10.5%	89.5%	-	-There are religious facilities for Orthodox, Muslim, Catholic, Protestant and Full Gospel. -10.5% of the prisoners complained that are forbidden not to worship Wakafeeta ⁴¹⁰
V	Adama	9.6%	90.4%	-	-There are facilities for Orthodox, Muslim and Protestant, the rest are not provided with facility.
VI	Dippo Training center	-	100%	-	-There is some complain that the construction of new Orthodox church is delayed; though the old one is still working. -There is quality church of Protestant and Mesjid al selam for Muslims.

Table 1.2 The situation of religious facilities and practices.

5.3.2.8 LIBRARY AND BOOKS

Prisoners should be able to use reading materials during their detention as a means of maintaining their health and well being, to relieve the monetary of daily prison life and to limit tension among themselves. Every prison, therefore, shall have a library for the categories of prisoners, adequately stocked with both recreational and institutional books, and prisoners shall be encouraged to make full use of it.⁴¹¹ For example in US every prison has a law library. The law library resources, however, can differ between prisons based on the type and security level of the facility. The law library generally provides type writers (electronic and/or manual), paper, and one or more photocopies.⁴¹²

⁴¹⁰ "Wakeefeta" is traditional belief of Oromo people, as explained by the respondent- prisoners.

⁴¹¹ See also above at p. 74.

⁴¹² Supra at note 403, p. 3.

The issue of library and books available for prisoners is addressed in the present study in all the five prisons i.e. Woliso, Shashemene, Ziway, Ambo and Adama, and in Dippo training center of prisoners. Question number 32⁴¹³ of the questioner disseminated for prisoners is used to test the situation of library and books in each prison and the center covered under the study, and accordingly the situation is ranked as excellent, satisfactory, and poor.

The situation of availability of library and books can be ranked as poor, in this context, where there is no library at all; or where it is generally forbidden not to use it, if any, for any reason. The situation can be ranked as satisfactory, in this context, where there is library which is open for use but there are no sufficient books either in number or in variety. The situation of availability of library and books can be ranked as excellent in this context, where there is library with open access for use; and where it is stocked with sufficient books, both in number and variety. It must be understood that personal view, under this context, is a relevant factor in ranking the situation of the library and of books. For instance, if there are books of his interest, a prisoner may respond that the library is of sufficient variety, while others may not agree with him since the books of their preference may not be available there.

Based on these criteria, the situation of availability of library and books in prisons and the center covered under this study is presented mathematically, with only little explanation as follows. Since there is no substantial difference between prisons on this issue that require further discussion, the statistical data is presented in the form of table.

No.	Name of prison	Poor	Satisfactory	Excellent	Special remark
I	Woliso	100%	-	-	No library at all. But it is mentioned as there was previously.
II	Shashemene	100%	-	-	No library at all.
III	Ziway	100%	-	-	No library at all.
IV	Ambo	31.6%	68.4%	-	It could be surprising division, 31.6% of respondents voted as there is no library at all, while there is actually. Perhaps it could be because of lack of books that the former denied the fact.
V	Adama	100%	-	-	No library at all.
VI	Adama-depo training center	10%	85%	5%	There are sufficient books better than any of prisons discussed. Surprisingly, the mere existence of library is generally denied by 10% respondents. It could be also due to lack of books of their interest.

Table 1.3 The situation of library and books.

⁴¹³ See Annex I, questioner disseminated for prisoners, p. III.

5.3.2.9 WORK

Unlike the above stated issues of prisoners or detainees treatment, prison work is specially required for prisoners under sentence, as a mandatory requirement.⁴¹⁴ Prison authorities must provide sufficient work of useful nature to keep prisoners employed for a normal working day. All prisoner under sentence shall be required to work, subject to their physical and mental fitness as determined by the medical officer. In this regard, work program must take in to consideration the physical specificities of women, especially pregnant women and nursing mothers.⁴¹⁵

In any case, prison labor must not be of an afflictive nature. The maximum daily and weekly hours of the prisoners shall be fixed by law or by administrative regulations, taking into account local rules or custom in regards to free workmen. There shall also be a system of equitable remuneration of the work of prisoners. In the prisons of United States, for instance, there is a system called “UNICOR” which stands for prison industry. Most of the prisons are in the business of manufacturing textiles, electronics, furniture, and metals. Some of the prisons even contain a graphics and services plant or a distribution warehouse. While inmates are paid for their work, pay is generally higher in UNICOR- related jobs, and based on an inmate’s experience or seniority. There are grade 1 to 5 levels of premiums in which prisoners can get a daily earning of \$10.80 to \$ 1.84.⁴¹⁶ Generally, making situations like as shown under the US experience is the responsibility of prison authorities through making an arrangement for all the above mentioned conditions, in line with the practical situations of the country, and meet other requirements of standard minimum rules for the treatment of prisoners, as provided under rule 71-76.⁴¹⁷

The issue of work of prisoners is addressed in this study under all five prisons- Woliso, Shashemene, Ziway, Ambo and Adama and the technical and vocational center of prisoners. Question 11, 35 and 36⁴¹⁸ of the questioner distributed for prisoners are used as a test of the

⁴¹⁴ Persons detained in a prison without conviction may not be necessarily required to work.

⁴¹⁵ Supra at note 379, p.201.

⁴¹⁶ Supra at note 408, p.4.

⁴¹⁷ See also above at p. 76.

⁴¹⁸ See Annex I, questioner disseminated for prisoners, p. I & III.

situation of work in each prison covered under the study; and accordingly the situation is ranked as excellent, satisfactory and poor.

The situation on of work in a prison can be ranked as poor, in this context where the prison authorities does not facilitate or make available any work; and/or where prisoners are not allowed to do their own business; and/or where there is forced labor without or with extremely poor remuneration. The situation of work in a prison can be ranked as satisfactory in this context, where work is facilitated or become available by prison authorities with moderate remuneration; and where prisoners are allowed to do their own business with fair taxation, if not for fair length of time. In this regard fairness of taxation can be evaluated having regard to the type of the work and the amount of payment of offered for it. The situation of work in a prison can be ranked as excellent in this context, where work is available or facilitated by the prison authorities; and prisoners are allowed to do their own business all with equitable remuneration, fair taxation and limited (fixed) length of hour.

Based on this, the situations of work in prisons and center of training covered under the study is presented mathematically, with some elaboration, as follows.

I. WOLISO PRISON

About 67.6% of prisoners in Woliso prison are provided with poor situation of work. While the other 23.6% are provide with satisfactory situation, the remaining 8.8% are enjoying an excellent situation of work. The basic problems frequently mentioned are firstly, there is no sufficient work facilitated for prisoners; secondly, there is forced labor without payment; and thirdly, there is extremely unfair or disproportionate taxation against those doing their own business.

Despite the existence of these problems, prisoners in this prison are engaged in a number of works ranging from weaving to agriculture and rappour writing for male, and spinning to basketwork (*seffed sifet*) and preparation of spices for women. One of the burning issues indicated by many prisoners is that those prisoners who are convicted of long years of imprisonment are not allowed to work. More or less, the category of prisoners enjoying an excellent work situation is private workers.

II. SHASHEMENE PRISON

About 68.75% of prisoners in Woliso prison are provided with poor situation of work. While the other 25% are provided with satisfactory situation, the remaining 6.25% are enjoying excellent situations of work. Unlike Woliso prison, there is no forced labor without payment herein Shashemene prison. The main problem here is that there is no sufficient work available for prisoners. There is work available on food preparation, wood work and metal work though not sufficient in amount for prisoners.

III. ZIWAY PRISON

While 92.6% of prisons in Ziway prison faced poor situation of work, the rest 7.4% are enjoying a satisfactory situation of work. There is only very limited number of work position in construction /building/ and wood work. Most of the prisoners do not have work at all. Where there is temporary work available for a certain period of time there is a trend named “*afessa*” in which prisoners are forced to work without any payment.

IV. AMBO PRISON

While 94.7% of prisoners in Ambo prison are provided with poor work situation, the rest of 5.3% are enjoying satisfactory work situation. There are varieties of works available in the prison and outside the prison but all without any payment. The work available for prisoners include weaving, rappour writing, sewing, cleaning toilet, roasting bean (up to 100kg /1Kuntal/ per day), mowing, wood work, and surprisingly uprooting or clearing trees (deforestation). It is generally in exceptional situations that prisoners may get paid.

V. ADAMA PRISON

While 57.1% of prisoners in Adama prison are provided with poor works situation, the rest of 42.9% are enjoying a satisfactory work situation. There is no any work facilitated by the prison authorities. However, there access for those who want to work by themselves privately. Lack of capital is the major problem faced by prisoners that impede them no to do their own private works.

VI. DIPPO TECHNICAL AND VOCATIONAL TRAINING CENTER

About 80% of trainee-prisoners are provided with satisfactory situation of work in this technical and vocational training center. While the other 10% are provided with poor situation, the rest 10% are enjoying an excellent work situation. Most of the complaints constituting that of 10% poor are concerning the low amount of payment offered for them.

5.3.2.10 EDUCATION AND TRAINING

Education is a prerequisite for making informed choices and being able to participate fully in society. The education of children is generally recognized as necessary by most societies. However, adults, both male and female, also need education and training in different areas of life.⁴¹⁹ Prison authorities shall provide for the further education of all prisoners capable of profiting thereby. The education of illiterates and young prisoners shall be compulsory and special attention shall be paid to it by the prison administration.

For instance, in the US in recent years, all of the BoP's (Bureau of Prison) facilities have made it a requirement that inmates acquire a high school diploma or GED before they are released from custody. This requirement is not only important for finding work in the outside world, but is also important inside the prison. Instruction for the vocational training programs is given by either the BoP or local community colleges or technical colleges sponsoring the program. There are a wide variety of vocational and apprenticeship program offering throughout the BOP, which can differ between prisons based on the type of prison facility, i.e., security level.⁴²⁰ Generally, it is the responsibility of prison authorities to fix the education and training situations of the prison just like as indicated in the US case, to the extent the situation of the country permits, and to make other arrangements in line with the rule of the standard minimum rules for treatment of prisoners.⁴²¹

⁴¹⁹ Supra at note 379, p. 136.

⁴²⁰ Supra at note 403, p. 2.

⁴²¹ See above at p. 76.

The issue of education and training of prisoners is addressed in this study under all the five prisons i.e. Woliso, Shashemene, Ziway, Ambo and Adama and the Dippo technical and vocational center of prisoners. Question number 37 and 38⁴²² of the questioner disseminated for prisoners have been used as test of the situation of education and training in each prison covered under the study; and the situation is accordingly ranked as excellent, satisfactory and poor.

The situation of education and training can be ranked as poor, in this context, where; a prisoner does not attend any education and training in the prison for any reason that does not amount to his failure. The situation can be ranked as satisfactory where a prisoner does attend an education which is not beyond grade 8; and a training of any kind whether of his interest or not. The situation can be finally ranked as excellent where a prisoner attended an education which is beyond grade 8 and a training of his interest.

It must be understood that, under this section, the assessment mainly focus on the situation of individual prisoners rather than the situation of the prison, even though it can be reflected indirectly. The statistical presentation shows the status of prisoners provided with questioner, that may not necessarily indicate the situation of the prison, especially on education facility as the attendance may, most of the time, depends on the interest of the prisoner. However, it could not be forgotten that the education of literates and young prisoners shall be compulsory-whether they are interested in education or not. Based on this understanding the situation of prisoners with regard to education and training in prisons and the training center covered under the study is presented mathematically as follows. As there are no details of elaborations made in this regard, the presentation is in the form of table.

⁴²² See Annex I, questioner disseminated for prisoners, p. III.

N o.	Name of prison	Poor	Satisfactory	Excellent	Special Remark
I	Woliso	100%	-	-	- It is mentioned that there is education up to grade 6; Education is only through Oromffa; Prisoners of grave crimes cannot attend education; and there is training on HIV/AIDS, metal work, and wood work informally.
II	Shashemene	78.1%	21.9%	-	- It is mentioned that there is education up to grade 6 started at 2001; to the contrary of Woliso, education is available only for those who are convicted for long term imprisonment; and there is training on malaria prevention, wood work and metal work.
III	Ziway	92.6%	7.4%	-	- It is mentioned that education is up to grade 4 only; and there is no training at all.
IV	Ambo	86.8%	13.2%	-	- It is mentioned that there is education up to grade 8 to be delivered through only Oromffa and allowed only for those who are punished for less than 12 years imprisonment. There is informal training on wood work and waving. There are also prisoners who are attending College through distance education.
V	Adama	100%	-	-	- It is mentioned that there is education up to grade 4 started at 2001 E.C. But, there is no any training.
VI	Dippo training center	-	-	100%	-There are varieties of trainings. -All respondents have completed grade 8 th education before being admitted to the center.

Table 1.4 The situation of education and training

As it is indicated on the table, all of the prisons assessed under the study have an education program ranging from up to grade 4 to up to grade 8. But, most of the respondents are not attending any education. As mentioned by substantial number of prisoners, this is partly due to language problem. It was, however, the duty of the prison authorities to facilitate the situation and to compel the rest of illiterate and young prisoners who may not attend it due to lack of interest to attend education.

5.3.2.11 SEPARATION OF CATEGORIES

The different categories of prisoners shall be kept in separate institutions or parts of institutions taking into account of their sex, age, criminal record, the legal reason for their detention and the necessities of their treatment. Thus, men and women shall so far as possible 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 person imprisoned by reason of criminal offence; and young prisoners shall be kept separate from adults.⁴²³

⁴²³ Supra at note 224 (Standard Minimum Rules for the Treatment of Prisoners), Rule 8.

Further, persons who are found to be insane shall not be detained in prisons and arrangements shall be made to remove them to mental institutions as soon as possible. During their stay in a prison, such prisoners shall be placed under the special supervision of a medical officer.⁴²⁴ For instance, in US convicted criminals who become psychotic while they are serving their sentences in state prison had been transferred to a state hospital, for convicted criminal who are mentally ill. However, before this facility was started to be administered jointly by Department of Correctional Services and the Department of Mental Hygiene in New York, the old practice was to continue the confinement of these insane criminals even after the expiration of their prison sentence.⁴²⁵ Generally, as they are responsible because of their position, prison authorities shall make all necessary arrangement to keep those different categories of prisoners separate.

The issue of separation of categories is addressed in this study under all five prisons - Woliso, Shashemene, Ziway, Ambo and Adama and under Dippo technical and vocational center of prisoners. Question number 1, 6, 14 and 43⁴²⁶ of the questioner disseminated for prisoners are used as a test of the situation of separation of categories; and accordingly this situation is ranked as excellent, satisfactory and poor.

The situation of separation of categories can be ranked as ,poor, in this context, where the prison administration do not facilitates a separate accommodation for male and female; and/or sane and insane; and/or child and adult. The situation of separation of categories can be ranked as satisfactory where the prison administration facilitates a separate accommodation at least for male and female; sane and insane; and child and adult prisoners. The situation can be ranked as excellent where the prison administration facilitates a separate accommodation for all categories of prisoners, i.e., male and female; sane and insane; child and adult; convicted and unconvicted; and civil and criminal prisoners.

Unlike the other cases, here there is no need of presenting the situation of different prisons with their particular rank as all prisons found to be poor. All the five prisons i.e. Woliso, Shashemene, Ziway, Ambo and Adama are alleged by all 100% of prisoners for lacking any kind of separate

⁴²⁴ Id, Rule 82.

⁴²⁵ Supra at note 326, p.64.

⁴²⁶ See Annex I, questioner disseminated for prisoners, p. I & III.

accommodation for any category except for categories of male and female prisoners. There are insane residing with sane prisoners for 3 years or above and there are children as old as 14 years only accommodated with old age prisoners.

The only exception is the case of Diplo center of technical and vocational training where there is an excellent separation of category as testified by all 100% of trainee-prisoners and personally observed by the writer. In this center, women have their own separate accommodation, and children have their own compound. There is no any insane or unconvicted person in the center at all.

5.3.2.12 CONTACT WITH OUTSIDE WORLD

Prisoners need to receive frequent visits from relatives in order to maintain families and preserve their psychological well being, and also in certain contexts to receive vital material assistance. Indeed, in many cases family visits are the main source of supplies to supplement the scarce commodities provided by the prison authorities. Prisoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits.⁴²⁷

For example, the practice in US is that shortly after arriving at their designated prison facility, inmates will have to complete and submit an approved visitor list to their counselors. Only approved visitors will be permitted to visit the inmate. Absent strong concerns by the warden that would preclude visiting, immediate family members (i.e., mother, father, spouse, children, brothers and sisters) are automatically placed on the approved visitor list, if their relationship to the inmate is verified in the presence report. Individuals who are not considered immediate family may be approved for visitation after they have submitted the appropriate forms and have been “cleared” by prison staff.⁴²⁸

According to US practice all incoming mail from family, friends, and other prison inmates is opened and checked for contraband. Mail from attorney and on attorney letter head, bearing the

⁴²⁷ Supra at note 379, p. 199.

⁴²⁸ Supra at note 403, p. 10.

attorney's name and marked "special mail - open in the presence of the inmate", will be opened in the inmate's presence and checked for contraband. Such mail, however, is not copied or read by the Bureau of prison staff. One of the first thing inmates should be aware about telephone usage in US prisons is that they will not be permitted to use the phone to conduct any business dealings while they are incarcerated. For the rest of matters, however, almost all prison utilize the pre-payment method, otherwise known as the inmate telephone system (ITS) to facilitate telephone service for prisoners.⁴²⁹ Generally speaking, it is the duty of prison authorities to facilitate everything for contact of prisoners with the outside world. The prison authorities shall use their best to adopt the best practice like the case of US. In any case, however, they shall make an arrangement at least conforming to rule 37-39 of standard minimum rules for the treatment of prisoners.⁴³⁰

The issue of contact with the outside world is addressed in this study under all the five prisons - Woliso, Shashemen, Ziway, Ambo and Adama and in Dippo technical and vocational center for prisoners. Question number 29 and 30⁴³¹ of the questioner disseminated for prisoners have been used as test of situation of contact with the outside world of prisoners in each prison covered under the study; and finally the situation is ranked as excellent, satisfactory and poor.

The situation of prisoners contact with the outside world can be ranked as poor where; visit and use of postal service is absolutely forbidden. The situation can be ranked as satisfactory where visit is allowed but not for 3 days or above per week and use of postal service is allowed. The situation can be ranked finally as excellent where visit is allowed for more than 3 days per week and use of postal service is allowed.

Here is also like in the case of separation of categories, there is no need of presenting the situation of different prisons with their particular rank as most of prisons and the training center found to be excellent. While Woliso, Shashmene, Ziway prisons and Dippo center of training for prisoners are testified by 100% of prisoners for their excellent situation in relation to contact of the prisoners with the outside world by allowing full day visit to the prisoner throughout all the day of the week with some access of postal service, the rest two prisons, i.e., Ambo and Adama

⁴²⁹ Id, p. 9.

⁴³⁰ See also above at p. 73.

⁴³¹ See Annex I, questioner disseminated for prisoners, p. II & III.

prisons are found to be satisfactory as they allow the visit of prisoners only three days per week. Note must be taken that all the prisons and training center covered under the present study prohibit the use of telephone service strictly.

5.3.2.13 COMPLAINT PROCEDURE AND REMEDY

Prisoners are entitled not only to the above discussed situations but also to the right of complaining when any of those situations found to be detrimental to them or when things found to happen in contrary to the standard minimum rules for the treatment of prisoners. 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. Further, every prisoner shall be allowed to make a request or complaint, without censorship as to the 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. It is the duty of prison authorities to make all the necessary arrangements for proper complaint procedure and proper response as stated above and under rules 35-36 of the standard minimum rules for the treatment of prisoners.⁴³²

As what is done in all other issues, the case of complaint procedure and remedy is also addressed in this study for all the five prisons - Woliso, Shasemene, Ziway, Ambo and Adama, and the Dippo technical and vocational training center. Question number 44⁴³³ of the questioner disseminated for prisoners has been used as test of the situation of complaint procedure and remedy in each prison covered under the study; and the situation is finally ranked as excellent, satisfactory and poor.

In this context, the situation of complaint procedure and remedy can be ranked as poor where there is no any formal complaint procedures at all or where prisoner indicates for the non existence of any remedy for any informal complaint lodged, if any. The situation could be ranked

⁴³² It is also well mentioned under CAT.

⁴³³ See Annex I, questioner disseminated for prisoners, p. III.

as satisfactory where there is formal complaint procedure but a prisoner indicates as there is no any response for those complaints lodge or where there is response but with extreme undue delay. Finally, the situation can be considered excellent where there is well organized and formal complaint procedure and a prisoner indicates that there is sufficient and effective remedy for those complaints, without undue delay. Based on this understanding the situation of prisoners with regard to complaint procedure and remedy in prisons and the training center covered under the study is presented mathematically. Since there is no detail elaboration made on this issue, the presentation is in a form of table.

No	Name of prison	Poor	Satisfactory	Excellent	Special remark
I	Woliso	35.3%	58.8%	5.9%	- In some cases prisoners indicates as they have faced revenge for the complaint they have made.
II	Shashemene	12.5%	78.1%	9.4%	- The complaint procedure starts form the boss of the prisoners.
III	Ziway	66.7%	33.3%	-	- Complaint is allowed for the prison warder in charge only.
IV	Ambo	86.8%	13.2%	-	- The basic problem is lack of any remedy-absolute ignorance.
V	Adama	81%	19%	-	- Lack of both remedy and complaint procedure.
VI	Dippo training center	10%	20%	70%	-Lack of effective remedy is indicated by some prisoner.

Table 1.5 The situation of compliant procedure and remedy.

It must be understood that the response of prisoners especially concerning the availability of remedy could be highly influenced by their own particular experience. Unlike the test of the existence of formal procedure which can be known with sufficient certainty, the existence of informal procedure and effective and prompt remedy are highly affected by the specific experience of a respondent.

5.3.2.14 SUMMARY

It is obvious that all the above discussed ranks of poor and satisfactory in each and every category of assessment are violations committed against the standard minimum rules for the treatment of prisoners and the body of principles for the protection of all persons under any form of detention or imprisonment (1988).

As well stated at the beginning of this section, the non binding nature of these instruments shall not be used as an open way out by prison authorities to depart negatively from those internationally recognized rules for the treatment of prisoners. There is a strong and direct nexus between the rules of such non binding instruments and the provisions of those binding instruments such as ICCPR, CAT, ACHPR, etc. No one can deny, actually, as there is a degree difference between these instruments. While these non binding instruments provide for best practice in treating prisoners, those binding instruments deals with the poor practice that may cause liability, in treating prisoners. However, most of the issues likely to be raised in both cases are more or less the same, save alone other legal requirements of binding instruments.

In the present study, however, none of the prison authorities have tried to derecognize or reject the rules provided in these instruments (standard minimum rules for the treatment of prisoners and the body of principles for the protection of all person under any form of detention or imprisonment) because of their non binding nature. Most of the prison authorities mentioned as they are working to their best to make situations conforming to these rules.

In this regard, it is also necessary to mention some kind of contradiction between the words of prison authorities and prisoners about existing situations. For instance, while the prison administration of Shashemene prison mentioned for the existence of ventilator (air conditioner) and facilities of personal hygiene situation such as soap (as collected from sponsors),⁴³⁴ large number of prisoners denied this situation. While the prison administration of Woliso prison firmly stated as there is facility and open access to sport and exercise activities,⁴³⁵ the existence of this situation is largely rejected by prisoners. While the prison administration of Ziway prison

⁴³⁴ Supra at note 347 (Interview with Commander Teklu Letta).

⁴³⁵ Supra at note 344 (Interview with V/Commander Fikadu Tola).

mentioned for an extremely sufficient complaint procedure and remedy available for prisoners,⁴³⁶ existence of this situation was highly disagreeable by prisoners. While the prison administration of Ambo prison stated as there is equitable remuneration for the works done by prisoners,⁴³⁷ this is amazing news for the prisoners as they totally denied this situations completely.

But all prison authorities are commonly saying that they are working hard to make situations compatible with those mentioned international standards. The writer has understood as this assertion could be said honestly as reflected under some indicators. In this regard, for instance, the prison visit report released by Ethiopian Human Rights Commission of July 2008 had mentioned the extraordinary poor situations of water provision, personal hygiene facilities, health care, and clothing and bedding situations of Shashemene prison. But this situation is not something easily agreeable in this study. Even though there are poor situations in these matters still in this prison, the situation is remarkably different from that stated under the Commission's report. The writer believes that this improvement is recorded due to, among other things, the commitment of the prison authorities to improve the situation.

According to vice Commissioner and head of prisoners and prisons administration department of Oromia Prisons Administration Commission⁴³⁸ - all the prisons in the region are provided with equal budget for food, i.e., 8.80 birr per prisoner. The commission is also using its best effort to wide spread prison education to the maximum extent possible. Despite the existing opposite situations that seem a common policy of all prisons covered under the study, the commissioner mentioned that sport and exercise are not only allowed but also encouraged practices in the prisons found in this region.

He, the commissioner, further mentioned that there is reasonable budget allocation for the maintenance of prison facilities. The writer gets surprised when the commissioner mentioned the strong conviction of the commission not to undertake any developmental works for prisons, except as maintenance, having in mind the overcrowded and highly deteriorated prison facilities observed under the study. Though the commissioner mentioned as they are working on to

⁴³⁶ Supra at note 350.

⁴³⁷ Supra at note 353.

⁴³⁸ Interview with the vice Commissioner and Head of Prisoners and Prison Administration Department of Oromia Prison Administration Commission, Addis Ababa, November 12, 2010.

develop medical care facilities in the long run, the writer feels discomfort with this plan considering the poor existing facilities and the urgent need of the situation.

Generally, it is possible to conclude that the violation of the standard minimum rules for the treatment of prisoners is not an easy matter as treating prisoners below the minimum or the bottom line could pave the way and be the starting point of other grave matters of the international community as discussed under the forthcoming section.

5.3.3 THE PROTECTION OF PRISONERS FROM TORTURE, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Beside measuring the situation of prisoners in light of accommodation, food and water, clothing and bedding, medical service, personal hygiene, sport and exercise, religious practices, library and book, work, education and training, separation of categories, contact with the outside world and complaint procedure available for them as firmly listed out under numerous non binding instruments, there are issues linked to prisoners, that can be measured directly in light of binding international and regional human rights and humanitarian instruments. In this regard, there are a number of binding instruments dealing with the rights of individuals, including prisoners, to be free from torture, inhuman or degrading treatment or punishment.

All forms of ill-treatment of prisoners are prohibited. The prison authorities must refrain from such practices themselves and also protect detainees from ill-treatment at the hands of others. The role of guards and other personnel in prisons is to implement the prison rules and regulations, to protect the prisoners from persons inside and outside the prison and to prevent them from escaping. Therefore, all staff of the prison authority has a responsibility to ensure that prisoners are treated properly and not subjected to ill-treatment.⁴³⁹

In the next sections, the protection of the right of prisoners to freedom from torture, inhuman or degrading treatment or punishment, in the prisons and the training center covered under the present study, will be discussed. As it was frequently mentioned under chapter II it is not easy to

⁴³⁹ Supra at note 379, p. 169-171.

put the exact separation point of these terms- torture, inhuman treatment/punishment and degrading treatment/punishment. However, the best possible effort is used in this work to present the violations, if any, occurred in the prisons with categorization as torture, inhuman treatment/punishment or degrading treatment/punishment in light of various human rights instruments, commentaries thereof and celebrated court decisions.

5.3.3.1 TORTURE

The protection of the right of prisoners to be free from torture has been addressed in those five prisons covered under the study i.e. Woliso, Shashemene, Ziway, Ambo and Adama and in the Dippo technical and vocational training center of prisoners. In this study question number 24, 26 [second paragraph], 33, 34, 39 and 42 of the questioner disseminated to prisoners,⁴⁴⁰ additional elaborations on other questions made by prisoners, and informal interviews as mentioned under chapter I have been used as a test for the existence of torture in these prisons and the training center.

In light of the responses forwarded to the check list questions of the questioner and interviews conducted, there is huge alleged violation of the right of prisoners not be subjected to torture. A considerable number of prisoners answered the questions designed to test the occurrence of torture in affirmative. To put strictly, about 23.5% of respondents in Woliso prison, 12.5% of respondents in Shashemene prison, 25.9% of prisoners in Ziway prison, 26.3% of respondents in Ambo prison, and 28.5% of respondents in Adama prison alleged as they were subjected for torture at least once in their stay in these prisons. Only the trainee-prisoners of Dippo technical and vocational training center found to be absolutely protected from torture.

However, the writer of this work does not agree with the allegations partly. Unlike other situations of prison such as clothing and bedding, the issue of torture is something beyond a situation as perceived by individuals. Having regard to the seriousness of allegation made on torture, the complex and mandatory legal requirements for the existence of torture, and the difficulty of testing and proofing factual situations about torture, the writer believes that the issue

⁴⁴⁰ See Annex I, questioner disseminated for prisoners, p. II & III.

of torture requires further scrutiny beyond the shortly stated responses made by respondent-prisoners for the questions provided for them as a check list of torture.

To begin with the legal elements of torture as stated under Article 1 of UN CAT, the following elements must be fulfilled to sustain the allegation of prisoners for their subjection to torture. (1) There must be severe pain or suffering, whether physical or mental; and (2) The infliction of that severe pain or suffering must be intentional; and (3) That intentional infliction of severe pain or suffering must be committed for such specific purposes as obtaining information, punishing, intimidating or coercing, or for any reason based on discrimination of any kind; and (4) The intentional infliction of severe pain or suffering committed for such specific purposes must be done by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. However, the term torture does not include pain or suffering arising from, inherent in or accidental to lawful sanctions.⁴⁴¹

If any of the above elements is missing, then the allegation of prisoners for the occurrence of torture would not be acceptable. To start the discussion with the requirement of “intention”, none of the respondents that allege the occurrence of torture have made a reference showing either the negligence or general intent in the commission of those torturous acts. Almost all of them firmly mentioned that the torture is committed against them with specific intent - intent not only to do the act but also to cause such harm as they indeed suffered.

The issue of official capacity is another issue worthy of serious discussion. As repeatedly mentioned by prisoners, a substantial number of torture act have been committed by other prisoners who are appointed by the prison authorities as a boss of the prisoners. For instance, about 17.6% of respondents in Woliso, 3.1% in Shashmene, 14.8% in Ziway, 18.4% in Ambo and 19% in Adama have mentioned that they have suffered from torture committed by other prisoners appointed by the prison authority as a boss. As the prisoners almost all with full agreement indicated these severe acts are committed with the instigation and/or consent, if not orders, of the prison warders. There are also substantial cases of torture committed by prison warders themselves and by prisoners with the order and presence of the prison warders.

⁴⁴¹ Supra at note 177 (UNCAT), Article 1.

However, there are minor cases in which such severe acts have been committed in a manner that do not fall under Article 1 of UN CAT, for instance, when prisoners allege the occurrence of torturous acts committed by another prisoner with his own motivation and without the knowledge of prison authorities and warders, as observed under some cases in this study.

The other issue is the existence of specific purpose for the alleged commission of these torturous acts. According to the findings of this study, none of the torturous acts have been committed for the purpose of obtaining information and discrimination according to the explanations made by prisoners. All the respondents alleging torture have mentioned punishment and intimidation or coercion as causes of torture. Out of the total number of prisoners in all the five prisons alleging the commission of torture-proper, 80% have mentioned punishment as a ground of torture while the remaining 20% stated intimidation and coercion as a ground cause of torture. This does not, however, mean that these prisons are free of violations caused by discrimination and searching for information. There are violations motivated by searching for information and discrimination, but these grounds are not used to the extent reaching torture or causing severe pain or suffering. Therefore, they are the subject matter of the next sections, most importantly degrading treatment/punishment rather than torture.

As mentioned by most of prisoners alleging torture, there are different grounds because of which prisoners have got punished and exposed to serious intimidation and coercion. The grounds, among other things, ranges from punishment for the non observance of minor prison rules to the coercion aimed at forcing prisoners to serve labor works outside the prison without any payment.

The other, perhaps the most controversial, issue for the fulfillment of torture is severe pain or suffering whether physical or mental. As well discussed under chapter II, whether physical or mental pain can be termed “severe” depends on the victim’s subjective feeling. This qualification can be made only in a given case by carefully balancing all circumstances, including the victim’s age, sex and subjective pain tolerance. With regard to the type of torturous acts and the severity of pain they have sustained, different prisoners in different prisons mentioned a number of things.

It should be noted that investigation towards torture can be better significant if it can be done through interviewing rather than dissemination of questioner. There are also a number of highly important techniques to be applied in interviewing the alleged torture victims.⁴⁴² Since interviewing prisoners is not the main technique applied in this work, it was not easy to know clearly the degree of severity of suffering sustained by victims. However, the writer used the explanations made on those specific questions designed to test torture, as mentioned at the beginning of this section, and the explanations made on other questions of particular relevance, in addition to interviewing some prisoners while helping them in filling out the questioner to understand the degree of severe pain sustained by prisoners.⁴⁴³

Among the types of acts of torture prisoners in Woliso prison mentioned, there is a prisoner who had been tied on with handcuff and chain on his leg for four years; there is severe beating with sticks against many of prisoners alleging torture; there is severe flogging with lash; there is severe punishment called “*makobko*” - such a kind of physical exercise; there is forced walk with knee on a rough ground for prolonged period of time; there was a person who alleged severe mental suffering as he was exposed to immediate death because of quarrel occurred with the prison administration, after a serious intimidation with a weapon, according to this person, he remains silent as he is totally forbidden not to complain any kind of violations occurred against his rights; there is also one prisoner who allege waterbroading as his head was immersed down into a barrel full of cold water. There is also an old prisoner who suffered from tooth breaking while beaten up by a stick as a coercion to move fast and work properly.

Other prisoners in Shashemene prison mentioned that, they have suffered from a prolonged incommunicado detention plus severe beating. They mentioned that they have been detained incommunicado for more than 2 months in addition to severe beating with sticks in that situation. It is also reported that one person has died in that situation. There is also, as reported, severe flogging with lash as a normal practice.

Prisoners in Ziway prison alleged as they have suffered from different kinds of torturous acts. It was repeatedly mentioned that there is severe flogging with lash, and sever beating with sticks. It

⁴⁴² Supra at note 18, p. 65.

⁴⁴³ See above “Research Methodology” at p. 7-8.

is reported that there is a prisoner on bed at the time this study is being conducted because of severe beating he sustained whilst tied on with handcuff. There is a prisoner who got a punishment of putting chili in his eyes for prolonged period of time as a punishment for disrespecting the prison guard. As this prisoner mentioned, he was taken away by the prison guard to the office and forced to put his face on chili with severe beating with rifle butt. There is also another prisoner who alleged that cold water was spilt out over his body at the middle - overhead sun- of the day while beaten up severely with stick. There are also reports of serious prohibition not to clean up one's room while it is severely verminious.

The situation is somewhat different in Ambo prison. Two prisoners have reported for the existence of darkrooms in this prison. These prisoners mentioned that they have been kept incommunicado in such dark cells for more than 3 weeks with repetitive beating. Other prisoners mentioned the existence of severe flogging with lash. There is a prisoners report for handcuffs and/or chain on his leg for the last three years, waiting for the execution of his death sentence- a sentence that have never been executed in prisons of Oromia region.⁴⁴⁴ There are also severe beatings with stick against prisoners while tied on with handcuff; and they are also exposed to splitting out with cold water in that situation. One of them report for severe back bone breaking injury because of such acts.

Prisoners of Adama prison mentioned that there are a number of torturous acts. Among others, prisoners have mentioned that, there is severe flogging and beating. While the acts of flogging have been committed with lash in those other prisons, the prisoners of Adama prison mentioned that they have suffered from flogging with electric cables just on the sole of their foot. The others have been forced to roll over mud with severe beating for a prolonged period of time. There are also reports for exposure to split out with cold water while they are beaten and rolling over mud. They have also mentioned that they have been severely trodden on by guards repeatedly at the night time, in an attempt to make a sleeping arrangement. Note that, as mentioned under accommodation section, sleeping with back is forbidden in this prison because of serious overcrowd.

⁴⁴⁴ Supra at note 438.

To summarize, these are the acts mentioned as causing severe pain of physical and mental character- indeed most of them are severe to any reasonable (average) person. The non existence of torture through medical experimentation and rape in all prisons and the non existence of dark rooms except reported in Ambo prison are good practices that must be maintained. In other regards, the writer firmly believes that there is torture in these prisons. However, in screening out those allegations of torture, there are some cases alleged to be committed but without public official capacity (or instigation or consent of public official). There are exceptional cases that lack intent to cause such harm though there is intent to do the act, for instance trampling down prisoners alleged in Adama prison is not to cause such harm rather than making sleeping arrangement. According to the writer's believe, there are some cases that lack the necessary intensity of severe suffering such as sporting punishments called "*makobkob*". There are also some cases of allegation for severe mental suffering caused by the unfair nature of the court judgment that makes them prisoner and/or the pronged nature of the detention. However, these situations cannot be considered as torture since they don't fall in the scope of Art 1 of UNCAT.

The writer also rejects the allegation of mental torture mentioned to be occurred in Woliso prison. Severe mental pain or severing means the *prolonged mental harm* caused by or resulting from: (a) the intentional infliction or threatened infliction of severe physical pain or suffering; or (b) the administration or application, or threatened administration or application, of mind altering substances or other procedures calculated to disrupt profoundly the senses or the personality; or (c) the threat of imminent death; or (d) the threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind altering substances or other procedure calculated to disrupt profoundly the sense or personality.⁴⁴⁵ It is clear that most of these listed things could be happened in the course of the occurrence of that of most of physical tortures mentioned above in all prisons in addition to one specific allegation in Woliso prison for mental torture. But, the writer does not believe that these listed things do resulted in prolonged mental harm. None of the respondents have made mention for any kind of prolonged mental harm that could be interpreted as torture.

⁴⁴⁵ In the decision of supreme Court of Israel, Sitting as the High Court of Justice, (September 6,1999) available at <http://62.90.124/mishpat/html/en/system/index.html> (accessed on November 4,2010).

After sorting out the above mentioned kinds of allegations not confirming to art 1 of UNCAT, made in all the five prisons covered under the study, the writer sustained the torture allegations of prisoners in the following manner. Accordingly about 17.6% of prisoners in Woliso prison, about 9.3% of prisoners in Shashemene prison, about 14.8% of prisoners in Ziway prison, about 21% of prisoners in Ambo prison and about 23.8% of prisoners in Adama prison have suffered from torture. Note that most of the prisoners whose allegation for torture sustained are victims of combined - two or more suffering of the above mentioned acts.

Despite the absolute prohibition of torture in international law and the obligation of the state to take all effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction, none of the prison authorities and/or prison guards have faced prosecution because of the tortures committed in the prisons covered under the present study. The writer tried to know if there were any kind of investigation and persecution against the torturers for the torture committed in these prisons. However, all of the prison administrators denied the existence (occurrence) of torture in the prison they are administrating.⁴⁴⁶ Finally, it is important to mention the praiseworthy practice of Dippo training center in its proper protection of the rights of prisoners to be free from torture.

All other ill treatments that can not fall under Art 1 of UNCAT have also been addressed in all the five prisons and the training center of prisoners as follows.

5.3.3.2 INHUMAN TREATMENT/PUNISHMENT

As well discussed under chapter II, cruel, inhuman or degrading treatment (“CIDT”), like torture, is universally recognized as prohibited under international law. Even more so than torture, however, there is serious disagreement over what acts constitute CIDT. While most agree that the spanking of a school boy is not torture, many differ on whether such an act constitutes

⁴⁴⁶ Interview conducted with top officials of the prisons covered under the study; see Qn. 22, 23 & 24 of Annex I, questions for prison administrators, p. vi

CIDT.⁴⁴⁷ When first confronted with the question of the status of CIDT under international law, a US federal court found that there was no universal consensus on what constituted the prohibition against cruel, inhuman, or degrading treatment, and thus it was not specific and universal enough to rise to the level of a rule of customary international law.⁴⁴⁸ However, as in various cases such as *Paul V. Avril* (812 F.supp.207/S.D. Fla. 19931), *Abebe- Jira V. Negewo* (72 f.3d 844/11th cir.1996) and *Xuncax V. Gramajo* (886 F. supp.162187/D.Mass.1995) US federal courts have since reversed this position, finding that the prohibition against CIDT is universal and specific enough to constitute a norm of customary international law.⁴⁴⁹

Currently, even though the jurisprudence is still evolving, there are enough standards to test the occurrence of inhuman treatment or punishment in a particular situation. It is in light of this jurisprudence that the protection of the rights of prisoners in the prisons of Oromia National Regional State has been assessed in this work.

The protection of the right of prisoners to be free from cruel or inhuman treatment has been addressed in those five prisons covered under the study-Woliso, Shshemene, Ziway, Ambo and Adama and Dippo technical and vocational training center of prisoners. In this study, question number 11, 33, 34, 39 and 42 have been mainly used as a test of the occurrence of inhuman treatment/punishment in these prisons and training center. It must be understood that there is a considerable similarity in acts that amount to torture and inhuman treatment or punishment. Therefore, those tests used to measure torture are again applied to test inhuman treatment/punishment.

The most important tool in assessing inhuman treatment/punishment is the elaborations made by respondent prisoners about the nature of suffering they have sustained, both as written thereon the papers (questioner) and as told to the writer while helping them in filling out the questioner.

⁴⁴⁷ Francisco F. Martin, *International Human Rights Law and Practice: cases, treaties and materials*, Kluwer Law International, Leiden, 1997, p.342.

⁴⁴⁸ *Forti V.Suarez-Mason*,672 F.supp.1531, 1543 (N.D.cal.1987); *Forti V.Suarez-Mason*,694 F. Supp. 707, 711-12 (N.D.Cal.1988). In this case plaintiffs failed to establish that universal consensus exists concerning what constitutes cruel, inhuman, or degrading treatment.

⁴⁴⁹ *Supra* at note 447.

These elaborations were particularly important to identify the elements of purpose, intent, active undertaking and the intensity of the pain sustained.

In answering questions provided to test the existence of inhuman treatment/punishment, the respondent prisoners have indicated the existence of serious violation in the prisons covered under the study, except the Dippo center of technical and vocational training, which found to be completely free from any kind of inhuman treatment/punishment. Mathematically, about 14.7% of prisoners in Woliso, 12.5% of prisoners in Shashemene, 14.8% of prisoners in Ziway, 23.6% of prisoners in Ambo and 28.5% of prisoners in Adama have suffered from inhumane treatment and punishment at least once in their stay in these prisons. All prisoners included under this mathematical presentation unequivocally mentioned that they have suffered these treatments and/or punishments either by the hands of prison warders or at the instigation and full knowledge of them.

It must be clear that this number does not include the number of prisoners admittedly (accepted by the writer to) fall under torture. It is absolutely different. Those prisoners who alleged torture and finally accepted as proper victims of torture by the writer after screening based on Art 1 of UNCAT are not reconsidered as victims of inhuman treatment or punishment. The present statistics indicates the number of prisoners (1) who mentioned somewhat different act that is not mentioned by alligators of torture, (2) who mentioned acts the same as alligators of torture but with moderate intensity, and (3) those prisoners who alleges torture but rejected by the writer due to lack of intent i.e. intent to cause the result and most importantly due to lack of the necessary intensity of severe suffering to constitute tortures.

Under a number of celebrated court rulings and commentaries acts such as forcing detainees to stand for long periods of time, subjecting them to sights and sounds that have effect or intent of breaking down their resistance and will, or inflicting severe mental or physical stress on detainees;⁴⁵⁰ deprivation of certain basic needs of the person, such as the need for food, water, or sleep if the pain or suffering inflicted is not server enough to constitute torture; deliberate indifference to a detainee's medical needs and deprivation of the basic elements of adequate

⁴⁵⁰ Ireland V. United Kingdom, 25 ECtHR (Ser.A) at para 166-68 (1978); Bouton V.Uruguay (37/1978), Report of the U.N Hum. Rts. Comm.. GAOR, 35th Suppl.,No.40 (1980).

medical treatment;⁴⁵¹ and delay in removing condemned prisoner from “death cell” after stay of execution has been granted⁴⁵² have been declared to be inhuman treatments or punishments.

In the prisons covered under the present study there are cases of serious food and water deprivation like the case in Adama prison, there is intentional omission not to provide medical treatment like the cases in Ambo and Woliso prisons - in this regard it must be noted that whether there is purpose or not in prohibiting and/or intentionally omitting medical treatment does not matter as the allegation is not of torture. There no also sleeping with back as repeatedly mentioned in Adama prison, and prisoners got tramped on (“*beigir meteketek*” as the prisoners call it) when they found sleeping with their back.

The writer also believes that waiting for 3 years in a death row - as what mentioned in Ambo prison is inhuman treatment. Like the case of Soering V. UK and Pratt Vs Jamaica mentioned above it is possible to adopt a valid analogy to establish inhuman treatment in this case (even just setting the case of handcuff and chains aside) as the prisoners is in constant fear of imminent death, despite the fact that death penalty have never been implemented in the region and certainly known not to be executed hereafter by prison authorities.⁴⁵³

Further, all acts of flogging with lash and beating with stick are existent in all prisons. In this regard, while most of the prisoners who fall in the present category as suffering from inhuman treatment have mentioned as they have suffered from moderate degree of flogging and beating by themselves which do not reach the extent of torture, the rest are rejected by the writer and added to inhuman treatment/punishment though their allegation was stated as severe enough to constitute torture. Those physical punishments as “*makobkob*” and the like are included in this inhuman treatment/punishment category while initially claimed by the respondents to be torture. There are also well stated facts of suffering from severe pain committed and sustained without any purpose. Two prisoners, for instance, one from Shashemene and the other from Ambo mentioned as they have suffered from severe beating without any reason, just because of personal hate.

⁴⁵¹ Supra at note 447, p.343.

⁴⁵² Soering V. United Kingdom, 161 ECtHR (Ser.A) (1989); Pratt V. Jamaica, UK privy council, 2AC 1, 4 All ER 769, 3 WLR 995, 143 NLJ 1639 (1993).

⁴⁵³ Supra at note 438.

Just as what had been done in the case of torture, the writer have also questioned the prison authorities⁴⁵⁴ whether there is any complaint of inhuman treatment/punishment in the prison they are administering and the measures taken against violators, if any violation occurred. However, the response was just the same as the response forwarded to torture i.e. “there is no any kind of inhuman treatment/punishment and complaint therefore, in this prison.”

Article 16 of UNCAT expressly provided that each state party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment of punishment which do not amount to torture as defined in Article 1, when such acts committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. Therefore, the situations occurring in the prisons covered under the present study are clearly violations of the convention.

5.3.3.3 DEGRADING TREATMENT/PUNISHMENT

As well discussed under different sections of chapter II, degrading treatment or punishment is the weakest level of violation of the right mentioned under “freedom from other cruel, inhuman and degrading treatment or punishment”. In this case the severity of the suffering imposed is of less importance than the humiliation of the victims, regardless of whether this is in the eye of others or those of the victim himself or herself. In addition to other acts causing a serious humiliation or anguish, mere legislative or administrative discrimination by itself suffices to constitute degrading treatment or punishment.⁴⁵⁵

The right of prisoners to be free from degrading treatment or punishment has also been assessed in all the five prisons -Woliso, Shashemene, Ziway, Ambo and Adama and in Diplo technical and vocational training center covered under the present study. Unlike other issues addressed in this section, the issue of degrading treatment is so broad enough that it can cover the extreme poor cases of all issues covered under this chapter, except torture and inhuman treatment or

⁴⁵⁴ Interview conducted with top officials of the prisons covered under the study, questions for prison administrators, Qn. 23 & 24 of Annex I, p. vi.

⁴⁵⁵ Supra at note 64, p.133.

punishment. Except in the issues of torture and inhuman treatment or punishment for which degrading treatment or punishment is the least severe issue, it can be considered as the most severe issue of all other matters addressed under *section 5.3.2* (such as accommodation, food and water, clothing and bedding etc.).

It is, however, important to address the right by itself, using specific indicators of violation before passing to creating a link between this right (the right to freedom from degrading treatment or punishment) and other issues of treating prisoners. Accordingly, in addition to the severe violations of the standard minimum rules for the treatment of prisoners and the lesser violations of different instruments prohibiting torture, inhuman treatment or punishment, the writer adopts a particular test of degrading treatment. Strictly speaking question number 9, 10, 11, 21, 40, 41 and 43⁴⁵⁶ are specifically designed to assess the situation of degrading treatment in the prisons and the training center covered under the study.

Particularly, question number 9 and 10 are provided to test the situation of discrimination in these prisons. Since the existence of mere legislative or administrative discrimination can be considered as degrading treatment, as well discussed under chapter II, this issue must be settled before discussing other areas. Discrimination on the grounds of race, color, sex, language, religion or religious belief, political or other opinion, national, ethnic or social origin, property, birth or other status is prohibited by all international and regional instruments on human rights. In addition to this prohibition, it is also our concern since discrimination is one of the causes of degrading treatment. Not only with regard to degrading treatment or punishment, but also with respect to torture, discrimination has a significant role. Recall that Art 1 of UNCAT makes the requirement of purpose unnecessary when the act is found to be committed on any ground of discrimination. This shows that discrimination alone is a sufficient ground or purpose which is enough to establish torture, save other requirements as fulfilled.

Article 1, paragraph 1, of the International Convention on the Elimination of All Forms of Racial Discrimination (General Assembly Resolution 2106 A(XX)) defines the term “discrimination” as “any distinction, exclusion, restriction or preference based on race, color, descent, or national or

⁴⁵⁶ See Annex I, p. I – III.

ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any field of public life.”

In the present work the existence of discrimination has been tested in light of question number 9 and 10 of the questionnaire. As the issue of degrading treatment requires discrimination to be either of legislative or administrative to constitute the violation of the right, those ordinary discriminations by private individuals are not considered in this study. Therefore, in this context discrimination is there where any act, to the effect mentioned under Art 1 of CERD, has been committed by (1) prison authorities or (2) prison guards or (3) other prisoners ordered or consented to by prison authorities and/or guards or (4) other prisoners but tolerated by prison authorities and/or guards with full knowledge of the fact. Therefore, discrimination in this work includes both de jure and de facto discrimination.

Based on the responses given to question numbers 9 and 10 of the questionnaire disseminated to prisoners; 32.3% of prisoners in Woliso, 12.5% of prisoners in Shashemene, 33.3% of prisoners in Ziway, 52.6% of prisoners in Ambo, and 28.5% of prisoners in Adama alleged as they have suffered from discrimination. Only Dippo center of technical and vocational training is free from discrimination. The grounds of discrimination found to be varying from one prison to the other. While the main grounds of discrimination in Woliso, Shashemene and Adama prisons is language and ethnic origin, the main ground of discrimination in Ziway prison is economic background. It is worthy to mention that, economic background is also a cause of discrimination in Ambo prison. On the other hand, the followers of belief called Wakefeeta in Ambo prison alleged to be highly discriminated to the extent of prohibition not to worship or practice their religion. The writer firmly believes that all these are violations against the prohibition of degrading treatment as these acts are mentioned by prisoners as had been committed with full knowledge of prison officials, which is the element required for administrative discrimination.

The rest of matters related to degrading treatment or punishment have been tested in light of the combined result of (1) the response given to question No. 11, 21, 40, 41 and 43 of the questionnaire (2) the worst or extreme poor cases of *section 5.3.2* and (3) acts alleged by prisoners as of torture or inhuman treatment but rejected due to lack of the necessary intensity of suffering.

Under the questions provided on the questioner, prisoners were examined whether they were subjected to stay in rooms (without sun light and fresh air) in their cells or rooms; or whether they were exposed to the outside world in a humiliating manner, i.e., during journey from that prison to any where for any purpose; or whether they were forced to wear a cloths of extremely poor quality (if there is uniform of the prison); or whether there were forced to wear a uniform of convicted prisoners (if they are unconvicted); and finally whether they were exposed to any humiliating situation either in their own eyes or in the eyes of other prisoners. Frankly speaking, most of the answers for this specific questions testing degrading treatment were negative except some cases mentioned in Adama and Shashemene prisons in which prisoners were exposed to severe insult and beating while their family members appeared there to visit them. The writer suspects that this situation may happen partly due to lack of uniform clothes in all prisons and the lack of frequent journeys outside the prison.

On the other hand, section 5.3.2 have shown us so gross and so severe departure from standard minimum rules for the treatment of prisoners in the prisons covered under the study and in the training center, to some extent. We have seen 90.5% and 73.5% poor accommodation facilities in Adama and Woliso prison, respectively. Clothing and bedding facilities were indicated to be as poor as 95.2% and 77.8% in Adama and Ziway prisons, respectively. Food and water provisions were found to be poor to the extent of 33.3% and 18.5% in Adama and Ziway prisons. Ziway and Adama prisons are again alleged to be leading poor in their situation of personal hygiene that extends to 55.5% and 76.2%, respectively. Medical care has been so poor in the prisons of Woliso and Adama as severe as 97% and 57.1%, respectively. Sport and exercise is absolutely forbidden in Ziway and Adama prisons and the situation is not as such better in the rest of Shashemen, Ambo and Woliso prison. Enjoyment of religious practices found to be poor in 15.7% and 11.1% in Ambo and Ziway prisons, respectively. There is no library and book available at Woliso, Shashemene, Ziway and Ambo prisons. Conditions of work found to be so poor in Ambo and Ziway prisons to the extent 94.7% and 92.6%, respectively. The situation of education and training found to be zero in Woliso and Adama prisons. There is no separation of categories in accommodation in all prisons, and availability of complaint procedure and remedy have been indicated to be poor in Ambo and Adama prisons to the extent of 86.8% and 81%, respectively.

The reason why these situations are restated in this manner is not to summarize the factual situations in the prisons covered under the study; rather it is to show the severity of the situations in connection with degrading treatment. To put with strict terms, the deep scrutiny to each and every issue of the categories listed above have lead the writer to conclude that almost all 100% of prisoners in all the five prisons have suffered from degrading treatment caused by one or the other way.

As mentioned under chapter II, the term “treatment” in its legal sense does not cover degrading situations arising from socio-economic conditions.⁴⁵⁷ But matters related to disproportionate budget allocation could not be included under this ‘socio economic situations’ while the budget is generally available. Likewise the failure of particular prison authorities to use their budget wisely is not something that can acceptably fall under this ‘socio- economic situations’ of a country. It was based on this view that the writer interviewed V/Commissioner Tilahun kibre, where he said the commission has consulted prisons in budget allocation, but does not decide the matter as it is left for them, according to their particular situations such as supply, price and related affairs of materials in a particular area.

Therefore it must be clear that the failure of particular prisons in using their budgets properly and/or the failure of any competent authority to allocate the necessary budget for the relevant matter, giving due priority, while the budget is generally available, cannot defend these organs from being liable of causing degrading treatment against prisoners under the guise of ‘socio-economic situations of a country’ which is said to consider, among others, the economic position of the whole country under the international arena. Based on this understanding, there is no doubt that all the *extreme poor* cases of the above situations can fall under degrading treatment. Degrading treatment means nothing but gross disregard to prisoners as a person that interferes with human dignity.⁴⁵⁸ Therefore, if not all poor cases, at least the extreme portion of poor cases of these situations shall be considered as degrading treatment to which all 100% of prisoners have been subjected in one or another way.

⁴⁵⁷ See also above at p. 34.

⁴⁵⁸ Supra at note 114 (the Judgement ECtHR in Tyrer case).

Backing this assertion, we can also raise the victims of torture and inhuman treatment in these prisons, as discussed under the previous subsections. In the Greek case⁴⁵⁹ it was clearly stated by ECmHR that for all torture must be inhuman and degrading treatment, and inhuman treatment also degrading. Therefore, all the above listed out victims of torture and inhuman treatment or punishment are also victims of degrading treatment or punishment. The addition of the number of allegations for the commission of torture and/or inhuman treatment or punishment, but rejected due to lack of the necessary severity, in to this category (the category of degrading treatment or punishment) makes the case clear enough to convince anyone, as convincing to the writer, that all the respondent prisoners in all prisons except the center of technical and vocational training have been exposed to degrading treatment. Legally speaking, it is the other situation where among other laws such as Art 7 and 10 of ICCPR, Art 5 of ACHPR, and Art 5 of UDHR; Art 16 of UNCAT has been violated.

5.3.3.4 SUMMARY

In addition to finding out the degree of violation as stated above in the prisons covered under the study, this work has also tried to find out the causes for the occurrence of this situation (Violation). The combined reading of Art 10 and Art 16(1) [paragraph 2] of UNCAT will be resulted in that each state party shall ensure that education and information regarding the prohibition against torture, inhuman or degrading treatment or punishment are fully included in the training of law enforcement personnel, civil and military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.

It is uncontested fact that the effective training of police in human rights is an essential element in the global efforts to promote and protect human rights in every country. Prison warders and police officers must be familiar with the various international guidelines and bodies of principles

⁴⁵⁹ Supra at note 117 (Greek case).

such as the code of conduct for law enforcement official and the principles on the use of force and firearms- and be able to use them as tools in their every day work.⁴⁶⁰

Despite this urgent need for police and prison warders training on human rights, and particularly on the prohibition of torture, inhuman or degrading treatment or punishment, there is no any well organized training on human rights issues for prison warders in all the prisons covered under the study. Actually in the questioner disseminated for prison warders⁴⁶¹ most of the waders have mentioned as attended human rights training in a varying degree. While 30% of prison warders in Woliso prison have mentioned as they have taken a human rights training for a sum total of less than 15 days, the rest 50% mentioned for a training of in between 15 days and one month, and the rest 20% for greater than 1 month. In the same manner while 22.2% of prisoner warders in Shashemene prison have mentioned as they have taken a human rights training for a sum total of less than 15 days, the rest 22.2% mention for a training of in between 15 days and one month, and the rest 55.6% for greater than a month. While 83.3% of warders in Ziway prison have mentioned as they have attended a human rights training for a sum total of less than 15 days, the rest 16.7% indicated for a human rights training of greater than 15 days but less than one month. The question has also been provided for warders in Ambo prison in which while 33.3% mentioned for less than 15 days and 41.6% mentioned for above 15 days and less than a month, the rest 25% indicated for more than a month. While only 14.3% of warders in the Dippo center of training have mentioned as they have attended a human rights training for a sum total of less than 15 days, the rest 14.3% and 71.4% have mentioned a human rights training for a sum total of 15 days - one month, and above one month, respectively.

However, the fact understood from the interview held with top officials of all prisons⁴⁶² indicated that there is no any training on human rights issues arranged for prison warders. The situation has also been confirmed by the vice Commissioner of the Oromia Prison Administration Commissioner.⁴⁶³ According to his wordings there is a police training of 6 months before

⁴⁶⁰ Gordan Kalajdziev, *Police and Human Rights: Manual for the police training*, Danish Institute for Human Rights, Copenhagen, 2004, p. 9.

⁴⁶¹ See Qn. No. 5, 6 and 7 of questioner disseminated for prison warders, Annex I, p. iv.

⁴⁶² See also Qn. 7 of Annex I, questions for prison administrators, p. v.

⁴⁶³ Supra at note 438.

requirement about military issues and overall general concerns. That is all about the practice of police training in Oromia national regional state.

If this is all the practice in the whole region, the claim of prison warders for attending human rights training could not be sustained, according to the writer's view. The possible exception through which their claim for specific human right training could be acceptable is if they all have come from other regions of the country (where there is human rights training) through transfer. Otherwise, it means that they have misunderstood the question provided for them because of which they have mentioned the general pre-recruitment police training as a specific on work human rights training. But, that was not the notion of the questions at it is explicitly mentioned with the words "on work training" in the questioner. According to the view of the writer this is one of the main reasons contributing for widespread violations of the right to freedom from torture, inhuman or degrading treatment or punishment in the prisons covered under the study.

In view of the writer the other fact contributing to the wide spread of violation against this freedom is the silence of concerned authorities. The combined reading of Art 12 and Art 16(1) [paragraph 2] of UNCAT declares that each state party shall ensure that its competent authorities proceed to prompt and impartial investigation, wherever there is reasonable ground to believe that an acts of torture, inhuman or degrading treatment or punishment have been committed in any territory under its jurisdiction. Despite the existence of these clear provisions of UNCAT to which Ethiopia is a state party, none of the above mentioned violations have been investigated.

As indicated above, the findings of this study indicated that the existence of torture or other ill treatments in the prisons covered under the present study is totally ignored by prison authorities. As there is no redress without investigation, the work cannot find any redress granted for torture survivors. The failure of competent authorities to conduct an investigation is a violation of the Convention against Torture to which Ethiopia is a state party. Setting the possible lack of promptness and impartiality of investigations aside, the general ignorance of the prison authorities on these torture, inhuman or degrading treatment or punishment committed in front of their eyes is unacceptable.

It is obvious that individually liable prison warders and/or the prison authorities as an institution can defend the allegations either in general or mentioning a particular part after the case is investigated appropriately but the situation of muffling the complaints at all would not be proper in any case. Even countries like USA – claiming to be the best human rights protecting and defending state in the world - has defend their methods of interrogation which are condemned to be the acts of torture by others.

Acts like immersing someone's head down to the water had been defended by even top officials of the state as not torturous. In a radio interview US former Vice President Dick Cheney stated that subjecting prisoners to a “dunk in water” is a “no-brainer” if it could save lives while this act was seriously opposed by organizations like Human Rights Watch as water boarding is openly an act of torture and a war crime to which many perpetrators faced prosecution as early as 1901 including, a US Court Martial Major Edwin Glenn who had been sentenced to 10 years of hard labor for subjecting a suspected insurgent in the Philippines to the “water cure”.⁴⁶⁴ Other acts of stress and duress tactics used on terrorism suspects held in secret overseas facilities have also been defended by other US officials.⁴⁶⁵ Saving these kinds of defenses under the guise of national interest and saving the life of others on one hand [note that the writer of this work doesn't agree with these kind of justifications to commit torture], on the other hand violations must be at least well investigated and tried before courts. In the present work, the interview held with various prison authorities has indicated that there is no any decided or pending case arising from torture or other ill treatments committed in a prison under their administration.

The writer is of a believe that under exceptional circumstances court may properly decide not try a case of torture, but this decision shall be according to the law and must be passed by the court itself, not by prison officials or other members of executive organ. Even the US Supreme Court, perhaps the world's leading competent court, has decided not to try torture case in various occasions but only according to the law. For instance, the court refused to hear an appeal filed on behalf of Khaled el- Marsi, who claims he was abducted and tortured by US agents while imprisoned in Afghanistan. On the ground of state secrets privilege, the Supreme Court ruled that

⁴⁶⁴ Vice president endorses Torture, Human Rights Watch, Washington DC, October 26, 2006.

⁴⁶⁵ U.S Decries Abuse but defends interrogations, by Dana Priest and Barton Gellmen, Washington Post staff writers, Washington Post, December 26, 2002; page A01.

El-Masri could not establish a prima facie case without exposing sensitive, privileged information protected under the state secrets doctrine; therefore the appeal must be rejected.⁴⁶⁶

Even if the writer is of a believe that all acts of torture must be prosecuted without any barrier, the exemption could be acceptable when supported by the laws of the land, including judge made doctrines like in US, following common law legal system. However, practices of shielding and muffling torture and other ill treatments adopted by prison authorities covered under the present study are not absolutely acceptable from the very beginning since they are not passed by competent courts and are not backed by any law for that matter, even if passed by courts. The writer has a fear that if this reluctance to prosecute perpetrators of torture remains untouched, the situation observed in the prisons may become worsen.

⁴⁶⁶ Supreme Court Refuses to Hear Torture Appeal, by Linda Green House, The New York Times, October 9, 2007.

CHAPTER SIX

CONCLUSION AND RECOMMENDATION

6.1 CONCLUSION

Prisons have existed in most societies for many centuries, though not in the modern sense of the term. While the use of imprisonment as a direct punishment of the court is believed to be introduced in Pennsylvania of US in the late eighteenth century, it has spread gradually to most countries in the world. Even though it is not exactly known when it was started, there were detention places in Ethiopia for centuries before. Mountains such as Mount Debre Domo, Mount Gishen and Mount Wehni were among the detention places that were mainly used to detain the successors of the throne. There were also detention places of ordinary criminals under different regimes of Ethiopian rulers. At these periods, the conditions of detention places and the methods employed to punish criminals were inhuman and degrading. It is in the reign of Emperor Haile Selassie that the modern history of prisons began in Ethiopia, as documented in history.

Over the years there has been a lively debate, which is still going on, about the purposes of punishment and therefore imprisonment. While some commentators argue that it should be used only to punish criminals, others believe that it must be to prevent the commission of another crime by that criminal through incapacitating him. Others again insist that the main purpose of imprisonment is to deter individuals who are in prison from committing further crimes after they are released, as well as others who might be inclined to commit crime. Another and perhaps the most widely accepted perspective is that people are sent to prison to be reformed or rehabilitated. That is to say, during the time they are in prison they will come to realize that committing crime is wrong and will learn skills which will help them to lead a law-abiding life when they are released. In practical terms, the purposes of imprisonment can be interpreted as a combination of

some or all of these reasons. The relative importance of each one will vary according to the circumstances of individual prisoners.⁴⁶⁷

Whatever the purpose of imprisonment is believed to be, there is a general agreement that prisoners must be treated in a human manner compatible with their human dignity - the underlying concept of the prohibition against torture, inhuman or degrading treatment or punishment. Numerous human rights instruments ranging from the Universal Declaration of Human Rights and International Covenant on Civil and Political Rights to specific texts such as Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Standard Minimum Rules for the Treatment of Prisoners and the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment provide a set of rules in protecting the rights of prisoners to a human treatment.

The role of regional human rights instruments prohibiting the use of torture, and other cruel, inhuman or degrading treatments or punishments against individuals, or prisoners for that matter, including, the African Charter on Human and Peoples Rights, American Convention on Human Rights and European Convention for the Protection of Human Rights and Fundamental Freedoms, for the development of the jurisprudence and for a better monitoring and supervision on states about the protection of the right is really substantial.

There are also a lot of human rights and humanitarian instruments designed to protect, among others, the right of individuals to freedom from torture, inhuman or degrading treatment in some particular situations and /or for some particular groups. Among other, these instruments include the four Geneva Conventions of 1949 and their additional protocols of 1977, applicable in times of armed conflict, the ICC statute, the Child Rights Convention of 1989, and the CERD and CEDAW to some extent. There are also various committees organized for the supervision of compliance to the rules mentioned under these instruments.

⁴⁶⁷ Human Rights and Prisons, Manual on Human Rights Training for Prison Officials, Professional Training Series No.11, Office of the United Nations High Commissioner for Human Rights, United Nations, New York and Geneva, 2005, p.3.

Ethiopia ratified most of these instruments; among others Ethiopia became a state party to CAT in 1994, ICCPP in 1993, ACHPR in 1998, CRC in 1991, CERD in 1976 and CEDAW in 1981. Ethiopia is also among the earliest states that ratified International Humanitarian Law instruments as it has ratified the four Geneva conventional in 1969. Ethiopia also ratified the two additional protocols to the Geneva Conventions of 1977 in 1994.

The FDRE constitution, under unequivocal statement makes all these instruments the integral part of the law of the land, under its Article 9(4). Further, the constitution has provided for the interpretation of its chapter 3, titled “fundamental rights and freedoms” in line with the principles of the UN Declaration of Human Rights and international covenants on human rights and international instruments adopted by Ethiopia.

The present work has tried to indicate the normative contents of the right to freedom from torture, inhuman or degrading treatment or punishment in light of various human rights and humanitarian instruments to which Ethiopia is a state party and other regional instruments that have a well developed jurisprudence on the subject matter. In this regard, the contribution of European and inter American human rights instruments and organs established to interpret and supervise them were beyond words can describe. While the work gave much emphasis to CAT, all other international and regional human rights instruments dealing with this freedom have also been consulted. Different non- binding but influential instruments particularly the Standard Minimum Rules for the Treatment of Prisoner and Body of Principles for the Treatment of Persons under Any Form of Detention or Imprisonment have been used extensively throughout the whole work.

Based on these binding and non- binding human rights instruments, the last chapter of this work has been devoted to assess the practical implementation of the right of prisoners to be protected from torture, inhuman or degrading treatment or punishment in prisons of Oromia National Regional State, the largest and the most populous region in the country. The study covered five prisons and one technical and vocational training center of prisoners in the National Regional state of Oromia, namely Ambo prison, Shashemen prison, Woliso prison, Adama prison, Ziway prison, and Adama - Dippo technical and vocational training center of prisoners.

The finding of the study, as tested mainly in light of the standard minimum rules for the treatment of prisons, generally indicated that the situations of the prisons covered under the study is below the minimum standard. Except the Dippo center of technical and vocational training for prisoners, most of the rest of prisons found to be generally poor in their situations related to accommodation, clothing and bedding ,personal hygiene, medical care, sport and exercise, library and books, work, education and training, separation of categories and compliant procedures. While there are generally satisfactory situations in most of the prisons in issues related to “food and water provision” and religion related issues, prisoners’ contact with the outside world found to be exceptionally excellent.

A separate section in the last chapter of the work has also been designed to assess the protection of the prisoner’s right to freedom from torture, inhuman or degrading treatment or punishment in light of binding international and regional human rights instruments to which Ethiopia is a state party. In this special part where the UN Convention against Torture has been utilized extensively, the work identified a number of significant violations to the CAT and other international and regional Human Rights instruments to which any person under Ethiopian territory is entitled.

In the practical study conducted in the above mentioned prisons of Oromia national regional state, there were so many allegations of torture, inhuman and degrading treatments and punishments. However, after due analysis of allegations in light of relevant instruments, the writer rejected some of the allegations as they are not fit to be considered as a violation while tested in light of human rights instruments to which Ethiopia is a state party, particularly CAT.

Setting the rejected allegations aside there are, however, considerable violations of the rights of prisoners to be free from torture, inhuman or degrading treatment or punishment in all prisons covered under the study, except in Dippo technical and vocational training center of prisoners. The study finds out that there are more victims of inhuman treatment and/or punishment than victims of torture. In almost all prisons the number of inhuman treatment and/or punishment victims exceeds the number of torture survivors as those rejected allegations of torture failed to qualify as torture because of lack of purpose, specific intent, active undertaking or necessary intensity of severe pain have been added to this [inhuman treatment and/or punishment] category.

Beside, the violation of the right to protection against degrading treatment and/or punishment found to be absolute and all embracing. Adding up a number of different situations of the treatment of prisoners, including the extreme poor (saving those mild and excellent situations aside) situations of accommodation, clothing and bedding, food and water, personal hygiene medical care etc. and lesser degree (otherwise amounting to torture or inhuman treatment) mal treatments administered against prisoners, the findings of the analysis section of this work concluded that almost all respondent – prisoners, in all prisons, except in the Diplo center of training, have faced degrading treatment and/or punishment at least once in their stay in this prisons.

Despite the prevalence of this situation, the writer does not, however, believe as there is gross violation of the prisoners right to freedom from torture, inhuman or degrading treatment or punishment in the prisons assessed as “gross violation” is believed to be there under the international law, born out of practice, where torture, cruel, inhuman or degrading treatment or punishment is especially carried out systematically as a matter of policy.⁴⁶⁸ But the situation we have considered in these prisons does not show any sign of policy implementation, for that matter. Rather, the grounds of torture, inhuman or degrading treatment or punishment occurred mostly vary from one individual to the other and from one prison to the other in a manner showing that nothing is held as a matter of policy or program.

Lack of trainings on human rights for prison warders is another issue discovered by the study. There is no any well organized either short-term or long-term on work trainings on human rights for prison warders. The writer believes that this could be the main factor, along with impunity- as no prison found to be prosecuting the violators, highly contributed to the widespread violations of the prisoner’s right to protection from torture, inhuman or degrading treatment or punishment.

⁴⁶⁸ Lisa Magarrell and Lorna Peterson, *After Torture: U.S. Accountability and the Right to Redress*, International Center for Transitional Justice, August 2010, p.10.

6.2 RECOMMENDATION

In general terms, the writer has a strong conviction that all the above situations are in a position to be rectified easily, if the following recommendations can be considered by the competent organs.

■ The prison administration commission of Oromia national regional state (herein after “the commission”) must allocate the necessary budget⁴⁶⁹ to build sufficient accommodation facilities. The position held by the commission not to develop prison facilities must be changed. Even though developing prisons is not something positive and developmental enough to be held by governments as a program or policy, there must be a prison development program at least to the extent of making the facilities sufficient for the existing prisoners, to avoid those observed extreme overcrowds. Further, setting its wish to reduce the number of criminals aside, the commission must consider the growing number of criminals with the population growth, while designing its program. Prison authorities of all particular prisons covered under the study must also use their own effort to minimize the over crowd of prisoners in consultation with the people of the town where the prison situated and with different NGOs.

■ The commission must allot the necessary budget for the purchase of bed and bedding facilities for these prisons. While some of the prisons covered under the study have some beds, the others do not have. This inequality in treatment of prisoners must be avoided and the commission must provide all prisons with necessary bed and bedding facilities. Those prison authorities of these particular prisons must also use their own effort to provide the prisoners with bed and bedding service. Particularly, if these prisons can develop their own metal and wood workshops, it would be the best way to reduce the lack of bed in addition to creating work opportunity for some prisoners and training opportunity for other. The commission must also use its best effort to prepare uniform clothing for prisoners, firstly, and then according to their status as convicted and unconvicted.

⁴⁶⁹ Based on the interview conducted with the vice Commissioner of Oromia Prison Administration Commission, it is indicated that the budget of all prisons in Oromia region is primarily allocated by the Government of the Oromia National Regional State to Oromia Prison Administration Commission, and then it is the commission that provide the necessary budget to each prison in the region. Therefore, all said for the commission under this section must be applicable to the Government of Oromia National State too when the issue requests so.

■ The commission must allocate sufficient budget for food and related issues. The current budget which is 8.80 birr per day for an individual could not be sufficient in any way. Having regard to the current high inflation rate, 8.80 birr cannot cover even one time menu under the normal course of things. It is agreeable that the mass purchase and preparation of food can somehow reduce the cost of food but the present situation is beyond this justification as the amount allotted is too low to be compromised. The reason why the situation of “food and water” is satisfactory under this study is because of the combined assessment of water, which is good in most prisons, with food, as indicated under the relevant section. Otherwise, the study indicated that the situation of food is too deteriorated. Therefore, there is a need to budget adjustment. Further, prison authorities of each prison must use their budget wisely. They have to develop their menu with sufficient variety as much as possible, within the budget they have. The commission must also consult, and even interfere, with all prisons in developing their menu so as to avoid unnecessary waste of budget.

■ The commission must allocate the necessary budget for the provision of personal hygiene facilities. 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. Prison authorities of some prisons must also refrain from using punishments in which they prohibit prisoners not to clean their veninous rooms. They must also develop a serious rule to monitor prison warders under their order not to be engaged in this kind of activities.

■ The commission must allot sufficient budget for matters related to medical service. Each prison must have its own clinic with sufficient medical staff. The availability of sufficient medicine must also be secured. The commission must also provide each prison with ambulance to save the life of prisoners. Prison authorities of particular prisons covered under the study must establish all necessary relations with hospitals in their town so as to enable prisoners have access to these hospitals at any time they suffered from severe illness. The observed negligence of prison authorities to send a patient-prisoner to higher medical facilities must also be rectified.

■ The policy of the commission regarding sport and exercise is under big question mark. Even if the commission stated as it has an open opportunity to prisoners to do any sport and exercise as they like, the situation is absolutory to the contrary. The commission must revise its policy to assess whether there is anything wrong left. The prison authorities of each particular prison must also be consulted and inspected about their internal policy about sport and exercise.

■ While matters related to religious practices are generally good enough in almost all prisons covered under the study, some prisons such as Ambo must respect the beliefs of prisoners. Worshiping of some traditional beliefs such as Wakefeeta must not be prohibited. Further, all prisons must make an arrangement in order to facilitate a regular visit of prisoners by religious leaders.

■ The situation of library and books facility is another issue that put the policy of the commission under question mark. Most of the prisons covered under the study have no library facility. It is mainly through reading and education that the “*reformation of prisoners*” purpose of the prisons could be achieved. Therefore, the commission must allocate the necessary budget to construct libraries and provide sufficient quantity and variety of books for the libraries.

■ The commission must develop a policy and program in which work opportunity can be created for prisoners of all prisons. It must also design a uniform scale of payment for prisons according to the type of work. Prison authorities of each prison, covered under the study, must use their best effort to create work opportunities for prisoners according to their particular situation. Authorities must also facilitate a reasonable payment for worker- prisoners. Prisoners shall not be forced to work without payment. Unfair and excessive taxation on works done in private, as reflected in some prisons, must be avoided. Illegal and immoral activities such as clearing forest as shown in Ambo prison under the guise of creating work opportunity must be avoided urgently. Further, the commission shall fix, by law or by administrative regulations, maximum daily and weekly hours of work for the prisoners, taking into account national rules or custom in regards to free workmen.

■ The situation of education and training in those prisons covered under the present study needs a serious review. Prison authorities must design the level and quality of education in line with the nationwide policy and the demand of prisoners. Those prisons like Ziway and Adama that provide education up to only grade 4 must extend it at least up to grade 8. The commission must do something to make the education level and quality uniform in all prisons under its supervision. Prisons covered under the study must facilitate education in languages other than Oromifa considering the number of prisoners unable to communicate with Oromifa. In these regard Woliso and Ambo prisons must do an immediate revision. Prison authorities must also make the education of illiterates and young prisoners mandatory.

■ The need to develop prison facilities is not only related to reducing over crowded but it has also a purpose of maintaining separation of categories. None of the prisons covered under the study found to be sufficient in separation of categories. All young and adult prisoners, all convicted and untried prisoners, all sane, mentally abnormal and insane, and all criminal and civil prisoners are detained in a single room. The commission must construct separate rooms, even compounds if possible, for these categories of prisoners. Especially, the issue of insane prisoners needs an immediate decision as it is dangerous for the whole prison community.

■ All prison authorities, covered under the study, must make an arrangement in their particular prisons to hear the complaints of prisoners concerning all the above issues. Confidentially about the complaints must also be maintained to protect prisoners from retaliation. After investigating the complaint promptly, reasonable responses must be given to the complainant. Formal rules, for these issues, must be prepared by the commission.

■ The commission must design a program and facilitate a situation in which it can make a prison staff aware of the prohibition on torture or cruel inhuman or degrading treatment or punishment in the pre- recruitment training to be provided for them. Particular prison authorities also must use this prohibition as their main slogan in each every activity of the prison community.

- Both the commission and particular prison authorities covered under the study must arrange on-work human rights, particularly related to the treatment of prisoners, trainings for the prison warders in consultation and assistance of different NGOs working on human rights.
- Instrument of restraint, such as hand cuffs and chains should be kept in a central location in the prison and should be used only under extremely necessary situations and under the authority of the top prison authority.
- In addition to making compliant procedures generally available about the whole situation of the prison, there should be a formal and open set of procedures which prisoners may use to complain to an independent authority against any incident of torture or cruel, inhuman or degrading treatment or punishment without any fear of revenge.
- The commission must develop a stringent procedure in which perpetrators can be prosecuted. All previous violations must also be investigated, and perpetrators get punished. Victims, especially of torture, must be compensated.
- Arrangements should be made to provide regular access to prisons by a judge, non-governmental organizations or other independent persons to ensure that torture, inhuman or degrading treatment or punishment does not take place.
- Generally, all the five prisons covered under the study, i.e., Shashemene, Adama, Ambo Ziday and Woliso, must learn from the practice of Dippo technical and vocational training center of prisoners. In all matters covered under the present work i.e. on issues related to accommodation, clothing and bedding, food and water, personal hygiene, medical care, sport and exercise, religious practice, library and book, work, education and training, separation of categories, contact with the outside world, and compliant procedures available for prisoners; and particularly on matters related to the protection of prisoners' rights to freedom from torture, inhuman or degrading treatment or punishment, the Dippo training center has shown a promising performance. Therefore, it is generally recommendable that all the five prisons covered under this work must take the experience of this center in all issues related to treating prisoners besides developing their own programs for the treatment of prisoners in a better standard.

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Interview with V/Commander Jiffar Hombobe, one of top administrative staff of Ambo prison, Ambo, November 8, 2010.

Interview with V/Inspector Teshome Tadesse, prisoners judgment execution officer, Adama, November 3, 2010.

ANNEX - I

QUESTIONER FOR PERSONS DETAINED IN PRISONS

- ◆ The fruit of this questioner will be used as an input for the masters' final thesis of AAU, School of Law. The information to be collected through this questioner will not be used for any other purpose.
- ◆ Considering the vital nature of the information we are expecting from you, please make sure that the information you are giving is genuine and precise enough.
- ◆ There is no need of writing your name.
- ◆ If you found the blank space insufficient, please write at the back of the page indicating the question number clearly.
- ◆ Thank you in advance for all tangible information you are going to give us.

1. Sex: Male Female

Age: _____

2. Ethnic origin: _____

3. Religion: _____

4. Educational level: _____

5. How long do you stay in this prison? _____

6. What is your status in the prison? Meaning, Are you prisoner: under sentence waiting for trial
without any charge civil prisoner

7. Have you been in other prisons previously? Yes No

8. If your answer for question no. 7 is yes, please mention the name of that previous prison and compare it with the present one in light of its treatment of prisoners. _____

9. Is there any discrimination in this prison in relation to treating prisoners? Yes No

10. If your answer for question no. 9 is yes, what is the ground of discrimination? Ethnic origin
Language Religion Sex Economic background Other: _____

11. Where are you spending the day time in this prison? _____

12. What is the size of your cell (room) in which you are spending the night time? Can you generally guess its size? It is less than 2mX2m In between 2mX2m-5mX5m Above 5mX5m

13. How many prisoners are accommodated in your room? _____

14. If there are other persons accommodated with you (if your cell is not assigned only for you), are all of you in a same status in all manner? Yes No If not, what is the ground of your difference? Age

Sex Conviction (sentenced and un convicted) Heath Status (sane and insane)

Cause of imprisonment (criminal and civil prisoners)

15. How is the condition of your cell (room)? Can you mention its situation of weather, the existence or other wise of ventilator, AC, sufficient lamp, windows and so on? _____
16. Is there toilet in the prison? Yes No Please mention its situation (cleanness) and the frequency you are allowed to use the toilet, if any? _____
17. Is there bath room in the prison? Yes No If yes, please mention the frequency in which you are allowed to use it. _____
18. Please, briefly discuss the situation of food in this prison, particularly the frequency with which it is provided for you and its variety. Do you believe as the food is of sufficient quality and quantity? _____
19. Is there sufficient potable water? _____
20. Are you wearing your own clothes or the one provided by the prison? _____
21. If the cloth you are wearing is provided by the prison, do you believe the cloth sufficiently express you- in light of being so old, deteriorated and unclean? _____
22. Do you have personal bed? _____
23. How is the cleanness of your (common- shared with others) bed? _____

24. Have you ever faced severe physical or mental injury during your stay in this prison? If your answer is yes, please elaborate the kind and severity of injury, its cause and the general circumstance in which it was committed. _____

25. Have you faced the same kind of severe pain while you were in police custody, before coming to this prison? If you answer is in affirmative please mention the name of the police custody, and the cause, severity and circumstances of the injury. _____
26. Is there sufficient medical treatment in this prison? What about the supply of medicine? _____
_____. In addition, have you ever faced an attempt to use you for medical experimentation in your stay in this prison? _____

27. Are you keeping your environment and person clean? Is the prison providing you all necessary materials for that matter, for example, water, soap, mop, wiper, shaver and soon? _____

28. Are you allowed to do or enjoy with sport and recreational activities? Is there sufficient equipment in the prison? _____
29. Does the prison allow you to be visited by persons coming from the outside world? Can you elaborate the circumstance (precondition), if any, and the frequency? _____

30. Is there mail (postal) and telephone service provided by the prison? _____

31. Do you believe that you are practicing religious activities in a proper manner? Yes No

Are there priests, pastors or Imams (or other religious leader as the kind of religion) visiting you frequently or accommodated in the prison? _____

32. Is there a library? Yes No If yes, do you believe there are sufficient (of quantity and variety) books? What is the manner (precondition) in which you are using it, if any? _____

33. Have you ever detained incommunicado in dark rooms during your stay in this prison? Yes No

If yes, for how long? _____. Have you faced an additional suspension while you were detained in such manner, for example, a limitation or suspension on food, water, sleeping or other? Please elaborate, if there is anything. _____

34. Have you ever faced flogging in or stay in this prison? If so, can you mention the cause and the situation? _____

35. Are you required to work? Yes No If you are working, please detail the working hours and the payment provided for you, if any. _____

36. If you are not working, please mention the cause thereof _____

37. Are you attending regular education? Please elaborate _____

38. Have you taken any kind of vocational or technical training? Please mention the kind of training you have taken or are taking. _____

39. Have you ever chained or tied up by catena in your stay in this prison? Was there a situation in which your face had been covered with something and forced to stay long in that situation? _____

40. Have you ever traveled outside the prison compound in your stay in this prison? If yes, how was the situation- the situation of being exposed to the public, chained by catena and so on? _____

41. Have you ever faced a situation in which someone in the prison caused you to be severely humiliated or debased, whether in your own eyes or in the eyes of other persons? Please elaborate it, if any. _____

42. Have you ever faced severe disciplinary penalty? Please elaborate it, if there is any. _____

43. Is there any difference in the dressing of the persons detained (only if the prison provides a uniform clothing) i.e., in between the clothing of sentenced and untried prisoners, for example _____

44. Is there any complaint mechanism in the prison? What about the existence of sufficiently effective responses and remedies _____

45. Is there any severe condition you have observed in your stay in this prison? _____

46. Do you believe your stay in this prison is reformatory enough, in general? _____

QUESTIONER FOR PRISON WARDERS

- ◆ The fruit of this questioner will be used as an input for the masters' final thesis of AAU, School of Law. The information to be collected through this questioner will not be used for any other purpose.
- ◆ Considering the vital nature of the information we are expecting from you, please make sure that the information you are giving is genuine and precise enough.
- ◆ There is no need of writing your name.
- ◆ If you found the blank space insufficient, please write at the back of the page indicating the question number clearly.
- ◆ Thank you in advance for all tangible information you are going to give us.

1. Sex: Male Female
2. Religion: _____
3. Ethnic origin: _____
4. Educational level: _____
5. How long do you stay in this prison? _____
6. Have you ever attended on-work training? Yes No
7. If your answer for question no. 6 is yes, is there any on-work training, particularly conducted on human rights protection and the treatment of prisoners, out of the trainings you have taken? _____

8. If your answer for question no.7 is yes, please mention the period (length and frequency of the training you have taken? _____
9. Do you always conduct a night visit on prisoners? _____
10. Is there any problem you have encountered in your stay in this prison, from both side of prisoners and prison administrators side? _____
11. If you have any unique or special experience in the treatment of prisons, please discuss it _____

GUIDELINE FOR INTERVIEW WITH PRISON ADMINISTRATORS

- ◆ Name: _____
- ◆ Rank (position): _____
- ◆ Job description: _____

1. Can you tell me about the establishment of the prison?
2. Can you mention places from which this prison receives prisoners?
3. Can you tell me about the laws, rules and regulation that are employed by this prison in the administration of prisoners?
4. Is there any written rule to be disseminated for new comer prisoners?
5. How many prisoners are there in this prison, currently? Based on sex and age category?
6. How many staff members are there? Based on the category as prison warders, medical practitioners and other supportive staff? How is their educational level, training they have attended and their experience, in general?
7. How is the educational level of prison warders, and can you tell me the detail?
8. Is there any regular on-work training available for prison warders, especially related to the treatment of prisoners in light of human rights principles?
9. Is there a formal register to keep the identity, the date of entrance and the date of release of prisoners?
10. How is the situation of accommodation room- the condition or availability of lamp and widow, the number of prisoners detained in a single room, the cleanses of the cells and so on?
11. Is there sufficient toilet facility in the prison? Can you tell me its situation such as its cleanness?
12. Is there sufficient bath room facility in the prison?
13. What the meal program (menu) of the prisoners look likes? Can you tell me the details of the frequency, quantity, quality, and variety of food?
14. What the supply of potable water looks like?
15. Does the prison allow prisoners to wear their own cloths? If not, please tell me the kind and situation of clothes provided by the prison?
16. Con you tell me the details of bed and bedding facilities provided for prisoners?
17. How is the situation of medical treatment in the prison? Is there sufficient medicine and instant access to the treatment of prisoners outside the prison compound in serious cases?
18. Are there insane prisoners in this prison? If any, how many?
19. Is there any special treatment for mothers bearing a child in the prison, if the case happened?

20. Is there separation of category, for example, male from female, sane from insane, young from adult, un convicted from sentenced, civil from criminal, etc ...?
21. Is there any facility and arrangements made to enable prisoners enjoy with sport and recreational activities?
22. Is there any compliant procedure available for prisoners?
23. Is there any prisoner complained of suffering from severe physical or mental pain? Can you elaborate the cause and circumstance of the issue as mentioned in the complaint?
24. Is there a prisoner complained of suffering from mild (moderate) physical or mental pain? Can you elaborate the situation?
25. What measures have you taken against persons who caused the above suffering?
Have you simply advised them not to commit it again? Have they faced a disciplinary penalty? Or have you sent the case to the court?
26. Can you tell me the frequency and the preconditions, if any, in which prisoners can be visited by visitors coming from outside the prison?
27. Does the prison have postal and telephone service?
28. Are there sufficient facilities to enable prisoners enjoy with their religious activities? Is there a practice of inviting religious leaders?
29. Is there a library? If yes, what the availability of books look like?
30. What is the manner of transferring prisoners from one place to the other outside the prison?
31. Can you tell me the details of works, if any, provided for prisoners, including the time limit, payment and so on?
32. Is there education and training program available for prisoners?
33. Is there any formal inspection or visit by higher officials on this prison?
34. How is the treatment of insane prisoners in this prison?
35. Is there different clothing prepared for different categories of prisoners (if the prison prepared for uniform clothing)?
36. Are there well established disciplinary rules in the prison?
37. Are there dark rooms in the prison? Are they, if any, currently used for the excision of disciplinary penalties?
38. Is there a suggestion box or register book in which prisoners may express their view about the treatment of prisoners at the time of their release? If there is, what their view looks like, in general? Do they believe as the treatment is reformatory enough?

ANNEX - II

**TABLE SHOWING THE DETAILS OF RESPONDENT- PRISONERS AND PRISON WARDERS
CONSULTED IN THE STUDY**

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Name of Prisons	Number of Prisoners			Number of Prison Warders		
	Male	Female	Total	Male	Female	Total
Woliso Prison	29	5	34	7	3	10
Shashemene Prison	26	6	32	6	3	9
Ambo Prison	30	8	38	8	4	12
Adama Prison	21	-	21	-	-	-
Ziway Prison	24	3	27	3	2	5
Dippo Prison	17	3	20	7	-	7