

ADDIS ABABA UNIVERSITY

COLLEGE OF LAW AND GOVERNANCE

CENTRE FOR FEDERAL STUDIES

**A CRITICAL ASSESSMENT OF PRISONERS' RIGHT IN THE
OROMIA NATIONAL REGIONAL STATE: THE CASE OF
BURAYU PRISON ADMINISTRATION**

BY: REBUMA TEFERA ALEMU

MAY, 2014

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**A Critical Assessment of Prisoners' Right in the Oromia
National Regional State: The Case of Burayu Prison
Administration**

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Addis Ababa University Center of Federal Studies**

**In Partial Fulfillment of the Requirements for the Degree of
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By Rebuma Tefera

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MAY, 2014

AAU

APPROVAL SHEET BY THE BOARD OF EXAMINERS

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Acronyms

ONRS	-Oromia National Regional State
FDRE	-The Federal Democratic Republic of Ethiopia
P	- Page
L.T.	-local time
CCRA	-Canadian Correctional Release of Act
OAU	-Organization of African Unity
BPT	- Basic Principles for the Treatment of Prisoners
CAT	- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW	- Convention on the Elimination of All Forms of Discrimination against Women
ICCPR	- International Covenant on Civil and Political Rights
ICESCR	- International Covenant on Economic, Social and Cultural Rights
SMR	- Standard Minimum Rules for the Treatment of Prisoners
Tokyo Rules	- United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules)
UDHR	- Universal Declaration of Human Rights
ECOSOC	-Economic and Social Council
OAS	- Organization of American States
IACHR	-Inter-American Court of Human Rights or Inter-American Commission on Human Rights
CPT	- Committee for prevention of Torture
Capitis deminutio maxima	- the forfeiture of citizenship by the ruler as punishment
Lex Talionis	law of retaliation/revenge (an eye for an eye principle)

Declaration

I, Rebuma Tefera, hereby declare that the title “A Critical Assessment of Prisoners’ Right in Oromia National Regional State: The Case of Burayu Prison Administration” is my own original work which has not been offered for any degree in any University and the sources used have been appropriately acknowledged and I confidently declare that this thesis has not been submitted to any other institutions anywhere for the award of any academic degree, diploma, or certificate.

Name: Rebuma Tefera

signature-----

MAY, 2014

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Abstract

The paper strongly emphasizes on the critical assessment of prisoners' rights in Oromia National Regional State particularly the prisoners' rights of Burayu Prison Administration. Accordingly, the aim of this research is to assess the handling and the treatments of prisoners' rights according to International Prisoners' Rights that provided under the FDRE and ONRS Constitutions. Thus, in order to identify the problems concerning the protections of prisoners' right in the Burayu Prison Administration, deep interviews were conducted with prisoners and with top officials of different prison institutions both at Federal and Oromya Region. In doing so, the paper indentified the problems concerning the protection of prisoners' rights to food and water, free medical services, the right to sanitations, the right to accommodation, the right to bedding and clothing, the right to contact with families, legal and religious counselors, the right to classification in terms of their sex, age, types of the crime committed and seriousness of the crime for which imprisoned. The study, additionally, examine the role of Federal Prison Commission for the protections of prisoners in the country. Hence, the research discovered that, there are poor handling and ill-treatments of prisoners in the Burayu Prison Administration. And also, both Burayu Prison Administration and the Oromia Prison Commission are not in a position to effectively work concerning the treatments of prisoners. Further, the existing proclamation and regulation regarding to the treatments of prisoners could not properly protect the rights of prisoners because both the proclamation and regulation not clearly provide the rights of prisoners as provided in other International Human Rights that directly related with protection of prisoners.

Based on the findings, the researcher proposed the amendments of the existing regulations for the protections of prisoners' rights and the need of a country-wide minimum standards and rules that govern every prisons institution of the country.

Key words: prisoners' rights, prison administration, prison institution, international human rights principle, Burayu Prison Administration, Oromia Prison Commission, Federal Prison Commission, minimum standard rules, prison treatments and handling of prisoners.

CHAPTER ONE

Introduction

1.1. Background of the Study

Different international instruments explain human rights in different ways. Human right is a fundamental right to which a person is inherently entitled simply because she/he is a human being. Prisoners' right is part and parcel of a human right which is not violated simply for their criminal status except expressly provided by law because human rights are thus conceived as universal and the same for everyone regardless of color, legal status, economic status, political attitude, racial, religion, language and personal status.¹ The preamble of the Universal Declaration of Human Right also provides that the recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.² These rights are including the prisoners' rights which exist as natural rights and it also protected.

Moreover, Article 11 of the International Covenant on Economic, Social and Cultural Rights states that everyone has a right to an adequate standard of living, is particularly important to the rights of prisoners. These rights, as stated in this particular provision of the Covenant, prisoners have the right to adequate food, clothing, bed and bedding, accommodations and to the continuous improvement of living conditions in the prison institutions. Hence, countries have an obligation to protect the prisoners' human dignity and provide the basic needs for them, .i.e., the provision of adequate food and drinking water and shelter for prisoners.³

Furthermore, Art.10 of the International Covenant on Civil and Political Rights provides that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. Hence, to torture or to cruel or degrading treatment or punishment are prohibited. Thus, the Covenant is a legally binding instrument which must be respected by both Governments and prison institutions.

¹ . Art. 2 of the Universal Declaration of Human Rights adopted and proclaimed by the General Assembly of the United Nations On 10 December 1948, by its resolution 217 A (III).

² . Ibid, see Paragraph 1 of the preamble of UDHR.

³ . In May 1999, the Committee on Economic, Social and Cultural Rights adopted General Comment No. 12 (1999) on the right to adequate food (art. 11 of the Covenant). In November 2002, it adopted General Comment No. 15 (2002) on the right to water.

However, the reality is that, prisoners are often held in the most restricted conditions, i.e., conditions that in a number of cases are disrespect to human dignity. Prisoners who are in prisons are challenged by a number of problems, such as poor medical services, insufficient provision of food and water, poor sanitations, lack of bed, bedding and clothing, declassifications of prisoners in terms of their age, sex, seriousness of the crime committed, the rights to contact with families, and the way prisoners are handled concerning their human dignity. Therefore, even if the prisoners' rights have been recognized by different International Human Rights Instruments, still there are problems concerning the handling and treatments of prisoners particularly in the Prison institution.

In order to protect the prisoners' rights, many countries of the world enshrined in their constitutions basic principles of prisoners' rights in line with international law and different conventions. Based up on these international human rights instruments, the United Nations Economic and Social Council (ECOSOC) in 1957 recognized the prisoners' right.⁴This International Standard Minimum Rules list the rights of the prisoners such as the right to free medical services, the right to accommodation, the right to be provided adequate food and water, the categorization of prisoners in their age and sex, types of crime for which imprisoned, the right to bedding and clothing, the right to sanitations, the right to bring complains and so on. Then after, different countries of the world take in to account the prisoners' right and enshrined it in their constitutions.

Ethiopia also ratified International Human Right Treaties by the 1995 FDRE Constitution. Under the Constitution, the protection of human rights in general and prisoners' right in particular also guaranteed.⁵

Moreover, from the time Ethiopia adopted the Federal government in 1995, the prisoner's right also recognized both by the 1995 FDRE Constitution and the States Constitutions. Hence, prisoners in the Oromia Region in general and prisoners in the Burayu Prison Administration in particular have a right to be treated humanely according to the human rights principles that provided both by the FDRE and Oromia Constitutions. As such, Art.21 of the FDRE Constitution

7. Minimum Standard Rules For the Treatments of Prisoners Adopted By the First United Nation Congress on the Prevention of Crime and the treatment of Offenders ,held at Geneva in 1955,approved by the Economic and Social councils by its Resolution 663 C (xxIv) of 31 July 1957,and 2076(LXII) of 13 May 1977.

⁵ .THE 1995 Constitution of the Federal Democratic Republic of Ethiopia ,Negarit Gazeta,1st year No.1,21st August,1995,art.9(4).

states that, all persons held in custody and persons imprisoned up on conviction have the right to treatment respecting their human dignity. With the same manner, Art. 21 of the Oromia Constitution also provides that a person in custody or imprisoned have the right to treatments in respecting his human dignity.

Bearing in mind this fact, the thesis discusses the prisoners' rights concerning the prisoners right to food and water, free medical services, the right to accommodation, the right to sanitation, the right to bed, bedding and clothing, the right to contact with families and other close relatives, and the right to make complains in a detailed manner.

Further, an attempt would also be made to identify the role of the Federal Prisons Commission for the treatment and handling of prisoners in all Regions of the country including Oromia. And it also discussed how the Burayu Prison Administration implements the prisoners' rights that are provided in the International Human Rights Instruments, the FDRE and Oromia Constitutions.

1.2. Statement of the Problem

Concerning the treatments and handling of the prisoners, Art.21 of the FDRE and the Revised Oromia Regional Constitutions impose a duty on the Prison Institutions to respect the human dignity of the prisoners. Even if both the national and International Human Right Instruments are provided the rights of the prisoners in line with the International Laws or International Conventions, various prison institutions are not practically implementing the rights of the person in custody according to the provisions of the law provided for prisoners'. Therefore, the thesis attempted to discuss the problems concerning the particular prisoners' right, such as: prisoners' right to fair and free medical services, the provision of adequate food and water, accommodation, bed, bedding and clothing, the right to complaint procedure, categorization of prisoners in their sex and age and the right to contact with their family.

Moreover, the thesis also come up with to what extent the prisoner's human dignity are respected according to the provisions of the 1995 FDRE and the Oromia Constitutions and other relevant laws. Thus, even if prisoners' constitutional rights are protected under the FDRE constitution, still there are serious problems that the subsequent laws did not address these prisoners' rights both at Federal and Regional levels. The prison institutions have a duty to

handle prisoners in accordance with the International Prisoners Rights Principles that provided in the FDRE and Other Regional Constitutions.

However, concerning the handling and the treatment of prisoners in the Oromia Region in general and Burayu Prison Administration in particular, there are problems regarding the protection of prisoners rights relating to prisoners' right food and water, prisoners right to free medical services, prisoners right to sanitation, right to accommodations, right to classification, the right to contact families, legal and religious counselors and the right to make complains. And also, the regulations and proclamations for the treatment of prisoners in the Oromia were not provided in a manner to ensure the protections of prisoners' rights and their human dignity. In addition, the Federal Prison Commission negligent the protection of prisoners' right in the country though its main purpose of establishment was to make sure the protection of prisoners' right in the country in accordance with different United Nations Minimum Standard Rules as recognized both in the FDRE and Oromia Constitution.

All these problems concerning the handling and the treatments of prisoners' rights in the Burayu Prison Administration would also be discussed.

1.3. The Research Question

With an objective of making the study soundful, the following research questions are taken into consideration:

- ✓ Does the Burayu Prison Administration provide for prisoners free medical services, adequate food and water, accommodation, sanitation services, bedding and clothing, classifications of prisoners in terms of age, sex, and recidivist, the reasons for which detained, seriousness of the crime for which imprisoned and the conditions of complaint procedure for prisoners and availability to communicate with families, legal and religious counselors?
- ✓ Does the Federal Prison Commission provide professional, technical and advisory assistance to the regional prisons particularly to the Oromia Prison Commission and is there a regular or irregular communication between the Federal Prison Commission and Regional Prison Administration in order to up hold the rights of prisoners?

- ✓ Are International human rights instruments specifically regarding prisoners' rights and provisions of the Oromia Constitution and FDRE Constitution specially focusing on the prisoners' rights properly implemented?

1.4. Objectives of the Study

This thesis has two objectives: general and specific objectives.

1.4.1. General Objectives

Today, human rights including the prisoners' rights are protected by several international laws and treaties and national human rights instruments regardless of color, social status (conditions), place of birth, religion, sex, racial, personal status, and so on.

Accordingly, Ethiopia, by the Federal and state constitutions, also recognized the prisoners' rights.

Therefore, the general objective of the study would be aimed to discuss the handling and the treatments of the prisoners' right in Burayu Prison Administration in compliance with the International Prisoners' Rights and Rules that provided under the FDRE and ONRS Constitutions.

1.4.2. Specific Objectives

The specific objectives of the thesis are:

- A. To identify the roles of the Federal Prison Commission for the protection of prisoners' rights in Ethiopia.
- B. To assess whether or not the Prisons Institution protects and realize the prisoners' rights without discrimination according to the national and international instruments, rules and principles.
- C. To examines the prisoners' rights to personal hygiene and sanitation, right to adequate food and water, free medical services, accommodation, separation of prisoners in terms of age, sex, types of crime for which detained, cause for which imprisoned, prisoners right to

clothing, bed and bedding, the right to contact with families and the right to making complain to higher official also discussed.

1. 5. Scope of the Study

This study is specifically limited to the Burayu Prison Administration. As it is known, Special Zone of Oromia Around Finfinne is known where the crimes in the Region are highly committed because of the most closeness to the capital City of the Country, Addis Ababa. As a result, different criminals were detained by committing different types of crime in the Zone and from Addis Ababa. As such, the treatments and the handling of prisoners in the Burayu Prison Administration are the subject of the study.

Hence, the thesis focused on the analysis of the critical assessments of prisoners' rights of the Burayu prison Administration. Thus, the study revolved around the prisoners' rights particularly the prisoners' right to adequate food and water, right to sanitation, free medical services, right to make complaint, separation of prisoners in their sex, age, recidivist, reasons of crimes for which detained and seriousness of crime, right to accommodation, right to communicate with families, legal and religious counselors, rights to bedding and clothing and also it extended to cover the roles of the Federal Prison Commission for the protection of prisoners of the Regions of the country.

1.6. Related Literature Reviews

Many authors wrote in the sphere of human rights in general and the protection of prisoners' rights in particular. The most prevailed and substantially relevant to conduct the research are going to be reviewed.

PASAN, (2007), states that, it is a well-established legal principle that prisoners do not surrender their rights upon incarceration, but instead retain all rights subject to the restrictions that are unavoidable in a prison environment. That is, Prisoners are entitled to enjoy to the normal living standards such as: health services, adequate diet, sanitation, and adequate living space as guaranteed under international law.

Similarly, Pier Giorgio Nembrini, (2005), believes that, prisoners have the right to live in health, and provided with adequate food and drinking water; they have a right to protect his/their personal dignity and other rights except those rights deprived by laws. And also, he argues that, measures depriving persons of their freedom must in no way, for whatever the circumstances, be made more severe by treatment or material conditions of detention which undermine the dignity and the rights of the individuals while serving their sentences. To that end, he recommends that, the “conditions of detention” should encompass the degree of respect for the detainees’ physical and mental integrity shown by the whole range of personnel in charge of their lives in detention; material conditions of detention (food, accommodation, hygiene); access to health care; and possibilities for maintaining family and social relationships. Hence, even if prisoners are deprived their liberty, their human dignity and other prisoners’ rights should be respected and their constitutional rights for whatever reasons not be removed. Accordingly, the prisoners’ rights also recognized under the FDRE and the Oromia Constitutions. Under these two respective Constitutions, prisoners’ human dignity and their right to contact their families and other close relatives also respected.

Moreover, the United Nations Human Rights and Prison (2012), proposes that, the prisoners health matter is the series problems in the prisons institutions. The source evidences that, within prisons, the risk of the spread of TB is heightened by poor and overcrowded prison conditions. Thus, the overcrowded of prisoners in the prisons institution has the relationship between environmental conditions in prisons and the health status of prisoners. This overpopulated of prisoners has adversely affect the prisoners health matter by causing the spread of HIV and other contagious diseases in prisons which can lead to high rates of mortality among prisoners.

On the other hand, RICK LINES, (2008), suggests that, people in prison have the right to an amount of living space sufficient to safeguard their health. As to the author, accommodation is one of the basic need of prisoners rights, i.e., lack of adequate living space not only contributes to a violation of the right to dignity and humane treatment, but also to conditions that breach the rights to life and health. This indicates that, there are serious problems of overcrowding and poor health and sanitary conditions in many prisons, which are incompatible with applicable national, and international law, standards and guidelines. For this reason he recommends that, the prison institutions have an obligation to reduce overcrowding and to upgrade prison facilities as quickly as possible.

On the same manner, World Prisons brief, (2012), put forward that, the living space of prisoners is serious problems in many prisons institutions. This problem also the main problem of the Burayu Prison Administration in particular and the problems of prisoners in the Ethiopia in general; that highly challenges the prisoners in the country. This overcrowded not only cause to disturb the prisoners living conditions; such as prisoners' health, sanitations, concentrations to use to toilet but also disturb the administrations system of the institutions. Accordingly, Jonny Steinberg, (2005), also proposes that, overcrowding is not only affecting the personal well-beings of prisoners, but also it affects the principles of administrations. That means, overcrowding strains the prison administration's capacity to maintain security and good order. Thus, the more crowded a prison, the more the maintenance of security curtails and also it undermine the quality of life in prison .As a result, movement is severely restricted, access to recreational and learning facilities decrease, invasions of privacy increase, and prisoners spend a greater proportion of time in their cells. Then, this indicates that, the highly overcrowded of prisoners are affecting the general rights of prisoners in prison institutions.

As such, in Ethiopia, there is no any uniform standard or guidelines that determine the treatments of prisoners concerning the living space of prisoners in the country. And also the regulation for the treatments of prisoners of Oromia has no any clear provisions for the protections of prisoners' rights regarding the adequate living space or accommodation. Hence, where prisoners are highly overcrowded, it affects the prisoners' human dignity and it cause to increase the risk of physical and mental health problems because of they are incarcerated in overcrowded, and cause unsanitary and stressful conditions. Andrew Coyle, (2007), also recommends that, the governments have an obligation to protect the health matters of prisoners, who should not, by reason of their imprisonment, is exposed to the risk of deadly condition.

Furthermore, Paul Hayton, (2007), explores that, in addition to providing health care, prisons should also provide health education, patient education, prevention and other health promotion to meet the assessed needs of the prison population. That means; simply by depriving of their liberty, they should not lose their other rights because good health and well-being are key to successful rehabilitation and resettlement.

In other word, the Right to Adequate Food, Fact Sheet No. 34, also emphasizes that, food is the other basic right of prisoners. The source also evidences that, it is not simply a right to a minimum ration of calories, proteins and other specific nutrients but it is a right to all nutritional

elements that a person needs to live a healthy and active life. Hence, failure to provide detainees with reasonable quality of food and insufficient water has an obvious negative impact on the prisoners' health. Thus, the prison officials have an obligation to provide adequate food and sufficient water for drinking and for their sanitation.

In addition, Africa Watch, Prison Project, (2005), hints that, among those factors that intensively affect the prisoners' rights are the rights to clothing and bedding of prisoner's. The source also indicates that, those prisoners not allowed to wear their own clothing shall be provided clothes which fit both the personal dignity of the prisoners and the local climate conditions. This indicates that, the prisons institution has an obligation to provide cloth, bed and bedding for prisoners free of charge. Thus, in turn, Prisoners have the right to be provided cloth, bed and bedding because lack of cloth, bed and night clothes in the Prisons institution adversely affects their health and personal dignity.

On the other hand, a Pocketbook of International Human Rights Standards for Prison Officials, (2005) recommends that, the separation of prisoners should be conducted in terms of their sex, age and their serious of crime. The author believes that, the separations of prisoners are the obligation of the prisons authority and it is the rights of the prisoners to classified in terms of their age, sex, types of the crime committed for which imprisoned. This is clearly illustrating that, women detainees should be separated from men detainees as well as children detainee shall be separated from adult detainees. So, what we observe from this general concept is that, the separations of women from men are not the special right of women rather to recognize the security of women. Moreover, pregnant women and nursing mothers who are in prison shall be provided with the special facilities which they need for their condition. In addition, the separation of children from the adult has its own purpose .i.e., Children who are detained shall be treated in a manner which promotes their sense of dignity and worth facilitates their reintegration into society, and all other activities must reflect their best interests and takes their needs into account.

Moreover, in order to protect more the rights of prisoners, the document also advocates that, when the prisoners' rights and personal dignity violated, the prison officials have a duty to provide an immediate remedy. This indicated that, prisoners have a right to bring complaint where his/her/ their recognized rights are violated either by prison official or through other condition. This is due to the fact that, if a complaint is rejected or not responded to in a well-

timed way, the complainant shall be entitled to bring it before a judicial or other competent authority. For such matter, States have an obligation to establish an independent organ for the supervision and to monitor the internal procedures of the prison official and to this end Prisons shall be inspected regularly by qualified and experienced inspectors or by other organ which independent from the prison administration.

On the other hand, unlike to Ethiopia, the American University Law Review Vol.20, issue-3(2003) offers that, different nations have their own system by which they administer and regulate the prison institutions. For instance, in America, there are a dual standard for the manner of protection of prisoners right and the administration of the prisons, depend upon whether it is a local (states) or a federal officer who is making the protection and act the administration of prisons. It also addresses that, concerning the regulation of prisoners discipline and administration of state detention; the states have the power and are subject to federal authority only when paramount federal constitutional rights supervene. As we have seen from this resource, it has a relation with the 1995 FDRE constitution which empowered the States to administer, regulate and control their Regional Prisons Commissions and the Federal Prison Commission has only the power to control the uniformity of the activities and the protection of the rights of prisoners in the country.

Similarly, PASAN, (2007), also suggest that, different States have their own laws by which governing their systems via imposing obligations on governments to safeguard the health and well-being of prisoners. The sources evidences that, in Canada, concerning the health services of prisoners, only the federal government has a statutory (i.e., written in a law) obligation to provide prisoners with essential health care akin to that available in the community. As such, the Canadian federal prison system is governed under the Corrections and Conditional Release Act (CCRA) and the accompanying regulations.

Hence, the Canadian CCRA is mandated to provide every prisoner with essential health care and reasonable access to health services that will contribute to his or her rehabilitation and reintegration into the community. Hence, in Canada, however, Provincial and territorial prison systems are created under provincial laws. That means, the overall provincial and territorial legislation does not incorporate international standards for the treatment of prisoners to the same extent as does the CCRA. For such reasons, regarding health services of prisoner, provincial and territorial laws are weaker than the CCRA in conferring on provincial and territorial prisoners a

right to receive equivalent health care, or placing on prison staff the responsibility for providing such care. Unlikely, in Ethiopia, both the administration and budget allocation for prisoners' health was left for the Region. So, it is up to Regional States Councils to allocate enough budgets for their respective Prisons Commission for the health services of prisoners.

1.7. Methodology of the Study

1.7.1. Research Method

In order to achieve the objectives of the study set forth herein above, the researcher opted to use qualitative method of research. Because a detailed interviews with a concerned institutions and with the prisoners themselves expose more the realities concerning the handling of prisoners and the protections of prisoners' rights that provided both by the FDRE and the Oromia Constitutions.

1.7.1.1. Primary Source

To achieve the main goals of the study, detailed interviews were conducted with the higher Officials of the Federal Prison Commission, with the Oromia Prison Commission, with the Burayu Prison Commission and with the Prisoners of Burayu Prison Administration.

1.7.1.2. Sampling Technique

In order to collect a reliable data, the researcher conducted detailed interviews with different levels of prison institutions and with the prisoners themselves. For instance, the Federal Prison Commission empowered to issue a uniform standard and rules that govern the treatment of prisoners in the Country. Besides, the commission is under a duty to conduct inspection and supervision regarding the protections of prisoners' human dignity. In order to come up with the functions and powers of the Federal Prison Commission concerning the treatment of prisoners in the country, the interviews were conducted with 3 higher administrators of the Prison Commission.

And also an exhaustive interviews also conducted with the top administrators of the Oromia Prison Commission due to the fact that, the Oromia Prison Commission has a mandate to implement the prisoners' rights in line with the international Human Rights Instrument that provided both in the FDRE Constitution and Oromia Constitution particularly for the protection

of prisoners' right in the Region. Moreover, the Oromia Prison Commission has an obligation to issue directives and other internal administration of the prison including the duty to inspect and to supervise the handlings of prisoners in the Region. Hence, the interviews were conducted with 3 higher administrators of the Oromia Prison Commission.

In addition, the interviews also undertaken with key administrators of the Burayu Prison Administration because of the fact that, they know well the problems regard to the treatments of the prisoners in the institution. The researcher used these key administrators as tools to gather reliable information regarding to the treatment and handling of the prisoners in the Burayu Prison Administration concerning every right's of prisoners that provided in the International Standards of Minimum Rules. Thus, the writer conducted interviews with 4 key administrators of the prison institution.

Further, worded questions were prepared and response was conducted face to face with the prisoners in the Burayou Prison Administration because they are the main components of the research. In doing so, the interviews conducted with selected prisoners in the institution regarding the handling and the protection of their human dignity and other rights that recognized under International Human Rights Principles that adopted by the FDRE Constitutions and other domestic laws. As such, intentionally 12 (twelve) prisoners who were at least stay more than one year in the institution was selected to conduct interviews. Because they know well every good and bad things of prison life and also they have more experiences concerning the rights and duties of prisoners during they have served their imprisonment. Among the 12 prisoners, 4 of them were sentenced of life imprisonment, 4 of them sentenced more than 10 years and the other 4 sentenced more than 1 years.

1.7.1.3. Observation

Personal observation was also conducted by the researcher in order to gather real information concerning the sanitation of the prisoners, the overcrowdings of the prisoners, the categorizations of prisoners in their sex, age and their seriousness of their crime. This personal observation exposed the existing realities and provided supportive information.

1.7.1.4. Secondary Source

On the other hand, as secondary source, different domestic regulations, proclamations, laws and, International Human Rights Instruments that have direct relations with the prisoners' rights were

discussed. And also various books that describes about the treatments of prisoners of different countries were referred.

1.8. Significance of the Study

In Ethiopia, both at Federal and Regional, different laws (legislations) were proclaimed for the protection and treatment of prisoner's rights in the prisons. Hence, a study will use the justice sectors of the Region particularly the Federal Prison Commission, the Oromia Prison Commission and Burayu Prison Administration to have enough knowledge about the rights of the prisoners and used to improve the treatments and handling of prisoners both in the country as a whole and in Oromia Region. Besides to that, it contributes to issue a uniform standard that used to govern all prison institutions in the country regarding the treatments of the prisoners' rights.

And also it used as an input in formulating prison policy both in the country and the Oromia national Regional State. So, since this study is exclusively related to the prisoners' right in Burayu Prison Administration, in one way it used to investigate the problems of the prisoners ; in other way it also help the researchers as the base for further study in other Prisons Administration either in other Region or in Oromia. Moreover, this study also used to enhance the knowledge of the prison officials, Judges, public Prosecutors and public polices (police officers) in order to realize the rights of the prisoners' according to International Prisoners' Right Instruments.

1.9. Limitation of the Study

During the study was conducted, different problems faced the writer. One of the problems is a time limitation. In normal principle, the time given for the completion of the thesis is one year but we defend the research proposal in December 2013. Thus, the remained time is not enough to complete the study. The limitation of time is the main problem because the time spent before undertaking of the defense proposal.

The other problem is unwillingness of the higher administrators of Federal and Oromia Prisons Commission and Burayu Prison Administration to give information. By the name of security, these all institutions do not want to disclose the handlings and the treatments of prisoners imprisoned in their respective prison institutions.

There was also a limitation with regard to the accessibility of Regional laws which are necessary for the conduct of the research especially laws related with prisoners treatments. As known, many of the laws of the Regional States are not available on website. This has hindered the writer from having access to the Regional Prisons Administration laws in the discussion of the handling of prisoners due to the distance of the Regional States from Addis Ababa and/ or the Regions have no branch in Addis Ababa that distribute their respective proclamations and Regulations. It is for this reason that the others States of prisoners treatment is not used in the research to compare the handling of prisoners with the Oromia National Regional State.

The other limitation relates to the financial assistance granted for conducting the research. To determine the study of the handling and the treatments of prisoners' right in the Oromia Regional State particularly the prisoners' rights of Burayu Prison Administration, it needs an adequate financial assistance to carry out better research. However, the financial grant given for the research is not enough to complete any research. For this reasons, the researcher limited his interviews only to the Federal and Oromia Prisons Commission, Burayu Prison Administration and Prisoners of the Burayu Prison Administration.

1.10. Organization of the Study

The thesis composed of five chapters. Every chapter has inter-related. Accordingly, chapter one contains, the introductory part or the background, objective, significance, research questions, statements of the problems, limitations, literature review, methodology, and scope of the study. This Chapter illustrates the needs of the research and seeks the solutions.

Chapter Two discusses the overall framework of prisons and prisoners, the historical developments of prison, the role of prison officials for the protections of prisoners' rights and the concept of punishment and its purpose.

Chapter three describes in details the protection of human rights including the prisoners' rights by different International Human Rights Instruments. This chapter also illustrates the protections of prisoners' rights and to what extent the protections of prisoners' rights undertaken under the Regional Prisoners right Laws, rules, principles and standards; for instance, under the European System, Inter-American States and Africa. Under this chapter, it also discusses the handling of prisoners under the Ethiopian law.

Chapter Four discusses the law and practices concerning the handling of prisoners in the Burayu Prison Administration. Under this chapter, it discusses the implementations of prisoners' human rights principles provided in FDRE Constitution and Oromia Constitution. And also, the chapter describes the role of the Federal Prison Commission for the Protections of prisoners' right in the Country.

Finally, Chapter five comes up with the conclusion and recommendation of the study. At the end, bibliography and annexes has been provided.

CHAPTER TWO

General Overviews of Prison(s) and Prisoners

Introduction

Prison and prisoner have common history and one of the two has no meaning without the other. Human being used different mechanism in order to regulate their social interactions, peace and order from ancient time to the present day. Thus, Prison is one of the most recognized institutions where the wrongdoers, here in after called the ‘prisoner’ detained as punishment. As such, in this chapter, we will be tried to discuss the conceptual framework of prison and prisoners, the historical development of prison, the role of prison officials for the protection of prisoners’ rights and punishment and its purposes would be determined.

2.1. Conceptual Framework of Prison

When we talk about crime and criminals, immediately we remember the word ‘prison’. ‘Prison’ has been defined by different scholars. However, different authors defined the term ‘prison’ differently. For instance: “Imam Amidi M. Zuberi” defined the term ‘prison’ as:

A public building used as a house of convicted criminals and accused persons remanded in custody and waiting trial; or it is any place of confinement; or it is a jail, penitentiary, place of reformatory, etc.

He also proposes that, Prison by itself has a negative impact on the prisoners or it destroys the moral of the prisoners in different perspectives. This means that, your moral being is what makes you to be the person that you are. If you are in prison and feeling sorry for yourself, you will become out a loser, but if you are in prison and accept that fact that you are in there whether right or wrong, and that you have time in your hands to re-evaluate your entire life. Moreover, it includes all prisons of all security ratings or it is any place of detention accommodating pre-trial or sentenced persons of any class or security category.⁶

On the other hand, it has been defined as

⁶.Imam Amidi M. Zuberi, march 31,2001, Being in Prison-Right or Wrong “Dedicated to Prisoners World Wide”, P.1

“any Correctional Institution or any penal or correctional facility, jail, reformatory, detention center, halfway house, or residential community program operated by, or under contract to, a state, a territory, a political subdivision, of a state or territory, for the confinement or rehabilitation of persons charged with or convicted of a criminal offense or other persons held in lawful custody.”⁷

According to this author, every detention center or correctional institution that gives services for both criminal and civil liabilities are termed as prison or correctional institution without the categorization of sentenced Person for the commission of crime or awaiting trial or those detained for their civil liability. That is, the place where both sentenced persons for criminal and civil liability, untried and none convicted persons are living for their disobediences or violating the laws.

Besides, it is a correctional institution where prisoners sentenced by the court are serving their sentences, are reformed and rehabilitated; and also where remand prisoners are held in custody until verdict.⁸ Accordingly, prisons institution are the place where the person who deprived of her or his liberties are living and it also extended to the place where tried and untried, sentenced or convicted but not sentenced, fine defaulter and non-criminals held either for correctional purpose or for other reasons.

Further, the term prison is intended to denote, as a minimum, the institutions that hold people who have been sentenced to a period of imprisonment by the courts for offences against the law. However, the principles, approaches and technical advice in these definitions give different meanings. The institutions included in the term prison are varying between countries⁹.

2.2. Conceptual framework of Prisoner(s)

Prisoner is a person who entered in to Prison Institution as a result of receiving a sentence in a criminal court, convicted or for civil liability and for such reasons loses his or her personal liberty. Sending the prisoner in to incarceration is not the means to denying his human rights. That means, they retain their rights even when in prison. This is so, because human rights are

⁷ . Alexander L. Bednar, (2003), ‘Prisoners’ Right to Healthcare’ page, 1.

⁸ .A Proclamation to Provide for the Establishment of Federal Prisons Commission: Proclmn. No. 365/2003, 9thYear No. 90 Addis Ababa, 2003, Art. 2 (4).

⁹ . Health in prisons, A World Health Organization guide to the essentials in prison health, 2007.

universal and it is the same for every human being including a prisoner, no matter how where s/he lives.

As such, different authors were defined who the prisoner is? How and when a person become a prisoner also differentiated and defined by a number of scholars. Hence, “prisoner” is defined as a person incarcerated in or otherwise confined to a correctional institution.¹⁰ Moreover, prisoner(s) is/are when a person is received to serve a period of imprisonment composed of a sentence for a criminal offence and a consecutive period of imprisonment in connection with a non-criminal matter and a person who deprived of his liberty for his criminal status.¹¹ Accordingly, prisoner means a person incarcerated or confined in prison and includes a person who detained for criminal or civil matter, and tried or untried.

Furthermore, other scholar defined prisoner as a person deprived of his or her personal liberty is to be regarded as prisoner.¹² Thus, according to this author, every person who deprived of his or her liberty either for criminal or civil purpose is considered as prisoners.

On the other hand, Prisoners means a convicted prisoner serving a sentence passed by a court authorized by law; and also refer to a person detained upon judicial remand.¹³ Hence, according to this particular provision, any person in custody is not considered as a prisoner rather than those for their criminal act serving their sentence or staying their remand. In Ethiopia, according to the Proclamation of Federal Prison Commission No.365/2003, those persons detained for civil liability are not considered as prisoners except person(s) serving their sentence for criminal act or a person detained up on judicial remand.

Therefore, for the nature of prison environment, person(s) who is/are in prisons have no personal liberty. In our world, no term is given to the person who detained in prisons institution for different reasons either detained for criminal or civil purpose except the term ‘prisoner’. Thus, no matter how the person detained either for criminal act or for civil purpose, the prisons institution have their own object starting from its establishment. As such, the main purpose of the prison institution is, at first hand, not to punish detainees but to change his or her behaviors and making law binding and responsible citizens. For this reasons, the term ‘prisoner’ is not only limited to

¹⁰ . Ibid: p.1.

¹¹ . Ibid, P. 2

¹² . Parliamentary Assembly Committee on Legal Affairs and Human Rights Draft resolution adopted by the Committee in Strasbourg on 26 June 2012, p.1)

¹³ . See, Federal prison procln. No.365/2003: Art.2 (5).

the person who deprived his/her personal liberty for criminal offence but it includes the persons lose their liberty for civil liability.

2.3. Historical Development of Prison

Human person used different methods by which to recognize their security among themselves for a long period of years. Accordingly, the primitive society has no any institution which where the wrong doers were punished or rehabilitated and reform their behaviors. However, in order to regulate their peace and security, they used different mechanisms of punishments. Hence, among tribal groups, such punishment might include, among other tortures, whipping, mutilation, drowning, executions, and banishment (which in remote areas was tantamount to a death sentence).

After passing thousands of years, prisons and community corrections were created to ‘punish’ their kind for real or perceived transgressions.¹⁴ The main purpose of this Correctional institution at that time was to avert the use of more violent or coercive responses to such folk. However, there was no equal punishment between the wrongdoers even though they commit the same fault. The extent of the punishment often depended on the wealth and status of the offended party and the offender. Those accused or found guilty and who were richer were often allowed to make amends by recompensing the victim or his or her family, while those who were poorer and of lesser status were likely to suffer some sort of bodily punishment.¹⁵ For the executions of such punishment, jails/prisons were the first type of correctional institution and in some form they have existed for several thousand years. Whether dungeons or caves were used, or the detained were tied to a tree, these were the mechanism through which ancient people had ways of holding people until a judgment was made or implemented.

On the other hand, punishment is referenced in a written document as early as in 2000 B.C. For example, during the early history of corrections, Codified punishment for offenders was developed in the early ages of human history. Thus, one of the earliest known written codes that specified different types of offenses and punishments was the Code of Hammurabi in 1750 B.C.

¹⁴. Garland, D. (1990). *Punishment and Modern Society: A Study in Social Theory*. Chicago: University of Chicago Press, p.200.

¹⁵. Franklin, H. B. (1989), *Prison Literature in America*, New York: Oxford University Press, p.60.

The Code of Hammurabi was divided into sections to cover different types of offenses and contained descriptions of the punishments to be imposed to offenders.¹⁶

The other classical code is the Draconian Code, which was developed in classical Greece in the 7th (seventh) century B.C. This code described legal procedures by which the rights and duties of the offenders were taken in considerations and punishments for offenders, such as stoning to death or public abuse while dying.¹⁷

In other word, more of the ancient societies and ‘primitive’ social groups often provided the penal process with a wholly religious meaning, so that punishment was understood as a necessary sacrifice to an aggrieved deity. Accordingly, the Old Testament of the Bible refers to the use of imprisonment from 2040–164 B.C. in Egypt and Babylon. And also, an ancient Greece and Rome reserved harsher physical punishments for slaves, whereas citizens might be subjected to fines, exile, imprisonment, or death, or some combination of these.¹⁸ Further, the histories of Ancient Greece describe a transition from customary law to public criminal justice between 800 and 400 B.C to use prison.

Subsequently, although mutilation eventually disappeared from English law, the brutality of Anglo- Saxon criminal punishment continued unabated into the eighteenth century. And also in England, the 1530 act authorized prisoners to be boiled alive. Burning was the penalty for high treason and heresy, as well as for murder of a husband by a wife or of a master by a servant.¹⁹

Moreover, the ancient Roman used as punishment by making the wrongdoers a slave. To punish wrongdoers, “**capitis deminutio maxima**” was used, i.e., the forfeiture of citizenship because slaves have no any human rights and not considered as a human person. Thus, criminals became penal slaves.²⁰

Likewise, in historical development of prisons, the Catholic Church’s influence on the development of westernized corrections was powerful in the Middle Ages (medieval Europe

¹⁶ . Marcos L. Misis (ABD), 2011, Early History of corrections in America,p.1.

¹⁷ .abid

¹⁸ . Daniel J. D’Amico, 2009. The prison in economics: private and public incarceration in Ancient Greece
Received: 5 February 2009 / Accepted: 17 November 2009.

¹⁹ . A History of Corrections and Early Punishments in Westernized Countries, p.18.

²⁰ .abid: p.1.

from the 5th to the 15th centuries) even today.²¹ As a means of sharing up its power base vis-à-vis feudal and medieval lords and kings, the Catholic Church maintained not only its own forms of prisons and jails, but also its own ecclesiastical courts.²²

On the other hand, during the Roman Empire, Emperor Justinian in 534 G.C. compiled a code, which would constitute the basis for all modern European law. In Rome, offenders were usually tortured, served as slaves or in the imperial galleys. However, in most of Europe, forms of legal sanctions that are familiar today did not appear until the beginning of the Middle Ages, in the 1200s. Before that time, European viewed responses to crime as a private affair, with vengeance a duty to be carried out by the person wronged/ victimized or by a family member. Wrongs were avenged in accordance with the **Lex Talionis**, or law of retaliation. But, subsequent to the middle ages, the European secular law was organized according to the feudal system. Death, torture and corporal punishment were extended practices at this time.²³ During this time, the Church, as the dominant social institution, maintained its own system of ecclesiastical punishments, which made a great impact on society as a whole. Especially during the Inquisition of the 1300s and 1400s, the church zealously punished those that violated its laws. At the same time, it gave refuge from secular prosecution to people who could claim benefit of clergy. In time, benefit of clergy was extended to all literate people.²⁴ Accordingly, in early Europe, five punishments were common before the 1770s; such as: Galley slavery, imprisonment, transportation, corporal punishment and death.

Galley slavery was used since the times of classical Greece and the Roman Empire and was not formally abolished in Europe until the mid-1770s.²⁵ Imprisonment was the other punishing system in Early Europe .Hence, prior to the 1800s, imprisonment was used for the short-term detention of offenders awaiting trial or those who committed petty theft or could not pay their debts.²⁶

Moreover, “transportation” was also a common practice in European countries as they hold colonies all over the world. For instance, Australia was developed as a British penal colony

²¹ .see, supra footnote, 14, D. Garland. D, (1990): p.203.

²² .abid

²³ .abid: p.2.

²⁴ .abid

²⁵ .abid, p.4.

²⁶ .abid

through transportation. And also, until the American Revolution, England had not stopped to transporting prisoners to America.²⁷

Finally, as public punishment was considered a good deterrent for offenders, corporal punishment and death were much extended in European countries during the early period. As such, torture, mutilation and death were very prominent in Great Britain from the sixteenth to the eighteenth century and it was used as a deterrent effect.²⁸

On the other hand, Enlightenment was played a great role for the development of a new penal system in Europe and in America. Thus, after the American Revolution, the ideas of the Enlightenment gained force. As such, in America with the ideas of proponents of Enlightenment²⁹ and the Declaration of Independence, a new penal system was developed and as a result of the revolution, the system of punishment was also changed. The systems of punishing the offenders changed to rehabilitate the offenders' behaviors. Hence, reformers argued that, the system of punishment had to move away from inhumane and punitive measures of punishment, but it must be more rational and humanistic approach to punishment.³⁰

2.3.1. Prisons Institution and Prisoners' Right Protection

Most of today's prisons are still formally known as correctional institutions because of the fact that, the prisons institutions are at forefront established for the purpose of reforming and to rehabilitate the criminals but not to punish or revenge them. As such, the correctional institution was emerged gradually from the Big House, with the first stirrings of this new prison type manifesting themselves in the 1940s and 1950s.³¹ One problem has been that, with the passing of the disciplined and repressive routines of penitentiaries³² and Big

²⁷ .abid

²⁸ .abid.p.5.& see also Jeremy Bentham (1748–1832), the philosophers and reformers for British criminal law.

²⁹ . Beccaria (1764) argued that punishments should fit the crime and should be certain, swift and severe. In addition, Beccaria (1764) believed that laws should be written and judicial discretion should be limited; Jeremy Bentham (1748–1832), was one of the leading reformers for British criminal law. Bentham advocated for a system of graduated punishments to make a system where punishment and crime were equal.

³⁰ .abid

³¹ . Robert Johnson, (2005). The American Prison in Historical Perspective: Race, Gender, and Adjustment American University, p.14.

³² . **Penitentiary** institution designed for offenders to meditate upon their crimes and, through penitence, achieve absolution and redemption and see, Robert Johnson, 2005.p.23. The penitentiary was the first truly modern prison. In a sense, it was the template or model from which most, if not all, subsequent prisons were cast.

Houses³³, today's prisons are marked by more inmate violence than at any other time since the advent of the penitentiary. Due to the fact that, by the name of correctional institution, a number of prisoners are tortured and treated inhuman approach though both at international and domestic human rights instruments are recognized the respecting of prisoners' human right. This ill-treatment, especially, is most apparent in men's prisons. While some staff members still abuse inmates due to lack of awareness regarding the handling and protection of prisoners in the correctional institution. In addition, most of today's punishments are supported in technology and it highly inflicts or suffers more the prisoners' daily life even though this grossly unprofessional behavior is considerably less in evidence in today's prisons than in earlier prisons.³⁴

On the other hand, the reformatory systems of the prisoners are the other model of the contemporary prisons. This movement started in the late 1800s when new institutions called reformatories were opened. These reformatory institutions had a stronger emphasis on reform and targeted more of younger offenders.³⁵ Thus, the first two decades of the twentieth century represented a drastic change on the social landscape of America. At this time, the presumption forwarded were totally changed and believed that criminals should be rehabilitated through individualized treatment. Therefore, it was heavily influenced by the positivist school of Criminology. Thus, Positivists believed that criminal behavior is not a product of free will; it is product of biological characteristics, psychological deficiencies and some sociological conditions and hence, criminals can be treated.³⁶

Accordingly, the 1950s is known as the era of treatment of prisoners in American and Europeans Corrections. For such reasons, punishment was perceived as an obsolete way to deal with offenders and treatment took a central role in penology. Thus, prison became rendering to mental health services institutions where inmates had a health problems and continuously tested for their readiness to reentry to the society.³⁷ Subsequently, after World War II, psychiatry was used as a tool to rehabilitate offenders. Hence, group counseling, behavior modification techniques,

³³ **Big Houses** author's term for prisons in the early 1900s and also see Robert Johnson, 2005.p.8.

³⁴ .Johnson, R. (2002). *Hard Time: Understanding and Reforming the Prison*. Belmont, CA: Wadsworth.

³⁵ .Pisciotta, A. W. (1994). *Benevolent Repression: Social Control and the American Reformatory-Prison Movement*. New York: New York University Press. See also Rafter. N. H. (1990), *Partial Justice: Women in State Prisons, 1800–1935*. Boston: Northeastern University Press.

³⁶ .See, Marcos L. Misis (2011), p.6

³⁷ .abid

psychotherapy and individual counseling were common ways to treat inmates. To this end, States need to change their sentencing policies and create alternatives to imprisonment so politicians and policy makers will not automatically try to build more prisons rather they should have to emphasize to bring awareness of crime to the society and its impacts on individual well-beings.³⁸

2.4. The Role of Prison Officials in the Protection of Prisoners' Right

Prisons Institution are one of the government agencies that deals with the persons legally deprived their liberty. And also, it is the place where the behaviors of criminals are reformed and rehabilitated. Hence, prisons have a great role both for the protections of prisoners' human rights and to facilitate the future life of the prisoners in order to reintegrate to the society. International Human Rights and different domestic laws are mandating the governments' agencies particularly the correctional institutions in order to handle as to humane and treat prisoners in line with the international principle, standards and rules. For this reason, prisoners have the right to treated in human so that some rights and freedoms are fundamental to human existence.³⁹

Accordingly, Prisoners have the right to retain some basic human rights even though entered in to the prison institutions. The prison institutions, in turn, have an obligation to protect the prisoners' human dignity and implement the same. Due to the fact that, human rights are inherent and entitlements that come to every person as a consequence of being human, and are founded on respect for the dignity and worth of each person. They are not privileges, nor gifts given at the whim of a ruler or a Government. Nor can they be taken away by any arbitrary power. They cannot be denied, nor can they be forfeited because an individual has committed any offence or broken any law because of his criminal status.⁴⁰

However, this doesn't mean that, a prisoner can enjoy all the rights like anyone else. That is, the enjoyment of human rights may be restricted or limited by the correctional institutions in certain circumstances. For instance, all people have the right to liberty, the right to practice any profession, occupation, trade or business, the right to freedom of movement, etc. But these rights are restricted when someone go to prison. Such restrictions or limitations are considered as

³⁸ .abid.p.7

³⁹ . Human Rights and Prisons, Manual on Human Rights Training for Prison Officials, UNITED NATIONS, New York and Geneva, 2005, page. 4

⁴⁰ .abid

lawful and the application of international human rights law.⁴¹ Then, trials awaiting prisoners or people who have been sentenced lose some of these rights, such as freedom of movement or they are deprived of their liberty, but they keep other rights such as the right to dignity which every human being naturally endowed because of being human. Thus, in order to protect the prisoners' right, the prison officials have a great role by implementing the said prisoners' human rights.

Accordingly, Prison officials have a legal obligation to receive individuals who are lawfully deprived of their liberty. And hence, they have the responsibility to hold them safely and then, after completing court decision of imprisonment, release them back to the community subsequent to rehabilitate their behaviors and change their attitudes.⁴² This function involves the carrying out of extremely demanding and stressful tasks on behalf of society. Hence, prison officials have a duty to handle the prisoners in a good condition and in humane. While facing situations of lawful limitations of freedoms and rights, prison officials are at the forefront of prisoners' rights protection on a daily basis, experiencing them and putting them into practice; respecting them and enforcing their respected human dignity.

Moreover, human rights are not the exclusive jurisdiction of the State or its agents. Rather, Prison officials shall also be carried out their functions in a manner that respects and protects human rights bring honour not just to themselves, but also to the Government that employs them and the nation which they serve.⁴³

Different Principles and standard of minimum rules emphasized that, prisoners are members of the community and that efforts should be made to maintain and foster community contacts of prisoner. The rationale behind this idea is that, prisoner-community contact fosters rehabilitation and reintegration of the prisoners in to the society.⁴⁴ To meet this goals, the prison officials should have to arrange the community agencies as much as possible to assist the staff of the institution in order to have an awareness of the prisoner' right and their future life and the rights relating to civil interests, social security rights and other social benefits of prisoners.⁴⁵

⁴¹ .abid

⁴² .abid.p.4.

⁴³ .abid.p.5.

⁴⁴ . abid: p.6.

⁴⁵ . A Compilation of International Human Rights Instruments, concerning the Administration of Justice, United Nations, New York and Geneva, 2005, page, 167.

The contribution of the participation and help of the community makes strong the capacity of the prison officials and this also improves the protection of the interests of victims, favorable conditions shall be created for the reintegration of the ex-prisoner into society under the best possible conditions. This means that, the prison officials should have to give an attention from the date of a prisoner's admission to the date of his release and he shall be encouraged and assisted to maintain or establish such relations with persons or agencies outside the institution as may promote the best interests of his family and his own social rehabilitation in the future.⁴⁶

Additionally, international human rights instruments are binding the States and their agents, including prison officials in order to manage the prisoners in compliance with the international human right instruments. Thus, prison officials are obliged to know, and to apply, International Principles of prisoners' rights.⁴⁷

As such, prisons institutions have a duty to treat with humanity and respect the inherent dignity of persons deprived of their liberty. Hence, the Prison Officials shall be ensured that prisoners under custody should not be subjected to torture, inhuman or degrading treatments. So, the prison officials at any aspect have an obligation to handle and treat them in normal living conditions and not torturing them. Therefore, torture and ill-treatment are forbidden under the International Standards Minimum rules and principles of prisoners rights.⁴⁸ That means the prison officials shall be fully informed and educated about the prohibition of torture and ill-treatment of the prisoners as of their constitutional rights. To that end, any individual who alleges that he or she has been subjected to torture has the right to complain and bring his/her case rapidly to the competent authorities in order to seek immediate remedies.⁴⁹

⁴⁶ . Basic Principles for the Treatment of Prisoners, adopted by General Assembly resolution 45/111 of 14 December 1990, art.10. And see also, supra, footnote, 25. p.168.

⁴⁷ .: A Compilation of International Human Rights Instruments concerning the Administration of Justice (Office of the United Nations High Commissioner for Human Rights (OHCHR), Professional Training Series No. 9/Add.1); and OHCHR, Human Rights: A Compilation of International Instruments, vol. I (2 parts), Universal Instruments (United Nations publication, No. E.02.XIV.4).

⁴⁸ . Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Adopted by General Assembly resolution 39/46 of 10 December 1984, Art, 1, defined the term torture and ill-treatment as: **Torture** is defined as any act by which severe physical or mental pain or suffering is intentionally inflicted on a person, other than that which is inherent in or incidental to lawful sanctions. **Ill-treatment** is defined as other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture.

⁴⁹ .abid

Besides, persons deprived of their liberty shall be held in places which are officially recognized as places of custody or the prison institutions which are recognized and established by a given law.

On the other hand, after admissions of prisoners have been taken place, the prison officials should have to conduct a detailed register of every person deprived of liberty. As soon as the prisoners' admission takes place, all prisoners shall be provided written information about the regulations which are going to apply on their rights and duties. Furthermore, the prison officials have an obligation to facilitate the ways the families, legal representatives and, if appropriate, diplomatic missions of prisoners are to receive full information about the fact of their detention. Therefore, the prison officials have an obligation to provide prisoners an adequate standard of living, including adequate food, drinking water, accommodation, clothing and bedding and the sanitations and personal hygiene of prisoners as well as have a duty to carry out their functions in a manner that respects and protects human dignity of prisoners.⁵⁰

⁵⁰ . Human Rights and Prisons Manual on Human Rights Training for Prison Officials UNITED NATIONS New York and Geneva, 2005, p. 5.⁵⁰ .

55. Jaan Sootak, (2000), theories of Punishment and Reform of Criminal Law (Reforms as a Change of Mentality), p.68-78.

CHAPTER THREE

Prisoners Rights as Constitutive Part of the General Human Rights

Introduction

In the Preceding chapter, we have tried to look at a brief description of the conceptual framework of prison and prisoners' rights. In doing so, we have been discussed all the historical developments of prison institutions, both classical and contemporary roles of prisons institutions and also the concept of punishments and its purpose also discussed.

In this chapter, an attempt will be made to make a discussion regarding the prisoners' right according to international context, Regional context particularly prisoners' right under European, Inter- American and African system and at the last the prisoners' right under Ethiopian Context also discussed.

3.1. Prisoners' Rights in International Context

As discussed above, international human rights law is binding on all States and their agents, including prison institution. Human rights are a legitimate subject under International law and International Conventions. Hence, law enforcement officials are obliged to know, and apply international bills of human rights including prisoners' rights so that all human beings are born free and equal in dignity and rights.⁵¹

Human rights, generally, derived from the inherent dignity of the human person.⁵² For this purpose, all persons deprived of their liberty shall be treated at all times with humanity and with respect for the inherent dignity of the human person with the exception of those rights restricted for their criminal status. This means that, no one shall be subjected to torture or to cruel, treated

51.A Pocketbook of International Human Rights Standards for Prison Officials UNITED NATIONS New York and Geneva, 2005 ,page ,10-14)

⁵² . Human Rights: A Compilation of International Instruments, vol. I. Universal Instruments (United Nations publication, Sales No. E.02. XIV.4).

inhuman or punished contrary to these international human right principles.⁵³ This is because of the fact that, there is no exception concerning the protection of human dignity including the prisoners.

Furthermore, human rights are not the sole matter of the State or its agents rather; they are, also, the matter of both the national and international community, because international human right bills were recognized these rights as endowed and it is naturally given for human being. As such, different nations of our world also recognized these international human rights principle in their constitution and hence, obliged to implement in accordance with these international laws. Thus, prisoners are human person and they have the right to inherent dignity of the human person except the rights limited by law. For this purpose, there are well- established legal principles, i.e., prisoners do not surrender their rights upon incarceration, but save the restrictions that are unavoidable in a prison institution.⁵⁴ This indicates that, prisoners are entitled to enjoy their human rights which are guaranteed under the domestic and international Human Rights laws without any discrimination as to their criminal status. For instance, the Prisoners' health care including measures for the prevention of disease, should be equivalent to that available in the community, i.e., prisoners should benefit at any aspect from the national policy of health. Therefore, prisoners have the right to retain all their personal rights except those proscribed by law and the extent and content of prisoners rights are to be determined by indication not only to the relevant legislation, but also by reference to his inviolable human rights.⁵⁵ This means that, people who are in prison, awaiting trial and sentenced prisoners lose some of their fundamental rights, or have their rights limited, such as the right to freedom of association, freedom of movement and residence, and freedom of trade and occupation. But a person does not lose all of their rights as soon as they are sent to prison. They still have human rights, as set out in different international Minimum Standard Rules, Principles and laws of prisons and prison policy.

Moreover, international human rights instruments protect everyone, including prisoners, against gross violations of their health and the integrity of their person, because people who are in custody are particularly vulnerable, there are specific international standards which protect their

⁵³ . Human Rights and Prisons: A Compilation of International Human Rights Instruments concerning the Administration of Justice (Office of the United Nations High Commissioner for Human Rights (OHCHR), Professional Training Series No. 9/Add.1); and OHCHR

⁵⁴ .abid

⁵⁵ . A Prisoner's legal Rights (1993), p.3.

right to health care.⁵⁶ Accordingly, all prisoners and detained persons have the right to the highest attainable standard of physical and mental health because physical and mental health of human beings is considered as a human right. Hence, Prisoners should have free access to the health services available in the country. For this matter, there is an obligation on the prison system to ensure that to provide fair health services to the prisoners. Thus, health care is a basic right which applies to all human beings. The conditions of health care in prisons affects the living conditions of prisoners and the purpose of the prisons institution that is mainly to rehabilitate and reform the prisoners before their reintegration are taken place as well as it affects prisoners human right.⁵⁷ The state of health, both physical and mental, of any human being affects how he or she lives, works and behaves. This is true in the case of both prison staff and prisoners.

In other word, a person's state of health may affect other people.⁵⁸ Sick people need special care and cannot contribute fully to the society in which they live. This can affect relations with other people. This is particularly the case with mental health problems, which may affect a significant proportion of prisoners. In addition, the other serious problems of the 'diseases' are the transmission from one person to the other. This is particularly true which are prevalent in some prison institutions. HIV/AIDS and tuberculosis are examples of such diseases. Besides to that, the vast majority of prisoners leave prison at some point. Staff in prisons come and go between prisons and the outside world, as do visitors to the prison. This means that, health problems in prisons can become community health problems.⁵⁹ For this purpose, the health matter of prisoners need a great attention from both the government and the prisons officials. To this end, it should be the interest of everyone to maintain the health services in correctional institutions.

That's why, when prison staffs are healthy, they are better able to do their work and also when prisoners are healthy, they are fit for work and better able to cope with imprisonment and their future lives will not be damaged. Thus, in order to achieve the health services of inmates, proper health care should begin at the point of admission to custody. Because it is a basic requirement that prisoner should be given a medical examination as soon as they have been admitted to a

⁵⁶ . Minimum Standard Rules for the Treatments of Prisoners Adopted by the First United Nation Congress on the Prevention of Crime and the treatment of Offenders, held at Geneva in 1955, approved by the Economic and Social councils by its Resolution 663 C (xxIv) of 31 July 1957, and 2076(LXII) of 13 May 1977.

⁵⁷ . International Covenant on Economic, Social and Cultural Rights,1966, Article 12, paragraph 1,

⁵⁸ .abid

⁵⁹ . abid

prison or place of detention. The purpose of screening new prisoners on admission is for the sake of the prisoners' health and not for the benefit of the prison authorities⁶⁰ because prisoners have a right to live in the healthy condition. Accordingly, any necessary medical treatment should then be provided free of charge and when necessary, prisoners should generally have the right to request a second medical opinion.⁶¹

As such, principle 25 of the Body of Principles for the Protection of All Persons under Any Form of Detention provides that:

“A detained or imprisoned person or his counsel shall, subject only to reasonable conditions to ensure security and good order in the place of detention or imprisonment, have the right to request or petition a judicial or other authority for a second medical examination or opinion”.

This indicates that, having deprived a person of his or her liberty, there is an obligation on the State to care for that person. This obligation extends to health care from the moment of his admission to his release. Thus, the first point when prisoners' admission to custody is likely to be a stressful time for prisoners. During this time, the medical staff in the reception area of the prison should care of in re-assuring prisoners that they will be treated in a decent and humane manner and that they will not be abused. Hence, health-care staffs or personnel who work in the reception area of the prison may be the first to obtain information about a prisoner's state of health. If they suspect that a newly admitted prisoner may be mentally abnormal, they have to separate the mentally ill prisoner from the normal prisoners and send him to appropriate places. Because prisoners are, as any human being, guaranteed and have the right to live in a healthy condition and well-being including medical care and necessary social services.⁶² For this reason, Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation, or for their criminal conditions.⁶³

In countries where health care in the population at large is not of a high standard, there must be particular concern about health-care standards in prisons because it is not appropriate to argue that a person in prison is entitled to a lower standard of health care than that provided in the

⁶⁰ . Principle 24 of the 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.

⁶¹ .Rule, 24: SMR for the Treatment of Prisoners, 1977.

⁶² . Universal Declaration of Human Rights,1948, Article 25, paragraph 1; International Covenant on Economic, Social and Cultural Rights, article 12, paragraph 1

⁶³ . Basic Principles for the Treatment of Prisoners, Adopted by General Assembly resolution 45/111 of 14 December 1990, Principle 9 and rule 22 &23 of Standard Minimum Rules for the Treatment of prisoners, 1977.

community. Therefore, prisoners as a citizens, they have the right to enjoy to all human rights except those limited by laws and they should not be ignored the right to medical services.⁶⁴ Accordingly, prisoners have the right to access to a doctor who is handsome and understood by everyone and prisoners have the right to ask to be seen by a doctor as soon as possible. For this reason, there should be close links between prison medical and community medical personnel. Furthermore, a prison health-care service should be able to provide medical treatment and nursing care, appropriate diets, physiotherapy, rehabilitation or any other necessary special facility, in conditions comparable to those enjoyed by patients in the outside community i.e. prisoners should have access to a full range of health-care facilities and that there should be a strong link between healthcare services in prisons and those in the community or nation. Moreover, sick prisoners who cannot be treated in the prison, such as prisoners with mental illness, should be transferred to a civil hospital or specialist prison hospital.⁶⁵ Thus, prisoners who are insane shall not be detained in prisons, but transferred as soon as possible to mental institutions. Prisoners suffering from other mental diseases shall be treated in specialized institutions under medical management, or treated and supervised by prison medical services in proper way⁶⁶ because in many prison institutions, a significant proportion of prisoners are suffered from some mental illness. In such a case, the prison authorities should make every effort to have them transferred to a psychiatric hospital or when they remain in prison they will require special care. For this reason, there should be a close relationship between the prison medical officer and health-care specialists in the community. Besides, it is particularly important in the case of prisoners who are receiving psychiatric treatment that arrangements should be made for their continuing care after they are released. In the first hand, the conditions of the health matter of the prisoners are different from person to person. Some prisoners may need specialist health care which is not available in the prison. In such cases, the prisoners should be transferred to outside to get specialist care. If it is not possible to transfer such prisoners to outside facilities, they must be transferred to a prison with equivalent specialist facilities.⁶⁷ Subsequently, medical personnel (staffs) have a duty to provide prisoners and detainees with health care equal to that is

⁶⁴ . SMR for the treatment of Prisoners, 1977: Art. 22 (1, 2 &3) .

⁶⁵ .abid

⁶⁶ .abid

⁶⁷ . 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 Adopted by General Assembly resolution 37/194 of 18 December 1982.

afforded to the community in general.⁶⁸ The primary responsibility of all health-care personnel in prison institution is to look after the health of all prisoners. Hence, health personnel shall not commit or give their permission for any acts which may adversely affect the health of prisoners. Thus, the primary relationship of the medical officer with the prisoner is that of doctor to patient. This means that, the issues of medical confidentiality between doctor and patient must be respected. For this purpose, the medical officer must be particularly careful not to be involved in any way in the disciplining or punishment of prisoners or in restraining a prisoner for any reason other than a medical one.⁶⁹

Furthermore, prisoners and detained individuals have the right to an adequate standard of living and appropriate conditions of detentions.⁷⁰ Hence, all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person i.e. all prisoners have the right to an adequate standard of living, including adequate food, drinking water, accommodation, clothing and bedding. Therefore, as we have discussed above, all prisoners have the right to an appropriate conditions of living concerning their health and well-being including food, clothing, housing and medical care and necessary social services, and the right to security in the event of lack of livelihood in circumstances beyond his control. Hence, every prisoner or those persons deprived of their liberty shall be treated with humane and with respect for the inherent dignity of the human person.⁷¹ Thus, without any discrimination, every person including prisoners have the right to a moderate standard of living for himself and his family, and to the continuous improvement of living conditions⁷² as well as they have the

⁶⁸. Abid: principle, 2.

⁶⁹. abid: Principle 4, it is a contravention of medical ethics for health personnel, particularly physicians:

(a) To apply their knowledge and skills in order to assist in the interrogation of prisoners and detainees in a manner that may adversely affect the physical or mental health or condition of such prisoners or detainees and which is not in accordance with the relevant international instruments;

(b) To certify, or to participate in the certification of, the fitness of prisoners or detainees for any form of treatment or punishment that may adversely affect their physical or mental health and which is not in accordance with the relevant international instruments, or to participate in any way in the infliction of any such treatment or punishment which is not in accordance with the relevant international instruments.

⁷⁰. A manual on Right to an adequate standard of living, (p.45-50)

⁷¹. International Covenant on Civil and Political Rights Adopted by General Assembly resolution 2200 A (XXI) of 16 December 1966. The Covenant entered into force on 23 March 1976, Article 10.

⁷². International Covenant on Economic, Social and Cultural Rights, adopted by General Assembly resolution 2200 A (XXI) of 16 December 1966. The Covenant entered into force on 3 January 1976, Article 11.

fundamental right of everyone to be free from hunger.⁷³ As it was noticed above, child⁷⁴ in any condition has also the right to live in appropriate life as to their physical, mental, spiritual, moral and social development.⁷⁵ This implies that, the deprivation of adequate food, water, clothing and proper accommodation can often result in ill-treatment of prisoners which may amount to “torture”⁷⁶ in several cases. So, it is important to realize that physical infliction or torture or other cruel, inhuman or degrading treatment of the prisoner is not only violating the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment but also it violates the right to life of the prisoner.

On the other hand, accommodation is one of the component rights of prisoners. Concerning the accommodation of prisoners, a number of international instruments set different basic standards. The United Nations SMR make it clear that, prisoners should have enough space to live in, with access to enough air and light to remain healthy. Accommodation for prisoners shall provide adequate fresh air, floor space, lighting, heating and ventilation.⁷⁷ Hence, prisoners required to share sleeping accommodation shall be carefully selected and supervised at night, so that the arrangements of accommodations for prisoners are the reflection of the protection of the right of the person deprived of his liberty. Thus, an 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 fresh air, minimum floor space, lighting, heating and ventilation also should be taken in to consideration.⁷⁸ In addition, a place where prisoners are required to live or work; 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; or artificial light shall be provided sufficient

⁷³.ibid, article 11, paragraph 2,

⁷⁴ . For the purposes of the Convention on the Rights of the Child, (1989), Art. 1, provides that a **child means** every human being below the age of 18 years unless, under the law applicable to the child.

⁷⁵ Article 27 of the Convention on the Rights of the Child, adopted by General Assembly resolution 44/25 of 20 November 1989. The Convention entered into force on 2 September 1990. It has been ratified or accepted by all Member States of the United Nations, as well as by the Holy See (Permanent Observer).

⁷⁶ . Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984,art.1.provides that; the term “**torture**” means 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 only from, inherent in or incidental to lawful sanctions.

⁷⁷ . see SMR: art.9.

⁷⁸ .SMR: rule.10.

for the prisoners to read or work without injury to eyesight. Thus, to implement the minimum standard rule which adopted by the United Nation in 1957, the higher authority or the medical officer of the institution or prison shall regularly inspect and advise the sanitation, heating, lighting and ventilation of the institution.

On the other hand, in prisons institution, overcrowding is one of the serious problems in many prisons. In some countries two or three prisoners live in cells which were originally built for one person while in other large numbers of prisoners are overcrowded into small dormitories, sometimes with an insufficient number of beds or with no proper bedding. Where prisoners are kept in such overcrowded conditions, there may be a danger of violence and they may be exposed to different types of diseases.⁷⁹ Where prisoners are locked up for most of the day with nothing to do or without staying out of their room and no privacy, it is likely that they will turn on each other as a means of relieving tension or breaking monotony. These in turn cause a danger of sexual as well as physical abuse.⁸⁰ Hence, where overcrowding exists, there will also be a real danger of illness and the spread of disease. In such a case, in many prisons, for example, tuberculosis, sexually transmitted diseases; e.g. HIV/AIDS seriously threaten the healths of the prisoners. Such living conditions have serious implications and can amount to inhuman, degrading or other ill-treatment in violation of international standards of minimum rule of prisoners.⁸¹ To recognize this particular prisoner rights, adequate temperature and heating are extremely important in ensuring acceptable living conditions. In this regard, all cells should be adequately heated to provide comfortable room temperatures and to cope with wintry conditions, and well ventilated so as to contribute preventing disease and ensuring a healthy environment for prisoners.

The other important right of prisoners is the provision of food to them. The right to food is a comprehensive right. It is not simply a right to a minimum ration of calories, proteins and other specific nutrients.⁸² It is a right to all nutritional elements that a person needs to live a healthy and active life, and to the means to access them. Similarly, the right to adequate food is realized when every man, woman and child, alone or in community with others, has accessed at all times

⁷⁹ . The handbook of Water, Sanitation, Hygiene and Habitat in Prisons, International Committee of the Red Cross (ICRC), Geneva, Switzerland,. April 2012, p. 32.

⁸⁰.abid

⁸¹ .abid.p.44.

⁸² .The right to adequate food of prisoners; the United Nation of Human Rights of Office of the High Commissioner for Human Rights, Fact Sheet No.34, Geneva, Switzerland, 2012, p.2.

to adequate food or means for its procurement irrespective of where and under the condition they live.⁸³ As a result, prisoners have the right to regular, permanent and free access to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of the people to which the consumer belongs, and which ensures a physical and mental, individual and collective, fulfilling and dignified life free of fear, to that end the prisoners shall be free from hunger. In nature, Human Rights are interdependent, indivisible and interrelated. That's why; violating the right to food may impair the enjoyment of other human rights, such as the right to health, life, and vice versa. Hence, what the prisoners feed should be adequate; it means that, the food must satisfy dietary needs, and taking into account the individual's age, living conditions, health, occupation, sex, etc.⁸⁴ Food that is energy-dense and low-nutrient, which can contribute to obesity and other illnesses, it could be another example of inadequate food. Thus, food should be safe for human consumption and free from adverse substances, such as contaminants from industrial or agricultural processes, including residues from pesticides, hormones or veterinary drugs. And also, adequate food should be culturally acceptable.⁸⁵ For example, aid containing food that is religious or cultural taboo for the recipients or inconsistent with their eating habits would not be culturally acceptable.

Moreover, prisoners have the right to regular access to drinking water⁸⁶ so as adequate food and drinking water are human rights. Strictly speaking, prisoners have the right to nutritious and adequate food at the usual hours, with drinking water available whenever needed. Then, the higher institution of prisons shall be ensured the right to adequate food and water as a component right of prisoners to an adequate standard of living. The states should have to recognize such fundamental right of prisoners to be free from the tension of hunger. In addition, the right to adequate food shall therefore not be interpreted in a narrow or restrictive sense which equates it with a minimum package of calories, proteins and other specific nutrients.⁸⁷ It means that, the core content of the right to adequate food implies that the availability of food in a quantity and quality sufficient to satisfy, at the same time, the dietary needs of individuals, free from unfavorable substances, and acceptable within a given culture; and the accessibility of such food

⁸³ . See OHCHR Fact Sheet No. 16 (Rev.1): The Committee on Economic, Social and Cultural Rights.

⁸⁴ .abid: p. 3.

⁸⁵ . abid

⁸⁶ .Human Rights and Prisons, the right to adequate food and drinking water, United Nations, New York and Geneva, modified 24 /11/2013, p. 52-53.

⁸⁷ . The Committee on Economic, Social and Cultural Rights in its General Comment No. 12 (1999)

in any ways that are sustainable and that do not interfere with the enjoyment of other human rights.⁸⁸

However, Violations of the prisoners' right to adequate food occur when a State fails to ensure the satisfaction of, at the very least, the minimum essential level required. In determining which actions or omissions amount to a violation of the right to food, it is important to distinguish the inability from the unwillingness of a State party to comply with the prisoners' right to adequate food and drinking water.⁸⁹

Therefore, as it was pointed out above, the right to food has stressed the inclusion of the right to adequate drinking water as part of the definition of the right to adequate food.⁹⁰ Hence, drinking water is essential for healthy nutrition, so that it should be considered as prisoners rights. Because of both the quality and the quantity of water and food available are fundamental human rights of prisoners.⁹¹ Setting standards for water quality is extremely important, as is ensuring equitable access to water resources to protect social justice. Drinking water also includes the right to food so as it is an important way of ensuring such accountability and justifiability. It should be noted that, modern legal opinion holds that reduction of diet equates with corporal punishment and constitutes inhuman punishment.⁹²

Moreover, the manner in which food is prepared and served is important to ensuring the right to adequate food and clean water because for the health of prisoners there should be proper sanitary conditions in prison kitchens and good ventilation in order to prevent infestation and to maintain culinary hygiene.

The other fundamental rights of prisoners are the right to clothing and bedding. It is an important both for the general health of everyone in prison and for the self-respect of the prisoners in order to have clean and adequate clothing and bedding.⁹³ Clothing, as a constituent right to an adequate standard of living, is a human right. As such, when prisoners not allowed wearing their own clothing, it should be provided with suitable clothing which fit the local conditions. Thus, all prisoners shall be provided with a separate bed and clean bedding, with facilities for keeping

⁸⁸ . Official Records of the Economic and Social Council, 2000, Supplement No. 2 and corrigendum (E/2000/22 and Corr.1), annex V.

⁸⁹ SMR for the Treatment of Prisoners, Rule 20(1&2)

⁹⁰ See the Report of the Special Rapporteur on Human Rights to the Commission at its fifty-eighth Session, in 2002.

⁹¹ .abid

⁹² .abid

⁹³ . Human rights and Prisons: prisoners' right to clothing and bedding, United Nations, New York and Geneva, Modified, 2013, p.56-57.

bedding clean. The prison(s) must facilitate the conditions to wash and dry clothing and bedding regularly so as the right to clothing and bedding of prisoners are the implication of an adequate standard of living which are recognized in international instruments.⁹⁴

Moreover, the United Nation SMR for the Treatment of Prisoners provides that: 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 prisoner's personality.⁹⁵ Hence, 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. To this end, the higher authority of the institution and the medical officer shall regularly inspect and advise the personnel upon the suitability and cleanliness of the prisoners' clothing, bed and bedding.⁹⁶

However, regarding the wearing of the prisoners, different experiences have been conducted in countries. In some countries, pre-trial prisoners are allowed to wear their own clothes and convicted prisoners are required to wear prison clothing while in some countries, all prisoners are required to wear prison clothing. In other countries, all prisoners with the exception of those in the highest security category are allowed to wear their own clothes.⁹⁷ Therefore; whatever the arrangement has done by the institutions (prisons), as much as possible prisoners should have kept clean personal clothing and the facilities should exist within or outside the prison for washing and drying prison clothes. In addition, the nature of the bed and bedding may vary according to local traditions. What is provided in prisons should be similar to what is used in the community.⁹⁸

As it has been discussed above, persons who are deprived his liberty have human right except those limited by law and his personal hygiene is one components of his dignity. So that, the installations and washing and bathing facilities in prisons and other places of detention are the basic rights of prisoners.⁹⁹ Accordingly, all prisoners shall be provided with facilities to meet the

⁹⁴ .ICESCR: art.11 (2), paragraph, 2.

⁹⁵ .SMR: rule, 17(2).

⁹⁶ .abid, rule,17(1(d))

⁹⁷ Supra footnote. 88, Human rights and prison, p.57

⁹⁸ .abid

⁹⁹ . Human rights and Prisons, the Prisoners' rights of hygiene, United Nations, New York and Geneva, modified, 24/11/2013,page.76-77.

needs of nature in a clean and decent manner and to maintain adequately their own cleanliness and good appearance because personal cleanliness has a great role for the protection of prisoners' physical and mental health.¹⁰⁰The prison institution should provide sanitary installation and adequate bathing and shower to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner as well as at a temperature suitable to the climate, as frequently as necessary for general hygiene according to season and geographical region. For this purpose, the prison institution and the medical officer shall be taken in to considerations about the hygiene and cleanliness of the institution and the prisoners.¹⁰¹

Therefore, what we understand from the prisons activities are, in many prisons large groups of people lived close together for long periods of time. This is particularly true of prisons where there is dormitory accommodation holding a large number of prisoners. Hence, this kind of living seriously affects the health's condition as well as personal dignity. So that prisoners have the right to attend their most basic bodily functions with a proper degree of privacy and also that special attention should be paid to the requirements of personal hygiene. Thus, Prisoners carrying out work which makes them dirty and those preparing or serving food should be given the opportunity to wash more regularly.

The other important functions of the prison officials are the administrations of the internal discipline. For different reasons, some prisoners may be refused to observe the legitimate rules and regulations of the prison. When this disobedience happened, there has to be a formal disciplinary procedure to establish guilt and impose appropriate punishment up on such prisoner(s).¹⁰² The objective of the disciplinary punishment is to respect the rules and regulations of the prison and make them a law abiding citizens. For its implementations, all disciplinary offences and punishments must be specified by law or by published legal regulations unless otherwise, it violates the prisoners' human right which recognized under the International Human Rights Instruments. For such reasons, no prisoner(s) shall be punished before being informed of the alleged offence and before being given the opportunity to present a proper defense.¹⁰³The prisoners are also not punished unless in accordance with the terms of such law or

¹⁰⁰ .ICESCR,art.12(12),paragraph,1, see also, SMR,rule,12,13,14,15 and 16.

¹⁰¹ . SMR rule 26(1(B)).

¹⁰² . Human Rights and Prisons: the discipline and punishment of prisoners, United Nations, New York and Geneva, 2013, p.91-93.

¹⁰³ .United Nation,SMR,art.30(2)

regulation, and when punishment conducted, the concerned organ take in to consideration not to punish the prisoners twice for the same offence. Particularly, placing the prisoner in a dark cell, reduction of diet and any other punishment that may be prejudicial to the physical or mental health of a prisoner are strictly prohibited.¹⁰⁴ Additionally, instruments of restraint, such as handcuffs, chains, irons and straitjackets, shall never be applied as a punishment or disciplinary measure. When the punishments are imposed, prisoners who are subject to disciplinary action should have the right to appeal to a higher authority and the competent authority shall conduct a thorough examination of the case and such organ shall have to review the case.

Concerning the rules and regulations that applied to the prisoners while they are serving their sentences, it is important that prisoners be made aware of all the rules and regulations which affect them in prison when they commits a prison discipline. In addition, their cases should be heard under a set of procedures which have been publicized in advance. Later, if they found guilty, the prisoner may be subjected to a range of punishments which will be laid down in the same procedures. These rights of prisoners are recognized as the prisoners' rights to make complaints to the competent organ. The objective of this right is to underline those complaints procedures must be drawn up in such a way that they can be understood and accepted both by prisoners and by those responsible for the administration of prisons.¹⁰⁵ When the prisoner(s) rights or freedoms have been violated, s/he or they has/have the right to an effective remedy and determined by a competent court. Then, every prisoner shall have the right to make a complaint regarding his or her treatment and, unless the complaint is clearly frivolous, to have it dealt with punctually.¹⁰⁶ If necessary, the complaint may be lodged on behalf of the prisoner by his or her legal representative or family. At first hand, relating to the disciplinary matter in the prison, the prison institution have a duty to make an awareness during the admission of the prisoner with written information on rules and on complaints and disciplinary procedures in a language which

¹⁰⁴ .see,SMR,art.28,29,30,31 and 32; ICCPR,art.8,paragraph,3; Basic Principles for the Treatment of Prisoners Adopted by General Assembly resolution 45/111 of 14 December 1990. Principle 7 and 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, Adopted by General Assembly resolution 37/194 of 18 December 1982, Principle 3; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Adopted by General Assembly resolution 39/46 of 10 December 1984. The Convention entered into force on 26 June 1987.

See also,SMR,art.30(2) & art.33; 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. Principle 30, paragraph 2 ,¹⁰⁵ . Human rights Prisons, the prisoners' right to make complaints and inspection procedures, United Nations, New York and Geneva, modified, 24/11/2013,p.127-133.

¹⁰⁶ .abid: p.127.

he or she understands and when it is necessary, these regulations should be explained orally.¹⁰⁷ Unfortunately or fortunately, if a complaint is rejected or not responded to in a timely manner, the complainant shall be entitled to bring it before a judicial or other authority which established by law.¹⁰⁸ That's why; the prisoner shall have the opportunity to talk to the inspector or to the director or other members of the staff being present. Thus, every prisoner shall be allowed to make a request or complaint, without censorship as to matter but in proper form, to the central prison administration, the judicial authority or other proper authorities should approve through their channels.

Therefore, all prison systems should be administered in a manner which is fair and just, and which is seen to be so. One way of ensuring this is that, there should be a clearly defined set of procedures which allow a prisoner to make a request or complaint, or to bring a grievance, without fear of reprisal or any other contrary conditions. The procedures for dealing with these issues must be drawn up in such a way that they can be understood and accepted both by prisoners and by those who are responsible for the administration of prisons. As such, any system of complaints and redress for grievances must be based on the principles of fairness and justice because dealing with requests, complaint and grievances should include certain characteristics; such as accessibility, credibility, openness, reasonableness, objectivity, sensitivity, flexibility, efficiency and speed.¹⁰⁹ Thus, prisoner(s) has/have the right to bring complaint when his/her/their recognized rights are violated regarding to the criminal behavior, civil right or when civilly damaged, content of decisions and against disciplinary findings.

¹⁰⁷ .abid; p.128.

¹⁰⁸ .ICCPR,art.3(a-c) states that: a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; (c) To ensure that the competent authorities shall enforce such remedies when granted; Article 13 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Art. 13 &16,paragraph,1; Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, principle 33 (1-4); Standard Minimum Rules for the Treatment of Prisoners, rule 35 and rule 36(1-4)

¹⁰⁹ .abid

3.2. Prisoners' Rights in Regional Context

In our world, different regions were proclaimed laws and principles of the prisoners' right based on the global standard which produced by the United Nations. In order to foster the aware of both the national and regional relating to the prisoner right, different laws, principles and trainings were conducted based as a universal applicability by different regions of our world.¹¹⁰ Accordingly, regional prisoners' right instruments and arrangements were recognized in Europe, in Americas and Africa however no such arrangements exist yet for the Asian region.

3.2.1. The prisoners' Right under the European system

Under the European system, the protection of human rights in general and prisoners' rights protection in particular recognized in different human right instruments of the Region. As such, the main human rights instrument in the European Region is the Convention for the Protection of Human Rights and Fundamental Freedoms, generally referred to as the European Convention on Human Rights.¹¹¹ The organs of the European system relevant to the European Convention and its Protocols are the European Court of Human Rights and the Committee of Ministers of the Council of Europe. These organs empowered to inspect and to supervise the proper implementations of the convention and other Regional human right bills. The Court is a judicial body which receives complaints from Contracting States or individual that claim victims of a violation of the Convention. After receiving the complaints, decides on cases, and issues binding decisions and gives advisory opinions on legal questions concerning the interpretation of the Convention or of its Protocols. While the Committee of Ministers is a political body whose members are appointed by member States of the Council of Europe.¹¹² The Committee has a particular mandate to supervise the implementation of judgments of the Court, issues resolutions requiring States to take necessary action in that regard, and can suspend or expel a State from the Council of Europe.

¹¹⁰ .Human rights and prisons, Manual on Human Rights Training for Prison Officials and its sources, system and standards at the Regional level, United Nations, New York and Geneva, 2005,page 34-37

¹¹¹ . The Convention for the Protection of Human Rights and Fundamental Freedoms of European Region, (generally referred to as the European Convention on Human Rights); which entered into force in September 1953. Subsequently, several related Protocols have been adopted.

¹¹² .abid

In addition, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment is the other basic instruments in protection of prisoners' right.¹¹³ This Convention established the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), whose function is to visit any place within the jurisdiction of States parties, both periodically and on an ad hoc basis, where persons are deprived of their liberty by a public authority, including police stations, prisons, psychiatric institutions and holding centers for asylum seekers and other categories of foreigners.¹¹⁴ In the course of these visits, the Committee examines the treatment of persons deprived of their liberty with a view to strengthening, if necessary, the protection of such persons from torture and from inhuman or ill- treatment or unlawful punishment. After such visit, the Committee prepares a report on its findings which may include recommendations and other advice to create a dialogue with the State concerned.¹¹⁵ Moreover, in order to protect the health right of prisoners, the European Committee for the Prevention of Torture has recommended that every newly arrived prisoner should be properly interviewed and physically examined by a medical doctor as soon as possible after his admission however without violating the consent of the prisoners but the examination and interviews are only for recognizing the health condition of the prisoners in general. Such medical screening on admission could also be performed by a fully qualified nurse reporting to a doctor. Thus, the committee concludes that the prison authorities are responsible for making special arrangements to deal with prisoners who are found to be suffering from contagious or infectious diseases.

Hence, both the prison authority and the prison staff have a duty to protect the prisoners from suicide or self-harm themselves. Moreover, prisoners thought to be at risk may be referred to a counselor, placed in a cell with another carefully selected prisoner or observed by staff at frequent intervals for their protection during the imprisonment. Thus, the European

¹¹³ . European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment; adopted by the Council of Europe on 26 November 1987. The Convention entered into force on 1 February 1989.

¹¹⁴ .abid: art.1.

¹¹⁵ .abid,art.10(1&2) states that:

1) After each visit, the Committee shall draw up a report on the facts found during the visit, taking account of any observations which may have been submitted by the Party concerned. It shall transmit to the latter its report containing any recommendations it considers necessary. The Committee may consult with the Party with a view to suggesting, if necessary, improvements in the protection of persons deprived of their liberty.

2) If the Party fails to cooperate or refuses to improve the situation in the light of the Committee's recommendations, the Committee may decide, after the Party has had an opportunity to make known its views, by a majority of two thirds of its members to make a public statement on the matter.

Committee¹¹⁶ for the Prevention of Torture suggests that long-term imprisonment can have a number of dissocializing effects on inmates. Consequently, long-term prisoners become institutionalized, experience a range of psychological problems and have a tendency to become detached from society to which almost all of them will return. As a result, prisoners in the Region are properly handled because the Committee for the prevention of torture is effectively inspect and supervise the prison institution and report the same for its implementation. At the end, the Committee can take any reasonable measure when the State party failed to come up with the prisoners' rights recognized in the conventions.

3.2.2. The Prisoners' Right under Inter-American System (under the Organization of American States)

The Organization of American States is the other Region that also owned different human rights instruments and conventions for the protection prisoners' rights in their jurisdiction. Human rights at the Regional level for the Americas are governed mainly by the American Convention on Human Rights.¹¹⁷ The Convention created the Inter-American Court of Human Rights and defines its functions and procedures accordingly. In addition, it defines most of the functions and powers of the Inter-American Commission on Human Rights (IACHR).As such, both IACHR and individual States may bring cases before the Inter-American Court where their recognized rights are violated.

The Inter-American Court of Human Rights performs three main functions: deciding contentious cases, adopting provisional measures and issuing advisory opinions. As it has been discussed above, both States and IACHR may bring cases before the Court on all matters relating to the interpretation and application of the American Convention and other regional human rights treaties which formally recognized the competence of the Court in that regard. In order for the Court's decision to be binding, a State party to the American Convention must make a formal declaration accepting the Court's jurisdiction either unconditionally, on the condition of reciprocity, for a specified period or for specific cases. Decisions made by the Court are final and

¹¹⁶ .See, The European Convention for prevention of torture, art.1 there shall be established a European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter referred to as "the Committee"). The Committee shall, by means of visits, examine the treatment of persons deprived of their liberty with a view to strengthening, if necessary, the protection of such persons from torture and from inhuman or degrading treatment or punishment.

¹¹⁷ . The American Convention on Human Rights, which entered into force in July 1978.

not subject to appeal. Moreover, member States and competent organs of the Organization of American States (OAS) may consult with the Court in order to interpret the American Convention or other treaties formally recognizing the competence of the Court.

In addition, IACHR, among other things, receives, analyses and investigates individual petitions alleging human rights violations; monitors the general human rights situation in the member States of OAS and publishes special reports, when it considers it appropriate, on the situation in specific States; visits countries to engage in more in-depth analysis of the general situation and/or to investigate a specific situation; recommends to member States the adoption of measures which would contribute to human rights protection; and requests advisory opinions from the Inter- American Court regarding questions of interpretation of the American human Right Convention.

Furthermore, in addition to ensure and guaranty the prisoners' right, three additional treaties were adopted in the American systems or under the organization of American States that are particularly relevant to those persons deprived of their liberty: they are the Inter-American Convention to Prevent and Punish Torture (1985); the Inter-American Convention on the Forced Disappearance of Persons (1996); and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (1994) or ("Convention of Belem do Para").¹¹⁸ Hence, neither the dangerous character of the detainee or prisoner, nor the lack of security of the prison establishment or penitentiary shall justify torture.¹¹⁹ According to this convention ,the prisons authority have an obligation to oversight the prisoners living standard conditions regularly and seriously give an attention to prisoners' right not to be tortured and proper handling of prisoners.¹²⁰

¹¹⁸ . Inter-American Convention to Prevent Punish and Torture, Adopted by the Organization of American States on 9 December 1985. The Convention entered into force on 28 February 1987;

. Inter-American Convention on the Forced Disappearance of Persons Adopted by the Organization of American States on 9 June 1994. The Convention entered into force on 28 March 1996; and Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women ("Convention of Belem do Para") Adopted by the Organization of American States on 9 June 1994. The Convention entered into force on 5 March 1995.

¹¹⁹ . Inter-American Convention to Prevent and Punish Torture, Adopted by the Organization of American States on 9 December 1985, art.5, paragraph 2.

¹²⁰ . *abid*: art, 2, paragraph.1. defines the term "torture" as, for the purposes of this Convention, torture shall be understood to be any act intentionally performed whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation, as a means of intimidation, as personal punishment, as a preventive measure, as a penalty, or for any other purpose. Torture shall also be understood to be the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental.

3.2.3. The Prisoners' Right under the African system (or under the African Union)

The African Charter on Human and People's Rights followed the principles of the European and Inter-American systems by creating a regional human rights system for Africa. The African Charter on Human and Peoples' Rights was adopted followed by the Organization of African Unity (OAU) in 1981 and entered into force in October 1986. Under the Charter, the African Commission on Human and Peoples' Rights was established to promote and protect human rights in Africa.¹²¹ The Commission also interprets provisions of the Charter and is empowered to receive complaints of human rights violations from States, individuals and groups. On the basis of such complaints, the Commission may seek an amicable solution, initiate studies and make recommendations concerning the violations of human rights including prisoners' right.

Accordingly, in 1997 the African Commission on Human and Peoples' Rights appointed a Special Rapporteur on Prisons and Conditions of Detention in Africa to assess the handling of prisoners and prison conditions. Thus, the Special Rapporteur empowered to visit prisons institutions, different police stations and gendarmerie cells, or any other place where people are imprisoned or detained in various African countries in order to obtain information. As it was provided under article 46 of the Charter, the Commission has the power to use any appropriate method of investigation in order to verify the allegation of human rights abuses. Where the Commission finds that violations have occurred, it makes recommendations to the State(s) concerned; to ensure that the occurrences are investigated, comment that the victim(s) should be compensated (if necessary) and that measures are taken to prevent the recurrence of the violations. Additionally, in order to uphold the rights of prisoners, the Charter recognized most of what are regarded universally accepted civil and political rights. The civil and political rights recognized in the Charter include the right to freedom from discrimination (Article 2 and 18(3)), equality (Article 3), life and personal integrity (Article 4), dignity (Article 5), and freedom from cruel, inhuman or degrading treatment or punishment (Article 5).

Concerning the inspections and supervisions of prisoners' rights protections, the Special Rapporteur mandated to do so. Thus, after completes his/her visits, prepares a report on the visit

¹²¹ . The African commission was established in 1987, the year after the African charter entered into force. The eleven members of the African commission, the commissioners, are elected by secret ballot by the OAU assembly of heads of state and government from a list nominated by states parties to the African charter.

and submit it to the Government concerned.¹²² And pertaining to the recommendation given, the concerned Government is invited to make comments and to describe the measures taken to deal with the recommendations of the Special Rapporteur. The reports of the Special Rapporteur and Governments' comments are published by the African Union.

In addition, the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of African Court on Human and Peoples' Rights was adopted in 1998. Although the Court is not yet in operation, it is important to understand some of its functions. The Court may entitle relevant nongovernmental organizations with observer status before the African Commission on Human and Peoples' Rights, and individuals, to introduce cases directly before it, in accordance with article 34 of the Protocol. States parties must first have made a declaration, however, accepting the jurisdiction of the Court to receive individual cases concerning them. Furthermore, the Court will complement the mandate of the Commission.

Finally, the African Commission adopted the Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (The Robben Island Guidelines).¹²³ These Guidelines state in clear and concrete terms the measures that are recommended to African States and other actors in order to prevent torture and ill-treatment. And also, the Guidelines encourage States to cooperate with the African Commission's Special Rapporteurs on prisons and conditions of detention in Africa; as well as with the United Nations human rights treaties or conventions. Hence, art. 34 of the guidelines states that, concerning the prisoners right, a member States have an obligation to take steps to improve conditions in places of detention which do not consistence with international standards. Even though different human rights and conventions are defining all the rights of prisoners in Africa, still there are many problems on its implementation when it compared with that of the European and Organization of American States. Hence, even if the Special Rapporteurs are established to visit the conditions of prisons and the treatments of prisoners in State Parties to the African Union, visiting is not in a position to bring result for the protections of prisoners' rights in the Region. For this reason, though the recommendations are made concerning the ill-treatments of prisoners' rights, the African Court on Human and Peoples' Right still not on

¹²² .abid

¹²³ . Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (The Robben Island Guidelines) ,adopted by the African Commission on Human and Peoples' Rights at its thirty-second ordinary session, 17-23 October 2002.

functioning or not yet in operation. So, there is no a functional organ that inspect, supervise and implement the rights of person deprived their liberty in Africa. Unlikely, in Europe, the Committee mandated, by the European Human rights Convention to inspect, supervise and implement all prisoners' rights that recognized in the convention and other human rights in the Region. This Committee also has a power to take necessary measures on the Member State when they failed to realize the prisoners' rights in line with the conventions.

3.3. Prisoners' Rights under Ethiopian Context

3.3.1. The prison and prisoner Right in Pre 1991 Ethiopia

Ethiopia has no a long history concerning the establishment of prison in the country. Before the country was unified and up to the modern prison institution was established in Ethiopia, different ethnic group of the country used the traditional method of punishment.

“Especially, in Oromo culture, ‘Gumma’ was well known through the ‘Gada’ system. By this system, after taken in to considerations a concrete procedure, the local known elders called the wrongdoer and the victims’ family to arbitrate them. Through the mediators (Aba Gada), they brought all things to negotiation and at the end, they decided to the wrongdoer to compensate the victim (s) either by giving cattle or paying money. However, if the wrongdoer refused the decision of the elders, the communities in which the wrongdoers live render other decision called ‘tuma’. So, when the ‘Tuma’ decided upon the wrongdoer, he could not buy and sell anything even to/from the market, he excluded from the social life and interactions evenly”.

Hence, until the modern prison institution was formed in Ethiopia, a number of traditional ways was used in order to regulate their social security, peace and order.

Similarly, under the Ethiopian Customary Laws, there was also other system by which the murderer or offender who commits homicide or causes any criminal act was punished. According to this customary law, when the person commit homicide or caused injure on other person, he was sentenced to pay a blood compensation for the family/ families according to the then judges ordered either in cash or in kind, i.e., the blood compensations may be money, gold, silver, or cattle. When the blood compensation is money, the offender was not paying the

compensation from his pocket rather he begs from his relatives, local community, from market and begging from house to house of the given community. The amount paid by the offender often decided by local elders but for whatever reason not less than 80 birr. But when the compensation was cattle, it was not less than 50 cattle. At the end, when the blood compensation paid, the elders called the offenders and the victims' families/ family in order to bring ever last peace between them and the oath conducted between them in order to recognize not to revenge one another in the future. At the end, in order to recognize this resolution, the elders tied them by creating contract of marriage between them.¹²⁴

On the other hand, the “modern Prison” was for the first time built before the Italians invaded the country.¹²⁵ Similarly, when we look into the modern history of prisoners in Ethiopia summarily, the prison problem and the harsh treatment of prisoners continued up to the time of emperor Haileselesie, though it did not terminate there.¹²⁶

And hence, historically, the modern Ethiopian prison system was created on a proper and country wide by the proclamation No.45.of 1944¹²⁷; under this proclamation, the ministry of Interior was empowered to declare thorough a legal notice, any building or premise as a prison and appoint officers and wardens of the institution. In addition to the proclamation, Subsequent amendment of prisons administration was done under the sponsorship of the Ministry of Interior of that time.¹²⁸

Subsequently, in 1956, prison regulation was enacted by then council of Ministers pursuant to art.13 of proclamation 45/1944.¹²⁹ The main object of this rule was, to be effectively implemented of the proclamation on prisons. Moreover, this rule and regulation were proclaimed particularly to apply and to govern both the prisoners and prison administrators. To this end, art. 13 of proclamation No.45of 1944, the Ministry of Interior was empowered to make rules and regulations regarding the duties of prison officers and other persons employed, the health and sanitations of prisons, the safe custody and treatment of prisoners etc. and generally issue

¹²⁴ .Fewtarary, Dr. kebede Hailemariam, (2003 E.C): the customary laws of Ethiopia, p.70. The book was written in Amharic and it has been interpreted by the writer.

¹²⁵ .Mergery Perham, (1969): the government of Ethiopia, (London, feber and Faberlimited,) p.194.

¹²⁶ .Kasahun Bogale, (1993): the rights of prisoners in Ethiopia with specific Reference to A.A. Central Prison, (A.A.U., Law Fculty Unpublished), p.17.

¹²⁷ .The prison proclamation No.45.of 1944, Negarit Gazetta, 20th year No 15.

¹²⁸ .see Kasahun Bogale, (1993): p.17.

¹²⁹ .see: The 1956 Ethiopian prison Regulation.

regulations and standing orders and directives as are necessary for the effective administration of the proclamation and for the good management and administration of prisons and safe custody of the prisoner.¹³⁰

However, there were no any basic changes after Ethiopia having started to own her first written constitution regarding the protection of human rights in general and prisoners right in particular.¹³¹ Under this constitution, no specific provision was written as to the disposition and treatment of prisoners. With a little difference, the 1955 Revised Constitution was provided some constitutional safeguards to protect the rights of all citizens including prisoners.¹³² Thus, in this constitution, citizens including prisoners are guaranteed equal protection of the laws and punishment is personal and a prisoner shall not be punished except in accordance with the law and after conviction of an offense committed by him. And also, prisoner had a right not to be subjected to cruel and inhuman punishment.¹³³

In the same fashion, when we look in to the Constitution of the 1987, it included the provisions (art.35-58) relating specifically to human rights and fundamental freedoms; but they had remained dead phrases, i.e., it was not implemented in to practices but it was simply written on the paper. Moreover, there was no any mentioned provision in respect to the specific rights of prisoners among these provisions of the said Constitution, and the practice on the treatment of prisoners of Ethiopia at that time were horrible and contrary to the International Bill of Human Rights and in turn International Human Rights had not got recognition in Ethiopia at that time.¹³⁴

Generally, the conditions of prison of the previous regimes from what has been elaborated so far that prisons in the country couldn't give respect to the natural right of human beings and their dignity; the prisons institution completely didn't intended to rehabilitate, educate and making them a cultured part of the society rather the act of inhumanity was a practical one.

On the other hand, in Ethiopia, within the three (3) previous constitutions, other laws were also proclaimed. For instance, the 1957 of penal code and the 1961 of criminal procedure code (still functional) of Ethiopia could be mentioned. However, the 1957 of the Ethiopian penal code

¹³⁰ .see.proclmn.no.45/1944.

¹³¹ . See: the 1931.Ethiopian Constitution.

¹³² .see: the 1955 Revised Constitution of Ethiopia.

¹³³ .Ibid: Art.37, 54 and 57.

¹³⁴ .see.chapter, 3 of the thesis about the prisoners right under the sub-topic of international laws.

contains no definition of ‘punishment’ as such. It only provided for the punishments that are to be imposed on criminal offenders. Besides, there was no specific article dealing with the purpose or objective of punishment. However, article 1 of the Code stated that the object and the purpose of the penal system as: “The purpose of criminal law is to ensure order, peace, and the security of the state and its inhabitants for the public good”. Thus, it aims at the prevention of offences by giving due notice of the offences and penalties prescribed by laws. In fact, the Code provided the equality before the law without discrimination as regard to person social conditions, race, religion, and as equality of offenders in their treatment with the exception of few immunities such as those sanctioned by public international and constitutional law, or relate to the gravity of the offence, or the degree of guilt, the age of offender are guaranteed by article four (4) of the code. However, when we look the overall articles of the code, most of the provisions relating to the prisons and the treatment of prisoners could not coincide with human right principles. This does not mean that, they were totally inconsistency with the international human right principles. For instance, the Code also provided clearly the legal principle of the crime, .i.e.; no law no punishment, the prohibitions of double jeopardy and equal treatment before the law was a few that mentioned in the Code.

Criminal Procedure Code is the other law which proclaimed and come in to force in 1961, which also serve as a screening process and still it is in use. It is designed to hold only probable offenders and let others pass out again in freedom. In all the stages of the screening process the individual is guaranteed certain rights. Here we need to examine only the major provisions. Article 187(3) provides that a convicted person has the right to appeal against the conviction and sentence. Where the appellant is in custody, the prison administrator must forward the memorandum of appeal without delay to the court against whose decision an appeal is made.

3.3.2. The Prisoners Rights in Ethiopia after 1991

After the Derg regime overthrown, the Transitional Period Charter replaced it in 1991 G.C. The Transitional Period Charter has completely changed the structure of the Ethiopian government system, i.e., from a unitary to a federal structure of Government. Although there was no mention of federal arrangement in the charter in to an explicit manner, it can be inferred from the charter itself and from the subsequent proclamations that the forthcoming constitutions would make the country a federal one. Transitional Period Charter came into force immediately after the downfall

of the P.D.R.F. government, which was the extension of the military administration. Thus, the Charter declared that, the provisions of the Universal declaration of Human Rights should be fully respected and as such it presented the historical moment and opened a new chapter in Ethiopia in which freedom, equal rights and self-administration of all the people shall be the governing principle of political, economic and social life of the whole society of Ethiopia.

3.3.3. Prisoners Rights under the Modern Ethiopian Law

3.3.3.1. Prisoners Rights under the FDRE Constitution

Accordingly, there are different legal approaches that can be employed to recognize and to ensure individual rights and freedoms in a given domestic legal system. The most common method is to include a bill of rights in the national constitution. To this effect, to improve the conditions of imprisonment and the treatments of detainees, the full application of principles and norms universally accepted for the protection of prisoners' rights and promote implementation of the preventive measures so as to fight against the possible violations of these rights, safeguards should be provided in the national constitution.

Bearing in mind these conditions, let us try to look into the provisions which the Constitution of FDRE stipulated towards the substantive rights of all citizens and in particular to the prisoners' right as a whole both at the Federal and State Governments.

The 1995 FDRE Constitution recognizes the Federal structure of government in Ethiopia.¹³⁵ As such, the power vertically divided between the Federal and State governments by the constitution.¹³⁶ Both the Federal and State governments are under obligation for the protection of the fundamental human rights which expressly provided under art.13 (1) of the FDRE Constitution. Thus .this particular provision indicates that, the Federal arrangement of Ethiopia is ensured the human right principles both at Federal and State level. Moreover, the 1995 FDRE Constitution recognizes the International Bill of Human Rights as a part and parcel of the constitution.¹³⁷ And, concerning the interpretation of fundamental human rights which provided

¹³⁵ . THE 1995 Constitution of the Federal Democratic Republic of Ethiopia ,Negarit Gazeta,1st year No.1,21st August,1995.

¹³⁶ .abid: art.46 (1&2) and art.50 (1&2).

¹³⁷ .Art.9 (4) of the 1995 FDRE constitution read as: "All international agreements ratified by Ethiopia are an integral part of the law of the land".

under chapter III of the constitution, it should be interpreted in line with the international human right adopted by Ethiopia.¹³⁸ Hence, these mentioned basic provisions on human rights expressly provided are particularly the right to life; the right to liberty and the security of person are applicable to everyone including prisoners without any consideration to prisoners legal status except expressly provided by law.¹³⁹ And also art.18 particularly provides that, the conditions under which prisoners are detained shall offer due respect for their humanity and dignity. In addition, by way of reference by virtue of art.9 (4), the Constitution entitles the prisoners the enjoyment of the rights and freedoms by international human rights instruments ratified by Ethiopia.

Furthermore, art.21 of the Constitution recognizes the prisoners right and considering them as a special categories of persons who need more constitutional protection and these rights are the right to his/her dignity and the opportunity communicate their spouse or partners, relatives, religious counselors, lawyers, and medical practitioners.¹⁴⁰

Therefore, it is not mean that, prisoners have every rights that provided for one else in the constitution. It must be recalled, nevertheless, that incarceration, in principle limits a prisoner of his freedom of movement and those rights are naturally related to this. And hence, punishing prisoners by reducing diet or by denying them adequate food, poor hygiene and sanitation facilities or other will be unconstitutional.

3.3.3.2. Prisoners' Rights under the Revised Criminal Code of Ethiopia

As has been discussed earlier, the main objective of the Ethiopian criminal law is not inflicting a reorganized revenge on prisoners by the name of social security. Its prime purpose is rather to reconstruct offenders. Article 1 of the 2005 Ethiopian criminal code states that, “the purpose of criminal law is to ensure order, peace and the security of the state and its inhabitants for the public good.”¹⁴¹ Moreover, it provides that: “The criminal law aims at the prevention of offenses by giving due notice of the offenses and penalties prescribed by law and this should be

¹³⁸ . See, Art.13 (2) of the 1995 FDRE read as: The fundamental rights and freedoms specified in this Chapter shall be interpreted in a manner conforming to the principles of the Universal Declaration of Human Rights, International Covenants on Human Rights and International instruments adopted by Ethiopia.

¹³⁹ .see: the 1995 FDRE Constitution of art.14-19.

¹⁴⁰ .abid: art.21.

¹⁴¹ . The criminal code of the Federal Democratic Republic of Ethiopia: proclamation No.414/2004, 9th of May, 2005, art. 1, paragraph, 1.

ineffective by providing for the punishment of criminals in order to deter them from committing other crime and make them a lesson to others or providing the reform of offenders and measures to prevent the commission of further crimes.”¹⁴² This is the general message of the law that one can infer from Art. 1 of the criminal code of Ethiopia as well as we also conceptualized this message in the provision of Art.87, paragraph, 2 which read as “..... they shall always be in keeping with the respect due to human dignity.” This statement is exactly in accord with the constitutional requirement for the human treatment of person under custody. This indicates that, any sentence entailing loss of liberty shall not, as a rule, affect the human dignity of prisoners. Thus, the criminal code recognizes that, the way prisoners are handled while in prison is a crucial to attain its main object of reforming and making them law abiding society members. These and other provision of the code, in general, indicate that our law, in order to achieve its purpose of preserving state order and ensuring public peace, has taken rehabilitation of offenders as its prime goal.

As far as forms of punishment in Ethiopia concerned, we get Book II, Title I of the criminal code that provides different forms of punishments each with variations in application. Hence, the principal types of punishments under our law are pecuniary penalties (fine, confiscation of property, sequestration of property, forfeiture to the state, restitution of property, and compensation for damages and costs)¹⁴³, penalties entailing loss of liberty (simple and rigorous imprisonment)¹⁴⁴, and the punishment of death¹⁴⁵.

In addition, secondary punishments which, according to Art.121 of the same code shall only be applied in conjunction with one of the main type of punishments and only where there is express order from courts for their application, include caution, reprimand, admonishment and apology, deprivation of civil or family right or of exercising of a profession.¹⁴⁶

Furthermore, it seems that the law does not want the governance of certain conditions as to fall exclusively under administrative regulations. Art. 109 and 110(2) of the code gives the message that: once having given under Art. 109 that matters of internal discipline, so to say, such as

¹⁴² . abid: paragraph, 2.

¹⁴³ . The FDRE Criminal Code of 2005 art.100-102.

¹⁴⁴ . abid: art.106 & 108.

¹⁴⁵ .abid: Art .117-120.

¹⁴⁶ .abid: art.122.

classification of prisoners shall be governed by regulations to be issued by prison administration, it, on the other hand, provides under Art.110(2) that separate confinement of prisoners of different sexes cannot be escaped under any circumstance say cultural or economic reasons or whatever. The implication of this is that, the prison administrations cannot justify its failure to confine the different sexes in different regimes under any difficulty. Hence, different sexes of prisoners are separated and serve the sentences in different sections or cell, and also those imprisoned for simple crime separated from those detained for rigorous imprisonment. In addition, those prisoners under 18 years are also detained in different room or cell and in any aspect not imprisoned with adult prisoners.¹⁴⁷

Right of wage to work upon showing conduct improvement is the other entitlement of prisoners found under Art.111 (2) of the said code. And also the rights of persons sentenced to death laid down in the provisions of Art.117-119 of the criminal code of Ethiopia and the way to handle him also expressed.

3.3.3.3. Prisoners' Rights in other Legislation under the Ethiopian Federal System

As Ethiopia is a Federal country, different legislations were proclaimed for the protection of prisoners' rights both at States and Federal level. As such, concerning the rights of prisoners, proclamation No.365/2003 provides that the Federal prison commission has a duty to maintain prisoners' health care; and provide prisoners free medical treatment, food and shelter and undertake and encourage tasks, services and activities necessary for the physical and mental well-being of prisoners.¹⁴⁸ And the Federal Prison Commission basis its object to admit and ward prisoners, and provide them with reformatory and rehabilitative services in order to enable them make attitudinal and behavioral changes, and become law abiding, and productive citizens when reintegrate to the society.¹⁴⁹ Moreover, the prison commission is under a duty to provide professional, technical, and advisory assistance to the Regional prisons in order to improve the custody and treatment of prisoners, and to facilitate country-wide similarity and standardization

¹⁴⁷ .abid, FDRE Criminal Code: Art. 110(1-3).

¹⁴⁸ . A proclamation To Provide For The Establishment of federal Prison Commission, Proclamation No.365/2003, 9th yearNo90,art.6(3).

¹⁴⁹ .abid: proclamation no.365/2003,art.5.

of both professional competence of the staff and services provided by the prison institution to the prisoners.¹⁵⁰

As the federal principles, the Oromia National Regional State (ONRS) also owned its constitution by which exercise different functions within the boundary given by the Federal and Oromia National Regional Constitutions. When we see the Oromia State Constitution concerning to the human rights in¹⁵¹ general and particularly the prisoners' right, it is a copy of one another with the federal constitution ,i.e., both of them are used similar word and the same principle even without changing the particular articles which talk about the fundamental human rights as well the prisoners' rights.¹⁵² No matter how whether they are similar or not, but both of them are expressly provided in a clear manner the fundamental human right in general and prisoners right in particular. Hence, art.21 of the Oromia Regional State Constitution also provides that, a person in custody or imprisoned upon conviction shall have the right to treatments respecting his human dignity as well as the right to the opportunity to communicate with and to be visited by his spouse, relatives, religious counselor, medical practitioners and lawyers shall be given.

Moreover, a proclamation No.163/2011of the Oromia Prison commission states that, the prisoners' rights should be protected without any discrimination as to prisoners' criminal status.¹⁵³ Hence, the Oromia Prison Commission has an obligation to provide sufficient food for the prisoners, to care the personal hygiene and sanitation of prisoners, arrange conditions that help the health matter of prisoners, and causes prisoners to meet with their family, physicians, and legal counselors. And the prisons Administration also under a duty to work on the prisoners' behavior which enable to return prisoners who have acquired behavioral and psychological change to their previous social life.¹⁵⁴

¹⁵⁰ .abid, proclamation no.365/2003: art.11 & 12.

¹⁵¹ .see, Oromia Regional State Revised Constitution No.46/2001, With Its Amendments Proclamation No.94/2005 and No.108/2006, Finfinne, April 2007,(art.13-21).

¹⁵² . See, Art.21 of both the Oromia State Constitution and the FDRE constitution.

¹⁵³ .A Proclamation To Provide for the Reorganization and Redefinition of the Powers and Duties of the Executives Organ of the Oromia National Regional State, Proclamation No.163/2011,19th yeas No.1/2011,art.35.

¹⁵⁴ . abid: Proclamation No.163/2011: art.35 (3-18).

CHAPTER FOUR

Law and Practice Regarding Prisoners' Right in Oromia National Regional State

4.1. The Prisoners Right in Burayu Prison Administration

“Burayu Prison Administration”, to which the study dedicated, is one of the prison administrations found in ONRS and Special Zone of Oromia Around Finfinne. This Prison Administration receives criminals from the Zone and different Weredas in the Zone. Accordingly, the Burayu Prison Administration has an obligation to handle prisoners in humane and to provide the basic needs to them because they have every human rights except what they deprived of their liberty by law. Hence, the Burayu Prison Administration (Here in after called the Prison Institution) is a place in which individuals are physically confined or detained and usually deprived of a range of personal freedom. This Institution is an integral part of the criminal justice system of a country and has an obligation to protect the prisoners’ human dignity and their constitutional rights.

Therefore, to step in to the study, unstructured depth interviews were conducted with a top administrators of Federal and Oromia Prisons Commission and with the Staffs and Prisoners of the Burayu prison Administration to clarify to what extent the constitutional rights of prisoners are protected and how the Burayu Prison Administration treat the prisoners according to the international and national laws.

4.1.1. The Practical Problems and the Prisoners’ Right to Medical Services

The health matters of a human person are a basic right which applies to all human beings because the enjoyment of the maximum achievable standard of physical and mental health is a human right.¹⁵⁵ Every human being including prisoners are guaranteed and have the right to an adequate standard of living of health and well-being including medical care and necessary social services.¹⁵⁶ Hence, Prisoners have the right to access the health services available in the country without discrimination on the grounds of their legal situation. It is a basic requirement that all prisoners should be given a medical examination as soon as they have been admitted to a prison or place of detention. Prisoners should have to be screened and well treated during their admissions. The purpose of screening new prisoners on admission is for the sake of the prisoners' health and not for the benefit of the prison authorities because prisoners have a right to live in the healthy condition due to the fact that, they have the right to medical care without considering

¹⁵⁵ . ICSESCR,1966, Article 12, paragraph 1,

¹⁵⁶ . see, *UDHR,1948*, Article 25, paragraph 1; *ICESCR*, article 12, paragraph 1

their criminal status. This means that, having deprived a person of his or her liberty, there is an obligation on the State to care for that person. This obligation extends to their health care.¹⁵⁷

However, in Burayu Prison Administration, Prisoners are suffered from the health matters. In the Institution, nothing is available for prisoners concerning medical services. In one way prisoners are not getting enough medicine when they have got sick because of the constraints of budget to provide pharmaceuticals for them and on other hand the institution has no a qualified health officers or nurses who treat them well. Concerning the health care of prisoners, there are serious problems, both the government and the hospitals haven't given an attentions to prisoners. In the prison's Clinic, no medical equipment is fulfilled and no enough budget are allocated, for this reasons, the numbers of prisoners and the budget allocated for prisoners medication is highly imbalance. And also there is a serious problem of transportation services by which to take the prisoners to the referral hospitals. Due to the lack of transport services, sick prisoners are not in a position to appear to the Hospital on the fixed date. Sometimes even if the prisoners are referred to the hospitals, the hospitals not treat the prisoners in a proper way and they have no interest to accept and to treat them as a citizen. The other problem is that, the clinic is not providing enough pharmaceuticals for prisoners rather than the paracetamols. On the other hand, prisoners haven't presented even after being referred to the civil hospitals by the prison's clinic because the prison's has inadequate human power specially police warden. For these different factors, the prisoners have been faced great problems of the health services.¹⁵⁸

As a consequence, the prison Institution is exercising contrary to different domestics and international laws. For instance, the Regulations on the Treatment of Federal Prisoners No.138/2007, Art.11 (2) reads as:

“To the extent that circumstances allow, every prison shall have a medical facility, adequate medical equipment, pharmaceuticals, and medical officer”.

As we understand from this particular provision, both the government and the prison institution have an obligation to provide fair and free medical services to prisoners and in turn prisoners have the right to be protected from any diseases without discrimination. However, in accordance

¹⁵⁷ .abid

¹⁵⁸ .Interviewees conducted with Inspector Tashoma Tadesse, executive affairs of prisoners warden,26/3/2014, 4:00-6:00(L.T)

with the interviews conducted within the Burayu Prison Administration, there are serious health problems:

“It is better not to talk about the health services of this Institution. There is a clinic for prisoners, but they didn’t render any services to them and nurses seat simply without treating the prisoners, due to lack of medicine in the clinic. Money is the basic need to get medical services both in the institution and outside the institution. Prisoners have no option than to depend on their own money for treatment but if they do not have money, he/she dies and no alternatives at all. In the prison Institution, there is a corruption and there is a chain and ask the prisoner who has got sick to give them money (to bribe you) even to get medical services. One day we ask the higher administrator of the prison Institution about our heath matter and the way we get medical services, and he answered that we don’t liable when the prisoners die due to lack of health services but only we responsible when the prisoners escape the institution”.¹⁵⁹

Hence, prisoners rights to life are at stake due to lack of adequate health services. Thus, the prisoners right to medication directly contact with the right to life of the prisoners. That means, denying the health services of prisoners is violating their right to life. Article 15 of the FDRE Constitution provides that every person has the right to life. And hence, the same provision also provides that no person may be deprived of his life except as a punishment for a serious criminal offence determined by law. However, in Burayu Prison institution, there are a number of prisoners living between the boundary of the live and dead due to the lack of health services. Consequently, their constitutional rights to life are violated.

Additionally, mentally abnormal prisoners are living with those of sane prisoners and there are no special and separate treatments for them, though different international instruments and national laws give especial attention for them. Art.25 (1) of the UDHR states that everyone has the right to a standard of living adequate for the health and well-being of himself that contribute for their health condition like food, clothing, medical care and the like. This indicates that every human being including prisoners have the right to a normal living standard which guarantees their health conditions.

Moreover, Art. 12(1&2) of the ICESCR provides that, every States Party to the convention has an obligation to assure the right of everyone to the gratification of the highest attainable standard of physical and mental health. These obligations extended to the prevention, treatment, and control of epidemic, endemic, rendering medical services and other diseases in the event of

¹⁵⁹ . Interviewees conducted with, Yohannis Belay, Prisoner,27/3/2014, 2:30 (L.T)

sickness. Hence, People who are in prison have the same right to health care as everyone else and to this end both the government and Prison administrations have a responsibility to ensure that prisoners receive proper health care and that prison conditions should promote the well-being of prisoners because the main objectives of the prison institution are changing the bad behavior of prisoners and reintegrate them to the society. Therefore, in order to address the health problems in the prison institutions, the health policy should be integrated into national health policy, and the administration of public health should be closely linked to the health services administered in prisons.¹⁶⁰

In Ethiopia, even if the Ministry of Health issued the health policy which may benefit the Ethiopian people at large, the allocation of budget is from Regions to implement the health policy of the country. This has its own impact because some regions allocate few birr for some sector. For example, the “Caffee Oromia” Regional State allocates the annual budget for the Oromia Prison Commission and the Oromia Prison Commission again allocates from its own budget to the Zonal Prison Administrations. Hence, this problem is the core point of the Burayu Prison Administration to render fair and free medical services to the prisoners because the main cause for the poor health services of the institution is the allocation of budget which is insufficient to fulfill medical equipments, pharmaceuticals and other conditions of treatment of prisoners. For this reason, prisoners in the Burayu Prison Administration are not benefited from the health policy of the Ethiopia. Because of the fact that, concerning the allocation of budget, the Burayu Prison Institution has no extra budget and a separate budget is not allocated for the medical services of prisoners. The annual budget is decided and allocated once by Caffee Oromia, which is imbalance in every aspect with the number of prisoners. From the total budget, the institution use 2% of the budget as reserve for those prisoners live with the HIV/AIDS diseases. This 2% is not benefiting other prisoners except the prisoners who live with HIV/AIDS. Besides, when the budget constraint challenges the prison institution, prisoners are transferred from one Zone of prison Administration to other Zone of Prison Administration.¹⁶¹

Thus, from this point of view, we can understand two things: in one way both the government and the Oromia prison Commission haven’t given attention to the people who live in prison

¹⁶⁰ . See, Andrew Coyle, 2007, p. 24.

¹⁶¹ .Interviewees conducted with, Tsahay Negash Welde, Commissioner of the Oromia Prison Commission,20/3/2014,3:00-4:00 (L.T)

Institution and in other way particularly the Zonal Prison Administrations and Oromia Prison Commission highly negligent about the prisoners' constitutional rights and the obligations imposed upon them. Because, Art.13(1)of the FDRE Constitution 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 human rights incorporated under chapter three of the same Constitution. However, in Burayu Prison Administration, the prisoners' health rights are not protected both by the Prison Institution at all level and by government itself because the government was not employed health officers both in quality and in quantity that contribute to the health services of the prisoners. The Institution also not attentively followed and implements the protections of prisoners' health's right that negatively affect the prisoners' right to life. And the transfer of prisoners to other prisons administration (other zones) like Ejere, Fiche and Aleltu Prison Administrations without the consent of the prisoners also inconsistency completely with the prisoners' constitutional right so that this hinders prisoners from having a contact with their families.

On the other hand, both the health officers charged to serve the prisoners and physicians (medical Doctors) have obligations to treat the prisoners via bona fide services. The physicians have a professional duty to treat the prisoners under the international guidelines. Thus, the Principles of Medical Ethics provides that, health personnel, particularly physicians, charged with the medical care of prisoners and detainees have a duty to provide them with protection of their physical and mental health and treatment of disease of the same quality and standard as is afforded to those who are not imprisoned or detained.¹⁶²

However, prisoners are challenged by the health officers or nurses both at the place where they imprisoned and at the referral levels. They are, sometimes, negligent, indifferent and/ or lose interest to treat the prisoners or they do have bad behaviors either to benefit themselves or to benefit or to impair others.

Regarding some bad activities of the Nurses or health officers charged to serve different prison Administrations in the Region, a one who didn't want to disclose his name in the Oromia Prison Commission said that, "some clinics of the prison administrations gives expired medicines to

¹⁶² . 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 Adopted by General Assembly resolution 37/194 of 18 December 1982.

prisoners and there are person who punished in discipline by selling an expired tablets to the prisoners”¹⁶³.

In the same meaning, when the prisoners are referred to the hospitals either at Black Lion, St. Paul or Emmanuel hospitals, in one way the hospitals not accept the prisoners as such by saying there are no enough bed or they will be postponed to a long period of time or they order to buy pharmaceuticals from outside of the hospitals where medicine is too expensive. In this case, when the prisoners haven't able to buy it, he/ she have no alternatives except staying the last time or second to die.

Furthermore, in Burayu Prison Administration, no special attention is given to pregnant women and minors regarding the medical care. They considered as any prisoners without take in to considerations of their vulnerable group of the society and the need of special treatment in nature. Hence, adequate medical care should highly need those detained juveniles, both preventive and remedial, including physical and mental health care, as well as pharmaceutical products and special diets that by considering their age in order to prevent stigmatization of the juvenile and promote self-respect and reintegration into the community.¹⁶⁴ However, in the Burayu prison administration, children are treated just as other prisoners and no any considerations are given for them concerning their treatments. As such, the commissionaire of the Oromia Prison Commission said that “since every detained person is a prisoner, we look all of them as prisoners; we don't give special attentions to any of them even if their conditions need attention because we have no extra budget to do so”.¹⁶⁵ This also completely contradicts with the interest of children that expressly provided in the FDRE Constitution and other International children rights and conventions.

4.1.1.2. Prisoners' Right to Food and Water

Every living thing including human person started to feed at immediate of the ovum and semen are fused, this is the act of nature and not made by human. This means that, no food no life.

¹⁶³.Anonymous, the interviewees conducted with a Staff in Oromia Prison Commission,20/3/2014,5:00-6:00(L.T)

¹⁶⁴ . United Nations Rules for the Protection of Juveniles Deprived of their Liberty Adopted by General Assembly resolution 45/113 of 14 December 1990, Art.49.

¹⁶⁵ . See supra note 162, Interviews conducted with AtoTsehay Negash, commissionaire.

Hence, human being as any other animal started to nourish after the moment conception taken place in the womb and till at the time of passing away. Thus, food is considered as a basic human right which is inviolable and inalienable and naturally endowed. The right to food is an inclusive right. This right is not limited to take a minimum ration of calories, proteins and other specific nutrients rather it is a right to all nutritional elements that a person needs to live a healthy and active life.¹⁶⁶

Furthermore, the right to food of specific groups particularly prisoners' right to food has been recognized in several international conventions. Because of the fact that, all human beings, regardless of their race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or legal status have the right to adequate food and the right to be free from hunger.¹⁶⁷

The right to food is not detached from human right at any aspect and it is recognized by international human rights law. The UDHR states that, in the context of an adequate standard of living, that is: "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food ..."¹⁶⁸

However, prisoners in the Burayu Prison Administration are challenged by the provisions of food. The food provided for prisoners are poor and undernourishment. As such, "the food they feed is too poor both in quality and in quantity. The budget allocated for each prisoners is too imbalance to feed them. Thus, it has not use both for their health and physical strength. Prisoners are starving even 24:00 hours because what provided at breakfast, lunch and dinner has no quantity and they remained as being hungry. Most of the prisoners supported by their relatives but those prisoners who have no relatives to be supported are usually live under hunger. In quality wise, it is unhealthful food. Additionally, they are highly challenged by drinking water and there is no the accessibility of pure drinking water and there is a time stay up to 14 days without getting water. During such time, they drink from a tanker which is ruined."¹⁶⁹ Hence, prisoners have the right to food both in quality and in quantity because the right to food is the right that every human being should be enjoyed. Thus, to cause the prisoner to be starved, it is

¹⁶⁶ . UN Human rights OHCHR, the Right to Adequate Food, Fact Sheet No. 34, and P.2.

¹⁶⁷ .abid: p.7.

¹⁶⁸ .see: UDHR, 1948, ART.25.

¹⁶⁹ . Interviewee, conducted with Tesfaye Megarsa, prisoner, 26/3/2014, 7:40.(L.T)

clear that, causing the prisoners' health conditions and at the end denying his right to life. Hence, different international bill of human rights recognizes the prisoners' right to adequate food¹⁷⁰ as an essential part of the right to an adequate standard of living and it is recognized as fundamental right of everyone to be free from hunger.¹⁷¹ Moreover, The Committee against Torture, which monitors the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984), has pointed out that lack of adequate food in prisons may be tantamount to inhuman and degrading treatment. Unlikely, "concerning the feeding system of prisoners in Burayu prison Administration, prisoners are eating always only shiro or throughout the year and there is no change. The Injera also prepared from sorghum, and as soon as it was eaten, they are going to hungry. The tea has no sugar, bread at breakfast is overcooked and not fresh and these also affect their health"¹⁷² These all are violating the constitutional right of prisoners of the Burayu Prison institution.

Similarly, different international human rights give attentions to the provisions of adequate food for prisoners because food is the basic for life. As such, the right to food is also recognized in other International Conventions protecting specific groups, such as the Convention on the Elimination of All Forms of Discrimination against Women (1979), the Convention on the Rights of the Child (1989) and the Convention on the Rights of Persons with Disabilities (2006). Moreover, the right to adequate food also acknowledged in regional instruments, such as the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, known as the Protocol of San Salvador (1988), the African Charter on the Rights and Welfare of the Child (1990) and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003). Furthermore, it is also recognized implicitly through the African Commission on Human and Peoples' Rights has interpreted the right to food as being implicitly protected under the African Charter on Human and Peoples' Rights (1981) through the right to life, the right to health, and the right to economic, social and cultural development. According to the Human Rights Committee, which monitors the

¹⁷⁰. FAO, 2004, defined adequate food as the food that must satisfy dietary needs, taking into account the individual's age, living conditions, health, occupation, sex, etc. For example, if children's food does not contain the nutrients necessary for their physical and mental development, it is not adequate. Food that is energy-dense and low-nutrient, which can contribute to obesity and other illnesses, could be another example of inadequate food.

¹⁷¹.see: ICESCR, ART.11(1&2)

¹⁷². The interviews conducted with, Kejela Desta, prisoner, 27/3/2014, 9:00(L.T).

International Covenant on Civil and Political Rights (1966), the protection of the right to life requires States to adopt positive measures, such as measures to eliminate malnutrition.

Although different international and Ethiopian laws recognized the right to adequate food as basic human rights, prisoners of the Burayu Prison institution are still suffering from hunger. Accordingly, in Oromia, before few months, for each prisoner 8 birr was allocated per day, now it is extended to 11.18 cents and nevertheless by this amount of birr it is impossible to provide adequate food for prisoners and prisoners are suffering from hunger due to the insufficiency of the budget allocated to feed them. In the same way, in the prison institution, for prisoners of breastfeeding and pregnant mothers, children with their imprisoned mother and for sick prisoners, additional food are not provided and child with his mother is not counted independently in spite of Art. 8 of the Megelata Oromia Proc. no. 163/2011 provides that, the prisons institution should provide for prisoner a sufficient food and special treatment should be given for children imprisoned with their mothers.¹⁷³ Additionally, the food provided for prisoners is not only the problems of its quality and quantity matter, but also the ‘wett’ is just a cool water and has no test, the ‘injera’ has stone and to eat it need care, prisoners are dying because of ravenous.¹⁷⁴ In other word, the regulation on the treatment of ONRS was not provided in a way to protect the right to adequate food of prisoners. As such, Art.18 (1) of the regulation stated that the prisoners have a right to get a qualified breakfast, lunch and dinner which balance with the budget allocated by the government. This provision is contradict each other in one way it has the message of prisoners have the right to get a sufficient food and in other way it says that, ‘with the budget allocated’ in spite of no enough budget allocated. Consequently, prisoners in the Region are removed their right to food and so that their right to food still not clearly established in the regulation. Contrary to this regulation, the regulations on the Treatment of Federal Prisoners, clearly provided that prisoners shall be provided with ‘balanced and sufficient diet’ by the prison. The Amharic version of this article provides that “.....prison should provide food which is comfortable for health, balanced and adequate diet for prisoners....” Moreover, the regulation also obliges the prison institution to provide special food

¹⁷³ .Interviews conducted with, Lubaba Mahamad, legal expert at Oromia Prison Commission, 20/3/2014, 5:00-6:00(L.T).

¹⁷⁴ .Interview conducted with, Yohannis Belay, prisoner,27/3/2014,2:30(L.T)

for prisoners with health problems at the recommendations' of medical officer and the provisions of sufficient and clean drinking water at usual time.¹⁷⁵

4.1.1.3. Prisoners' Right to Accommodation

Accommodation is the basic human right for prisoners. Prisoners have the right to get living space which must be available for his personal dignity, health and hygiene. That's why, overcrowded has an adverse effect on the detainees' daily lives, and often on the way in which they are managed and treated by prison staff. Similarly, overpopulation in a prison gives rise to problems in terms of access to water, hygiene and exacerbate the health problems which go beyond the question of the space available to accommodate the detainees.

As it has been discussed in the chapter three above, prisoners have every human rights save the limitations provided by law, due to this fact, people in prison have the right to an amount of living space sufficient to safeguard their health. As such, the UN Human Rights Committee on the ICCPR (1966) considers that, a lack of adequate living space not only contributes to a violation of the right to dignity and humane treatment, but also to conditions that breach the rights to life and health. Moreover, Committee has identified "overcrowding" as a condition "which contribute[s] to a high level of death in custody". In prison institutions, overcrowded is the major factor that have resulted in a high rate of infectious disease and this in turn alarming mortality rate in prison custody.

In Burayu Prison Administration, there is a highly overcrowded of prisoners. In one room there are 400- 500 (four hundred-five hundred) prisoners. Accordingly, one of the prisoners proposes that:

"In our room there are 400-500 prisoners, at night time breathing is impossible because the class is too blistering, and there is no windows, there is no enough space for sleeping and prisoners stand through the night. The class is dangerous for prisoners' health and we live under a tension because prisoners who suffered from TB living with us and there are no separations of

¹⁷⁵. Council of Minister Regulations on The Treatment of Federal Prisoners, Reg No. 138/2007, federal Negarit Gazeta,13th year,No.47.

See, Basic Principles for the Treatment of Prisoners Adopted by General Assembly resolution 45/111 of 14 December 1990.

See also, SMR for the Treatment of Prisoners, 1977, Art. 20,provides that:

(1) 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.

(2) Drinking water shall be available to every prisoner whenever he needs it.

prisoners who have got sickness from normal. We cannot get a fresh and a cubic content of air, has no ventilation. The class is locked at night time and it is opened in the morning, but the class has no toilets and other place where we cleaned ourselves. During the night time there a barrel and jar can at center of the class and all of us used everything to it, i.e. we urinate and faeces to this material as a latrine. For this reason, the class is too poor in sanitations and has bad odour, and this makes you to halt yourself and torture you”.¹⁷⁶

However, Art, 21(1) of the FDRE constitution provides that, all persons imprisoned upon conviction and sentencing have the right to treatments respecting their human dignity. Similarly, Art.18 (1) of the same constitution also states that everyone including prisoner has the right to protection against cruel, inhuman or degrading treatment or punishment. Despite the fact that, both international human right bills and the FDRE Constitution of 1995 recognized the prisoners’ right of dignity and the need to humanly treatments, prisoners in the Burayu Prison institution are clearly under the act of inhuman and degrading treatment or punishment and their human dignity is violated. In addition to the interviews was conducted with prisoners in the prison and officials of different levels both in the Region and Federal, personally the researcher observed that every dorms in the prison institution. During the observations, both men and women classes and the sizes of the rooms and the numbers of prisoners living in the class completely imbalance and hence, it is not believable that all these prisoners are living in the rooms.¹⁷⁷ Specially, in one class 450-500 prisoners are living though the size of the room is too small and the class has no any window and ventilation. For sure, this room is not enough these all prisoners even to stand just as a client of the ‘city bus’ let alone to sleep. During this observations, the writer too regret and thinking that who is responsible for this ill-treatment. Moreover, the female accommodation at first hand not constructed for this purpose and it was designed and constructed to render other service but later it was given for female prisoners, for this reason, there are serious problems concerning the dorms, showers and toilets of the female prisoners. Hence, now only one dorm was provided for all female prisoners but there are 68

¹⁷⁶. Interviews conducted with, Masho Zalaka, prisoner in Burayu, 26/3/2014, 10 :00-10:30(L.T).

¹⁷⁷ . Personal observation by the Researcher, during the interviews was conducted and a full day of 8/4/2014, 2:30-11:30(L.T).

women in number and 18 children are with their mothers. They are highly overcrowded and their premise has no any shower and latrine.¹⁷⁸

Therefore, concerning the overall accommodations of the Burayu Prison Administration, “the class and the number of the prisoners are not balance each other. In one class more than 450 prisoners are living and so that it could be guessed that how it is difficult to live in the class. It is not possible to think about sleeping because of no enough space and it is not sufficient even to sit. Besides to the suffocations and concentrations of prisoners, the walls of the class is a full of lice, pest and cockroaches and they chomp you. Sane and insane prisoners are living together. These all are affecting prisoners’ health and it cannot be get rest throughout evening”.¹⁷⁹

Furthermore, in all prison of the country including the prison administrations of Oromia, there is no a uniform applicable standards. As such, there is no minimum standard rule concerning the living space of prisoners and no regulations determined this standard. And in Oromia Region, the number of prisoners and the classes provided for such purpose is not balance each other’s. For such reasons, there are highly overcrowded in the prisons. To build the prisons, the government is not allocating capital budget separately and the prison administrations use recurrent budget in the way to maintain the prison institution. Sometimes when the prisoners become over the capacity of prisons, the prison administrations use the system of transferring prisoners from one zone of prison to other zone of prison Administration”.¹⁸⁰ Hence, the transfer of prisoners without his consent is other punishment by itself. Prisoners have the constitutional right to contact his family, legal and religious counselors as much as possible at near distance. The prison institution has an obligation to available the conditions for imprisoned person and be kept in a place of detention or imprisonment reasonably near his usual place of residence.¹⁸¹In spite of the prisoners’ rights to live an adequate floor space and the right to contact his relatives, the Burayu Prison Administration is imposing a double punishment both on the prisoners himself and the person could by law contact him. That is, in one way when the prisoner is transferred to at a distant prison, he loose support from his families or from other body who in charge to support the prisoner and at the same time his constitutional right to contact his family, legal and

¹⁷⁸.Interviews conducted with, saj. Dinke Bayissa, head of women and children affairs of the Burayu Prison Administration, 27/3/2014, 5:00-5:20(L.T).

¹⁷⁹ . Interview conduct with, Teshome Galmech, Prisoner in Burayu Prison Administration,27/3/2014, 3:30 (L.T)

¹⁸⁰ .see, supra note, interviews of Ato Tsehay.

¹⁸¹ . 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,Art.20, See also Art.21(2) of the FDRE Constitution of 1995.

religious counselor may be cut off and in other way it is other burden to those person who could communicate the prisoner. For these reasons, they may bore and their relations could be disconnected which also adversely affect the prisoners' right and interest.

Therefore, the non-respecting of the human dignity of the prisoners in Burayu Prison Administration is the other problem. Both the Federal Regulation for the treatment of prisoners (Reg. no.138/2007) and the Regulation for the treatment of prisoners of the Oromia Regional States (Reg. no.48/1997) also not set any standard both the number of prisoners' lives in a given class and the sizes of the classes provided. Hence, by using this gap, the Burayu prison institution used the room as a 'storehouse or magazine' where without limitation the prisoners live.

In addition to the prisoners are suffering from overcrowded, dorms are not equally provided to the prisoners in the Burayu Prison Administration. All prisoners are not uniformly provided the dorms and there are clear discriminations among the prisoners by the staffs. For example, those prisoners convicted due to the corruption act from 'Sebata and Burayu Town Administration' were provided separate classes. Their dorm has shower, different TV channels and its cleanliness is also well kept. They are living in a class not more than 12- 20 prisoners and there are no overcrowded.¹⁸²

Moreover, as the writer's observed all the classes of the prisoners, in other class more than 450 prisoners are living (the class where one prisoners live over the other just like quintals) while other class 12(twelve) prisoners are living in a free floor space though the size of the class less compared to other classes. All of these 12 prisoners were came from the Burayu and Sebata Town Administration and they economically strong, they live as their own home, their dorm full in different home materials including the materials to cooking wet and coffee in their own dorm by the cost of those prisoners.¹⁸³ This indicates that, the violations of Art.25 of the FDRE Constitution of 1995, which states that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall guarantee to all persons equal and effective protection without discrimination on grounds of race, or other social origin, colour, sex, language, religion, political or other opinion, property, birth or other status. However, contrary to this clear provision, in Burayu prison institution, prisoners are

¹⁸² .Interview conducted with, Hyreddin Nur, prisoner, 27/3/2014, 4:20(L.T).

¹⁸³ . See: supra footnote of 177, of personal observations of writer.

treated according to their wealth. The staffs (the prison institution) arrange this maltreatment knowingly. And also regulation no.138/2007(3(1)) of the treatment of Federal Prisoners provides that prisoners should be treated without any discrimination on the grounds of gender, language, religion, social status and citizens although the Regulation for the treatment of prisoners of the ONRS REg.No.48/1997 say anything concerning the equal treatment of prisoners in prisons institution.

Therefore, even if the deprivation of liberty serves as the purposes of punishment, the implementation of a sentence for imprisonment has the objective of enabling the sentenced prisoner to lead a socially responsible and crime free life in the future. Accordingly, the Kampala Declaration on Prison Conditions in Africa 1996 states that, detainees should have living conditions which are compatible with human dignity and that conditions in which detainees are held should not aggravate the suffering already caused by the loss of liberty. Hence, persons deprived of liberty have a right to adequate floor space, daily exposure to natural light, appropriate ventilation and heating, according to the climatic conditions of their place of deprivation of liberty because prisoners right to accommodation is interrelated with other prisoners 'right, e.g. Right to health, sanitation and other basic human rights.¹⁸⁴

Unlike to Ethiopian prisons System, the system to regulate the accommodations' problems of the prisons institution, different countries of the World used different minimum standards by which control overcrowded in the prisons. For example, standards in Europe range from 4 m² in Albania to 12 m² in Switzerland per prisoners. In South America, Chile specifies 6 m² per prisoners, which includes a single bed, a shower, a washbasin, a desk and a shelf. In Guatemala, with an average of 7.46 m² per person is used.

In Africa, dormitory accommodation is the norm. As such, in Kenya, the minimum space requirement is 40 sq ft (3.7 m²) per prisoner. In Senegal, no minimum space is specified but the average floor space is 3.55 m² per person. In the South Africa, the minimum space floor per prisoner is 3.344 square meters.¹⁸⁵ That's why ,the main objectives of this minimum requirement is that Prisoners must be held in cells which meet the requirements prescribed by regulation in respect of floor space, fresh air, lighting, ventilation, sanitary installations and general health

¹⁸⁴ .Principle XII of the Inter-American Commission on Human Rights (IACHR), Resolution 1/108, Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas.

¹⁸⁵ .See, the prisons handbook: Water, Sanitation, Hygiene and Habitat.(2007)

conditions. These requirements must be adequate for detention under conditions of human dignity as it was stated in international human rights instruments and in other way it create an awareness to the prisoners when the regulations themselves to prescribe standards that were too restrictive, prisoners could challenge such regulations on the grounds that they failed to create an accommodation regime that met the constitutional human dignity standard.

In Ethiopia, however, no regulations have been proclaimed which prescribe the standard of accommodation both at Regional and Federal level and in turn the lacks of this standard also negatively affect the human dignity of prisoners in the country particularly the prisoners of the Burayu Prison Administration.

4.1.1.4. Prisoners' Right to Bedding and Clothing

Clothing is one of the basic needs of human being. It is one of the component elements of human right. Thus, prisoners have the right to enjoy to every human right that adopted by the domestic and international human right instruments. And they are not denied the right to getting wear because of their legal situations so that clothing is considered as a component right of an adequate standard of living.

Accordingly, different international principles, at least in principle, provides that the prisons institution should provide clothes to the prisoners when prisoners not allowed to wear their own clothes and to this effect, facilities should be taken into considerations for keeping clothes in clean and in proper conditions.¹⁸⁶

Even so clothing and bedding are considered as human rights for prisoners, prisoners in Burayu prison institution are denied these rights. In Burayu Prison Administration, some prisoners who have cloths are wearing their own while those who have none live simply by covering their body with pieces of clothes or it could be say they are living naked. In the prison institution, most of the prisoners have no clothes to wear. Some of the prisoners wear the bed sheet because they have no normal clothes.

Furthermore, prisoners have no bed and bedding, i.e., they have no night wear, bed and bedding. They sleep on the bare floor. As anyone know, Burayu is too cold and it is simple to guess how it

¹⁸⁶. See, SMR for the Treatment of Prisoners of principle, 17.

is difficult to those not have a day and a night wear (blanket) including bed and bedding.¹⁸⁷ The writer also observe that, most of the prisoners are wearing underclothes, they have no a day and a night clothes separately, some of them are covering their body by their bed sheet due to lack of normal clothes and or lack money to buy.

Moreover, the prison is totally not in a position to treat prisoners humanely because in the institution there are insane and they are also live without having a day and night cloths and the prison institution also not provided any clothes for them. In one way they have no money to buy clothes and in other way, the prison institution is not giving soap and other materials for prisoners to wash what they have (clothes).

In the institution, there are few beds which is not enough the total prisoners of the Burayu Prison Administration. Hence, the distributions of these beds are not fair and the prison institution by itself sells bed to those prisoners at least has been stayed one year and above. Even if the prisoners have the chance to get bed, he should has to pay birr 775 to the institution. If he fails to pay, he loses the bed.¹⁸⁸ This is also other discrimination which is committing by the staffs.

Thus, the Burayu prison Administration is violating the right to prisoners' basic need, i.e., bed is provided free of charge to prisoners as it is clearly stated under the regulations for the treatment of Federal prisoners and other international rules. And also, leaving prisoners without clothing is violating the right to life of prisoners which is also recognized by the FDRE Constitution under Art. 15, which provides "every person has the right to life. No person may be deprived of his life except as a punishment for a serious criminal offence determined by law". Likely, the Federal Regulation on the treatment of Prisoners' rights Reg.No.138/2007, Art. 7(1) state that, every prisoner shall wear clothes provided by the prison and also Art.8 (1) of the same regulations provides that every prisoner shall be provided with necessary bed and bedding even additional clothes and bedding is given when the health officers recommend to this effect. To this end, prisoners have the right to be provided with a separate bed and clean bedding, with facilities for keeping bedding clean, i.e., there must be facilities to wash and dry clothing and bedding regularly.¹⁸⁹

¹⁸⁷ .Interview conducted with, Gadisa Seboka, prisoner in Burayu,26/3/2014, 9:30 (L.T)

¹⁸⁸ .See, interviews conducted with Belay.

¹⁸⁹ .See, A Pocketbook of International Human Rights Standards for Prison Officials, United Nations, New York and Geneva, 2005.

However, irrespective of these laws, the Burayu prison Administration has been denied the prisoners' to clothing, bed and bedding. Contrary to this particular law, Prisoners are buying bed from the institution which is seriously contradicted with both national and international prisoners' rights. Unlikely, the Regulations for the treatment of prisoners of the ONRS Reg.No.48/1997 is totally silent about the right of prisoners clothing and bedding.

Regarding the cleanliness of the prisoners' clothes, bed and bedding, it is impossible to talk at Burayu prison level, because at first hand prisoners are denied the right to provision of these materials. Most of the prisoners have no extra clothes to change it, they wear and use the same cloth as blanket or pajamas or bed sheets for a long period of time without washing as a normal clothes. The prison institution is also not issued soaps to wash such dress. For this reason, their clothes, blankets or bed sheets were infested with lice and bedbugs that is highly affect their health conditions.

4.1.1.5. Prisoners' Right to Classification in terms of Age, Sex, types of Crimes and seriousness of Crime

The main purpose of the prison institution is not to punish the criminals rather to change the psycho and attitude of the prisoners during serving their imprisonment. And also the main purpose of imprisonment is to protect the society from the threat of criminals and as well to the criminal, to rehabilitate her/him and hence generate a productive and healthy citizen. To attain this goal, many countries adopt classification within their prison.

The concept of classification rests on the premise that differences between prisoners are sufficiently critical and vital to demand differential ways of working with them. The hand book on classification in correctional institutions described classification as "a method that will assure co-ordination in diagnosis, training, and treatment throughout the correctional process". Thus, the main purpose of classification is basically seen in two ways: First, to separate those prisoners by virtue of their criminal record are likely to exercise a bad influence on the rest of other prisoners and Secondly, to divide prisoners in to classes in order to facilitate their treatment through social rehabilitation.¹⁹⁰ In order to achieve this purpose, various laws in Ethiopia as well as the international human rights documents discussed the concept of classification in depth. The Criminal Code of Ethiopia (2004), for instance, provides that female prisoners must be separated

¹⁹⁰ .Yilma Mengesha, prisons in Ethiopian law and practice (unpublished Faculty of Law, May, 1973) p.22.

from male prisoners, prisoners who are dangerous to others and are bad of character and who are sentenced to imprisonment or internment should be kept separate from prisoners under the age of 18 years and from those serving simple imprisonments or from those who are detained for civil debts. Pursuant to the above provision of the criminal code, in Ethiopia, both at Federal and Regional level, the prison internal regulations has laid down to elaborate procedure for classification. Moreover, the Federal Regulation on the treatments of prisoners' reg. no. 138/2007, Art.5 states in such a way that, the premises of the female and male prisoners should be separated and also prisoners should be separated in terms of their age, recidivists and indecent prisoners, and prisoners with records of serious crime, prisoners on death roll and prisoners detained for civil dept should be imprisoned in a separated accommodations. Similarly, the Oromia regulation on the treatment of prisoners Re. no.48/1997 clearly addresses as such it discussed under the Federal regulations.

However, in the presence of these laws both at Federal and Regional, prisoners in the ONRS were not categorized according to the law says. Even if, regulations and other laws clearly states about the categorizations' of prisoners by virtue of their sex, age, serious crime record, prisoners with communicable diseases and mentally abnormal, and the types for which imprisoned, all except female prisoners in the Region are incarcerated in the same dorm/ class within the same premises or they are not separated as such.¹⁹¹ The same thing also applied in the Burayu Prison Administration. In Burayu prison institution, only female prisoners are separated from other prisoners. All prisoners are serving their imprisonment without any separations in terms of their age, prisoners with death roll, recidivists, serious crime record, insane prisoners and prisoners detained for civil debt.¹⁹² For a long period of time, in Ethiopia, except female prisoners, it is experienced that prisoners incarcerated for simply and serious crime have been imprisoned in the same dorm or class and not separated.¹⁹³

The problems of classification of prisoners are not limited to the issue raised above, but it is extended to the declassifications of prisoners with mental problems from other prisoners. Especially, in the class where more than 450 prisoners are living, in this class insane and sane and other prisoner' with health problems are living without separated from each other. Even

¹⁹¹. Interview conduct with, Inspector Haftamu Tesfaye, head of human resource management at Oromia Prison Commission, 20/3/2014. 7:30-8:30 (L.T.)

¹⁹². See, supra note, 217, interviews conducted with Hyreddin Nur.

¹⁹³. Interviews conducted with, Enatnesh Mokonnen, chief super Intendent (commander), head of Legal department at Federal Prison Commission, 21/3.2014.4:00-5:00(L.T)

prisoners with communicable diseases are living with other prisoners, and the prison institution is not gives any attentions for separation of detainees.¹⁹⁴

However, the practices in all Oromia prisons Administrations are clearly indicates that, there is no classifications of prisoners according to both the domestic and international laws that explicitly stipulate the categorizations' of prisoners.

The Burayu Prison Administration is not exception to this declassification. The absence of classification or declassification has a number of effects both on the individual, on the society, on the prison Administration and also on the criminal justice system as a whole. Due to the absence of proper classification, all types of prisoners irrespective of their age or offence are accommodated together. In social life, usually people tend to share ideas, talk to each other their experiences etc. Through this social interaction, the young prisoners would get the opportunity to learn different crimes, which they don't know before.

This in any way is a big loss to the society. The society instead of having a productive citizen would finally receive a dangerous and further threat from the prison. Though the prison is meant to protect the citizen by detaining criminals for the sake of the safety of the society, at last the society would receive a more dangerous criminals who is full of tactics not only as to how to escape the police etc. Hence, the entire attempt would back fire against the society since the criminal would eventually be part of the society. That's why; the main purpose of classification has two important points: First, to separate from others those prisoners who, by reason of their criminal records or bad characters, are likely to exercise a bad influence; secondly, to divide the prisoners into classes in order to facilitate their treatment with a view to their social rehabilitation in the future. Hence, this categorization of the prisons institution in different sections plays a great role for the treatment of the different classes of prisoners.¹⁹⁵ By doing so, prisoners will be led law-abiding and self-supporting lives after their release and to fit them to do so. But the prisons institutions totally failed to do so and this in turn, also, has an impact through discouraging their self-respect and develops their sense of responsibility. For the absence of classifications, the prison institution sustains certain problems. Since, the rehabilitation process is the reason for the prison is designated to; criminals there need properly and effectively be

¹⁹⁴ .See, supra note 159, interviews conducted with Yohannis Belay.

¹⁹⁵ .See: SMR, rule, 67.

rehabilitated. And this would be better achieved through the classification process. Unless all the situations of the inmates are clear enough, the rehabilitation aim would be obliterated.

4.1.1.6. Prisoners' Right to Sanitation

Sanitation is the most important method of preventing diseases from all human beings. It also highly needs the person who detained because prisoners are part of the society and also a vulnerable group of the people. Hence, sanitation basically needs for both the prisoners' personal and the premises of the prisons institutions in order to overcome the conditions of the prison life.

Consequently, supplying sufficient amounts of water is one of the basic services which must be provided without interruption at any aspect the place where persons deprived of their freedom are being held. Water is essential for drinking, for preparing meals, for maintaining personal hygiene, and also for sewage disposal (in water-based evacuation systems) particularly in the prison institution. It is, therefore, a priority task for anyone in charge of a prison to ensure that the water supply is adequate – in terms of both quantity and quality and be regular.

However, the water-supply infrastructure in places of detention is always under severe strain.

Thus, it must be adapted to cater for the number of detainees present and be regularly maintained.¹⁹⁶

In practice, it is frequently observed that, the supply system initially installed is no longer adequate because of the constant rise in the number of inmates .Over use results in general and rapid deterioration. Very often, there is little or no water supply to showers and toilets, cells and dormitories because the pipes either damaged or water pressure is insufficient or it cutoff without unknown reason. This depriving the detainees the use of water that need for their own use has great impact on the personal hygiene of prisoners, and also this prevents proper sewage and waste disposal and thus creates conditions conducive to the spread of disease.

Hence, the prisons authorities are under obligations to supply a reliable water to the areas in which they are located.¹⁹⁷ As such, prisoners have the rights to be provided enough water and necessary materials for cleanliness and toilet facilities as well.¹⁹⁸ Moreover, the regulation for

¹⁹⁶ .see, Pier Giorgio Nembrini, (2005): International Committee of the Red Cross, p.36.

¹⁹⁷ .A tool to assist policy makers and practitioners develop strategies for implementing the human right to water and sanitation Centre on Housing Rights and Evictions, 83 rue de Montbrillant, 1202 Geneva, Switzerland, 2007, p. 98.

¹⁹⁸ .See,reg.no.138/2007 Art.9 of the regulations of the treatment of the Federal prisoners.

the treatment of prisoners in ONRS Reg. no.48/1997 of Art.8(3) states that, enough water and other equipments, toilet facilities, showering rooms and the place where they wash their clothes are provided and arranged by the prison institution.

However, prisoners in all Prison Administration in the Region are challenging both with personal hygiene and sanitations of the whole premises. Accordingly, the Burayu Prison Administration is at front hand sharing these problems. The institution has no enough toilet facilities and only one latrine is in use with few sections which is not at any aspect balance with the prisoners in the institutions. The prisoners are only using toilets at day time. As it is discussed above under the sections of accommodations', at night time the dorm locked and a barrel and jar can set at the center of the class in order be used by prisoners and all prisoners urinate and faeces to this barrel and jar can. Then, all the class polluted with bad smell, especially during the absence of water, not the class but the whole premise of the institution is infected. Living in the room is too hard and which is completely inhumane and it is violating the constitutional rights of the prisoners. In addition to poor sanitations system in the institutions, the institution is not providing any equipment which used for personal hygiene and for washing their clothes though it is clearly provided under domestic and international laws.¹⁹⁹ Every accommodation's in the prison have no shower except prisoners imprisoned for the crime of corruption from 'Sebata and Burayu' town Administrations.²⁰⁰

Moreover, the female premise has no totally the supply of water. That is, the water pipe still is not installed. For any services, water brought by male prisoners who disciplinary punished to the female premises by 25 liter jar can; because the male and female premises of the Burayu Prison Administration is entirely separated and it is at least distant of 1km each other. Consequently, their personal hygiene and the sanitation of the premise are at stake because they have no water to take shower and to clean everything in need. Accordingly, women prisoners in the institution are challenged with access to shower/bathing facilities, i.e., such condition is immaterial particularly for women and girls who are pregnant, have recently given birth, are breastfeeding or are menstruating and for those with dependent babies and children. As the male prisoners, female prisoners are not getting soap for personal hygiene to maintain an acceptable level of

¹⁹⁹ .see, supra note 178, interviewees conducted with Dinke Bayissa.

²⁰⁰ .see, supra note, 158, interview conducted with, Ins. Teshome. Interviews conducted with, Martha Gabissa, Prisoner, 27/3/2014, 5:20(L.T), see also supra note172, interviews conduct with Kejela.

hygiene though detainees should be provided with a sufficient supply of such equipments and to meet individual needs as it provided under domestic and international prisoners' rights.

In addition, as it was observed by the writer, every class of the prisoners is poorly handled in sanitation wise and the whole premises not in cleanliness. The toilet is no culturally appropriated as the community used. It was installed as not protect the prisoners privacy since it is the cultural taboo of the community where the prisoners came. As a whole, regarding the sanitations of the institution, all prisoners are not in a position to protect their personal hygiene due to lack of enough water and mal-treatments system of the prisoners. Hence, prisoners personal and their premises are poorly handled.²⁰¹

4.1.1.7. The Right to Contact with Family, Legal and Religious Counselors

Socialization is the basic need for every human being including the prisoners. Currently it has got, both at national and international, constitutional protection. Prisoners also have such right even if he/she entered the prison institution as imprisonment, and the right to contact with his/her family and others are not removed rather it has reserved for them as their constitutional right. For the achievement of this right, special attention shall be paid both by the government and prison institution to the maintenance and improvement of such relations between a prisoner and his family as are desirable in the best interests of both.

The main purpose of this relation is to maintain the prisoners' future after release and to be encouraged and assisted to maintain or establish such relations with persons or agencies outside the institution as may promote the best interests of his family and his own social rehabilitation.²⁰²

Consequently, prisoners are allowed freely to communicate with their families, legal counselor and religious father at regular intervals, both by correspondence and by receiving visits.

Now days, the prisoners' right to contact with outside the institution is considered as the norm in a number of prison institution and has got constitutional and legal guaranty. As such, Art. 21(2) of the FDRE Constitution of 1995, states that all prisoners have the opportunity to communicate with, and to be visited by, their spouses or partners, close relatives, friends, religious councilors,

²⁰¹ . See supra note, 177, observation by the writer.

²⁰² .See, SMR, rule .37.

medical doctors and their legal counsel. Hence, the right of prisoners to contact with their relatives, spouses, friends, medical officers, legal counselors and religious father is not only limited to but it extended to sending and receiving letters and to communicate with video conference and these basically considered as the rights of prisoners through which communications taken place.²⁰³

However, in Burayu prison Administration, there are conditions when the prisoners removed the right to communicate his families and close relatives. If prisoners commit any fault of disciplinary matter, the institution may be punished as not to contact with those persons legally allowed. Irrespective of this constitutional right which could not be removed either by the prison institution or other government agencies, the Burayu Prison Institution does so. Unless the punishment is imposed upon the prisoners, it is possible to communicate relatives, families, and spouse, legal and religious counselors. Hence, through the name of internal regulations, the Burayu prison institution is removed the constitutional rights of prisoners to contact their families. In fact, even if the prison institution is empowered to issue the internal regulations by which to administer and treat the prisoners, prohibiting the prisoners to communicate their families is seriously contradict with the constitutional rights of the prisoners. Thus, the prison institution has no power to issue such like regulation though they are practicing on the prisoners. In addition, the place facilitated for the prisoners to contact with the visitors is not large enough to freely discuss with the visitors. The space allocated for visits was not properly provided in a way balance with the number of prisoners and has no any sections. Simultaneously, many prisoners visited at the same place and at the same time, hence, the sound of the prisoners and the visitors' disturb their listening to each other. This also, in turn, has its impact to the right to contact freely with the person could visit them.²⁰⁴

4.2 .The Prisoners' Right to Making Complain and the Problems of Internal Administration

As it has been discussed in the chapter 3 above, prisoners have a number of rights incorporated both in domestic legislations' and international human rights documents. These rights pertain to

²⁰³ . See, both Regulations on the Treatment of Federal Prisoners REg.NO.138/2007,Art.13 and the Regulations on the Treatment of Prisoners in ONRS Reg.48/1997, art.21.

²⁰⁴ . Interviews conducted with, Biyansa Hirpho, prisoner, 26/3/2014, 8:00(L.T).

welfare rights, human rights and democratic rights etc. In this section an attempt would be made to relate these rights to the practical situation prevailing particularly prisoners' right to make complain in Burayu Prison Administration.

So, there is no guarantee that the individuals sent to prison would behave as a normal and decent individual. S/he can misbehave and commit disciplinary offences in prison. The reason attributed for offences in prison though not identical with the reason for the commission of crime outside the prison are to some extent different, for example stealing due to economical problem etc.

Apart from this, the crowd created due to lack of adequate rooms may give rise to conflicts. Because, overcrowd might be justifiably lead one to intrude his or her to do something unacceptable by the other. This might lead to undesirable exchange of words and hence beating.

Moreover, absence of classification also has major factor for the presence of conflict amongst prisoners. As it is known that the needs and desires of youngsters are too different from those who are elders. Situations that make fun among youngsters could annoy the elders and hence creating problems. Therefore, there are many reasons, which could give rise to disciplinary problems.

In order to cope with aspect of behavior, disciplinary measures were provided. The criminal code (2004) under Art, 109 empowered that the respective prison commission to proclaim directives relating to prisons administration; such as for the manner of execution of sentences, the admission to prison, and the segregation of prisoners, the contact of prisoners with persons outside, the internal discipline in the prisons, and for the education and spiritual welfare of the prisoners.

Accordingly, prisoners have the right have knowledge of the regulations of the institution. In turn, the prison institution has an obligation to teach every regulation and principles of the prison administration as soon as the admission of the prisoners taken place. This means that, every prisoner at the moment of admission should be provided with written information about the regulations governing the treatment of prisoners of his category, the disciplinary requirements of the institution, the authorized methods of seeking information and making complaints, and all such other matters as are necessary to enable him to understand both his rights and his obligations and to adapt himself to the life of the institution. And also when a prisoner is

illiterate, the aforesaid information should be conveyed to him orally.²⁰⁵ To do so is the overall obligations of the prison institution.

Although informing the prisoners all his/her rights and obligations in the prison is the duty of the prison, prisoners in the Burayu Prison Administration have not got any information about their rights and duties, and the way their treatment taken place both during their admission and after their entrance in to the prison. No prisoner in the institution has known even the existence of any regulations that determine his rights and duties. That is, the prison is not giving any orientations and concepts regarding the rules and regulations of the institutions both for new comer and for other prisoners. For such reasons, prisoners are not in a position to differentiate the act which is wrong and right.²⁰⁶ In other word, failing to inform prisoner about the rules and regulations are violating the entire rights of the prisoners.

Furthermore, the internal administration system of the prison is not inviting the prisoners to present a proper defense when alleged offence. Thus, in the institution, informing the prisoners every rights and duties are not experienced and also when the prisoners are alleged due to commit a fault, no chance is given to prepare defense before imposing punishments up on him/her.²⁰⁷

Additionally, if the prisoner is not satisfied with the decisions of the institutions and also when the conditions of ill-treatment committed up on the prisoners, no clear procedure are available in the institution the way in which to make complains to a competent body. In turn, the body who in charged to receive the complaint are not as much as possible give an immediate remedy however the prisoners' rights also extended to submit his grievance to a higher officials.²⁰⁸ Hence, in the Burayu prison administration, prisoner has no the right to lodge a complaint either orally or in writing.

Even though the right to appeal is reserved for prisoners, it is no, at any aspect, going beyond the head of the prison Administration though he/she is part of the rendering decision to the prisoner. In other countries, if a complaint is rejected or not responded to in a timely manner, the

²⁰⁵.See, SMR, rule, 35, See, Regulations for the treatment of prisoners both Federal and Oromia REg.no.138/2007 and 48/1997 respectively.

²⁰⁶ .Interviews conducted with, Gadissa Seboka, prisoner, 26/3/2014, 9:30(L.T).

²⁰⁷ .abid

²⁰⁸ .See, the Federal Regulations for the treatments of prisoners' right: Art.28; and the regulation of prisoner's treatment in Oromia, Art, 52.

complainant shall be entitled to bring it before a judicial or other authority although this practice is not experienced in Ethiopia.²⁰⁹

In Burayu prison Administration, there are discipline committees to bring suit to the prisoners when the prisoner commits any fault. There are also judges selected from the prisoners and their main object is to entertain the case brought before them by the Discipline committee. After they consider the case, they give decisions. In here, if the prisoners are not satisfied by the decision, he has one chance to take appeal to the head of the prison institution. And the decisions given by him is not appealable and it is the last resort.²¹⁰ At this juncture, the prisoner has no option rather accepting the decisions whether it is correct or wrong. As it is provided in the regulations, the judges could see simple and serious fault of the prisoners, and at last even they could render the decisions that remove the rights of the prisoners to communicate with his/her families, spouses and close relatives which is what constitutionally protected for prisoners as basic rights. Hence, the judges of the prisoners are initially selected through the advice of the head of the institution and for this reason, the impartiality of the head by itself under question. Therefore, the prisoners' right toward making appeal is negatively affecting the prisoners' right in the institution.

Moreover, there are also the punishments of placing in a dark cell, corporeal punishments, and instrument constraint and specially punishing the prisoners by fetching water from a remote area with 35 liters of jar can to the female premises. As it discussed under the sections of prisoners rights to sanitations, for all services there is no water in women premise unless it is brought by male prisoners who punished disciplinary. Besides, one of the interviewees put forward his feelings as:

“We cannot complain to any body and even we cannot claim our right. If you have owned money from the staff, you cannot receive it unless you give money for them, if you challenge them, you will be punished. Thus, we don't know whether the rule and regulation for the treatment of prisoners exist or not”.²¹¹

Furthermore, in the Burayu Prison Administration, there is no any other neutral organ that supervises and inspects the institution whether or not the prisoners' constitutional rights applicable in line with the international human right particularly the prisoners' right.

²⁰⁹ .See: the prisons handbook, p.92.

²¹⁰ .Ibid, Oromia prisoner regulation, Art.52(3), and See, also supra note, interviews conducted with, Ins. Teshome,

²¹¹ .see, interviewees conducted with Yohannis.

Contrary to the handling of prisoners in Ethiopian system, international principles that related to the protections of prisoners rights states that there should be methodical, punctual and impartial investigation of all suspected cases of extra-legal, arbitrary and summary execution, including cases where complaints by relatives or other reliable reports suggest ill-treatments are conducted either by the prison officials or by the prisoner on other prisoner. In order to achieve this goal, Prisons institution should be inspected regularly by qualified and experienced inspectors from a competent authority separate from the prison administration.²¹²

But, in Ethiopia, there is no any neutral organ that established from independent institution to investigate and supervise the prisoners' treatment both at Federal and at Regional level. The absence of this organ affects both the prison institution and the prisoners' rights. In one way, the prison institution is forgotten their mandate and not improved their management system through sharing experience both from outside and inside due to no fear of check and balance. In other way, prisoners are lack an independent organ that hear their grievances and implemented it to practice.²¹³

4.3. The Role of the Federal Prison Commission and the Oromia Prison Administration for the Proper Implementation of Laws dedicated to the Protection of Prisoners' Rights

After the adoption of the 1995 FDRE Constitution, Ethiopia entirely changed her system of government from highly centralized to the federal system of government structure. By establishing the Federal System of Government, the Constitution empowered the states to have their constitution by which determine their powers and functions.

The human rights and democratic rights are also the component part of the constitution that incorporated in line with international human right bills which makes the constitution different from the past. And also, it is not only recognized the human rights in general but also ratified international human right as part and parcel of the constitution.²¹⁴

Regarding the protection of human rights, the constitution also imposes an obligation both on the Federal and State legislative, executive and judicial organs at all levels in order to respect and

²¹². See, the prison handbook, p.22-23.

²¹³.Interviewees conducted with Desta Zeleke: super-Intendent, Leader of Employment Reform Directorate Director, 21/3/2014, 7: 30(L.T).

²¹⁴. FDRE Constitution of 1995, Art.9 (4).

enforce all human rights provided in the constitution. As such, the prisoners' rights also explicitly provided under art.21of the same constitution. Similarly, States constitution also recognized the rights of a person who deprived his liberty in the way to protect his personal dignity and humanly treatment.

In addition to the 1995 FDRE Constitution concerning the protection of prisoners' right, States Constitution, different Federal and States legislations determine the protection and handling of prisoners in their individual jurisdiction irrespective of the human right issue is not only the state matter. Furthermore, the Federal Prison Commission is under a duty to undertake studies that can help to improve the custody and treatment of prisoners, and that facilitate country-wide similarity and standardization in the professional competence and service of prison wardens. To this end, the Federal Prison Commission has two mandates in order to be standardized the treatment of prisoners in country as a whole. In one way the institution should facilitate the opportunities for training in Ethiopia or abroad in order to upgrade the professional competence of the prison warden that could contribute for their knowledge of prisoners rights protection and in other way, provides professional, technical and advisory assistance to Regional Prisons in the manner to protect the prisoners' rights throughout the country in similar manner.²¹⁵ In addition to do so, the commission has an obligation to follow up that the rights of prisoners are respected and their custody secured, and that prisoners are enable to be reformed and made a responsible citizens upon their release.

However, the Regional Prison Commission has not been provided professional, technical and any advisory assistance by the federal Prison Commission. And also the institution is not sharing special experiences either inside or outside Ethiopia that used Regions in order to protect the prisoners' right in their respective prisons institutions. Moreover, no research was conducted that help the administration system of prisons institution and uphold and standardize the right of prisoners through the prison administration of the country.²¹⁶

But, in order to strength the relations between the Federal and States Prison Commissions, proclamation No.365/2003, for the establishment of federal prison commission states that, Regions are presenting their report to the commission twice in a year. The commission also evaluates the report presented, and the weaknesses and strengths of the report also discussed

²¹⁵. A proclamation to provide for the establishment of federal prisons commission No. 365/2003, Art.7.

²¹⁶ .See, supranote 162, interview conducted with Ato, Tsehay, Commissioner.

through report although there is no cross checks about the realities of the report. And no committee was established to supervise the protection of prisoners' right and the security of the prisons of the Regions. Beyond hearing the report and evaluate the paper, the Federal Prison commission didn't know the proper implementations of prisoners' rights that recognized both in the proclamations and regulations, and in the international human rights documents. Hence, the Federal Prison commission has also no any awareness about the accommodations', provisions of food and water, health services, classifications of prisoners and other basic needs of prisoners' right in the country although has the power or mandate to supervise and inspect the regional prisons commission.²¹⁷

Therefore, evaluating the paper by name of report is completely different from evaluating the practice. Even though the Federal Prison Commission is empowered to conduct studies relating to the prison administrations and the treatment of prisoners in the country, no research is still conducted and for this reason, the problems regarding to the rights of prisoners, for example, overcrowded, declassifications, non-provisions of cloths, bed and bedding for prisoners, medical services, poor sanitations and etc. are continued as it is. Moreover, no uniform standard was issued and applied evenly throughout the country though to issue such like standard is the power of the federal prison commission. Thus, the treatment and handling of the prisoners is totally different even from one zone to the other zone of prison Administrations.

On the other hand, the main cause for the handling of prisoners in different aspect was the budget constrains in addition to the absence of uniform standards in the country. This is due to the fact that, all budgets are allocated by the individual Regional Council to the Regional Prison Commission, and the Regional Prison Commission again allocates the budget to different Zonal Prison Administrations, and at the same time the budget is distributed to prisoners' food, health services and for other requirements. The Federal Prison Commission cause this factor as hindering them to issue a uniform standard that applied throughout the prison Administrations of country. Because the Federal prison commission leaves everything to the Regional council to allocate enough budgets to their respective prison administration though non-supervisions of the fairness of the budget allocated was conducted.²¹⁸

²¹⁷.Interviews conducted with, Abdi Mamud, Chief Director of the FDRE Prison Commission.

²¹⁸.abid.

Therefore, this brings a number of questions that need answer. If so, this could consider as a factor that hinder to set a uniform standard for the treatment of prisoners or non uniform budget allocation could hinder to set a uniform standard of prisoners right? Hence, what is the answer for the proclamation that mandates the Federal Prison Commission to undertake studies and set a country-wide uniform standard that help to improve the system of prison administrations and the protections of prisoners' rights? In addition to that, who is in a position to apply the principles that listed under the Ethiopian criminal code and regulations: the federal or regional prison Commission?

In order to protect and enforce the human right principles in Ethiopia, every government agencies are under a duty or they have constitutional obligations. Because Art.13 (1) of the FDRE Constitution clearly obliged both State and Federal Judicial, Legislative organ and executives departments of the governments.

Even if other Federal and States officials are under a duty to respect and enforce the human right principles that provided under the FDRE Constitution, the Federal Prison Commission established particularly for the purpose to standardize the treatment of prisoners' rights in the country. In addition, the commission has the power to establish a committee at federal level to supervise and to inspect the consistency and realities of the implementations national and international prisoners' rights in the Regional Prisons institution and the report presented by the head of the prison Commissions of the Region.

But, nothing is done by the Federal Prison Commission; this also in turn has a great impact both on the treatment and handling of the prisoners and the improvement of prison management in the country as a whole. Besides, the commission makes the prisoners as not to be benefited to the international prisoners' rights, standards and rules and at last makes the country remained without having a minimum standard rule that commonly apply to both the prisoners and prisons in the country.

CHAPTER FIVE

Conclusions and Recommendations

5.1. Conclusions

Today, in the modern world, it is believed that whatever view governments may have about the purpose of imprisonment, there are no uniform arguments about the need to treat people decently while they are in prison and to respect their human rights. As such, prisoners retain all their rights except those taken away expressly by the laws or having regard to the nature of imprisonment. The right which is most obviously lost on incarceration is that of liberty, and there are other rights which are inevitably restricted, i.e., the right to free medical services, the right to get enough living space, right to provisions of nutritional diet and water, the right to classifications, the rights to personal hygiene and sanitations, the rights to provisions of bed and bedding, the right to contact with families and close relatives, and the right to make complain to the officials of the institutions exist at different level.

Accordingly, this protection becomes wide enough to specifically address prisoners as one category of citizens. Thus, today, we have several international and national legal instruments that call for and demand states to handle prisoners at acceptable standards of confinements.

Having in mind the overall prisoners' rights that mentioned above and the conceptual, historical and practical analysis of the prisoners' rights of the Burayu Prison Administration are concluded by the writer as follow.

After analyzing the health services of the Burayu Prison Administration, the writer concluded that, there are no adequate health facilities and services for prisoners. This challenges the prisoners to provide humane conditions for them and safeguarding compliance with applicable national and international laws, standards and guidelines. Even though people who are in prison have the same right to health care as everyone else, prisoners in the Burayu prison institution are not benefiting from the health policy of the country. In one way, there is no uniform budget allocation throughout the country regarding the health services of prisoners; for this reason, the Federal government cannot control the uniformity of the health services of prisoners in the country. In other way, the Oromia Regional Council is not allocating enough budgets to the Regional prison commission for the overall treatments of prisoners including the health services.

These facts clearly indicate that, there is no government attention both at the Federal and Regional level for the health services of the prisoners.

Therefore, the writer come to the conclusion that, in the Burayu prison institution, the health services provided for prisoners are too poor and it is entirely contrary to the prisoners' health rights which recognized under the International Guidelines and International Laws. For this reasons, prisoners in the Burayu Prison institution are not completely in a position to rehabilitation and resettlement because of their health problems.

Moreover, after conducting depth interviews with the prisoners and other concerned body, the study discloses that the existence of serious problem concerning the provision of adequate food and clean drinking water in the Burayu prison institution. Thus, the food provided for prisoners in the prison institution has no quality and quantity. For this reason, the food provided is not used for their health and strength because it is entirely under nutritional. The prisoners also have serious problems of water both for drinking and for sanitations. They are not accessed with clean drinking water when they need and often they stay up to 14 days without getting drinking water. Bearing in mind this fact, prisoners in the institutions are frequently living under starvation and their right to food and drinking water were violated. Moreover, regarding the life conditions of minors and pregnant women, special attention is not given to those children live with their mother and pregnant women. Children with their mothers are not counted independently but share everything from their mothers. The pregnant and breastfeeding mother also not provided with especial food that used for their dependant infant and baby's. Hence, after analyzing the feeding conditions of prisoners of the Burayu Prison Institution, the prisoners' right to food and drinking water are under questions, because no nutritional food (both in quality and in quantity) and clean drinking water are provided for a detained person in order to live with mentally and physically fitness.

On the other hand, after examining the accommodations of prisoners of Burayu Prison Administration, the researcher concluded that there are highly overcrowded of prisoners in the prison institution. Even though shelter is the basic needs of human being, prisoners in the Burayu prison Administration are denied this right. Prisoners have the right to an amount of living space sufficient to safeguard their health. Therefore, the classes of the prisoners in the Burayu Prison administration are highly exposing prisoners unhealthy because their classes are far from meeting the requirements provided by the International Minimum Standards Rules and

principles. Thus, prisoners are suffering from communicable diseases like TB and other diseases because it is transmitted simply from one prisoner to the other and hence, this overcrowded also alarming these conditions.

Having the opportunity of observing the classes of prisoners, this overcrowded are undoubtedly not only punishing the prisoners but also degrading, torturing and ill-treatments them though the main purposes of the prisons institutions are to rehabilitate the criminals and reintegrate to the society after complete their imprisonment. For this reason, the researcher comes to the conclusion that, the prisoners' rights to human dignity are also violated in the Burayu Prison Administration.

In other word, Contrary to the domestic and international instruments that recognizes the prisoners' right to be provided clothes, bed and bedding, no cloth, bed and beddings are provided for prisoners in the Burayu Prison Administration. Prisoners are sleeping on the bare floor without having any bed and bedding. And also, the prison institution is not provided clothes for them. In addition, there are no supervisions of the cleanliness of the prisoners' clothes, bed and bedding in the prison institution. For this reasons, they are highly suffered from lice and other parasites that also dangerous to prisoners health. Besides, there are also explicit discriminations between the prisoners concerning the provisions of bed even though the number of prisoners and the bed existed in the prison institution is imbalance. But in Burayu Prison Administration, prisoner who hasn't money in any way cannot be provided bed unless he has paid first 775 Ethiopian birr however both the Federal and ONRS Prisoners Regulations provided the right to provisions of bed free of charge and the equal treatment of prisoners. Therefore, bearing in mind this fact, the prisoners of Burayu Prison Administration have deprived of their constitutional right to be provided bed, bedding and clothing with free of charge.

Similarly, declassifications of prisoners in terms of their age, types of their crime (simple, rigorous and death sentence), recidivist, civil and criminal imprisonment are practiced in the Burayu prison Administration despite the fact that the main objective of classifications of prisoners is to rehabilitate and change the bad behavior of prisoners to be a responsible citizens. In addition, the prison institution is not facilitating for pregnant women who are in prison even what they need for their condition. And also both at pre-natal and post-natal and even during give birth, pregnant women in the Burayu Prison Administration are imprisoned with other

women prisoners. Likewise, minors below the age of 18 years also detained with others prisoners and this completely contradict with the children's interest that determine their future life.

Therefore, after considering the classification of prisoners of the Burayu Prison administration, the researcher come to the conclusion that the Burayu prison administration is not in a position to achieve the purpose for which it was established because prisoners are not treated according to their categories rather it is simply warding the prisoners without bringing the behavioral changes of prisoners.

Likely, after evaluating the overall cleanliness of the prison institution of Burayu, the sanitation conditions of the Burayu Prison Administration are too poor. In the institution, there is no continuous supply of water to use showers and toilets throughout the day. This has a great impact on the general cleanliness of the premises and the personal hygiene of the prisoners. Besides, the sanitation equipment is totally not provided for prisoners and the places where prisoners take showers and wash their clothes were not arranged. The classes of prisoners are also polluted with bad smell because of prisoners' are urinate and faeces in their class at the night time. Especially women prisoners in the institution are challenged with the total absence of water in their premise. For them, water for every service including shower and bathing facilities are not found in the premises rather come from somewhere by male prisoners. For this reason, women prisoners who are pregnant have recently given birth and those with dependent babies and children are challenged with serious problem to protect their personal hygiene and sanitation.

Therefore, having this fact, the total sanitation and hygiene of the institution is too poor and there is no supervision by a qualified person in order to protect the sanitation of the premises and the personal hygiene of prisoners through which the health's of the prisoners to be ensured. And the showers and the toilets of the institution were not provided in the way to protect the prisoners' privacy.

On the other hand, after considering the prisoners' right to communicate with their family, the study discloses that, the prisoners' right to contact their close relatives, families, and spouses is the serious problems of the Burayu Prison Administration. In the institution, prisoners are denied their constitutional right to communicate their spouse, legal and religious counselors and other close relatives through disciplinary punishment by the internal regulation. Moreover, even if communication is allowed, the section provided for visits is not large enough to freely interchange their idea between the prisoners and the visitors.

Additionally, after considering the prisoners' right to make complain, the paper exposes that the prisoners' right to make complain and to take appeal are limited. In Burayu Prison Administration, prisoners have no right to make complain because the regulation for the treatments of prisoners of the Region is not inviting them to bring their grievance to higher authority except in the institution. Because there is no clear procedure even in the institution how and to whom the complaint is made. Thus, bearing in mind this fact, prisoners in the prison institution is ignored their right to make their complaint and the right to take appeal freely to a competent body in order to seek remedies for their actual problems.

In other word, after conducting interviews with top officials of Federal and Oromia Prison Commissions, the writer concluded that the extremely negligence of the Federal Prison Commission cause for the poor handling and ill-treatment of the Regional prisoners including the prisoners of Burayu Prison Administration. Even though the Federal set up in its nature divide the powers and functions between the two tiers of government, the protections and the treatments of human rights including the prisoners' rights need uniform application throughout the country. Accordingly, Ethiopia also signed as its part of her constitution different international human right bills and for its implementations, both the Federal and States officials at any levels are under a duty to implement and enforce the human rights including the prisoners' rights. Thus, even if the Federal and States officials have an obligation to respect and protect the prisoners' rights, the Federal Prison Commission is at forefront in order to protect and to supervise the proper implementations of international prisoners' rights that provided under the FDRE Constitution. And also, the Federal prison commission has a particular constitutional obligation to issue a uniform standard and to conduct a research that applies to all over the prison Administrations of the country. However, the Federal Prison commission till today has not set any minimum rule and has not undertaken any research that could contribute for the treatment of prisoners in the country. Therefore, the researcher comes to the conclusion that, due to the absence of these minimum standards rules, prisoners in the country are exposing to the violations of their constitutional rights.

On the other hand, the proclamation and regulations for the treatment of prisoners in the country is not in a position to protect the prisoners' rights in line with that provided under both the FDRE and ONRS Constitutions. Therefore, after examining the handlings and the treatments of

prisoners in Burayu Prison Administration, the researcher comes up to the conclusion that, the existing laws concerning the protections of prisoners should be amended.

5.2. Recommendations

The handling of prisoners by the prisons administration in Ethiopia is too backward when we compare with different International Minimum Standards, Rules, Principles and Guidelines. Thus, with a view to come up with ways of improving the state of affairs in the prison in order to the prison could attain its reformatory and constructive purpose. Following are the general recommendations forwarded by the researcher:

Firstly, necessity of revision of the existing laws. The Federal Prison proclamation No.365/2003, the ONRS Prison Proc, No.163/2011 Art.25, and the regulations for the treatment of prisoners in the ONRS Reg. No.48/1997 should entirely be revised. These laws were not promulgated in the manner to protect the overall prisoners' right in details. Particularly, both the proc.No.163/2011 and the Regulation No.48/1997 for the establishment of prison institution and for the protection of prisoners' right in Oromia Regional State respectively were not well provided the treatment of prisoners in the Region in line with both the FDRE Constitution and the International Prisoners' Rights. Therefore, these laws and regulations should be enacted in the way to protect the prisoners' right; particularly, the right to prisoners' food and water, fair and free medical services, the classifications of prisoners, accommodations', sanitation and personal hygiene, and the right to communicate with outside the institution and the procedure to make a complain. To this end, detailed rules should be formulated for the implementations of the domestic and international laws especially the constitutional rights and other International human rights of prisoners to which the country is acceded to. And also the rules and regulations needs to strictly and clearly show the organizational setup and methods to administer the prisons and to treat the prisoners.

Secondly, proper classification of prisoners should be made. To this end, the services of a psychiatrist, psychologist, health officer and social worker should be involved in the classification of prisoners in order for the classification system be effective. A system of re-classification at the same intervals should be implemented based on the changing needs and behavioral patterns that each inmate has demonstrated through time. Proper classification of prisoners should be made.

Thirdly, minimum standard rules for prisoners should be uniformly applied. The Federal Prison Commission should set the minimum standard rules that uniformly apply to all prisons institutions of the country as it was provided in the proc.No.365/2003 for the establishment of Federal Prison. That is, the rules and regulations should determine the numbers of prisoners live in a class or dorm and the size of the class, the budget allocated for each prisoner per day for provision of food, the free medical services and for other services should also be determined uniformly throughout the country just as the health services of university students.

Fourthly, clothing, bed and bedding should be adequately provided to prisoners. Since prisoners are a vulnerable group of the society, the prisons institutions have an obligation to provide free of charge cloths, bed and bedding as it is expressly provided under the regulations and International Prisoners Minimum Standard Rules. Concerning the provisions of bed for prisoners in the Burayu Prison Administration, the clear discrimination acted between prisoners by the institution based up on financial capacity of prisoners should be avoided and both the Federal and Regional Prison Commission should inspect and follow up this like discriminations. And also the discrimination conducted between the prisoners regarding the provision of accommodation should be avoided. These all require due attention and urgent solution since these all contradict with underlying principles of human rights principle provided in FDRE and Oromia constitution.

Fifthly, such group of prisoners, pregnant women, minors, mentally abnormal, and sick prisoners should be given special attention. These groups of prisoners seek especial treatments because of their conditions of life regarding the accommodation, classification, provisions of food and water, and their personal hygiene.

Sixthly, the rights of prisoners to communicate their families, spouses and close relatives should be respected. These rights are given for prisoners by the constitution and for this reason, it is impossible to deprive this right by the internal regulations of the prisons. Hence, this kind of punishment should be averted.

Seventhly, clear procedures for complaining and appealing to the higher prison administration should be at place. The complain and grievance hearing institution should be established both at the Federal and the Regional Prison Commission, i.e., his right to appeal or to take complaint

should not be limited to only the prison institution of the prisoner where he/she imprisoned and he/she should have to an alternatives.

Lastly, independent supervising institute affairs of prisoners at Regional as well as at Federal level should be established. This body should be empowered to supervise concerning: the protection and proper implementations of prisoners' human dignity, the categorization of prisoners, separate and standard of accommodations, the nutritional values of food and clean drinking water, free medical services, discipline and punishment and the sanitations of the total premises of the prisons and personal hygiene of the prisoners.

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Annexes

THE INTERVIEWS QUESTIONS CONDUCTED WITH HIGHER ADMINISTRATORS OF THE FEDERAL AND OROMIA PRISONS COMMISSION, THE BURAYU PRISON ADMINISTRATION AND PRISONERS IN THE BURAYU PRISON ADMINISTRATION

Interviews Guide Questions

Dear respondents

The set of questions are prepared to gather information on the relating to the handling of prisoners in Ethiopia in general the protections of prisoners' rights of the Burayu Prison Administration in line with their constitutional rights and other international Human rights Instruments regarding the treatments of prisoners in particular. And hence, make sure that the responses you give are for academic purpose and not for any other reasons/ objectives. Thus,

your cooperation in giving genuine and reliable information will contribute highly to the achievement of the objectives of this study.

As Such, the questions of the interviews conducted with the key administrators of the Federal and Oromia Prisons Commissions, the Burayu Prison Administrators and the Prisoners of the Burayu Prison Administration provided as follow.

Thank you in advance!

(1) For Federal Prison Commission

Questions to key informants

Respondent's profile

Name-----Position-----Age-----sex-----Qualification.....

1. The commission has been empowered by art. 6.of Prcln.No365/2003 to undertake studies that:
 - ✗ Can help to improve the custody and treatment of prisoners,
 - ✗ facilitate country-wide similarity and
 - ✗ Standardization in the professional competence and service of prison warden.

If so, is/ are there any research(s) which was undertaken by the commission?

- ✓ What kinds of problems were addressed by the research conducted via setting a minimum standard prisoner' rights and obligations?
 - ✓ Annually, how many times the federal Prison Commission, Provide professional, technical and advisory assistance to Regional prisons?
 - ✓ After providing multi-assistance to the Regional prisons, in what way you supervise the practical implementations of prisoners' right?
2. As per art. 8. of the proclamation, the Management Council of the commission has a powers and duties to undertake studies concerning county-wide policy, strategy and standardization towards the improvements of custody and treatment of prisoners, and toward improving prison administration and submit the same with recommendations to the joint council of Federal prison commissioner and Regional Prison Heads. So:

- ✓ Do you think that this bring any change regarding the handling of prisoners and improve prison administration?
- ✓ Are we sure that every prisons in our country have the same minimum standard concerning the classification, accommodation, right to food and water, sanitation and hygiene, clothing and bedding, free-medical services and discipline and punishment?

(2) **The Oromia Regional National State Prison Commission**

Questions to key informants

Respondent's profile

Name ----- Position-----Age----- Sex----- Qualification.....

1. Do you have any Regulation and Directive for the implementation of the proc. No.163/2011?
2. Are/is there any minimum standard rules that uniformly apply in all prisons in the Region?
3. Can the Oromia Prison Administration be ensured that all international human rights instruments that ratified by the FDRE Constitution have been implemented particularly the protection of prisoners rights and their dignity?
4. How could the Oromia Prison Administration know the proper implementations of the proclamation and the International Human Right Instruments in Prisons Administration in the Region?
5. Are all prisoners equally protected without discrimination, e.g. concerning the accommodation of prisoners, provision of food and water, access to medical services and the like?
6. Is the Institution sure that prisoners in the Region are provided with adequate food and clean water both in quantity and in quality?
7. Do you think that the accommodation of prisoners and the number of the prisoners are balance each other?
 - 7.1. Is the Institution sure that the prisoners' rooms getting fresh and cubic content of air in a manner to secure their health?
 - 7.2. Are prisoners categorized in terms of their sex, age, sickness or sick prisoners, seriousness of their crime and the like?
8. Is special attention given to minors, pregnant mother and mentally abnormal prisoners?
9. Are prisoners get free medical services and equally benefited from the health policy of the country as a whole?
10. Are prisoners met with their family, legal and religious counselor freely without any problem?
11. Are there clear and simple procedures available in all prisons custody or Administration in the Region for making complain freely to a higher organ when their constitutional rights are violated?

(3) The higher officials of Burayu Prison Administrators

Questions to key informants

Respondent's profile

Name ----- Status or position-----Age----- Sex-----Qualification-----

Categorizations of prisoners

- ✘ Is, in your Prison Administration, different categories of prisoners kept in separate building or parts of buildings taking account of their sex, age, criminal records, and the legal reason for their detention and necessities for their treatment?

Prisoners Accommodations

- ✓ Do rooms or dormitories provided in personal or in group?
- ✓ If it is given in group, do the number of prisoners and the dorm given for them balance each other?
- ✓ If it is imbalance, is it not affect or cause to affect the health conditions of the prisoners?
- ✓ Are all accommodations provided for the use of prisoners and in particular all sleeping accommodation 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 ventilations?
- ✓ Are/is sanitary installations available to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner?
- ✓ Do classes or dormitories have been cleaned at a regular time and supervised?
- ✓ All or part of an institution regularly/ properly maintained and kept scrupulously clean at all time?

The right to personal hygiene and sanitation of prisoners

- ✚ Are there adequate bathing and shower installations so that every prisoner enable to have a bath or shower according to this local climate condition?
- ✚ Do prisoners keep their persons clean, and to this end they provided with water and such toilet articles as are necessary for their health and cleanliness?

The right to bedding and clothing of prisoners

- ✓ Do prisoners wear their own clothes or it is provided by the prison administration?
- ✓ Do prisoners' clothes kept its clean in a proper way and it is supervised?
- ✓ Via supervision underclothing changed or washed as often as necessary for the maintenance of prisoners' health?

- ✓ Are arrangements made by the Burayu Prison Administration to ensure that the conditions of prisoners' clothes shall be clean and fit?
- ✓ Do every prisoners provided a separate bed, and with separate and sufficient bedding in accordance with local or national standards?
- ✓ Do prisoners' beds are clean when it is issued, kept in a good order and changed often enough to ensure its cleanliness?

The right to food and water of prisoners

- ✗ Does every prisoner provided by the Burayu Prison Administration at the usual hours with food of nutritional value and adequate for their health and strength, of wholesome quality and well prepared and served?
- ✗ Do drinking water available to every prisoner whenever he/she needs it?
- ✗ Do pregnant mothers have privileged in the provisions of food?
- ✗ Do/does children/child with their mothers count independently and have got their own share?

Prisoners right to medical services

- ✓ Are Conditions available in this prison administration when prisoners got sick for their treatment?
- ✓ To render medical services to prisoners, do the Burayu Prison Administration has its own clinic, or health station or hospital?
- ✓ If no, where the prisoners are treated?
- ✓ Prisoners in this institution are getting free medical services both at normal treatment and at referral level?
- ✓ If the prisoners haven't money for medical fee, what the institution do for those prisoners?
- ✓ For prisoners who knew his types of disease, are an adequate pharmaceutical provided freely for those prisoners?
- ✓ When prisoners' sick become chronic, by whom cost the refer is issued?
- ✓ Prisoner who sick of 'HIV' AIDS has got appropriate support and education or concept concerning the disease?
- ✓ Are education and general concept are given concerning the contagious disease and also dormitories are separated for those suffering from TB and other diseases?
- ✓ Is there any difference between the prisoners and the community concerning the health policy of the country?
- ✓ Do pregnant mother have pre-natal and post-natal free-medical services as other women's?
- ✓ In order to ensure the health matter of prisoners, is there any organ or medical officer who regularly inspect and advise a concerned organ or man upon:
 - A) The quantity, quality, preparation and service of food?
 - B) The hygiene and cleanliness of the institution and the prisoners themselves?
 - C) The sanitation, heating, lighting, and ventilation of the institution?
 - D) Suitability and cleanliness of the prisoners' clothing and bedding?

Punishments and Discipline of Prisoners

- ✘ Are there law and regulation that describe the overall prisoners rights and duties and Prisoners know it?
- ✘ Prior to make liable the prisoner for his act, are general concepts given regarding the rules and regulations of your institution?
- ✘ Are prisoners punished without informed of the offence alleged against him and given the opportunity of pre-setting defense?
- ✘ Are prisoners punished through corporeal punishment, reduction of diet, punishment by placing in a dark cell, and cruel, inhuman or degrading punishment imposed?
- ✘ Are there simple and clear procedures to make complain to a higher organ by the prisoners when their right violated?
- ✘ A competent organ to hear complains is positive to treat the case brought by the prisoners?
- ✘ Is there any neutral organ established for the supervision and to control the general prison administration and prisoners right?

Prisoners' right to Contact with their Family, legal and Religious Counselors

- Are prisoners freely met their families, legal and religion counselors and talk to each other all their personal or family issues/ cases independently without supervisions or controls by Prison warden?

(4) Prisoners in Burayu prison Administration

Questions to key informants

Respondent's profile

Name of prisoner----- Age----- Sex----- Nationality----- Religion----- Married/
 Unmarried----- Has child/children----- Cause of imprisonment-----

Categorizations of prisoners

- ✘ Are different categories of prisoners kept in separate institutions or parts of institutions taking account of their sex, age, criminal records, and the legal reason for their detention and necessities for their treatment?

Prisoners Accommodations

- ✓ Do rooms or classes provided for you in personal or in group?
- ✓ If it is given in group, the number of prisoners and the dorm given for them balance each other?
- ✓ If it is imbalance, is it not affect or cause to affect your health conditions?

- ✓ Are all accommodation provided for the use of prisoners and in particular all sleeping accommodation meet all requirements of health, due regard being paid to climatic conditions and particularly to fresh air, minimum floor space, lighting, heating and ventilations?
- ✓ Are/is sanitary installations available to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner?
- ✓ Do classes or dormitories have been cleaned at a regular time and supervised?
- ✓ All or part of an institution regularly/ properly maintained and kept carefully clean at all time?

The right to personal hygiene and sanitation of prisoners

- ✚ Are there adequate bathing and shower installations so that every prisoner enable to have a bath or shower according to your local condition of climate?
- ✚ Do prisoners keep their persons clean, and to this end they provided with water and such toilet articles as are necessary for their health and cleanliness?

The right to bed, bedding and clothing of prisoners

- ✓ Do prisoners wear their own clothes or is it provided by the prison administration?
- ✓ Do prisoners' clothes kept its clean in a proper way and is it supervised?
- ✓ Via supervision underclothing cloth changed or washed as often as necessary for the maintenance of prisoners' health?
- ✓ Are arrangements made to ensure that the conditions of prisoners' clothes shall be clean and fit?
- ✓ Do every prisoners provided a separate bed, and with separate and sufficient bedding in accordance with local or national standards?
- ✓ Do prisoners' beds are clean when it is issued, kept in a good order and changed often enough to ensure its cleanliness

The right to food and water of prisoners

- ✗ Does every prisoner provided by the Burayu Prison Administration at the usual hours with food of nutritional value and adequate for their health and strength and with quantity and quality; and well prepared and served?
- ✗ Do clean drinking water available to prisoners whenever he needs it?
- ✗ Do pregnant mothers have got privilege in the provisions of food?
- ✗ Do/does child/children with their mothers count independently and got their own share?

Prisoners right to medical services

- ✓ Are Conditions available when prisoners got sick for their treatment?
- ✓ To render medical services to prisoners, the Burayu Prison Administration have its own clinic, or health station or hospital?
- ✓ If no, where you are treated?
- ✓ Are you getting free medical services both at normal and referral level?

- ✓ If the prisoners haven't money for medical fee, what the institution do for those prisoners?
- ✓ For prisoners who knew his types of disease, are an adequate pharmaceutical freely provided for those prisoners?
- ✓ When prisoners sick become chronic, by whom cost the refer is issued?
- ✓ Prisoner who sick of 'HIV' AIDS and diabetes have got appropriate support and education concerning the disease?
- ✓ Are education given concerning the contagious disease and dormitories are separated for those suffering from TB and other diseases?
- ✓ Is there any difference between the prisoners and the community concerning the health policy of the country?
- ✓ Do pregnant mother have pre-natal and post-natal free-medical services as other women's?
- ✓ In order to ensure the health matter of prisoners, is there any organ or medical officer who regularly inspect and advise a concerned organ or man upon:
 - E) The quantity, quality, preparation and service of food?
 - F) The hygiene and cleanliness of the institution and the prisoners themselves?
 - G) The sanitation, heating, lighting, and ventilation of the institution?
 - H) Suitability and cleanliness of the prisoners' clothing and bedding?

Punishments and Discipline of Prisoners

- ✗ Are there law and regulation that describe your rights and duties and you know it?
- ✗ Prior to make liable you for your act, are general concepts given regarding the rules and regulations of your institution?
- ✗ Are prisoners punished without informed of the offence alleged against him and given the opportunity of pre-setting defense?
- ✗ Are prisoners punished through corporeal punishment, reduction of diet, punishment by placing in a dark cell, and cruel, inhuman or degrading punishment imposed?
- ✗ Are there simple and clear procedures to make complain to a higher organ by the prisoners when their right violated?
- ✗ A competent organ to hear complains is positive to treat the case brought by the prisoners?
- ✗ Is there any neutral organ established to supervise and to control the general prison administration and prisoners right?

Prisoners' right to Contact with their Family, legal and Religious Counselors

- Are prisoners freely met without supervisions and controls their families, legal and religion counselors and talk to each other their security cases or issues independently?