

MIZAN TEPI UNIVERSITY

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L.L.B THESIS GRADUATE STUDIES IN LAW



**TITLE: THE RIGHT OF PRISONERS TO HAVE ACCESS TO
INFORMATION**

**IN THE CASE OF BENCH-MAJI ZONE PRISON
ADMINISTRATION**

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Acknowledgment

I would like to express my gratitude to the almighty God for it is for his will that I become what I am today

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ACRONYMES

ACHPR	African Charter on Human and Peoples Right
CAT	Convention against Torture
ICCPR	International Covenant on Civil and Political Right
OPCAT	Optional Protocol to CAT
SMR	Standard minimum rule
SNNPR	South Nation Nationalities and Peoples Region
UDHR	Universal Declaration on Human Right
UNC	United Nation Charter
UNHRC	United Nation Human Right Council

Declaration

I Tsegaye Zeleke, hereby declare that the title 'the right of prisoners to have access to information in Bench -Maji zone Mizan prison administration is my own original work which has not been offered in any university and the source used have been appropriately acknowledged and I confidentially declare that this thesis has not been submitted to any other institutions anywhere for the award of any academic degree or diploma.

Signature of confirmation

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Examiner

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Table of Contents

<u>Content</u>	<u>Page</u>
Acknowledgment	I
ACRONYMES.....	II
CHAPTER ONE	1
1.1 BCKGROUND OF THE STUDY.....	1
1.2 LITERATURE REVIEW.....	3
1.3 STATEMENT OF THE PROBLEM.....	4
1.4 OBJECTIVE OF THE STUDY.....	4
1.4.1 General objective.....	4
1.4.2 Specific objective.....	4
1.5 RESEARCH QUESTION.....	5
1.6 Significance of the study.....	5
1.7. Scope of the study.....	6
1.8. Research Methodology.....	6
1.9 Limitation of the study.....	6
1.10 Organization of the paper.....	7
CHAPTER TWO.....	8
2.1 The legal frame work for the protection of detained persons.....	8
2.2 International legal frame work on the protection of prisoner's right to access.....	8
2.2.1 Universal Declaration on Human Right (UDHR).....	8
2.2.2 The international covenant on civil and political right.....	9
2.2.3. Convention against Torture and other cruel inhuman or degrading treatment (CAT).....	9
2.2.4 The standard minimum Rules for the Treatment of prisoners (SMR)	10

2.3	Regional legal frame work on protection of prisoner right to access to information.....	11
2.3.1	African charter on human and peoples right (ACHPR).....	11
2.3.2	European convention on human right.....	12
2.3.3	Inter American legal instrument on right of detained person.....	12
2.4	Domestic legal framework on the right of prisoners on access to information	12
2.4.1	Introduction.....	12
2.4.2	The 1995 FDRE constitution.....	13
2.4.3	Federal prisons commission establishment proclamation.....	13
2.4.4	Council of ministers regulation on treatment of federal prisoner.....	14
2.4.5	South nation nationality and peoples regional state regulation on the treatment.....	14
2.4.6	Freedom of the mass media and access to information proclamation	14
CHAPTER THEREE.....		15
3.1	Law and practice regarding prisoner right to access to information in SNNPR...	15
3.2	The prisoner right in mizan prison administration.....	15
3.3	Introduction.....	15
3.5	Prisoner right to contact with their family.....	16
3.6	Prisoners right to contact with legal counsel.....	18
3.7	Visitation by public prosecutor and human right commission.....	18
3.8	Prisoners right to TV, Radio and internet access.....	19
3.9	Prisoner right to make complain.....	19
3.10	Prisoners right to library access.....	20
3.11	Prisoners right to religion.....	21
CHAPTER FOUR.....		21
4.1	Conclusion and recommendation.....	21
Reference.....		A
Annex.....		C

Abstract

The paper strongly emphasizes on the right of prisoner to have access to information in SNNPR particularly prisoners right in Bench-Maji zone in Mizan prison administration .Accordingly the aim of this research is to assess the right of prisoner to have access to information according to international instrument, FDRE constitution, prison establishment proclamation, prisoners treatment regulation, and access to information proclamation. Thus in order to identify the problems concerning the right of prisoner to have access to information in Mizan prison administration, deep interview was conducted with prisoners and top administrator of Mizan prison administration. In doing so, the paper identified the problems concerning the right of prisoner to have access to information which related with inadequacy source of information that are TV, radio, internet access, newspaper ,periodicals ,fiction and lack of awareness on the rules and regulation of the institution ,lack of awareness on the authorized method of seeking information and making compliant and finally unsuitable condition to be visited by legal counsel ,family ,religious father overcrowding and absence of construction for religion. Hence the researcher discovered that the right of prisoner to have access to information in Mizan prison administration is not adequately protected.

Based on the finding the researcher proposed the amendment of existing regulation for the protection of prisoner's right, the establishment of independent prison inspectorate, allocation of enough budget for the administration of the institution, the prison institution should made cooperation with human right commission, the Mizan prison administration should give awareness to prisoner on their right to access to information in general.

CHAPTER ONE 1

1.1 BCKGROUND OF THE STUDY

Country's views on proper treatment of prisoner vary greatly with the system of government. And many countries do not meet the minimum requirements outlined in the united nation human right council basic principles on the treatment of prisoner.¹

The reasons for these improper treatments of prisoners are due to lack of legislation on the right of prisoner and non-enforcement of existing legislations.

The united nation universal declaration on human right does not specifically mention the right of prisoner's².It does state that all human beings have certain inalienable right that cannot be taken away under any circumstance. So as human right are an entitlement that all human beings assert merely because they are human ,as such human right are basic moral claims invoked for the purpose of enjoying a decent human life rooted in dignity and human right are linked to the nature of human kind.³

Human right are also asserted as natural right, thus universality ,inherence ,inalienability ,indivisibility and equality are identified as the most common features of human rights.⁴.

The basic principle for treatment of prisoner provide that except for those limitation that are demonstrably necessitated by the fact of incarceration, all prisoner shall retain the human right and fundamental freedom set out in the universal declaration of human right and where the state concerned is

¹ United nation human right council for the treatment of prisoner resolution 218((III)1948

² UDHR adopted and proclaimed by general assembly resolution 217A(III) of 10 dc 1948

³ Human right and prison ,manual on human right unition. p3

⁴ Vienna declaration and program of action (1993) paragraph 1 article 5

party to ICCPR; ICESCR and the optional protocol thereto as well as such other right as are set out as in other united nation covenant.⁵

So when a person detained or sentenced to imprisonment they are deprived of one of their most basic human right, the right to liberty, the deprivation of liberty necessarily the result prisoner becoming dependent on the detaining authority for the realizations of their other basic human right.⁶

In this regard the right of prisoners to access information is one of basic human right that is recognized under various international regional and national human right instrument or laws as universally applicable right without any discrimination. It is clear from the attribute of the indivisibility of human right it is impossible to implement one right without implementing the other right

Accordingly access to information legally recognized under UDHR it provide that everyone has the right to freedom of opinion and expression this right include freedom to hold opinion without interference and to seek ,receive and impart information and idea through any media and regardless of frontiers.⁷

Similarly ICCPR also provide that everyone shall have the right to freedom of expression this right shall include freedom to seek, receive and impart information and idea of all kinds regardless of frontiers, either orally in writhing or in print in form of art or through any other media of his choice.⁸

And also African charter on human and people right provide that every individual shall have the right to receive information.⁹ And finally the Ethiopian legal system has equivalent set of legislation for the treatment of

⁵ Basic principle for the treatment of prisoner adopted and proclaimed by general assembly resolution 45/III of dc 1990 principle five (5).

⁶ The jailhouse lawyer's hand book 5th ed, revised in 2010, and published by the center for constitutional right and the national lawyers guild p5.

⁷ United nation universal declaration article 19.

⁸ ICCPR article 19(2)

⁹ ACHPR article 9(1)

detained person. Accordingly the FDRE constitution provide similarly to UDHR and ICCPR provide that everyone has the right to freedom of expression without any interference this right shall include freedom to seek, receive, and impart information and idea of all kind regardless of frontier either orally or in writing in print, in the form of art or through any media of his choice.¹⁰And the federal prison commission establishment proclamation no-365/2003 point out on the right of prisoner to access information clearly provided under different provision.

Freedom of information is an important components of the internationally guaranteed right to freedom of expiration which include the right to seek and receive, as well as to impart information and ideas of all kinds regardless of frontiers .the unequivocal importance of freedom of information was recognized during the first session of the united nation general assembly in 1946 which adopted resolution no-59(2) stating freedom of information is a fundamental human right and the touchstone of all the freedom to which the UN is consecrated (14 December 1946).

So the very purpose of recognizing right under human right law is to protect human dignity .Prisoners thus who deprived of their liberty can enjoy all these right set forth in international .regional and domestic human right laws . Practically the right of prisoner to access information is subject to different challenges which hinder the enjoyment of their human right. Thus this research focuses on the critical examination on the implementation of the right of prisoner to access information in bench-maji zone prison administration with domestic laws and international human right standards.

1.2 LITERATURE REVIEW

There was research have been conducted on the human right of prisoner in specific area in arada, yeka and Addis Ababa central police detention center. These research was focus on conditions of detention both in prisons and police detention center and it emphasis to the police detention in Addis

¹⁰ Proclamation no-1/1995 proclamation of the constitution of the FDRE federal negarit gazette, 1st year number 1 Addis Ababa 21st august 1995.

Ababa .and it also made analysis in light of the minimum rules for treatments of detained prison ,accommodation, personal hygiene ,clothing and bedding ,food ,medical service ,compliant mechanism and avenue ,inspection sport and exercise ,education and training , separation of accommodation and work condition.¹¹However this research failed to address the problem on the right Of prisoner to have access to information specifically.

In south nation nationality and people region in Bench-maji zone prison administration no enough studies have been done on the implementation of the right of prisoner to access information.

Beside this I was discussed the implementation of the right of the prisoners to access to information in Bench-maji zone prison administration.

1.3 STATEMENT OF THE PROBLEM

Ethiopia is state party to almost all of human right instruments' that has relevance to the protection of right of prisoner .The country not only party to the human right instrument but the country largely domesticated such right in its legislation under the umbrella of constitution.

When person is detained or sentenced to imprisonment they are deprived of one of their most basic human right, the right to liberty, the deprivation of liberty necessarily results prisoner becoming dependent on the detaining authority for the realization of their other basic human right.

Access to information is one of the basic human right ,prisoner are not deprived of it due to their imprisonment .But in Mizan prison administration there are different problems that affect the right of prisoner to access information. The problems which related with inadequacy of source of information that are

¹¹ Addisu Gulilat, the human right of detained person in Ethiopia .case studies in Addis Ababa Dc 2012.

Television ,Radio ,Internet ,Telephone ,Newspaper ,Periodicals fiction
Recreational books ,inadequate library access ,lack of awareness on the
rules and regulation of the prison institution ,lack of awareness on the
authorized method of seeking information and making complain ,absence of
independent prison inspectorate ,unsuitable condition to be visited by legal
counsel ,family ,religious father friends and other relatives .Absence of
constriction for religion and finally overcrowding are the problems that
affect the right of prisoner to access information .

1.4 OBJECTIVE OF THE STUDY

1.4.1 General objective

The overall objective of my study is to show the enforcement of the right of prisoners to have access to information in prison administration.

1.4.2 Specific objective

- To assess the right of prisoners to access to information
- To explore the practical challenges against the implementation of the right of prisoners to have access to information in Bench-Maji zone prison administration
- To critically examine the law and practice with regard to prisoner right to access to information in Bench-Maji zone prison administration.
- To analyze how the basic human rights instrument in international, regional as well as domestically recognize the right of prisoners to have access to information.
- To point out areas where there is a gap between the law and practices so that the possible solutions will be recommended to fill the gap
- To appreciate whether domestic laws properly incorporate the right of prisoners to access information.

1.5 RESEARCH QUESTION

The main research questions are examining the law and practice with regard to the right of prisoner to access information.

1.5.1 Specific research question

- Is the right of prisoners to have access to information is properly enforced in Bench-maji zone prisoner administration?
- How should the Bench-maji zone prison administration avoid the violation of the right of prisoner to access information?
- What are the practical challenges against the implementation of the right of prisoner to access information in Bench-Maji zone prison administration

1.6 Significance of the study

Firstly The major importance of the research is addressing the possible implementation of the right of prisoners to have access to information.

Secondly this research essentially attempts try to identify the problem in prisoners are facing while exercising their rights to access information.

Thirdly it would create awareness about the right to access information with specific emphasis to prisoner's right to access information.

Fourthly this research also serve as for a government to find out possible solutions for those practical problems pointed out in this paper, so that it could effectively realize the right of prisoners to access information

Fifthly, this research gives also an insight for the readers how the right of prisoners to access information incorporated and interpreted

under international, regional and national laws. Finally this paper serves as an instrument for conducting further research study in prison institution.

1.7. Scope of the study

The scope of this research is limited to examine and analyzing the better implementation of the right of prisoners to access information in Bench-maji zone prison administration and also the paper did not discuss all the human right of prisoners due to the vastness of the right.

1.8. Research Methodology

The source of information for this particular research had been both primary and secondary sources are employed. Addressing relevant human right instruments takes firsthand in the study while the study is also supported by interview and observation .To this end the international, regional and national legal frame work on access to information is assessed. The secondary data employed were existing literature pertinent to prisoners' right to access information. Thus various source materials were employed like books and legal instruments like resolution and declaration. In addition to these internet sources are employed in order to accomplish the intended purpose.

1.9 Limitation of the study

It was difficult to the researcher to find sufficient legal material specifically dealing with prisoner's right at national level. The writer also has suffered from lack of specific expertise on the subject matter. Lastly lack of sufficient time in dealing with the normal course, preparation for the National Exit exam and preparing the research at equal time was the most notable limitation of my study. But I tried to solve the limitation by exerting maximum effort on the research work

1.10 Organization of the paper

The paper has four chapters. The first chapter deals with background of the study, statement of the problem ,review of literature, research question, objective of the study, significance of the study, research methodology and scope and limitation of the study.

Chapter two discusses about the legal frame work on access to information at international, regional and domestic instruments. Chapter three discuss about the law and practice concerning the right of prisoners to access to information in mizan prison administration and finally the last chapter provides conclusion drawn from the finding and recommendations

CHAPTER TWO

2.1 The legal frame work for the protection of detained persons

The UN charter, have a basic principles for the protection of human dignity. The preamble of the charter provides determination of its members, states to reaffirmed faith in fundamental human rights, in the dignity and worth of human person, in the equal right of men and women and of nation large and small.¹²In order to achieve the objective sets out in the UN charter states have signed different treaties like UDHR, ICCPR, ICESCR and convention against torture (CAT) are signed out for this effect. Detained person are vulnerable categories of society due to the amount of the control the state have over them. for this reason the afro mentioned human right instrument have specifically realized the right of prisoners. In this part, to reflect the extent in which the different instruments gives recognition to the right of prisoners.

2.2 International legal frame work on the protection of prisoner's right to access to information.

2.2.1 Universal Declaration on Human Right (UDHR)

The universal declaration on human right is the main founding instrument that comes up with elaborated human rights to give effect to the human right objectives set under the united nation charter. Under its article 19 it provides that everyone have the freedom of information to seek, receive, information. Article 5 prohibits torture, cruel, inhuman treatment or degrading treatment or punishment. Though it is a declaration which has no

¹² UNC, 1945 preamble

binding effect, it is the first human right instrument ratified by almost all states of the world. It is also incorporated by constitutions of many of the states. This status of the UDHR gives it status of customary international law.¹³

2.2.2 The international covenant on civil and political right

ICCPR has played great importance on the protection of the right of prisoners. Since due to the ideological difference the world is divided into two, western and eastern block and the western adopted ICCPR and eastern give emphasis on ICESCR and this leads to the UDHR non-binding. ICCPR which is binding up on member states play significant contribution on the protection of right of prisoners. UN member states failed to adopt the UDHR as binding instrument for the ideological reason. The western adherence to civil and political right and the eastern emphasized to socio economic right¹⁴. The ICCPR reaffirmed article 19 of the UDHR under article 19(2) Every one shall have freedom to seek, receive and impart information. And also the ICCPR reaffirmed article 5 of the UDHR Under its article 7 no one shall be subjected to torture or cruel, degrading or inhuman treatment or punishment. As human being therefore detainees are protected from torture cruel or degrading or inhuman treatment or punishment by reason of their status. Unlike the UDHR, the ICCPR addressed the right of detainees specifically under article 10. It states that all people deprived of their liberty shall be treated with humanly and with respect for the inherent dignity of human person. The ICCPR as expressly adopted that the objective of punishment is reformation and social rehabilitation.¹⁵ The penitentiary system shall comprise treatment of

¹³ E, Dominguez -Redondo, role of the UN in the promotion and protection of human right in Rahman chowdhury and Hussein Bunyan an introduction to international human right law (2010) p128.

¹⁴ F. viljoen, Africa's contribution to the development of international human right and humanitarian law, African human right law journal vo.1 no-(2001)p20

¹⁵ ICCPR article 10(2).

prisoner the essential aim of which shall be their reformation and social rehabilitation

2.2.3. Convention against Torture and other cruel inhuman or degrading treatment (CAT)

The right of prisoner is also protected under CAT. Accordingly state parties have to make review of arrangements for the custody and treatment of person subjected to any form of arrest, detention or imprisonment. Article 11 of the convention, state parties are obliged to make conducive environment to victims of torture to make compliant for redress. The convention also obliges the states to include education against using torture in the training of law enforcement personnel. Article 13 maintains that methods, practices and arrangement as well as treatment of people in custody should be held under observation with the express purpose of preventing act of torture.

A sub, committee against torture with a mandate to visit detention center in the party states and evaluate the treatment provided there is created by an optional protocol to this convention.¹⁶The UN come up with the optional protocol to the CAT to protect persons deprived of their liberty from being subject to torture and other cruel inhuman or degrading treatment or punishment (OPCAT) to protect persons deprived of their liberty from being subjected to torture.

2.2.4 The standard minimum Rules for the Treatment of prisoners (SMR)

The standard minimum rules for the treatment of prisoner is the first of such instrument that was devoted specifically to protect the right of person under any form of detention .Though the UDHR earlier prohibited cruel

¹⁶ Optional protocol to the convention against torture and other cruel inhuman or degrading treatment or punishment GA resolution 57/99 UN CTOR ,2003,UN treaty series ,vol 2375 at 237 (opcat)

inhuman or degrading treatment or punishment .It was general principle which calls further clarification to be invoked as right by the alleged victim. Article 37 of the standard minimum rules for the treatment of prisoner envisages, prisoner shall be allowed under necessary supervision to communicate with their family and reputable friends at regular interval both by correspondence and by receiving visits. With regard to the access to reading materials ,the standard minimum rules for the treatment of prisoners under article 39 ,point out that prisoners shall be kept informed regularly of the more important item of news by the reading of newspapers, periodical or special institutional publications ,by hearing wireless transmission ,by lecturer or by any similar means at authorized or controlled administration. With regard to library access ,the standard minimum rules for the treatment of prisoners under article 40 provides that “every prison institution shall have a library for the use of all categories of prisoners adequately stored with both recreational and instructional books and prisoners shall be encouraged to make use of it.”

With regard to religious access ,the standard minimum rules for the treatment of prisoners under article 41(1) provided ,that If the institution has sufficient number of prisoners of the same religion ,a qualified representative of that religion shall be appointed or approved .If the number of prisoner justify it and condition permit the arrangement should be on full time basis. And sub article 2 of article 41 of the standard minimum rule for the treatment of prisoner provides a qualified representative appointed or approved. Under paragraph 1 prisoner shall be allowed to hold regular service and to pay pastoral visits in privet to prisoner of hi religion at proper times. Similarly sub article 3 of article 41 point out access to qualified representatives of any religion shall not be refused to any prisoner On the other hand if any prisoner should object to visit of any religious representative his attitude shall be fully respected.

With regard to information to and complaints by prisoners article 35[1] of the standard minimum rules for treatments of prisoners point out that every prisoner on admission shall be provided with written information about the regulation governing the treatment of his category ;the disciplinary requirement of the institution ;the authorized methods of seeking information and making complains and all such other matter as are necessary to enable him to understand both his right and to adopt himself to the life of the institution.

With regard to taking complaint article 36[1] of SMR point out that every prisoner shall have the opportunity each week; day of making request or complaints to the director of the institution or the office authorized to represent him .Also every prisoner shall be allowed to make request or complaint without censorship as to substance but in proper form to the central prison administration; the judicial authority or other proper authorities through approved channels.¹⁷

2.3 Regional legal frame work on protection of prisoner right to access to information

2.3.1 African charter on human and peoples right (ACHPR)

All forms of inhuman treatment are also prohibited under article 5 of the ACHPR, which provides every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade; torture; cruel; inhuman treatment shall be prohibited.

With regard information the ACHPR point out under article 9[1] every individual shall have the right to receive information.

¹⁷UN, SMR article 35(2) .

2.3.2 European convention on human right

The main legal source in Europe is the European convention on human right particularly article 3 of this convention and it is similar to article 5 of the UDHR stating that no one shall be subjected to torture or inhuman treatment or punishment.¹⁸

2.3.3 Inter American legal instrument on right of detained person

American convention on human right Like the UDHR and ICCPR article 5 of the convention prohibits torture or cruel, inhuman or degrading treatment or punishment. it specifically proclaims that those who are deprived of their liberty shall be treated with due regard to their inherent human dignity.

2.4 Domestic legal framework on the right of prisoners on access to information

2.4.1 Introduction

State parties to the international human right instruments are obliged to take steps to realize enforcement of the right those they under take to protect. These can be making legislative, administrative and other measures. The common methods are encompassing the right under the constitution, criminalizing the act by criminal laws and preparing policy and programs for enforcement sake. The researcher, discuss the Ethiopian legislation including the FDRE constitution and proclamations, regulations that available to protect the right of prisoners to access to information. Accordingly this section addresses the 1995 FDRE constitution, Federal prison commission establishment proclamation, council of minister regulation on the treatment of prisoners and SNNPR regulation on the

¹⁸ Convention, for the protection of human right and fundamental freedom 4 Nov 1950,213 UNTS221 at 223 EUR TS 3(ECHR).

treatment of prisoners and finally freedom of mass media and access to information proclamation.

2.4.2 The 1995 FDRE constitution

Chapter three of the FDRE constitution exclusively dedicated to human rights titled” fundamental rights and freedoms¹⁹ “the chapter divided in to two parts as human rights and democratic right .Everyone is entitled the rights entrenched in the constitution. Detained person as human being are entitled to these constitutional rights, except those limited explicitly as natural consequences of deprivation of liberty. Article 18 of the constitution provides similarly with article 5 of UDHR and article 7 of ICCPR by stating that everyone has the right to protection against cruel, inhuman or degrading treatment or punishment. The FDRE constitution under article 29(2)provide that everyone has the right to access information in which the right to seek, receive and impart information and ideas of all kind regardless of frontiers either orally ,in written or in print in the form of art ,or through any media of his choice.

The constitution on the rights of person held in custody and convicted prisoner reaffirmed that detained persons are entitled to the right entrenched in the constitution .And also the provision address the right of detained person. It state that all person shall have the opportunity to communicate with and to be visited by their spouse or partners ;close relatives ;friends ;religious counsels ;medical doctor and their legal counsels.²⁰

2.4.3 Federal prisons commission establishment proclamation.

¹⁹ Proclamation of constitution of the federal democratic of Ethiopia 1995, proclamation number 1 negarit gazette year 1no-1

²⁰ Id(article 21)

Federal prisons commission establishment proclamation,²¹ adopted by the house of people's representatives to give effect to the principle envisaged by the constitution regarding persons in custody is the next important instrument which deals with detainee's right. The preamble of the proclamation stipulates that reformation and rehabilitation are the objective of the punishment. Article 5 of the proclamation also states that the objective of the commission is reformation and rehabilitation. The objective of the commission shall be to admit and award prisoners and provide them with reformatory and rehabilitative service in order to enable them make attitudinal and behavioral changes and become law binding peaceful and productive citizens. Article 22(1) prisoners shall have the right to be treated condition of respect for human dignity. Similarly the prisoners have the right to access to visitors,²² shall have the right to communicate with their spouses, close relatives, friends, medical doctors, legal counsel and religious leaders. Prisoners have the right to receive, impart information about imprisonment and transfer.²³ The prisoner shall have the right to promptly inform his family or any person of his imprisonment or of his transfer on any ground from his current prison to another. It is prohibited to discriminate on grounds of gender, religion, political opinion nation nationality and of social origin.²⁴

2.4.4 Council of ministers regulation on treatment of federal prisoner

The council of minister regulation on treatment of prisoner regulation number 138/2007 is issued to implement federal prison commission establishment proclamation number 365/2003. The regulation provide that under article 13 prisoner have the right to communicate with visitors and article 18 provides prisoner shall be allowed to correspondence with person

²¹ Federal prison commission establishment proclamation no-365/2003.

²² Id(article 29)

²³ Id(article 30)

²⁴ Id(article 24)

outside of the prison provided wavier that the correspondence shall be inspected to prevent any action contrary to the custody of prisoner. Prisoners have the right to get counseling service²⁵ freedom of religion²⁶ access to information²⁷ and finally prisoners have the right to lodge grievance.²⁸

2.4.5 South nation nationality and peoples regional state regulation on the treatment of prisoners, regulation number 137/2008.

According to article 29 of the regulation prisoners shall have the right to communicate with their spouse, close relatives, friends, medical doctor, legal counsel and religious leaders. And also prisoner have the right to impart information about imprisonment and transfer accordingly every prisoner shall have the right to promptly inform his family or any person of his imprisonment or of his transfer on any ground from his current prison to another.

2.4.6 Freedom of the mass media and access to information proclamation

Freedom of mass media and access to information proclamation²⁹ ,it is important to implement the constitutional right of individual on access to information and prisoner has those categories of individual have the right to access to information. It provides that all persons have the right to seek, obtain and communicate any information held by public bodies, except as expressly provided for by this proclamation.

²⁵ Council of minster regulation on the treatment of federal prisoners regulation no - 138/2007 article 25

²⁶ Id(article 26)

²⁷ Id(article 27)

²⁸ Id(article 28)

²⁹ Freedom of the media and access to information proclamation no-590/2008

CHAPTER THEREE

3.1 Law and practice regarding prisoner right to access to information in SNNPR.

3.2 The prisoner right in mizan prison administration

3.3 Introduction

Mizan prison administration to which the study dedicated is one of the prison administration found in SNNPR in south western part of Ethiopia. This prison administration receives criminals from eleven [11] woredas, from mizan and Aman town. Accordingly the mizan prison administration has an obligation to handle prisoner in human and to provide the basic need to them because they have every human right except what they deprived of their liberty by law. Hence the mizan prison administration is a place in which individuals are physically confined or detained and usually deprived of range of personal freedom. This institution has an obligation to protect the prisoner human dignity and their constitutional rights.

Therefore to conduct the study, depth interview were conducted with top administrator of the mizan prison administrator and prisoners of the mizan prison administration, to examine to what extent the constitutional right of prisoner are protected and how the mizan prison administration treat the prisoners according to the law.

3.4 Treatment of detained persons in mizan prison administration

This section is specifically devoted to look into the practice of treatment of detained person in Bench-Maji zone mizan prison administration .As it has been discussed in the previous chapter prisoner have number of rights incorporated in the domestic, regional and international human right documents, these rights pertains to human rights and democratic rights .In

this section an attempt would be made to relate these rights to the practical situations.

3.5 Prisoner right to contact with their family

Now day the prisoner's right to contact family with outside the institution is considered as the norm in a number of prison institutions and has got constitutional and legal guaranty. As such article 21(2) of the FDRE constitution states that all prisoners have the opportunity to communicate with and be visited by their spouses or partners, close relatives, friends, religious counsels, medical doctors and legal counsel. Article 37 of the standard minimum rules for the treatment of prisoners envisages, prisoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular interval both by correspondence and by receiving visits. And also the federal prison commission establishment proclamation under article 29 provides similar terms with the constitution on the right of prisoners and it states that prisoners shall have the right to communicate with their spouses ,close relatives ,friends ,medical doctors ,legal counsel and religious leaders and the council of minister regulation number 138/2003 also provides similar right.

However, in mizan prison administration ,there are condition when the prisoner removed the right to communicate his families and close relatives ,If prisoner commit any fault of disciplinary mater the institution punish as not to contact with those person legally allowed. Irrespective of this constitutional right which could not be removed either by the prison institution or other government agencies unless the punishment is imposed up on the prisoner; it is possible to communicate with relatives, families, spouses, legal counsel and religious counsel. But the institution based on internal regulation denied the constitutional right of prisoner to contact with their families. Even if the prison institution is empowered to issue the internal regulation by which to administer and treat the prisoner,

prohibiting the prisoner to communicate their families is seriously contradict with the constitutional right of prisoner. The prison institution has no power to issue this kind of regulation, but they are practicing on the prisoners. The place allocated for visits by their families was not properly enough in away balance with the number of prisoner and has no any sections. Simultaneously many prisoners visited at the same place and at the same time, hence the sounds of prisoner and the visitors disturb their listening to each other,³⁰

Being imprisoned far from one's home makes telephone calls a natural means of communication. Almost all prisoner provide telephone opportunities were prisoner can call home or elsewhere according to certain schedule .But the main problem is that the prison institution did not give the opportunity to call the telephone with free of charge and the poor lack this access and did not contact with their families due to the distance from the institution and lack of finance. The way of communication through the telephone is not direct but through the intermediaries, in these regard it is difficult to the prisoner to tell the entire necessary thing to the intermediaries.³¹

Most of the prisoner has not been visited by their children. Since entering prison there are programs to facilitate such visit but program coordinator or facilitator personnel make determination that particular prisoner are not allowed these opportunity.³²

The interviewee added that it is not only the prisoner's absence due to imprisonment that endangers the stability of his relationship and also his marriage was dissolved as a result of his imprisonment and due to lack of communication at the necessary time with his spouse.³³ There is another

³⁰ Observation and interview conducted with Nake Taye prisoner in mizan prison administration 04/07/09

³¹ Id(31)

³² Interview conducted with Alemitu fekade prisoner in mizan prison administration 04/07/09

³³ Interview conducted with Taye Nake prisoner in mizan prison administration 04/07/09

challenge which is related to children, in this case the difficulty is staying connected with children during imprisonment and re-connecting with them after prison. In this regard it is difficult for the child to contact with his mother at the necessary time and the relationship far away this finally leads to the child becomes orphaned.³⁴

3.6 Prisoners right to contact with legal counsel

With regard to prisoners right to contact with their legal counsel , according to FDRE constitution article 21 (2) point out that prisoners have the opportunity to communicate with and to be visited by their legal counsel and similarly federal prison establishment proclamation under article 29 point out that prisoners have the right to access to legal counsel.

Beside these legal protection in mizan prison administration prisoners right to contact with their legal counsel is challenged by lack of awareness by prisoner ,time schedule of the prison administration ,the increasing number of prisoner ,difficulty to find advocate in due time and the institution did not seriously facilitate the opportunities to the prisoner to contact with legal counsel ,and the space allowed for visits was not properly provided with the consideration of the number of prisoner and has no section ,this results to prisoner difficulty to make communication with legal counsel. With regard to trial waiting prisoners the difficulty is to find the legal counsel at the necessary time because of limited communication time and absence of member of families around the prison institution and the prison institution did not facilitate opportunity to prisoners³⁵.

³⁴ Interview conducted with Alemitu Fekade prisoner in mizan prison administration
04/07/09

³⁵ ID (34)

3.7 Visitation by public prosecutor and human right commission

Accordingly the human right commission made visit once in year, and due to this reason the mizan prison institution lacks awareness on the protection and handling of prisoners right, so the human right commission actively concern on the issue of prisoners and the protection of their right. And their involvement in prison institution has made change on the enforcement of the right but they did not show any commitment in mizan prison administration .And finally the public prosecutor has an obligation to follow up the enforcement of laws that protect the right of prisoners. But the public prosecutor did not visit all the time in the institution to challenge the problems that faces by prisoners.³⁶

3.8 Prisoners right to TV, Radio and internet access

According to freedom of the mass media and access to information proclamation number 590/2008 under article 12(1) point out that all persons have the right to seek, obtain and communicate any information held by public bodies .So prisoners are those categories of persons and have the right to obtain any information held by public or privately in order to exercise these right the accessibility of TV, radio and internet are very useful. But in mizan prison administration the accessibility of these instruments are not mach with prisoners number and their satisfaction, due to overcrowding results from increasing number of prisoner, lack of TV, radio,and internet access has the problems .Since these tools are the basis for the free transfer of any information and in absence of these tools it is difficult for prisoner to get the right information at the right time. But the mizan prison administration did not fulfill these tools to prisoners.³⁷

³⁶ Interview conducted with Dumpty executive of mizan prison administration Zenebe G/Tsadike Gemed. 04/o7/09

³⁷ Observation in mizan prison administration 04/07/09

3.9

Prisoner right to make complain

With regard to prisoner right to make complain article 36(1) of the standard minimum rule for the treatment of prisoner provide that every prisoner shall have the opportunity each week ,day of making regular or complains to the director of the institution or the officer authorize to represent him. And similarly article 36(2) point out that every prisoner shall be allowed a request or complain without censorship as to the substance but in proper form to the central prison administration, the judicial authority or other proper authorities through approved channels. And also article 28 of the federal detains treatment regulation empowered prisoner the right to loge complain and appeals. Finally the united nation standard of minimum rules for the treatment of detainees envisages the establishment of independent prison inspectorate stating that there are regular inspections and services are qualified and experienced inspector appointed by competent authority. Accordingly prisoners have the right to know the regulation in return; the institution has an obligation to teach every regulation and principles of the prison administration as soon as the admission of the prisoner takes place. These means that every prisoner at the moment of admission should be provided with written information about the regulation governing the treatment of prisoner of his category, the disciplinary requirement of the institution, the authorized methods of seeking information and making complains and all such other matters as are necessary to enable him to understand both his right and his obligation ,to adopt himself to the life of the institution .

Therefore, in mizan prison administration the interview results show that, there is no body to hear their compliant basically there are chief detention administration in the detention center. But these officers highly concerns about security and they did not entertain complaints lodged regarding

facilities. Sometimes making complaints May results in intimidation and punishment. The other point is that the Ethiopian federal detains treatments regulation does not have provision on the establishment of independent prison inspectorate, but there are prisoner committees organized in different form and all matters regarding prisoners welfare are handled by the relevant committees .On these point prisoner emphasized that the committee system allows the government to not to concern seriously its responsibility of providing basic necessities to prisoners.³⁸

3.10 Prisoners right to library access

According, the standard minimum rules for the treatments of prisoners under article 40 point out that every institution shall have library for the use of all categories of prisoners ,adequately stocked with both recreational and instructional books prisoners shall be encouraged to make full use of it. And article 39 of the standard minimum rules for the treatments of prisoner point out that prisoners shall be kept informed regularly of the more important items of news by the reading of newspaper ,periodicals or special publications ,by hearing wireless transmission by lectures or by any similar means as authorized or controlled by the administration. However in mizan prison administration beside this legal recognition, the accessibility of different materials in mizan prison administration is not accessible. Like newspaper, periodicals, fictions, books and internet access are not available .Finally the carrying capacity of library is very small and prisoner did not access in suitable manner.³⁹

³⁸ Interview conducted with Taye Nake prisoner in mizan prison administration 04/07 09

³⁹ Observation in mizan prison administration 04/07/09

3.11 Prisoners right to religion

According to article 41 of the united nation standard of minimum rules for the treatment of detainees, article 26 of the federal prison treatment regulation and article 29 of the SNNPR regulation on the treatment of prisoner's point that detainees have the right of freedom to religion and believe. And access to qualified representative of any religion shall not be refused to any prisoners; every prisoner shall be allowed to satisfy the needs of his religious life by attending the service provided in the institution and having in his possession the books of religious observance and institution of his denomination. However in mizan prison administration there is construction of building for three religion i.e. Muslims, orthodox and protestant .But there is however no building for other religion, the space provided for religious purpose is not enough due to lack of areas for construction, due to these reason place for worship is difficult because the number of prisoner and the place allocated for worship does not mach.⁴⁰

⁴⁰ Interview with Dumpty executive of mizan prison administration Zenebe G/Tasdik Gemeda.04/07/09

CHAPTER FOUR

4.1 Conclusion and recommendation

Ethiopia is state party to UDHR, ICCPR and ACHPR. Therefore the country treat prisoner according to these instruments .Ethiopia incorporated the principles of UDHR, ICCPR, ACHPR in the constitution by clearly stating that detained persons shall be treated humanely .Furthermore, the constitution stipulate that international human rights instruments that Ethiopia ratified are part of the law of the land . In order to implement these constitutional provided right different legislation to the protection of the right of prisoner are enacted .The study assed the practice of treatment of detained persons in Ethiopia with emphasis in SNNPR specifically in Bench-Maji prison administration in line with human right instruments.

Though in Mizan prison administration prisoners right to contact with family ,legal counsel ,religion father and friends are challenged by different factors like the internal regulation of the institution ,the increasing number

of prisoner and overcrowding , time schedule of the institution for contact ,in adequate telephone communication and absence of separate place for communication with legal counsel, family ,religious father, friends and other relatives .

The human right commission did not made visit in regular manner in the Mizan prison administration and also the public prosecutor not visit and give awareness adequately.

In Mizan prison administration TV, Radio, internet access are not adequately provided and these tools are the basic source of information to prisoner but, adequately not provided

Most of the prisoners are not adequately understand the rules and regulation of the institution and these results prisoner not to claim their right in case of violation by the institution

In Mizan prison administration there is no independent prison inspectorate that hear the complain of the prisoners

The library that accessed by the prisoner are not well fulfilled the necessary materials for prisoners and the library class was very narrow not suitable for use.

In Mizan prison administration there is problem related with lack of construction for religious purpose, and there is only three religions have place for religious practice but for the other no construction is built. And generally the place for religion is not suitable

In order to rectify the above problems the following recommendation are provided

Prisoners has the right to seek, receive and impart information and that this impose positive obligation on states to ensure information ,particularly

with regard to information film, electronic video ,CD and other that help prisoner should be provided freely .

Mizan prison administration should give awareness on the use of library, importance of different source of information like newspaper, TV, radio, internet, magazines and fiction and should provide adequately. .

Mizan prison administration should provide suitable place for the visitation this help prisoner to easily contact with their legal counsel, religious father, and other relatives.

Mizan prison administration should provide telephone service adequately to prisoner with supervision that did not affect the substance of communication.

For better handling of prisoner the Mizan prison administration should made co-operation with the human right commission and public prosecutor .These helps the institution to get awareness on the handling of prisoner's .And the prisoner get awareness on their rights and duties. This helps the prisoners to easily claim their right in case of violation.

It is found that the SNNPR prisoner's treatment regulation has not incorporated important provisions that are available in the UN standard minimum rule for the treatment of prisoners. Accordingly the UN standard minimum rule provides the establishment of independent inspectorate, while the SNNPR regulation on the treatment of prisoner does not incorporate it so regulation must be amended to fill the gap.

Mizan prison administration should allocate budget for library materials, TV, radio, news paper and internet because these tools are the basic sources of information to prisoners. .

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Annex

The interview conducted with Mizan prison administrator and prisoner of Mizan prison administration

Interview question to administrator of Mizan prison administration

1 Is there law and regulation that describe the overall prisoner right and duties, and prisoner know it ?

2 Before to make liable the prisoner for his act , are general awareness given regarding the rules and regulation of your institution ?

3 Are prisoner contact freely with their family, legal counsel and religious fathers?

4 Are prisoner access to library, Television, Radio, newspaper, and Internet, adequately?

5 Are the Mizan prison administration have independent prison inspectorate?

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6 In general as institution what measure are taken to protect the right of prisoner to access information?

Interview question for prisoner of Mizan prison administration

1 Are prisoner freely meet their family, legal counsel and religious father and tell all their personal or family issue without supervision?

2 Is there adequate library, Television, Radio and internet access in mizan prison administration?

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3 Is prisoner get awareness on rules and regulation of the prison administration?

4. Is human right commission and public prosecutor made visit adequately?

4 IS there independent prison inspectorate that hears the complaint in mizan prison administration?

5 Is prisoner having awareness on the authorized methods of seeking information and making complain?

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