

Observance of Adult Prisoners' Rights in the Gambella Prison Administration

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Abstract

Although there has been a considerable amount of literature recently on the subject of improving prisoners' rights in Ethiopia, research on the subject in the National Regional State of the Gambela Peoples is relatively novel. Apart from Omod Opodhi's 2019 journal article on addressing the psychosocial effects of crime on prisoners in Abobo City Prison and the Ethiopian Human Rights Commission (EHRC)'s 2021 report, which found that the protection of human rights in the Gambela region requires an urgent attention after gathering an extensive evidence on the extent of the abuses and revealing the sadistic treatment of those imprisoned in the Gambela's and Abobo's City prisons, there has not been any previously conducted investigation into the compliance with adult prisoners' rights, or their treatment as such, across the State of Gambela. This article assesses, therefore, the compliance of the Gambela Prison Administration (GPA)—which is not found—with pertinent national, regional, and international standards on adult prisoners' rights. The study was conducted via secondary and primary qualitative case study design, and the analysis employed narrative and content quality analysis techniques, compliance with international commitments and human rights norms and standards addressing adult prisoners' rights, and Articles 19(1) and 22 of the Gambela Constitution, is recommended.

Keywords: Compliance, Imprisoned Rights, City Prison, Gambella, Ethiopia

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1. Introduction

Prisons have existed in most societies for many centuries and usually they have been in places where individuals were imprisoned until they underwent some legal process and the principal purpose for establishing them in all parts of the world has been to provide rehabilitation and correctional facility for those who have violated the rules and regulations of their society and enable them demonstrate attitudinal and behavioral changes and become law-abiding, peaceful and productive citizens when integrated into the community.¹ Protecting the rights of prisoners, which to this work mean the rights of the adult prisoners serving sentences with the exclusion of the general prison population, namely, juveniles, non-sentenced prisoners, and all other detainees' categories—whose rights this paper does not address,² has never been easy. The vast extent and chronic nature of human rights violations in prisons around the world have long troubled the United Nations, evidenced by the promulgation of the United Nations Standard Minimum Rules for the Treatment of Prisoners (SMR) in 1955.³ Indeed, the failure of the international community to adopt these standards in practice, despite adopting them in theory, has inspired the recent efforts of the United Nations in the field of prisons.⁴

¹*Human Rights and Prisons: A Manual on Human Rights Training for Prison Officials* (UN New York and Geneva 2005).

²The term 'prison' & 'prisoner' shall have their respective meaning assigned to them by Art. 2(8) & (5) of the Gambela prisons proclamation (Gambela prisons proclamation No.197/2021), 1995, Proc. No.197/2021, *Gam. Neg. Gaz.*, Year 26, No.14. Next, this paper is reserved only for sentenced adult prisoners and is not applicable to all categories of prisoners & pretrial detainees, such as the arrested, remanded/persons awaiting trial, accused persons/persons charged, etc. However, for the definition & rights of persons accused, see Art. 21 of the Gambela Peoples National Regional State Constitution (Gambela Constitution No.27/1995), 1995, Proc. No.27/1995, *Gam. Neg. Gaz.*, Year 1, No.1. cum Art. 2(9) Gambela prison proclamation No.197/2021; for the rights of persons arrested, see art 20 of the Gambela Constitution; for juveniles' rights and definition, see art 37 (1) (e), and (3) of the Gambela Constitution cum Art. 2(11) of the Gambela prison proclamation No.197/2021; for the rights of persons held & convicted, see Art.22 of the Gambela Constitution No.27/1995; etc.

³Human Rights Watch Prison Project: UN Prison Monitoring Report

<https://www.hrw.org/legacy/advocay/prisons/un_op.htm> accessed on 12 April, 2022.

⁴Rodriguez Sara, 'The Impotence of being Earnest: Status of the United Nations Standard Minimum Rules for the Treatment of Prisoners in Europe and the United States'[2006]33NEJCCC <<https://law.bepress.com/expreso/eps/1627>> 2006> accessed on 5 April 2022.

Taking into account the progressive development of international law on the treatment of prisoners since 1945—as no history would be complete without its consideration—the rights of prisoners have their roots in various international and regional human rights treaties and instruments as well as national legislations.⁵ In 1948, the General Assembly of the United Nations (UNGA) adopted the Universal Declaration of Human Rights (UDHR).⁶ The UDHR of 1948 made, however, no explicit reference to prisoners, although the rights set forth therein, including the prohibition of torture, the provision of the adequate standard of living, the right to a fair trial, and the presumption of innocence, implicitly covered them.⁷

Later, two covenants, which state that prisoners have rights even when they are deprived of their liberty in custody, were adopted. They are the International Covenant on Civil and Political Rights (ICCPR),⁸ and the International Covenant on Economic, Social and Cultural Rights (ICESCR).⁹ The ICCPR remains a core instrumental treaty on the protection of the rights of prisoners by stating that '[all] persons deprived of their liberty should be treated with humanity and with respect for the inherent dignity of the human person',¹⁰ and envisioning the 'separate treatment of sentenced from accused and adults from juvenile',¹¹ and further for requiring that 'the reform and social readaptation of prisoners' should be an 'essential aim' of imprisonment.¹² The prohibition of torture and other unlawful treatment of persons deprived of their liberty is also evident from the case-law of its Human Rights Committee,¹³ which, *inter alia*, contains numerous examples of violations of Articles 7 and 10(1) of the Covenant.¹⁴

⁵ Van Zyl Smit (2010), P.507.

⁶ (adopted 10 December 1948) UNGA Res 217 A (III).

⁷ See eg, UDHR, Arts. 5, 10, 11(1), & 25.

⁸ (Adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171.

⁹ (Adopted 16 December 1966, entered into force 3 January 1976) 1993 UNTS 3.

¹⁰ ICCPR, Art.10 (1).

¹¹ *ibid* (2) (a) & (b); (3).

¹² *ibid* 10(3).

¹³ *ibid* Art.28.

¹⁴ See (Aksoy v Turkey) (1996).

Seven years later, following the UDHR, the first United Nations Congress on the Prevention of Crime and the Treatment of Offenders (UNODC) adopted the SMR in 1955.¹⁵ This was an important start, and subsequently, the UNGA adopted expanded rules, known as the 'Nelson Mandela Rules', in honour of arguably the most celebrated prisoner of the twentieth century.¹⁶ The Rules are based on an obligation to treat all prisoners with respect for their inherent dignity and value as human beings, and to prohibit torture and other forms of ill-treatment. As a result, the Mandela Rules provide states with detailed guidelines for protecting the rights of persons bereft of liberty in general and the sentenced ones in particular. More specifically, detailed guidance on a wide variety of issues ranging from staff training, limitations on the use of solitary confinement, investigation of deaths and torture, requirement of legal counsel, provision of medical and health services, information for prisoners and access to complaint mechanisms/independent inspection to disciplinary measures and sanctions. They prohibit, in the latter case, for example, the reduction of a prisoner's food or drinking water, as well as the use of instruments of restraint that are inherently degrading or painful, such as handcuffs, or shackles.¹⁷

At the regional levels, the development of regional treaties and standards as well as the role of the regional judicial institutions are useful measures as well to assess the implementation and provision of prisoners' rights.¹⁸ An example of this implementation and provision of prisoners' rights in Africa is Article 5 of the African Charter on Human and Peoples' Rights (ACHPR),¹⁹ which states:

Every individual shall have the rights to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of

¹⁵ (First adopted in 1957, entered into force in 1977, revised and unanimously adopted on 17 December 2015) UN Doc A/Res/70/175.

¹⁶ UNODC (2017); Mandela (1994).

¹⁷ SMR, r 46(1) (d) & (2).

¹⁸ See van (n 5) & Snacken (2009); Rodley (2011); Snacken (2015).

¹⁹ (Adopted 27 June 1981, entered into force 21 October 1986) 1520 UNTS 217. See also American Convention on Human Rights (adopted 22 November 1969, entered into force 18 July 1978) (IACHR) 1144 UNTS 123, Art.5; European Convention for the protection of human rights and fundamental freedoms as amended by Protocols No.11 and 14 (adopted 4 November 1950, entered into force in September 1953) (ECHR) ETS 5; 213 UNTS 221, Art.3.

exploitation and degradation of man particularly torture, cruel, inhuman or degrading punishment and treatment shall be outlawed.

In addition, Article 30 of the ACHPR has also established a control mechanism, called the African Commission, with the task of promoting human and peoples' rights and ensuring their protection in Africa. This regional body, operating since 2002 under the auspices of the AU, has played a significant role in improving prison conditions throughout Africa.²⁰ The Commission has, for instance, extended the rights and protections set forth in the ACHPR to prisoners by availing itself of the SMR, BOP, ICCPR, and embracing several resolutions on the standards of prisons in Africa,²¹ which, among others, contain recommendations on reducing overcrowding, making prisons in Africa more self-sufficient, holding prison administrations more accountable for their actions, promoting the African Charter, rehabilitation and reintegration programs, supporting the development of African Charter on Prisoners' Rights from the UN,²² and encouraging best practices. An additional instrument, the Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (Robben Island Guidelines),²³ which the commission adopted in 2002, encourages African nations to adopt minimum international standards on prison conditions, and provides detailed instructions on how to achieve them. In this case, the document takes note in its preamble of Article 55 of the UN Charter, Article 5 of the UDHR, Article 7 of the ICCPR, and Articles 2(1) and 16(1) of the CAT, and implores states to support the work of the Special Rapporteur on Prisons and

²⁰ Report (Rep) of the Special Rapporteur on Prisons and Conditions of Detention in Africa Presented By Hon Commissioner Med S K Kagwa at the 52nd Ordinary Session of the African Commission on Human and Peoples' Rights (Yamoussoukro, Côte D'Ivoire 9-22 Oct, 2012).

²¹ In pursuit of the mandate, the Commission adopted the Resolution on the Adoption of the Ouagadougou Declaration and Plan of Action on Accelerating Prison and Penal Reform in Africa. The Commission has also adopted declarations to find common solutions with the problems facing prisons in Africa, inter alia, the Kampala Declaration on Prison Conditions in Africa, adopted in Kampala, Uganda, in 1996, the Arusha Declaration on Good Prison Practice adopted in Arusha, Tanzania, in 1999 and the Kadoma Declaration on Community Service in Zimbabwe in 1997. The Commission has also adopted the Robben Island to monitor state implementation of these provisions.

²² E/CN.15/2002/CRP.2.

²³ Robben Island Guidelines, ACmHPR, 32nd Ordinary Sess (17th-23rd October, 2002).

Conditions of Detention in Africa as well as advising them to take steps to ensure that the treatment of all people deprived of their liberty is in conformity with international standards. It also contains detailed advice on how to address a variety of issues, including physical conditions of prisons, the use of alternative sentencing to mitigate overcrowding, the role of NGOs, raising staff awareness and training levels, and avoidance of the commingling of the prisons population; and further mandates to everyone deprived of their liberty to have the right to an adequate standard of living, including adequate food, drinking water, accommodation, clothing and bedding, etc; and provides, under provision 34, that states should take steps to improve conditions in places of detention which do not conform to international standards. In this context, the Commission has considered prison condition issues, including overcrowding and lack of access to basic hygiene facilities, medical treatment and adequate food, as amounted to cruel, inhuman or degrading treatment under Article 5 of the ACHPR.²⁴

The Ethiopian legal system has equivalent set of legislations for the treatment of imprisoned persons. The 1995 Constitution,²⁵ the FDRE Criminal Code,²⁶ and the forthcoming 2020 FDRE Criminal Procedure and Evidence²⁷ are relevant

²⁴ See, eg, (*Huri Laws v Nigeria*) (2000); (*Ouko v Kenya*) (2000).

²⁵ FDRE Constitution (FDRE Constitution No. 1/1995), 1995, Arts. 18(1) & 21, Proc. No. 1/1995, *Fed. Neg. Gaz.*, Year 1st, N, 1.

²⁶ Criminal Code of Ethiopia, 2004, Art.1cum Arts. 87,106, 108, 109, Proc. No. 414/2004, *Fed, Neg, Gaz.*, (extraordinary issue), 9 May 2005.

²⁷ This draft law, intended to replace the 2011 Ethiopian Criminal Justice Policy, is relevance to this work, mainly in some of its key provisions, such as art 9, which forbids harsh or humiliating treatment of prisoners, art 22(1), (2), (4), & (5), which respectively require prisons to reform convicted inmates, facilitate their reintegration into society after their release, make it easier for prisoners to communicate with their spouses, friends, and close relatives as well as receive legal, medical, or religious services from their legal counsel, doctor, or priest, warded them in a separate accommodation on the basis of age, sex, offence type, punishment and health status, art 20(9) which requires the public prosecutor to pay for visits to prisons and other places of detention, and art 18(1) (d), (e) and (h) which make it further a mandatory for the justice organs, such as federal or state attorney general, prisons, courts, police, etc, the establishment of a system for the submission of grievances and complaints including those from prisoners, the consistency of the treatment of inmates with the FDRE Constitution and of itself, the establishment of an inspection department which monitors the discharge of their duties comply with the law and identify non-conformities and address them as well. It is hoped that this prison legislation would serve as a stepping stone to overhaul existing prison policies.

legislations. As a regional state, the Gambela Peoples' region has also legislations, including the Gambela Constitution,²⁸ the Gambela Prisons Commission Proclamation,²⁹ and associated draft Regulations,³⁰ which are of significant value to the rights of prisoners. The FDRE Constitution, which is the supreme law of the land as well as the source and basis of legality of all other laws, has, in particular, provided under Article 9(4) that international agreements ratified by Ethiopia are integral to the law of the land, and states further under Article 13(2) that the fundamental rights and freedoms enshrined therein are to be interpreted in a manner consistent with the principles of all international human rights laws, instruments and agreements adopted by Ethiopia. The same principles noted above have been incorporated and articulated in significant detail in state constitutions, guidelines and national policy documents and frameworks, as well as in substantive and procedural laws of both federal and state governments, in which the protection of human rights, including inmates, has been made solid for the protection and enforcement of human rights. In addition to the basic human rights and freedoms provided for in the FDRE and state constitutions, Ethiopia enforces several international and regional human rights treaties and instruments as the country's laws, including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT),³¹ which Article 18(1) cum Article 16 of the FDRE Constitution replicated by providing, for instance, that everyone, incarcerated adults included, has the right to be protected from bodily harm, cruel, inhuman or degrading treatment or punishment.³² On top of that, police and prison administration officers and other law enforcement officials have been trained to enable them undertake their duties in line

²⁸ Gambela Constitution No.27/1995, 1995, Art.22.

²⁹ Gambela prison proclamation No.197/2021, Arts. 3 & 26ff.

³⁰ Regulations—/2021 (unapproved).

³¹ (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85.

³² Jean-Baptiste N & Patrick L, *Robben Island Guidelines for the Prohibition and Prevention of Torture in Africa: Practical Guides for Implementation* (apt, Addis Ababa, 2008).

with the rights of citizens to be treated humanely and respecting the rights to security of the persons.³³

This illustrates that human rights instruments, such as the UDHR, the SMR, the Principles for the Protection of All Persons against any Form of Detention or Imprisonment,³⁴ the CAT, and the ICESCR,³⁵ provide a set of rules that help prison administrations and staff perform their duties through policies and practices that are lawful, humane and disciplined. However, given the wide variety of legal, social, economic and geographical realities in the world, it is evident that not all rules are applicable everywhere and at all times,³⁶ and there is a loss of rights in prisons that continues to occur, even against the recognition of prison jurisprudence that prisoners should not lose all of their rights through incarceration.³⁷ Equally, despite the best practices set out in many national and international guidelines, it is common knowledge that prison officials around the world are often ignorant of these guidelines and the human rights of prisoners are often not respected.³⁸ In such facilities, including those in Ethiopia, the main challenge is to ensure that prisoners

³³ *Prison Reform and Rehabilitation in Ethiopia* (UNDOC, 2021)—the new prison curriculum includes modules on prison management in security, rehabilitation, and protection of the rights of prisoners and is aligned with the new Federal prisons proclamation (Federal prisons proclamation No, 1174/2019), 2019, Art.34, Proc. No, 1174/2019, Fed.Neg. Gaz., Year 26, No, 14 (1174/2019). It has similarly incorporated the SMR (Nelson Mandela Rules) as a key component of the training curricula.

³⁴ (adopted 9 December 1988 UNGA Res 43/173 A) UN Doc (BOP).

³⁵ FDRE Constitution No. 1/1995, part 2, Art. 9(4).

³⁶ *Human Rights and Prisons* (n 1); SMR's preliminary observation 2(1).

³⁷ The *coffin v Reichard* (1944) case was the first in which a federal appellate court ruled that prisoners do not automatically lose their civil rights when in prison rather prisoners retain some constitutional rights; *Minister of Justice v Hofmeyr* (1993) is another case wherein the Supreme Court ruled that prisoner retains all his personal rights save those abridged or proscribed by law; *Wolff v McDonnell* (1974) 418 US 539(USC) is further the case where the USA apex court has emphatically stated that it must be realised that a prisoner is a human being as well as a natural person or a legal person, and if a person gets convicted for a crime, it does not reduce him to the status of a non-person whose rights could be snatched away at the whims of the prison administration

³⁸ *Prison Conditions: The issue* (Penal Reform International) <<https://www.penalreform.org/issues>> accessed on May10, 2022.

receive humane treatment equivalent to that outside of prisons and to ensure prisoners' autonomy in prison setting decisions.³⁹

Further put, the declaration that all human beings, including prisoners of course, have certain inalienable rights recognised by internationally recognised instruments, and that a sentence of imprisonment constitutes only a deprivation of the fundamental right to liberty and does not include the restriction of other human rights,⁴⁰ is being hurt in the worlds that are imprisoned, including those in Ethiopia, in which prisoners face years of incarceration in often cramped and filthy food supplies, inadequate hygiene, and little or no clothing or other amenities, with authorities reportedly beat and tortured detainees in prisons and medical care reported to have been inadequate (in some cases) after being beaten.⁴¹ While these conditions are not uniform across the country, their prevalence is a matter of concern and needs to be addressed through prison reform and attention to human rights.⁴²

It is on this basis and the principle that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person,⁴³ which none can fulfil, except the right to an adequate standard of living,⁴⁴

³⁹ See Mary Katherine Maeve and Michael S Vaughn, *Nursing with Prisoners: The Practice of Caring, Forensic Nursing or Penal Harm Nursing?* (2001); Torrey E F, 'Jails and prisons—America's new mental hospitals' (American journal of public health, 1995) 85 AJPH, 12; Addisu (2012); Gosaye (2003); Mintewab (2005); Shambal [2007]; Yitayal [2006]; Country Reports on Human Rights Practices: Ethiopia (United States Department of State, Bureau of Democracy, Human Rights, and Labour, 2022); Reports on Prison Conditions in Ethiopia (EHRC, 2022) <https://www.ecoi.net/en/file/local/2044634/Ethiopia_prison_conditions.PDF> accessed on January 9, 2022. See also SMR, r 5; Association for the Prevention of Torture (APT) <<https://www.apr.ch/en/knowledge-hub/detention-focus-database/material-conditions-detention>> accessed on February 10, 2022.

⁴⁰ See Basic Principles for the Treatment of Prisoners (BAP) (adopted 14 December 1990 UNGA Res 45/111) UN Doc A/RES/45/111, Art 5; r 2 cum r 5 of the 2006 European Prison Rules; 1996 Kampala Declaration on Prison Conditions in Africa's second Recommendation on Prison Conditions; Coyle & others [2016], p.72.

⁴¹ Addisu & others (n 39); United States Department of State Rep; EHRC Rep (n 39); Jeremy Sarkin, 'Prisons in Africa: An Evaluation from a Human Rights Perspective, Sulu International Journal', Vol.4. No. 9, Dec. 2008, PP. 22-49.

⁴² *ibid* EHRC Rep.

⁴³ BAP, pr 1.

⁴⁴ ICESCR, Art 11(1), 1st para.

which, includes, inter alia, adequate food, drinking water, accommodation, sanitation, clothing and bedding, etc, GPA has been examined, via three main sections. The first section addresses the adult prisoners' fundamental rights that should be protected in the GPA. The second section presents an analysis on the challenges in ensuring these rights and the identification of what (if any) the Gambela Peoples' Regional Government and/or GPA's correctional authorities have done/are doing to alleviate these challenges. The final section provides a concluding remark on the issue under investigation.

2. Observance of Adult Prisoners' Rights in the GPA

2. 1. Prisoners' rights

2.1.1. Penitentiary Placement and Security Classification

Given the number of hours spent in dorms each day, the living arrangements have a considerable impact on the experience of deprivation, dictating minimum standards of these conditions to uphold human dignity.⁴⁵ It is for this reason that, according to international human rights law, prisoners must be classified or awarded dorms in a manner that is appropriate with their status as inmates who have been sentenced, such as separating them from accused inmates and treating them differently.⁴⁶ It is documented, notwithstanding this requirement, and although opinion differ, that there are 419 GPA's population in total, of which 417 are adult inmates, and 329 are sentenced adults, accommodated in barracks with accommodation varying from 20-50 or more with no adequate ventilation despite in hot climates, like Gambela region, that ventilation can be greatly improved with air conditioning or the installation of electric fans to allow good air circulation inside.⁴⁷ From waking up to going to sleep, it is regularly 7:00 am and 5:00 pm respectively, but going to dorms is changeable depending on the Gambela region's weather condition and was shifted in the course

⁴⁵ APT (n 39).

⁴⁶ See ICCPR, art 10(2) (a); SMR, r 11(b).

⁴⁷ Interview with Philipp Pidak, Commander, Gambella *Prison*, Gambela town, on 21 March 2022.
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<https://journals.hu.edu.et/hu-journals/index.php/hujl>

of this study to 6:00pm; desperately with mentally ill prisoners being kept isolated in their dorm and let out only when going to hospitals.⁴⁸

Despite a widespread tuberculosis and other communicable diseases inside prison, there is yet no classification of inmates on the basis of the health reason, rather prisoners are accommodated together in common dorms,⁴⁹ wherein rooms are not appropriately furnished and provided good access to natural light and adequate ventilation, attested by Room 14, a deafening, dirtiest and bustling, hosting as many as 43 inmates, with dirty windows and bed bugs on each torn mattress and on the wall, mosquitoes, with no mosquitoes nets provided; and prisoners are not involved to participate in their being awarded dorms, and are not carefully selected and adequately supervised as well.⁵⁰ Nonetheless, special treatments are provided to, for example, those who are faithful and loyal, such as to become committee members.⁵¹

The concern of overcrowding sometimes forced its authorities to rent outside, as the constant request for funding from the Gambela regional government and/or concerned NGOs to construct new prison dorm rooms, repair windows, doors, etc, remains in vain;⁵² likewise, as a part of efforts to ease an overfilling and for improved prison conditions in general, a project is planned targeting former South Sudanese Peoples' Liberation Movement's Military Camp (known as Dhingki in local Nuer

⁴⁸ *ibid* added that mental disorderly inmates' room 7, which is only roofed with fly wood and aluminum sheets, is dirtier & gloomier than any other room in the prison. See Gambela prison proclamation No.197/2021, Art.50 (2) (c).

⁴⁹ Interview with Ato Chany Dep, Coordinator of the Gambela *Prison*, Gambela town, on 25 March 2022. He further noted that there is an overcrowding in GPA which does not provide adequate separation from non-infectious detainees (ie detainees with infectious disease are not separated from accommodation block, or non-infected detainees).

⁵⁰ *ibid*.

⁵¹ Pidak (n 47) stated, for example, that if someone is sentenced to 3 years, he/she can serve only 8 months for each month and 24 months in average; Ruon Chony, prisoner, Gambella *Prison*, Gambela town, on 30 April 2022, also stated that Room 4 (also known as Arat band in the prison language parlance, a room where former British colonist envoy—known in Nuer language as a Janguan—was an inmate) is reserved for honest people, & added that Room 8 (also known Bet Mengist in Amharic) is where Riek Machar, the former & current Vice President (but now FVP) of South Sudan & rebel leader was an inmate for being a supposedly political dissident against late Dr John Garang De Mabior (honored as the Sudan peacemaker & founder of the South Sudan).

⁵² Interview with Jeremiah Pathot, Inspector, Gambella *Prison*, Gambela town, on 24 March 2022.

parlance) to build a new prison compound wall, on the area of 338 Karo metres, equivalent to 43 metres or hectares, with an estimated cost of birr 1.5 million from the Gambela regional government budget, ensuing, under a wider strategy to modernise it.⁵³

On the basis of these observations and evidences presented, it is clear that the prison has complied with Article 33(1) of the Gambela prison proclamation as there is separation between men and women prisoners, and female staff supervise women prisoners (or female block) as those for men.⁵⁴ Yet separation failure exists for those tried and sentenced from those listed under Article 33(2), (3), (4) and (5) of the same. In other words, the requirement to hold prisoners separately on the basis of their gender is contrary to popular belief fulfilled in the prison, as is the requirement of privilege under Article 66(1) and (2) of the same proclamation, particularly for the present of a special treatment to those who are faithful and loyal, such as to be committee inmates' elects.⁵⁵

And while the prison complies with Rule 33(a) of the SMR in separating female inmates from their male counterparts, non-compliance with the last sentence of the opening paragraph of the same has been observed, as prisoners with communicable disease are not separated/provided separate accommodation from other prisoners.⁵⁶ Similarly, the absence of adequate artificial light provided for prisoners to read or work, as well as windows large enough to enable them to read or work by natural

⁵³ *ibid.*

⁵⁴ Interview with Nyamal Taidor, prisoner, Gambela *Prison*, Gambela town, on 27 March 2022. She stated as well that there are 14 rooms in the prison, two of which are reserved for female inmates, and added that sanitary pads, soaps and underwear, were one provided by the Gambela Children, Women and Girls Affairs Office, in April 2019.

⁵⁵ APT (n 39)'s Extract from the 10th General Rep [CPTINF] (2003)13], para 24. See also Rep of the Working on Arbitrary Detention-A/HRC/7/4, para 5, which makes it imperative to allocate entirely separate premises to women in institution which receive both men and women if it is not possible to detain women in separate institutions, and to keep young prisoners separate from adults, which r 11(a) & (d) of the SMR also envisaged.

⁵⁶ See Council of Ministers Regulation on the Treatment of Federal Prisoners (Federal prison regulations No. 138/ 2007), 2007, Art. 5(1)(a), (b), & (3)(d), Proc. No. 138/ 2007, *Fed. Neg. Gaz.*, Year 13, No. 47.

light, is in contravention with the SMR's Rule 14(a) and (b), which call for their provision.

Additional observations and interviews conducted with most inmates and prison staff signpost the prison's non-compliance with almost all stipulations of the SMR regarding prisoners' accommodation, such as sleeping, working, and sanitary conditions. In particular, the prison's inmates' dormitories do not comply with these rules for their not being carefully selected and hence, not suitable to associate with one another in those conditions, and for absence of regular supervision by night in keeping with its nature.⁵⁷ Equally, the prison's abject practice of not letting mental cases inmates to come out except when going to hospital contravenes Rule 45(2) cum 43(1)(a) and (c) of the SMR, which prohibits it as torture or another kind of cruel or humiliating treatment.

Its further practice of accommodating prisoners ranging in number from 20-50 or more with no adequate ventilation to allow good air circulation inside, no adequate sanitary installations to enable each prisoner to meet the needs of nature when necessary and in a clean and decent manner, as well as no adequate bathing and shower installations, acts contrary to what are provided under sub-Articles (1), (2) and (3) of Article 34 of its prison proclamation that ensures prisoners shall have an accommodation that preserves their human rights, dignity, security and health during their prison stay. In addition, the proclamation, provides that a prison room is not occupied by prisoners beyond its standard capacity, and that the place where prisoners live shall have sufficient and clean personal hygiene, bathing, and toileting, considering their health, privacy, and personal dignity. Likewise, its regular neglect of all areas regularly used by inmates runs counter to this same provision.

The prison's lack of proper classification of inmates may similarly counteract Articles 19(1) and 22(1) of the Gambela Constitution, which in turn provide that

⁵⁷ SMR, rr 14 (a), (b), & 15. See also apt (n 39).

'everyone has the right to protection against cruel, inhuman, or degrading treatment or punishment' and that 'all persons imprisoned upon conviction and sentencing have the right to treatments respecting their human dignity'.⁵⁸

Its deprivation of inmates of proper accommodation can also be held against CAT's Article 16(1) cum Article 1, which outlaws it as ill-treatment and even torture, because infliction of physical torture or other cruel, inhuman, or degrading treatment is not the only manner of violating the said provision. In addition to harming inmates' health, the prison's poor ventilation and denial of bathroom facilities, combined with a hot and humid climate and overcrowding, amount as well to physical and mental torture. It is also possible, in this context, to interpret Article 5 of the ACHPR, which guarantees the rights to respect for one's dignity and freedom from inhuman or humiliating treatment, including prisoners, as conflicting with the prison's conduct of depriving adults of their proper accommodations.⁵⁹

The prison's act as well of turning (for lack of space within) areas originally served as stock rooms or workshops into dorms, despite non-fulfillment of satisfactory conditions for accommodations,⁶⁰ falls below both national and international minimum standards.⁶¹ The prohibition that 'in general no more than 40-50 persons should be accommodated in a room where detainees sleep, and then only when the available space, ventilation and lighting meet specifications' with justification; where this number is exceeded, it becomes increasingly difficult to guarantee for prisoners a minimum amount of privacy as well as access to essential services, like toilets and water, has also been contravened.⁶²

⁵⁸ See FDRE Constitution No. 1/1995, Arts.18 (1) & 21(1), the basis of the abovementioned provisions.

⁵⁹ See also IACHR, Art.5; ECHR, Art.3.

⁶⁰ GPA's Female block's 2nd room attests it.

⁶¹ See, eg ICCPR, art 10; ICESCR, art 11; SMR, rr 12-17; FDRE Constitution, Art. 21; Federal prisons Proclamation No, 1174/2019 etc; meaning that international instruments are clear that there are no circumstances in which this degree of overcrowding can be considered acceptable.

⁶² International Committee of the Red Cross (ICRC), *Water, Sanitation, Hygiene and Habitat in Prisons* (Geneva 2005) chapter 16, p.12; apt (n 39). See also SMR, r 13.

2.1.2. Bedding and Clothing (Right to Clothing and Bedding)

Despite specifications by international rules that clean clothes and bedding, in sufficient quantity and adapted to the climate, are essential elements of good personal hygiene and decent living conditions in detention; and clean bedding changed regularly prevents the outbreak of bug and skin disease epidemics,⁶³ in the GPA, prisoners are not only dozed on stained, wore and torn forms having no mattress covers and pillowcases holding as many as three or more prisoners with no sleeping clothes, especially blankets delivered by the prison commission, they are also forced to rely on their families for bedding and clothing, and are not provided with bedding and clothing, and beds.⁶⁴ Further, the prison is overcrowded, with up to 50 prisoners per room, and absences basic amenities, such as lockers or closets, for prisoners to lock their possessions.⁶⁵

The prison's dressing code system is a civilian clothing. Despite this, inmates clothes are shabby and dirty (as they are not regularly washed for lack of water as well as the absent of receiving underwear such as briefs/panties and socks from the same), and mattresses are not inspected regularly to detect damage, stains and wear and tear, and to get rid of bed bugs thereon and on the walls of each room.⁶⁶ Apart from these, prisoners shower once a week despite the Gambela's highest temperature in Ethiopia, non-existence of the hangings up of clothes to dry,⁶⁷ unreliable electricity—having

⁶³ SMR, rr 19-21.

⁶⁴ Interview with Gemechu Omod, prisoner, Gambela *Prison*, Gambela town, on 23 March 2022. He also amplified that the principal deficiencies in the region's prison noted include: shortage of items such as furniture stretchers, beds and clothes, cleaning materials and other basic materials for providing health care in minimally acceptable condition as well as inadequate medicine and medical supplies and equipment.

⁶⁵ *ibid* Room 14 is an example.

⁶⁶ Observations plus testimonies proved that there are no standardized clothes worn by prisoners.

⁶⁷ Taidor (n 54) there are 4 block having 14 dorms, each with handful old broken mattresses, holding three(3) to four(4) inmates, with no beds (four inmates sometimes sleep together in one for single torn mattress); and sometimes used mates as blanket or mattress covers as they are not provided with the latter..

only one electric bulb in room 14, absurdly left on all night—and no generator which can furnish light when the Gambella town's city has a power cut.⁶⁸

A Perusal conducted in the form of such observations and interviews demonstrated the prison's non-compliance with, for example, Article 11, paragraph 1 of the ICESCR, which stipulates that everyone has the right to clothing as part of their right to an adequate standard of living, Article 35(3) of the Gambela prison proclamation, which mandates, *inter alia*, that no limitations can be placed on the use of private underwear, and the SMR's Rule 19 cum Rules 20 and 21, which fiats, in particular, the getting of clothing by the inmates from the facility and access of the same to the appropriate beds and bedding.⁶⁹

A careful reading likewise of Article 34(4) cum Article 50(2)(d) of the Gambela prison proclamation, which requires it to provide each prisoner with a clean bed, mattress, blanket and bed sheet, and prohibits keeping the prisoner in a room with, among other things, no bed, mattress and beddings, reveals its non-compliance. This is because the prison has not been abided by the requirement that beds and mattresses must always be present and that prisoners should be able to lock their authorised personal possessions and papers up in something that is closed.

The prison's act, in addition, of not providing proper washing services, clean wearable clothing or underwear, a situation female inmates find more difficult as they are frequently in need of these items more than men do antithesis the same rules and proclamation.⁷⁰

2.1. 3. Recreational and Other Facilities

Observations and interviews conducted in regard to recreation demonstrated that there are no recreational facilities, such as football, in the GPA except volleyball,

⁶⁸ *ibid.*

⁶⁹ See Federal prison regulations No. 138/ 2007), Arts.7 & 8.

⁷⁰ For example, the Kampala Declaration calls for improving the situation of women in African prisons & thus contravened.

Mogollas and Damas, and no events have ever been celebrated by prisoners as required by international human rights law and instruments.⁷¹ In addition, the prison does not provide a centrally operated common radio or television to be used at predetermined times.⁷² And as per a steered observation, the prison's compound wall is too small with no enough yards to play around, with prisoners further not allowed to use electronic devices, and thus spend most of their time leading worship services or attending spiritual counseling sessions.

Despite the importance of exercise for prisoners' physical health and the opportunity to relieve their stress or mental tension,⁷³ GPA misses this. Particularly ogled is the lack of compliance with the requirements of provisions (1), (2), and (3) of Article 39 of the Gambela prison proclamation that prisoners, individually or in groups, have the right to engage in physical exercise within the prison compound that is appropriate for their health. Thus, the commission has to arrange a sufficient open space within the prison compound for sports and physical exercises and has also, to the extent possible, and in collaboration with the community outside, prepare cultural, social, sports and other similar events for prisoners due to absence of all these things, and particularly the space necessary for moving about and getting some exercise therein.⁷⁴

The prison has equally acted against cumulative requirements of the said proclamation's Article 43(5) and (6) that prisoners must receive the physical education and exercise they require to maintain their health and that all necessary arrangements must be made to enable them to engage in a variety of rehabilitation and recreational activities, for absence, in particular, of the prison radio and

⁷¹ Interview with Ruach Dey, prisoner, Gambela *Prison*, Gambela town, on 29 March 2022. See, eg, SMR's r 105, which states that recreational and cultural activities must be made available in every prison in order to enhance the mental and physical well-being of convicts.

⁷² Interview with Yein Gach, prisoner, Gambella *Prison*, Gambela town, on 1 May 2022.

⁷³ Esposito M, 'The Right to Physical Activity in Italian Prisons: Critical Considerations on Official Data' (2020)10 SMJ< <https://doi.org/10.4236/sm.2020.101003>>accessed on 23 May 2022.

⁷⁴ BAP, pr 6.

television, as well as books in its reading room that should provide recreation, support education and help with their personal development.⁷⁵

The same logic applies to Article 12(1) of the ICESCR, which recognises the right of everyone to physical and mental health, and the CPT's believes that all prisoners, including those undergoing cellular confinement as punishment, should have at least one hour of exercise outside every day, where there is enough space to exert themselves physically, as it crucial for their mental and physical well-being.⁷⁶

2.1.4. Connection with the Outside World and Notification

It is duly noted in other interviews that visitation is only allowed on Saturday and Sunday and the other days are only permitted for food and water services visitation.⁷⁷ The communication is conducted in a common visitation area that is two meter long partitioned by rope or string with 30-50 minutes duration.⁷⁸ Prior to the visit, however, visitors are searched by prison staff, and prisoners may also be subject to body search before and after the meeting to check for contrabands.⁷⁹ It is also indicated that prisoners have the right to be visited by and correspond with their family members, and it is where visitors can carry a few permissible items to give to the prisoners, and prisoners write letters to their families provided a request has been made for the same.⁸⁰ It is also stated that prisoners are allowed to communicate with the outside world, but restrictions on the use of phones and access to information, and lack of respect for confidentiality and privacy—as usual in the prison—exist, notably in the latter as every talk is heard without any limitation⁸¹ Similarly, lawyers are accessible to their clients and are provided a special place behind prison guard,

⁷⁵ Federal prison regulations No. 138/ 2007), Art 24(1) & (2); SMR rr, 105, 64, 91, 92, 104, 105; ICCP, Art 10(3)'s first sentence.

⁷⁶ See apt (n 39)'s Extract from the 2nd General Report (CPT/Inf (92)3]-imprisonment, para 48; SMR, r 23.

⁷⁷ Interview with Chambetha Ongom, prison officer, Gambela *Prison*, Gambela town, on 22 March 2022.

⁷⁸ *ibid.*

⁷⁹ *ibid.*

⁸⁰ *ibid.*

⁸¹ Interview with Nyaboth Biel, prison officer, Gambella *Prison*, Gambela town, on 23 March 2022.

demonstrating that meetings with lawyers are allowed with no restriction, and if prisoners want to have them, they can do so by requesting prison office tasked with calling and connecting counsels to their clients.⁸²

It was revealed in other interviews regarding notification and permission for prisoners that when a death occurs, the deceased prisoner's parents are notified; however, in situations where there are no parents, the corpse is taken to a hospital for an autopsy before being reported back to the Gambela Land Administration for a land plot and descent burial in which prisoners participate.⁸³ It was similarly revealed that permission is granted under certain conditions, such as a prisoner's family member's death or serious illness, but not when the prisoners are critically ill themselves or a close relative is getting married.⁸⁴ It is not necessary as well for agricultural operations such as plowing, sowing, or harvesting, and other sufficient causes to allow inmate to leave.⁸⁵ Leaves are equally granted under certain conditions, such as a prisoner being able to be escorted but not handcuffed.

Transfer to and from the prison is often permitted, and while children are allowed to meet their parents, it is not in the private setting that is required, and there is no way further to meet one's couple even when they are in the same prison:

"Nyajiok Duol Deng,⁸⁶ a refugee imprisoned mother with a young child of five (5) years, who was transferred, upon request, from Addis Ababa's Kalti Prison to Gambela prison, and who met only twice in a year with her two refugee children, currently living at Jew Refugee Camp, not in females room but rather at rope where all people meet, illustrates that prison transfer is

⁸² Dep (n 49); Pidak (n 47).

⁸³ *ibid.*

⁸⁴ Interview with Alemayahu Adane, prisoner, Gambela *Prison*, Gambela town, on 28 April 2022.

⁸⁵ *ibid.*

⁸⁶ The situation of this South Sudanese co-murder convict (the others being eighteen men, who are yet serving their sentence at the said prison)'s two children deprived of visitation right & her Kalti born prison daughter who has not received education since birth contravened Article 54(3) of the Gambela prisons proclamation which provides for the prison to arrange a separate place where juvenile prisoners can meet their parents and family and sub-Article (2) of the same which require juvenile prisoners to attend educational programs.

possible, but meeting, even with one's children, is seriously restricted in GPA."

"The other scenario involves Nyagile Toang Deng, who received a 15-year sentence for being a murderer of her husband and transferred from Akobo Woreda to Gambela maximum security prison (the case being her longer prison term) and was denied access to her three (3) children, who are now living with their aunt and are each 15, 13, and 6 years old, respectively."

⁸⁷

A further interview on the issue of notification and information signposted that prisoners had no access to information because neither public news agencies nor private newsstand purchases are permitted within GPA.⁸⁸ Broadcasters or journalists are, in addition, prohibited from entering the same to bring to the attention of human rights bodies and others the suffering they see.⁸⁹ Media or journalists were, in particular, prohibited from visiting the prison in 2010 Ethiopian calendar mainly because some prisoners were imprisoned for political reason.⁹⁰ Even the happening of the conflict itself may go unnoticed unless one's parents tell during prison visit, which is regularly on Saturday and Sunday.⁹¹ And in addition to little information about the lives outside is available to them, no re-entry programmes available to them.⁹²

Generally, those testimonies and observations desecrate the principle that prisoners should maintain contact with the outside world, especially their families through regular visits (and foreign prisoners should be allowed to communicate with their diplomatic representatives) and prisoners be kept informed of important items of news, particularly by the reading of newspapers, periodicals, or special institutional publications, hearing wireless transmissions, or lectures, or by any similar means as

⁸⁷ Adane (n 84).

⁸⁸ Interview with Meritinet Alemu, prisoner, Gambella *Prison*, Gambela town, on 30 February 2022.

⁸⁹ Dak Koang, business person/retailer, Gambella *Prison Gate*, Gambela town, on 1 March 2022.

⁹⁰ *ibid.*

⁹¹ Interview with Gatbel Reat Gach, prisoner, Gambella *Prison*, Gambela town, on 2 March 2022.

⁹² Koang (n 89).

authorised or controlled by the prison administration since imprisonment will frequently sever family ties and links with the community.

In detail, the stipulation by Article 40(1) of the Gambela prison proclamation that prisoners have the right to be visited by, and to correspond with, above all members of their families and be provided adequate opportunity to communicate with the outside world, is fall out from, for denial, in some cases, of prisoners to visitors by the prison authorities. Sub-Article three (3) of the same's statement that a prisoner has the right to receive current information about the community outside prison by, for example, bringing public or private press resources at his own expense, or following up audio and video programs made available at the prison is not adhered to.

There is also a lack of accord by the prison with sub-Article (4) of the forgoing proclamation for not preparing a sufficient place for prisoners to meet and stay with their visitors and for failure to make imprisoned persons' and their legal counsels' consultation to be within sight but not reachable by its prison staff or employees.⁹³

By the same token, the respective avowals of Article 41(1) and (2) of the same proclamation that where there are social activities that the prisoner cannot perform through a representative the prison shall establish a system through which the prisoner can get permission as appropriate during public working hours and, in case of the death of a close relative, a prisoner shall be given permission in the town where the prison is located are not adhered to, as do leaves, with the exception of leaves for the death of prisoner's family member or close relative, for others activities.

The SMR's Rule 58(1) (a) and (b), which provide that prisoners have the right to communicate with their families and friends, as well as Rule 62(2) that refugee prisoners shall be allowed similar facilities to communicate with, or be visited by the

⁹³ BOP, pr 18(4) also states that interviews between (...) imprisoned person and his/her legal counsel may be within sight, but not within the hearing, of a law enforcement official.

state which takes charge of their interests or any national or international authority whose task it is to protect them are not equally followed in GPA:

"A case in point is Nyabel Pech, who despite her frequent requests and the close proximity of Itang to Gambella, was denied access to her three (3) children. In other words, she has been debarred from seeing those children (who now reside in Itang Special Woreda with their aunt) since the murder."⁹⁴

Finally, the stipulation by the Gambela Constitution's Article 22(2), which is an exact replica of Article 21(2) of the FDRE Constitution, that all persons shall have the opportunity to communicate with, and be visited by, their spouses or partners, close relatives, friends, religious councilors, medical doctors, and their legal counsel, is not in accord with by the GPA.⁹⁵

2.1.5. Right to Adequate Food and Drinking Water

Interviews conducted as to GPA's prisoners' food and water went succinctly as follow: despite food is a universal need and only eating habits are highly personal and culture specific,⁹⁶ the food provided for prisoners is insufficient in both quality and quantity, as the government only budgeted 18 birr per prisoner per day for food, water, and health care, and the prison does not provide any more food than that amount.⁹⁷ In addition, water is unclean as it is fetched directly from the Baro River without being treated.⁹⁸ Again, there is no sufficient water for food preparation, personal hygiene, cleaning, watering and any other basic requirements. It is such prison water shortage and lack of appropriate sanitary facilities that escalates or serves as source of unhygienic conditions, causing, for example, the outbreak of the skin problem (or Good Yiel in the GPA's language community), which occupied

⁹⁴ In an interview, she admitted that she had murdered her husband, a former head of the Wanthoa Woreda in the Gambela Region.

⁹⁵ See also BOP, pr 19.

⁹⁶ John Germov & Lauren Williams, *Exploring the Social Appetite: A Sociology of Food and Nutrition* (Oxford University Press, 2017), part 1.

⁹⁷ Interview with Nyabol Biel, prison police, Gambella Prison, Gambella town, on April 2022, added that the daily budget for food per prisoner is in average 18 Birr which in the context of today's cost of living does not afford bread with tea and should have been for normal breakfast only.

⁹⁸ Interview with Nyabel Pech, prisoner, Gambella Prison, Gambella town, on 2 April 2022.

each and every inmate's body part, starting from fingers, up through chest, armpit, and penis/vaginas, dejectedly with no remedy to it.⁹⁹ The most affected room being the prison's largest room (ie, room 14).¹⁰⁰

From these testimonies and observations, the underlined objective that prisoners must be provided with wholesome food which is adequate to safeguard their health and strength and must also have regular access to drinking water, both of which are indispensable for leading a life in human dignity and prerequisite for the realisation of other human rights,¹⁰¹ is debased in GPA, as prisoners do not have a good quality food and access to a sufficient quantity of clean water at all times.

Despite the total reliance of prisoners on prison authorities for their basic needs, including adequate clean drinking water at all times, the reality remains in GPA as water and water facilities and services are not accessible by prisoners in accordance with the ICRC's prescription that the strict minimum physiological needs of an individual are estimated at 3-5 litres of drinking water per day and that this minimum requirement may increase if warranted by the climate and the amount of daily work and physical exercise performed.¹⁰²

There is, in particular, a disregard of Article 11(1) cum Article 12(1) of the ICESCR, which ensures the right to adequate food as a component of the right of everyone to an adequate standard of living. The prison has not also committed itself than is customary in the outside world with provisions (1) and (3) of Article 36 of the Gambela prisons proclamation, which provide sequentially that prison shall provide three times a day sufficient and balanced diet for each prisoner adequate to preserve his/her health and physical fitness and that sufficient clean drinking water shall be made available to every prisoner.¹⁰³ Its prison food (18 Birr) and water conditions

⁹⁹ Omod (n 64).

¹⁰⁰ Dep (n 49).

¹⁰¹ SMR, r 22(1) & (2).

¹⁰² ICRC (n 62).

¹⁰³ See also Federal prison regulations No. 138/ 2007), Art.10 (1) & (3); SMR, r 22(1) & (2).

may also be in opposition to the Special Rapporteur of the Commission on Human Rights to Food's argument that the right to adequate drinking water should be included in the definition of the right to food, as well as the development of the latter by the CESCR in its General Comment 12 (1999) and the right to adequate water by the same in its General Comment 15 (2002).

2.1.6. Sanitation (Personal Hygiene)

It is indicated, as to GPA's hygiene and sanitation, that prisoners are responsible for cleaning their living spaces as well as communal showers and urinal/toilet areas inside using hands in lieu of cleaning products, while cleaning of other common prison areas is undertaken either by the prisoners themselves as part of their prison labour, or its hired sweepers—there are permanently employed cleaners for its offices though.¹⁰⁴

Sanitation is problematic inside prison as there is no water and sanitary napkin/pads for female prisoners—who rather use hands, and sometimes their clothes, to care for themselves during the period of menstruation.¹⁰⁵ It is added that prisoners can sometimes urinate in buckets and defecate on plastic as sanitation deteriorates.¹⁰⁶ The prison's toilets surfeit, which burst into, and spoils, the surrounding Gambela town dwellers and, ultimately, the Baro River, has been observed too. There is also absence of barbershop to keep men's beard clean and services provided while inside and also support upon release. Non-existent as well are sanitary facilities (for example toilets, showers and washbasins) despite their great importance, especially in a situation where people are deprived of their liberty.¹⁰⁷ It has also been noted that

¹⁰⁴ Alemu (n 88) there is prison administrative division as Kilil and Zonal with an administrative task assigned to each, for example, the prison guardian responsibility is assigned to Prison Zonal police force while supervision responsibility is assigned to Kilil Prison police.

¹⁰⁵ *ibid.*

¹⁰⁶ Giel Wengbod, prisoner, Gambella *Prison*, Gambela town, on 2 April 2022.

¹⁰⁷ Dep (n 49) inmates are using broken jerry cans or buckets for showering their bodies.

the physical structures of the prison's buildings are too old which were built during the Italian invasion and of poor quality, with small dirty windows, to mention some.

For health as well as personal dignity in accommodation system where large groups of people live close together, inmates should be provided every opportunity to attend to their most basic bodily functions with a proper degree of privacy; and it is also important for the health of the staff who work in a prison and for the prisoners and there should be proper arrangements for hygiene and cleanliness. However, the information provided, and observations carried out, point out the prison's non-conformity, particularly with the need for adequate sanitary installations and washing and bathing facilities as well as the essential principle that all prisoners shall be provided with facilities to meet the needs of nature in a clean and decent manner and to maintain adequately their own cleanliness and good appearance, as basic amenities including toiletries, such as toilet paper; sanitary napkins, such as sanitary supplies for menstruation; and personal items, such as undergarments, towel, shoes and sandals, are not present.

This, no doubt, effects its departure from Rule 18(1) and (2) of the SMR, which states that prisoners shall be provided regularly with enough water and necessary materials for cleanliness as well as toilet facilities,¹⁰⁸ Article 34(3) of the Gambella prison proclamation (a verbatim copy of Article 34 of the 2019 Federal prison proclamation), which provides that the place where prisoners live shall have sufficient and clean personal hygiene, bathing and toilet facilities considering their personal dignity, privacy and health, and the Robben Island Guidelines' assertion that ready access to proper toilet facilities and the maintenance of good standards of hygiene are essential components of a humane environment.¹⁰⁹

¹⁰⁸ Federal prison regulations No. 138/2007), Art. 9.

¹⁰⁹ APT (n 39)'s Extract from the 2nd General Report ([CPT/Inf] 92)3.

Non-compliance with Article 12, paragraph 1, of the ICESCR, which recognises the right of everyone to physical and mental health, was or can be said to have also been observed.

2.1.7. Freedom of Religion and Belief

A query in relation to the practice of religious faith in GPA is that it is allowed with restriction being the deficiency of facilities inside.¹¹⁰ Even outside people may come and pray in the prison if they wish.¹¹¹ Religious services are observed to the maximum and inmates are allowed to have Bibles and other recreational and instructional books.¹¹² The prison officials take strong interest in the role of religion in the inmates' lives and there are religious volunteers.¹¹³ As for number, each faith has a lot of followers in the prison, on the other hand, with by far more Orthodox, Protestants (especially the 7 Day ones), and Muslims respectively than the rest.¹¹⁴ There are also followers of pagan (or earth-based religions) and various forms of Protestants as well.¹¹⁵ Again, almost all adult inmates investigated admitted that they attend religious services more often and all asserted that religious is very important in their lives and more said to have believe in God.¹¹⁶ Besides, there is no any preference of one religious over the others inside GPA, and religious switching, among inmates, if any, take place freely.¹¹⁷

As per these testimonies, the constitutional rights to free exercise of religions has been affirmed and bolstered in the GPA. The prison meets, in this regards, the religious need of the inmates as required, for instance, by the Gambela

¹¹⁰ Omod (n 64).

¹¹¹ *ibid.*

¹¹² *ibid.*

¹¹³ Interview with Obong Achan, prisoner, Gambella *Prison*, Gambela town, on 1 May 2022.

¹¹⁴ Pidak (n 47).

¹¹⁵ *ibid* indicated that an handicapped and a 30 years prison sentenced since 2008 EC for killing and eaten their father with his mother, of which he served 15 years and, by the research time, awaiting Gambella Regional Government's pardon, is a 666 member (Illuminant); Chony (n 51) is, for instance, a Ngundeng Bong (God gift) follower.

¹¹⁶ Dey (n 71); Omod (n 64); Achan (n 113).

¹¹⁷ *ibid.*

Constitution,¹¹⁸ particularly because outside people are allowed to come and counsel inmates and try to connect them to religious organisations or social services providers that can offer job training, substance abuse treatment, education and other assistance to help adults in custody before and after their release.¹¹⁹

And contrary to expectations that the opportunity to practice one's religion, either in private or in public, is restricted by the fact of imprisonment, the most obvious finding to emerge from those testimonies and observations is that prisoners have in the prison the freedom to follow their religion, and keep books, like Bibles, subject to permission from the responsible prison officer. In other words, the GPA's prisoners have the right to freedom of religion and belief and to the observance of the requirements of their faith, with the exception being to carry or use articles that fall under the prohibited category and rituals obstructing prison routine or rules. And had it not been the absence of prison facilities, prisoners may request the officer-in-charge for special considerations, such as having a separate space or special diet in accordance with their religious beliefs, a fact in line with the principle of nondiscrimination, the essential aim of which is that all prisoners have the right to observe the tenets of their religion and to have access to a minister of that religion.

In other words, the prisoners' right to exercise religious freedom during their stay in prison is somewhat observed in the prison, particularly because prisoners are allowed by its authorities to observe their religion by having in their possession the books of religious observance and instruction of their denomination as required, for example, by Article 38(1) of the Gambela prison proclamation that freedom of religion and belief during prison stay should subsist, and that every prisoner should

¹¹⁸ FDRE Constitution No. 1/1995, Art 22(2) first sentence (religious councilors).

¹¹⁹See USA, Pew Center, *State of Recidivism: The Revolving Door of America's Prisons* (2011)<http://www.pewcenteronthestates.org/report_detail.aspx?id=85899358613>accessed 15 March 2022.

be granted access to, and read, spiritual books, magazines and articles as well as to observe religious holidays.¹²⁰

Yet the requirement of access to qualified representatives of any religion to any prisoner by Article 22(2) of the Gambela Constitution is not observed in the prison, basically for allowing access to it only the representatives of the main religion, especially the Orthodox Christianity one in the region.¹²¹ Also there is lack of guarantee to prisoners of minority religions, such as Jehovah Witness, the observance of the requirements of their faith in defiance of Article 23(1) of the same, which provide the right of everyone to freedom of religion, including the freedom to have or to adopt a religion or belief of one's choice, and freedom, either individually or in community with others and in public or private, to manifest his/her religion or belief in worship, observance, practice and teaching.¹²²

2.2. The Challenges and Actions taken and/or planned to be taken by the Gambela Regional Authorities for the Realisation of Rights of Prisoners

2.2.1. The Challenges

As to what constitutes the prison's problems, people are increasingly remarking lack of inter-agency coordination between the GPA, Gambela Justice Bureau, Police Commission, Courts, and the EHRC in regard to prisoners' humane treatment, and between them with other pertinent NGOs, like the ICRC.¹²³ Yet, sporadic investigations are sometimes carried out by the EHRC, Ethiopian Ombudsman, ICRC, Gambela Justice Bureau, etc, on prison's sanitation, among others.¹²⁴ For

¹²⁰ SMR, rr 65 cum 66.

¹²¹ See r 65(3) of the SMR; pr 2 of the BAP.

¹²² ICCPR, Art.18 (1).

¹²³ Interview with Wondimu Lama, prosecutor, Gambella *Justice Bureau*, Gambela town, on 30 March 2022.

¹²⁴ *ibid* added that inspection is present but weak a procedure (ie among the challenges faced by prison, one is the weak inspection carried out by relevant external and independent bodies).

instance, the visit from the EHRC is at least three times a year,¹²⁵ nevertheless media, especially the independent ones are not allowed to enter and gather data from prisoners.¹²⁶ Likewise, the prison's visit from the Justice Bureau is every fifteen days (ie two times a month), and from the police commission and station, three times a week (ie Monday, Wednesday and Thursday),¹²⁷ in clear break, for such weak oversight mechanisms in overseeing the treatment of prisoners, with Articles 60-63 of the Gambela prisons proclamation on both internal and external inspections and Article 68 of the same on joint cooperation as well.¹²⁸

Lack of adequate funding (competition with other services for funding as the budget allocated for prison service is not substantial) is also cited as a key reason for any restriction placed on inmates' rights.¹²⁹ Put otherwise, high levels of crowding or shortage of dormitories and struggling with limited resources is issue facing it. Exist as well are issues regarding research thereon despite the present sparse data collected by the ICRC on its sanitation, and administration of its resources,¹³⁰ in this case, due to inadequate salaries of the prison staff/officers, which causes dissatisfaction and corrupt practices,¹³¹ though police are paid well (8000-12000 Birr) while civil service servants are subject to the levels of pay as other employees in the region.¹³² The involvement of legal aid clinic is further a challenging issue, as there is yet no operated legal aid clinic inside prison; the clinics' poor working relations with

¹²⁵Jiokow Bidit & Kor Nyatuoch, interview with Abel Adane, Head of Ethiopian Human Rights Commission *Gambella Branch*, Gambela town, on 4 April 2022.

¹²⁶ Pidak (n 47); Pathot (n 52).

¹²⁷ Lama (n 123).

¹²⁸ See Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 18 December 2002, entered into force 22 June 2005) 2375UNTS 237.

¹²⁹ Pidak (n 47); Pathot (n 52) in greater terms, the general description of a situation of adult prisoners at prison is dreadful: no water let alone its cleanliness; no bedding; no enough food; no enough prison compound walls. Too there is less sanguine about efforts to rehabilitate inmates and prepare for reentry into the community, in particular of whether correctional workers have regular, often positive interactions with inmates.

¹³⁰ SMR, r 74 state that salaries must be adequate to attract suitable prison staff and the employment benefits and working conditions must be favourable in views of the demanding nature of the work.

¹³¹ SMR, r 57; UNODC (2010) P. 58.

¹³² Interview with Jonn Chuol, Finance Officer, *Gambella Prison*, Gambela town, on April 2022.

judicial, prison and other government authorities, with a paucity of fund ranked at the pinnacle, is a general problem in the entire region.¹³³ A further noted issue in the prison is the absence of sufficient alternatives to imprisonment.¹³⁴

Similarly, despite in some cases, prisoners are mistreated by prison guards, access to ombudspersons to hear and register their complaints is denied—there is inadequate system for receiving and responding to prisoners' grievances and reports by staff about misconduct.¹³⁵ Furthermore, higher risks of violence, riots and other disturbances in protest to the conditions in prisons in general, or for lack of water, food, among themselves, and between them, and the prison guards, or administrators, is an unvarying.¹³⁶ Improper management and classification practices by staff are also commonly recounted reasons for high rates of prison violence.¹³⁷

Let alone small clinic with no instruments or equipment, medical services are challenging in the prison as there are no facilities, emergency services, drugs, specialised mental health facilities on premises,¹³⁸ against the obvious global view that proper health care is a basic right which applies to all human beings and that the conditions of health care in prisons affect public health as well as the recent progress of Article 37(1) and (2) of the Gambela prisons proclamation that prisoners shall have access to free medical services available to all other citizens pursuant to health service laws of the country and that there shall be establishment of a medical center in the prison with qualified medical personnel, sufficient medical facility and medicine supply that can provide medical services to the prisoners for 24 hours.

Education and works are as well challenging issues as there is a school or education from 4 up to 10 grades with enough teachers, but poorly equipped with no

¹³³ *ibid.*

¹³⁴ *ibid.*

¹³⁵ Interview with Alemu Mulaku, prisoner, Gambella Prison, Gambela town, on 23 May 2022.

¹³⁶ Interview with Omod Oman, prisoner, Gambella Prison, Gambela town, on 24 May 2022.

¹³⁷ *ibid.*

¹³⁸ Omod (n 64) prison has no a prison doctor available on site; in cases where specialist care is needed for the prisoner, the supposedly prison doctors send the prisoner to the specialist institution (nearby hospital), with fees mostly paid by the latter's families.

educational materials, for example, books or reading materials in the library; class rooms, workshops, and attendant of the outside in the prison school inconsistent with Article 43(1) of the Gambela prisons proclamation's averring that a prisoner shall have the right to improve his knowledge and skills by participating in educational and training programs based on his interest during his stay in the prison.¹³⁹ This is also in contradiction with the requirements that all prisoners should be treated with human dignity and be provided with education and technical training to assist with rehabilitation.¹⁴⁰ Another problem, opposing the same, is the lack of essential services and programs as well as the prison industries, in particular factory or manufacturing units, kitchen, cleaning, security and/or building maintenance work, which left prisoners with no meaningful productive activities that could divert their mind from other mischievous or nefarious activities while they are in (or serving their sentences).

2.2.2. Actions taken and/or planned to be taken by the GPA's/ Gambela Regional Authorities for the Realisation of Rights of Prisoners

The responses or steps taken by the prison and its relevant regional authorities for all the challenges thwarted or impinging on its prisoners' rights,¹⁴¹ include, inter alia, revising the regional prisons laws/legal instruments, with new prisons proclamation,¹⁴² and issuing regulations with numerous directives thereto, such as orders on education, brawl, discipline, under approval though—and on the way to publish the same; locating new prison compound wall; renting private rooms in case the prison is overfilled; delivering training to prison officers particularly on the SMR; involving inmates in the administration of the prison or making the bureaucracy of correctional services more effective, such as by instituting inmates

¹³⁹ Interview with Kong Maluth, Plane Monitor and Evaluation officer, Gambella *Prison*, Gambella town, on 27 March 2022.

¹⁴⁰ *ibid.*

¹⁴¹ Dep (n 49).

¹⁴² *ibid* Gambela Constitution No.27/1995.

committee, and extending special benefits to prisoners with good conduct who are not taught to be dangerous to society by, for instance, allowing them to work outside of the prison and get a better payment for their work, and permitting those with good conduct who are completing their sentence and have no risk of escape to visit their families and return to prison without police escort in accord with Article 66 of its new proclamation; requesting the involvement of the NGOs for funding; increasing prison inspection or coordinating its correctional activities across different agencies (ie improving interagency coordination) in compliance with Articles 60, 61 and 62 of the same new law; referring prisoners from the prison to Gambella General Hospital, Mettu or Jimma, in grave medical issues; and contracting the Gambella University, though yet to come into picture, to deliver various services to prisoners, including professional counseling service or psychosocial support to mental disorderly inmates; strengthening its working relation with the Federal Prison Commission as well as other regional prisons; improving regional correctional service, researching best practices and expanding implementation of such good practices; establishing system for prisoners' statistics and data exchange, regional standard for the selection, training, ranking, uniform, armament of prison police and other related matters; preparing and follow up implementation of standards on security, custody, basic provisions and rehabilitation of prisoners as required by Article 68 of the same proclamation.

Conclusion

This paper on the whole talks about the rights of the adult prisoners and their protection in the GPA and the study found out the latter's non-adherence to the relevant provisions of the international and regional human rights instruments and national legislations as the treatment of the adults inside is not in accord with them for a dreadful confinement conditions, such as lack of food and water, which makes it worst in the entire correctional system, and of not taking into account these basic

needs to constitute cruel, inhumane or degrading treatment, or torture.¹⁴³ In particular, the study has identified that the prison buildings are in disrepair and that most were not built for prison purposes. Also identified is that accommodations have poor ventilations as a result of small and cramped windows that allow a little light and air into (ie poor air quality and high temperature which can create new health problems in addition to intensifying the existing one). The prison, likewise, is extremely overcrowded having only four old dirty toilets and except for gender segregation, the separation of prisoners according to age, type of crime and state of health was not found (ie one interesting finding is separation failure for inmates). Another important finding was that beds are absent and the clothes are shabby and degrading, particularly in the latter for lack of regular wash due to non-existence of institutional laundry service, or detainees' washrooms/laundry areas provided for the purpose.

The research has also shown in respect of recreation and other facilities inside prison that there is poor detention for lack of fully-fledged recreational material, such as big exercise yards, a library, and workshops. The finding of research in relation to visitation and notification indicated that there are only two days allowed for visitation, and no other media in which prisoners can communicate with the outside and hence, hear news. Particularly a lack of adherence to both national and international instruments has been seen in this respect as prisoners are in some cases denied visitors by prison authorities. It has also found that food is inadequate (18 Birr), countering stipulation that prisoners are to be provided three meals per day. Also it has found out the absence of proper water supply and the fetching of water directly from the Baro River. Similarly, on the question of sanitation, this study found out poor prison sanitation, among others, for lack of adequate sanitary facilities and/or basic amenities including toiletries and personal items, as well as water, causing inmates getting ill, and the outbreaking of skin problems. And

¹⁴³ Gambela Constitution No.27/1995, Art. 19(1).

although the practice of faith is observed by the prison, there still restrictions, such as the denial of some prisoners to qualified religious councilors, or provision of special diet, or adequate place in which to pray, and lack of guarantee, especially for those of minority religions to observe the requirements of their faith. Nonetheless, visitation/more open communication with the outside world and the practice of faith are somewhat observed rights.

Lack of resources and coordination among relevant prison stakeholders with itself and themselves, the absence of involvement of legal aid clinic, denial of prisoners to ombudspersons to hear and register their complaints, regular violence for challenges, such as water, food, sleeping, sanitation, among themselves, and between them and the prison guards or administrators, absence of class rooms, attendant of the outside in prison education, books in its library, prison industries and restaurants, lack or insufficient provision of medical care to prisoners, are, among others, found as challenges facing it. The research findings, however, as to actions taken and/or planned to be taken by the prison and regional authorities, include, inter alia, adapting regional prison laws to federal prison ones by directly copying the latter; finding new prison compound wall; renting private room in case prison is overfilled; delivering training to prison officers; involvement of inmate in the administration of the prison, such as by being a committee, and extending special benefits to prisoners with good conduct who are not taught to be dangerous to society; requesting the involvement of the NGOs for funding; increasing the prison inspection in compliance with relevant national legislations and international legal instruments.

However, to be a humane correction that meets the prisoners' essential needs, or basic human rights available to every man walking on earth,¹⁴⁴ or comply with human rights standards concerning the treatment of prisoners,¹⁴⁵ as well as the assertion that the conviction of a person does not render him a non-human and still

¹⁴⁴ Mahelaka Abrar, 'Rights of prisoners and major judgment on it' (Aligarh Muslim University 2020).

¹⁴⁵ SMR, r 5.

remains a human who should be treated alike,¹⁴⁶ the prison's compliances with relevant national legislations, and regional and international human rights standards and norms that Ethiopia ratified is suggested. Particularly, its law enforcement officers and authorities have a responsibility to ensure that the treatment of the adults inside is in line with the constitutional rights set forth under Articles 19(1) and 22 of the Gambela Constitution, the basis of current and future Gambela prisons laws.¹⁴⁷

¹⁴⁶ Coyle & others (2016), P. 72; Abrar (n 144); (*Trop v Dulles*) (1958) 356 US 86.

¹⁴⁷ See also FDRE Constitution No. 1/1995, Arts.18 (1) & 21.