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REFORMING PRISON POLICY TO IMPROVE WOMEN-SPECIFIC HEALTH AND SANITARY CARE CONDITIONS OF PRISONS IN ETHIOPIA

BEHAILU T. WELDEYOHANNES*

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INTRODUCTION

In Ethiopia, prisons do not adequately provide women-specific health and sanitary care services to women prisoners because of poor prison conditions and lack of policies to ensure women prisoners' health. Prison conditions are not suitable to provide women-specific health and sanitary care goods and services to women prisoners, as most of the prisons were not designed or constructed to rehabilitate or reform women prisoners. Rather, prisons were established as military camps, administration units, or to serve only men prisoners.

On the other hand, Ethiopia has signed and ratified international human rights instruments, which require member states to assure that all women, irrespective of their status, are able to access adequate standards of physical and mental health. Moreover, ratified international agreements are part of national laws as per

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constitutional provisions and international customary rules. The Constitution also recognizes citizens' equal right to access publicly funded social services in addition to requiring the government to allocate adequate resources to provide health care services to people who need it most.¹

Women prisoners have women-specific health care needs. Yet, Ethiopia lacks specific policy and regulations that would help women-specific health rights, recognized under regional and international human rights instruments, to be equally available to women prisoners. Existing statutes do not specifically recognize women-specific health and sanitary care as women's rights, except under limited circumstances during pregnancy and childbirth. Poor prison conditions and a lack of adequate legal force, in terms of recognizing women-specific health and sanitary care needs of women prisoners, are limiting the efforts of the country to promote and protect human rights and women's rights.

The author argues that women-specific health care is part of the right to health, and promoting and protecting women's rights would not be achieved without ensuring women prisoners' right to health and sanitary care needs, which is crucial to promoting and protecting human rights that are specific to women. Therefore, Ethiopian prison laws and conditions must be reformed because they are designed solely for men, and they are inconsistent with the FDRE Constitution and ratified international human rights instruments. Reforming prison laws and conditions is helpful in tackling the problem of wrongly fitting women prisoners in men's prisons and can help to ensure the availability and accessibility of women-specific health and sanitary care services to all women prisoners in the country.

This Article has three parts. The first part discusses the prison landscape and causes of women's incarceration in Ethiopia. The second part explains the prison conditions and basic women-specific services in women's prisons in Ethiopia. The last part analyzes existing legal frameworks and principles aimed to protect women prisoner's health and sanitary care needs and calls for a policy reform in Ethiopia.

I. PRISON LANDSCAPE AND CAUSES OF WOMEN'S INCARCERATION

Sketching the history of prisons in general and women's prisons has been challenging because of unavailability of written documents on prisons and lack of data on the conditions of women prisoners.

1. CONST. OF THE FED. DEMOCRATIC REPUBLIC OF ETHIOPIA (FDRE) Dec. 8, 1994, art. 41, ¶¶ 3, 5.

Historically, prisons were not designed for women in Ethiopia.² Rather, prisons were designed to incarcerate men, and most of the prisons were established as warehouses for military and administrative units before they were converted to prisons.³

Despite difficulties in locating primary evidence on the history of prisons,⁴ most of the prisons in use today were established during the Emperor Haile Selassie, Derg, and EPRDF regimes.⁵ Similarly, incarcerating women was not a new phenomenon in Ethiopia,⁶ but separately incarcerating women prisoners from their men counterparts was started following the adoption of the 1957 Penal Code.⁷ In terms of facilities, the Addis Ababa central prison had separate cells for men and women political prisoners.⁸ Before this period, however, mostly women prisoners were incarcerated with men prisoners, and prisons were not guarded by women prison staff.⁹

In Ethiopia, prison policy is a recent development. In 1944, the country enacted the first statute on prison and prison administration.¹⁰ The Prisons Administration Establishment Proclamation No. 45/1944 was enacted to properly govern and administer prisons throughout the country.¹¹ Nevertheless, the proclamation was not properly enforced partly because of the ad hoc rules made by prison

2. See Tenth U.N. Congress on the Prevention of Crime and the Treatment of Offenders, *Report of the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders*, ch. 1, ¶ 11 & ch. 3, ¶ 8, U.N. Doc. A/CONF.187/15 (Apr. 10–17, 2000).

3. ETHIOPIAN HUMAN RIGHTS COMM’N, HUMAN RIGHTS PROTECTION MONITORING IN ETHIOPIAN PRISONS PRIMARY REPORT 22 (2012).

4. Thomas Pakenham, *THE MOUNTAINS OF RASSELAS: AN ETHIOPIAN ADVENTURE* 23 (1959). In Ethiopia (formerly Abyssinia), since the 17th century, there was a practice of detaining imperial princes on mountains, which was called “mountains Wehni” until they died or were called to assume the throne.

5. ETHIOPIAN HUMAN RIGHTS COMM’N, *supra* note 3, at 23. The report stated that during the military (Derg) regime, the Cuban government constructed new prisons that included facilities for solitary confinement in the country.

6. THE AFRICAN UNION HUMAN RIGHTS MEMORIAL: REMEMBERING VICTIMS OF MASS ATROCITIES IN AFRICA, AFRICAN UNION COMM’N 6, 13 (2012), <http://www.alembekagn.org/download/Brochure-Final.pdf> [<https://perma.cc/4CMM-93S2>] (noting that the Addis Ababa prison that was built in 1923 by the order of Empress Zewditu proves the existence of prison before 1930s in the country).

7. Penal Code of Ethiopia of 1957, art. 109, § 1, Proc. No. 158 (stating “[p]risoners of different sexes shall serve their sentences in different buildings or in different sections of the same building and prisoners of one sex shall not be allowed to mix with prisoners of the other sex.”).

8. MITCHEL P. ROTH, *PRISONS AND PRISON SYSTEMS: A GLOBAL ENCYCLOPEDIA* 102 (2006).

9. *Id.*

10. HAILE SELASSIE I. UNIVERSITY FACULTY OF LAW, *ETHIOPIAN CONSOLIDATED LAWS*, Vol. I. Proclamation No. 45/1944, 300 (1972).

11. *Id.* The Amharic version of the proclamation is available on p. 336 of the document, https://www.chilot.files.wordpress.com/2013/01/consoludated-laws-in-amharic-v-1_part3.pdf [<https://perma.cc/YD9T-2V5G>].

administrators during the imperial and Derg regimes.¹² Moreover, the proclamation did not impose an obligation on the government to provide women-specific health services and sanitary goods to women prisoners.¹³

In 1974, the imperial regime was overthrown by a military government.¹⁴ The military government kept using prison-related laws, such as rules to segregate prisoners based on sex, from the imperial period.¹⁵ Nevertheless, a regime change did not bring better conditions for women prisoners in Ethiopia as prisons became extremely brutal for women during the military regime.¹⁶ The regime converted military camps and local administration units, which lacked sanitary and health care facilities, into prisons.¹⁷ The conditions of women-specific health and sanitary care in women prisons disgracefully deteriorated during the military regime following the intensification of civil war and civil resistance in the country.¹⁸

The military government used torture and cruel and inhumane treatment to punish political prisoners.¹⁹ In most prisons, male superintendents were responsible for the direct supervision of women prisoners, and the situation was worse for women prisoners who were dissidents to the military government.²⁰ The regime was notoriously horrible to women prisoners. As forms of investigation and punishment, prison authorities and superintendents cut prisoners' breasts and genitals with sharp objects, raped and sexually harassed women prisoners, poured boiling oil over victims' breasts, and pulled out prisoners' nails to force women prisoners to admit

12. FED. DEMOCRATIC REPUBLIC OF ETHIOPIA COMPREHENSIVE JUST. SYS. REFORM PROGRAM: BASELINE STUDY REPORT, MINISTRY OF CAPACITY BUILDING JUST. SYS. REFORM PROGRAM OFF. 110 (2005).

13. *Contra* Federal Prisons Commission Establishment Proclamation, Proclamation No. 365/2003, Negarit Gazette, Year 9, No. 90.

14. *Ethiopia Executes 60 Former Officials, Including 2 Premiers and Military Chief*, N.Y. TIMES (Nov. 24, 1974), <http://www.nytimes.com/1974/11/24/archives/ethiopia-executes-60-former-officials-including-2-premiers-and.html> [<https://perma.cc/U2JY-KHNR>].

15. See Addisu Gulilat, *The Human Rights of Detained Persons in Ethiopia Case Study in Addis Ababa*, ADDIS ABABA UNIV., at 32 (Dec. 2012) (unpublished master's thesis, Addis Ababa University) (showing Ethiopia did not change their criminal laws until the 1995 constitution's adoption).

16. See AMNESTY INT'L, HUMAN RIGHTS VIOLATION IN ETHIOPIA 13 (1978).

17. *Id.*

18. Paulos Milkias, AFRICA IN FOCUS: ETHIOPIA 66–68 (2011). See also AMNESTY INT'L, *supra* note 16, at 12.

19. Milkias, *supra* note 18, at 66–68. See also ROTH, *supra* note 8, at 102.

20. AMNESTY INT'L, *supra* note 16, at 13 (noting the government's "Red Terror" campaign against the EPRP involving large-scale political arrests, mass killings, the exposure in public of the bodies of those summarily executed and systematic torture had reached its peak in the capital Addis Ababa between December 1977 and February 1978).

their involvement in dissident politics or membership in certain political groups.²¹

In 1991, the Ethiopian People's Revolutionary Democratic Front (EPRDF) defeated the military government, and the country underwent massive legal and prison reforms.²² During the transitional period, the country adopted major international and regional human rights instruments²³ and prison rules and standards to bring overall change and improve the condition of human rights in the country.²⁴ In 1995, the Federal Democratic Republic of Ethiopia (FDRE) Constitution, which is the supreme law of the land, was enacted. The Constitution prohibits cruel and inhumane or degrading punishment.²⁵ It also recognizes the rights of incarcerated people to treatments that respect their human dignity.²⁶

In 2003, Proclamation No. 45/1944 was fully repealed, and the Federal Prisons Commission Establishment Proclamation, Proclamation No. 365/2003 was adopted.²⁷ In 2004, the 1957 Penal Code of Ethiopia was repealed by the Revised Criminal Code, which focuses on reformation and rehabilitation more than retribution and revenge.²⁸ In 2007, the Council of Ministers adopted a regulation, Regulation No. 138/2007, on the treatment of federal prisoners.²⁹ Providing basic services, such as food, shelter, water, and maintaining prisoners' health by providing free medical treatment to all prisoners are the main obligations of prison authorities under such prison laws.³⁰ In addition, the country revised its old penal rules and adopted new criminal principles, which prefer progressive prison principles.³¹

21. Milkias, *supra* note 18, at 66–68. See also AMNESTY INT'L, *supra* note 16, at 10.

22. EPRDF is a front established by the TPLF (Tigray People Liberation Front), EPDM (Ethiopian Peoples' Democratic Movement later changed to Amhara National Democratic Movement—ANDM in 1994), OPDO (the Oromo Peoples' Democratic Organization), and the Southern Ethiopian Peoples' Democratic Front (SEPDF in 1994).

23. Ethiopia adopted the International Covenant on Civil and Political Rights and the International Covenant on Social, Economic, and Cultural Rights in 1993, and a year later, the Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment was adopted.

24. CONST. OF THE FDRE, art. 21, ¶ 1.

25. *Id.* at art. 18, ¶ 1.

26. *Id.* arts. 18–21.

27. See Proclamation 365/2003, *supra* note 13, at ¶ 3, § 1, & ¶ 38, § 1.

28. See *Proclamation of the Criminal Code of the Fed. Democratic Republic of Ethiopia*, Proclamation No. 414/2004, at IV–V (2005).

29. Even if states can adopt their own prison laws, they usually use or fully adopt the federal prison laws.

30. See Proclamation No. 365/2003, *supra* note 13; AMHARA NAT'L REGIONAL ST. PRISONERS HANDLING AND CARE DETERMINATION, COUNCIL OF REGIONAL GOVERNMENT REG., Reg. No. 26/2005.

31. See Proclamation No. 365/2003, *supra* note 13, art. 5. See also Proclamation No. 414/2004, *supra* note 28.

Nevertheless, the EPRDF government maintained the legacy of poor prisons. The prisons maintained their notorious gender blind order, and even if women prisoners have suffered for long because of grave human rights violations, prison authorities kept detaining women prisoners in those poor facilities.³² Further, the conditions of women-specific health and sanitary care remained unchanged in the newly established prisons.³³

Currently, Ethiopia has 120 regional and six federal prisons, where 112,361 men and 3,895 women are incarcerated.³⁴ In Ethiopia, women prisoners account for 3.5 percent of the total prison population.³⁵ However, the data on women prisoners and prison population do not include women who have been detained at police stations, military camps, administration units, and rural areas.³⁶ These temporary detention sites also do not provide women-specific health and sanitary care services to the detainees.³⁷

A. Causes of Women's Incarceration in Ethiopia

According to reports, women prisoners are minor offenders, mostly with no educational background, no land or wealth ownership, and had experience of gender-based abuse in their lives.³⁸ Women are usually incarcerated for minor offenses, mostly connected to economic reasons or violence.³⁹ In Ethiopia, the lives of women prior to

32. WORLD REPORT 2016: ETHIOPIA, HUMAN RIGHTS WATCH (2016), <https://www.chilot.files.wordpress.com/2011/01/reg-no-138-treatment-of-federal-prisoners.pdf> [https://perma.cc/FB28-2YMK].

33. *Id.* See also ETHIOPIA: WORLD PRISON BR., INT'L CTR. FOR PRISON STUD. (2016), <http://www.prisonstudies.org/map/africa> [https://perma.cc/Q64X-CZ7A].

34. U.S. DEP'T. OF STATE, ETHIOPIA 2013 HUMAN RIGHTS REPORT (2013), <https://www.state.gov/j/drl/rls/hrrpt/2013humanrightsreport/index.htm?dlid=220113&year=2013#wrapper> [https://perma.cc/7NPM-T8DH] (according to this report, Justice for All-Prison Fellowship Ethiopia (JFA-PFE), a non-profit organization, ran model prisons in Adama and Mekele, with significantly better conditions than other prisons found in the country).

35. ETHIOPIA: WORLD PRISON BR., *supra* note 33.

36. *Id.*

37. THEY WANT A CONFESSION, HUMAN RIGHTS WATCH 3 (Oct. 17, 2013), <https://www.hrw.org/report/2013/10/17/they-want-confession/torture-and-ill-treatment-ethiopia-maekelawi-police-station> [https://perma.cc/Q77H-MZSP].

38. Rebecca Burger, *A Feminist Oversight: The Reprod. Rts. of Women in Prisons*, WRIGHT ST. U., at 45 (2014) (thesis). See also Patricia O'Brien, *We should stop putting women in jail. For anything.*, WASH. POST (Nov. 6, 2014), https://www.washingtonpost.com/posteverything/wp/2014/11/06/we-should-stop-putting-women-in-jail-for-anything/?utm_term=.9e892b5dcfe3 [https://perma.cc/AM9C-NGEW]; U.N. OFFICE ON DRUGS AND CRIME, HANDBOOK ON WOMEN AND IMPRISONMENT 8 (2d ed. 2014) (with reference to the United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (The Bangkok Rules)).

39. WOMEN AND DETENTION, U.N. HUMAN RIGHTS OFFICE OF THE HIGH COMM'N (2014), http://www.ohchr.org/Documents/Issues/Women/WRGS/OnePagers/Women_and_Detention.pdf [https://perma.cc/7UJT-EZP9].

incarceration were characterized by abuse and violence.⁴⁰ Women disproportionately bear the burden of poverty and diseases because of the gender-based division of economic resources, lack of access and control over political power, and prevalence of gender-based violence.⁴¹

Historically, women were limited by law and tradition not to make decisions on most important issues except on certain individual and family matters.⁴² Because of such discriminatory legacies, the political system in Ethiopia is still dominated by men politicians.⁴³ Since the downfall of the feudal system, women's political activism is growing rapidly in the country.⁴⁴ Unfortunately, women's political activism is becoming one of the risk factors to women's incarceration in the country.⁴⁵

Gender-based violence is a significant risk factor for women's incarceration in Ethiopia, increasing women's contact with the criminal justice system.⁴⁶ Research shows the inability of victims to access health care services after facing violence and witnessing stigma and lack of protection against gender-based violence develop psychological trauma and hate towards the society.⁴⁷ The effects of these conditions often lead women to act with the aim of protecting themselves and their families, and sometimes victims may commit criminal activity that increases their vulnerability to detention or incarceration.⁴⁸

40. *Violence against women: Intimate partner and sexual violence against women Fact Sheet*, WORLD HEALTH ORG. (Nov. 2016), <http://www.who.int/mediacentre/factsheets/fs239/en/> [<https://perma.cc/Q2WT-MQS4>] (holding that 71 percent of women in Ethiopia reported physical and/or sexual violence by an intimate partner in their lifetime).

41. *Ethiopia National Action Plan*, U.N. WOMENWATCH, <http://www.un.org/womenwatch/confer/beijing/national/ethiopia.htm> [<https://perma.cc/KB3N-WMPA>].

42. CONST. OF THE FDRE, art. 35, § 3.

43. Gemma Burgess, *A Hidden History: Women's Activities in Ethiopia*, 14 J. INT'L WOMEN'S STUD. 96, 96 (2013).

44. *Id.*

45. *Serkalem Fasil 2007 Courage in Journalism Award*, IWMF PRESS RELEASE (2007), <http://www.iwmf.org/blog/2007/10/12/serkalem-fasil-2007-courage-in-journalism-award> [<https://perma.cc/QAZ8-LT8P>] (discussing how Serkalem was incarcerated for her political activism and gave birth to a premature and underweight child while detained in a cell that was full of rats, cockroaches and fleas). See also *Prison places restrictions on jailed journalist Reeyot Alemu*, COMM. TO PROTECT JOURNALISTS (Sept. 10, 2013), <https://www.cpj.org/2013/09/prison-places-restrictions-on-jailed-journalist-re.php> [<https://perma.cc/J2UD-5ZX5>].

46. Dana D. DeHart, *Pathways to Prison: Impact of Victimization in the Lives of Incarcerated Women*, 14 VIOLENCE AGAINST WOMEN 1362, 1378 (2008).

47. Melissa E. Dichter, *Women's Experiences of Abuse as a Risk Factor for Incarceration: A Research Update*, VAWNET.ORG (July 2015), http://www.vawnet.org/sites/default/files/materials/files/2016-08/AR_IncarcerationUpdate%20%281%29.pdf [<https://perma.cc/PC9D-6FKP>].

48. DeHart, *supra* note 46, at 1365–66, 1376.

Gender-based violence affects women's reproductive health and aggravates victims' reproductive and sexual health complications.⁴⁹ Hence, gender-based violence is a grave human rights violation and a serious public health concern with significant impact on the physical, mental, sexual, and reproductive health of women.⁵⁰ Prisoners who were victims of gender-based violence also lack the ability to access reproductive and related health care services because of stigma and fear.⁵¹

A research report by the Ethiopian Women's Lawyers Association showed most Ethiopian women were incarcerated for petty offences, and in some places, they were serving time without being sentenced.⁵² Women prisoners who were incarcerated for grave crimes were often convicted of crimes committed against their husband or partner either in self-defense or for causes beyond their control.⁵³ For instance, forty percent of women prisoners in Assela, Ambo, Adama, and Zeway prisons were incarcerated for acts committed in self-defense.⁵⁴

Women prisoners often lack education and come from socially and economically disadvantaged groups.⁵⁵ They have had no contact with health services in the community before incarceration.⁵⁶ The story of Lome explains the connection between women's incarceration, gender-based abuse, and absence of contact with health services. Lome married her first husband at the age of fourteen but divorced

49. *Violence Against Women: Effects on Reproductive Health*, 20 OUTLOOK 3 (Sept. 2002), http://www.path.org/publications/files/EOL20_1.pdf [<https://perma.cc/4ADV-BN6J>].

50. William Davison, *Ethiopia's Women Vow to Turn Tide of Violence, Rape and Murder*, GUARDIAN (Jan. 27, 2015), <https://www.theguardian.com/global-development/2015/jan/27/ethiopia-women-violence-rape-murder> [<https://perma.cc/5HP3-CHAX>].

51. Tadesse Alemu et al., *Experience of stigma and discrimination and the implications for healthcare seeking behavior among people living with HIV/AIDS in resource-limited setting*, 10 SAHARA-J: J. SOC. ASPECTS HIV/AIDS 1, 6 (2013), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3819651> [<https://perma.cc/S8QW-L3XG>].

52. Sosena Mulatu, FAMILY CONVERSATIONS: LET'S TELL THE SECRETS!: PROCEEDINGS OF THE CONFERENCE ON DOMESTIC VIOLENCE 72 (Ellaine Rocha ed., 2007). See also AMNESTY INTERNATIONAL REPORT 2016/2017, AMNESTY INT'L. 22 (2017), <https://www.amnesty.org/en/countries/africa/ethiopia/report-ethiopia> [<https://perma.cc/6QA2-7SHV>]; REPORT OF THE MISSION OF THE SPECIAL RAPPOREUR ON PRISONS AND CONDITIONS OF DETENTION IN AFRICA TO THE FDRE, AFRICAN COMMISSION ON HUMAN AND PEOPLE'S RIGHTS (2004), http://www.achpr.org/files/sessions/37th/missionreports/ethiopia/misrep_specmec_priso_ethiopia_2004_eng.pdf [<https://perma.cc/E7Q2-MW6H>] [hereinafter REPORT OF THE MISSION OF THE SPECIAL RAPPOREUR].

53. Mulatu, *supra* note 52, at 42.

54. *Id.* (self-defense is a valid defense against criminal conviction, but most of the prisoners were not aware of the existence of such defense).

55. Brenda J. van den Bergh et al., *Imprisonment and women's health: concerns about gender sensitivity, human rights and pub. health*, 89 BULL. WORLD HEALTH ORG. 691 (July 7, 2011), <http://www.who.int/bulletin/volumes/89/9/10-082842/en> [<https://perma.cc/HQB4-66KL>].

56. Mulatu, *supra* note 52, at 64–65.

after three years and married another man because her first husband abused her for not being a virgin, a harmful practice very common in tradition.⁵⁷ She killed her second husband and was incarcerated. Lome explained why she killed her husband:

It was very unfortunate to see my 4-year-old little girl raped by her own father. . . . [I]t was beyond my emotions—I felt that my mind was blank. I wanted to run away, to disappear once and for all in the midst of the darkness. The next morning, I took my daughter to a nearby health post and found out that my little one had been physically damaged and had a fistula problem caused by her 50-year-old father.⁵⁸

Gender-based abuse badly affects the health of women.⁵⁹ Women prisoners who have experienced gender-based abuse are more likely to suffer from mental health problems and gynecological complications including chronic pelvic pain, vaginal infection, urinary tract infection, and fistula.⁶⁰ Yet, women's prisons in Ethiopia are not equipped with women-specific health and sanitary care facilities that are crucial to mitigate health complications that are specific to women.⁶¹

Lome, who is a mother of three, was detained in Adama prison, where women-specific and mental health care facilities were inadequately available to treat traumas caused by gender-based abuse and past criminal history.⁶² In addition, Lome's daughter, who was suffering from a fistula, was also in a prison that lacked women-specific health care services and did not have facilities that met specific physical and mental health needs of women prisoners who had prior health issues.⁶³

B. Absence of Legal Aid Support to Women Prisoners

Ethiopia recognizes a woman's right to access justice and the right to state-funded legal assistance in certain conditions.⁶⁴ Under the Constitution, state-funded legal assistance to an accused person

57. *Id.* at 65.

58. *Id.*

59. See WHAT HEALTH WORKERS NEED TO KNOW ABOUT GENDER-BASED VIOLENCE, NHS SCOTLAND 9 (2009), <https://www.rapecrisisscotland.org.uk/publications/Whats-gender-got-to-do-with-it-What-health-workers-need-to-know-about-GBV.pdf> [<https://perma.cc/AVX8-QSNL>].

60. *Id.*

61. van den Bergh et al., *supra* note 55.

62. Mulatu, *supra* note 52.

63. *Id.*

64. CONST. OF THE FDRE, art. 20, § 5. See also Hussein A. Tura, *Indigent's Right to State Funded Legal Aid in Ethiopia*, 2 INT'L HUM. RTS. L. REV. 120, 130–34 (2013).

is recognized to avoid a ‘miscarriage of justice.’⁶⁵ State-funded legal assistance is a very important means to defend and protect the rights of economically marginalized and incarcerated women.⁶⁶ Yet, incarcerated women often face immense challenges accessing legal assistance because of prevailing traditional discriminatory practices, unavailability of legal aid services, and policy bottlenecks.⁶⁷

In Ethiopia, women prisoners are minor offenders and their offenses are mostly caused by poverty, gender-based abuse, and lack of education, but efforts to reduce the incarceration of women are limited.⁶⁸ With limited resources and infrastructure, prisons and detention centers are poorly equipped to provide or facilitate legal aid assistance to incarcerated women.⁶⁹ Thus, except in a few urban areas,⁷⁰ incarcerated women are not getting highly needed legal aid help to prepare statements of defense, appeals, closing statements, opinions of sentence, petitions for cassation, asking for bail, and other civil matters such as delegating a property administrator.⁷¹

II. POOR PRISON CONDITIONS AND LACK OF BASIC WOMEN-SPECIFIC SERVICES

A criminal justice system is a vital tool that society can use to ensure peace, order, and security.⁷² Prisons are part of the criminal justice system, and if they are properly organized and administered, they can help to ensure peace and safety in the community.⁷³ Since 1991, Ethiopia has taken great steps in terms of modernizing its criminal justice system.⁷⁴ For example, the country has adopted major international human rights norms, pledged to conform to

65. CONST. OF THE FRE, art. 25, § 5.

66. *Basic Principles on the Role of Lawyers* (Aug. 27, 1990), <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfLawyers.aspx> [<https://perma.cc/XAA2-ZTEY>]. See also Mahider M. Habtemariam, *Gender Based Violence, Women with Disabilities and Access to Justice: Ethiopia and Kenya*, CENT. EUR. U., at 76–82 (Nov. 2015) (LLM long thesis).

67. ACTIVE LEARNING CENTRE, LEGAL ADVICE AND INFORMATION IN THREE REGIONS OF ETHIOPIA: A PRACTICAL GUIDE (2011), <https://www.activelearningcentre.org/wp-content/uploads/2013/11/Ethiopia-legal-advice.pdf> [<https://perma.cc/PQ9L-TRWQ>].

68. Mulatu, *supra* note 52.

69. Gulilat, *supra* note 15.

70. BIENNIAL REPORT ON THE PERFORMANCE OF JIMMA UNIV. LEGAL AID CTR., JIMMA UNIV. LAW SCH. LEGAL AID CTR. (2011).

71. ASSESSMENT OF LEGAL AID IN ETHIOPIA: A RESEARCH REPORT AND PROCEEDING OF THE NATIONAL WORKSHOP OF LEGAL AID PROVIDERS, CTR. FOR HUMAN RIGHTS (2013).

72. Penal Code of Ethiopia of 1957, *supra* note 7.

73. GLOB. PRISON TRENDS 2017, PENAL REFORM INT’L 5 (2017), http://cdn.penalreform.org/wp-content/uploads/2017/05/Global_Prison_Trends-2017-Full-Report-1.pdf [<https://perma.cc/R38V-DMDL>].

74. See ETHIOPIAN HUMAN RIGHTS COMM’N, *supra* note 3 (discussing Ethiopia’s criminal justice reform).

international prison standards, and revisited old and outdated laws to conform to modern penal principles and jurisprudence.⁷⁵

However, the country needs to do a lot to ensure gender-sensitive, decent prison conditions. Most of the prisons in the country do not function at the level of international prison standards, such as the standards of the UN Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (The Bangkok Rules), the UN Standard Minimum Rules for Treatment of Prisoners, the Ouagadougou Declaration and Plan of Action on Accelerating Prison and Penal Reform in Africa, and the Robben Island Guidelines.⁷⁶

As per human rights norms and modern prison rules, incarceration must be used as a last resort, and people in prison should be able to retain their human rights.⁷⁷ An adequate standard of living, which includes housing, clothing, food and medical services, is one of the most important conditions that women prisoners need to have to fully exercise their rights and be in a good health condition.⁷⁸

A. Housing, Clothes, Water and Food

A prison which is equipped with good accommodations, such as housing, fresh air, and sufficient lights, can have a positive impact on the prisoner's journey towards reform and rehabilitation.⁷⁹ Women prisoners must be separately housed from their men counterparts as prison houses and cells have an impact on women prisoners' health and safety.⁸⁰ Women prisoners need protection from the weather and the climate conditions, and they also need a relative sense of personal space and privacy.⁸¹

75. See Proclamation 414/2004, *supra* note 28, at Preface (which prohibits acts of torture against incarcerated people).

76. U.S. DEP'T OF STATE, ETHIOPIA 2015 HUMAN RIGHTS REPORT, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2015 4–5 (2015), <https://www.state.gov/j/drl/rls/hrrpt/2015humanrightsreport/index.htm#wrapper> [<http://perma.cc/QG3U-GB93>]; see G.A. Res. 45/111, Basic Principles for the Treatment of Prisoners ¶ 9 (Dec. 14, 1990), <http://www.ohchr.org/EN/ProfessionalInterest/Pages/BasicPrinciplesTreatmentOfPrisoners.aspx> [<http://perma.cc/VZD9-HDPP>]; G.A. Res. 663C (XXIV), Standard Minimum Rules for the Treatment of Prisoners ¶¶ 9–14 (July 31, 1957), <http://www.ohchr.org/EN/ProfessionalInterest/Pages/TreatmentOfPrisoners.aspx> [<http://perma.cc/R3GG-5ZVT>] [hereinafter Standard Minimum Rules]; AFRICAN COMM'N ON HUMAN & PEOPLES' RIGHTS, RESOLUTION ON GUIDELINES AND MEASURES FOR THE PROHIBITION AND PREVENTION OF TORTURE, CRUEL, INHUMANE OR DEGRADING TREATMENT OR PUNISHMENT IN AFRICA: THE ROBBEN ISLAND GUIDELINES, GENEVA 11–12, 15 (2003), http://www.achpr.org/files/instruments/robben-island-guidelines/achpr_instr_guide_rig_2008_eng.pdf [<http://perma.cc/9XCL-M93S>].

77. See G.A. Res. 45/111, *supra* note 76, at ¶ 1.

78. G.A. Res. 663C, *supra* note 76, at ¶¶ 9–10, 17–20, 22–26(d).

79. See Proclamation No. 365/2003, *supra* note 13, at art. 26.

80. ABA STANDARDS FOR CRIMINAL JUSTICE: TREATMENT OF PRISONERS, § 23-3.2 (3rd ed. 2011).

81. *Id.*

In Ethiopia, housing and related accommodations are poorly available for women prisoners.⁸² As a result, women prisoners are suffering from various health-related complications.⁸³ According to reports by Human Rights Watch and the African Human Rights Commission Rapporteur, individual cells in Ethiopian women's prisons are extremely narrow, often requiring prisoners to sit without being able to stretch their legs.⁸⁴ The cells were not designed to help prisoners with special needs, such as persons with disabilities, pregnant women, or breast-feeding mothers.⁸⁵ These poor housing conditions often affect prisoners who need prenatal and postnatal treatment and access to showers to maintain their hygiene.⁸⁶

TABLE 1. CONDITION OF HOUSING IN ETHIOPIA PRISONS⁸⁷

Region	Detention Centers with old rooms	Detention Centers with New rooms	Highly Congested Detention centers	Detention centers without sufficient air and light
Oromia	21	16	13 (Ejere, Western Hararghe, Finfine Zuria, Eastern Hararghe, Western Shewa, Adomi Tulu, Western Wollega)	24
Tigray	1	2	4 (Alemata, Shire, Humera, Maichew)	3
SNNPRS	10	13	16	16
Amhara	13	9	12 (Gondar, Kombolcha, North Shewa, Chilga, Dessie)	9
Somali	1	2	1 (Jigjiga)	1
Gambella	1	2	2 (Gambella Zuria, Mejenjer)	2
Harari	1	-	-	-
Afar	2	1	1 (Gebi Resu)	1
Benshangul /Gumuz	1	2	2 (Asosa, Metekal)	2
Federal	3	2	2 (Dire Dawa, Addis Ababa)	2

The housing conditions in most Ethiopian women prisons do not meet the minimum requirements provided under international prison

82. G.A. Res. 2200A (XXI), International Convention on Economic, Social and Cultural Rights, art. 11(1) (Dec. 16, 1966), <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx> [<https://perma.cc/Y2CZ-FRC2>]; G.A. Res. 217 (III) A, Universal Declaration of Human Rights, art. 25 (Dec. 25, 1948), http://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf [<https://perma.cc/2TZN-VVFX>].

83. See ETHIOPIAN HUMAN RIGHTS COMM'N, *supra* note 3, at 28–29.

84. *Id.*

85. *Id.* See also Julie Ashdown & Mel James, *Women in Detention*, 92 INT'L REV. OF THE RED CROSS 123, 125 (2010).

86. See U.S. DEPT OF STATE, *supra* note 76, at 4–5.

87. See ETHIOPIAN HUMAN RIGHTS COMM'N, *supra* note 3, at 113.

standards and human rights instruments.⁸⁸ Prisons have low standards on specific health requirements, climatic conditions, minimum floor space, lighting, heating, and ventilation because most existing prisons were not designed and furnished to serve as prisons.⁸⁹ In addition, there are limitations to provide separate accommodations for female juvenile delinquents, women prisoners with communicable diseases, and prisoners who should be accommodated separately for health reasons.⁹⁰

The small number of women prisoners in the country is not helping prison authorities to provide clothes to prisoners.⁹¹ Rather, women prisoners are restricted from wearing clothes that they prefer because of cultural, religious, and prison dress codes.⁹² Clothes are important to protect prisoners from exposures to cold, heat, wind, rain, and dirt.⁹³ Nevertheless, women prisoners are not getting clothes, except when they are going out to work in the farms or when they are performing other forms of compulsory prison jobs.⁹⁴ In all other cases, women prisoners are required to use their own clothes.⁹⁵

Incarcerated people are at increased risk of foodborne diseases, such as diarrhea, typhoid, and typhus.⁹⁶ Food is both insufficient in quality and quantity for prisoners, and there are no rules in state or federal laws or policies on nutritional standards of food.⁹⁷ The government allocates approximately nine birrs (\$0.43) per prisoner per day for food, water, and health care.⁹⁸ Prisoners who have access to family or are incarcerated near to family or friends get food from family members, but others who are poor and without access to their families suffer from foodborne diseases.⁹⁹

88. *Id.* at 146, 150, 153.

89. *Id.* at 34, 111–14, 209.

90. *Id.* at 49–55.

91. See U.N. OFFICE ON DRUGS AND CRIME, *supra* note 38; Mulatu, *supra* note 52, at 30.

92. Lisa Vetten, *The Imprisonment of Women in Africa*, HUMAN SCI. RES. COUNCIL 148 (2008).

93. U.N. Human Rights Comm., General Comment No. 28: Equality of Rights Between Men and Women (Article 3), U.N. Doc. CCPR/C/21/Rev.1/Add.10 (Mar. 29, 2000). The comment stresses that specific regulation of clothing to be worn by women may violate rights guaranteed by the Covenant.

94. See ETHIOPIAN HUMAN RIGHTS COMM'N, *supra* note 3, at 211.

95. *Id.*

96. Food inadequacy is a major problem both in developing and developed countries. See Correcting Food Policy in Washington Prisons, PRISON VOICE WASHINGTON (Oct. 25, 2016), <http://prisonvoicewa.org/content/CorrectingFoodPolicy-2016-10-25.pdf> [<https://perma.cc/A326-CM8M>]. See also Rachael Dixey et al., *Health promoting prisons—An impossibility for women prisoners in Africa?*, AGENDA (2015), <http://eprints.leedsbeckett.ac.uk/2197> [<https://perma.cc/MUR3-GXQ5>].

97. See ETHIOPIAN HUMAN RIGHTS COMM'N, *supra* note 3, at 105.

98. See U.S. DEPT OF STATE, *supra* note 76, at 4 (the mother and the children eat the regular meal, which is supplied to all prisoners by the prison administration).

99. See ETHIOPIAN HUMAN RIGHTS COMM'N, *supra* note 3, at 105–06.

Women prisoners who are pregnant or nurturing a child while serving their sentences must have access to adequate and sufficient food.¹⁰⁰ A report by the African Child Policy Forum shows most of the prisons in Ethiopia do not provide special food to pregnant and nursing prisoners, and food is not available adequately to women prisoners who are breast-feeding.¹⁰¹ Similarly, women prisoners who are pregnant and nurturing a child and prisoners with special dietary needs do not get sufficient, nutritious, and special food as required by statutes.¹⁰²

Women prisoners also suffer from an acute shortage of water.¹⁰³ According to a report by the Ethiopian Human Rights Commission, prisoners fetch unclean water from nearby rivers or often buy water from water points in town, which involves payment deducted from prisoners' food budget.¹⁰⁴ Lack of access to clean water creates harsh conditions for prisoners who are pregnant, nursing, or menstruating, as well as for prisoners involved in cooking. The acute and widespread challenges posed by shortage of water can lead to other serious health and environmental problems.¹⁰⁵ Women prisoners are hindered from maintaining their sanitation and the well-being of their children.¹⁰⁶ Shortage of water in the prisons is also affecting the proper sewage and waste disposal system, which in turn is creating conditions conducive for the spread of diseases.¹⁰⁷

B. Poorly Available Women-Specific Health and Mental Health Care Services

Poor prison conditions, such as overcrowding, poor sanitary conditions, inaccessibility of sanitary napkins, poor medical service, extreme temperature, and inadequate food can complicate the health

100. See G.A. Res. 217 (III) A, *supra* note 82, at art. 25; G.A. Res. 2200A (XXI), *supra* note 82, at art. 11 (recognizing the right to food under international human rights law and the correlative state obligations).

101. CHILDREN IN PRISONS AND DETENTION CTR. IN ETHIOPIA, THE AFRICAN CHILD POLICY FORUM 56 (2007), https://www.crin.org/en/docs/documental_9626_en.pdf [<https://perma.cc/NZ5Y-RZHE>].

102. See ETHIOPIAN HUMAN RIGHTS COMM'N, *supra* note 3, at 153.

103. See U.S. DEPT OF STATE, *supra* note 76, at 6.

104. See ETHIOPIAN HUMAN RIGHTS COMM'N, *supra* note 3, at 108–09 (the Ethiopian Human Rights Commission in its prison report stated that there was an acute shortage of water in: Yabelo, Merti, Chiro, Deder, Girawa, Negele, Borena, Kibre-Mengist, Harar (East Hararghe), Denbi-Dollo, Ginir, and Ejere in the Oromiya region; and Adi-Grat, Axum, Shire, and Humera in the Tigray region).

105. See EMERGING ISSUES IN WATER AND INFECTIOUS DISEASE, WORLD HEALTH ORG. 18 (2002), http://www.who.int/water_sanitation_health/emerging/emerging.pdf [<https://perma.cc/WQ59-HR39>].

106. *Id.* at 18. See also U.S. DEPT OF STATE, *supra* note 76, at 5.

107. WATER, SANITATION, HYGIENE AND HABITAT IN PRISONS, INT'L COMM. RED CROSS 26 (2013) [hereinafter WATER, SANITATION, HYGIENE AND HABITAT].

of women prisoners.¹⁰⁸ Gender-based violence, poverty, and addiction are connected to the health of women prisoners.¹⁰⁹ Prison authorities are expected to pay attention to such internal and external factors while working to address health complications related to communicable and noncommunicable diseases.¹¹⁰

Prisons are required to rehabilitate and reform prisoners by promoting and protecting prisoners' physical and mental health and accommodating the special needs of women prisoners.¹¹¹ Women prisoners need access to women-specific sanitary supplies, such as sanitary napkins, prior and during menstrual times. Unavailability of sanitary napkins, which is also against the dignity of women prisoners,¹¹² can affect the rehabilitation of women prisoners in a bad way.¹¹³

According to reports, Ethiopia is making progress to ensure that women have access to needed reproductive health services.¹¹⁴ Nevertheless, the country is incarcerating women in a prison that presents greater barriers to reproductive health services. Most prisons in the country do not provide sanitary napkins to women prisoners, and the natural process of menstruation creates a big problem for women prisoners, and it is also contributing to a stressful experience and health risks.¹¹⁵ In few prisons, however, women prisoners are provided with cloths with the expectation of reuse during menstrual time.¹¹⁶

In addition, women prisoners do not get toilet paper and menstruation related self-care items when they need it most.¹¹⁷ As a

108. THE HUMAN RIGHTS WATCH GLOBAL REPORT ON PRISONS, HUMAN RIGHTS WATCH xxi-xxiv, 22 (1993).

109. Brenda van den Bergh et al., *Women's health and the prison setting*, PRISONS & HEALTH 159, 160, http://www.euro.who.int/__data/assets/pdf_file/0006/249207/Prisons-and-Health,-18-Womens-health-and-the-prison-setting.pdf?ua=1 [https://perma.cc/UH3F-LRNP].

110. Marleen Temmerman et al., *Women's health priorities and interventions*, BRITISH MED. J. 7 (Sept. 14, 2015), <http://www.bmj.com/content/bmj/351/bmj.h4147.full.pdf> [https://perma.cc/N5F7-SR5B].

111. U.N. STANDARD MINIMUM RULES FOR TREATMENT OF PRISONERS R. 24, 25.

112. Chandra Bozelko, *Prisons that Withhold Menstrual Pads Humiliate Women and Violate Basic Rights*, GUARDIAN (June 12, 2015), <https://www.theguardian.com/comment/isfree/2015/jun/12/prisons-menstrual-pads-humiliate-women-violate-rights> [https://perma.cc/X9XE-7MJT].

113. TAMAR KRAFT-STOTLAR, CORRECTIONAL ASS'N OF NEW YORK, REPROD. INJUSTICE: THE STATE OF REPRODUCTIVE HEALTH CARE FOR WOMEN IN NEW YORK STATE PRISONS. 67 (Feb. 2015), <http://www.correctionalassociation.org/wp-content/uploads/2015/03/Reproductive-Injustice-FULL-REPORT-FINAL-2-11-15.pdf> [https://perma.cc/C7XV-GH7F].

114. SUCCESS FACTORS FOR WOMEN'S AND CHILDREN'S HEALTH: ETHIOPIA MINISTRY OF HEALTH, WORLD HEALTH ORG. 14 (2015), http://www.who.int/pmnch/knowledge/publications/ethiopia_country_report.pdf [https://perma.cc/3BS5-4QJW].

115. REPORT OF THE MISSION OF THE SPECIAL RAPPOREUR, *supra* note 52, at 29.

116. *Id.* See also ETHIOPIAN HUMAN RIGHTS COMM'N, *supra* note 3, at 150.

117. REPORT OF THE MISSION OF THE SPECIAL RAPPOREUR, *supra* note 52, at 29. See

result, prisoners are using anything from old clothes, toilet paper, newspapers, and other materials during menstrual time.¹¹⁸ The use of these unhygienic products and cloths combined with the shortage of water is increasing women prisoners' vulnerability to communicable and noncommunicable diseases.¹¹⁹ The conditions are also harder for women prisoners with endometriosis and other critical menstrual-related health problems.¹²⁰

Prisons have a very limited number of toilets that are not compatible to the number of prisoners, which is harming women prisoners' dignity and rights.¹²¹ Lack of adequate sanitation in prison can extremely affect women prisoners' basic rights.¹²² Inaccessible toilets and bathrooms can affect women prisoners during menstruation.¹²³ The effect of lack of access and privacy can be even worse for women prisoners who are from the communities that consider menstruation taboo and a woman's issue only.¹²⁴ Prison authorities should consider menstruation as an issue of health and sanitary care.¹²⁵ Denying women prisoners access to sanitary facilities is a degrading and inhumane treatment; therefore, prisons need to work to ensure the accessibility of sanitary and washing facilities and sanitary towels and tampons.¹²⁶

also WATER, SANITATION, HYGIENE AND HABITAT, *supra* note 107, at 50. See also ETHIOPIAN HUMAN RIGHTS COMM'N, *supra* note 3, at 150.

118. REPORT OF THE MISSION OF THE SPECIAL RAPPORTEUR, *supra* note 52, at 29.

119. Eskinder Nega, *Letter from Ethiopia's Gulag*, N.Y. TIMES (July 24, 2013), http://www.nytimes.com/2013/07/25/opinion/letter-from-ethiopia-gulag.html?_r=0 [<https://perma.cc/VE2X-UDVR>].

120. Lara Pearce, *Endometriosis Affects One in Ten Women. Here's What You Need to Know*, HUFFINGTON POST (May 22, 2017), http://www.huffingtonpost.com.au/2017/05/21/endometriosis-affects-one-in-ten-women-heres-what-you-need-to_a_22036284 [<https://perma.cc/45JZ-NJC2>].

121. "GOING TO THE TOILET WHEN YOU WANT": SANITATION AS A HUMAN RIGHT, HUMAN RIGHTS WATCH 15 (2017), <https://www.hrw.org/report/2017/04/19/going-toilet-when-you-want/sanitation-human-right> [<https://perma.cc/Q8LV-VR7D>].

122. *Id.*

123. WOMEN AND GIRLS AND THEIR RIGHT TO SANITATION, U.N. HUMAN RIGHTS OFFICE OF THE HIGH COMM'N FOR HUMAN RIGHTS (2011), <http://www.ohchr.org/EN/NewsEvents/Pages/Womenandgirlsrighttosanitation.aspx> [<https://perma.cc/KZ6S-GPHH>].

124. L. Lewis Wall et al., *A Community-Based Study of Menstrual Beliefs in Tigray*, 135 ETHIOPIA INT'L J. GYNECOLOGY & OBSTETRICS 310, 313 (2016).

125. 10TH GEN. REPORT ON THE CPT'S ACTIVITIES, EUROPEAN COMM'N FOR THE PREVENTION OF TORTURE AND INHUMANE OR DEGRADING TREATMENT OR PUNISHMENT 15 (2000), <http://www.cpt.coe.int/en/annual/rep-10.pdf> [<https://perma.cc/VJC4-8R5W>] [hereinafter 10TH GEN. REPORT].

126. See appropriate provisions on the ICCPR, ICESCR, CEDAW. See also Tolu Ajiboye, *Why Are Inmates Still Being Denied Access to Menstrual Products?*, ESTABLISHMENT (Oct. 16, 2016), <https://www.theestablishment.co/why-are-inmates-still-being-denied-access-to-menstrual-products-380e707fab82> [<https://perma.cc/Q4GR-4E5A>].

Women prisoners have special health needs for pregnancy tests and cervical and breast cancer screenings.¹²⁷ The poor prison conditions, however, are preventing women prisoners from accessing women-specific reproductive health care services, including treatment for gynecologic and breast cancers.¹²⁸ According to reports, women prisoners' health conditions are deteriorating in Ethiopia because of the lack of access to health screening for gynecologic cancer and breast tumors, and the problem is severe in prisons where health centers or clinics are not available at all.¹²⁹

Women prisoners are of reproductive age, and they have a great need for information on reproductive health issues.¹³⁰ However, in Ethiopia, prison officials usually overlook a woman prisoner's need to access information on health.¹³¹ Similarly, medical screening on entry is poorly available, and most of the time prison staff do not treat prisoners' personal health related data confidentially.¹³²

C. The Condition of Mental Health

In Ethiopia, mental health is a growing problem but hugely neglected.¹³³ More than one in ten pregnant women and one in twenty postnatal women suffer from undetected depression and mental health related problems in the country.¹³⁴ Incarceration is often a source of mental health complications and psychological distress.¹³⁵

A recent report on the mental health status of prisoners shows that a significant number of prisoners are living with depression in

127. Sarpong AA et al., *An Assessment of Female Prisoners' Perception of the Accessibility of Quality Healthcare: A Survey in the Kumasi Central Prisons, Ghana*, 5 ANNALS OF MED. & HEALTH SCI. RES. 179, 183 (2015).

128. WOMEN IN DETENTION: A GUIDE TO GENDER-SENSITIVE MONITORING, PENAL REFORM INT'L 16 (2013), https://www.penalreform.org/wp-content/uploads/2013/06/Women-in-Detention-a-guide-to-gender-sensitive-monitoring_English_0.pdf [<https://perma.cc/934G-UE9C>].

129. Lindsay Church, *Student Perspective: Protecting Freedom of Expression, in Ethiopia and Beyond*, HARV. L. HUMAN RTS. PROGRAM (Sept. 15, 2014), <http://hrp.law.harvard.edu/student-perspectives/protecting-freedom-of-expression-in-ethiopia-and-beyond> [<https://perma.cc/ZX5Q-6UEH>]. See also Nega, *supra* note 119.

130. Kristine Husøy Onarheim et al., *Towards Universal Health Coverage for Reproductive Health Services in Ethiopia: Two Policy Recommendations*, 14 INT. J. EQUITY HEALTH 5, 9 (2015). See also Uju Agomoh, *Assessment and Treatment of Female Prisoners in Africa*, U.N ASIA AND FAR EAST INST. 134 (2015), http://www.unafei.or.jp/english/pdf/RS_No94/No94_VE_Agomoh1.pdf [<https://perma.cc/9F3B-663X>].

131. 10TH GEN. REPORT, *supra* note 125, at 15.

132. Onarheim et al., *supra* note 130.

133. WORLD HEALTH ORG., AIMS REPORT ON MENTAL HEALTH SYS. IN ETHIOPIA, WHO 5 (2006).

134. FED. DEMOCRATIC REPUBLIC OF ETHIOPIA MINISTRY OF HEALTH, NAT'L MENTAL HEALTH STRATEGY 2012–2016 42 (2016).

135. Seena Fazel et al., *Mental Health of Prisoners: Prevalence, Adverse Outcomes, and Interventions*, 3 LANCET PSYCHIATRY 871, 878 (2016).

state prisons.¹³⁶ Women prisoners are at high risk for physical and mental morbidity and mortality because of lack of medication and treatment for mental health and substance use in the prison.¹³⁷ Many of these prisoners are untreated, which increases conditions related to mental disorder.¹³⁸ Mental health awareness for prisoners and provision of mental health services to prison staff do not exist or are not adequate.¹³⁹

In general, the condition of women prisons in Ethiopia is characterized by poor conditions of confinement for women prisoners, including pregnant women and childbearing prisoners.¹⁴⁰ The conditions are also branded by insufficient and substandard food, poor housing, and nonexistent or extremely limited access to women-specific health and sanitary supplies.¹⁴¹

III. PRISON POLICY IN ETHIOPIA AND THE NEED FOR A REFORM

A. Prison Policy in Ethiopia

The prison condition in Ethiopia is not designed to provide women-specific health and sanitary care services to women prisoners. As a result, the absence of women-specific health and sanitary care service is affecting prisoners' rights. On top of that, the prison policy does not properly address women prisoners' health and sanitary care needs.¹⁴²

Ethiopia is a federal republic with nine regions and two administrative cities where prisons and prisoners are primarily governed by federal and state laws.¹⁴³ However, thanks to the constitutional principle on compatibility, there is no major difference between federal and state policies on rights recognized under their respective jurisdictions.¹⁴⁴ The difference is largely administrative in nature.¹⁴⁵

136. Teresa Kisi Beyen et al., *More than Eight in Every Nineteen Inmates were Living with Depression at Prisons of Northwest Amhara Regional State, Ethiopia, a Cross-sectional Study Design*, 17 BIOMED CENT. PSYCHIATRY 1, 6 (2017).

137. HEALTH IN PRISONS: REALISING THE RIGHT TO HEALTH, PENAL REFORM INTERNATIONAL (2007), https://www.penalreform.org/wp-content/uploads/2013/06/brf-02-2007-health-in-prisons-en_01.pdf [<https://perma.cc/6WX3-W95J>].

138. *Id.* at art. 6.

139. *Id.* at art. 7.

140. *Id.* at art. 2.

141. *Id.* at art. 3.

142. *Id.* at art. 4.

143. Prison laws include the FDRE Constitution, state constitutions, the Federal Prisons Commission Establishment Proclamation No. 365/2003, the Federal Detainees Treatment Regulation No. 138/2007, state regulations on prisons, the revised FDRE Criminal Code, and the criminal procedure code.

144. *See* CONST. OF THE FDRE, arts. 55, 9. *See also* Reg. No. 26/2005, *supra* note 30.

145. CONST. OF THE FDRE, art. 55.

The FDRE Constitution is the highest law in the land, and it provides fundamental rights to women, which includes prisoners' rights to protection from cruel and inhumane treatments.¹⁴⁶ The Constitution also stipulates women prisoners' rights to protection from "the historical legacy" of discriminatory laws and conditions.¹⁴⁷ Therefore, women are protected from harms arising from pregnancy and child birth and bad prison conditions.¹⁴⁸

Ethiopia is party to major international human rights treaties relevant to women and health rights.¹⁴⁹ The country has also made such agreements part of its domestic laws.¹⁵⁰ Under the FDRE Constitution, courts and agencies with judicial power are required to interpret fundamental rights and freedoms, which includes women's rights and incarcerated peoples' rights, in conformity with the principles of the Universal Declaration on Human Rights, international covenants on human rights, and international instruments adopted by the country.¹⁵¹

International and regional human rights instruments, which are adopted and ratified by the country, are very significant in terms of providing a normative base for women specific rights of women prisoners in Ethiopia. For example, human rights agreements, which are associated to the right to health, have made health a legal right by imposing obligations on the country to provide primary and basic health and sanitary care services to all people irrespective of their sex, legal status, and health conditions.¹⁵² As Ethiopia is a member to

146. *Id.* at art. 21.

147. *Id.* at art. 35, § 3.

148. *Id.* at art. 35, § 8.

149. Ethiopia ratified the International Covenant on Civil and Political Rights (ICCPR) on 11 June 1993 and entered it into force on 11 September 1993, while the International Covenant on Economic, Social, and Cultural Rights (ICESCR) was ratified on the 11 June 1993 and came into force 11 September 1993. Similarly, the country ratified the African Charter on Human and Peoples' Rights on 15 June 1998. The Convention Against Torture (CAT) was ratified 14 March 1994 and came into force 13 April 1993, and the Convention on the Rights of the Child (CRC) was ratified on 14 May 1991 and entered into force 13 June 1991.

On the other hand, Ethiopia is a member to agreements which are specific to women. For example, while the Convention for the Elimination of All Forms of Discrimination Against Women (CEDAW) was ratified on 10 September 1981 and came into force 10 October 1981, the Protocol to the African Charter on the Rights of Women in Africa was ratified on 1 June 2004.

150. CONST. OF THE FDRE, art. 9, § 4.

151. *See id.* at art. 13, § 2. This provision establishes the duty of all federal and state legislative, executive and judicial organs to respect and enforce fundamental rights and freedoms. *Id.*

152. *CESCR Gen. Comment No. 14: The Right to the Highest Attainable Standard of Health*, U.N. OFFICE OF THE HIGH COMM'R FOR HUMAN RIGHTS, art. 12.2 (18) (2000) [hereinafter *CESCR Gen. Comment No. 14*].

such agreements, the author believes the right to health is a legal right in the country.

Ethiopia has made progress in terms of recognizing rights pertinent to health and women by adopting international human rights instruments, but Ethiopia does not perform well in terms of ensuring the right to health care, healthy conditions, and protections from discrimination of women prisoners. This is partly because of the weak enforcement mechanism of international agreements¹⁵³ and lack of specific prison laws on the women-specific health care needs of incarcerated women.¹⁵⁴

In 2004, Ethiopia revised its penal law to adequately address concerns on gender and conformity of the criminal law to the constitutional principles.¹⁵⁵ Then, the revised FRDE Criminal Code introduced a few provisions which are relevant to the health condition of women prisoners.¹⁵⁶ Accordingly, the criminal code prohibits detaining women prisoners with men prisoners in the same section and the application of death penalty on women prisoners who had not attained the age of eighteen at the time of crime.¹⁵⁷

Pertinent to women, the Code bans the application of death penalty on pregnant women prisoners while providing life imprisonment as an alternative form of punishment for nursing women.¹⁵⁸ Ethiopia also prohibits any form of torture and inhumane treatments against prisoners,¹⁵⁹ but punching, slapping, and beating of prisoners are very common in the country.¹⁶⁰ Denying women prisoners basic services, such as sanitary pads, is a form of degrading treatment. Women-specific health needs of women prisoners are not properly addressed under the Criminal Code, and they are unfairly overlooked.

The Federal Prisons Establishment Proclamation No.365/2003 (the prison proclamation) and the Federal Detainees Treatment Regulation No. 138/2007 (the prison regulation) are parts of the country's prison policy. The prison proclamation and the prison regulation impose duties on the government to provide prisoners with basic services such as food, water, shelter, clothing, and medical

153. Mekdes Fisseha Libasie, *Implementation of Women's Right to Reprod. Health in Ethiopia: Pol'y and HealthCare Perspectives* 29 (Dec. 9, 2016) (submitted for the Degree of Doctor of Philosophy School of Law Faculty of Arts and Social Sciences).

154. van den Bergh et al., *supra* note 55.

155. Rev. Crim. Code, art. 119–20 (2005) (FDRE).

156. *Id.*

157. *Id.*

158. *Id.*

159. *Id.* at art. 424(1).

160. AMNESTY INT'L REPORT 2013: THE STATE OF THE WORLD'S HUMAN RIGHTS, AMNESTY INT'L 96 (2013).

services.¹⁶¹ The prison law also mentions prisoners' right to have access to free and sufficient food, special food for pregnant and breast-feeding prisoners, and shelter and medical access.¹⁶² However, the law requires pregnant women prisoners to wait for a recommendation from medical directors to get additional food.¹⁶³

In general, in Ethiopia, the relevant prison laws and regulations do not recognize women prisoners' rights to women-specific health care and sanitary needs. The policies have limitations in terms of specifying the rights of women prisoners and the duty of prison authorities to provide women-specific health services and sanitary goods to women prisoners. Therefore, Ethiopia needs a prison policy reform.

B. A Need for Prison Policy Reform

Inadequate access to health care, serious limitations on accessing basic women-specific health services, and sanitary goods remain challenging to women prisoners in Ethiopia partly because of inadequate prison policy. Ethiopia needs to improve the condition of women prisons by reforming its prison policy. The prison policy, which is applicable today, discriminates against women prisoners because of their sex and lacks rules on access to women-specific health services and sanitary goods.¹⁶⁴

On the other hand, the rule against discrimination is a basic principle in the FDRE Constitution, the Convention on the Elimination of all forms of Discrimination Against Women, and other regional and international human rights norms, which the country accepted and adopted as part of its domestic laws.¹⁶⁵ The FDRE Constitution and international agreements relevant to health prohibit any form of discrimination that is based on sex or legal status.¹⁶⁶ Similarly, the Convention on the Elimination of All Forms of Discrimination Against Women and the International Covenant on Economic, Social and Cultural Right oblige member states to eliminate health care related discrimination against women.¹⁶⁷

161. See Proclamation No. 365/2003, *supra* note 13, at art. 27; see also Reg. No. 26/2005, *supra* note 30, at art. 10.

162. *Id.* See also Reg. No. 26/2005, *supra* note 30, at art. 11.

163. *Id.*

164. van den Bergh et al., *supra* note 55, at 691.

165. G.A. Res. 34/180, Convention on the Elimination of All Forms of Discrimination Against Women, art.1 (Dec. 18, 1979) (CEDAW) (stating that discrimination against women is the "distinction, exclusion or restriction made on the basis of sex" that results in the curtailing of women's human rights and fundamental freedoms) [hereinafter CEDAW].

166. See International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171, art. 26.

167. See CEDAW, *supra* note 165, at art. 12.

International guidelines on prisons prohibit all forms of gender-based discrimination against women prisoners.¹⁶⁸ The Standard Minimum Rules for the Treatment of Prisoners requires prison authorities not to discriminate against women prisoners while performing their duties.¹⁶⁹ Similarly, the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the Bangkok Rules) introduced progressive and pragmatic rules against discriminatory practices on women-specific health and sanitary care services.¹⁷⁰

All prisoners must be treated equally, but providing rules to address the specific needs of women prisoners should not be regarded as discriminatory to other prisoners. Rather, it is enforcing the rights recognized under the UN Convention on the Elimination of All Forms of Discrimination Against Women, the Convention on the Rights of the Child, and the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment.¹⁷¹ All prisons need to have health screening on admission.

As discussed before, in Ethiopia, the lives of women prisoners before incarceration are affected by a variety of untreated health conditions. A prison policy needs to recognize the relationship between abuse, addiction, and incarceration, as it has a significant public health implication. Most of the time, women prisoners with substance use or alcohol abuse problems had experienced physical, sexual, or other forms of gender-based abuses.¹⁷²

Women prisoners who were the victims of violence should not be denied access to health services and sanitary goods because of their gender or because they are smaller in numbers.¹⁷³ Rather, the period of incarceration should provide an opportunity to connect women prisoners to treatments.¹⁷⁴ In this regard, the Bangkok Rules

168. *Id.*

169. See Standard Minimum Rules, *supra* note 76, at Part I, § 6(1). However, the standard rule did not properly address female prisoners' women-specific health and sanitation needs. This could show how women-specific health and sanitary care needs were not properly addressed in the international prison rules and standards. The international legal system, similar to the domestic system, wanted to maintain the masculinity of the architecture of prisons, security procedures, healthcare services, family contact, work and training systems that we had in prisons.

170. U.N. RULES FOR THE TREATMENT OF WOMEN PRISONERS AND NON-CUSTODIAL MEASURES FOR WOMEN OFFENDERS, U.N. G.A., A/C. 3/65/L. 5. (Oct. 6, 2010) [hereinafter THE BANGKOK RULES].

171. See G.A. Res. 43/173, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 5 (2) (Dec. 9, 1988); G.A. Res. 34/180, *supra* note 165, at art. 4; G.A. Res. 44/25, Convention on the Rights of Children, art. 3 (Nov. 20, 1989).

172. HANDBOOK FOR PRISON MANAGERS AND POLICYMAKERS ON WOMEN AND IMPRISONMENT, U.N. OFF. ON DRUGS AND CRIME 13 (2008).

173. HANDBOOK ON WOMEN IMPRISONMENT, U.N. OFF. ON DRUGS AND CRIME 99 (2014).

174. THE BANGKOK RULES, *supra* note 170, at Rule 15 (stating that prison health services shall provide or facilitate specialized treatment programs designed for women

require states to pay attention to the specific health and sanitary care needs of women prisoners at all times.¹⁷⁵

All prisons should have the ability to perform health screening on admission. Upon incarceration, women prisoners should get comprehensive women-specific medical screening in order to ensure that prisoners who had previous medical conditions are continuing with their medication or to identify prisoners who are in need of medication or treatment.¹⁷⁶ Medical screening on entry can help to determine the presence of sexually transmitted diseases such as, HIV/AIDS,¹⁷⁷ genital warts, and pelvic inflammatory disease.¹⁷⁸ Screening can also help to identify mental health issues, drug dependency, and forms of violence that women prisoners suffered before incarceration.

Because women prisoners have multifaceted health problems caused by both factors directly connected to prisons and factors which are external to prisons,¹⁷⁹ women prisoners' prior vulnerability to health risks need to be identified and, if possible, addressed by providing medical care and treatment free of charge.¹⁸⁰ Unfortunately, the prison law does not recognize much of these procedures.¹⁸¹ Hence, a new prison policy is needed to ensure the accessibility and availability of good quality women-specific health and sanitary service in women prisons.

Prisons are responsible for the maintenance of prisoners' health in accordance with the principle of access to health and sanitary care services.¹⁸² Prisons are also responsible to ensure healthy conditions,

substance abusers taking into account prior victimization, the special needs of pregnant women and women with children, as well as their diverse cultural backgrounds).

175. *Id.* (stating that provisions of prison health facilities, goods and services must take into consideration women's special needs).

176. *Id.* at Rule 6. *See also* G.A. Res. 43/173, *supra* note 171, at Principle 24.

177. Based on the definition from Center for Disease Control and Prevention, HIV is a virus spread through body fluids that affects specific cells of the immune system called CD4 cells, or T cells. Over time, HIV can destroy so many of these cells that the body can't fight off infections and disease. When this happens, HIV infection leads to AIDS. *See* CTR. FOR DISEASE CONTROL & PREVENTIONS, TERMS, DEFINITIONS, AND CALCULATIONS USED IN CDC HIV SURVEILLANCE PUBL'N, <https://www.cdc.gov/hiv/statistics/surveillance/terms.html> [<https://perma.cc/5GTE-DT5P>].

178. A complication can develop following multiple different sexually transmitted diseases, particularly gonorrhea and chlamydia. In PID, bacteria spread to the uterus and female reproductive tract. Infertility may result if the condition is not treated right away. Symptoms include fever, pelvic or low abdominal pain, pain with urination, discharge, painful intercourse, and light bleeding. *See* CTR. FOR DISEASE CONTROL & PREVENTION, PELVIC INFLAMMATORY DISEASE FACT SHEET, <https://www.cdc.gov/std/pid/stdfact-pid.htm> [<https://perma.cc/8L7S-5KKN>].

179. van den Bergh et al., *supra* note 55, at 689–90.

180. G.A. Res. 43/173, *supra* note 171, at Principle 24.

181. van den Bergh et al., *supra* note 55, at 690–91.

182. Standard Minimum Rules, *supra* note 76, at §§ 22–26.

which includes health promotion, disease prevention, treatment and palliative care to women prisoners.¹⁸³ The principle of access to health care and sanitation service includes women's access to specific medical care services, such as medical screening on entry, women-specific health care, mental health care, HIV prevention and treatment, substance abuse treatment programs, preventive health care service, and suicide and self-harm prevention.¹⁸⁴

Access to health and sanitary care includes access to clean and hygienic prison conditions, which are important to maintain the health of prisoners and prevent the spread of infectious and non-infectious diseases.¹⁸⁵ Prisons should have vital facilities, such as showers and toilets, necessary for women prisoners, and such facilities must be arranged in a way that women prisoners would not be ashamed for using them or asking for sanitary goods.¹⁸⁶

Prisons should be inspected and monitored.¹⁸⁷ Prison staff, mainly women, should guide prisoners to keep their persons clean and maintain a good appearance compatible with their self-respect.¹⁸⁸ Similarly, a prison policy needs to entail a specific set of practices associated with the preservation of prisoners' health on environmental cleaning, water hygiene, sanitation, and disposal of waste.¹⁸⁹ Providing a clean and safe living and working prison environment can help to protect women prisoners against communicable and noncommunicable diseases, which are rampant in Ethiopian prisons.¹⁹⁰

As prisons are often forced homes for women prisoners to spend much of their lives, they need to have operational health and health care accommodations, goods, and services.¹⁹¹ Prisons need to have facilities for reproductive and women-specific medical care that is equivalent to what is available for the community outside of the prison.¹⁹² The availability of such services is important as women

183. JUDITH ASHER, *THE RIGHT TO HEALTH: A RESOURCE MANUAL FOR NGOS*, INT'L FED'N OF HEALTH & HUMAN RTS. 41, 46–47 (2004), http://www.ifhhro.org/images/stories/ifhhro/Right_to_Health/3_2_5_rt_health_manual.pdf [<https://perma.cc/9822-EXV9>].

184. THE BANGKOK RULES, *supra* note 170, at rules 6–18 (discussing health care service, medical screening, medical confidentiality, women-specific health care).

185. WORLD HEALTH ORGANIZATION, *HYGIENE*, WHO HEALTH TOPICS, <http://www.who.int/topics/hygiene/en> [<https://perma.cc/QFD3-2P77>] [hereinafter *HYGIENE*].

186. Standard Minimum Rules, *supra* note 76, at Rules 15–16.

187. THE BANGKOK RULES, *supra* note 170, at Rule 25.

188. *Id.* at Rules 8, 25.

189. *Id.* at Rule 8.

190. *HYGIENE*, *supra* note 185.

191. See *CESCR Gen. Comment No. 14*, *supra* note 152, art. 12.

192. THE BANGKOK RULES, *supra* note 170, at Rule 10 (paragraph 2 of this rule further provides that if a woman prisoner requests that she be examined or treated by a woman physician or nurse, a woman physician or nurse shall be made available, to the extent possible, except for situations requiring urgent medical intervention. If a male medical

prisoners' need for reproductive and mental health care not only originates from the history of poverty, physical, or sexual abuse, it also originates from the conditions in prisons.¹⁹³

Prisons must be equipped at least to provide primary medical services. In cases where they lack the ability to provide certain care, support must be provided by outside service providers.¹⁹⁴ In any case, medical services, including for mental health, pre- and post-natal care, treatment for abortion and related complications, need to be available for women prisoners. Similarly, women prisoners should not be limited from accessing facilities for Papanicolaou tests¹⁹⁵ or screenings for breast and gynecological cancers, such as cervical cancer, ovarian cancer, uterine cancer, and vaginal cancer.¹⁹⁶

A prison policy should require a prison's medical personnel to provide professionally and medically appropriate and good quality medical services to women prisoners.¹⁹⁷ Prison medical officers need to obey the rules of medical ethics, and they should protect the confidentiality of women prisoners' health-related information.¹⁹⁸ Yet, prison medical officers themselves should be protected not to be obliged by prison authorities to disclose confidential information of women prisoners.¹⁹⁹ Women prisoners should be treated with

practitioner undertakes the examination contrary to the wishes of the woman prisoner, a woman staff member shall be present during the examination).

193. WOMEN'S SEXUAL AND REPROD. HEALTH AND RIGHTS IN ETHIOPIA: THE ROLE OF THE NAT'L GOV'T AND U.S. FOREIGN ASSISTANCE, CTR. FOR HEALTH & GENDER EQUITY, http://www.genderhealth.org/files/uploads/change/publications/CHANGE_Ethiopia_Study_Report_web_FINAL.pdf [<https://perma.cc/NWT3-BQFZ>].

194. *Id.*

195. The Pap test (or Pap smear) looks for cancers and precancers in the cervix (the lower part of the uterus that opens into the vagina). Precancers are cell changes that might become cancer if they are not treated the right way. See CERVICAL CANCER FACT SHEET, NIH NATIONAL CANCER INST. (2017), <https://www.cancer.gov/types/cervical/pap-hpv-testing-fact-sheet> [<https://perma.cc/Z6M8-BNSM>].

196. Cancer is a disease in which cells in the body grow out of control. Cancer is always named for the part of the body where it starts, even if it spreads to other body parts later and based on this. Gynecologic cancer is any cancer that starts in a woman's reproductive organs. See WHAT IS GYNECOLOGIC CANCER?, CTR. FOR DISEASE CONTROL & PREVENTION, http://www.cdc.gov/cancer/gynecologic/basic_info/index.htm [<https://perma.cc/2PZZ-NAXB>].

197. AMNESTY INT'L, ETHICAL CODES AND DECLARATIONS RELEVANT TO HEALTH PROFESSIONS, PRINCIPLE 1 (1994).

198. G.A. Res. 37/194, *Principles of Medical Ethics*, Principle 1 (Dec. 18, 1982), <http://www.un.org/documents/ga/res/37/a37r194.htm> [<https://perma.cc/4RZV-F86Q>] (relevant to the role of health personnel, particularly physicians, in the protection of prisoners and detainees against torture, and other cruel, inhumane or degrading treatment or punishment).

199. *Id.*; see also WORLD MEDICAL ASSOC., MEDICAL ETHICS MANUAL 56 (2015), <https://www.wma.net/what-we-do/education/medical-ethics-manual> [<https://perma.cc/4WRQ-9PMT>].

respect. Seeking, receiving, and imparting information must be guided for clinical care and psychological wellness of women prisoners.²⁰⁰

RECOMMENDATIONS

Ethiopia is incarcerating women prisoners in prisons that do not provide women-specific health and sanitary care services to women prisoners. This is a violation of the FDRE Constitution and it overlooks its international obligations.²⁰¹ Therefore, Ethiopia needs to adopt a new prison policy that will address the women-specific health and sanitary needs of women prisoners.

200. THE BANGKOK RULES, *supra* note 170, Rules 2–4. Further, the Bangkok Rules under Rule 5 provide:

The accommodation of women prisoners shall have facilities and materials required to meet women's specific hygiene needs, including sanitary towels provided free of charge and a regular supply of water to be made available for the personal care of children and women, in particular women involved in cooking and those who are pregnant, breastfeeding or menstruating.

201. *Malawi African Ass'n & Others v. Mauritania*, African Comm'n on Human & People's Rights, Comm'n Nos. 54/91, 61/91, 98/93, 164/97, 196/97, 210/98, para. 122 (2000) (art. 16 recognizes the best attainable state of physical and mental health and it also requires states to take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick).