

## Protection of Prisoner's Human Rights in Prisons through the Guidelines of Rule of Law

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### Abstract

Punishing the criminals is one of the criminal justice mechanisms to compensation and reparation for victims and society. In this regards some of the punishments are determined by criminal justice systems in every society. Imprisonment is one of these penalties which specified in this regard and through this punishment the convicted persons are detained in prison. However, the guilty is sentenced to prison and restriction of his or her liberties, but she or he has fundamental rights and freedoms that must be protected even if in prison and has the right to how to be punished. All of these rights and freedoms are protected by the rule of law. This issue means that how to be punished is restricted under the definite principles which have to be exercised when the retribution and punishment is ongoing. This matter of criminal law and criminal justice is considered as right on how to be punished. The area of this right and authority of prison's heads and its personnel is determined by law. In order to do that and protection of prisoner's human rights and regulating manner with them and also for prison management, the rule of law provided a set of guidelines. According to these guidelines prison is managed in the legal framework as well as in this context the prisoner's rights are protected effectively. These guidelines are provided in some of international legal instruments. This article investigates these guidelines and in respect of their human rights aspects which related to the environmental, educational, management, health care, personnel and humanistic dimensions of imprisonment these guidelines and instructions are studied and analyzed.

**Keyword:** rule of law, human rights, guidelines, prison, prisoner

### 1. Introduction

An offender who is sentenced to imprisonment, his or her punishment is just imprisonment thus the punishment should not deprive him/her of his/her rights and other human rights must be protected under the auspices of definite law. The prisoner should only be punished by imprisonment which has been convicted for it in a fair judicial process in a justice and independent court.

This issue means that the punishment is restricted under the law and as the other Executive legal areas comply with the rule of law theories. So the duration of imprisonment shall be passed on the basis of the legal principles and under the rule of law and prison management, personnel duties and activities of the Bureau of prisons must be based on it. In this regard, and in order to protect the rights of persons sentenced to incarcerate, international organizations and specialized institutions in the field of international criminal law and human rights organizations have attempted to prepare a list of the guidelines according to the rule of law lessons that the human rights of prisoners can be protected under them. These guidelines generally are declared in many international human rights documents or especially in the practice of professional and specialized institutions and then have been announced and proposed to enforce in the domestic law by the judiciary and the prisons. These guidelines have been accepted by states and recently there has been international responsibility and obligation to exercise them under the principle of rule of law.

This article firstly examines the concept of the rule of law and its general instructions and then study the international legal sources of the rule of law guidelines related to human rights in the prisons affaires, review these guidelines and finally discussed these issues in different sections through classifying them on the basis of indicators and instructions which provided by the United Nations.

## 2. The Concept of the Rule of Law

Rule of law in some forms may be traced back to Aristotle, and has been championed by Roman jurists; medieval natural law thinkers; Enlightenment philosophers such as Hobbes, Locke, Rousseau, Montesquieu and the American founders; German philosophers Kant, Hegel, and the nineteenth century advocates of the Rechtsstaat; and in this century such ideologically diverse figures as Hayek, Rawls, Scalia, Jiang Zemin and Lee Kuan Yew. (Peerenbom, 2005: 1). Each one of these thinkers has a different approach to the rule of law and its principles and considers the different elements for it too. Some believe in the formal conception of the theory of rule of law and others believe in a substantive conception of it.

Identifying conditions necessary for a society to be said to be subject to the rule of law does not tell one much about the content of the society's laws, and there is widespread disagreement over exactly what that content must be. Some thinkers in the area focus on the existence of a structure and fair procedures for making and enforcing laws. Others focus more heavily on the content of the law itself. The two concerns are reflected by two views of the rule of law, a formalist one, which emphasizes the procedures for making and enforcing law and the structure of the nation's legal system, or a substantive one, in which certain rights are protected. Using the list of rule of law values described above, the transparency and stability of the law is more closely a formalist concern, while the protection of human rights and fundamental freedoms is a substantive one. While it is important to recognize that legal systems can be described both along formalist and substantive lines, the two are not mutually exclusive (for instance, protection against arbitrary state action). One can be committed to both formalist and substantive requirements for the rule of law. Indeed, it is difficult to find someone with a strong substantive approach to rule of law who would not also insist that the state in question follow certain procedures in making and enforcing law. Thus, one set of authors on the subject distinguish between "minimalist" approaches that may be merely formalist and "maximalist" approaches that include both formalist and relatively strong substantive components (Cole, 2011:9).

Minimum consensus as the condition of acknowledgement of the concept of rule of law can be framed in two propositions. First, the state should make rational decisions and act accordingly. This means that realization of decisions should be based on "reasons". Second, reasons in one of its significance should be legal too. These two abstract propositions are formal ones and as a result, they seem to be sufficiently non-polemical. The first proposition does not presume a certain type of government and does not suggest an objective entity of "state". In the same vein, the second proposition does not include a certain substance or content of "legal reasons" (Tremblay, 1997: 31).

One might regard the most famous and comprehensive written expression of the concept of the rule of law to be the explained concept of Albert Venn Dicey. It seems that from the viewpoint of most of the thinkers of the realm of the rule of law, Dicey is regarded as the reformer of "rule of law" (Markaz Malmiri, 2007: 28). Based on the Dicey's viewpoint, one could say that the rule of law is about the supremacy of law to human state and government. In other words, it refers to an absolute supremacy law to human. In addition, the equality of all individuals, despite of their political and social position as well as submission to legal authorities, is associated with the principle of rule of law (Rostam Nejad and Rahim Khoi, 2012: 15). In all of the associated theories, one could witness the existence of the concept of equality before the law, submission to law and its supremacy. In this regard, there is almost no difference among them. The differences are realized in content and essence which lead to distinctive perceptions of different elements of this concept.

In the formal conception of the rule of law, the compliance with the law and application of the principle of "legality" are regarded as the most important principles. However, in substantive conceptions of the rule of law, attention to other extralegal and ethical principles and standards such as the principles of natural law and principles of justice are significant and constitute an essential element of the theory of rule of law (Markaz Malmiri, 2007: 56). The first significant point in distinction of these two conceptions is the association of these conceptions with two categories of theories on the association between "legal fact" and "moral fact", namely the theories of "natural right" and theories of "legal positivism". The theories of legal positivism associate "legal argument" with external reality and merely consider something as "law" when it is announced as "law" by competent authorities. But the theories of natural rights regard the legal argument as equivalent with moral argument and consider real law to be the one which is compliant with the moral law (Rasekh, 2006: 73-76). The positivists regard something with legal form, formally passed by competent authorities and going through the procedural process of legalization as law. They regard its realization and implementation as equivalent to rule of law. As a result, they do not concern themselves with just and moral content of law or basing the law on the principles and standards of human rights while naturalists pay more attention to the content of the legal system and essence of law. They consider the rule of law to be legitimate and legal when its compliance with fairness,

equality, freedom, ethical values and human rights with legislated issue exists.

However, the advocates of both conceptions agree that the objective of the rule of law is limitation of state authorities in exercising their powers. Despite this agreement, each one of these approaches implements different instruments and means to obtain their objective. The formal conception of the rule of law lacks verdict in regard to the way of codification of law. In this regard, the significant issue is that the law is passed through competent authorities and satisfies the essential characteristics of law (Rasekh, 2006: 65). From this viewpoint, the necessary and sufficient conditions of regarding a text as law are complied with characteristics, formal and ritual conditions, as well as approval by a competent authority. Therefore, the implementation of such a bill or act is regarded as the rule of law from the viewpoint of advocates of formal conception. The advocates of substantive conception of the rule of law explain the rule of law from a perspective beyond legal positivism and with consideration of other fundamental values. In fact, this conception goes beyond a formal approach and necessitates the law to consider some substantive characteristics. The main characteristic of substantive conception is emphasis upon the dominant role of moral teachings codified in law.

In a substantive conception of the rule of law, constitutionalism is regarded as a part of the theory of the rule of law. The rule of law and the constitution have joint objectives the realization of which lead to support of human rights and its reinforcement. The framing and limitation of power, the establishment of democratic rule, guaranteeing rights and civil liberties as well as realization of justice are the common objectives of these two concepts. The exercise of freedoms is guaranteed only when they are codified as a set of personal rights in a charter of rights based on the constitution. The defense of rights and liberties is the necessary condition for realization of democracy which is only evaluable through the reference of courts to such a charter of rights. This idea had outstanding overlap with the idea of rule of law (Beetham, 2004: 62-63).

The alignment of the judicial system with law implies the control of state officials, surveillance over them, and realization of the rights of citizens and parties of legal cases. The extent of independence of the judicial system and its alignment with formal and substantive criteria of rule of law, such as an Implementation of the law in the same conditions, independence and impartiality, and non-discrimination among the parties of trials represent the extent of realization of the rule of law. The judicial independence is an essential and inevitable element of the rule of law that plays a fundamental and critical role in the application of the rule of law (Montesquieu, 1748).

The United Nations in some documents tries to determine the Rule of Law. So, the definition below, articulated by the United Nations Secretary-General in a report to the Security Council in 2004, provides a foundation for the Rule of Law Indicators. It refers to a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency (Report of the Secretary-General on the rule of law and transitional justice in conflict and post-conflict societies (S/2004/616), Para. 6).

### **3. General Guidelines of Rule of Law**

The rule of law in domestic and international law has clear principles regarding the judiciary and prison management. This is especially in human rights issues and minimum sanctions for these rights very clear. The rule of law has clear stance and guidelines for protection of human rights in different situations, for example, in the process of legislation, execution and judgment. Legislature, according to the rule of law, law enforcement under the rule of law and judgment by law and under the rule of legitimate law are some of the general guidelines that mean ruling by law. Commitment to these issues is a part of fundamental human rights under the lessons of rule of law (Raz, 1977).

In both domestic and international law perspectives the rule of law has the same elements. So there is no difference between them under the substantive attitudes. But to some extent in according with the formal attitudes is variable. At both levels, it has the same guidelines and instructions. Some of indicators and guidelines have been provided by the United Nations Organization, which has to be considered in the legislative process. In order to be accommodating with rule of law, the laws must have the formal and substantive characteristics of law and also obey of international rule of law measures which separation of powers, judicial independence and legislature with respect to justice and human rights values are some of them. Under the impartial and independence judiciary, human rights and legal rights of accused and convicted persons are protected. So, the following are some of these measures and general guidelines of the rule of law:

- A. The law must be comprehensive
- B. The law must be clear, certain and accessible
- C. The law must be legitimate: consent and compliance
  - a) Legislative legitimacy
  - b) Legitimacy of policy
  - c) Legitimacy of application legitimacy of support structures
- D. The law must balance stability and flexibility
- E. Equality before law
- F. Institutional independence and the separation of powers
- G. Legal rights as element of the rule of law

In the light of rule of lessons these guidelines must be exercised to obtain the stable society based on human rights values. Prison management by law and treatment for prisoners, according the rule of law require the clear and effective guidelines that should be announced before and must be applied by states in domestic level. Following these guidelines are so essential for protection of human rights in prisons.

#### **4. International Sources of Rule of Law Related to the Prisons**

The theory of the rule of law in both substantive and formal attitudes introduces guidelines which some of them related to prison and prisoner's rights. These guidelines reflected in international human rights instruments generally and especially in documents about prison and prisoners. The following are some of these documents which all of them are international treaties or declaration and the international community be bound to them. These documents have formed a part of international resources about managing prisons and prisoner's rights. The next section of this article is about guidelines and instructions of rule of law which reflected in these resources.

"Universal Declaration of Human Rights" (UDHR) is one of the important documents that declared fundamental rights for human and requested all of the states to protect these rights. The Universal UDHR is a milestone document in the history of human rights. Drafted by representatives with different legal and cultural backgrounds from all regions of the world, the Declaration was proclaimed by the United Nations General Assembly in Paris on 10 December 1948 as a common standard of achievements for all peoples and all nations. It sets out, for the first time, fundamental human rights to be universally protected. It provided a set of rights for all people. Some of these rights related to prisoners that have been provided in Articles 4, 9, 18, 19 and 25 (a).

"International Convention on the Elimination of All Forms of Racial Discrimination" 21 December 1965 which entry into force 4 January 1969, in accordance with Article 19 was one of the other human rights treaties to be adopted by the United Nations. The Convention is widely supported, with more than 156 countries (four-fifths of the membership of the UN) having ratified it. Article 5 of this convention has some provisions related to prisoner's rights.

"The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment" (commonly known as the United Nations Convention against Torture) is an international human rights treaty, under the review of the United Nations, that aims to prevent torture and other acts of cruel, inhuman, or degrading treatment or punishment around the world. This convention Adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984 and entry into force 26 June 1987, in accordance with article 27 (1). A set of rights recognized in articles 10 and 11 that those are closely related to prisoner's rights.

"The UN Convention on the Rights of the Child" Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 entry into force 2 September 1990, in accordance with article 49. This convention is a human rights treaty which sets out the civil, political, economic, social, health and cultural rights of children. The Convention defines a child as any human being under the age of eighteen, unless the age of majority is attained earlier under a state's own domestic legislation. Article 37 (a), (b), (c) and (d) involved some rights and duties which must be protected and applied in prisons. The convention requires the states parties to ensure these rights.

"The UN Standard Minimum Rules for the Treatment of Prisoners" is one of the other documents related to the prison and prisoner's rights were initially adopted by the UN Congress on the Prevention of Crime and the Treatment of Offenders in 1955, and approved by the UN Economic and Social Council in 1957. These rules

revised on 17 December 2015 and their revised version was adopted unanimously by the 70th session of the UN General Assembly. The revised Rules will be known as the “Nelson Mandela Rules” to honour the legacy of the late President of South Africa, Mr. Nelson Rolihlahla Mandela, who spent so many years of His life in prison. In the next section these rules will be studied completely.

“Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment” is the other international resources which Adopted by General Assembly resolution 37/194 of 18 December 1982 closely related to prisoner’s rights and duties of prison health and medical personnel. Principles 3, 4, 5 and 6 of these principles will be investigated in the next part.

“Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment” was adopted by the UN General Assembly on December 9, 1988 and contains detailed provisions for the protection of persons held in any type of detention. Principles 1, 2, 6 and 8 are so useful for this research and will be studied in following.

“United Nations Standard Minimum Rules for Non-custodial Measures” (The Tokyo Rules) adopted by the UN General Assembly on 14 December 1990 through the Resolution 45/110. These rules provide a set of basic principles to promote the use of non-custodial measures, as well as minimum safeguards for persons subject to alternatives to imprisonment.

“Basic Principles for the Treatment of Prisoners” is one of the other document related to prisoner’s rights which adopted and proclaimed by General Assembly resolution 45/111 of 14 December 1990. These rules involve some guidelines for treatment of prisoners.

The “UN Rules for the Protection of Juveniles Deprived of their Liberty,” adopted by the General Assembly in December 1990 (Resolution 45/113) , elaborate on norms contained in the Convention on the Rights of the Child , in particular those regarding the deprivation of liberty of any person under the age of 18. The rules establish the minimum standards accepted by the United Nations “for the protection of juveniles deprived of their liberty in all forms, consistent with human rights and fundamental freedoms, and with a view to counteracting the detrimental effects of all types of detention and to fostering integration in society”.

The other document in this regard is The “United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders” (the Bangkok Rules) were adopted by the UN General Assembly in December 2010 and fill a long-standing lack of standards providing for the specific characteristics and needs of women offenders and prisoners.

All of these resources provided useful an essential guideline for protection of human rights in prison in many files such as management, health and care, educational, environmental, humanistic factors and etc. in the following part these issues are classified and will be studied to gain the aim of this article.

## **5. The Guidelines of the Rule of Law for Managing the Prisons**

Obedience of the rule of law through exercising its guidelines in prisons and their related institutions help the criminal justice system to punish the criminal and protect the human rights of convicted simultaneously. The prison management system in any country is subject to the laws of that country, thus the applicable law related to the prison and prisoners is different and vary in on one state to another. In order to protect the human rights of prisoners and unification of the law in this regard because of the universality nature of these rights, international rule of law via the international instruments has provided some guidelines in these documents in order to protection of human rights in prisons.

To exercise the rule of law in prison and ensure that prisons are a part of the rule of law system in any state the UN has attempted to provide some guidelines in international documents as rules and principles for prison management which involve environmental, educational, monitoring, personnel proficiency, humanistic conditions and health and care factors and indicators. These issues will be studied in this section. These guidelines have a close relationship with human rights of prisoners (Raz, 1977).

### *5.1 Environmental Guidelines*

In the light of the rule of law theories in both formal and substantive attitudes some of guidelines and indicators have been provided through international documents about environment of prisons and its conditions. These guidelines are so important to protect the human rights values in prisons, especially about the place and its characteristics which prisoners are kept in that and also the separation of prisoners by age, sex and criminal classification. Following are some of these guidelines:

### 5.1.1 Women Detained Separately from Male Prisoners

The Standard Minimum Rules for the Treatment of Prisoners, in rule 8 provided that the different categories of prisoners shall be kept in separate institutions or parts of institutions taking account of their sex, age, criminal record, the legal reason for their detention and the necessities of their treatment. Thus, (a) men and women shall, so far as possible be detained in separate institutions; in an institution which receives both men and women the whole of the premises allocated to women shall be entirely separate.

The other relevant document is the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders which is known as The Bangkok Rules in rule 1 declared that in order for the principle of non-discrimination embodied in rule 6 of the Standard Minimum Rules for the Treatment of Prisoners to be put into practice, account shall be taken of the distinctive needs of women prisoners in the application of the Rules. Providing for such needs in order to accomplish substantial gender equality shall not be regarded as discriminatory (United Nations, 2011).

### 5.1.2 Children Detained Separately from Adults

There are many rules about children's rights in general human rights documents and also in the Convention on the Rights of Child. Furthermore the other international documents have been provided the same provisions and programs professionally about protection of children's rights. Some of these rules and provisions are as follows:

Article 37 (c) of the Convention on the Rights of the Child provided that every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances.

According to the rule 29 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, in all detention facilities juveniles should be separated from adults, unless they are members of the same family. Under controlled conditions, juveniles may be brought together with carefully selected adults as part of a special program that has been shown to be beneficial for the juveniles concerned. In this regard also the Standard Minimum Rules for the Treatment of Prisoners via Rule 8(d) declared that the different categories of prisoners shall be kept in separate institutions or parts of institutions taking account of their sex, age, criminal record, the legal reason for their detention and the necessities of their treatment. Thus, (d) young prisoners shall be kept separate from adults. As well as in rule 85 (2) announced that young untried prisoners shall be kept separate from adults and shall in principle be detained in separate institutions (Ibid).

## 5.2 *Management, Educational and Monitoring Guidelines*

In order to ensure that prisons are managed according to the rule of law and prison's personnel are educated to act by law and also these issues and prison system is checked and controlled effectively UN in its documents has attempted to provide effective guidelines. Indeed exercising these guidelines led to the protection and promotion of human rights in prison.

### 5.2.1 Corruption of Prison Officers

Rule of law is required for good governance and in the absence of corruption good governance is established. There is a direct linkage between these issues. Corruption in prison system may lead to destroy the goals of criminal justice and also ruin the personnel and officials and subsequent violence against the prisoners. Rule of law in this regard has some guidelines.

Article 7 of the Code of Conduct for Law Enforcement Officials is provided that law enforcement officials shall not commit any act of corruption. They shall also rigorously oppose and combat all such acts.

The United Nations Convention against Corruption in Article 15 request that each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally: (a) the promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

International Code of Conduct for Public Officials is the other source in this regard which provided in paragraph 9 that public officials shall not solicit or receive directly or indirectly any gift or other favor that may influence the exercise of their functions, the performance of their duties or their judgment. In order to manage the prison effectively these guidelines must be exercised perfectly (Dworkin, 1995).

### 5.2.2 Public Reports on Spending

One of the ways to combat against corruption is transparency and providing clear reports about the functions of managements and officials especially in spending and finance items. There are clear and effective instructions about this matter which have been stated in international treaties and documents and approved by the states.

According to the Article 9 paragraph 2 (b) of the United Nations Convention against Corruption each State Party shall, in accordance with the fundamental principles of its legal system, take appropriate measures to promote transparency and accountability in the management of public finances. Such measures shall encompass, inter alia: (b) timely reporting on revenue and expenditure. Article 10 says that taking into account the need to combat corruption, each State Party shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, inter alia: (a) adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration and, with due regard for the protection of privacy and personal data, on decisions and legal acts that concern members of the public; (b) simplifying administrative procedures, where appropriate, in order to facilitate public access to the competent decision-making authorities; and (c) publishing information, which may include periodic reports on the risks of corruption in its public administration (Ibid).

### 5.2.3 Publicly Available Information on Deaths in Custody

Right to know or right to access to information is one of the new generation human rights which have to be protected by the rule of law. Exercising this right is so helpful for making transparency and subsequently good governance. There are some guidelines which encompass in international document about this matter and directly affect the prisoner's rights and his/her family and the society indirectly. The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment is one of the international sources which in principle 34 provided that whenever the death or disappearance of a detained or imprisoned person occurs during his detention or imprisonment, an inquiry into the cause of death or disappearance shall be held by a judicial or other authority, either on its own motion or at the instance of a member of the family of such a person or any person who has knowledge of the case. When circumstances so warrant, such an inquiry shall be held on the same procedural basis whenever the death or disappearance occurs shortly after the termination of the detention or imprisonment. The findings of such inquiry or a report thereon shall be made available upon request, unless doing so would jeopardize an ongoing criminal investigation.

International Convention for the Protection of All Persons from Enforced Disappearance is the other international convention which, according its article 17 in paragraph 3 requests that each State Party shall assure the compilation and maintenance of one or more up-to-date official registers and/or records of persons deprived of liberty, which shall be made promptly available, upon request, to any judicial or other competent authority or institution authorized for that purpose by the law of the State Party concerned or any relevant international legal instrument to which the State concerned is a party. The information contained therein shall include, as a minimum: (a) the identity of the person deprived of liberty; (b) the date, time and place where the person was deprived of liberty and the identity of the authority that deprived the person of liberty; (c) the authority that ordered the deprivation of liberty and the grounds for the deprivation of liberty; (d) the authority responsible for supervising the deprivation of liberty; (e) the place of deprivation of liberty, the date and time of admission to the place of deprivation of liberty and the authority responsible for the place of deprivation of liberty; (f) elements relating to the state of health of the person deprived of liberty; (g) in the event of death during the deprivation of liberty, the circumstances and cause of death and the destination of the remains; (h) the date and time of release or transfer to another place of detention, the destination, and the authority responsible for the transfer (Ibid).

### 5.2.4 Discrimination

The principle of equality is one of the human rights bases. Any act contrary to this principle means discrimination and violate against fundamental human rights. Therefore impartially must be conserved in all of prison personnel activities.

According to the rule 6 (1) of the Standard Minimum Rules for the Treatment of Prisoners, rules of general application shall be applied impartially. There shall be no discrimination on grounds of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Also in this regard, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, in principle 5, paragraph. 1 provided that these principles shall be applied to all persons within the territory of any given State, without distinction of any kind, such as race, color, sex, language, religion or religious belief,

political or other opinion, national, ethnic or social origin, property, birth or other status” (Larkins, 1996).

#### 5.2.5 Detention Facilities for Women

Because of the social orders and national traditions, women in every society are vulnerable group, thus they have to be protected in grounds that they are vulnerable. When they are in prison and custody, according their mental, psychological and physical characteristics, it should be provided some facilities for them. The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders which is known as the Bangkok Rules have involved many effective rules and provision in this regard (Ibid).

#### 5.2.6 Competence of Prison Officers

Proficiency and educational background of officers about their duties in the prison system is required for managing prison according the rule of law. Minimum Rules for the Treatment of Prisoners about this issue in Rule 46 provides that (1) the prison administration shall provide for the careful selection of every grade of the personnel, since it is on their integrity, humanity, professional capacity and personal suitability for the work that the proper administration of the institutions depends. (2) The prison administration shall constantly seek to awaken and maintain in the minds both of the personnel and of the public the conviction that this work is a social service of great importance, and to this end all appropriate means of informing the public should be used. (3) To secure the foregoing ends, personnel shall be appointed on a full-time basis as professional prison officers and have civil service status with security of tenure subject only to good conduct, efficiency and physical fitness. Salaries shall be adequate to attract and retain suitable men and women; employment benefits and conditions of service shall be favourable in view of the exacting nature of the work.

This international document also in Rule 47 requires that (1) the personnel shall possess an adequate standard of education and intelligence. (2) Before entering on duty, the personnel shall be given a course of training in their general and specific duties and be required to pass theoretical and practical tests. (3) After entering on duty and during their career, the personnel shall maintain and improve their knowledge and professional capacity by attending courses of in-service training to be organized at suitable intervals (Ibid).

#### 5.2.7 Training on Human Rights

Human rights education is one of the ways that the UN and other international and regional organizations and also some of national and international NGOs have been applied that for promotion and protection of human rights and informing the people about these rights. This matter is so essential for everyone in every situation and every position. This is true for prison officials and personnel and as well as for prisoners. In order to gain this goal Updated Set of Principles for the protection and promotion of human rights through action to combat impunity, in principle 36 (e) requires that states must take all necessary measures, including legislative and administrative reforms, to ensure that public institutions are organized in a manner that ensures respect for the rule of law and protection of human rights. At a minimum, States should undertake the following measures: (e) public officials and employees, in particular those involved in military, security, police, intelligence and judicial sectors, should receive comprehensive and ongoing training in human rights and, where applicable, humanitarian law standards and in implementation of those standards (Ibid).

#### 5.2.8 Vetting Process for Prison Officers

Checking prison officers and vetting them constantly is necessary for ensuring that the human rights or prisoners are protected in prison and everything is done according to the rule of law lessons. Updated Set of Principles for the protection and promotion of human rights through action to combat impunity, have useful instructions in this regard. Upon the principle 36 (a) of these principles states must take all necessary measures, including legislative and administrative reforms, to ensure that public institutions are organized in a manner that ensures respect for the rule of law and protection of human rights. At a minimum, States should undertake the following measures: (a) public officials and employees who are personally responsible for gross violations of human rights, in particular those involved in military, security, police, intelligence and judicial sectors, shall not continue to serve in State institutions. Their removal shall comply with the requirements of due process of law and the principle of non-discrimination. Persons formally charged with individual responsibility for serious crimes under international law shall be suspended from official duties during the criminal or disciplinary proceedings (Ibid).

#### 5.2.9 Record Keeping and Information Management

Recording the prisoners and detainee persons is required for transparency and good governance in prison and other detention places. This matter plays a crucial role in the protection of rights of prison especially about political prisoners. Because these persons are more vulnerable in comparing with other usual prisoners. So, every prisoners and detainee name and their related issues must be recorded according the definite instructions. In this



regard Standard Minimum Rules for the Treatment of Prisoners, in rule 7 provides that: (1) In every place where persons are imprisoned there shall be kept a bound registration book with numbered pages in which shall be entered in respect of each prisoner received: (a) information concerning his identity; (b) the reasons for his commitment and the authority therefor; (c) the day and hour of his admission and release. (2) No person shall be received in an institution without a valid commitment order of which the details shall have been previously entered in the register.”

In order to protect of prisoners United Nations Rules for the Protection of Juveniles Deprived of their Liberty also in Rule 19 provides that all reports, including legal records, medical records and records of disciplinary proceedings, and all other documents relating to the form, content and details of treatment, should be placed in a confidential individual file, which should be kept up to date, accessible only to authorized persons and classified in such a way as to be easily understood. Where possible, every juvenile should have the right to contest any fact or opinion contained in his or her file so as to permit rectification of inaccurate, unfounded or unfair statements. In order to exercise this right, there should be procedures that allow an appropriate third party to have access to and to consult the file on request. Upon release, the records of juveniles shall be sealed, and, at an appropriate time, expunged. As well as Rule 21 of these rules in every place where juveniles are detained, a complete and secure record of the following information should be kept concerning each juvenile received: (a) information on the identity of the juvenile; (b) the fact of and reasons for commitment and the authority therefor; (c) The day and hour of admission, transfer and release; (d) details of the notifications to parents and guardians on every admission, transfer or release of the juvenile in their care at the time of commitment; (e) details of known physical and mental health problems, including drug and alcohol abuse (Hayek, 1993).

#### 5.2.10 Lawfulness of Detention

Rule of law in formal and substantive attitudes means that everything must be done according to law and the action and function of officials and administrations must be ruled by law. Every acts and functions must be legal. People’s rights must be legally protected. International Covenant on Civil and Political Rights, in article 9, paragraph 1 provides that everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law. The other international documents have the same requirements. The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment in principle 32 requires that (1) detained person or his counsel shall be entitled at any time to take proceedings according to domestic law before a judicial or other authority to challenge the lawfulness of his detention in order to obtain his release without delay, if it is unlawful. (2) The proceedings referred to in paragraph 1 of the present principle shall be simple and expeditious and at no cost for detained persons without adequate means. The detaining authority shall produce without unreasonable delay the detained person before the reviewing authority (Ronald, 2007).

#### 5.2.11 Complaints Procedure

All of damages must be repaired and in every legal system, there is compensation for wrongful acts or omissions and also for violations against the legal rights of people as well as punishment for such acts. In this regard article 2 of the International Covenant on Civil and Political Rights provides for the right to seek and obtain a remedy for violations of human rights. Victims and injured or damaged persons must have access to justice through the recognized procedures.

According with the paragraph 1 of principle 33 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, A detained or imprisoned person or his counsel shall have the right to make a request or complaint regarding his treatment, in particular in case of torture or other cruel, inhuman or degrading treatment, to the authorities responsible for the administration of the place of detention and to higher authorities and, when necessary, to appropriate authorities vested with reviewing or remedial power. Also, according with the rule 35 (1) of Standard Minimum Rules for the Treatment of Prisoners every prisoner on admission shall be provided with written information about the regulations governing the treatment of prisoners of his category, the disciplinary requirements of the institution, the authorized methods of seeking information and making complaints, and all such other matters as are necessary to enable him to understand both his rights and his obligations and to adapt himself for the life of the institution. There are many guidelines for this issue in international human rights documents (Ibid).

#### 5.3 Health and Care, Personal and Humanistic Guidelines

The guidelines of rule of law are not restricted to the above mentioned issues. Rule of law provides many guidelines in other fields such as care and health of prisoners and their human rights such as civil rights and etc.

(Woolley, 2014).

#### 5.3.1 Prisoners' Nutrition

Appropriate nutrition is required for human beings and administration of every prison must consider this matter. According to rule 20 (1) of the Standard Minimum Rules for the Treatment of Prisoners, every prisoner shall be provided by the administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served. The Bangkok rules have the same provisions which are so useful for protection of prisoners' rights.

United Nations Rules for the Protection of Juveniles Deprived of their Liberty, in rule 37 provides that every detention facility shall ensure that every juvenile receives food that is suitably prepared and presented at normal meal times and of a quality and quantity to satisfy the standards of dietetics, hygiene and health and, as far as possible, religious and cultural requirements (Ibid).

#### 5.3.2 Clean Water and Sanitation

Daily access to clean water, for drinking and other humanity usage is one of the new generations of human rights. This subject is reflected in some international documents. Rule 20 (2) of the Standard Minimum Rules for the Treatment of Prisoners provides that drinking water shall be available to every prisoner whenever he needs it. Also, according to the United Nations rule 37 of Rules for the Protection of Juveniles Deprived of their Liberty, clean drinking water should be available to every juvenile at any time (Ibid).

#### 5.3.3 Family Visits

Prisoners have the right to visit their family and this right is recognized in the guidelines which are provided by the rule of law. The Standard Minimum Rules for the Treatment of Prisoners, in rule 37 provides that prisoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits.

There are the same provisions in the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. Principle 19 of these principles provides that a detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions as specified by law or lawful regulations.

According to the rule 60 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty every juvenile should have the right to receive regular and frequent visits, in principle once a week and not less than once a month, in circumstances that respect the need of the juvenile for privacy, contact and unrestricted communication with the family and the defence counsel. The provisions of Bangkok Rules are notified about this matter.

According to Rule 26 of Bangkok Rules women prisoners' contact with their families, including their children, their children's guardians and legal representatives shall be encouraged and facilitated by all reasonable means. Where possible, measures shall be taken to counterbalance disadvantages faced by women detained in institutions located far from their homes.

Right to visit family must be exercised without any discrimination. Thus, Rule 27 of Bangkok Rules provides that where conjugal visits are allowed, women prisoners shall be able to exercise this right on an equal basis with men. The other provisions of these rules are very important and significant for prisoners.

#### 5.3.4 Quality of Health – Care Services

Healthy conditions of prisoners are one of the measures which every prisons must be involved those according to international standards. In this regard rule 22 (1) of the Standard Minimum Rules for the Treatment of Prisoners provides that at every institution there shall be available the services of at least one qualified medical officer who should have some knowledge of psychiatry. The medical services should be organized in close relationship to the general health administration of the community or nation. They shall include a psychiatric service for the diagnosis and, in proper cases, the treatment of states of mental abnormality. (2) Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be a staff of suitable trained officers.

#### 5.3.5 Care of Mentally Ill Prisoners

Mentally care of prisoners, which they are ill must consider permanently. These prisoners must be protected and

conserved under the especial care and compatible with international standards. The Standard Minimum Rules for the Treatment of Prisoners have useful provisions in this regard. Rule 22 of these rules requires that (1) At every institution there shall be available the services of at least one qualified medical officer who should have some knowledge of psychiatry. The medical services should be organized in close relationship to the general health administration of the community or nation. They shall include a psychiatric service for the diagnosis and, in proper cases, the treatment of states of mental abnormality. (2) Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be a staff of suitable trained officers. The other rules of this document involve the same provisions.

#### 5.3.6 Health Examination at Time of Admission

Healthy condition in prison must be examined constantly. Standard Minimum Rules for the Treatment of Prisoners in rule 24 proclaims that the medical officer shall see and examine every prisoner as soon as possible after his admission and thereafter as necessary, with a view particularly to the discovery of physical or mental illness and the taking of all necessary measures; the segregation of prisoners suspected of infectious or contagious conditions; the noting of physical or mental defects which might hamper rehabilitation, and the determination of the physical capacity of every prisoner for work.

The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, in principle 24 states the same provision that according that a proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge.

#### 5.3.7 Prisoners Permitted to Practice Their Religion

Freedom of religion is one of the fundamental rights which recognized and emphasized in many international human rights documents. This right is universally protected. Thus, in respect of prisoners' rights it must be permitted to practice. The Standard Minimum Rules for the Treatment of Prisoners in paragraph (2) of rule 6 provides that it is necessary to respect the religious beliefs and moral precepts of the group to which a prisoner belongs.

Rule 41 of these rules requires that (1) If the institution contains a sufficient number of prisoners of the same religion, a qualified representative of that religion shall be appointed or approved. If the number of prisoners justifies it and conditions permit, the arrangement should be on a full-time basis. (2) A qualified representative appointed or approved under paragraph (1) shall be allowed to hold regular services and to pay pastoral visits in private to prisoners of his religion at proper times. (3) Access to a qualified representative of any religion shall not be refused to any prisoner. On the other hand, if any prisoner should object to a visit of any religious representative, his attitude shall be fully respected.

United Nations Rules for the Protection of Juveniles Deprived of their Liberty has the same provisions in this regard.

### 6. Conclusion

Human rights are considered as a basis of the Rule of Law and also such as one of its consequences. Both of these concepts have a close relationship and protection and promotion each of them lead to strengthen the other. In order to laws be legitimated and rule of law be established it must be based on human rights. Rule of law for obtaining its purposes and protection of human rights as one of these aims has provided many guidelines and also for measuring these guidelines has introduced some indicators. Exercising these issues make the better conditions for protection of human rights of all people from everywhere. Prisoners because of their location and legal situations and many restrictions are facing with a violation of their rights constantly more than the others in society. Thus, the rule of law lessons is so caring about these persons and generally and specially has been provided many useful instructions in the context of international treaties and instruments and has been requested of states to be bound to these guidelines and those obligations and exercise all those in their national prisons system. These guidelines involve the different areas of a prisoner's life and provide many useful instructions for states in every field such as management, educational, environmental, health and care, group and individual's civil and political rights and etc. and expected of states to enforce these issues. Whereas these guidelines have human rights dimensions, that implementation improve the situation of prisoner and protect their human rights in prison.

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