Proclamation No. 840/2014

A PROCLAMATION TO PROVIDE FOR THE PROCEDURE OF GRANTING AND EXECUTING PARDON

WHEREAS, it has been provided for in Article 71(7) of the Constitution that the President of the Federal Democratic Republic of Ethiopia grants pardon in accordance with law;

WHEREAS, it has become necessary to make the procedure of granting and executing pardon more effective and efficient by incorporating the lessons gained during the enforcement of the existing law;

NOW, THEREFORE, in accordance with Article 55(1) and Article 71(7) of the Constitution of the Federal Democratic Republic of Ethiopia, it is hereby proclaimed as follows:

PART ONE

GENERAL

1. Short Title

This Proclamation may be cited as the "Procedure of Granting and Executing Pardon Proclamation No. 840/2014".

2. Definition

In this Proclamation unless the context otherwise requires:
“pardon” means a decision to remit a sentence in whole or in part or to reduce it to a lesser nature or gravity;

“sentence” means a final court decision of principal punishment, secondary punishment or a prevention or protection measure passed on a criminal case;

court” includes federal court, regional court that deals with federal matters pursuant to Article 78(2) of the Constitution, regional court which passed death sentence and military court;

“President” means the President of the Federal Democratic Republic of Ethiopia;

“petitioner” means a person concerned with the sentence on which petition for pardon has been lodged;

“prison” means a place of confinement administered either by the federal or regional prisons administration and includes military prison;

“Ministry” or “Minister” means the Ministry or Minister of Justice, respectively;

“person” means natural or legal person;

any expression in the masculine gender includes the feminine.

3. Objective of Pardon

The main objective of pardon shall be to ensure the interests of the public, government and offenders by re-integrating criminal offenders into the community and make them productive citizens upon ascertaining that they have repented and reformed.

4. Scope of Application

This Proclamation shall be applicable on federal courts, military courts, final criminal penalties rendered by regional state court entertaining federal jurisdiction in accordance with Article 78(2) of the Constitution and death penalty imposed by regional state court.
PART TWO

ORGANS GRANTING AND EXECUTING PARDON

5. Powers of the President

1/ The President shall grant pardon in accordance with Article 71(7) of the Constitution and this Proclamation.

2/ The President may, as necessary, give delegation to the appropriate regional state organ on matters covered under this Proclamation.

6. Board of Pardon

1/ A Board of Pardon (hereinafter the “Board”) which examines petition of pardon and submits recommendations to the President is hereby established.

2/ The Board shall be accountable to the President.

7. Members of the Board

The Board shall have the following members:

1/ the Minister of Justice ...........Chairperson;
2/ a State Minister of the Ministry of Justice ...........Deputy Chairperson;
3/ a State Minister of the Ministry of Health .........Member;
4/ a State Minister of the Ministry of Labour and Social Affairs ..........Member;
5/ a State Minister of the Ministry of Federal Affairs ............Member;
6/ a State Minister of the Ministry of Women, Children and Youth Affairs ..........Member;
7/ a State Minister of the Ministry of National Defense ..........Member;
8/ a Deputy Commissioner General of the Federal Police Commission ..........Member;
9/ Deputy Director General of the Federal Prison Administration ..........Member;
10. Two persons who are loyal to the Constitution and having high moral standing assigned by the President, upon recommendation by the Minister, from organizations having broad representation of the society

8. Duties of Members of the Board

Every member of the Board shall have the obligation to:

1/ exert the necessary effort for the attainment of the objectives of the Board;

2/ attend meetings of the Board;

3/ examine issues presented by the Board;

4/ inform the Chairperson of the Board and exclude himself from meetings of the Board where the issue under discussion raises conflict of interest;

5/ not disclose confidential issues.

9. Powers and Duties of the Board

1/ Without prejudice to other provisions of this Proclamation, the Board shall have the powers and duties to:

a) examine a petition for pardon lodged pursuant to this Proclamation and submit recommendation to the President that pardon be granted on condition or without condition;

b) formulate criteria necessary for granting pardon by taking into account the objective reality;

c) when necessary, require the public prosecutor organ involved in the prosecution, any official or individual to present his opinion by appearing in person or in writing.

2/ The Board may, where necessary, give delegated powers and duties to regional boards of pardon or organs assigned to examine petitions of pardon on issues within its scope of mandate.
10. Powers and Duties of the Chairperson of the Board

The Chairperson of the Board shall have the powers and duties to:

1/ preside over the meetings of the Board;

2/ notify to the concerned bodies, through the Office of the Board, about the persons granted pardon;

3/ submit to the President a report on the performance of the Board every six months;

4/ whenever necessary, cause the declaration of decisions of pardon through the mass media; and,

5/ discharge other related duties entrusted to him by the President.

11. Powers and Duties of the Deputy Chairperson of the Board

1/ The Deputy Chairperson shall act on behalf of the Chairperson in the absence of the latter.

2/ The Deputy Chairperson shall discharge such other duties entrusted to him by the Chairperson.

12. Meetings of the Board

1/ The Board shall meet at any time upon the call of the Chairperson.

2/ There shall be a quorum when more than half of the Board members are present at a meeting.

3/ The Board shall pass its decision by a majority vote; in case of a tie, the Chairperson shall have a casting vote.

4/ Without prejudice to the provisions of this Article, the Board may adopt its own rules of procedure.

13. Office of the Board

1/ The Office of the Board of Pardon (hereinafter the “Office”) shall be organized within the Ministry.
2/ The Office shall have the duties and responsibilities to:
a) accept petitions for pardon lodged in accordance with this Proclamation, compile the necessary information thereon, and submit same for the decision of the Board;
b) keep and preserve properly the records and documents of the Board;
c) keep and preserve properly all the recommendation of the Board as well as decisions approved by the President and prepare statistics of same;
d) communicate the decision of the President and Board on petition of pardon to the prison administration where the petitioner is confined, and follow up the implementation of same; and provide certificate of pardon;
e) communicate to the concerned parties the order of the Board, given in accordance with Article 23(3) of this Proclamation, on the nullity of pardon and the reactivation of execution of the sentence;
f) keep records of pardons and make the records open to the public in accordance with the appropriate law;
g) carry out other activities related to pardon.

14. Duties and Responsibilities of the Head of the Office
The Head of the Office of the Board shall:
1/ execute the duties and responsibilities of the Office;
2/ pass calls of meetings to the members of the Board; ensure that the necessary documents for the meeting are delivered to the members;
3/ serve as secretary of the Board;
4/ carry out other duties assigned to him by the Chairperson of the Board.
15. Lodging Petition for Pardon

1/ Without prejudice to prohibiting provisions of other laws, the Board shall, for the purpose of attaining the objective of Article 3 of this Proclamation, entertain pardon petition lodged in accordance with this Proclamation by weighing with the interests of the government and public.

2/ Without prejudice to the provision of sub-article (1) of this Article, any person convicted for crime and sentenced by a final decision of a court may lodge petition for pardon by himself or through his spouse, close relative, representative or lawyer.

3/ Unless the petition is lodged by himself, his lawyer or his representative, the prisoner in whose name petition for pardon is lodged shall confirm by his signature that he agrees with the petition for pardon.

4/ Notwithstanding the provision of sub-article (2) of this Article, the Ministry or the Federal Prison Administration may lodge on behalf of prisoners petition for the granting of pardon to the Board upon selecting prisoners who deserve pardon in accordance with the regulation or directive issued hereunder.

5/ The petition for pardon to be lodged pursuant to sub-article (4) of this Article shall first present to the prisoner on whose behalf it is requested before submitted to the Board.

6/ The person in whose favour a petition for pardon has been submitted pursuant to sub-article (4) and (5) of this Article shall be presumed to accept the petition unless he notifies his rejection to the Board in writing within 15 working days from the date of receipt of the copy of the petition.

7/ If a person fails to notify his rejection of a petition for pardon within the time specified in sub-article (6) of this Article due to force majeure, he may notify such rejection within 15 working days from the date of cessation of the force majeure.
16. Particulars of Petition for Pardon

1/ The petition for pardon with respect to a sentence that applies to an individual shall contain the following information:

a) the petitioner’s full name including grandfather’s name, mother’s full name, age, sex, nationality, nation, and occupation and address before his imprisonment;

b) residential address of the petitioner within the five years immediately preceding the date of the crime for which he is convicted;

c) the crime for which he was charged, the criminal provision with which he was convicted and the penalty imposed, the court passed the sentence, the stage of the execution of the sentence and number of the case docket;

d) apart from petty offences, previous convictions, if any, type of the crime, the penalty imposed, the stage of the execution of the sentence and the name of the court which passed the sentence;

e) the name of the prison or the institution in which the petitioner serves his sentence;

f) the reasons for being eligible for pardon;

g) opinion of the prison or the institution given in relation to the conduct of the petitioner;

h) the full names and addresses of three persons who are not related to the petitioner by consanguinity, affinity or any interest and who can give testimony on the ethical conduct of the petitioner prior to the sentence;

i) whether paid the fine or compensation or both imposed by the court, if any, or the reasons thereof if not paid;

j) the date and the year of previous granting or denial of pardon, if any;
petition furnished by any person or discovered

found, if any,

The petition for pardon with respect to a sentence
that applies to a legal person shall contain the
relevant particulars from those specified under
sub-article (1) of this Article.

17. Time for Lodging Petition for Pardon

1/ Any person lodging petition for pardon pursuant
to Article 15 of this Proclamation may do so:

a) at any time after the decision of sentence;

b) six months after the date of denial of a
previous petition; or

c) one year after the date of granting, if the
pardon was partial.

2/ Notwithstanding paragraphs (b) and (c) of sub-
article (1) of this Article, a petition may be
lodged at any time if it is considered urgent and
gets approval of three-fourth of the members of
the Board.

18. Examination of Petition for Pardon

Upon the receipt of the petition for pardon, the
Board shall, as may be necessary, examine, in
addition to the particulars required under
Article 16 of this Proclamation, files of the
public prosecutor and the court and any
evidence or information for or against the
petition furnished by any person or discovered
by it.

19. Obligations of Witnesses and Experts

Any person who gives testimony or expert
Considerations for Granting Pardon

The following conditions shall be taken into consideration for granting pardon:

1. the petitioner's dangerous disposition;

2. the gravity of the offence and the duration of the time the petitioner has been in custody and prison;

3. information gathered from the office the petitioner was previously working, local community of his previous residence, his family, his doctors or other relevant organs;

4. the petitioner's disposition to live in peace in the future;

5. the petitioner's confession and repentance, his effort to reconcile with the victim or his family and compensate them, or his ability and willingness to settle the compensation decided against him;

6. the petitioner's good conduct and ethics demonstrated during his stay in prison;

7. opinion of the victim or his family on the petition for pardon, if it is possible to contact them;

8. the family and health status of the petitioner and his age condition.

Procedure of Decision of Pardon

1. The Board shall examine pardon petitions submitted to it.

2. The Board shall submit to the President the name of the person considered eligible for pardon and the explanation thereof.

3. The President shall give his final decision based on the name and explanation submitted to him.

Effects of Pardon

1. Unless the pardon decision expressed otherwise, the decision on pardon shall make
2/ Notwithstanding the provision of sub-article (1) of this Article the decision on pardon may not invalidate civil liabilities emanating from the criminal liability.

3/ Unless the pardon decision expressed otherwise, penalties served before the decision of pardon shall remain effective.

23. Nullity of Pardon

1/ A pardon granted on the basis of false or fraudulent evidence shall be null and void.

2/ A pardon shall become null and void if the condition specified for granting the pardon has been violated.

3/ Where the Board ascertains the nullity of a pardon pursuant to sub-article (1) or (2) of this Article, it shall submit recommendation to the President in order to reactivate the execution of the sentence with its content existed before the pardon.

4/ The order of the President passed pursuant to sub-article (3) of this Article shall be served to the bodies responsible for the execution of the sentence and to the person who was granted the pardon.

5/ Were the person who was granted pardon had been in prison before the pardon, an application requesting arrest order shall be made to first instance court in order to return the person to prison.

6/ In accordance with the arrest order given by the court, the person who was granted pardon shall return to prison.

7/ The person who was granted the pardon may, within 15 working days from receipt of the order of the President referred to in sub-article (3) of this Article, submit his application to the Board for the reconsideration of the order.

8/ Where the application submitted pursuant to sub-article (7) of this Article is rejected by the Board, the person who was granted the pardon shall return the certificate of pardon to the Office.
24. Proof of Pardon

1/ A person granted pardon shall prove the grant of pardon by producing the certificate of pardon.

2/ Notwithstanding the provisions of sub-article (1) of this Article, the person who lost his certificate of pardon may request the Office to furnish evidence to the concerned party that he is granted pardon.

PART FOUR
MISCELLANEOUS PROVISIONS

25. Duty to Cooperate
Any person shall have the duty to cooperate, when requested to do so, in providing evidence, information or opinion required in the course of granting pardon in accordance with this Proclamation.

26. Transfer of Rights and Duties
The rights and duties of the Board established under the Procedure of Pardon Proclamation No.395/2004 are hereby transferred to the Board established hereunder.

27. Repealed Law
The Procedure of Pardon Proclamation No.395/2004 is hereby repealed.

28. Power to Issue Regulation and Directive

1/ The Council of Ministers may issue regulations necessary for the implementation of this Proclamation.

2/ The Board may issue directives necessary for the implementation of this Proclamation and regulations issued pursuant to sub-article (1) of this Article.
29. **Effective Date**

This Proclamation shall enter into force on the date of publication in the Federal Negarit Gazette.

Done at Addis Ababa, this 21st day of August, 2014.

MULATU TESHOME (DR.)

PRESIDENT OF THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA