



COLLEGE OF LAW AND GOVERNANCE

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ADMINISTRATION OF PARDON UNDER CRIMINAL JUSTICE SYSTEM:  
ASSESSING ITS LEGAL AND PRACTICAL CHALLENGES IN HAWASSA  
CITY ADMINISTRATION

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BY: - **TAMIRAT TAYE** ID NO. RM 0738/10

PRINCIPAL ADVISOR: ALEMU MEHERETU (PHD)

CO-ADVISOR: MARKOS DEBEBE (LLB, LLM)

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## TABLE OF CONTENTS

DECLARATION .....	i
ACKNOWLEDGEMENTS .....	ii
LIST OF ACRONOYMS AND ABBEREVATIONS.....	iii
ABSTRACT.....	iv
CHAPTER ONE .....	1
1. INTRODUCTORY MATTERS .....	1
1.1 BACKGROUND OF THE STUDY .....	1
1.2 STATEMENTS OF THE PROBLEM.....	6
1.3 OBJECTIVE OF THE STUDY .....	8
1. 3.1 General objective .....	8
1.3.2 Specific objectives .....	8
1.4. RESEARCH QUESTIONS.....	8
1. 5 LITERATURE REVIEW .....	9
1. 6 SCOPE OF THE STUDY .....	10
1. 7 RESEARCH METHODOLOGY .....	11
1.7.1 Rationale for selection of site.....	11
1.7. 2 Methodology of the study .....	11
1.7. 3 Data analyzing methods .....	13
1.8 SIGNIFICANCE OF THE STUDY.....	13
1.9 LIMITATION OF THE STUDY .....	14
1.10 ETHICAL CONSIDERATIONS .....	14
1. 11 STRUCTURE OF THE STUDY .....	14
CHAPTER TWO .....	16
2. CONCEPTUAL AND THEORETICAL FRAMEWORK OF PARDON IN GENERAL .....	16
2.1 INTRODUCTIONS .....	16
2.2 GENERAL DISCUSSION ON CONCEPTUAL AND THEORETICAL FRAMEWORK OF PARDON .....	16
2.2.1 Definition of pardon.....	16
2.2.2 Historical background of pardon and its justifications.....	17

2. 2.3 Importance of pardon .....	22
2. 2.4 Criticisms on the power of the pardon .....	23
2. 2.5 Nature and effects of pardon .....	24
2. 2.6 Pardon distinguished from other related non-custodial measures.....	26
2.2.7 International legal framework on the administration of pardon.....	29
2.3 EXPERIENCE OF SOME COUNTRIES ON THE ADMINISTRATION OF PARDON .....	33
2.3.1 Administration of pardon in Canada.....	34
2.3.2 Administration of pardon in Kenya .....	36
2.4 ADMINISTRATION OF PARDON UNDER ETHIOPIAN CRIMINAL JUSTICE SYSTEM: A CLOSE SCRUTINY .....	38
2.4.1 ADMINISTRATION OF PARDON PRE-1995 FDRE CONSTITUTION .....	39
2.4.2 ADMINISTRATION OF PARDON POST FDRE CONSTITUTION.....	41
CHAPTER THREE .....	49
3. ADMINISTRATION OF PARDON IN SOUTHERN NATION, NATIONALITIES AND PEOPLES' REGIONAL STATE.....	49
3.1 Introduction.....	49
3.2 Legal framework of pardon in SNNPR.....	49
3.3 SOUTHERN NATION, NATIONALITIES AND PEOPLES' REGIONAL STATE AMENDED PROCEDURE OF GRANTING PARDON PROCLAMATION NO.157/2015 .....	50
3.4 SOUTHERN NATION, NATIONALITIES AND PEOPLES' REGIONAL SATE PROCEDURE OF GRANTING PARDON REGULATION NO.141/2015.....	53
3.5 SOUTHERN NATION, NATIONALITIES AND PEOPLES' REGIONAL STATE DIRECTIVE TO SELECT THE ELIGIBLE CANDIDATES OF PARDON DIRECTIVE NO.2/2016 .....	54
3.6 SOUTHERN NATION, NATIONALITIES AND PEOPLES' REGIONAL STATE REGULATION ON THE MANNER OF TREATMENT OF INMATES OF PRISONS, REGULATION NO. 45/2005 .....	55
CHAPTER FOUR.....	57
4. LEGAL AND PRACTICAL CHALLENGES ON THE ADMINISTRATION OF PARDON IN HAWASSA CITY .....	57
4.1 INTRODUCTION .....	57
4.2 LEGAL AND PRACTICAL CHALLENGES ON THE ADMINISTRATION OF PARDON IN HAWASSA CITY .....	57
4.3 ASSESSMENT OF ADMINISTRATION OF PARDON IN HAWASSA CITY IN LINE WITH PRINCIPLES ASSISTING REINTEGRATION OF GRANTEEES.....	64

4.3.1 Fairness and transparency in decision-making process.....	64
4.3.2 Victim and public participation.....	64
4.3.3 Rehabilitation of inmates in prison .....	66
4.3.4. Reintegration of grantees into the community .....	67
4.3.5 Collaborative work of stakeholders in rehabilitating and reintegration of inmates .....	69
4.3.6 Efficiency of institutional arrangements .....	70
CHAPTER FIVE .....	72
5. CONCLUSIONS AND RECCOMENDATIONS .....	72
5.1 CONCLUSIONS.....	72
5.2 RECCOMENDATIONS.....	75
BIBLIOGRAPHY .....	77
APPENDICES .....	80

## **DECLARATION**

I, Tamirat Taye, hereby declare that “Administration of pardon under criminal justice system: Assessing its legal and practical challenges in Hawassa city administration” is my own original work which has not been presented for any degree or other purpose in any university and, all sources used have been duly acknowledged and cited.

Tamirat Taye Biliso Signature \_\_\_\_\_ Date\_\_\_\_\_

**Email-** [tameyetaye327@gmail.com](mailto:tameyetaye327@gmail.com)

## **APPROVAL OF BOARD OF EXAMINERS**

Alemu Meheretu (Dr.) \_\_\_\_\_

Principal advisor signature date

Co- advisor signature date

External examiner signature date

Internal examiner signature date

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## LIST OF ACRONOYMS AND ABBEREVATIONS

Art.	Article
EMPE	Extra Mural Penal Employment
E.C	Ethiopian Calendar
FDRE	Federal Democratic Republic of Ethiopia
G.C	Gregorian calendar
HPR	House of people's representative
ICCPR	International Covenant on Civil and Political Right
NGOs	Non-Governmental Organizations
N.D	No date
No.	Number
PDRE	People's Democratic Republic of Ethiopia
Proc.	Proclamation
SDGs	Sustainable Development goals
SNNPR	Southern Nations Nationalities and Peoples Region
The Tokyo Rules	United Nations Standard Minimum Rules for Non-custodial Measures
TVET	Technical vocational education and trainings
UDHR	Universal Declaration of Human Rights
U.K	United Kingdom
U.N	United Nations
UNODC	United Nations Office on Drugs and Crime
U.S.A	United States of America

## ABSTRACT

International laws and standards set out principles and minimum safeguards to administer pardon and to assist grantees reintegration into the society. Those principles includes, the principle of non-discrimination, fairness and transparency in decision-making process, the rehabilitative and reintegration needs of inmates, victim and community participation in decision-making process and collaborative work of different stakeholders in attaining objectives of pardon. In order to establish comprehensive administration of pardon, domestic legislations have to comply with international human rights laws and national constitution. This helps grantees to be law-abiding and responsible, reducing stigmatization, overcrowdings and reoffending, and to strengthen rule of law.

However, when compared with the above standards, administration of pardon in Ethiopia has not yet taken root in the criminal justice system. The way pardon administered and implemented in Hawassa city administration is analyzed using national, international standards and recognized good practices of other jurisdictions as a bench mark. And this research intends to explore the role and effective administration of pardon and its contributions in protecting the rights of victims, public and the offenders; whether SNNP regional pardon laws ensure national and international standards of treatment of grantees; and identifying legal, institutional and practical challenges in administration and execution of pardon laws. The study is conducted based on interviews, reviewing and analysis of literatures, and experiences of other countries are consulted.

Moreover, findings of the study has revealed that lack of follow up and supervising organs, lack of qualified professionals in rehabilitation and reintegration process of grantees, low political attention given for pardon and looking pardon as a means to reduce overcrowdings and government costs, improper interpretation of laws are the major factors that limited the effective administration of pardon. Generally, absence of effective institutional arrangements undermined the effective administration and fair execution of pardon in Hawassa city administration.

## CHAPTER ONE

### 1. INTRODUCTORY MATTERS

#### 1.1 BACKGROUND OF THE STUDY

The term pardon is an old concept and well known under Roman and Greece law.<sup>1</sup> There is no commonly accepted definition for pardon. Black's Law Dictionary<sup>2</sup> defines pardon as the act or an instance of officially nullifying punishment or other legal consequences of a crime. Most countries allow the use of pardon in criminal cases to a convicted persons and a person serving sentences of imprisonment, death penalty, pecuniary and all penalties and measures. Others exclude some crimes from eligibility for pardon under their constitutions and laws.<sup>3</sup>

Traditionally, pardon has been used representing the act of grace in order to rectify legal gaps and for political purposes.<sup>4</sup> However, starting from 20<sup>th</sup> century this understanding changed from the private act of grace to protecting the public interest and it cannot be claimed by a person as a right, rather it is a political decision.<sup>5</sup> Generally, there are two types of pardon, conditional and unconditional.<sup>6</sup> Unconditional pardon is all about a situation where there is no any condition attached and rule of conduct expected from the criminal after his release.<sup>7</sup> Whereas, conditional pardon can be effective on the existence of certain conditions and become revocable for violation of the imposed conditions.<sup>8</sup>

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<sup>1</sup> William F. Duker, 'The president's power to pardon: A constitutional history' (1977) 18 William and Mary LR 474

<sup>2</sup> Garner, B.A, *Black's Law Dictionary* (9<sup>th</sup> edn, Western Publishing Co. 2009)

<sup>3</sup> For example, impeachment is excluded in U.S.A, corruption in Mexico, aggravated murder, rape and human trafficking in Ethiopia.

<sup>4</sup> Nada Simjanoska, 'Meaning of the terms amnesty and pardon in the Macedonian criminal law' (2017) 5 journal of new technologies international 14. Available at [www.japmnt.com](http://www.japmnt.com). (Accessed 04/04/2019)

<sup>5</sup> G. Sidney Buchanan, *Nature of a pardon under the United States constitution* (U.S, 1978) 45

<sup>6</sup> Andrew Novak, 'Transparency and comparative executive clemency: Global lessons for pardon reform in the United States' (2016) 49 University of Michigan JLR 819

<sup>7</sup> Adler et al, *Criminal Justice: The Shorter Version*, (McGraw, 1995) 452

<sup>8</sup> State of Texas, *Board of Pardons and Paroles, Handbook on parole, mandatory supervision, and executive clemency of the Texas Board of Pardons and Paroles*. (Texas board of pardons and paroles, 1978) 50. Available at <http://www.ncjrs.gov/App/publications/abstract.aspx?ID=47793>. (Accessed 06/03/2019)

International laws and standards set out principles and minimum safeguards to assist reintegration of offenders into the society.<sup>9</sup> These principles and minimum standards includes: - victim and community participation in the criminal justice system, creating balance among the interests of victim, offenders and the society, principle of non-discrimination, transparency in decision-making, collaborative works of stakeholders and also provision of efficient rehabilitation and reintegration programs. In order to establish comprehensive criminal justice policies, domestic legislations have to comply with international laws, principles and standards. The Tokyo Rules recommends that, states should apply criminal justice policies taking into account the observance of human rights, the requirements of social justice, and the rehabilitative needs of the offenders and application of long and short term programs.<sup>10</sup> Also regionally, the Ouagadougou declaration and plan of action on accelerating prisons and penal reforms in Africa<sup>11</sup> recommends, African standards to be complementary to international standards regarding to treatment of prisoners and in line with national constitutional guarantees and international human rights laws. Additionally it strongly recommends on the collaborative work of governmental agencies with NGOs and civil societies in reducing prison population, in facilitating reintegration of offenders into the community, and on the need of strengthening rule of law in the treatment of inmates.<sup>12</sup>

The modern administration of pardon is playing great contribution in attaining the objectives of criminal justice system. Promotion of peace, justice, rule of law and reduction of poverty is among the agendas of the United Nation's 2030 SDGs.<sup>13</sup> The application of the above principles, minimum standards and international human rights norms creates huge importance in facilitating

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<sup>9</sup> Standard minimum rules for the treatment of prisoners, adopted by the first United Nations congress on the prevention of crime and the treatment of offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977. See also ICCPR, art.10 (3)

<sup>10</sup> United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules) Adopted by General Assembly resolution 45/110 of 14 December 1990, Rule 1.5 Available at <https://www.un.org/ruleoflaw/blog/document/united-nations-standard-minimum-rules-for-non-custodial-measures-the-tokyo-rules/>. (Accessed 01/03/2019).

<sup>11</sup> Second pan-African conference on prison and penal reform in Africa, (2002). Available at <http://www.achpr.org/instruments/ouagadougou-planofaction/>. (Accessed 07/03/2019)

<sup>12</sup> Ibid

<sup>13</sup> Transforming our world: the 2030 Agenda for Sustainable Development, adopted by the heads of State and government and high representatives at the United Nations headquarters in New York from 25-27 September 2015 as the organization celebrates its seventieth anniversary, have decided today on new global Sustainable Development Goals, Goal 16. Available at <https://sustainabledevelopment.un.org/?menu=1300>. (Accessed 01/03/2019)

reintegration of inmates to be productive and law-abiding citizens. The proper reintegration of inmates into the society results in maintaining peace and security of the society, protecting the social, psychological and economic benefits of inmates. In addition to this, it strengthens the relation between the offender and the society with the victim, increases the active participation and confidence of the society in the administration of criminal justice system. Additionally, it reduces overcrowdings in prison. Pardon should be administered and executed in a manner of protecting the interest of victim, offender and the larger community with strong implementing institutions.<sup>14</sup>

The execution of pardon is expected to be in conformity with the aim and objectives of criminal law, principles of punishment, in a manner of facilitating the rehabilitation and reintegration of inmates. Those inmates are vulnerable group and need moral, psychological and other supports by professional pardon and parole service workers in their stay in prison and on reintegration process into the community.<sup>15</sup> In order to effectively assist the rehabilitation process of inmates, a collaborative work of justice organs, other social organizations, offender's families and community based organizations are vital.<sup>16</sup> Also the availability of clear procedures for application of pardon and facilitating legal aid result in great impact on the life of grantees.

Failure to properly manage administration of pardon results in huge political, economic, social challenges. Before granting pardon, clear legal conditions, correctional and follow up institutions with qualified staffs are vital pre-requisites to effectively rehabilitate grantees. Unless they face social, economic, personal and practical challenges in their reintegration process and finally endangers the criminal justice system. The government should balance between rights of individual offender, victim and concern of society for public safety and crime prevention.<sup>17</sup> The existence of international standards and national laws alone, the provision of pardon and other

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<sup>14</sup> Berhane Gebregziher, 'Conditional suspension of penalty under the Ethiopian criminal code: What is missing?' (2017) 5 Mekelle ULJ 50 Available at [http://www.mu.edu.et/mulj/files/V5N1/3\\_Conditional\\_50-77.pdf](http://www.mu.edu.et/mulj/files/V5N1/3_Conditional_50-77.pdf). (Accessed 03/03/2019)

<sup>15</sup> Council of Europe, 'European committee on crime problems, Council for penological co-operation, 17<sup>th</sup> meeting of the working group' (report) (2018). Available at <https://www.coe.int/en/web/prison/council-for-penological-co-operation>. (Accessed 05/03/2019)

<sup>16</sup> Ibid

<sup>17</sup> Tokyo Rules (n 10), rule 1.4

crime prevention strategies do not result in reducing recidivism and successful reintegration.<sup>18</sup> When released inmates failed to get efficient rehabilitative and reintegration programs in correction centers and after their release, they may lack jobs and forced to enter into addictions and other crimes. In these scenarios, their earlier release cannot be productive and impair rule of law, the process rather than deterring the offenders from another crime, increases their level of criminality.<sup>19</sup> It also decrease trust of the community on the justice system and make chance of revenge by victims and their relatives.

There are no constant structures and trends in the administration and execution of pardon among countries.<sup>20</sup> When compared with civil law countries, common law countries strictly regulate pardon power and procedures on constitutional or legislative levels.<sup>21</sup> Such mechanisms and structures have their own limitations in protecting the interests of victims, public, justice system and grantees. Also do not incorporate in elaborated form about the administration, limitation and execution of pardon.<sup>22</sup> For instance, in U.K pardon is subject to judicial review.<sup>23</sup> Whereas in U.S.A, it is an absolute power of the president and completely free a person from criminal liability and records.<sup>24</sup> Here, in U.S.A the president's pardoning power has the same effect like amnesty. In some countries, pardon officers and correction administration jointly work on the rehabilitation and supervision of the grantees; others have different pardon and parole board independently or parole board to administer both pardon and parole.<sup>25</sup> There are also countries which have no professional pardon officers to follow the reintegration process of the grantees

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<sup>18</sup> Curt T. Griffiths and et.al, (2007), *The social reintegration of offenders and crime prevention: research report*, (international center for criminal law reform and criminal justice policy, 2017) 1

<sup>19</sup> Open philanthropy project, (report) (2017) Available at <https://www.openphilanthropy.org/blog/impact-incarceration-crime>. (Accessed 04/03/2019)

<sup>20</sup> Sarah Cooper and Daniel Gough, 'The controversy of clemency and innocence in America' (2014) 51 CWLR 73

<sup>21</sup> Novak (n 6) 820.

<sup>22</sup> Ena Dion, *Using collective pardons to address prison overcrowding. International network to promote the rule of law*. (2015) 10

<sup>23</sup> Novak (n 6) 851

<sup>24</sup> Ibid 820

<sup>25</sup> For example, in Canada, there is parole board to follow up and control the reintegration of inmates into the society after their release on both parole and pardon.

except, provision of rehabilitative programs in correction centers.<sup>26</sup> Some states also gave such power to judicial organ, court personnel's.<sup>27</sup>

Under Ethiopian history, except to constitutional guarantees, the institution to administer and the procedure to grant pardon have no long history. The 1931 Constitution<sup>28</sup> only gave the power to grant pardon to the Emperor. The 1987 PDRE Constitution<sup>29</sup> also empowered the president of the republic to grant pardon without defining it, its administration, its characteristics and effects. However, currently, the FDRE government under its constitution and other specific laws in general and each regional state particularly promulgates laws regarding treatment of inmates of prison and administration of pardon. The 1995 FDRE Constitution empowers the President of Federal Democratic Republic of Ethiopia to give pardon.<sup>30</sup> Additionally, the new criminal code provides conditions and effects of pardon.<sup>31</sup> Proc. No. 395/2004 establishes pardon board and provides the procedure of granting pardon. Later, amended by Proc. No. 840/2014 and its art.3 aimed at re-integrating grantees into the community and make them productive citizens upon ascertaining that they have repented and reformed. The new criminal justice policy states the application of every activity under criminal justice to be in line with FDRE Constitution, ratified international instruments and adopting just, clear and reasonable procedure of reintegration process of offenders and maintaining peace and security of the society.

In SNNPR, Proc. No. 157/2015 and Reg. No. 141/2015 on the procedure of granting pardon ensures in protecting the interest of public, victims and the offenders, in facilitating rehabilitation and reintegration process of inmates with the collaborative work of different stakeholders. Also directives come into force to enforce the above proclamation and regulation. Additionally, a proclamation to define powers and duties of the executive and executing organs of the SNNPR

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<sup>26</sup> For example, in least developing countries including Ethiopia, the administration of pardon is surrounded by plenty of problems. Which includes: - lack of follow up and controlling institutions to regulate reintegration process, lack of professional officers and other legal, practical and institutional problems exists.

<sup>27</sup> For example, in India and Malaysia, court personnel's in collaboration with correction centers facilitate rehabilitation and reintegration process of grantees. Indian pardon laws gave the judiciary to decide on complaints related with decision of pardon in case it violates grantees guaranteed human rights.

<sup>28</sup> The 1931 constitution, art. 16

<sup>29</sup> The 1987 constitution, art. 86 (2-d)

<sup>30</sup> The Constitution of the Federal Democratic Republic of Ethiopia, Federal Negarit Gazette, year 1, No.1, Proclamation No. 1/1995, art. 71(7)

<sup>31</sup> FDRE criminal code, Federal Negarit Gazette of The Federal Democratic Republic of Ethiopia, Addis Ababa, Proclamation No. 414/2004, art.229 and 230

State<sup>32</sup> and a regulation on the manner of treatment of inmates of prisoners, empowered to treat inmates with due respect to their human rights and enabling them to become responsible and law-abiding citizens.<sup>33</sup>

Even if SNNPR has taken various legislations to effectively administer pardon, practically there are huge gaps between the law and practice. The central theme of this research is to assess the legal framework on pardon and its implementation in Hawassa city administration. Also to identify challenges and also exploring the opportunities to strengthen the current regional legal framework on the administration and execution of pardon.

## **1.2 STATEMENTS OF THE PROBLEM**

Although, states take different measures like enacting laws and establishing institutions to decrease crime rates and to facilitate the reintegration of grantees, the number of criminal's and reoffending rate is not decreased.<sup>34</sup> Also reintegration of inmates into the society and making them free from re-offending was, is and will be headache for states. In this scenario Ethiopia could be a good example. In addition to legal, policy guidelines and correctional facilities, the existence of follow up institutions are vital in order to attain the objectives of criminal justice system.<sup>35</sup> For example; provisions of follow-up and supervision organs, qualified personnel's from different professions are vital components in ensuring reintegration of inmates. Failure to properly administer pardon results in prison overcrowdings, stigmatization and other related political, economic and social challenges. In SNNPR twice a year, thousands of inmates have been released through pardon. But, grantees are only entitled to get clothes, money to cover their transportation and subsistence costs and certificate of release on their release.<sup>36</sup>

Follow up institutions are important in supervising and controlling whether grantees are fulfilling their legal obligations, providing different supports including financial, moral and social. The financial and human resources to administer and execute pardon should be proportionate with the

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<sup>32</sup> SNNPR Proclamation No. 64/2003,art.56 (1)

<sup>33</sup> SNNPR Regulation No.45/2005 on the manner of treatment of inmates of prisons.

<sup>34</sup> Penal reform international, 'Global prison trends 2018: The rehabilitation and reintegration of offenders in the area of sustainable development' (report) (2018) Available at <https://www.penalreform.org/resource/global-prison-trends-2018/>. (Accessed 07/03/2019)

<sup>35</sup> FDRE constitution (n 30), art.1

<sup>36</sup> FDRE Proclamation No.138/2007, art.49. However, the regional laws with regard to treatment of prisoners do not guarantee these minimum rights.

number of prisoners. There must be mechanisms to evaluate the behavior of grantees whether they are properly reintegrated into the society and ready to lead their lives from different social, economic and personal hardships. Unless, it results in ineffective usage and handling of pardon. Changing the life of grantees needs a lot economy and is too challenging.<sup>37</sup> Beside of this, providing different opportunities for grantees by combining limited economy of the country with works of NGOs and communities participation plays a great contribution to sustain their lives. On the lack of these opportunities, grantees will be forced to re-enter into criminal activities. The incorporation of pardon in different laws alone without supervising and follow up institutions are not enough to successfully reintegrate grantees into the society.

SNNPR established regional pardon board, investigative committees in zonal and city administration levels and committees are also arranged in each correction center. These organs are assigned to facilitate the execution of pardon in their respective areas and to identify and select eligible candidates for pardon respectively. But, there is no organ to control and supervise the life of grantees after their release. Without the existence of such institution and qualified personnel's, rehabilitation programs given in correction centers cannot be adequate to reintegrate inmates and have its contributions on re-offending of grantees for violation of conditions. There are no mechanisms to create opportunities to strengthen their relation with the community.

There is no research done in relation to administration of pardon in Ethiopia in general and SNNPR. Lack of prior researches done on the administration of pardon under criminal justice system triggered the researcher to do this research. This research is expected to evaluate the law and practice in the administration and implementation of pardon in Hawassa city administration using as a bench mark the national, international standards and recognized good practices of other jurisdictions. When compared with international and national laws, principles and standards, administration of pardon in Ethiopia in general and SNNPR in particular has not yet taken root in the criminal justice system. Practically, victims and public's rights to be heard is infringed, no professionals to handle and arrange file of each inmate in electronic file management and no modern and systematic exchange of data among stakeholders in relation to

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<sup>37</sup> Andrew Coyle and Helen Fair, *A Handbook for prison staff: A human rights approach to prison management* (3<sup>rd</sup> edn. The institute for criminal policy research, (2018) 92 Available at [http://www.prisonstudies.org/sites/default/files/resources/downloads/handbook\\_3rd\\_ed\\_english\\_v5\\_web.pdf](http://www.prisonstudies.org/sites/default/files/resources/downloads/handbook_3rd_ed_english_v5_web.pdf). (Accessed 02/03/2019)

grant of pardon. Also decision making process puts defendant`s rights at greater risk, and leave a room for abuses and corruptions.

Hence, this research focuses on assessing whether the current SNNPR legal framework on pardon meets the need of grantees rehabilitation and reintegration process, whether SNNP regional pardon laws are in line with national and international standards of treatment of grantees; and assessing the administration of pardon under the criminal justice system. Also evaluating the legal, institutional as well as practical challenges and exploring the opportunities to strengthen execution of pardon under the study area. The administration and implementation process and the major challenges related with administration of pardon under the study area need to be identified by this research.

### **1.3 OBJECTIVE OF THE STUDY**

#### **1.3.1 General objective**

The main objective of the study is to identify challenges in the administration of pardon in Hawassa city and exploring the opportunities to strengthen the current regional legal framework on the administration and execution of pardon. Also identifying whether SNNPR pardon laws are efficient and attaining the objectives of pardon.

#### **1.3.2 Specific objectives**

The study has the following specific objectives:

- To explore legal, institutional and practical challenges in the administration and execution of pardon in Hawassa city.
- To evaluate whether SNNP regional pardon laws ensure national and international standards of treatment of grantees and objectives of pardon.
- To evaluate the level of collaborative work, their efficiency and institutional arrangements among SNNPR stakeholders for administering pardon laws.
- To assess challenges related to the principle of fairness, non-discrimination and whether inmates are properly informed about application and effect of pardon.

### **1.4. RESEARCH QUESTIONS**

The study is conducted to answer the following major questions:

- ❖ What are the legal and practical challenges in administration and execution of laws of pardon in SNNPR, with particular reference to Hawassa city?
- ❖ Are SNNP regional pardon laws ensure national and international standards of treatment of grantees and objectives of pardon?
- ❖ What are the challenges of SNNPR stakeholder organs regarding collaborative work, their efficiency and institutional arrangements for implementing pardon laws?
- ❖ What are the challenges related with the principles of fairness, non- discrimination and informing inmates about application and effect of pardon?

## 1. 5 LITERATURE REVIEW

There is almost no research conducted in the area of administration of pardon in Ethiopia in general and SNNPR. Lack of literatures on pardon in Ethiopia made it as a most neglected portion of criminal justice system. However, some attempts were made indirectly or in connection with probation, parole and amnesty.

For instance, Berhane Gebregziher, in his article entitled "Conditional Suspension of Penalty under the Ethiopian Criminal Code: What is missing?"<sup>38</sup> Discusses about the need and existence of strong institutional arrangements to follow up and supervise the rehabilitation process of offenders. He gives due attention to analyzing the Ethiopian conditional suspension of penalty from the perspective of the general objectives of punishment and criminal law. He also recommends the need to establish probation office and probation commission. When such institutions properly managed, supervised and implemented have great contribution in rehabilitating offenders. Lack of such institutions will result in release of Probationers into society without supervision and finally the concept of probation fails. However, the author gives little attention for pardon and its relation with the concept of conditional suspension of penalty, like pardon. Since the main focus of this thesis is to evaluate the law and practice in the administration and implementation of pardon, the applicability of pardon and its effects are not addressed by the author.

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<sup>38</sup> Gebregziher (n 14) 60

Additionally, Solomon Yohannes, in his research entitled "Probation under Ethiopian Criminal Justice System: The Law and Practice"<sup>39</sup>, tried to assess the implementation of probation in Ethiopia and used pardon only to show its differences with probation. But, this research did not show any legal and practical gaps in execution of pardon, whether pardon laws in Ethiopia are efficient or not in protecting the interest of victim, offender and the general public.

Endalew Lijalem, under his article, The Space for Restorative Justice in the Ethiopian Criminal Justice System<sup>40</sup> discusses the issue of restorative justice by stating that conditionally released prisoners through parole and pardon played great role from restorative justice perspective. That means, they provide rehabilitation of offenders, promote communities active participation and this can conform to the objectives of restorative justice of healing the injuries of victim, offender and the community. Further he criticizes the current criminal justice system due to its more emphasis on the punishment to prevent further commission of crime. Because, mostly punishments can negatively impair rehabilitation of offenders and encourage criminal behavior. It also excludes communities from participation in the justice system. He did not forget to raise the reforms taken by government to decrease such problems like, enacting new criminal justice policy and draft code of criminal procedure and evidence law.

Beside these articles and research, the researcher did not find any literature that deals with the issue of administration and implementation of pardon regionally or nationally. Since the focus of the researcher is on assessing whether the current SNNPR legal framework on pardon meets the need of grantees rehabilitation and reintegration process, assessing the administration of pardon under the criminal justice system. Also evaluating the legal as well as practical challenges and exploring the opportunities to strengthen execution of pardon under the study area. Therefore, considering the lack of sufficient literatures on the field of study called for further research on the area.

## **1. 6 SCOPE OF THE STUDY**

This research is limited to discuss administration of pardon in Hawassa city administration. Whether the current legal framework of pardon meets the rehabilitation and reintegration needs

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<sup>39</sup> Solomon Yohannes, 'Probation under Ethiopian criminal justice system: The law and practice' (L.L.M thesis, Addis Ababa University 2018)

<sup>40</sup> Endalew Lijalem, 'The space for restorative justice in the Ethiopian criminal justice system' (2014) 2 B JCR & CJ 237

of inmates, protecting interest of victim and the larger community. Also assessing whether it is in line with international laws, principles and standards developed in other jurisdictions. Therefore, this study discusses the legal, practical and institutional obstacles related with administration of pardon in the study area and assessing its implication on criminal justice system. Further, it discussed better experiences of other countries in relation to administration and execution of pardon so as to enable our country to draw lessons from such countries.

## **1.7 RESEARCH METHODOLOGY**

### **1.7.1 Rationale for selection of site**

Hawassa is a capital city of SNNPR and Sidama Zone, and comprises of seven urban sub-cities and one rural sub-city. The city correction center is rehabilitating a large number of prisoners from Sidama zone Woreda's and eight sub-cities of Hawassa city. Inmates in Hawassa prison center are overcrowded<sup>41</sup> and a lot of prisoners released through pardon and parole yearly. For example, as per reports of SNNPR pardon board, in 2007 E.C, in two rounds 8779, in 2008 E.C, in two rounds 4791 and in 2009 E.C, in two rounds 3913, in 2010 E.C in two rounds 6153 and in 2011 E.C in two rounds 2911 and 2366 grantees released. The researcher in his career have observed many challenges like frequent involvement of individuals in criminal acts after released by pardon and the increment of criminal files through years. These factors make correction centers and other stakeholders under question whether they effectively supervise and rehabilitate grantees as per the law. These factors motivated the researcher to take this research.

### **1.7.2 Methodology of the study**

In order to attain the objectives of the study, the researcher planned to conduct both doctrinal and empirical type of research. The reason to choose doctrinal research is to make legal analysis on pardon laws. And empirical data is used to assess the administration of pardon in Hawassa city administration. Thus, the research is empirical type too. This research employs qualitative research methodology. It enables the researcher to provide descriptive analysis to assess the administration of pardon in the study area. Also this approach is flexible and gives a chance for participants to reply in their own words. A qualitative analysis of relevant theoretical concepts, international standards related with treatment of grantees and Ethiopian legal framework are

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<sup>41</sup> Hawassa prison center database shows that the capacity of prison center is to hold 1800 inmates and at the date of this information gathered (17/12/2018), totally there were 2451 inmates in the prison.

made. Thus, in order to accomplish the purposes of the research, the following methods of data collection is used:

- Reviewing relevant literature: The existing international and domestic legal documents like The Tokyo Rules, Standard minimum rules for the treatment of prisoners, FDRE Constitution, new criminal justice policy, legislations, regulations, directives and guidelines concerned with the issue of pardon were employed to identify and evaluate the existing legal framework of SNNPR. In addition to these, relevant literatures like books, journals, and research paper and internet sources were used as secondary source of information for this study.
- Conducting interview; the research also depends on structured and semi-structured interviews with purposively selected informants with their direct and indirect linkage with the administration and execution of pardon and also inmates. The use of such interview is that, it is open ended, effective, flexible and provides opportunities for both interviewer and interviewee to discuss topics in more detail ways. The institutions to be selected for interview purpose are:- City's correction center, regional prison administration commission, regional pardon board, city's investigative committee of pardon, correction center committees to identify and select eligible candidates for pardon and city public prosecutor's office. In order to balance one sided information from the executive branch of government, president of city high court and purposively selected judges, randomly selected inmates and defense attorneys were interviewed. Sample size of the respondents depends on the saturation point, means, depending on the gaining of relevant answers for the research questions. This technique is used to exploit the experience, opinions, practices and detailed information regarding the issues undertaken under this study.
- The lessons from foreign countries experiences were consulted in shaping SNNPR and Ethiopian pardon laws. In order to attain reform and rehabilitation of offenders, protecting interest of victim and the larger community, the administration and execution of pardon should be clear and participatory. Primarily, the concept of pardon emerged and rich in practice in common law countries than civil law countries. For that purpose, the researcher selected Kenya and Canada. The rational includes, Canada as a developed country is rich in laws, court decisions, and literatures and with regard to reviewability of

pardon decisions. Also have strong supervision and control institutions on which Ethiopia needs to learn a lesson, especially for conditionally released inmates until the expiration of the sentence imposed. Likewise, Kenya, as developing country, found in similar position with regard to economic, social and political situation with Ethiopia. Here, pardon is administered by professionals from different disciplines and works jointly with stakeholders before and after conditional release of grantees. Also pardon officers are appointed at correctional facilities and responsible for assisting applicants in the preparation of petitions and providing general information on the power of pardon or mercy to the prisoners. The Kenyan government shows great commitment towards its constitution, international standards of treatment of inmates and also makes the procedure more transparent and accountable.

### **1.7.3 Data analyzing methods**

The researcher used descriptive inferences for this study purpose. Each step followed by preliminary analysis that includes translation of Amharic written documents into English. Then after, the collected data analyzed and presented descriptively and in qualitative form based on research questions and objectives. Raw data obtained by interview, had structured, systematically organized, interpreted and analyzed. Interview questions also structured in qualitative approach. Key informant interview responses had been examined and analyzed.

### **1.8 SIGNIFICANCE OF THE STUDY**

The study will provide a good opportunity for SNNPR and Hawassa city administration to work on their weak sides in administering pardon. Even if, the scope of the study is limited to specific area, the study's significance would be to show the legal and practical deficiencies of SNNPR pardon laws and to inform the policy and law makers for adopting new implementing arrangements in line with international and other jurisdictions laws and best practices.

Moreover, the study will enables the policy makers to examine and review the effectiveness of existing regional pardon and correctional legislations relating to administration of pardon. Finally, this study contribute for initiating other scholars to undertake further inquiry in the country context, as the area is least addressed.

## **1.9 LIMITATION OF THE STUDY**

There is shortages of previous works done with respect to administration of pardon in Ethiopia has its effects on this research. Also lack of finance was a big constraint in order to effectively deal on each and every aspect of the subject matter. In addition that easily contacting some of the key informants for the purpose of interview is seen as a challenge. Mostly, the idea of pardon come into picture at post trial stage of criminal justice system<sup>42</sup> and the scope of this research is limited to post sentencing stage for conditional grant of pardon.

## **1.10 ETHICAL CONSIDERATIONS**

This research had taken into account ethical considerations. Before directly entering into interviewing my informants, I had informed them about the purpose of the study. The respondents were told to participate on voluntary basis and in a manner of ensuring their confidentiality. Primarily, the researcher asked official permission of respective institutions and individuals by showing the cooperation letter given by school of law. The purposively selected informants had been only approached after getting their free, full and informed consent. Also, the respondents were informed that any confidential information taken from them cannot be used unless they have consented to, and solely for the purpose of the study. In addition to these, proper acknowledgements of interviewees' contribution to the study had been made.

## **1. 11 STRUCTURE OF THE STUDY**

This research organized into four chapters. Chapter one is devoted to introduce the background of the study. Assessing whether administration of pardon is in line with protecting interests of victim, offender and the public at large. This chapter tried to show the development of pardon, its implication in the administration of criminal justice system; identifying challenges that hinders the effective administration of pardon under the study area are dully dealt with.

Chapter two tried to define the term pardon, its historical development, its nature and effect, its rationales and purposes. Similarly, its similarity and differences from other concepts of non-custodial measures are identified. The administration of pardon under international, Ethiopian criminal justice system and experiences of other countries are discussed.

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<sup>42</sup> Office of the high commissioner for human rights and international bar association , human rights in the administration of justice: A manual on human rights for judges, prosecutors and lawyers, series no. 9/add.1 (2003) 384 Available at <https://www.ohchr.org/Documents/Publications/training9Titleen.pdf>. (Accessed 08/03/2019)

Chapter three examines whether the normative framework protects interests of victims and the public by reviewing regional substantive and procedural pardon laws. Through reviewing SNNPR pardon and correctional laws, it tried to address some research questions. It gave more emphasis to examining administration of pardon in Hawassa city through laws, principles and standards developed from national, international laws, standards and experiences of foreign countries.

Chapter four has devoted to examine the administration of pardon and its challenges in Hawassa city administration by interviews conducted from informants. Also it tried to assess whether the administration of pardon in Hawassa city is in line with principles assisting rehabilitation and reintegration process of grantees into the society. It tried to identify whether there are any practical and institutional challenges that hinders the effective administration of pardon in the study area. Chapter five draws some conclusions for the identified problems on how to effectively administer and execute pardon in line with international standards. It also contains recommendations.

## CHAPTER TWO

### 2. CONCEPTUAL AND THEORETICAL FRAMEWORK OF PARDON IN GENERAL

#### 2.1 INTRODUCTIONS

In modern criminal justice system, pardon is among a mechanism to remit in whole or partially punishments of the offenders in line with protecting the interest of the community and also rehabilitation and reintegration needs of the inmates. This concept is also incorporated under Constitution, criminal code, pardon or parole laws and correctional laws of most countries. However, the existence of legally provided procedures, legislative framework to establish supervising and controlling organs, and conditions to be fulfilled by each stakeholder are vital to effectively administer and execute pardon.

The effective administration and execution of pardon took place while the inmates are placed under supervision and treatment. In the absence of controlling and supervising organ on conditionally released inmates, the process of rehabilitation and reintegration become problematic. Likewise, failure to properly administer and execute pardon endangers criminal justice system in general and results in socio-economic challenges in the country. This chapter tries to define pardon, its historical development, its nature and effect, its criticisms, its rationales and purposes.

#### 2.2 GENERAL DISCUSSION ON CONCEPTUAL AND THEORETICAL FRAMEWORK OF PARDON

##### 2.2.1 Definition of pardon

There is no unanimously accepted definition for pardon. Black's Law Dictionary<sup>43</sup> defines pardon as the act or an instance of officially nullifying punishment or other legal consequences of a crime. In most of the case, "pardon", "clemency" or "mercy" is interchangeably used terms. Generally, pardon is one part of clemency and used in its generic sense to refer to its various forms of clemency.<sup>44</sup> Other forms of clemency are reprieves, commutations of sentence, and

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<sup>43</sup> Black's Law Dictionary (n 2)

<sup>44</sup> Zacchaeus Adangor, 'The presidential pardon granted Chief D.S P. Alamieyeseigha: Time to revisit the president's pardoning power under section 175 of the constitution of the federal republic of Nigeria' (2015) 39 Journal of Law, Policy and Globalization 179

remissions of fines and forfeitures.<sup>45</sup> Pardon is the full cancellation of punishment or replacing one form of punishment with a lesser one or cancellation of punishment either freely or conditionally.<sup>46</sup> Whereas, a reprieve is a temporary delay or suspension of punishment, while a commutation is substitution of a greater sentence with a lesser one.<sup>47</sup> It also used as a basic tool for the protection of social interests. Therefore, pardon includes the power to suspend, remit and commute sentences of imprisonment, fine or forfeiture.

In the course of this paper, the researcher uses the term 'pardon' as a general term which would include full cancellation of a punishment or replacing it with a lesser one.

### 2.2.2 Historical background of pardon and its justifications

The concept of Pardon well known in Greece, Roman and Medieval laws.<sup>48</sup> But, it is not possible to clearly identify the exact date of origin of pardon specifically.<sup>49</sup> In ancient Athena, around 403 B.C a person could be pardoned if 6,000 Athenians voted for his pardon through a secret ballot and only athletes, orators, and people with power would be pardoned.<sup>50</sup> In the Roman Empire, the purpose of pardon was not a mechanism to forgive a person for a crime or, but it was applied for political purposes and to establish discipline in the army.<sup>51</sup> Moving to England, King Richard II was known for selling pardon in consideration of large sum of money.<sup>52</sup> Generally, prior to the 17<sup>th</sup> century, the king's power to pardon was absolute<sup>53</sup> and there were no uniform application of the power.<sup>54</sup>

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<sup>45</sup> Historical perspectives of the pardoning power, page 37. Available at link [https://shodhganga.inflibnet.ac.in/bitstream/10603/201569/8/08\\_chapter%202.pdf](https://shodhganga.inflibnet.ac.in/bitstream/10603/201569/8/08_chapter%202.pdf). (Accessed 10/05/2019).

<sup>46</sup> Novak (n 6) 819

<sup>47</sup> S.E. Martin, *Commutation of prison sentences: Practice, promise, and limitation* (First Published October 1, 1983 Sage journals) 593- 594

<sup>48</sup> Jennifer Schweppes, 'Pardon Me: The contemporary application of the prerogative of mercy' (2013) 49 *Irish Jurist*, New Series 212

<sup>49</sup> Andrew Kent, *Examining the constitutional role of the pardon power: Hearing before the house judiciary committee subcommittee on the constitution, civil rights, and civil liberties* (Fordham University School of Law, 2019) 2

<sup>50</sup> Simjanoska (n 4) 8

<sup>51</sup> Ibid

<sup>52</sup> Buchanan (n 5) 183

<sup>53</sup> Adler et al (n 7) 487

<sup>54</sup> Adangor (n 44) 212

After the 17<sup>th</sup> century, the modern pardoning power descends from the English royal prerogative of mercy<sup>55</sup> and applied into American colonies and later incorporated under United States Constitution.<sup>56</sup> Also it spread to other parts of the world. For example in developing countries, especially those countries lack modern supervising and controlling facilities and where overcrowding is high.<sup>57</sup> In order to limit the harsh application of criminal law and pardoning power, limitation began to be imposed on pardoning power of king's.<sup>58</sup> Like, the Habeas Corpus Act of 1679<sup>59</sup> prohibits the grant of pardon to any person convicted of causing other persons to be imprisoned outside England. Also by the 1701 Act of Settlement<sup>60</sup>, the parliament removed the pardoning power of a king as a bar to impeachment. Generally, starting from the period of Greece and Roman to early 19<sup>th</sup> century, pardon had been representing the act of grace in order to rectify legal gaps and for political purposes.<sup>61</sup>

However, starting from 20<sup>th</sup> century this understanding changed from the private act of grace to protecting the public interest.<sup>62</sup> For example, in 1927, U.S Supreme Court defines pardon by stating that pardon is not a private act of grace from an individual happening to possess power. It is part of the constitutional scheme. When granted, it is the determination of the ultimate authority that the public welfare will be better served by inflicting less than what the judgment fixed".<sup>63</sup> This position is intended to reduce the harsh application of the law and grant of pardon, to create check and balance among government as per the constitution.<sup>64</sup>

In the contemporary world, the recognition for pardon is becoming increasing through time.<sup>65</sup> The rationale is due to shifting pardon from the absolute discretion of king or monarchy to make

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<sup>55</sup> David Caruso & Nicholas Crawford, 'The executive institution of mercy in Australia: The case and model for reform' (2014) 37 University of Michigan LR 37

<sup>56</sup> Adler et al (n 7) 476

<sup>57</sup> Novak (n 6) 820

<sup>58</sup> Harold J. Krent, 'Conditions the president's pardon power' (2001) 89 California LR 1690

<sup>59</sup> Habeas Corpus Act 1679. Available at <https://magnacarta800th.com/history-of-the-magna-carta/the-magna-carta-timeline/1679-the-habeas-corporus-act/>. (Accessed 02/07/2019)

<sup>60</sup> Act of settlement 1701. Available at <https://www.parliament.uk/about/living-heritage/evolutionofparliament/parliamentaryauthority/revolution/collections1/parliamentary-collections/act-of-settlement/>. (Accessed 02/07/2019)

<sup>61</sup> Simjanoska (n 4)

<sup>62</sup> Buchanan, (n 5) 45

<sup>63</sup> Biddle v. Perovich, 274 U.S. 480, 486 (1927)

<sup>64</sup> Ibid

<sup>65</sup> Novak (n 6) 817

it as an integral part in the administration of criminal justice system.<sup>66</sup> The modern form of pardon comprises some elements of criminal justice system. It includes, due process guarantees, public and victim participation, successful reintegration of inmates and also rational decision making principles.<sup>67</sup> Also it is intends to attain constitutional principles of separation of power and rule of law.<sup>68</sup> Today, criminal justice system increased in size and scope due to expansive criminal laws, cost and overcrowdings of prisons, and incarceration for long time are among factors that accelerated the use of pardon.<sup>69</sup> Some countries grants pardon before production of charge, during trial, after conviction and before passing penalty.<sup>70</sup> The modern concept of the pardon power includes: - absolute discharge from criminal liability, reprieve or suspension of punishment, commutation of sentence into less grave punishment, and absolute discharge from criminal record and its consequent restrictions.

However, currently, unchecked president's power to grant pardon, unfair and arbitrary decision making process, lack of follow up and supervisory organs are common and worse in developing countries.<sup>71</sup> These and other related factors lead the process of making grantees law-abiding and productive problematic. In order to limit these problems and to ensure effective administration of pardon, UN General Assembly adopted the Tokyo Rules<sup>72</sup> and other instruments. These shows that grantees reintegration process in addition to application of non-custodial measures, it need the collaborative work of stakeholders to solve grantees social, economic, psychological problems and helping them to lead crime free life. Countries are trying to reduce the rate of re-offending and making productive citizens grantees by enacting laws, arranged institutions and personnel. However, due to the social, economic and political situation of each respective country, starting from rehabilitating and reforming in prison centers to reintegration within the society face variations and disparities.

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<sup>66</sup> Coyle and Fair (n 37) 185

<sup>67</sup> Novak (n 6) 822

<sup>68</sup> F. Ogoloma, 'The theory of separation of power in Nigeria: An assessment' (2001) 26 AR R 128

<sup>69</sup> Rachel E. Barkow, 'Clemency and presidential administration of criminal law' (2015) 6 N.Y.U. L. REV 808- 817

<sup>70</sup> For example:- art.2 of U.S Constitution states that the president has the Power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment. The provision's broad interpretation allows individuals to gain pardon before, during or after trial and also in the form of commutation, remission, conditional or full pardon. However, in U.K, Canada, Malaysia, Nigeria, pardon can be granted only after conviction.

<sup>71</sup> Barkow (n 69) 828

<sup>72</sup> Tokyo Rules (n 10)

Grant of pardon in the 17<sup>th</sup> and 18<sup>th</sup> centuries, both in theory and practice were considered as a personal gift from the monarch.<sup>73</sup> Pardon was granted for different reasons without any legal or moral justifications. It has the effect of unfairly advantages some group and jeopardize others.<sup>74</sup> In order to avoid the arbitrary application of pardon, art. 2 of U.S constitution incorporates limitation on president's power over grant of pardon on crime of impeachment. Under the modern criminal justice system, the pardoning power is given to check the judicial miscarriage and undue harshness in passing conviction sentence.<sup>75</sup>

Pardon has a strong link with religion, moral value and administration of criminal justice system.<sup>76</sup> It is widely used in different religious traditions and widely used by pre-colonial societies.<sup>77</sup> Some writers relate the primary sources of pardon with Christianity and natural law theories.<sup>78</sup> Their arguments are based on the assumption that, the king or the leader of the state as representative of God on the earth and is empowered to punish wrongdoers. It shows that when the offender is forgiven, it is considered that he/she did an immoral act.

There are different views deals with the rationale behind granting of pardon.<sup>79</sup> The Hegelian view focuses on granting of pardon only in certain cases and where justice may not be attained without grant of pardon like in case of avoiding wrongful conviction.<sup>80</sup> As per this view, its principal objective is to bring justice and to fill a gap in criminal law. Wrongful conviction may results from mistakes of judge and disproportionate of punishments. In support of this view, Alexander Hamilton<sup>81</sup> argues on the importance of pardon to mitigate the harsh application of criminal law and to create check and balance on the judiciary. Similarly, the retributive view advocates pardon to be given to remedy any fault in the criminal justice system and to enhance

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<sup>73</sup> Kathleen D. Moore, 'Pardon for good and sufficient reasons' (1993) 27 University of Richmond LR 282.

<sup>74</sup> Kathleen D. Moore, *Would public be served by a pardon for north?* (1989) 7

<sup>75</sup> Gebregziher (n 14) 34

<sup>76</sup> Historical perspectives of the pardoning power, (n 45) 37

<sup>77</sup> Board of Pardons and Paroles (n 8) 6

<sup>78</sup> Cathleen D. Moore, *Pardons, Justice, Mercy, and the public interest* (3<sup>rd</sup> Edn, Oxford University Press, New York 1989) 20

<sup>79</sup> Parul Kumar, 'The executive power to pardon: dilemmas of the constitutional discourse' (2009) 10 Nujs LR 11

<sup>80</sup> M. Strasser, 'The limits of clemency power on pardons, retributivists, and the United States constitution' (Parul Kumar. P. 65 - NUJS Law Review 2002) 85

<sup>81</sup> Hamilton A., Madison J., Jay J. Federalist No. 74. In: *The Federalist Papers* (Palgrave Macmillan, New York 2009) Available at [https://avalon.law.yale.edu/18th\\_century/fed74.asp](https://avalon.law.yale.edu/18th_century/fed74.asp). (Accessed 02/07/2019)

fair justice.<sup>82</sup> It deals with the treatment of pre and post-conviction stage of the accused to protect the interest of the community and the offenders. Also pardon can be used for broader public policy purpose of ensuring peace in case of internal conflicts in the country.<sup>83</sup> The other view is related with the rehabilitation of offenders. The fundamental objective of pardon is the reformation and re-socialization of offenders by avoiding the economic, social and psychological challenges on inmates.<sup>84</sup> However, currently, the combination of these three views are being applied together to enhance justice and facilitate the rehabilitation of inmates.

Traditionally, the executive's power to grant pardon has been considered as an "act of grace"<sup>85</sup>, a free gift from the monarch, king, and queen. However, currently, pardon has administrative, economic, traditional, political, peace and security justifications. As stated earlier, grant of pardon primarily aim at protecting the interests of the society. There is also the case where government grants pardon in order to create political stability and to bring the people together.<sup>86</sup> Establishing democratic culture of respect and tolerance among the society, to secure rule of law and other related political factors motivated award of pardon. Also when a prisoner in his/her stay in correction center and faced with incurable diseases or become too elder, pardon can be a best option to release such person.

Administrative justifications includes the situation where prison centers are overcrowded and hold lot prisoners out of their capacities, in such scenarios pardon become one alternative to reduce prison population. This type of measure is used to facilitate correction and rehabilitation of offenders as per the law. Examples of economic justifications are budget provided by correction centers for inmates and the economic capacity of released inmates to lead productive life after release. Awarding pardon based on protecting interests and security of the society has invaluable economic advantages.

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<sup>82</sup> G.B. Wolfe, *I beg your pardon: A call for renewal of executive clemency and accountability in Massachusetts* (Boston Bar Journal, A peer reviewed publication of the Boston Bar Association 2007) 417

<sup>83</sup> Treatment of federal prisoner's regulation (n 36)

<sup>84</sup> Buchanan (n 5) 20

<sup>85</sup> Cooper and Gough (n 20) 288

<sup>86</sup> Felicia Istad, 'Presidential pardon in South Korea: Analysis of quantitative and qualitative trends' (2017) 8 Yonsei journal of international studies, Korea University 26

### 2. 2.3 Importance of pardon

In most countries of the world including Ethiopia, free pardon has two main objectives. First, and foremost, the protection of society from the criminal by establishing institutions to administer pardon and creating responsible and law-abiding citizens. Second, attaining the rehabilitation and reintegration of the criminals.<sup>87</sup> These two objectives are not in conflict with each other, they are mutually inter-dependent. Effective and successful rehabilitation of offenders begins with wrongdoer's acknowledgment of the wrong act and steps taken to prevent further wrong doing.<sup>88</sup> The best way to protect society from the criminal is to rehabilitate inmates and to reintegrate them into the society as a law-abiding and responsible citizen rather than incarceration in prison. Whereas, when there is an objective reason not to grant pardon for the sake of public interest, government is allowed to deny it. Generally, grant of pardon was given to benefit the ordinary people to whom the trial process results in harsh and unfair decisions.<sup>89</sup>

Other importance of pardon includes:- it has great contributions to re-union families and facilitate the reintegration of the inmates to have independent and crime free life, it reduces recidivism, overcrowding and reduces costs of prison centers and redress miscarriage of justice or wrongful conviction and also improves the rigidity of criminal law and correct judicial mistakes.<sup>90</sup> Also it strengthens the relation between the inmates and the society and also with the victim and increases the participation of society in the reintegration of inmates. The need and importance of pardon holds a great share in countries like Ethiopia, where there is shortage of budget to administer prison and inmates properly. Similarly, in addition to save the costs of prison, being productive citizen of an inmate has great on the general economic of the country. Generally, pardon brings huge social, political, economic contributions.

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<sup>87</sup> Ernest W. Burgess, 'Protecting the Public by Parole and by Parole Prediction' (1936) 27 JCLC 494

<sup>88</sup> John O. Haley, *Comment on using criminal punishment to serve victim and social needs, law and contemporary problems* (Duke University 2009). Available at [https://www.jstor.org/stable/pdf/40647749.pdf?ab\\_segments=0%2Fdefault%2Fcontrol&refreqid=search%3A25ddbc2d7751ca0582c4ccacc0c8f2be](https://www.jstor.org/stable/pdf/40647749.pdf?ab_segments=0%2Fdefault%2Fcontrol&refreqid=search%3A25ddbc2d7751ca0582c4ccacc0c8f2be). (Accessed 10/05/2019)

<sup>89</sup> Margarate Colgate Love, 'The twilight of the pardon power' (2010) 100 JCLC 1175

<sup>90</sup> T. Thorp, *Miscarriages of justice Auckland: legal research foundation* (2005) 2

## 2. 2.4 Criticisms on the power of the pardon

There are two dominant divergent opinions or views in relation to power of pardon. The first group argues on the non-usefulness of pardon.<sup>91</sup> The justifications raised by this group includes, improvement in pre-trial, trial and post-trial procedures, improvement in forensic science and providing a greater opportunity for review by appeal procedures have direct impact on reducing wrongful conviction. Making these procedures more efficient results in non-usefulness of pardon. In similar way, others argue that pardon is all about interfering in the work of judges<sup>92</sup> and it overlap with the power of the judiciary.<sup>93</sup> They argue on giving priority for the judiciary to review the mistakes done by organs of the government. In this case, the president's arbitrary power to grant or deny pardon and may be influenced by political, family or other related considerations.<sup>94</sup> These show that pardon is contradicting with the democratic principle of separation of power and has the potential to threaten rule of law.<sup>95</sup> For example, under *Ashok Kumar vs. Union of India*<sup>96</sup> case, the president is empowered to enter into the merits of the decision passed by the court. However, allowing the president to perform the function of the judiciary threatens rule of law.<sup>97</sup>

Supporters of the modern form of pardon (pardon as part of constitutional scheme), look it from its results than its process.<sup>98</sup> They argue that pardon has a great contribution to attain justice and to correct mistakes of court decision. For example Kathleen Dean Moore<sup>99</sup> argued that pardon results in protecting public interest, correcting mistakes of court decision, reducing cost and overcrowding in prison, and removing internal political tension. In addition to bringing administration and execution of pardon in line with constitutional principles and theory of criminal law, making the process free from doubts and unfairness is important.<sup>100</sup> Andrew

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<sup>91</sup> Paul Rosen Zweig, 'Reflections on the atrophying pardon on power' (2012) 102 JCL 604

<sup>92</sup> M. McDowell, 'Pardon: an adequate response to injustice?' (1991) Irish CL 6

<sup>93</sup> Samuel T. Morison, 'The politics of grace: on the moral justification of executive clemency' (2005) 9 Buffalo CLR 78

<sup>94</sup> Griffiths and et.al (n 18) 15

<sup>95</sup> Ibid 96

<sup>96</sup> *Raj Kumar vs. Union of India* on 18 April, (1968) Available at

<https://www.advocatehoj.com/library/judgments/announcement.php?WID=8231>. (Accessed 02/07/2019)

<sup>97</sup> Ibid 1709

<sup>98</sup> Jerry Carannante, 'What to do about the executive clemency power, in the wake of the Clinton Presidency' (2003) 47 New York Law School LR 350

<sup>99</sup> Cooper and Gough (n 20) 284

<sup>100</sup> Scholars like Beccaria, Cesare, (1819) on his essay entitled as "An essay on crimes and punishment", consider pardon as irregular and inconsistent with a theory of criminal justice system. It includes arbitrary exercise of presidential authority on granting of pardon and making decision without any formal standards.

Novak<sup>101</sup> argue that the traditional pardoning system is facing problems like, absence of limitation on the executive power, lack of transparent decision- making, leads the process to abuse, bribery and full of political influence. He opposes the concept of pardon as a gift from the sovereign power and argues that such concept is not appropriate on the 21<sup>st</sup> century.

Samuel T. Morison<sup>102</sup> recommends the following elements in order to have efficient administration of pardon: the availability of public and victim participation, independency from government bureaucracy, sufficient justifications to grant or deny parson, judicial review and transparency of the process. He considers these elements as vital to improve grant of pardon and to make the process to be in line with substantive and procedural due process guarantees.

From the above two opinions, the researcher supports the modern form of pardon. The reasons includes: - the primary objectives of modern criminal law and punishment is reformation of offenders rather than sending to jail. Reforming the criminal behavior of offenders and developing them a sense of responsibility is a major goal of criminal law and punishment.

### **2. 2.5 Nature and effects of pardon**

Pardon is considered as essential part of criminal justice system. Unconditional pardon is all about a situation where there is no any condition attached to the grantee after his release.<sup>103</sup> Whereas, conditional pardon deals with a conditional release under supervision and control. Conditional pardon can be effective on the existence of certain conditions and become revocable for violation of the imposed conditions.<sup>104</sup> In addition to this classification, some writers classified pardon into three.<sup>105</sup> They are (1), An absolute or free pardon, which set aside the sentence of punishment, (2), Commutation or a conditional pardon, which substitute's one form of sentences by another sentences. For example substitution of death penalty by life imprisonment, (3), a remission, this reduces the length of a sentence.

There are two views with regard to the nature of pardon, traditional and modern approach.<sup>106</sup> The traditional approach considers pardon as a private act of grace by the president or king and

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<sup>101</sup> Novak (n 6) 822

<sup>102</sup> Schweppes, (n 48) 103

<sup>103</sup> Adler F.et al (n 7) 452

<sup>104</sup> Ibid, see also board of pardons and paroles (n 8) 50

<sup>105</sup> Griffiths and et.al (n 18) 221

<sup>106</sup> Coyle and Fair (n 37) 49

such power is not checked by the legislative or court.<sup>107</sup> As per this approach, the president/king can be liable only through political process to the country or to his conscience.<sup>108</sup> However, it opens a door to abuse of administration and execution of pardon. Also non-reviewability of president's decision has a potential to decrease the societies confidence on the administration of criminal justice system and the judiciary. This shows that check and balance on the president's power of pardon is important to attain fair justice.<sup>109</sup> The modern approach considers pardon as an instrument to protect the public interest. It is intended to make the process of granting of pardon more efficient on bases of constitutional principles. G. Sidney Buchanan<sup>110</sup> proposed five policy goals in analyzing and defining the nature of pardon. They are fidelity to the constitution, fidelity to the historical bases for inclusion of pardon power under the constitution, fidelity to structural implications of the constitutional system, the preservation of executive capacity to promote public interest and the preservation of executive capacity to grant pardon.

Generally, pardon can be granted to restore the innocence of a person or for other reasons.<sup>111</sup> Pardon granted to restore innocence has the effect on both the punishment and the guilt of the offender and hide the guiltiness of a person as he/she had never committed the crime.<sup>112</sup> Pardon releases from the punishments or mitigates a penalty and cancels the existence of guilt. Finally, it restores the beneficiary in his/her former position before conviction. Also professor Williston<sup>113</sup> argues that a pardon granted to ensure innocence in order to attain fair justice, have the same effect as a judicial acquittal. And it is granted in strict sense of justice due to its nature of bringing huge injustice.<sup>114</sup> When compared with grant of pardon for other reasons, pardon grant for innocence has a broader effect. But, granting of pardon in case other than restoring innocence of a person has limited effects only. For example, pardon can be granted for good behavior in prison center and after serving majority of the sentence. Authors like Henry

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<sup>107</sup> J.T. Menitove, 'The problematic presidential pardon: A proposal for reforming federal clemency' (2009) 8 Harvard Law and Policy Review 449

<sup>108</sup> Margaret Colgate Love, 'Of pardons, politics and collar buttons: Reflections on the president's duty to be merciful' (2000) Foldham Urban LJ 1489

<sup>109</sup> J.C. Baumgartner and M. Morris, *Presidential Power Unbound: A comparative look at presidential pardon power* (Politics and Policy, 2001) 219

<sup>110</sup> Buchanan (n 62) 49

<sup>111</sup> Henry Weihofen, *The effect of pardon* (1939) 178. Available at [https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=9065&context=penn\\_law\\_review](https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=9065&context=penn_law_review). (Accessed on 18/05/2019)

<sup>112</sup> Ibid

<sup>113</sup> Williston, *Does a pardon blot out guilt?* (Harvard law review, 1915) 653

<sup>114</sup> Ibid

Weihofen<sup>115</sup> argues on the need to clearly distinguish between pardons granted for innocence and other reasons. He argues that pardon for innocence is acquittal and must be given all the effects of acquittal. Whereas, pardon for other reasons is not equal to acquittal and it attaches legal conditions for the convicted person.

The administration of pardon from the monarchical era to 21<sup>st</sup> century is showing development in theory and practice. In early time, the nature and effects of pardon had been broad in scope and totally remove the grantee from both punishments and the effects of conviction.<sup>116</sup> But currently, in most countries of the world, the effect of pardon is limited to substituting a form of punishment, reducing length of a sentence or remit to a lesser sentence, rather than eliminating the conviction from criminal record. For example, in some countries, pardon doesn't alone eliminate the punishment; in addition to that it restores his/her civil rights.<sup>117</sup> It also makes him/her, as free and gives him/her a new credit and capacity.<sup>118</sup> In theory, classifying pardon in two or three seems similar, but there is variation in effect. There are countries which set aside the sentences and criminal record.<sup>119</sup> In contrast, other states only gave the sentences of the punishment to be set aside and left the criminal record to remain in existence for a fixed period of time.<sup>120</sup>

## **2. 2.6 Pardon distinguished from other related non-custodial measures**

There are different types of non-custodial sentences<sup>121</sup> and pardon is one among them. It helps to promote the interest of victims and or their relatives and the society, rehabilitative and

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<sup>115</sup> Ogoloma (n 68) 183.

<sup>116</sup> Pardoning Power in U.K., USA & Canada: A comparative analysis, Available at a link [https://shodhganga.inflibnet.ac.in/bitstream/10603/148889/12/12\\_chapter%205.pdf](https://shodhganga.inflibnet.ac.in/bitstream/10603/148889/12/12_chapter%205.pdf). (Accessed 10/05/2019)

<sup>117</sup> Griffiths and et.al, (n 18) 222

<sup>118</sup> Ogoloma (n 68) 177

<sup>119</sup> For example, Canada removes a person's criminal record from the Canadian police information center (CPIC) database only for some non-serious crimes. But, it doesn't mean that the criminal record is destroyed. It can only remove from CPIC, but the government can access it. Its aim to facilitate the reintegration of offenders after their release from prison, like, the criminal record not to be an obstacle in searching for a work.

<sup>120</sup> For example, Ethiopian pardon laws recognize full pardon and decrease of sentence into less grave punishment.

<sup>121</sup> Non-custodial measures found at different stages of criminal justice system. Non-custodial measures at pre-trial stage vary based on the legal system of each country. The police and prosecution are empowered to discharge the offender if they consider that it is not necessary to proceed with the case for the protection of society, crime prevention or the promotion of respect for the law and the rights of victims. At this stage, for minor cases public prosecutor may impose suitable non-custodial measures based on legally established criteria's. Non-custodial measures at trial and sentencing stage includes:- verbal sanctions, such as admonition, reprimand and warning, conditional discharge, economic sanctions and monetary penalties, confiscation, a compensation order, probation and community service order. Also non-custodial measures at post-sentencing stage includes: - parole, remission, pardon, and work and education release.

reintegration process of the offenders into the community. However, pardon, amnesty, probation and parole usually cause confusion when do not seen critically. Including in Ethiopia, modern criminal laws of other states incorporates pardon, amnesty, probation and parole as distinct in their enactment, implementation, effect and competent organ to grant them. This section distinguishes these concepts.

#### **2.2.6.1 Amnesty and pardon**

Generally both pardon and amnesty are given for past offences and create a strong relationship between offender and victim and or their relatives and for the sake of larger community. Both result in immunity of the offender from criminal consequences of his/her prior criminal acts. Also both have the effect of releasing the accused from trial or a guilty person from the sentence. However, both concepts have different purposes, the decision to grant amnesty is usually a legislative while a pardon is an executive act granted by head of state or president.<sup>122</sup> Amnesty deals with offences of a military or political nature which are generally committed against the State, while pardon is usually granted to individuals who have been convicted of crimes against criminal law.<sup>123</sup> The dictionary further explains that amnesty may be granted before any conviction or punishment has been pronounced, whereas pardon only takes place after the grantee has already been convicted and punished. Also amnesty has a potential to prevent a person or group of persons from being punished.<sup>124</sup> Pardon, on the contrary, granted after the punishment has begun operated, and aims at either remitting such punishment, or putting an end to the execution of a penalty.<sup>125</sup> In line to the above discussion, amnesty is usually a general concept and addresses to a group of society whereas, pardon applies to an individual's release him/her from the punishment fixed by law for his/her specific offence.

#### **2.2.6.2 Probation and pardon**

Probation is an alternative sentence and given after conviction and before enforcement of the sentence. Probation come into picture when a convicted criminal is granted period of probation instead of confinement in prison. The jurisdiction to impose probation lies on the court. It deals with suspension of all or part of sentence while the offender is placed under the control and

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<sup>122</sup> Fuastin Z. Ntouband, *Amnesty for crimes against humanity under international law* (Martinus Nijhof Publishers, 2007) 11

<sup>123</sup> Bryan A. Garner, *Black's Law Dictionary*, (7<sup>th</sup> edn, 1999) 1368

<sup>124</sup> See for example (n 31) art.230 (2)

<sup>125</sup> Ibid, art.229 (2)

supervision by a competent organ.<sup>126</sup> Generally, it is possible to say that probation is a contract between the court and the offender in return for showing good behavior within the society.<sup>127</sup> A prisoner who released on probation is expected to be guided by conditions for the release. These rules includes: - making restitution for loss or damage to the victims or relatives, cooperate with probation office, participating in works and the like. The violation of these rules may result in revocation of the probation order. Also conditional pardon can be revoked for violation of the imposed conditions.<sup>128</sup> In this case, both pardon and probation has the same effect. However, both have different characteristics and purpose. For example, Probation can be executed by court decision, whereas pardon executed by the recommendation of pardon board to the president of respective federal or regional state. In case of probation, criminals are under supervision while in the case of pardon, they are free from entire punishment prescribed for the offence.<sup>129</sup>

### 2.2.6.3 Parole and pardon

Parole is conditional release of inmates from prison after serving a portion of sentence under the supervision. Parole officers and parole board selects eligible inmates for parole based on their good conduct in prison. Then after, the court can execute it by the recommendation of correction centers and inmates may earn parole through good conduct they shown in prison. Like probation, it provide periods in which a criminal lives in the community instead of serving time in a prison center. Both probation and parole require the convicted person to be under a supervision so as to ensure good behavior. In similar fashion with probation, parole is subject to certain conditions and when the conditions are violated, previous punishment applies.<sup>130</sup> However, parole and pardon have no exactly common features. Primarily, in case of parole, serving portion of sentence is mandatory, but in case of pardon, cases like being infected by incurable diseases, being old aged, disability, women with a child do not require serving a part of sentence to be eligible for pardon. This type of pardon is called special pardon. Secondly, the jurisdiction to impose parole relies on parole board or parole committees and finally the court recognize it. But,

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<sup>126</sup> Glory Nirmalak, *Criminology: Teaching material prepared under the sponsorship of the justice and legal system research institute.* (Justice and legal system research institute, 2009) 222 Available at <https://www.coursehero.com/file/28764600/89392529-Criminologypdf/>. (Accessed 10/05/2019).

<sup>127</sup> Gebregziher (n 14) 52

<sup>128</sup> Adler F.et al (n 7) 445

<sup>129</sup> Corpus Juris Secundum, 'The American law book' (1961) 24 West Publishing 562

<sup>130</sup> FDRE criminal code (n 31), art. 206

in case of pardon, with the recommendation of pardon board or other respective organs, the president grants it.

### **2.2.7 International legal framework on the administration of pardon**

For the purpose at hand, social reintegration process includes rehabilitation, education and pre-release programs offered in prison, post-release supervision and support. Achieving effective rehabilitation programs, social reintegration and preventing reoffending has to be the central work of prison administration in general and pardon executing organ specifically.<sup>131</sup> International instruments emphasize the importance reintegration of grantees as one mechanism to prevent recidivism and to protect the interest of the society. The application of effective measures as per the norms of international instruments results in the most cost-effective ways of preventing recidivism and properly made grantees a sense of responsibility for their acts.<sup>132</sup> Also they recommend on the creation of the link and community based interventions among governmental and non-governmental organs. The use of those programs and interventions among different stakeholders are intended to help the grantees to overcome the stigma of a criminal conviction. Also the provision of assistance and support to grantees are vital to facilitate their reintegration into the community. Based on these international rules, various countries are taking measures to develop and institutionalize organs to facilitate reintegration process of released inmates in general and grantees of pardon specifically.<sup>133</sup>

In order to attain these objectives, there are different international and regional laws and standards. Only some laws and standards are used to show as example. Like, ICCPR under art.10 (3) obliges states and their prison centers to consider the reformation and social rehabilitation needs of inmates. The same law under art. 6(4) empower any person sentenced to

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<sup>131</sup> International Covenant on Civil and Political Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976, in accordance with Article 49 , art. 6(4) and art.10 (3)

<sup>132</sup> UNODC, *Introductory handbook on the prevention of recidivism and the social reintegration of offenders*, *Criminal justice handbook series*. (English, Publishing and Library Section, United Nations Office, Vienna, United Nations, December 2018). Available at [https://www.unodc.org/documents/justice-and-prison-reform/crimeprevention/Prevention\\_of\\_Recidivism\\_and\\_Social\\_Reintegration\\_12-55107\\_Ebook.pdf](https://www.unodc.org/documents/justice-and-prison-reform/crimeprevention/Prevention_of_Recidivism_and_Social_Reintegration_12-55107_Ebook.pdf). (Accessed 11/05/2019)

<sup>133</sup> For example, in Canada, community corrections services at the provincial or regional and national levels have engaged communities, other government agencies and non-governmental organs in efforts to prevent recidivism by facilitating the reintegration of offenders. As one of the developing countries, in Kenya, under the Ministry of Home Affairs there are different after-care department and programs concerning with the supervision of noncustodial court orders probation and community service orders.

death to apply for pardon or commutation of the sentence. In the same manner, a resolution safeguards guaranteeing protection of the rights of those facing the death penalty.<sup>134</sup>

Standard minimum rules for the treatment of prisoners<sup>135</sup>, provides different rehabilitation programs for inmates in serving sentences, including academic and vocational training, employment counseling, strengthening moral character. Those programs are expected to help the inmates in developing a sense of responsibility and to become law-abiding citizens after their release. Rule 59(2) of the same instrument provide scenarios to be released before completion of sentences. This scenario includes probation, parole, pardon, amnesty and the like. This provision made the government organ to be responsible to facilitate the return of inmates into the society with support and supervision with social workers. It also recommends the participation of the community, community agencies, private agencies and government organs until the inmates effectively reintegrated.<sup>136</sup>

Basic principles for the treatment of prisoners<sup>137</sup>, recommends on the creation of different facilities which helps in facilitating their reintegration process and contributes financial support to themselves and their families. Similarly with the above instruments, it encourages the participation of community agencies, social institutions and government organ with the consent of the victim in reintegrating the former prisoner into the community.

The Tokyo Rules, under its fundamental objectives intends to ensure the greater community participation in the reintegration of inmates and to create a sense of responsibility on their release. It recommends the states on the creation of balance among the rights of the victims, interest of the offenders and the society as well as crime control.<sup>138</sup> In similar way, under rule 1.5, it also recommends on strengthening the use of non-custodial measures to attain social justice in general and the rehabilitation and reintegration needs of the offenders in particular. Under rule 9, the Tokyo Rules made pardon as one type of non-custodial measures in post-

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<sup>134</sup> Safeguards guaranteeing protection of the rights of those facing the death penalty, (1984), Economic and Social Council resolution 1984/50. Available at [https://www.unodc.org/pdf/criminal\\_justice/Safeguards\\_Guaranteeing\\_Protection\\_of\\_the\\_Rights\\_of\\_those\\_Facing\\_the\\_Death\\_Penalty.pdf](https://www.unodc.org/pdf/criminal_justice/Safeguards_Guaranteeing_Protection_of_the_Rights_of_those_Facing_the_Death_Penalty.pdf). (Accessed 14/05/2019)

<sup>135</sup> See Standard minimum rules for the treatment of prisoners (n 9)

<sup>136</sup> Ibid, rule 61 and 64

<sup>137</sup> Basic Principles for the treatment of prisoners, (1990), adopted by General Assembly resolution 45/111 Available at <https://www.un.org/documents/ga/res/45/a45r111.htm>. (Accessed 17/10/2019)

<sup>138</sup> Tokyo Rules (n 10), rule 1.4

sentencing stage. The same instrument also provides the implementation of pardon and other post related measures. The first mechanism is supervision and treatment by a competent authority.<sup>139</sup> It aim in minimizing reoffending rate and facilitate reintegration of inmates into the community. The treatment includes psychological, social and material assistance aimed at strengthening their relation with the community and conducted by the professionals specialized in different disciplines. Rule 14 of the same instrument provides the effect in case of violations of the conditions and such violations result in modification or revocation of non-custodial measure or pardon. In addition to these, the Tokyo Rules provide the minimum rules with regard to recruitment of staff with appropriate profession working on supervision and treatment of grantees and other post sentencing measures.

Decision making process of pardon involves assessing the degree and nature of risk to the public face by an offender's release from prison.<sup>140</sup> International instruments like the Tokyo Rules<sup>141</sup> provide the administration and execution of pardon to be fair and objective. In order to make fair, objective and reasoned decision-making, the pardon board is expected to provide reasons for a denial of pardon, to seek the views of stakeholders and victims.<sup>142</sup> The application of due process guarantees, prohibiting arbitrariness, allowing judicial review process on decision and applying transparent and predictable administrative criteria's has great contributions to restore public interest in the administration of pardon.<sup>143</sup>

The modern form of administration of pardon requires the decision-making process to be open, public and rational. Unless, decision-making process results in improper influence and arbitrary decisions. Also the unlimited president's power in granting pardon is subject to judicial review. For example, a court can inquire into whether the executive properly considered a pardon petition, but not review the substance of final decision.<sup>144</sup> Canadian court under the case

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<sup>139</sup> Ibid, rule 10

<sup>140</sup> Tifwepo Nkunika, 'A critical analysis of the parole system in the Zambian criminal justice system' (L.L.B thesis, university of Zambia, 2015) 30

<sup>141</sup> Rule 2 of The Tokyo Rules provides the rules and principles provided under it to be applied without any discrimination on the grounds of race, color, sex, age, language, religion, political or other opinion, national or social origin, property, birth or other status.

<sup>142</sup> Cathleen Burnett, *The failed failsafe: The politics of executive clemency*. (2003) 191

<sup>143</sup> Novak (n 6) 822

<sup>144</sup> Andrew Novak, 'Comparative executive clemency: The constitutional pardon power and the prerogative of mercy in global perspective' (2016) AJOCL 334 103

Thatcher v. Attorney General<sup>145</sup> ruled that the minister of justice must act in good faith and conduct a meaningful review a petition for pardon as he was bound by the duty of fairness, diligence with principle of legality and without delay, under the Canadian charter of rights and freedoms even though he had no legal obligations to an applicant.

Tokyo Rules impose the decision of non-custodial measures to be subject to review by a judicial or other competent independent authority, upon application by the inmate.<sup>146</sup> Making decision-making process to judicial scrutiny is a one way to increase transparency and ensuring that the applicant's due process rights are protected.<sup>147</sup> E.g. Indian courts limited president's pardon power and empower a court to interfere where the president's exercise of power is guided by political considerations, like arbitrariness or discrimination.<sup>148</sup> In U.S also judicial review raised in four cases.<sup>149</sup> First, a presidential grant of pardon could be set aside for violating the limitation provided under the constitution, "in cases of impeachment". Second, pardon granted by the president can be declared invalid when the decision infringes fundamental rights. Third, the court can declare if the pardon granted or denied in violation of equal protection principle by discriminating on the bases of race or gender. Finally, pardon practices could be modified by the courts for failing to provide "minimal due process protections".

Most international instruments and pardon system of countries establish institutions in order to carry out follow-up and supervise grantees. This aimed to tackle social stigmas, psychological, economic hardships in their reintegration process. The Tokyo Rules states the purpose of "supervision" as a means to reduce reoffending, to assist the inmate's integration into a society.<sup>150</sup> It also show that the supervision to be conducted by a competent authority under specified standards.<sup>151</sup> Inmates should be provided with psychological, social and material assistance and opportunities to strengthen their links with the community.<sup>152</sup> Rule 2 of the

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<sup>145</sup> Thatcher v. Attorney General. (1987) 1987-05-14 1SCR 652. Available at <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/15406/index.do>.

(Accessed 18/07/2019)

<sup>146</sup> Tokyo Rules (n 10) rule 3.5

<sup>147</sup> Novak (n 6) 830

<sup>148</sup> *Maru Ram v. Union of India*, (1980). AIR 1980 SC 2147:1 SCC 107. Available at <https://www.ebc-india.com/lawyer/articles/2002v6a2.htm>.(accessed 17/07/2019)

<sup>149</sup> Baumgartner and Morris (n 109) 215

<sup>150</sup> Tokyo Rules (n 10) rule 10.1

<sup>151</sup> Ibid, rule 10.2

<sup>152</sup> Ibid, rule 10.4

Tokyo rules provides the conditions to be taken into account. They are: - the needs of the society, needs of the victim, rights and needs of the individual inmates.

The judicial process ensures the existence of due process and protection of constitutionally guaranteed rights of applicants. For example, international law in death penalty cases<sup>153</sup> provides pardon procedures to offer certain essential guarantees, including clarity about the process followed and the substantive criteria's applied. It includes rights like a right for individuals sentenced to death to initiate pardon or commutation procedures and to make representations about their personal or other relevant circumstances, a right to be informed in advanced when the request is considered, and a right to be informed promptly about the outcome of the procedure.

The Ouagadougou declaration and plan of action aims in accelerating prisons and penal reforms in Africa. The first Ouagadougou declaration was held in Burkina Faso in 1998 and was to assess progresses made since 1996 and further identify new African models for dealing with crime. The conference finally presented strategies for recommendation in reducing prison population and promoting the use of alternatives. The second Ouagadougou declaration and plan of action on accelerating prisons and penal reforms in Africa<sup>154</sup> recommends that, African standards to be complementary to international standards regarding to the treatment of prisoners and review of prison legislations in line with national constitution guarantees and international human rights laws. Additionally it strongly recommends on the collaborative work of governmental agencies with NGOs and civil societies in reducing prison population, in facilitating reintegration of inmates into the community, and on the need of strengthening rule of law in the treatment of offenders.<sup>155</sup>

### **2.3 EXPERIENCE OF SOME COUNTRIES ON THE ADMINISTRATION OF PARDON**

Due to different factors among countries, there are no constant structures and trends in the administration and execution of pardon. For example, majority of common law countries empowers the executive organ of government to grant pardon only after conviction.<sup>156</sup> Whereas, developing countries frequently used pardon for lack of modern rehabilitation and reintegration

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<sup>153</sup> See ICCPR (n 131) art. 6

<sup>154</sup> Pan-African conference, 'Second pan-African conference on prison and penal reform in Africa' (2002). Available at <http://www.achpr.org/instruments/ouagadougou-planofaction/>. (Accessed 21/04/2019)

<sup>155</sup> Ibid

<sup>156</sup> See for example Kenyan constitution, art.133 (1-a) and Indian constitution art.72 (1)

structures and in order to reduce overcrowding in prison centers.<sup>157</sup> In addition to this, social discrimination is a significant barrier to the proper reintegration of grantees into the society.<sup>158</sup>

In order to assess the effective administration of pardon in Ethiopia generally, a brief view into the experience of other countries is important, when only it is to bring some lessons. But, this comparative study is not in a strict sense; it is only intended to show the place of Ethiopian laws with regard to administration of pardon. Also it is to determine what lessons could be learnt by Ethiopian pardon laws from the administration of pardon in these jurisdictions; and not for making any specific recommendation for improvement in those jurisdictions. To attain this objective, the researcher purposively selected two countries: Canada and Kenya. Both countries are selected mainly on purpose and geographical grounds also differ in terms of socio-economic contexts. Canada as a developed country is rich in laws, has strong and efficient institutions to supervise grantees, electronic file management or record-keeping system in administering and executing pardon on which Ethiopia needs to learn a lesson. Even if Kenya found in similar political, economic and social situation with Ethiopia, in Kenya pardon is administered by professionals from different disciplines and works jointly with stakeholders before and after conditional release of grantees. Pardon officers appointed at correctional facilities and responsible for assisting applicants in the preparation of petitions and providing general information on the power of pardon or mercy to the prisoners. The Kenyan government shows great commitment in relation to making the process more transparent and accountable. Relatively little assessment has been done to develop comprehensive pardon administration and enforcement mechanisms in Ethiopia. Therefore, this research is intended to identify best practices and their impact in correcting the weakness under Ethiopian pardon law.

### **2.3.1 Administration of pardon in Canada**

In Canada, section 748 of the criminal code empowers the general governor to grant two types of pardon, namely free and conditional pardon<sup>159</sup> including remission in whole or in part of a fine or

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<sup>157</sup> Novak (n 6) 820

<sup>158</sup> Jameson Green, 'Pardons and Record Suspensions: Implications of policy changes for criminal record holders' (B.A thesis, Grant Mac Ewan University, 2015) 8

<sup>159</sup> In Canada both types of pardon have different effects. That means, free pardon cancels all consequences resulting from the conviction. Also any records of conviction can be erased from the police, court records and any organs database. While, conditional pardon all about stay of inmates under supervision, assistance and subject to conditions until the expiration of sentences imposed by the court.

forfeiture under an act of Parliament. The national parole board under criminal records act<sup>160</sup> empowered to administer, grants, denies and revokes pardon and parole. Members to the parole board are composed from different disciplines<sup>161</sup> of criminology, law, police, social work, medicine, education, business, and private and public service management. Board members are trained in risk assessment and conditional release decision-making. The board uses the principles of protection of the society and the least restrictive determination consistent with the protection of the society in its decision-making process.<sup>162</sup> And it provides mechanisms for the national parole board to follow and support grantees.

In Canada, record suspension or pardon is granted to reformed offenders in prison with follow up and assistance programs to overcome legal, economic and social stigmas related with their prior criminal record.<sup>163</sup> Canadian laws guaranteed human rights protections of grantees including relief from the stigma of criminal record, improved opportunities for employment and housing.<sup>164</sup> In the same manner, the Canadian human rights act<sup>165</sup> prohibits grounds of discrimination in respect to granting pardon. The criminal record act gives the right to apply for pardon to a citizen of Canada, a resident of Canada, and even that person was convicted in another country and transferred to Canada.

The national parole board provides different factors to be taken into account in a preparation for release on pardon.<sup>166</sup> The board made public safety as a primary pre-requisite in granting, denying or revoking record suspension or pardon. The factors are the progress of the offender, his or her social and criminal history, the circumstances and gravity of crime committed, specialized risk assessments results, prison overcrowding, the re-offending chance and the like. Also the correctional service and the national parole board of Canada developed a framework for

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<sup>160</sup> Criminal Records Act 1985 s C-47 (Canada). Available at <https://laws.justice.gc.ca/PDF/C-47.pdf>. (Accessed 10/05/2019)

<sup>161</sup> Parole board of Canada. Page 7. Available at [https://www.canada.ca/content/dam/canada/parole-board/migration/001/093/001-3000\\_en.pdf](https://www.canada.ca/content/dam/canada/parole-board/migration/001/093/001-3000_en.pdf). (Accessed 26/04/2019)

<sup>162</sup> Ibid, 8

<sup>163</sup> Board of pardons and paroles (n 8) 3

<sup>164</sup> Samantha Mc Aleese and Catherine Latimer, *Reforming the criminal records act* (Canadian bar association, 2017) 2

<sup>165</sup> Human Rights Act 1985 s H-6 (Canada). Available at <https://laws-lois.justice.gc.ca/eng/acts/h-6/>. (Accessed 15/05/2019)

<sup>166</sup> Parole board of Canada, policy manual 14, Clemency and pardons. Available at <http://publications.gc.ca/site/eng/9.646295/publication.html>. (Accessed 02/07/2019)

enhancing reconnecting offenders with families and communities improved outcomes and reduced recidivism. In Canada, inmates released on parole and pardons are supervised closely. Including face to face meeting with workers of parole board. The supervision conducted on high-risk offenders in Canada shows lower rates of recidivism for revocation of conditional release on parole and pardon.<sup>167</sup> After pardon offered for a grantee, any record of the conviction will be erased from police and court records.<sup>168</sup>

Also the criminal record act provides mechanisms how a pardon can be revoked.<sup>169</sup> Which are:  
- subsequent conviction for another crime after release, no longer in good conduct, or concealing by producing false or deceptive evidences in the process. When the board refuses to grant or to revoke a pardon, there is a process of notification to the applicant and there is also a review process and the decision of the board will be final.<sup>170</sup>

### **2.3.2 Administration of pardon in Kenya**

Kenya started penal reforms around 1960s aimed at curbing overcrowding in prisons and its associated effects under a program known as EMPE.<sup>171</sup> It was intended to consider the management and supervision of inmates released on parole, probation and pardon. A total of 201 EMPE centers were established in Kenya to follow up and supervise the reintegration of inmates.<sup>172</sup> The revised constitution of Kenya<sup>173</sup>, empower the president of the country to grant pardon, either free or subject to lawful conditions. Likewise Ethiopian, the Kenyan pardon laws results in substituting a less severe form of punishment or to remit the whole or part of a punishment imposed on a person for an offence. Section 28 of the constitution comprises advisory committee on the prerogative of mercy or pardon. Here, the president may consult the advisory committee before granting or denying pardon, but the president shall not be obliged to act in accordance with the advice of the Committee.<sup>174</sup> The 2011 power of mercy act, No. 21 provides mechanisms for the appointment, tenure security and the power and functions of

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<sup>167</sup> R. Serin, et, al, *Intensive supervision practices: a preliminary examination* (Ottawa correctional service, Canada, Research Brief No. B-31, 2003)

<sup>168</sup> Robin Mackay, *Eliminating pardons for serious crimes act*. (Bill C-23B, Publication No. 40-3-C23B-E, Legal and legislative affairs division, Canada, 2010) 4

<sup>169</sup> See Canadian criminal record act, section 7

<sup>170</sup> Ibid, section 8

<sup>171</sup> Reich, S.N, *Community service program in Kenya*, (2002) 7

<sup>172</sup> Ibid, 12

<sup>173</sup> Section 27 of revised constitution of Kenya, (2009)

<sup>174</sup> Ibid, Section 29

advisory committee. It provides different criteria's to be member of mercy committee.<sup>175</sup> It includes knowledge and experience in matters relating to fields of law, psychiatry, psychology and counseling, correctional services, medicine, human rights, governance, religion, gender, children matters and disability.

The basic functions of the advisory committee includes<sup>176</sup> :- working with stakeholders responsible for correctional services to educate inmates before and after their release, creating strong relationship with state and non-state actors to educate the public on the nature and implications of the power of mercy. Also they are duty bound to inform the victim or at least to make a reasonable effort to notify the victim or his/her relatives. This committee is independent from political parties.<sup>177</sup> Vacancies and results to be a committee can be produced in the Gazette and also the notification of grant or denial of pardon petition can be notified to the petitioner in writing and published in the Gazette.<sup>178</sup> These show that the appointment process is transparent. In addition to the committee, pardon officers are appointed at prison centers and responsible for assisting applicants in the preparation of petitions and providing general information on the power of pardon or mercy to the inmates.<sup>179</sup> In Kenya, department of probation and after care services implement an after care support and supervision program for inmates to facilitate their reintegration into the society.<sup>180</sup> This program views inmates as vulnerable group and needy of assistance. After care is therefore seen as a continuation of the rehabilitation efforts started while in prison. Probation offices in Kenya are assisted by volunteer probation officers and offer close supervision to released inmates. When compared with Ethiopian constitution and pardon laws, Kenyan constitution and mercy act provided administration of pardon in elaborated and clear manner.

The mercy act provides the following criteria's for the committee in making recommendation for grant of pardon.<sup>181</sup> They are:- age of the inmate, the circumstances surrounding the commission

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<sup>175</sup> Art.6 of power of mercy act, No. 21 (2011)

<sup>176</sup> Ibid, art.14 and 15

<sup>177</sup> Ibid, art.7 (1)

<sup>178</sup> Ibid, art.8 and 23

<sup>179</sup> Ibid, art.17.

<sup>180</sup> Office of the vice-president and ministry of home affairs, Department of probation and aftercare services, *Research report on the impediments to offender reintegration and resettlement*. (2007) (Nairobi, Kenya) Available at [https://www.academia.edu/7965070/Ex\\_Offender\\_Study-On-The-Impediments-To-Offender-Reintegration-And-Resettlement-In-Kenya\\_2](https://www.academia.edu/7965070/Ex_Offender_Study-On-The-Impediments-To-Offender-Reintegration-And-Resettlement-In-Kenya_2). (Accessed 13/05/2019)

<sup>181</sup> Kenyan constitution (n 156) art.21 and 22

of the offence, the nature and seriousness of the offence, the personal circumstances of the inmate, including mental and physical health and any disabilities, the interest of the State and community, the post-conviction conduct and character of the inmate, serving at least one third of the sentence, the official reports from the prison center and responsible organs responsible for correctional services and presentation or notification of the victim or relatives on the petition of mercy or pardon of the prisoner.<sup>182</sup> However, these conditions or criteria's are not an exhaustive list and the advisory committee may consider if necessary, a report of fellow inmates or reports from probation services.<sup>183</sup>

#### **2.4 ADMINISTRATION OF PARDON UNDER ETHIOPIAN CRIMINAL JUSTICE SYSTEM: A CLOSE SCRUTINY**

Before the establishment of federal form of government in Ethiopia, there were no detail procedural laws related with administration of pardon. The modern administration and execution of pardon in Ethiopia is of a recent development and having been operational in 1996 E.C or 2004 G.C. As per the FDRE's constitutional recognition, the federal government enacts laws in relation to procedure of granting pardon.<sup>184</sup> Taking this as a bench mark, regional states began enacting laws with regard to administration and execution of pardon.

The administration of pardon includes both legal and practical aspects that have their impacts on the proper application of pardon as its objectives. It includes: - the institutional arrangements to grant, control or follow-up grantees, conditions, decision-making processes, effects and revocation of pardon. The existences of strong institutions, consistent and proper application of laws, legislative framework to establish supervising and controlling organs, and conditions to be fulfilled by each stakeholder are vital to effectively administer and execute pardon. The proper administration and execution of pardon has multi-dimensional effects. Primarily, it facilitate the reintegration process of grantees to be responsible and law-abiding citizens, reduces recidivism, overcrowding in prison and redress miscarriage of justice. In addition to these, its objectives range to create harmonious relationship among the wrongdoer, victim and or his/her relatives and the community at large.

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<sup>182</sup> Ibid, art.21 (4)

<sup>183</sup> Ibid, art.22 (2)

<sup>184</sup> FDRE proclamation for the procedure of granting pardon, proclamation No.395/2004

As stated throughout this thesis, conditional pardon is conditional suspension of punishment while the offender is placed under supervision and treatment. Most African countries including Ethiopia rarely offer such programs for inmates and allocate funds to the prisons to run such programs.<sup>185</sup> In the absence of controlling and supervising organ on conditionally released inmates, the process of rehabilitation and reintegration of offenders become problematic. Likewise, failure to properly administer and execute pardon endangers criminal justice system in general and socio-economic and political challenges in the country.

Here, the researcher tries to discuss administration of pardon into two major parts. The first part deals with administration of pardon pre-1995 FDRE Constitution and part two discusses the administration and execution of pardon post FDRE Constitution. The researcher, accordingly, tries to assess whether the Ethiopian correction and pardon laws in general are efficient or not in administering and executing pardon.

#### **2.4.1 ADMINISTRATION OF PARDON PRE-1995 FDRE CONSTITUTION**

Before the era of Emperor Haile Selassie, pardon and amnesty had been used interchangeably and in the same meaning.<sup>186</sup> It also had been given for the wrongdoers as a gift from the then emperors. The 1931 constitution empowers the emperor to grant pardon, commute penalties and to reinstate the wrongdoer.<sup>187</sup> The emperor's power was not limited, by his last appeal power; he may release offenders arbitrarily or on the form of pardon.<sup>188</sup> However, rather than constitutional recognition, there had been no organ to administer and no procedure to grant pardon. This constitution contains some human rights concerns, like due process of law guarantees.<sup>189</sup> But, there is no other provisions dealing with the treatment of inmates and

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<sup>185</sup> Sekhonyane, M, South Africa Law Reform Commission, 'Prison Reform in Africa-current Trends' (report) (2005) to the Alraesa Law Reform.

<sup>186</sup> Tsegai Berhane, *A brief reflection on amnesty & pardon from the Ethiopian context (Abyssinia law, 2018)*. Available at <https://www.abysinialaw.com/blog-posts/item/1774-a-brief-reflection-on-amnesty-pardon-from-the-ethiopian-context>. (Accessed 01/10/2019)

<sup>187</sup> 1931 constitution (n 28)

<sup>188</sup> Gashaw Ayferam, (2015), 'Constitution, constitutionalism and foundation of democracy in Ethiopia' (2015) 2 IJR 588

<sup>189</sup> Addisu Gulilat, 'The human rights of detained persons in Ethiopia: Case study in Addis Ababa' (L.L.M thesis, Addis Ababa university, 2012) 36

existence of post custodial measures. This constitution was only aimed in honoring the emperor rather than protecting the rights of individuals.<sup>190</sup>

Inadequacy of the 1931 constitution and the aim to bring social progress and economic development motivated the revision.<sup>191</sup> 1955 revised constitution brings some progress on the protection of rights of individuals.<sup>192</sup> There are two provisions concerning pardon under the revised constitution. The first provision under art.59 deals with death penalty. This states that the death penalty pronounced by a court cannot be executed, unless got approval from the emperor. This provision shows that the emperor had a right to change the death penalty with other lesser sentences and it is one type of pardon. The second provision is art.35 and gives right to the emperor to grant pardon, amnesty and the right to change the sentence into the lesser gravity.

The prior constitution had been silent about amnesty, but the 1955 revised constitution somehow shows that amnesty and pardon are different concepts. Like the prior constitution, this constitution empowers the emperor to grant arbitrarily and as his gifts for the subjects. Also there were no other laws governing the administration and implementation of pardon. In a similar vein, the constitution is silent on the treatment process like rehabilitation and reintegration of inmates. In Ethiopian history, the Proclamation No. 45/1944 was the first law deals with the treatment and rehabilitation of offenders. It includes segregation of inmates based on sex, participation of inmates in some works to reform and to decrease the stress and stigma they face in the prison and after prison life.

The 1957 penal code aims at prevention of crime and rehabilitation of offenders through reforming in prison and enabling him/her to be responsible person.<sup>193</sup> It incorporates pardon and amnesty under separate provisions, art. 239 and 240 respectively. Art. 239 of the penal code failed to define pardon, but provides the conditions, applications and effects of pardon. In addition to that, it empowers the sovereign power to grant pardon.

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<sup>190</sup> Selamawit Belachew, 'Community service as criminal punishment in Ethiopia: A practical assessment in Hawassa city' (L.L.M thesis, Jimma university, 2016) 34

<sup>191</sup> Bereket Habte Selassie, 'Constitutional development in Ethiopia' (1966) 10 Published online by Cambridge University Press 2009 82. Available at <https://www.cambridge.org/core/journals/journal-of-african-law/article/constitutional-development-in-ethiopia/CB7B15781E168F8E07DB8A9897EC0889>. Accessed on 25/6/2019)

<sup>192</sup> The 1955 revised constitution, art. 36

<sup>193</sup> See the preamble and art.111 of the 1957 penal code

In addition to constitutional recognition, the concept of pardon had been also incorporated under the 1955 criminal procedure code. Art. 239 (1) entitled as amnesty and comprises elements of pardon and is all about reducing, remitting the level of punishments wholly or partially by the emperor. Also art. 240 clearly deals with amnesty. Those, the above mentioned constitutions do not incorporate the procedures to administer and execute pardon fairly and equitably for all candidates of pardon.

The 1987 constitution<sup>194</sup> empowers president of the republic to grant pardon. Also it does not incorporate the administration, implementation, conditions and effects of pardon. Under a separate provision<sup>195</sup>, it empowers the council of state to grant amnesty. Here, this constitution grants pardon and amnesty to different organs, namely, the president of the republic and state council respectively. Generally, the 1931, 1955 and 1987 constitutions do not define the concept of pardon and had been used arbitrarily. Based on the facts provided above, it is possible to argue that before 2004, pardon had been granted for different reasons only based on constitution without any executing and procedural laws. After the fall of Dergue regime, the country become federal state and the FDRE constitution empowers the federal government and regional states to promulgate their own laws, including laws governing administration and execution of pardon.

## **2.4.2 ADMINISTRATION OF PARDON POST FDRE CONSTITUTION**

### **2.4.2.1 Pardon under 1995 FDRE constitution**

Based on the federal form of government in Ethiopia, both federal and regional governments under their respective constitutions and subsidiary laws enact laws related with treatment of inmates, administration and execution of pardon. The FDRE constitution established a federal form of governments. It comprises plenty of human rights provisions. Moreover, under art. 13 (2), it gives the rights and freedoms in the constitution to be interpreted in line with the principles of UDHR and other international human rights instruments adopted by Ethiopia. Inmates in prison have the right to be treated humanely in respect of their dignity.<sup>196</sup>

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<sup>194</sup> PDRE constitution (n 29), art. 86(3-d)

<sup>195</sup> Ibid, art. 82 (1-e)

<sup>196</sup> FDRE constitution (n 30), art.21

The 1995 FDRE constitution empowers the president of FDRE to give pardon.<sup>197</sup> It also limits the power of the FDRE president on granting pardon. It requires the existence of laws based on the constitution with regard to conditions and procedures of pardon, unless the president is not allowed to grant pardon arbitrarily.

The same constitution identifies the beneficiaries.<sup>198</sup> Art. 28 (1) of the constitution prohibits inmates convicted for crimes against humanity from being eligible for pardon. Crimes like genocide, summary executions, forcible disappearances or torture cannot be commuted by pardon. The acontrario reading of the art. 28 (1) can be interpreted in a manner that, except the crimes against humanity other crimes are subject to pardon. Similarly, art. 28(2) of the same constitution empowers the head of the state to change or commute the death penalty to life imprisonment in case of a person convicted for the above crimes and sentenced for death penalty. This clearly shows that commuting a death penalty to life imprisonment is one way to making lesser the sentence and considered as one elements of pardon. The above stated justifications show that pardon under FDRE constitution has a constitutional recognition.

As discussed under previous chapters, protection of society from the crime and the rehabilitation and reintegration of the inmates are the two major objectives of pardon. The preambles of both federal<sup>199</sup> and SNNPR<sup>200</sup> pardon proclamations ensure that provision of pardon should protect the interests of the society, government and the offender. Whereas, when there is an objective reason not to grant pardon for the sake of public interest, government is allowed to deny it. In the first place, the best way to protect society from the criminal is to rehabilitate the offenders and to reintegrate them into the society as law-abiding citizens.<sup>201</sup> In the second place, if the protection of society is held as the actual guiding principle of prison administration and pardon, the work of reforming the criminal and of crime prevention will be advanced. These objectives could include administrative, economic, political, maintenance of peace and security of the country and reintegration of grantees. To attain these objectives, the participation of different stakeholders is needed. Police, prosecution office, court, prison administration commission and

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<sup>197</sup> Ibid, art. 71(7)

<sup>198</sup> Ibid, art. 28

<sup>199</sup> FDRE Proclamation for the procedure of granting and executing pardon, Proclamation No.840/2014.

<sup>200</sup> SNNPR amended procedure of granting pardon Proclamation No.157/2015

<sup>201</sup> FDRE Proclamation No.840/2014 (n 199), art.3

prison centers are the major stakeholders participating from crime commission stage to finally releasing inmates for serving the sentence fully or releasing through non-custodial measures.

When compared with the prior constitutions, this constitution gives more protection and rights for the treatment of inmates in general and for grantees released on parole and pardon particularly. It provides general principles and obligations with regard to protection and enforcement of human rights of an individual in general and person held in custody on serving sentences. It put duty on the legislative, executive and judiciary branch of government to respect and execute the fundamental rights of a person.<sup>202</sup> Likewise, art. 21 of the same constitution shows that the convicted and individuals serving their sentence in prison have a right to be treated in a manner of international standards, rule and with respect to their human dignity.

#### **2.4.2.2 Pardon under the new criminal code (2004)**

When we made comparison between the 1957 penal code and 2004 FDRE criminal code, the current criminal code gives more emphasis to the reform and reintegration of inmates into the community. It incorporates probation<sup>203</sup>, pardon<sup>204</sup> and parole or conditional release<sup>205</sup> in order to facilitate the rehabilitation and reintegration of inmates in line with the objectives of criminal law and punishment. In similar fashion, it rectifies problems of the prior Penal Code in three manners. Primarily, it separately provides the concept of pardon and amnesty under art. 239 and 240 respectively. Secondly, it solves the arbitrary power of pardon given for leaders to be executed in fair and transparent manner. Thirdly, it provides conditions and effects of pardon for all principal or secondary penalties and measures.<sup>206</sup> Art. 229 (1) of FDRE criminal code allows the pardon to be applied to all penalties and measures whether principal or secondary and whether their gravity, which are enforceable.<sup>207</sup> The FDRE Criminal code states that: "Unless otherwise provided by law, a sentence may be remitted in whole or in part or commuted into a penalty of lesser nature or gravity by an act of pardon of the competent authority. Pardon may apply to all penalties and measures whether principal or secondary and whether their gravity,

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<sup>202</sup> Ibid, art.13 (1)

<sup>203</sup> See FDRE criminal code (n 31), art. 190-202

<sup>204</sup> Ibid, art. 229

<sup>205</sup> Ibid, art.201-207

<sup>206</sup> FDRE criminal code (n 31)

<sup>207</sup> FDRE criminal justice policy, (2011), Section 1.4 (b) and 5.3

which are enforceable".<sup>208</sup> This provision shows that principal and secondary punishments and other measures are subject to pardon. From these, we can understand that pardon in general and conditional pardon specifically is to remit a sentence on criminal case either in whole or in part or to reduce it to a lesser nature. But, the criminal record remains in the file.

Similarly, it prefers dissemination of rehabilitation programs rather than blocking inmates in prison.<sup>209</sup> Art.1 of the new criminal code gives due attention for the rights of inmates. Also under art. 117 (2), it gives a clue about the chance that death penalty is subject to pardon or amnesty. It is expected to be scrutinized before reach to the head of state for final decision. It provides different principles related with the humane treatment of inmates. Such principles includes: - regulation on the enactment of sentence execution<sup>210</sup>, segregation of inmates based on their sex and the nature of sentences they serve<sup>211</sup>, youngsters who have not attained the age of nine years shall not be deemed to be criminal<sup>212</sup>, young offenders between the age of nine and fifteen years neither be subject to ordinary penalties applicable to adults nor be kept in custody with adult offenders.<sup>213</sup> A good example could be, when a young between the age of nine and fifteen commits a crime, the court can take educational or corrective measures for the reformation and rehabilitation purpose of the young offender.

Generally, the FDRE criminal code clearly incorporates elements of pardon to include full cancellation of punishment, replacing one form of punishment with a lesser one or cancellation of punishment either freely or conditionally. Grant of pardon ranges from secondary or subsidiary measures to principal offences.

#### **2.4.2.3 Proclamations related with procedure of granting and executing of pardon**

HPR based on art. 71 (7) of FDRE Constitution enacts the first law with regard to procedure of pardon.<sup>214</sup> Under its preamble, it aims in making the procedure of granting pardon based on laws of criminal law and FDRE Constitution. Even if Proc. No. 395/2004 does not directly defines pardon, it provides the procedure whom to petition, the conditions to petition and conditions to

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<sup>208</sup> FDRE criminal code (n 31)

<sup>209</sup> For example academic education and vocational training are among rehabilitation programs.

<sup>210</sup> FDRE criminal code (n 31).art.109

<sup>211</sup> Ibid, art.110

<sup>212</sup> Ibid, art.52

<sup>213</sup> Ibid, art.53

<sup>214</sup> FDRE constitution (n 30)

be fulfilled before grant of pardon.<sup>215</sup> This proclamation establishes pardon board with different power and duties in order to examine pardon cases and to submit their recommendations to the president.<sup>216</sup> The board solely gives decisions by taking petition and examining it and finally sends its recommendation to the president whether to remit the eligible grantees conditionally or unconditionally, in whole, in part or with a lesser penalty. In executing its duties, it collects necessary documents from prosecution office, courts, correction centers and any individuals. Art. 5 of the proclamation incorporates different professionals including senior medical doctor, senior social work expert, and representatives of the society and heads of concerned government organs.

This proclamation has other peculiar features. For example, art. 10 shows that the president is not bind by the recommendations of the board and allows the president to grant or deny pardon based on his/her personal judgment. Art. 2 (7) and 12 (6) incorporates a presumption that when the petition for grant of pardon involves co-offenders or accomplice, its application is presumed to include such co-offenders or accomplice. Similarly, it limits the purpose of granting pardon to protect the interest of the public<sup>217</sup> and do not give due attention to the needs and interests of inmates. Due to these shortcomings, this proclamation later amended.

In 2014, Proc. No. 395/2004 amended by Proc. No. 840/2014<sup>218</sup> in order to make the procedure of granting and executing pardon more effective and efficient. The new proclamations under art.3 aimed at re-integrating the grantees into the community and make them productive on the change of their criminal behavior. Art. 15 of the same law provides rules on who and how to petition for pardon. This provision empowers inmates themselves, their lawyers or their representatives on the one hand and also empowers ministry of justice or federal prison administration to lodge a petition of pardon in favor of the inmates on the other hand. In addition to mentioning the competent party to lodge a petition of pardon and conditions, the same legal provision under sub art. (1) Inserts exceptions. Such exceptions are: - pardon to be awarded only in a manner of attaining the interests of the public, government and offenders and without prejudice to prohibiting provisions of other related laws.

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<sup>215</sup> FDRE proclamation No.395/2004 (n 184), art.2 (4) and 12(1&2)

<sup>216</sup> Ibid, art.3

<sup>217</sup> Ibid, art.11

<sup>218</sup> FDRE Proclamation No.840/2014 (n 199)

The following features made the current proclamation different from the prior one. Primarily, it comprises of ministers and higher government officials as members of the pardon board without taking into account professionals from different disciplines. Secondly, it empowered to formulate criteria's to facilitate grant of pardon. Thirdly, art.5 empowers the FDRE president and art.9 (2) empowers the federal pardon board to delegate their powers to the relevant regional authority. Fourthly, art. 16 (2) shows the tendency to petition of pardon for legal person that was not recognized under the previous proclamation. Fifthly, it provides different considerations to be taken into account in granting pardon.<sup>219</sup> In addition to these, the prior proclamation keeps silent on the effect of president's decision on granting or denying of pardon. However, the current proclamation makes the decision of president as a final decision.<sup>220</sup> It also provides the effect of pardon under art. 22 as, when there is no exception on the decision; decision on pardon makes all penalties made by the court as ineffective. But, it does not invalidate civil liabilities emanating from criminal conviction. Art. 15 of Proc. No. 840/2014 empowers the petitioner himself, his spouse, close relative, representative or lawyer. But, for the question "who is a close relative" is not defined under the proclamation. In order to solve this gap, it is better to use the definition given in family law.

Generally, art. 2 (4) of Proc. No. 395/2004 and art. 2 (1) of Proc. No. 840/2014 defines pardon in almost the same manner. The definition given by proclamations show that, pardon is all about making a convicted person free from punishment fully or partially or reducing the sentence into lesser. Based on this line, regional states including SNNPR enacted their own pardon laws and executing procedures. From the above assertions, pardon in Ethiopia includes remittance of the whole or part of a penalty or commuting a sentence into a lesser penalty and it may apply to all penalties and measures.<sup>221</sup> And it does not have the effect of cancelling of the record and its consequences.<sup>222</sup> In violations of conditions of pardon, the first instance court empowered to give order of arrest to the appropriate organ.<sup>223</sup>

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<sup>219</sup> Ibid, art.20. Such considerations includes:- gravity of offence, criminal behavior of the petitioner, his/her disposition to live in peace in the future, effort to reconcile with the victims, good conduct in prison, opinion of the victims, health and family status of the petitioner.

<sup>220</sup> Ibid, art. 21(3)

<sup>221</sup> FDRE criminal code (n 31), art. 229(1)

<sup>222</sup> Ibid

<sup>223</sup> FDRE Proclamation No.840/2014 (n 199), art. 23 (5)

#### **2.4.2.4 Pardon under the new criminal justice policy**

Under its preamble, it comprises general principles, rules and issues related to the criminal reform. It includes; the need of increasing participation and confidence of the community in the overall activities of criminal justice system, collaborated and coordinated work of police, prosecution, defense lawyers, courts, prison administration commission and other organs directly or indirectly involves in the administration of criminal justice system. It further demands the application of every activity under criminal justice to be in line with FDRE Constitution, ratified international instruments and adopting just, clear and reasonable procedure of reintegration process of offenders and also maintaining peace and security of the society.<sup>224</sup> Also it aims in helping inmates to lead productive and peaceful life after their release. Likewise under part two, it takes crime prevention as a primary goal through the participation of both federal and regional governments and also increasing participation of the community. Part six of the policy includes the use of non-custodial measures against young offenders. These principles and rules show that, it gives due attention to the rights of inmates in custody to be treated in manner of facilitating their reformation and reintegration process.

#### **2.4.2.5 Pardon under the draft criminal procedure and evidence law**

The preamble of draft makes Ethiopia under international duty to take into consideration human rights of inmates and constitutional guarantees. Other principles included under this draft law in relation to treatment of grantees includes: - sentences to be in line with reformation and rehabilitation needs of offenders, in incapacitating the offender from re-offending and to educate other potential offenders.<sup>225</sup> Likewise stated under the revised criminal code<sup>226</sup>, this draft law made the prosecutor under duty to check that death penalty is given by the final judgment of Supreme Court or is subject to pardon or amnesty before requesting head of state for its execution. In addition to these principles and rules, it gives more emphasis to non-custodial measures. For instance, it gives discretionary power for the court to impose alternative sentences for minor crimes and in case, juveniles become defendants.<sup>227</sup> In this case, courts may give decision of inmates to be under organizations control or supervision, letting them to get priority chance in employment opportunities, to be treated by psychologists, psychiatrists and other

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<sup>224</sup> FDRE criminal justice policy (n 207)

<sup>225</sup> Draft criminal procedure and evidence law, art.333

<sup>226</sup> Ibid, art. 335

<sup>227</sup> Ibid, art. 348 and 349

professionals. Also individuals released on pardon or amnesty has a chance of reinstatement<sup>228</sup>, unless the decisions cannot be effective.

One of the power and function of prosecution office is to supervise the implementation of pardon in collaboration with other stakeholders.<sup>229</sup> This office is also duty bound to form follow-up and supervision procedures, arrangements, to follow its execution and to take any measures or order to take measures. Up on come into force of this draft law, it is intended to give the mandate of supervision and controlling of inmates after their release to prosecution office. This office is expected to lead the reintegration process of grantees and other released inmates with joint work of police, security administration office, kebele administration, NGOs and the like organs.

To summarize, most developing countries have developed administration and execution of pardon when compared with that of Ethiopia. Countries like, South Africa, Kenya, Zimbabwe, Zambia, Malaysia have established strong implementation and supervisory organs which are responsible for the overall implementation of pardon. Also such supervisory organs execute their work with the collaboration of different governmental, NGOs, community groups and volunteers. However, establishing institutions to administer and execute pardon, without supervisory and follow-up department will not result in fruitful implementation of pardon. Yet, Ethiopian criminal code or pardon laws had not established an organ to control and supervise the grantees on their reintegration process. The mere incorporation of laws with regard to procedures of execution and grant of pardon do not brought the intended goals like, reducing recidivism, making productive and responsible citizens.

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<sup>228</sup> Ibid, art. 352

<sup>229</sup> Ibid, art. 20 (10)

## CHAPTER THREE

### 3. ADMINISTRATION OF PARDON IN SOUTHERN NATION, NATIONALITIES AND PEOPLES' REGIONAL STATE

#### 3.1 Introduction

This chapter examines administration of pardon in Hawassa city through laws, principles and standards developed from national constitution, pardon and correction laws, international laws and standards and experiences of foreign country. Based on those principles and standards, the assessment is carried out in two sections. This part investigates whether the normative framework protects the interests of victims, public in general and inmates by reviewing regional substantive and procedural pardon laws in line with international laws and standards. Therefore, the first and second research objectives and questions are addressed under this chapter. It also deals with exploring legal problems in relation to interpretation and execution of pardon laws, efficiency of institutional arrangement in executing its daily activities.

#### 3.2 Legal framework of pardon in SNNPR

Before directly entering into assessing the administration of pardon under SNNPR, first it is better to have background information about administration of pardon in SNNPR. Regional pardon board was established in 2006 E.C and organized under regional justice bureau and become operational based on FDRE constitution and criminal law.<sup>230</sup> The current SNNPR proclamation on the procedure of granting pardon is a verbatim copy of the corresponding provisions of the federal counterpart.

The office of the board has its head and acts as secretary of the board.<sup>231</sup> The office of the board in order to execute its duties under the proclamation<sup>232</sup> arranged independently with budget in 2009 E.C. Concerning its internal arrangement, it comprises of its office, logistics, and four public prosecutors to execute its daily activities. Externally, it composed of pardon claim and

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<sup>230</sup> Proclamation No.99/2006, art. 5 and 9

<sup>231</sup> Ibid, art.14

<sup>232</sup> See SNNPR amended procedure of granting pardon Proclamation No.157/2015 (n 200) art.13. Some duties of the office includes:- accepting petition for pardon, compiling and submitting the necessary information for decision of the board, keep and preserve documents and records of the board and chief executive, follow-up the implementation of decision of the board and providing certificate of pardon for the grantees.

investigative committees established in each zone and especial woreda's. And prison center pardon investigative committee established in each prison center. Both committees are under control and follow up of regional pardon board.

The revised constitution of SNNPR<sup>233</sup> under the powers and functions of the president do not directly empower the president to grant pardon. However, the joint reading of art. 51 (3)<sup>234</sup> and art. 68 (2-k)<sup>235</sup> of the constitution make possible to argue that the president of the region or the chief executive is empowered to grant pardon. SNNPR state enacted its first pardon law in state's regional council in 2006 under Proc. No. 99/2006. Also a proclamation to define powers and duties of the executive and executing organs of the SNNPR State<sup>236</sup> and a regulation on the manner of treatment of inmates of prisoners, empowered to treat inmates with due respect to their human rights and enabling them to become responsible and law-abiding citizens.<sup>237</sup> However, on the existence of these laws, there are legal, institutional and practical challenges that surround the proper administration of pardon in SNNPR. As far as the scope of this research, the challenges related to administration of pardon assessed in Hawassa city.

### **3.3 SOUTHERN NATION, NATIONALITIES AND PEOPLES' REGIONAL STATE AMENDED PROCEDURE OF GRANTING PARDON PROCLAMATION NO.157/2015**

Proc. No. 99/2006 amended by Proc. No. 157/2015 and the rationales for amendment include the following. (A), to facilitate granting of pardon in line with FDRE constitution, FDRE criminal code, and regional constitution. (B), to protect the interest of the public. (C), to create efficient and speedy procedures in administration of pardon. (D), to include new issues.<sup>238</sup> (E), making clear and in detail crimes eligible for pardon and not. In order to facilitate the decision-making process, a new regulation<sup>239</sup>, directive<sup>240</sup> and manuals come into force. Generally, the above stated processes made administration and execution of pardon fairer, transparent, and efficient

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<sup>233</sup> SNNPR revised constitution, (2001)

<sup>234</sup> This states that the state council based on the revised regional constitution to issue different laws that are consistent with the federal and other laws.

<sup>235</sup> This provision states that regional president or the chief executive is empowered to discharge duties given to him by other laws or in addition to listed in the constitution.

<sup>236</sup> A proclamation to define powers and duties of the executive and executing organs (n 32), art.56

<sup>237</sup> A regulation on the manner of treatment of inmates of prisoners (n 36)

<sup>238</sup> For example, the prior proclamation includes co-offenders or accomplice to be pardoned, when one among the inmates lodge petition. However, the current proclamation made it clear that eligibility for pardon emanates from the individual's character in his/her stay in prison.

<sup>239</sup> SNNPR regulation to execute pardon, Regulation No.141/2015

<sup>240</sup> SNNPR directive to execute and select eligible inmates, Directive No.2/2016

and facilitate protection of public and victim interests. Also aimed in removing unnecessary provisions from prior proclamation.

Art. 6 of Proc. No. 157/2015 lists members of the board and increases the number of members from five to eleven from different governmental sectors and two representatives from the society. The new proclamation brought the following new developments and changes in the administration and execution of pardon. It gave a power for pardon board to formulate criteria's necessary for granting pardon by taking into account the current situation and objective reality.<sup>241</sup> It also empowers the pardon board to delegate its powers to other organs having power to examine petition of pardon based the law.<sup>242</sup> This helps to protect the interest of transferee inmates. In addition to this measures, regional pardon board enact regulation<sup>243</sup> on identifying crimes which are allowed and not allowed for pardon clearly and fairly and also conditions to be fulfilled to petition for pardon. Since 2010 E.C, in order to solve administrative inconveniences and to include other stakeholders in the administration and execution of pardon, regional pardon board made directives and manuals to facilitate execution of pardon.

Members of the board have the following duties and powers.<sup>244</sup> (A), examining a petition for pardon lodged and submit recommendation to the chief executive that pardon granted on condition or without condition; (B), formulating criteria's necessary for granting pardon by taking into account the current situation and objective reality; (C), examining the prosecution provided upon the people who granted pardon by chief executive are not fulfilled the precondition or the pardon granted with false evidence, and submit the recommendation to chief executive; (D), when necessary, require the prosecutor involved in the prosecution, any official or individual to present his opinion by appearing in person or in writing; (E), carry out other functions given by law. Art. 7(1-a) clearly empowers the chief executive or president of the region entitled to grant conditional or unconditional pardon in whole or in part, to make execution of penalty into lesser and also to ratify a penalty if it is unpardonable.

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<sup>241</sup> See SNNPR amended procedure of granting pardon Proclamation No.157/2015 (n 200), art.7 (1-b)

<sup>242</sup> Ibid, art.7 (2)

<sup>243</sup> SNNPR regulation to execute pardon, Regulation No.141/2015 (n 239)

<sup>244</sup> SNNPR amended procedure of granting pardon Proclamation No.157/2015 (n 200), art.7

The regional proclamation provides the mechanisms by whom to lodge petition of pardon and considerations to be taken into account to grant or deny.<sup>245</sup> Art. 15(2) empowers any person convicted and sentenced by final decision to petition by himself or through his spouse, close relative, representative or his attorney. In a similar way, art. 15 (3) empowers the regional justice bureau or the federal prison administration to petition for pardon in favor of the inmates. With regard to the considerations to be taken into account to grant or deny pardon procedures to lodge a petition the same proclamation provides different criteria's.<sup>246</sup> It includes:- (A), the petitioner's dangerous disposition; (B), the gravity of the offence and the duration of the time the petitioner has been in prison; (C), information gathered from the work place, his/her family, local community or other relevant organs; (D), his/her disposition to live in peace in the future; (E), petitioner's confession and repentance or his effort to reconcile with the victim or his family and compensate them; (F), petitioner's good conduct during his stay in prison; (G), opinion of the victim or his family on the petition for pardon; and (H), the family and health status of the petitioner and his/her age condition.

Similarly in SNNPR, art. 15 of Proc. No. 157/2015 provides the same conditions and exceptions on lodging petition for pardon with that of federal proclamation. SNNPR state prison administration directive No. 2/2007 on the treatment of inmates provides situations where regional prison administration commission to lodge a petition of pardon for inmates. It listed four situations: - in case where an inmate infected by an incurable diseases and evidenced by medical board, for elders more than 70 years old, for reformed and repented inmates for their prior criminal acts upon their stay in the prison and the services they deliver for prison centers by their knowledge and skill and also there has to be a reason to believe that they contribute a more for their society and country.

The proclamation also provides the mechanisms the effects of violations of conditions.<sup>247</sup> The conditions includes: - false or fraudulent evidence and condition specified for granting the pardons has been violated. Based on these facts, the pardon board shall submit recommendation to the president in order to reactive the execution of the sentence with its content existed before

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<sup>245</sup> Ibid, art.15

<sup>246</sup> Ibid, art.20

<sup>247</sup> Ibid, art.23

the pardon.<sup>248</sup> When the recommendation accepted by the president, a person who was granted pardon shall return back to prison.<sup>249</sup>

### **3.4 SOUTHERN NATION, NATIONALITIES AND PEOPLES' REGIONAL STATE PROCEDURE OF GRANTING PARDON REGULATION NO.141/2015**

The enactment of this regulation was to create clear execution, detail provision of crimes subject to pardon and unpardonable crimes separately.<sup>250</sup> For example art. 3 (1) of the regulation lists unpardonable crimes. Which includes: - rape, abduction, corruption crimes, aggravated homicide, human trafficking and others. However, these crimes become subject to pardon exceptionally in case of special conditions<sup>251</sup> like, being infected with non-curable diseases, elder people above sixty years, disabled individuals with medical certificate and female inmates with children are expected to serve 1/3 of each respective crime. The other cumulative criteria's included are bringing of reconciliation certificate and payment of fine for the crime. When the president believes that grant of pardon results in bringing security, development and rule of law of the region is entitled to grant pardon except in case of crimes against humanity.<sup>252</sup> This gives the president to have huge power and leave a room for abuses and corruptions.

Also the regional pardon board established pardon claim and investigative committee's in each zone, especial woreda's and Hawassa city administration.<sup>253</sup> As per art. 5 of the regulation, members of the committee are composed from different sectors. The objectives of these committees are to identify and select eligible candidates for pardon, to examine the execution of pardon in their respective areas and to facilitate the execution of pardon in general. Also there are committees arranged in each correction centers to facilitate execution of pardon. This helps the administration and execution of pardon to be fair and non-discriminatory. The committee after selecting the eligible candidates for pardon forwards the lists to regional pardon investigative committee and regional pardon board respectively. The board approves the lists after examining in line with the pardon laws and directives and finally forwards the list with its recommendations to the president of the region.

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<sup>248</sup> Ibid, art.23 (3)

<sup>249</sup> Ibid, art.23 (6)

<sup>250</sup> See preamble of SNNPR regulation to execute pardon, Regulation No.141/2015 (n 239)

<sup>251</sup> Ibid, art.3 (2)

<sup>252</sup> Ibid, art.3 (3)

<sup>253</sup> Ibid, art.4

Pardon investigating committees found in each correction center select eligible candidate of grantees based on criteria's provided by the board. Members of the committee are too near to the inmates and evaluate behavioral changes of inmates, examine the eligibility of candidates through collecting information from the fellow inmates and victims. This institutional arrangement aimed in granting pardon as per the law and creating fairness in decision-making. In relation to this the regional pardon board enacts directives<sup>254</sup> to execute the regulation and make the process more efficient. Under art.3 it provides crimes which are not eligible for pardon. In addition to this, the regulation provides power, duties and liability of the committee in execution of pardon.<sup>255</sup>

But, there is no organ to control and supervise the life of grantees after release. Without the existence of such institution and qualified personnel's, rehabilitation programs given in correction centers cannot be adequate to reintegrate inmates and have its contributions on re-offending of grantees for violation of conditions. There are no mechanisms to create opportunities to strengthen their relation with the community.

### **3.5 SOUTHERN NATION, NATIONALITIES AND PEOPLES' REGIONAL STATE DIRECTIVE TO SELECT THE ELIGIBLE CANDIDATES OF PARDON DIRECTIVE NO.2/2016**

Preamble of the directive aims in making the process of pardon to be fair through providing clear criteria's and conditions. It separately provides crimes which are subject to pardon and unpardonable crimes.<sup>256</sup> Rehabilitation certificate for behavioral changes in prison center<sup>257</sup>, serving ½ (50%) or 1/3 (33%) of the sentences for each respective crime<sup>258</sup>, and making reconciliation and paying compensation with victim and or relatives.<sup>259</sup> In addition to these, the directive incorporates other conditions like, verification by kebele administration about reconciliation and other corroborated evidences supporting the grant of pardon. Finally, pardon claim and investigative committee found in each zonal level selects eligible candidates of pardon in line with petitioner's personal file, petition for pardon, and other corroborated evidences and sent the file to regional pardon board to examine the petition for pardon.

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<sup>254</sup> SNNPR directive to execute and select eligible inmates, Directive No.2/2016 (n 240)

<sup>255</sup> Ibid, art. 8-13

<sup>256</sup> Ibid, art.4

<sup>257</sup> Ibid, art.4 (1)

<sup>258</sup> Ibid

<sup>259</sup> Ibid, art.5

Another directive provides a mechanism to full pardon, in case of prosecution by false evidence or witness.<sup>260</sup> Art. 6 of directive No. 6/2016 deals with the reintegration process of grantees and states that security administration department is duty bound to facilitate the reintegration process of grantees into the society with the support of kebele administration and representatives of elders.<sup>261</sup> The objective is to reduce the stigmas grantees face in their reintegration process. Similarly, the security administration department has a duty to supervise or examine whether the grantees shows behavioral changes in their reintegration process, collect information in relation to their life after release and also make reports to the concerned organs.<sup>262</sup> Art. 7 (3) of the same law made under liability any person or organ who is empowered by the law made illegal acts.

### **3.6 SOUTHERN NATION, NATIONALITIES AND PEOPLES' REGIONAL STATE REGULATION ON THE MANNER OF TREATMENT OF INMATES OF PRISONS, REGULATION NO. 45/2005**

Similarly, a regulation on the manner of treatment of inmates of prisons<sup>263</sup>, was enacted to facilitate the treatment of inmates with respect their human rights and helping them to be responsible and productive in their future life. It incorporates principles in relation to their imprisonment. Like rehabilitation programs to take into account human dignity and constitutional guarantees.<sup>264</sup> Also execution of sentence is expected to help the rehabilitation and post-release reintegration in the community. It encourages inmates to be separately placed in a way which facilitate their socialization and rehabilitation.<sup>265</sup> Art. 30 recognizes the rights of inmates to get academic and different vocational trainings. Accordingly, the regional prison administration commission can petition pardon in favor of inmates in their effective rehabilitation in prison and fulfillments of other legal requirements. Similarly at federal level, the regulation on the treatment of federal prisoners<sup>266</sup> provides academic education, different vocational trainings, rehabilitation and recreational activities for the inmates in their stay in prison. In addition to that art. 25 of the regulation deals with the provision of professional counseling to bring behavioral change among inmates to become law abiding and productive

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<sup>260</sup> Directive No.6/2016, art.4(2)

<sup>261</sup> Ibid, art.6

<sup>262</sup> Ibid

<sup>263</sup> SNNPR Regulation No.45/2005 on the manner of treatment of inmates of prisons (n 33)

<sup>264</sup> Ibid, art.4

<sup>265</sup> Ibid, art. 6(3)

<sup>266</sup> FDRE Proclamation No.138/2007 (n 36)

after their release. Also federal prisons administration can request for pardon on grounds of incurable diseases, old age or behavioral changes.<sup>267</sup>

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<sup>267</sup> Ibid, art.48

## **CHAPTER FOUR**

### **4. LEGAL AND PRACTICAL CHALLENGES ON THE ADMINISTRATION OF PARDON IN HAWASSA CITY**

#### **4.1 INTRODUCTION**

As stated under previous chapter, the assessment of administration of pardon in Hawassa city is carried out from laws, principles and standards developed from federal laws, international laws and standards and also experiences of foreign country. This chapter assessed the administration of pardon by interviews conducted from informants with their direct and indirect linkage with pardon. Therefore, the third and fourth research objectives and questions are addressed under this chapter. It similarly assess the level of collaborative work and their efficiency in achieving objectives of pardon, whether there are any practical and institutional challenges that informants witnessed and experienced in their work. Also whether grantees on the expiry of conditions attached on them reinstate in court are the major issues discussed under this chapter.

Therefore, findings gathered from informants were analyzed and presented in two parts. The first part focused on the major legal and practical challenges on the effective administration of pardon in Hawassa city. The second part tried to assess administration of pardon in Hawassa city in line with principles assisting the rehabilitation and reintegration process of grantees into the community.

#### **4.2 LEGAL AND PRACTICAL CHALLENGES ON THE ADMINISTRATION OF PARDON IN HAWASSA CITY**

This part discussed the findings related to legal and practical challenges in the administration of pardon in Hawassa city. For example, lack of strong implementing institutions, lack of clear procedures for application of pardon and facilitation of legal aid, its interpretations and executions are surrounded by difficulties and inconsistent application. In this regard, findings are supported with analysis of regional proclamations, regulations and directives related with administration of and execution of pardon and also treatment of inmates. Additionally, information acquired from different informants was used to assess the legal and practical challenges related with administration and execution, interpretation and lack of clear procedures for application of pardon are discussed herein below.

A. As per Proc. No. 157/2015, eligible inmates are selected by criteria's of regional pardon board. And it made the board under duty to provide reasons and counseling services for inmates whose petition is not accepted. In this regard, the researcher interviewed the heads of regional pardon board and Hawassa city prison center. Both respondents told that less attention has been given for reasons of denial of pardon. Mr. Biruk Tesfaye, head of regional pardon board stated that they only sent the lists whose petition is accepted with certificate. Also as per head of the board, there is no trend in expressing the reasons for denial of petition and stated that counseling service as a duty of the prison center. He raised the issue of budget on the part of pardon board as a constraint to counsel inmates. On this issue, the head of prison center Commander Kibret Toga told the researcher that the prison center screen out the eligible candidates for pardon board, but the certificate of some inmates do not come back to prison. Here, the pardon board do not gave justifications for denial of petition and there is no procedure for inmates to complain against the board's decision. Similarly, on the part of prison center, there is no counseling service other than counseling and awareness creation programs held by staffs of prison.

Ensuring inmates to get access to legal counsel is key to enable them to enjoy right to legal assistance during complaint procedures, appeals and applications for pardon.<sup>268</sup> Also it enables them to apply for early conditional release in a timely and legally informed manner. Complaints to judicial or other competent organs on matters affecting individual rights, provision of redress, prohibition of physical and mental injury, human dignity, right to privacy are among internationally recognized human rights applicable for inmates in general and grantees in particular. United Nations principles and guidelines on access to legal aid in criminal justice systems under guideline 6 provide legal aid at the post-trial stage. It includes: - informing all inmates on admission about their right to legal assistance during their imprisonment, provision of facilities for their contact with lawyers and legal aid providers. Also the awareness of public about the administration and execution of pardon has two general aims. Primarily to increase their participation in the reintegration of grantees and secondly to increase their confidence in the general administration of criminal justice system.

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<sup>268</sup> United Nations Office on Drugs and Crime in cooperation with the International Committee of the Red Cross, *Hand book on strategies to reduce overcrowding in prisons. Criminal justice hand book series* (UNODC, New York, 2013) Page 83

When we see the case of Hawassa city from this point of view, the level of dissemination of law among the society in general is found in minimal level. The same is true in case of making awareness among inmates in relation to pardon laws and other rights and duties in their stay in prison. In this regard the respondents from regional pardon board, city prison center, city prosecution department and also inmates have identified their concerns in relation to the level of awareness among inmates and society on pardon laws. They told that less attention has given to awareness creation programs with regard to rules and procedures of application of pardon, the effects of violation of conditions of pardon, access to legal counsel and aid to enable them to prepare their application or petition. Most of the respondent inmates in the prison center told the researcher that there is no comprehensive awareness creation education on how to petition for parole, pardon and other legal issues they face in prison center. From ten randomly selected inmates based on the type of crime they convicted, seven of them come from rural areas and have no knowledge except waiting for serving the whole sentence. In this issue, among the inmates the one<sup>269</sup> states that he is waiting the prison center if his time for parole or pardon is reached. He has no earlier information about the documents and the conditions what is expected from him.

In a similar way, the city prison center pardon investigative committee head Mr. Demissie Debeko<sup>270</sup> stated that the prison center has eleven committees to facilitate service delivery, rehabilitation process for inmates and to create awareness on rights and obligations of both inmates and prison center. Also head of the committee stated that there is only one lawyer in the prison and creates awareness once in a month generally for all inmates. But, there is no separate awareness creation program for eligible candidates of pardon. Also there is no awareness creation for inmates from earlier time about the process, conditions and effects of pardon. He recommends that the public prosecutor has a legal obligation to create awareness for the general public and inmates about the rights and obligation they have. The regional and city prosecutors come randomly once on a six month and create awareness, however, it is not efficient and all inclusive.

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<sup>269</sup> Interview with Mr. Teshale Ayele, prisoner, Hawassa prison center (Hawassa, 04/07/2019)

<sup>270</sup> Interview with Mr. Demisse Debeko, head, pardon investigative committee, Hawassa city prison center (Hawassa 02/07/2019)

On this issue, the researcher argued that non-provision of reasons for denial of petition of pardon is one way to show ineffectiveness in administration of pardon and unfairness of decision-making process. Non-availability of counseling service and lack of budget is due to internal inefficiency of the pardon board. In the absence of rational decision-making, budget and counseling services for those vulnerable groups do not attain the objectives of effective administration of criminal justice system in general and pardon particularly. Also the respondent's feedback shows that there is no strong collaborative work between pardon board and prison center rather than report exchanges. It is expected that the active involvement of pardon board, prison center and prosecution office are vital to create awareness on rights of inmates, build psychological makeup of inmates in general and whose petitions are rejected.

B. With regard to disciplinary measures, the regional regulation No. 141/2015 provides that an inmate who is charged with grave disciplinary measures cannot be eligible for pardon. However, there is discrepancy and misunderstanding in relation to execution of pardon. When we see the case of Hawassa city from this point of view, regional pardon board, city pardon claim and investigative committee and city prison center pardon investigative committee were interviewed on what the practice looks like. In this regard, the head of city pardon claim and investigative committee stated that:

The regulation lists simple and grave disciplinary measures or faults clearly. But, the practical application of disciplinary measures in relation to pardon results in discrepancy and inconsistent application. The primary reason for this discrepancy results from the legal knowledge gap among prison center's pardon investigative committee and pardon claim and investigative committee. Most members of both committees are politicians and police. Only two or three members are lawyers. The second reason is randomly considering inmates as recidivist for both simple and grave disciplinary measures. Even if an inmate scores good results in rehabilitation process, the disciplinary measure can be a bar for grant of pardon. Generally, this hinders the general objectives of criminal law.<sup>271</sup>

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<sup>271</sup> Interview with Mr. Abezu Asfaw, head, Hawassa city general attorney department and Hawassa city pardon claim and investigative committee (Hawassa, 12/07/2019)

The rest respondents in a similar way respond that there is an awareness gap among the members of both committees. On this issue, all of the respondents argued that prison center's pardon investigative committee has huge responsibility in selecting eligible candidates of pardon. Because the committee found in the prison center and know the daily activities of the inmates directly. However, the pardon claim and investigative committee composed from different sectors and has only investigative role. Also argue that the wrong interpretation of the directives results in arbitrary decision-making.

C. Procedure of granting pardon regulation No. 141/2015 under art. 3 (4) provides opportunities for offenders to get pardon before serving the sentence. This regulation clearly states situations to grant pardon when aimed in maintaining peace and rule of law, except crimes stated under art. 28 of FDRE constitution. However, the directives enacted to execute this regulation are silent and do not provide criteria's and conditions. It opens a door for political manipulation and infringes fair and transparent decision-making process. It also opens a door for corruption, motivated the victims for revenge and negatively affect rule of law.

E. Ensuring the process of administration and execution of pardon to be consistent throughout the country is important to attain the objectives of pardon. It also enables the administration of pardon to play its great contribution in creating responsible and law abiding citizens. The sum total of participating victims and public in decision making process, creating awareness among the society to reintegrate grantees ensures the administration of criminal justice system to be effective. In this regard the researcher interviewed Mr. Biruk Tesfaye head of regional pardon board with regard to whether there are constant trends in the administration of pardon in the country. He stated that:

Even if regional proclamations related to grant of pardon is similar with that of federal counterpart, at federal level, there is no regulation with regard to procedure of granting pardon. So, each regional state has their respective regulations on making crimes eligible and non-eligible for pardon and also provides different criteria's. For example, crime of contraband is eligible for pardon in Oromia; however, it is not eligible for pardon in SNNPR. Also in states like Amhara and Oromia, pardon can

be granted four times in a year. But, in SNNPR it can be granted only twice a year.<sup>272</sup>

In addition to these, grantees may face plenty of challenges of social, economic and practical on their integration into the society. Lack of strong link among grantees, victims and the larger community and also lack of awareness on the part of grantees to accept their wrongdoing and to provide appropriate compensation for the victim negatively affects the proper application of laws. Here are some practical challenges raised by the respondents from regional prison administration commission, city prison center, prosecutors, judges and lawyers in relation to grant of pardon. They are:-

- Lack of proper rehabilitation programs, improper reintegration in addition to economic conditions of the inmate's leads to unemployment, stigma and different addictions. The sum totals of these challenges reduce their chance of successful outcomes in the society and lead them to develop criminal behavior. For example: - there is no skill development programs to access finance and to facilitate their engagement in economically useful activities, because supporting grantees is all about supporting the whole sector of the society.
- Release of inmates without totally serving sentences may create loss of confidence among the society on rule of law and trust on judiciary. It results from lack of awareness on pardon law among the society. It finally results in lack of trust and support to grantees from the society.
- Lack of awareness among inmates in objectives and effect of pardon laws open a door to released inmates to use their release as a means to revenge the victims/their relatives or the reverse become true.
- Asking huge amount of money for payment of compensation. Poor inmates do not afford to pay and forced not to be eligible for pardon.
- Reconciliation as a precondition to get pardon is surrounded by many problems and makes the process challenging. E.g. the reconciliation process mostly conducted through traditional and religious ways and takes a time, victims or their relatives may not be available in their residence area and finding them become other problems, distance

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<sup>272</sup> Interview with Mr. Biruk Tesfaye, head, regional pardon board, SNNPR general attorney (Hawassa, (10/07/2019)

between residence of victims and place of prison. Making reconciliation process in woreda security department do not feasible for all grantees. Also grantees may have no relatives and not able to pay the fixed amount of birr for reconciliation purpose.

- Ethiopian laws and government gives priority for reducing prison overcrowdings and focuses on the type of offences and reconciliation rather than rehabilitating and correcting inmates as per the law. For example: the place given for inmates convicted for grave crimes under regional proclamation and regulation is low. Regional pardon laws seems it gave priority for minor crimes rather than being reformative and law abiding on the part of inmates. However, international instruments like ICCPR guarantees protection of the rights of those facing the death penalty and ensures right to apply for pardon or commutation of the sentence.
- There is no constant trend on the part of courts in pronouncing its judgment with regard to calculating the date for pardon. Sometimes, courts decide the date for sentence from the date the offender caught by police. In another way, it decide the date for sentence to be started beginning from the date of pronouncement of conviction.
- Lack of qualified professionals from different professions on pardon and prison center.
- The weak arrangement of administration and execution of pardon up to lower level makes the process under corruption and leave a room for abuses. For example, inmates or their families are requested to pay bribes for recommending them to be eligible for pardon and to get efficient grade in rehabilitation programs. Also refusing to give or write evidences and cooperation letter.
- False or fraudulent evidences produced to be eligible for pardon has great impact in impairing rule of law, fairness and equality principles. E.g. evidences related to reconciliation and payment of compensation, in case of transfer of prison center.
- Lack of modern database system to file the document of each inmate in evaluating their proper rehabilitation and lack of professionals in order to handle and arrange file of each inmate in electronic file management or record keeping system.
- Lack of modern and systematic exchange of data among stakeholders in granting and executing pardon.
- Prison overcrowdings are among the major practical challenges.

#### **4.3 ASSESSMENT OF ADMINISTRATION OF PARDON IN HAWASSA CITY IN LINE WITH PRINCIPLES ASSISTING REINTEGRATION OF GRANTEES**

There are different factors determining the quality and effectiveness in the administration of pardon. This part discusses the findings relating to administration of pardon in Hawassa city and its place from internationally recognized principles of reintegration and criminal law. In this regard findings are supported with information acquired from regional pardon board, regional prison administration commission and Hawassa city prison center, city prosecution office, judges, defense lawyers and inmates. Accordingly, fair and rational decision-making process, collaborative works of stakeholders, victim and public participation, rehabilitation and reintegration process and the level of awareness among inmates are major components in the administration of pardon as well as criminal justice and discussed herein below.

##### **4.3.1 Fairness and transparency in decision-making process**

Generally, transparency in decision-making process and public participation can improve the quality of grant of pardon and prevent arbitrary decision-making. In order to give an open and reasoned decision-making in execution of pardon, the pardon board or pardon workers should be experts in different disciplines, like experts in law, medicine, psychology, community relations, social worker rather than political appointees.<sup>273</sup> For example Kenyan constitution requires a correction expert, a medical practitioner to evaluate the inmate's treatment and mental health.<sup>274</sup> Secretiveness and unaccountability of pardon officials has great effect in the fairness of pardon results.<sup>275</sup>

When we see the case of Hawassa city from this point of view, starting from the stage of selecting eligible candidates of pardon to decision-making stage, there are different factors that hinder consistent and fair decision-making process. Inconsistent decisions may result from the legal and professional gap among pardon workers, maladministration and corruption practices.

##### **4.3.2 Victim and public participation**

Securing victim's and public participation in criminal justice system in general and decision making process in particular is a major factor in improving the relation among offender, victim

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<sup>273</sup> Novak (n 6) 823

<sup>274</sup> Kenyan constitution (n 156), art.133 (2)

<sup>275</sup> B.C. Naude, 'The pardoning power as a duty of justice' (2002) South African J CJ 160

and community.<sup>276</sup> Participation of victims, offenders and the public in decision making of pardon has a great contribution in dispute resolution and healing the disagreement.<sup>277</sup> Under the 2010 Kenyan constitution, the advisory committee on the power of mercy takes into account the views of the victims.<sup>278</sup> Efficient administration of pardon also benefits the communities and families of the inmates and thereby promotes restorative justice goals.<sup>279</sup> It breaks revenge, promote communities harmony and encourage resolution of future problems.<sup>280</sup> Reporting and publication of decision helps to improve transparency in administration of pardon, especially by preventing secret pardon.<sup>281</sup> Also constitutions of Canada, Zimbabwe requires that all grant of pardon and denials must be published in the official government Gazette and require that the executive organs to provide reasons for it.

Even if, the Ethiopian laws recognize the participation of public and victims, practically victims do not play a great role in the administration and execution of pardon. The participation of victim and communities do not necessarily play a formal role and may not be able to submit their views. When we see the case of Hawassa city from this point of view, there is a same situation. In this regard, the findings are supported with information gathered from respondents from regional pardon board, city pardon claim and investigative committee. Regarding victim's participation in decision-making process of pardon, the respondent from regional pardon board expressed his view as follow as:

Even if, art. 20 (7) of Proc. No. 157/2015 orders the opinion of victim or his/her families to be taken into account before making decision on pardon, practically, there is no participation of victims. The justifications are: - the non-availability of victims or their relatives on the area and there is no practice or trend to make them to be part of a decision making process.<sup>282</sup>

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<sup>276</sup> Tokyo Rules (n 10), rule 17

<sup>277</sup> Cathleen Burnett, 'Restorative justice and wrongful capital convictions' (2005) JCCJ 281

<sup>278</sup> Kenyan constitution (n 156), art.133 (4)

<sup>279</sup> Carol S. Steiker, *Tempering or Tampering? Mercy and the Administration of Justice, in forgiveness, mercy, and clemency* (Austin Sarat & Nasser Hussein edn, 2007) 29

<sup>280</sup> Ibid, 30

<sup>281</sup> Zimbabwe constitution, art. 47(4)

<sup>282</sup> Interview with Mr. Mulugeta Halo, public prosecutor, regional pardon board, SNNPR general attorney (Hawassa 11/07/2019)

### 4.3.3 Rehabilitation of inmates in prison

The fundamental aims of the Tokyo Rules are promoting greater community participation in the management of criminal justice and creating a sense of responsibility of inmates towards the society.<sup>283</sup> Rehabilitation is all about changing the attitudes of inmates and incapacitating them not to participate in criminal activities after their release. The rehabilitation process should be based on the clear standards and criteria's.<sup>284</sup> These criteria's includes the nature and gravity of the offence, personality of each offender, background of the offender, the purpose of punishment and the rights of the victims. Rehabilitation programs include skills training, educational, vocational or treatment programs in prison centers that aim to target the specific needs of offenders.<sup>285</sup> Generally, pre-release preparation and programs of rehabilitation are the most essential components to the successful reintegration of grantees into the community.

The availability of professionals with efficient knowledge and training with capacity to understand the individual inmate's mental needs and interests are important components in relation to rehabilitation. Regional regulation on the manner of treatment of inmates of prisons, regulation No. 45/2005 aimed in rehabilitating inmates with respect to their human rights and enabling them to be responsible and law-abiding. In order to make grant of pardon in line with efficient rehabilitating programs in prison centers contributes a lot for inmates to be skilled, law-abiding and to make smooth their reintegration into the society. In this regard, it is better to assess the efficiency of rehabilitation programs in prison.

When we see the case of Hawassa city from this point of view, the commissioner of regional prison administration commissioner and city's prison center were interviewed. In this regard, in Hawassa city small amount of budget allocated in prison workshops, skills training, educational facilities, sports and recreation. However, the budget for prison security and administration is too large. Also there is no co-ordination between pre-release programs and the services provided in the community. In this regard, Hawassa city prison center head Commander Kibret Toga<sup>286</sup> stated that there is no budget to facilitate the reintegration process of inmates into the community generally. Commander Kibret also states that the prison center is only responsible

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<sup>283</sup> Tokyo Rules (n 10) rule 1

<sup>284</sup> Ibid, rule 3.2

<sup>285</sup> Dennis Stevens, *Community corrections: An applied approach* (Upper Saddle River, New Jersey: Prentice Hall, 2006) 293

<sup>286</sup> Interview with Commander Kibret Toga, head, Hawassa city prison center (Hawassa, 02/07/2019)

for rehabilitate the inmates and there is no legal obligation to reintegrate them into the community. He recommends that in order to tackle different social, economic and psychological problems of inmates and to make them law-abiding citizens, the government should arrange institutions to facilitate their reintegration.<sup>287</sup>

In similar way, Commissioner Adane Dingamo, the regional prison administration commission commissioner has mentioned major challenges in relation with rehabilitation of inmates:

A lot number of inmates rehabilitated jointly without individual's physical, mental needs and interests. There is no comfortable training place and sufficient materials, lack of counseling services to be delivered by psychologists. The other problems that worsen the rehabilitation of inmates are: - lack of sufficient budgets, migration of professionals for insufficiency of salary, lack of professionals trained in different fields and overcrowdings of prison. Also lack of trainers in wood work, agriculture, electricity and water line. The delivery of academic education is also limited to grade 10.<sup>288</sup>

#### **4.3.4. Reintegration of grantees into the community**

Successful reintegration of inmates results in creating job opportunities, restoring family relationship, and guiding an inmate towards an independent, crime-free lifestyle.<sup>289</sup> Making available supervising and supportive services is one mechanism to facilitate reintegration of grantees into the community and avoids social stigmas among them. Educational, moral, spiritual and other form of assistances provided for inmates before and after sentence facilitates their reintegration into community. Offenders, especially those who have been incarcerated for long periods, often find it difficult to readjust life in the community.<sup>290</sup> Pardon provides a means through which an offender may make a smooth transition from prison life to living in a community with some degree of freedom under supervision.<sup>291</sup>

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<sup>287</sup> Hand book on strategies to reduce overcrowding in prisons (n 268) 39.

<sup>288</sup> Interview with Mr. Adane Dingamo, commissioner, SNNPR prison administration commission (Hawassa, 26/06/2019)

<sup>289</sup> Hand book on strategies to reduce overcrowding in prisons (n 268) 291.

<sup>290</sup> Zambian National Parole Board, *Annual Report*. (2013) 16

<sup>291</sup> Ibid, 26

In Ethiopia, for example, Tigray regional state started prison project in Mekelle.<sup>292</sup> It aims in creating sustainable livelihood opportunities for women and youth inmates through cooperatives and skill development and introducing in and after financial services. The rehabilitation and reintegration programs in Mekelle brought visible changes in the life of the inmates. Changes includes:- facilitating return of inmates to society with new skills, greater employability, better chance of integrating with the community and leading a peaceful and productive life, thus reducing crime and re-offending. In order to limit the social and economic hardships of inmates after their release, provision of skill training and opportunities to access finance and engage in economically useful activities.

As explained under chapter one, in Ethiopia due to the poor economy of the country most inmates got into criminal activities due to socio-economic problems. In this regard the respondents from regional pardon board, prison administration commission and city prison center have highlighted that there is no legal organ or experts to supervise and help grantees. As reports from Hawassa prison center, most offenders come from rural areas, illiterate and experienced unemployment. On their release unless sufficient support systems are in place, they forced to re-offending and alcohol abuses. Primarily, lack of legal framework for supervision and monitoring of grantees on the federal and SNNPR results the administration of pardon to be ineffective. In this regard, head of the regional pardon board stated that:

The existence of legal framework for inmates released on parole, pardon or conditional release is a primary tool to implement the administration of criminal justice system. Without support and follow-up mechanisms of grantees, the reintegration process cannot be effective. As per the respondent, the reasons include: lack of professional pardon workers made grantees to face social, economic, and personal challenges in their reintegration. Practically, lack of co-ordination on reintegration strategy among stakeholders results in high rate of recidivism and overcrowding in prisons. The respondent recommends that strengthen kebele's structure and security department in collaboration with public and other stakeholders in grantees residence is important to reintegrate them in lower cost. In order to

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<sup>292</sup> The Mekelle prison project, creating sustainable livelihood opportunities for women and youth, ILO country office for Ethiopia and Somalia (Addis Ababa, Ethiopia, 2013)

successfully reintegrate grantees, access to fair and supportive strategies, strategies to increase employment, crime prevention measures and support to vulnerable groups in the community are relevant elements.<sup>293</sup>

#### **4.3.5 Collaborative work of stakeholders in rehabilitating and reintegration of inmates**

The collaborative work of different governmental, NGOs, civil society organizations is important to promote rehabilitation and reintegration process of inmates into the society.<sup>294</sup> It also encourages different public mobilization programs in order to develop awareness of the public. The success of implementation of pardon laws and correction laws are mainly resulted from the implementation of government directives with stakeholders such as the bureaus of education, health, labor, universities, TVET and others. The collaboration and cooperation among stakeholders help to shape the criminal mentality of inmates and to be a responsible person after their release.

Similarly, the collaborative work of courts, prosecution office, prison administration commission and police with pardon board in executing court decisions, interpretation of laws, awareness creation and on investigating and correcting violations ensures the achievement of objectives of pardon law. However, making available rehabilitation opportunities in prison center alone is not enough to achieve objectives of pardon law. The behavioral changes the inmates acquired in their stay in prison do not result in making a person responsible and law-abiding after his/her release. Therefore, inmates released on non-custodial measures including pardon are vulnerable and need moral, financial supports, faced challenges related with social stigma and exclusion and job opportunities. These challenges become worse in countries like, Ethiopia. Legally in Ethiopia, there is a collaborative work among governmental, NGOs and civil society organization in rehabilitation programs. But practically, their participation is too limited. There is no organ to follow and support inmates released on parole and pardon. Also there is no collaborative work on integrating inmates into the community.

When we see the case of Hawassa city from this point of view, the city prison center pardon investigative committee head Mr. Demissie Debeke stated that pardon claim and investigative committee established on city level come to prison only to check the selected candidates for

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<sup>293</sup> Zambian National Parole Board (n 291)

<sup>294</sup> Tokyo Rules (n 10) rule 18

pardon and had no other role. The role of NGOs and other civil society organizations is limited in providing training and supplying some materials. When grantees left the prison center, no organ monitor and supervise their reintegration process. Especially poor grantees face social and economic hardships and forced to re-enter into criminal activity. He recommends that a great political will from the government is needed to tackle these problems. If mobilization programs conducted up to kebele level, the exclusion and stigmas grantees face in the community can be decreased. Making the public as part of reintegration process helps grantees to actively participate in communities affairs and become part to prevent future commission of crime. In addition to that provision of job opportunities, finance, work place, and counsel and trainings opportunities should be available based on the lessons and training the grantees gained in their stay in prison.

Similarly, the researcher witnessed that when the inmate prosecuted with grave charges and the court changes that charge into simple, the court officer negligently write warrant to prison on the former (grave) charge. Conviction in grave charge is one way to deny grant of pardon and leads for delay the process or made not to be eligible for pardon.

#### **4.3.6 Efficiency of institutional arrangements**

The existence of strong pardon executing organ is vital to protect the interest of general public, victim and the offender. The fulfillment of pardon board or office with adequate budget, qualified professionals in different fields and establishing strong lower arrangements to facilitate execution of pardon is vital to attain the objectives pardon law. In this regard, the internal and external arrangement of the pardon board, qualification of pardon officers with suitable training and practical experience matters the most. And it should be conducted based on nature and gravity of the offence, personality, background and intelligence of each offender. Also the circumstances of inmates leading to the commission of crime. The existence of qualified professionals from different professions is used to control and supervise whether grantees are fulfilling their legal obligations, to identify and evaluate inmate's behavior before and after their release. In addition to these, it helps to identify whether grantees are properly reintegrated into the society and are ready to lead in harmony with the society. Unless, it results in prison overcrowdings, social stigma and exclusion and finally to re-offending.

When we see the case of Hawassa city from this point of view, the researcher interviewed the regional pardon board head and he stated that:

The office comprises of internal and external arrangements to execute its daily activities. It composed of pardon claim and investigative committees established in each zone and zonal prison center pardon investigative committee established in each prison center. Staffs of the office of board are lawyers and the office filled with inadequate budget, human and resources. Also board members are high officials and most of the board members are busy on their respective official duties. Also the institutional arrangement of the prison center is not feasible for some disabled inmates. For example, there is no translator for deaf inmates. The prison center has only one lawyer on creating awareness for inmates, no psychology professional to council inmates and only one social worker. He argues that both the federal and regional pardon laws are silent over supervising and controlling inmates released on pardon. Art. 49 of Regulations No. 138/2007 provide only two obligations against prisons on releasing inmates on pardon. First, on the lack of money, provision of clothes and money to cover transportation and subsistence costs to travel to residence. Second, prison centers provide certificate of release. Arranging the institution under pardon board or prison center is essential to properly reintegrate inmates.<sup>295</sup>

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<sup>295</sup> Hand book on strategies to reduce overcrowding in prisons (n 268).

## CHAPTER FIVE

### 5. CONCLUSIONS AND RECCOMENDATIONS

#### 5.1 CONCLUSIONS

Economically advanced countries have modern administration of pardon; the reverse is true for poor countries. Achieving effective rehabilitation programs, social reintegration and preventing reoffending must be the main work of criminal justice system. International instruments emphasize the importance of reintegration of grantees as one mechanism to prevent recidivism and to protect the interest of the society. Administration of pardon is part and parcel of administration of criminal justice system. The effective administration of pardon results in efficiency in criminal justice too. This effectiveness can be measured by fairness and transparency in decision-making process, active victim and community participation, rehabilitation and reintegration mechanisms, collaborative works of stakeholders and the like.

There are various international instruments and standards set out different principles assisting grantees to be responsible and law-abiding citizens. E.g. ICCPR obliges states to consider the rehabilitative needs of inmates and empower any person sentenced to death to apply for pardon or commutation of the sentence. Standard minimum rules for the treatment of prisoners provide different rehabilitation programs for inmates in serving sentences. Basic principles for the treatment of prisoners recommends on the creation of different programs in facilitating grantees reintegration and provision of financial support to themselves and their families. The Tokyo Rules intends to ensure the greater community participation in the reintegration of inmates and obliges it to be conducted by the professionals specialized in different disciplines. Also minimizing re-offending rate by creating a sense of responsibility on their release.

These principles and minimum standards ensure the involvement of community in the criminal justice system, creating balance among the interests of victim, offenders and the society and the principle of non-discrimination. The combined role among governmental, NGOs, civil societies and community is vital to facilitate the rehabilitation and reintegration of inmates into the community. Its final goals are reducing recidivism, overcrowdings and administering and executing pardon in a manner of protecting the interest of victim, offender and the public.

Failure to successfully rehabilitate and reintegrate inmates in general and grantees in particular results in huge political, economic, social challenges to both the society and released inmates.

UN enacted different minimum standards, principles and rules regarding treatment of inmates. Based on these international rules and principles, various countries are taking measures to develop and institutionalize organs to facilitate reintegration process of released inmates in general and grantees of pardon specifically. Being member of UN and constitutional recognition of ratified instruments, Ethiopia is under duty to provide those rules, principles and standards in order to protect the rights, rehabilitation and reintegration needs of the inmates.

The modern administration of pardon in Ethiopia started in 1996 E.C. The FDRE constitution, FDRE criminal code, proclamations, regulations and directives related with treatment of inmates in general and administration and execution of pardon in particular incorporates different principles. Like; observance of human rights of inmates, more emphasis to the reform and reintegration of inmates into the community, participation of the community in the overall activities of criminal justice system, fairness and transparency in decision-making process.

Similarly, SNNPR enacts correctional laws and pardon laws in line with FDRE constitution and FDRE criminal law. The current SNNPR proclamation on the procedure of granting pardon is a verbatim copy of the corresponding provisions of the federal counterpart. However, the existence of international laws and standards alone do not bring the efficiency in the administration of pardon. Factors includes: - economic level of the country, backwardness of criminal justice system, political will of the government are the major. There are also legal and practical challenges in Hawassa city administration that hinders the proper administration of pardon. In this respect, pardon decision-making process, reform and reintegration of grantees, victim and public participation, involvement of stakeholders and efficiency of institutional arrangements are the major. Also there are other legal and practical challenges related to production of false or fraudulent evidences and corrupted service delivery.

This study has identified main findings on legal, institutional and practical challenges that hinder the efficient administration of pardon in the study area. In this study those findings are drawn from key informants through interviews, reviewing the existing international and domestic legal documents and lessons from foreign countries experience on which Ethiopia needs to learn a

lesson. Therefore, findings gathered from the informants are analyzed and presented in two parts. The first part highlighted on the major legal and practical challenges that hinder the effective administration of pardon in Hawassa city. Like, SNNPR pardon laws are silent and do not provide criteria's and conditions in situations of when grant of pardon aimed in maintaining peace and rule of law in the region. It infringes the principle of fairness and transparency. Also it motivated the victims for revenge and negatively affects rule of law. Also there is discrepancy and misunderstanding in relation to inmates who criminalized for disciplinary measures.

The second part tried to assess administration of pardon in Hawassa city in line with principles assisting the rehabilitation and reintegration process of grantees, victim and community participation and transparency in decision-making process and its place from internationally recognized principles of reintegration and criminal law. Here, factors that determine the quality and efficiency of pardon administration are identified.

In this regard, there are inconsistent decisions due to legal and professional gap among pardon committees, maladministration practices and corruption starting from selecting eligible grantees to decision-making process. Even if, the Ethiopian laws recognize the participation of public and victims, practically victims and public do not play a great role in the administration of pardon. Lack of sufficient budgets, migration of professionals for insufficiency of salary, insufficiency of professionals trained in different fields and overcrowdings of prison worsen the conditions. Also lack of professional pardon workers made grantees to face social, economic, and personal challenges in their reintegration. Practically, lack of co-ordination on reintegration strategy among stakeholder's results in high rate of recidivism and contributes to an increase in imprisonment rates and overcrowding in prisons.

Generally, the sum total of lack of proper rehabilitation and reintegration programs in addition to economic conditions of grantees reduce their chance of successful outcomes in the society. In other way, released inmates may use their release as a means to revenge the victims. Lack of proper participation of public in the administration of pardon results in lack of trust and support to released inmates. Production of fraudulent evidences and corruption impairs rule of law and decrease societies' confidence in the administration of criminal justice system. Totally, improper reintegration results in developing criminal behavior on grantees and leads the administration of pardon not to attain its objectives.

## 5.2 RECCOMENDATIONS

Based on the findings and conclusions made above, the researcher recommends the following:

1. Regional pardon board should be administered by professionals from different disciplines like criminology, law, social work, gender, disability, psychology and counseling. And it should work jointly with stakeholders before and after release of grantees. Also it should ensure participation of victim and public in order to improve relation among the victim, public and grantees.
2. Hawassa city prison center with collaboration of governmental and non-governmental organs should provide adequate rehabilitation programs in prison center with professionals is pre-requisite for inmates to be eligible for pardon. Such qualified professionals should be with knowledge and training to understand the background, personal needs and interests of inmates.
3. In order to effectively facilitate the reintegration of grantees into the community, the regional general attorney bureau should establish follow up and supervising organs. Which are intended to overcome legal, economic and social stigmas related with grantees prior criminal record. Grantees need close supervision. Because, societal exclusions lead them to develop a sense of loneness, depression, and become dependent of substances and finally develop criminal behavior.
4. Regional pardon laws should be clear, unless it creates opportunities to political interference, corruption and uncertain decisions.
5. The pardon board's decision-making process must be more open, transparent and rational. It should also ensure accountability on decision-makers. When the board refuses to grant or to revoke a pardon, it should be notified to the applicant and there should be a review process if the decision is arbitrary or violates due process guarantees.
6. Making awareness for inmates in relation to correction and pardon laws is their human rights. Collaborative works of pardon board, prison officers and general attorney should be responsible for assisting inmates in the preparation of petitions, complaints, appeal or review and providing general information about pardon and its effects.

7. Awareness creation programs must be provided for judges, prosecutors and prison officers on the objectives of criminal justice system in general and interpretation of pardon laws particularly.
8. Pardon board or office should be arranged with adequate budget and qualified professionals in order to administer and execute its duties.
9. Regional prison administration should allocate adequate budget for rehabilitation programs in prison and securing tenure security for professionals work in different occupation in prison.
10. Generally, the effective administration of pardon needs a great political commitment of government to strength the collaboration work of governmental, NGOs, civil societies and members of the public to participate from rehabilitation stage to reintegration of grantees into the society.

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4. Interview with Commander Kibret, head of Hawassa city prison center, Hawassa, 02/07/2019.
5. Interview with Mr. Demisse Debeko, head of Hawassa city prison center pardon investigative committee, Hawassa, 02/07/2019.
6. Interview with Mr. Matte Magane, president of Hawassa city high court, Hawassa, 21/07/2019.
7. Interview with Mr. Mulugeta Halo, public prosecutor in regional pardon board, Hawassa 11/07/2019.
8. Interview with Mr. Teshale Ayele, inmates in Hawassa prison center, Hawassa, 04/07/2019.

## **APPENDICES**

### **INTRVIEW GUIDELINES**

#### **A. General interview questions for SNNPR General Attorney Pardon board head and expert**

1. Do you think that the current administration and arrangements of pardon in Ethiopia and SNNPR is effective in achieving objectives of pardon?
2. Is there any follow up and control mechanisms of grantees on their reintegration into the community? If not, what is the effect of lack of organ to follow up and supervise the reintegration of grantees?
3. What is the level of participation of stakeholders in order to make execution of pardon to be effective as the objectives of law, in ensuring with equal application of laws to all eligible inmates?
4. What are the legal, practical and institutional challenges you have witnessed and experienced in your work related with administration and execution of pardon?
5. What do you suggest in order to fairly and non-discriminatorily administer and execute pardon and also to effectively reintegrate grantees as per the objectives of laws?

#### **B. General interview questions for regional prison administration commission, Hawassa city prison center officials and experts**

1. Do you think that the current correction and rehabilitation laws and programs in SNNPR are effective to achieve objectives of pardon?

2. Does the arrangement of the prison center ensure the needs of inmates and in line with attaining reintegration process after his/her release?
2. Is there any modern database system to document the file of each inmates in evaluate their proper rehabilitation? And is there any systematic exchange of data among stakeholders?
3. What is the level of awareness creation for inmates in their stay in prison about pardon executing laws, preconditions and pardon application?
4. Do members of pardon investigative committees are professionals from different disciplines and competent to treat inmates as per their individual circumstances?
5. Is there any controlling and evaluation mechanisms on documents brought by inmates with regard to bring fairness in the process, equal application of pardon laws among inmates?
6. From your work experiences, what are the legal, practical and institutional challenges related with rehabilitation and reintegration of inmates? What you recommend as a solution for the problems?

**C. General interview questions for Hawassa City General Attorney department head, public prosecutors, judges and lawyers.**

1. What is the role and level of participation of city General Attorney department as stakeholder in selecting eligible inmates to pardon? .... For prosecution office
2. Do you think that the current correction and reintegration process in SNNPR are properly achieving the aims and objectives of criminal law and punishment? ..... For all
3. What is the level of awareness creation for inmates in their stay in prison about pardon executing laws, preconditions and pardon application? ..... For prosecution office
4. Do grantees on the expiry of conditions attached on them reinstate in court? What the practice of reinstatement looks like? What is the level of awareness among inmates, community and lawyers? ..... For all
5. From your work experiences, what are the legal, practical and institutional challenges related with rehabilitation and reintegration of inmates? What you recommend as a solution for the problems? ..... For all
6. Is there any database or separate file documentation mechanisms for recidivists in criminal cases? If no, what is its effect? .... For prosecution and judges