

# COUNTRY - SPECIFIC ARTICLES

## The Abuse of Pardon Law in Ethiopia: The Case of Birtukan Midekssa

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On December 29, 2008, the re-arrest of a vibrant Ethiopian opposition leader, Birtukan Midekssa, set off a debate about Ethiopian pardon law. Her arrest and imprisonment also caused U.S. congressmen<sup>1</sup> and senators,<sup>2</sup> and their Canadian and European counterparts, to condemn the actions of the ruling Ethiopian Peoples Revolutionary Democratic Forces (“EPRDF”).

Even though Ethiopia is among the ten poorest countries in the world, it has had a rich history of peacefully solving its own political and legal problems. Kings applied force as a last resort against their opponents, rebel leaders or separatist regional chiefs.<sup>3</sup> Moreover, on the world stage, Ethiopia was a charter member of the League of Nations in 1923 and one of the original members of the United Nations. However, starting in 1974, things began to change radically. In that year, a Soviet-backed military junta deposed Emperor Haile Selassie I, a leader of world renown, and extra-judicially killed government ministers, some members of the nobility, and church leaders, while establishing a one-party communist state. Under this new regime, led by Mengistu Hail Mariam, the government persecuted its own people in a campaign called the “red terror,” killing hundreds of thousands of political opponents.<sup>4</sup>

In May 1991, after the dissolution of the Soviet Union led to the end of its foreign aid to Ethiopia, the rebel group EPRDF overthrew the junta, and EPRDF’s chairman, Meles Zenawi, presided over a transitional government until May 1995, when he was elected Prime Minister in Ethiopia’s first free and democratic election. In May 2005, another multiparty election was held in Ethiopia, and although opposition parties gained many more parliament seats (200 seats, compared to only twelve in the 2000 election), Zenawa and the EPRDF retained their hold on power. After the election, however, members of the main opposition group, the Coalition for Democracy and Unity (“CUD”), refused to take their 109 seats as an act of protest because they believed that EPRDF had stolen the

election. The EPRDF then arrested CUD leaders, political activists, human rights defenders, and journalists, and charged them with genocide, insurrection, and inciting violence. After some of their pre-trial motions and bail requests were denied, the thirty-eight political prisoners declared that they would not present defenses to the charges.

With the situation at an impasse, a traditional council of Ethiopian elders, with the support of U.S. and European ambassadors, offered to mediate a reconciliation between the CUD leaders and the government.<sup>5</sup> Even though it took several months, the mediation resulted in agreement. According to CUD leaders, it was agreed that the government would release them and drop the charges in exchange for the prisoners signing documents of apology. Nevertheless, after this agreement was reached and while the mediation was still pending, instead of withdrawing the charges, the prosecutor’s office participated in a “trial,” where clearly false testimony and evidence were submitted to the court; the defendants were convicted of all charges except genocide, and some of them were sentenced to life in prison.<sup>6</sup> CUD leaders did not appeal the decision, since the council of elders had already negotiated their release. A few days after they were sentenced to life in prison, CUD leaders were granted “full pardons” by Ethiopian President Girma Woldegiorgis<sup>7</sup> and were released in July 2007. According to the pardoning document, CUD leaders were released from prison under the conditions that they would respect the Constitution of Ethiopia, refrain from participating in the activities that they were convicted of, and that they would recognize and respect the branches of the government.<sup>8</sup> However, according to the document, if they violated those conditions, they could be rearrested and serve the sentences previously imposed by the court.

Recently, on December 29, 2008, the government rearrested Birtukan Midekssa,<sup>9</sup> who was first deputy president of CUD,<sup>10</sup> revoked her pardon, and returned her to prison to serve out her sentence. According to the government media,

the only charge against Ms. Mideksa was that, during a political meeting held in Sweden, she stated that she had not requested a pardon in 2007<sup>11</sup> and that she and her fellow CUD leaders had been released after a political negotiation.<sup>12</sup> According to news reports, after Midekssa returned from Sweden, the Ethiopian Police Commissioner sent two police officers to her home on December 10, 2008, and orally summoned her to his office to discuss the pardon. Then on December 24, 2008, she received an oral as well as a written summons to appear at the Commissioner's office. When she appeared, she was ordered by the Commissioner to retract the statement she made in Sweden.<sup>13</sup> Mrs. Midekssa did not retract her statement.

According to Article 71(7) of the Ethiopian Constitution ("Constitution"), the President has the power to grant a pardon. However, the Constitution is silent about revocation of pardons. Proclamation 395/2004, which was passed by the parliament in 2004 and signed by the sitting President, governs the pardon procedure. This Act sets up a Board of Pardon chaired by the Minister of Justice<sup>14</sup> and accountable to the President.<sup>15</sup> The Board's duties include recommending pardons, as well as examining cases and submitting recommendations of revocation when "persons granted conditional pardon by the President have allegedly failed to meet such condition or have violated it."<sup>16</sup> Article 10 of the Act provides that the President may: 1) "grant or deny pardons based on the recommendations of the Board or on his own appreciation of the facts" and 2) "revoke pardons based on Board recommendations regarding persons who failed to meet or violated conditions of pardons." This means that the president is bound by the recommendation of the Board to revoke a pardon. In violation of the Constitution, the Act usurps the President's independent authority with regarding to revoking a pardon. Article 3 provides that the Board is accountable to the President. On the other hand, Article 10 seems to suggest that the President is accountable to the Board.

Moreover, certain legal procedures in the Pardon Act ("Act") govern the revocation of pardons. According to Article 17, the grantee should be given a written notice about the intent of the Board to recommend revocation and be given the opportunity to respond within twenty days.<sup>17</sup> There is no evidence in this case that the government followed the Act. There is no evidence of a proper meeting of the Board or of a majority vote on a recommendation for revocation.<sup>18</sup> Oral and written summons of the police commissioner do not satisfy the requirement of the Act. The substantive conditions for revocation of a pardon also do not appear to have been satisfied. According to the Act, pardon may either be revoked if it was granted because of deceit or fraud or if the condition for granting it has not been met.<sup>19</sup> The only apparent "offence" of Birtukan Midekssa is her statement made in Sweden in which she stated that her release was the result of political negotiation.

The arrest of Ms. Midekssa and the "revocation" of the

pardon are in violation of Ethiopian law. Ms. Midekssa was denied due process of law because she did not receive a written notice of the Board's intent to revoke her pardon, not given a twenty-day opportunity to respond to the government's allegation, and not given a fair trial to determine whether her act violated the condition of her pardon.<sup>20</sup> Moreover, the Proclamation 395/2004 of the Pardon Act violates the Ethiopian Constitution, because it does not provide fully for due process of law and it usurps the constitutional right of the President to grant, and by extension, revoke pardons.

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1 United States House of Representatives, Press Release, *Payne Calls for the Immediate Release of Ethiopian Political Prisoners*, available at [http://www.abugidainfo.com/wp-content/uploads/2009/01/donald\\_payne\\_010909.pdf](http://www.abugidainfo.com/wp-content/uploads/2009/01/donald_payne_010909.pdf), last visited July 16, 2009.

2 United States Senate, Letter to the Prime Minister of Ethiopia, Jan. 16, 2008, available at <http://ethioforum.org/wp/pdf/ethiopiaSenate.pdf>, last visited June 29, 2009.

3 Messay Kebede, *Survival and Modernization, Ethiopia's Enigmatic Present: A Philosophical Discourse*, pp. 96-99, 155-159, 168-169 (Red Sea Press 1998).

4 In 2006, Mengistu was found guilty of genocide in absentia and was sentenced to death by Ethiopia's Supreme Court in 2008. He currently resides in Zimbabwe, where he was granted asylum in 1991.

5 The use of the traditional reconciliation process ("shimgilina" in Amharic) was applauded by many and brought hope that Ethiopia was returning to its roots. It was a process, however, that took place totally outside the established legal framework of Ethiopian's pardon law.

6 According to Birtukan Mideksa, the EPRDF government asked for a modification of the agreement and delayed the process until after the verdict and sentence were announced. See [www.ethiomeia.com/aurora/9508.html](http://www.ethiomeia.com/aurora/9508.html).

7 President of Ethiopia since October 8, 2001.

8 Setting conditions was inconsistent with the fact that the prisoners were granted "full pardons" and not conditional pardons.

9 Mrs. Mideksa, is a graduate of Addis Ababa University Faculty of Law. She also served briefly as a judge.

10 Currently Midekssa is the chairwoman of Unity for Democracy and Justice, a new opposition party.

11 This was a simple matter of fact: her pardon was not a result of the codified pardon process, which requires either an application for a pardon by a petitioner, a family member, or a lawyer or an application by the Ministry of Justice and the Federal prison commission. Proclamation No.395/2004, Article 12. Instead, the pardon law was bypassed by the

traditional reconciliation process conducted by the Council of Elders.

12 Arbitrary Arrest, Fear for Safety, Jan. 27, 2009, available at <http://www.ethiomeia.com/aurora/9765.html>, last visited on July 22, 2009.

13 Birtukan Mideksa's letter, January, 2, 2009, available at <http://www.ethiomeia.com/aurora/9508.html>, last visited on July 25, 2009.

14 Ethiopian Const. Article 5(1).

15 *Id.* at Article 3.

16 Proclamation 395/2004 Article 4(3).

17 Ethiopian Const. Article 17.

18 *Id.* at Article 7.

19 *Id.* at Article 16.

20 *Id.* at Article 17.