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EXECUTIVE OFFICE OF THE PRESIDENT  
CHIEF OF STAFF AND HEAD OF PUBLIC SERVICE

# **THE POWER OF MERCY ADVISORY COMMITTEE (POMAC)**

ANNUAL REPORT & FINANCIAL STATEMENTS  
FINANCIAL YEAR 2022/2023







**POWER OF MERCY ADVISORY COMMITTEE**  
(POMAC)

**MOTTO**

Power and mercy at its best

**VISION**

“Excellence in rendering advice on the Power of Mercy”

**MISSION**

To receive and consider petitions by convicted criminal offenders, research and collaborate with other relevant organs and expeditiously render independent advice to the President on the exercise of Power of Mercy

**CORE VALUES**

Integrity  
Transparency  
Accountability  
Professionalism  
Social Justice  
Teamwork

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## CHAIRPERSON'S STATEMENT



I am delighted to present the Power of Mercy Advisory Committee's Annual Report and Financial Statements for the fiscal year 2022/2023 in accordance with Section 29 of the Power of Mercy Act, 2011. This is the Committee's eleventh Annual Report and the first publication since I joined the Committee as Chair in line with the provisions of Article 133 of the constitution. Further, it is the final report for the second committee whose mandate lapsed in May 2023.

Am pleased to report that the Third Committee has now been appointed and ready to continue to steer the envisioned reforms to conclusion. It is envisaged that once they are fully implemented they will herald a new dawn in the policy, legislative and regulatory environment for the administration of the power of Mercy in Kenya and give full effect to Article 133 of the constitution.

I note with pleasure that this report has been prepared against the backdrop of progressive reforms that have been instituted in POMAC arising from the recommendations of the just concluded Taskforce on the Laws related to the Article 133. The said reforms have now addressed most of the gaps, overlaps and inconsistencies that hitherto existed between Article 133 and the Legislation that were in place before its enactment. It is important to mention that once these reforms are fully implemented they shall not only cure the operational overlaps of respective mandates but they shall transform the Clemency landscape and result to better outcomes for Kenyans

The processing of petitions is the cornerstone of the petition Process. In particular, Article 133 of the Constitution provides that on the petition of any person, the President on advice by of the Committee may exercise the prerogative power of mercy by granting a free or conditional pardon; postponing the carrying out of a punishment for a specified or indefinite period; substituting a less severe form of punishment; or remitting all or part of a punishment.

As you are aware, majority of jurisdictions across the globe provide for the inclusion of power of mercy. Heads of State are granted the constitutional power to grant pardons in many jurisdictions for various reasons. These include to promote of the contemporary penal policy which is correction and reformation of criminal offenders by replacing retributive policies. The rationale is to encourage other prisoners to change their behavior. Clemency may also be granted for humanity reasons which include pregnancy, insanity, young age, elderly inmates or terminally ill inmates in order to save their lives.

Further, the Head of State may proffer official compassion in case of Breach of the law in circumstances that attract public sympathy. Clemency can also be advantageously applied to restore public tranquility in the event of insurrection and to handle the unexpected contingencies of politics and public administration. Finally, Clemency can also help to maintain or repair diplomatic relations or correct mistakes that may in the unlikely event occur in the course of administration of criminal justice.


The exercise of mercy is governed by various principles which include: it is concerned solely with the applicant's post-conviction reform journey; is not intended to circumvent other existing legislations; the mandate of the judiciary shall be respected; should be applied in exceptional circumstances only; and that the exercise of the power of mercy, by its very nature, should not result in an increased penalty.

I note with appreciation that the POMAC Policy that anchors the envisaged reforms have now been adopted and approved by Cabinet. The said Policy provides for the definition of each of the four reliefs provided under Article 133 and a framework for their operationalization and implementation. The approval of the Policy now paves the way for the Draft Bill to be presented to parliament. Key amongst the reforms is the Introduction of a new system that allows for the conditional sealing

of the criminal records of pardoned offenders; a framework that includes a recall clause to revoke pardon as a consequence for contravening pardon conditions or upon committing a specified act; a new system of parole that is modelled on the Canadian system of Pardons and Parole; the establishment of county based multi-agency committees to support the resettlement, reintegration, supervision and monitoring of pardoned offenders; and the digitization of the entire petition process from end to end.

Moving forward, I wish to underscore the need for the committee to move with speed and develop the Strategic Plan for period 2023-2026. This is very crucial because it will provide a roadmap for the Committee in the ensuing period. The Strategic Plan will not only chart the strategic direction, but also identify strategies and activities that will guide the Committee in the furtherance of the reforms. I urge the committee to institutionalize an ethical culture guided by its strong value systems of Integrity, Transparency, Accountability, Professionalism, Social Justice and Teamwork.

On behalf of the Committee, I thank the Office of the President, all actors in the criminal justice system and all our partners for their support. I implore on them to strengthen their collaboration with POMAC in order to drive the reforms to the desired level. Further, in a very special way I wish to thank the second committee for spearheading the reforms and wish them well in all their future endeavors. Finally, I urge all our stakeholders to walk with us in this journey as we look forward to greater success in our joint endeavor to fulfill the Committee's mandate.



**Hon. J.B.N Muturi, EGH.**  
CHAIRPERSON



# SECRETARY'S REPORT



I am honoured to present this report during a decisive moment in POMAC's history when the committee is implementing the reforms arising from the recommendations of the Taskforce on review of laws related to Article 133 of the constitution. The said reforms have now been set out in a Policy and Legislative Framework and once fully implemented they will reengineer the petition process and result in better outcomes for petitioners. Am convinced that the Third Cohort of committee members which has since been on-boarded will continue to steer the envisioned reforms.

It is important to mention from the onset that, it is expected that the power to pardon is exercised in a manner that does not undermine the value of judicial decisions and upset the equilibrium that should ideally exist between executive and judicial action. Hence the need for the committee to renew its focus on deepening stakeholder partnerships and collaborations as it rolls out the reforms.

It is my strong conviction that the committee's unwavering commitment and dedication will provide a conducive policy and regulatory environment will enable the reforms to thrive. This will provide a unique moment for POMAC, the key actors in the criminal justice system and partners to reflect on the milestones covered and harness their efforts in order to realize the benefits envisaged in the petition process. This will in turn result to positive outcomes for both current and future petitioners.

In particular, the above cited reforms focus on the clemency landscape and include; sealing of criminal records to provide pardoned persons with better opportunities for gainful employment; the establishment of a multi-agency reintegration and empowerment committee to assist pardoned persons in

re-entering and reintegrating in society; the establishment of a framework for pardoning Kenyans and foreigners as distinct categories of petitioners; the embedding of parole as forms of the exercise of the President's power of Mercy under Article 133 of the constitution.

At practice level, POMAC will collaborate through a Multi-agency committee with the key actors in the criminal justice system, The National Government Administrative Officers (NGAO, the County Government and other key State and Non-State Actors in order to support the rehabilitation, resettlement, empowerment and reintegration of the pardoned convicts in the society. Closely tied to this will be the need for County-specific interventions to ensure pardoned offenders have been reintegrated and have become useful citizens.

Moving forward, the committee will continue to explore innovative ways of going beyond monitoring to helping the pardoned offenders to settle in some income-generating activities especially those related to their acquired vocational skills. It is important to mention that one of the positive effects of reintegration is the reduction in the recidivism rate.

I note with pleasure that the Committee in collaboration with the Information and Communication Technology Authority (ICTA) leveraged on technology and rolled out the integrated Power of Mercy Petition Management Information System (ePOMPMIS). The system automates the services offered to the members of public and is accessible through the online portal via the link [epmis.powerofmercy.go.ke](http://epmis.powerofmercy.go.ke) or e-citizen platform. The system is very user friendly since it can be accessed through the mobile phones.

Additionally, integration is one of the fundamental features of a well-designed system and will no doubt provide seamless communication. Am pleased to report that the process to integrate the key databases namely the Directorate of Criminal Investigation, the Kenya Prisons Service and the Probation and Aftercare Service to the system is at very advanced stage. This will help to dismantle the silos and result to greater satisfaction of the petitioners. It will also provide an opportunity to the petitioners and the general public to access relevant information, thereby enhancing transparency and accountability.

During the period under review, the most notable achievements include; using the system to process a total of 2,006 petitions from 58 Correctional facilities; issuing system credentials and petition application search parameters to the Correctional facilities to facilitate application and tracking of petitions; and enabling a representative or the public to make applications or track a petition on behalf of a convicted offender through a simplified online application form.

We note with appreciation that the Committee is now able to conduct hearings and interviews through the system; and a refined risk assessment tool has now been embedded in the system to provide for a scientific and objective assessment of the petitions. All these reforms are aimed at facilitating an end-to-end petition application process.

It is important to mention that these milestones could not have been achieved had it not been for the active and unwavering support of the Attorney General, whose guidance on policy and law which has always come in handy; the Cabinet Office whose facilitative role we have always relied on; the National Government Administrative Officers for coordination of the regional sensitization forums; the Prisons Department for the report on the reform journey of the petitioner; and the Probation and Aftercare department report on the views of the victim and community.

Finally, we appreciate the County Governments for their readiness to partner and support the reintegration, rehabilitation and empowerment of the pardoned convicts and look forward to greater success as we fulfil our constitutional mandate whilst adapting to the dynamics in the criminal justice system.



**Dr. Lydia Muriuki, EBS**  
SECRETARY

## COMMITTEE MEMBERS

Hon. J. B. N. Muturi, EGH	Chairperson
Dr. Janet Kirui, OGW	Vice-Chairperson
Prof. Kithure Kindiki, EGH	Member
Mr. Jerim Oloo, MBS	Member
Dr. Scholastic Adeli, OGW	Member
Mr. Richard Mativu, OGW	Member
Mr. Abdi Hassan, OGW	Member
Mr. David Macharia, MBS	Member
Dr. Lydia Muriuki, EBS	Secretary



Hon. J. B. N. Muturi, EGH  
CHAIRPERSON



Dr. Janet Kirui, OGW  
VICE CHAIRPERSON



Prof. Kithure Kindiki, EGH  
MEMBER



Mr. Jerim Oloo, MBS  
MEMBER



Dr. Scholastic Adeli, OGW  
MEMBER



Mr. David Macharia, MBS  
MEMBER



Mr. Richard Mativu, OGW  
MEMBER



Mr. Abdi Hassan, OGW  
MEMBER



Dr. Lydia Muriuki, EBS  
SECRETARY

## INTRODUCTION

### **Mandate of the Power of Mercy Advisory Committee**

The Power of Mercy Advisory Committee (POMAC) is a Constitutional Committee established pursuant to Article 133 of the Constitution of Kenya 2010, and operationalized by The Power of Mercy Act No. 21 of 2011. The committee's core mandate is to advise the President on the exercise of the Power of Mercy. The Act provide for the appointment, tenure of office of the members, the powers and functions of the Committee and connected purposes.

The Committee ensures that the process of exercising power of mercy is transparent, free from bias, just and used for public good. The Committee studies critical issues surrounding a petition, carries independent research, hears both the beneficiary of a petition and where necessary the testimony of others, review reports and recommendations from relevant agencies - all of which ensure the Committee formulates and forwards to the President well developed, thoughtful recommendations on all petitions for the exercise of mercy, made by convicted criminal offenders or their representatives. The Committee's role therefore guarantees that the mercy process is predictable and procedural. The establishment of the Committee was part of the criminal justice system reforms.

### **Functions of the Committee**

In addition to the functions set out in Article 133 (1) and (4) of the constitution, the Advisory committee shall;

- a) undertake or commission research and collect data on matters relating to the Power of Mercy;
- b) work with State organs responsible for correctional services to educate persons in correctional services on the power of mercy and procedures relating to applications for its exercise;

- c) carry out any necessary investigations required to make a determination on a petition for Power of Mercy;
- d) partner with State and non-state actors to educate the public on the nature and implications of the Power of Mercy;
- e) undertake such other activity as may be necessary for the discharge of its functions and exercise of its powers; and
- f) carry out any other function as may be conferred on it under any other written law.

### **Powers of the Committee**

In the performance of its functions and in the exercise of its powers, the Committee:

- a) may, subject to the Power of Mercy Act, 2011, determine its procedure;
- b) shall, where appropriate, receive written or oral statements;
- c) may establish sub-committees;
- d) may co-opt into its sub-committees' persons whose knowledge and expertise it requires;
- e) is not bound by the strict rules of evidence; and
- f) shall conduct interviews of individuals on whose behalf the petition is made.

### **Composition of the Committee**

The composition of the Power of Mercy Advisory Committee is provided for under Article 133(2) of the Constitution of Kenya and section 5 (1) & (2) of the Power of Mercy Act 2011 to comprise of -

- a) The Honourable Attorney General, who is the Chairperson.
- b) The Cabinet Secretary responsible for Correctional Services.
- c) Seven (7) other members who are not State officers or in public service appointed by the President.

### **The Chairperson**

The chairperson shall, within seven days of the appointment of the members, convene the first meeting of the Committee at which the members shall elect the vice chairperson of the Committee from amongst their number.

### **The Vice Chairperson**

The vice-chairperson shall chair all the Committee meetings where the chairperson is absent. Where the chairperson and vice-chairperson are absent, the committee members shall elect one member among themselves to chair the Committee meeting.

### **Committee Secretary**

The Secretary to the Committee is a public officer nominated by the Public Service Commission through a competitive process and appointed by the President. The Office of the President provides secretariat services to the Committee.

### **Pardon Officers**

Section 17 of the Power of Mercy Act provides for the appointment of Pardon Officers, who are public officers seconded to the Committee and stationed at all correctional facilities in the country to perform the following functions:

- a) report directly to the Committee on all matters related to the power of mercy;
- b) advise the internal mechanism in each correctional facility on all matters related to the exercise of the power of mercy; and
- c) be responsible for assisting the applicants in the preparation of petitions and providing general information on the power of mercy to the prisoners.



## PETITION FOR THE EXERCISE OF POWER OF MERCY

### **Introduction**

Article 133 (1) of the Constitution of Kenya provides that on petition of any person, the President may exercise power of mercy in accordance with the advice of the Advisory Committee by granting any of the following reliefs:

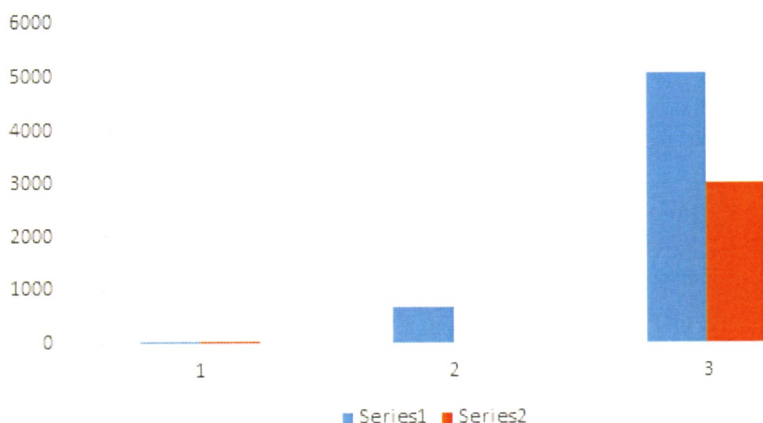
- a) Granting a free or conditional pardon to a person convicted of an offence
- b) Postponing the carrying out of a punishment, either for a specified or indefinite period
- c) Substituting a less severe form of punishment, or
- d) Remitting all or part of punishment.

In the period under review, 40 long-term offenders got presidential pardon, another 662 convicted offenders on death row had their sentence commuted to life imprisonment and 8,054 petty offenders were released through general amnesty on recommendation by the Power of Mercy Advisory Committee.

Table 1. Summary of Offenders Pardoned by H.E. the President Pursuant to Article 133 of the Constitution of Kenya

S/No.	Year of Pardon	Number of long-term offenders Pardoned	Number of convicts whose death sentence was commuted to life Imprisonment	Number of Petty Offenders Pardoned
1.	2023	37	662	5,061
2.	2022	3	0	2,993
	TOTAL	40	662	8,054

### Pardoned Offenders



### Eligibility to File a Petition for Exercise of Mercy

Section 19 of the Power of Mercy Act provide for the eligibility to file a petition for exercise of the power of mercy. Section 19 (2) states that a petition shall not be permitted where:

- a) The person for whose benefit it is made, is on probation or serving a suspended sentence
- b) The person has a pending judicial remedy before a court

Where a petition does not pass the eligibility test, the petitioner is notified of the reasons thereof.

## **Admissibility**

Admissibility is the inherent power within the Committee set by the Act to either admit or defer a petition therefore rendering it inadmissible. In determining the admissibility of the petition as set out by section 21 (2) of the Power of Mercy Act, the Committee may consider:

- a) whether, the convicted criminal prisoner has served at least one third of the sentence pronounced by a court (for determinate sentences)
- b) Where a person who is convicted and sentenced to imprisonment for life or to death and whose sentence has not been affected, has served for at least five years.
- c) Any other relief that the committee may consider necessary.

## **Commencing a Petition**

The benefits conferred by Article 133 are available to any person convicted of an offence. The process of application for the exercise of power of mercy shall be by a petition in the prescribed form, and meeting the guidelines and criteria prescribed in the form. The downloadable form is available at the Power of Mercy Advisory Committee's website **[www.powerofmercy.go.ke](http://www.powerofmercy.go.ke)**

The petition can also be filled electronically through the Electronic Power of Mercy Petitions Management Information System (ePOMPMS) portal accessible via **[epmis.powerofmercy.go.ke](http://epmis.powerofmercy.go.ke)** or on the e-Citizen platform.

The petition can be filed in prison by a convicted offender through a pardon officer or an advocate or any other person on behalf of the offender. However, a petition that provides the requisite information shall not be incompetent only for the reason that it does not accord strictly with the prescribed format.

Below is an analysis of petitions received grouped according to:

- a) The sentence the petitioner is serving; and
- b) The nature of the offence committed.

Table 2: Comparison of number of petitions received categorized by sentence the convicted offender (petitioner) is serving in the fiscal years 2019/2020, 2020/2021, 2021/2022 and 2022/2023

S/No	Sentence	FY 2019/2020	FY 2020/2021	FY 2021/2022	FY 2022/2023
1.	Death	15	2	2	1
2.	Life	3	18	8	67
3.	Determinate	100	40	25	68
4.	President's Pleasure	86	-	-	1
5.	Not indicated in the petition form	2	1	2	0
<b>TOTAL</b>		<b>206</b>	<b>62</b>	<b>37</b>	<b>137</b>

The Supreme Court of Kenya in its ruling in petition No. 15 of 2015; *Francis Karioko Muruatetu & Another and the Republic*, ordered inter alia, for all cases where the mandatory death sentence had been imposed to be re-heard on sentencing. Consequently, a significant number of long serving convicts opted to seek for review of the initial sentence. Subsequently, there has been a steady decline in the number of petitions received since FY 2021/2022 from that of the preceding two consecutive financial years.

However, arising from the automation and digitalization of the petition process there was a significant increase of the received petitions during the period 2022/2023

*Table 3: Number of petitions received during the period 2022/2023 categorized by offence committed*

S/NO	Offence	No. of Petitioners
1.	Sexual offences	52
2.	Murder	38
3.	Robbery with violence	35
4.	Attempted murder	1
5.	Preparation to commit a felony	1
6.	Manslaughter	2
7.	Fraudulent acquisition of public property & abuse of office	1
8.	Breaking and stealing	1
9.	Trafficking/Possession of narcotic drugs	1
10.	Conspiracy to defraud	1
11.	Obtaining money by false pretense	1
12.	Unlawful acquisition	2
13.	Stealing by servant	1
<b>Total</b>		<b>137</b>

### **Overview of Consideration of Petitions and Notification of Victims**

Upon receipt of the petition, the Committee determines eligibility and admissibility of the Petition. Where a petition does not pass the eligibility test, the petitioner is notified of the reasons.

Currently, there are 1,945 active petitions in the Power of Mercy Advisory Committee's electronic system ePOMPMIS. During the Financial Year (FY), the Committee received a total of 137 petitions. The Committee processed petitions in the database alongside new applications received during the period under review.

The Committee has automated the petition process and thus the admissibility test is done in the ePOMPMIS, in view of the set criteria, after an evaluation of submitted information and petition documents. Where a petition is inadmissible, the petitioner is duly notified with the reasons thereof.

Consequently, the admissible petitions undergo the following stages:

### 1. Investigation Stage

Once a petition is deemed eligible and admissible, a petition file shall be opened with a unique petition number. The petitioner will be notified of the number so that in the event that he/she wishes to make any enquiry it is the reference quoted. The Committee has powers as per section 21(1) (b) to call for further evidence which will may include:

- a. **Prison Report:** - This report assists the Committee to understand post-conviction conduct, character and reputation of the convicted criminal offender. It is a comprehensive report giving a holistic view of the prisoner including, personal information, family history, details of the offence committed, rehabilitation history, prisoners' medical and physical report and remarks of the Officer-in-Charge.
- b. **Probation Officer's Report:** - It is a social enquiry report of the convicted criminal offender. It provides information such as the family background of the offender, social history including religion and education status, offenders' criminal history, the victim's views, the attitude of the offender's family towards possible release, state and community interest and the reintegration plan among other factors.
- c. **Court Documents:** - Judiciary provides court records that are vital in the process of consideration for mercy. Such record includes court proceedings and judgment, documents related to appeal and any other record generated from the courts.
- d. **Medical Report:** - The Committee is mandated by section 22(1) (g) of the Act to consider personal circumstances of the offender at the time of making petition, including mental and physical health and any other disabilities. This report should be filed by a competent medical practitioner.
- e. **Security Appraisal report:** - Key security agencies vet all petitioners being considered for mercy to protect the interests of the community and the State and submits its reports to the Committee.
- f. **Petition Summary:** After receiving all the documents, a petition summary which includes the Petitioner's Bio-Data, the type and circumstances of the offence, petition overview with emphasis on post-conviction conduct and views from other relevant agencies, is made for presentation to the Committee.

## **2. Paper Hearing Stage**

Complete petition files having all the necessary documents up to petition summary is then presented to the Committee for members' hearing and deliberations. The Committee at this stage makes use of the Hearing Form as the tool to record observations regarding the parameters of assessment for possible recommendation of mercy.

Here, the petition may either be recommended for further consideration and therefore listed for interview, or not recommended with reasons or be deferred to a later date. When the Committee recommends the petition for interview, the interview date and venue is set.

During the period under review 195 petitions were procedurally reviewed by the committee out of which 186 petitions were recommended for interview and further consideration while 9 petitions were deferred to a later date with conditions.

## **3. Interview Stage**

All the petitions that are recommended for interview are presented before the Committee at this stage where the Committee members interrogate the petitioner with the objective of not only getting his/ her side of the story but also observing the demeanour of the petitioner.

The assessment of whether one is truly remorseful for the crime committed, has fully reformed, genuinely wishes to be pardoned, has atoned for the offence and less likely to revert to crime or not, is more possible at this stage. If the basis of the petition was ill health for instance, the Committee will interrogate the documents and make an assessment of the petitioner relying on the medical professional in the membership. The observations at this stage are recorded in the tool referred as Interview Summary Form.

During the period under review 25 petitioners were interviewed by the committee where 19 were recommended for further consideration while 6 were deferred with conditions. The petitions recommended at the interview stage were subjected to security appraisal by the relevant security agencies.

## **4. Notification of Victims**

Where the relief sought relates to a conviction for a felony or misdemeanour in which there was a victim and the committee determines that there's need to contact the victim, reasonable efforts are made to notify the victim. The victim notified shall be entitled to make a representation at the interview stage.

## **5. Overview of the Digitalised Petitions Processing**

The Electronic Power of Mercy Petitions Management Information System (ePOMPMIS), accessible through the link [epmis.powerofmercy.go.ke](http://epmis.powerofmercy.go.ke) or via e-Citizen platform aims at facilitating the end-to-end petition application process. The system facilitates the Power of Mercy Advisory Committee Members in receiving applications from petitioners, reviewing the petitions, processing them and making recommendations. It also assists the Secretariat Staff, Pardon Officers, Probation Officers and Security Agencies in updating petitioner information and uploading stakeholder reports.

The system has enabled petitioners to monitor their petitions through the new digital platform and provides an opportunity to the general public to access relevant information, thereby enhancing transparency, accountability and feed back in the petition process.

The main online processes involved in ePOMPMIS include:

- a. Online submission of petition by pardon officers or members of the public on behalf of a criminal offender.
- b. Verification of submitted information by POMAC and acknowledgement of receipt of a petition.
- c. Request for information from different stakeholders.
- d. Updating of information from different stakeholders.
- e. Committee conducts review/hearing of the petitions
- f. Committee interview the petitioners and make final recommendation of the petitions received.
- g. Committee updates report of security appraisal by the relevant security agencies
- h. Forwarding of the recommended petitions to H.E the President.
- i. Implementation of H.E. the President's decision.

Additionally, the system automates the services offered to the members of public and accessible through the online portal which include:

- a. Online Petition application
- b. feedback to petitioners through tracking the progress of a petition application using search parameters that include Prison Number, POMAC Petition number or Name of the prisoner



## **6. Criteria Applied by the Committee**

When making a recommendation under Article 133 of the Constitution and Section 21(1) (c) of the Power of Mercy Act, the Committee considers the following:

- a. the age of the convicted criminal offender at the time of commission of the offence.
- b. the circumstances surrounding the commission of the offence.
- c. whether the person for whose benefit the petition is made is a first offender.
- d. the nature and seriousness of the offence.
- e. the length of period so far served by the convicted criminal offender in prison after conviction.
- f. the length of period served by the convicted criminal prisoner in remand.
- g. the personal circumstances of the offender at the time of making the petition including the mental, physical health and any disabilities.
- h. the interest of the State and community.
- i. the post-conviction conduct, character and reputation of the convicted criminal prisoner.
- j. the official recommendations and reports from the State organ or department responsible for correctional services.
- k. where the petitioner has opted to pursue other available remedies the outcome of such avenue.
- l. the representation of the victim where applicable.
- m. the Committee may also consider reports from fellow inmates or reports from probation services.

Where a petition is deferred or not recommended for one or other reason, the petitioner is duly notified of the decision of the Committee.

## **7. Notification of Grant or Denial of Petition**

- The President shall, within sixty days of receipt of the recommendations by the committee, consider the recommendations and either approve or reject the petition.
- Where the President approves or rejects a recommendation by the Committee, the Committee shall in writing notify the petitioner or their representative of the President's Decision within Seven Days.
- The Pardon Warrant will be prepared for all the approved petitions and be transmitted to the Commissioner General of Prisons to facilitate release of the petitioner. The approved petitions will be published in the Kenya Gazette within twenty-one days of the receipt of the President's Decision.
- The decision of the President for each Petition made shall be final.

## 8. Re-Petition

- A person may after the rejection of a petition, re-petition only once and on new grounds, to the President through the Committee;
- The Committee shall consider a request for re-petition and where it is satisfied that the request raises reasonable facts, inform the petitioner of the outcome and require the petitioner to file the petition in a prescribed manner; and
- The procedure for the petition process shall then apply to a re-petition.

### Work in Progress FY 2022/2023

Appended here below is analysis of the status of petitions under review by the outgoing Committee as at 6th May, 2023 and which will be handled the next Committee. The outgoing Committee members were appointed by His Excellency the President, vide Kenya Gazette Notice No. 4361 on 7th May, 2018 in accordance with section 9 (3) of the Power of Mercy

*Act, 2011. Consequently, the term of the Committee (POMAC) for the Five Year ended on 6th May, 2023.*

Stage	No. of Petitions
Petition Verification Stage	113
Petition Paper Hearing Stage	198
Petition Interview Stage	185
Awaiting Conclusion of Judicial Applications (appeals/resentencing)	191
Recommendation Stage	185
Deferred Petitions	12
Pending Reports from stakeholders	658
Petitioners awaiting security appraisal	173
Prisoners released before completion of petition process	188
Petitioners deceased	1
Petitioners who escaped prison	1
Petitioners pardoned by H.E. the President	40
<b>Total</b>	<b>1,945</b>

## **Other Work in Progress**

1. Development and enactment of guidelines for operationalizing and implementing each of the four reliefs provided for under Article 133 of the Constitution;
2. Introduction of a new system that allows for the conditional sealing of the criminal records of pardoned offenders;
3. Introduction of a framework that includes a recall clause to revoke pardon as a consequence for contravening pardon conditions or upon committing a specified act;
4. Establishment of county based multi-agency committees to support the resettlement, reintegration, supervision and monitoring of pardoned offenders;
5. Introduction of a new organizational structure that provides for operational autonomy of the Committee for effective and efficient service delivery;
6. Partnering with stakeholders to establish an administrative body provided for under the Mental Health Act that shall be responsible for reviewing the cases of petitioners who are determined by a court to be guilty but insane, or unable to understand the proceedings against them;
7. Establishment of Prison Based Petitions Committees comprising of the petitions officer and correctional service officials in each prison facility to support the petition process;
8. Development and implementation of a framework for pardoning of non-citizen offenders and for negotiation with other jurisdictions on matters related to power of mercy;
9. Introduction of a new system of parole that is modelled on the Canadian system of Pardons and Parole.
10. Enactment of the Power of Mercy Policy Framework 2023 and the Power of Mercy Bill 2023. These instruments will result in a conducive policy, legislative and regulatory environment for the administration of the power of mercy in Kenya.

## CHAPTER THREE

# IMPLEMENTATION OF THE TASKFORCE RECOMMENDATIONS

The Task Force on Review of the Laws Relating to the Exercise of the Power of Mercy Under Article 133 of the Constitution of Kenya, 2010 was constituted by the Hon. Attorney-General, vide Gazette Notice No. 7382 of the 25th September, 2020 and Gazette Notice No. 10186 of the 30th November 2020, to review the entire legislative framework including in particular the Power of Mercy Act, 2011, the Prisons Act and the Prisons Rules, and any other statute that may be consequentially affected by reforms to the exercise of power of mercy, such as the Mental Health Act, the Criminal Procedure Code and the Probation of Offenders Act, with a view to ensuring that Article 133 is fully implemented. The membership of the Taskforce consists of the following—

Chairperson:

Principal Administrative Secretary and Assistant Secretary to Cabinet

Members:

- (a) A representative of the Power of Mercy Advisory Committee;
- (b) A representative of the Kenya Prisons Service;
- (c) A representative of the Director of Medical services;
- (d) A representative of the Probation and Aftercare service;
- (e) A representative of the Office of the Attorney-General and Department of Justice; and
- (f) A representative the Kenya National Commission on Human Rights;
- (g) A representative the National Crime Research Centre;
- (h) A representative the Kenya Police Service;
- (i) A representative the Director of Public Prosecution;
- (j) A representative of the Executive Office of the President;
- (k) A representative the Victim Protection Board; and

- (l) A representative of the Kenya Law Reform.
- (m) A representative Ministry of Defense

The Task Force has co-opted members from the Ministry of Foreign Affairs and the Community Service Orders Committee.

The terms of reference of the Task Force are to—

- (a) identify all the laws relevant in the implementation of the power of mercy under Article 133 of the Constitution;
- (b) review the legislative framework relating to exercise of the power of mercy in Kenya;
- (c) recommend comprehensive amendments to existing legislation to give full effect to Article 133 of the Constitution;
- (d) conduct research;
- (e) sensitize stakeholders and the public on the power of mercy;
- (f) receive and consider views from members of the public and oral or written submissions from relevant stakeholders;
- (g) prepare quarterly progress reports and submit to the Attorney General;
- (h) develop a prioritized implementation matrix clearly stating the immediate, medium and long-term proposals; and
- (i) undertake any other activities required for the effective discharge of its mandate.

### **Taskforce Recommendations**

In reviewing the four powers of mercy and making recommendations for their reform and operationalization, the Task Force, in addition to taking into account the views of the stakeholders obtained through its consultations, conducted research on comparative practices in a number of jurisdictions including Canada, the United States, India, the United Kingdom, the Philippines, Namibia and South Africa.

### **Pardon**

The Task Force recommends that a 'pardon' for the purpose of Article 133(1)(a) be redefined, as pertaining to the criminal record of an offender such that a pardon allows people who were convicted of a criminal offence, but have completed their sentence and demonstrated that they are law-abiding citizens for a prescribed number of years to have all records pertaining to their criminal conviction be kept separate and apart from other records.

- i. A 'free' pardon within the meaning of Article 133(1)(a) should be granted in very limited special circumstances with the effect that the person's criminal record is expunged – removed fully and sealed or destroyed – from the criminal records database.
- ii. A 'conditional' pardon within the meaning of Article 133(1)(a) should be granted in the form of a record suspension, with the effect that the person's criminal record is sealed and delivered to the POMAC so that a search of the criminal records database would result in a 'nil' record for the purpose of a Police Clearance Certificate. The record suspension should be conditional on maintaining a clear record, so that it is automatically revoked if the ex-offender is subsequently convicted of a felony offence.
- iii. The Power of Mercy Advisory Committee should be responsible for receiving and determining applications for record suspensions, which in most cases should be handled administratively on the basis of satisfaction of the eligibility criteria,

### **Parole**

Article 133(1)(b) of the Constitution provides for the power of "postponing the carrying out of a punishment, either for a specified or indefinite period". It is recommended that this provision be defined and operationalized as a new system of parole, applicable to offenders including capital offenders whose sentence has been commuted to life, and to any other offender designated as a 'high risk offender', being offenders who have been convicted of offences that attract the possibility of life imprisonment but are sentenced to a determinate period, where the offence is aggravated by a degree of violence, multiple victims, hate/discrimination or particular vulnerability of the victim. This would entail the conditional placement of an offender into the community after a set period of a sentence has been served, following the approval of a parole board. The offender remains under the supervision and control of the corrections department, until his full sentence or parole period expires. Parolees will still be considered to be serving their sentences and they may be returned to prison if they violate the conditions of their parole.

The Taskforce has further recommended that Parole should be implemented through an independent administrative body called the National Parole Board, with oversight and secretariat services situated with the Power of Mercy Advisory Committee, with the authority to grant, deny and revoke parole, including deciding on the appropriate release conditions that will enable the reintegration of offenders into society.

## **Commutation**

While commutation of sentences is currently being undertaken by various means and by various authorities in the country, there is no clearly defined statutory basis to commute a sentence of imprisonment other than the power of mercy to 'substitute a less severe form of punishment' under Article 133(1)(c).

The Task Force therefore recommends that the process of commutation, including the regular decongestion of prisons, be provided for in legislation and overseen administratively by the Power of Mercy Advisory Committee, including responsibility for coordinating with the Prisons Service to identify offenders whose sentences ought to be commuted for various reasons or policy purposes, the Judiciary as may be necessary for summary review of individual cases, or the imposition of probation orders, and Probation and After Care Services for post-release supervision in the community.

## **Remission**

The Task Force recommends that the power to grant remission is properly exercised by the President through the Power of Mercy Advisory Committee in accordance with Article 133(1)(d) of the Constitution. The basic elements of eligibility for remission under the Prisons Act, i.e. early release from prison on basis of good conduct, will not change. Remission should be automatic based on a clean record of discipline, after serving two thirds of a determinate sentence, and available to all offenders serving a determinate sentence, with the exception of designated high-risk offenders, who will be dealt with under the system of parole.

## **Mentally Ill Offenders**

The Criminal Procedure Code provides that the President may order accused persons who are of unsound mind and consequently incapable of making defense, and persons who are not insane but do not understand the criminal proceedings against them to be detained in a mental hospital, prison or other suitable place of safe custody. Given the existing provisions of the Criminal Procedure Code that vest responsibility for review of persons detained at the President's Pleasure in the President, and several court decisions holding that the President is empowered by Article 133 of the Constitution to review sentences of convicted offenders, the Task Force recommends that offenders who are determined by a court to be guilty but insane, or unable to understand the proceedings against them, should have their disposition (whether unconditional or conditional release, or detention

in a mental hospital) made and reviewed by an independent administrative body called the Mental Health Review Board. The proposed Mental Health Review Board shall be composed of professionals with relevant backgrounds that include psychiatry, mental health, psychology, rehabilitation, social work, law, human rights and community corrections.

### **The Power of Mercy Advisory Committee**

The Taskforce recommends that the Power of Mercy Advisory Committee should be an independent statutory body responsible for the comprehensive, practical management and performance of the executive duties of the President in the form of the four powers of mercy set out in Article 133(1) of the Constitution of Kenya, 2010.

For the purpose of decentralisation of the Committee's functions, and to ensure the systematic involvement of county level public and security agencies and community members through obtaining relevant input into potential grants of mercy, a Power of Mercy Case Manager should be stationed in each prison facility, responsible for administration of all aspects of the power of mercy at the institutional level, including identifying offenders who may be eligible for pardon, parole, commutation and remission, and assisting with the petition process. The Power of Mercy Case Manager should work together with a Probation/Parole Officer and the prison Welfare Officer in a Parole Case Management Committee, to ensure that all relevant input is obtained to inform the process for every petition.

### **Key Deliverables Arising From the Taskforce Recommendations**

#### **1. Electronic Power of Mercy Petitions Management Information Systems (ePOMPMIS)**

The Committee in acknowledgement of the said recommendations has developed Electronic Power of Mercy Petitions Management Information System (ePOMPMIS) in collaboration with the ICT Authority that aims to automate the entire petition process. The System was launched by Hon Attorney General on 13th March, 2022 at the Kenyatta International Convention Centre. The idea was borne as a means to enhance transparency, accountability, participation, collaboration and feedback in the petitions process.

The data migration from manual database to electronic system was successfully done and the system changeover completed. The ePOMPMIS portal is accessible to all stakeholders and members of the public through the link [epmis.powerofmercy.go.ke](http://epmis.powerofmercy.go.ke) or e-citizen platform.



Among the functions of the online system include assisting in: Petition application by the convicted offender through their Pardon Officers; Petition application by a member of public or a representative; Tracking the progress of a petition application; Updating of information from stakeholders such as Kenya Prison Service, Probation and After Care Services and Judiciary; Updating results of Security Appraisals; Conducting hearings and interviews by the Committee members; Managing the petition application workflow and Preparation of relevant reports

## **2. Power of Mercy Policy Framework**

In undertaking its mandate, the Taskforce held stakeholder consultation meetings in 23 Counties between March and May 2021. The stakeholder views received from this engagement together with the research and benchmarking findings were reduced into a taskforce report that was presented to Hon. Attorney General on 16th December, 2021.

The Taskforce Report culminated in the development of a Draft Power of Mercy Policy which were subjected to stakeholder validation between 4th July and 30th September, 2022. The validated policy document was thereafter handed over to the Attorney General for onward submission to the Cabinet for consideration and approval.

## **3. Power of Mercy (Amendment) Bill, 2022**

From the Taskforce report, it was also considered that a Power of Mercy Amendment Bill be developed and that repeal of the existing law was necessary due to the extent of new policy decisions. The Draft Power of Mercy Amendment Bill (2022) was subjected to stakeholder validation between 4th July and 30th September, 2022.

The technical committee established to finalize the Power of Mercy Bill (2022) completed its development and the draft Bill submitted to Hon. Attorney general for further consideration.

## **4. Power of Mercy Organizational Structure**

The Taskforce among other things observed that POMAC as currently structured is unable to fully implement the constitutional provisions on power of mercy. The Taskforce thus recommended that the Power of Mercy Advisory Committee be restructured to enable it to implement comprehensively the provisions on power of mercy set out in Article 133(1) of the Constitution of Kenya, 2010.

Proposals have been made to the Public Service Commission for the Committee's organizational structure to be reviewed to enable it to give full effect to Article 133 of the Constitution. This includes the recommendation that the Secretary to the Committee be designated as an accounting officer as well as an authorised officer.

**5. Relocation of Power of Mercy Offices to 2nd Floor, Maktaba Kuu Building, Kenya National Library Services (KNLS)**

The Committee relocated from KENCOM Building to Maktaba Kuu Building in December, 2023 after consideration of justifiable reasons that warranted relocation of the Committee offices. The relocation from KENCOM Building was informed by the following reasons;

- a. The staff establishment was made up of twenty- three (23) staff and the department had been provided additional technical staff in ICT, legal, communication and Accounts departments. The office space at KENCOM building was not sufficient to accommodate additional staff
- b. The department was in the process of implementation of the recommendations of the taskforce on review of the laws related with the exercise of the power of mercy under Article 133 of the Constitution of Kenya, 2010. The taskforce recommended review of the Power of Mercy institutional framework in order to fully give in to effects reliefs provided for under Article 133 (1) (b).
- c. The department proposed to provide office space for pardon officers appointed by the Cabinet Secretary responsible for Correctional Services who are directly under the Power of Mercy Advisory Committee.
- d. The Committee proposed a separate interview space for petitioners for power of mercy. The Power of Mercy Act, 2011 provides for public participation to such interviews and such there was need for sufficient space for such function which accommodate the general public.
- e. The location of the Committee at KENCOM House was uncondusive for the Committee work due to noisy environment.

# STAKEHOLDER PARTNERSHIPS AND COLLABORATIONS

Section 14 (b) and (d) of the Power of Mercy Act, 2011 provide that the Committee shall undertake its mandate in collaboration with State and Non-State actors. The Committee actively collaborates with key stakeholders to enhance knowledge sharing and improve on service delivery.

Among the key stakeholders who work closely with the Committee include: Kenya Prisons Service, Probation & After Care Service, Kenya Police Service, the National Crime Research Centre (NCRC) and the Information, Communication & Technology Authority (ICTA).



Table 4: POMAC's key stakeholders, their mandate and linkage

S/No.	Stakeholder	Mandate	Linkage
1.	Executive Office of the President	<ul style="list-style-type: none"> <li>• Organization and coordination of Government business.</li> <li>• Ensures the President achieves his objectives related to the power of mercy.</li> <li>• Offers technical leadership role and mandate in policy formulation</li> </ul>	<ul style="list-style-type: none"> <li>• Appoints members of the Power of Mercy Advisory Committee after recommendations by the selection panel.</li> <li>• Considers recommendation of the Committee in regard to exercise of power of mercy.</li> </ul>
2.	Kenya Prisons Service	<ul style="list-style-type: none"> <li>• It contributes to public safety and security by ensuring there is safe custody of all persons who are lawfully committed to prison facilities, as well as facilitating the rehabilitation of custodial sentenced offenders for community reintegration.</li> </ul>	<ul style="list-style-type: none"> <li>• Custodian of POMAC's clients</li> <li>• Pardon officers are also prison officers</li> <li>• Pardon officers report to the Committee through Officer-in-Charge</li> <li>• Assists inmates in the preparation of petitions for power of mercy</li> <li>• Ensures accurate compilation of prison reports which are filed with POMAC</li> <li>• Makes necessary preparations for POMAC's interviews within the institutions.</li> <li>• Through the Pardon officers, the Service ensures that Petition registers are well maintained</li> </ul>

3. Probation & Aftercare Services (PACS)

- It is involved in the administration of criminal justice with the responsibility of the management of community corrections.
- Generates social information on offenders to courts and other government penal organs, implementation of supervised non-custodial court orders as well as the rehabilitation, reintegration, and resettlement of post-penal offenders.
- Provides reports on the petitioners who have petitioned for clemency.
- Facilitates reintegration and resettlement of pardoned offenders in the community.
- Provide aftercare service for offenders who have been granted mercy
- Prepares periodic reports on the progress of pardoned offenders.

4. National Police Service (NPS)

- Its core mandate: maintenance of law and order, preservation of peace, protection of life and property, prevention and detection of crime, apprehension of offenders and enforcement of all laws and regulations with which it has been charged.
- On 21st January, 2020, the Advisory Committee co-opted the Director, Directorate of Criminal Investigations (DCI) into the Committee.
- The DCI vets' offenders who are being considered for pardon by reviewing and submitting to the Committee criminal records of each of the petitioners considered for clemency.

5.

Ministry of Interior & National Administration - National Government Administrative Office (NGAO); Department of Immigration Services

- To create an enabling environment for Kenya's growth and prosperity through provision of security and safety to the people and property.
- Provision of key information to POMAC mainly through the local administrators.
- Through public barazas undertake community sensitization, education and community acceptance of offenders who have been granted pardon.
- Assists and ensures smooth re-integration, family re-unification and social re-adjustment of pardoned offenders.
- Monitors the resettlement of pardoned offenders in their localities, provide periodic feedback and challenges with a view to guaranteeing public protection.
- Assist in repatriation of released foreign prisoners to their respective countries of origin.

6. National Intelligence Service (NIS)

- NIS is charged with the responsibility of enhancing national security by providing security intelligence and counter intelligence for all government Ministries, Departments and Agencies (MDAs).
- Gather, evaluate and transmit departmental intelligence at the request of any State department or organ, agency or public entity.
- Undertake to provide a confidential security report as may be required under any written law.
- The National Intelligence Service vets all petitioners being considered for mercy to protect the interests of the State.

7. Office of Director of Public Prosecutions (ODPP)

- Institutes and undertakes criminal proceedings against any person before any court (other than a court martial) in respect to any offence alleged to have been committed.
- To undertake public prosecution of cases forwarded by all investigation agencies.
- To represent the State in all criminal cases.
- To advice Government Ministries, Departments and State Corporations on matters pertaining to the application of criminal law.
- POMAC has collaborated with the ODPP in creating synergies through stakeholders' engagement forums.

8.	Judiciary	<ul style="list-style-type: none"> <li>The Judiciary is mandated to dispense justice in line with the Constitution and other laws, and is expected to resolve disputes in a just manner with a view to protecting the rights and liberties of all.</li> </ul>	<ul style="list-style-type: none"> <li>Provides court records that are vital in the process of consideration for pardon. Such record includes court proceedings, judgment and notice of appeal where applicable.</li> </ul>
9.	Kenya National Commission on Human Rights (KNCHR)	<ul style="list-style-type: none"> <li>Promotes respect for human rights and develop a culture of human rights in the Republic.</li> <li>Act as the principal organ of the State in ensuring compliance with obligations under international and regional treaties and conventions relating to human rights.</li> </ul>	<ul style="list-style-type: none"> <li>The KNCHR has a role of reviewing the Committee and stakeholder practices, to ensure that the rights of petitioners are upheld and the practices comply with human rights provisions.</li> <li>KNHCR is a member of the selection panel under the Power of Mercy Act.</li> </ul>
10.	National Council of Administration of Justice (NCAJ)	<ul style="list-style-type: none"> <li>Formulate policies relating to the administration of justice</li> <li>Implement, monitor, evaluate and review strategies for the administration of justice</li> <li>Facilitate the establishment of court user committees.</li> <li>Mobilize resources for purposes of the efficient administration of justice</li> <li>Oversees the operations of any other body engaged in administration of justice.</li> </ul>	Cooption of POMAC in NCAJ



11.	Kenya Law Reform Commission (KLRC)	<ul style="list-style-type: none"> <li>• Undertakes review of the laws in the republic.</li> <li>• Ensures that the laws conform to the spirit of the constitution.</li> </ul>	<ul style="list-style-type: none"> <li>• The Committee partners with the Kenya Law Reform Commission to strengthen its legal framework.</li> </ul>
12.	Ministry of Health	<ul style="list-style-type: none"> <li>• It provides rehabilitation and treatment to all mentally ill offenders who are held under presidential pleasure</li> <li>• Provision of medical reports to government agencies for purpose of administration of justice.</li> </ul>	<ul style="list-style-type: none"> <li>• Through the Medical Superintendent at Mathari Referral hospital, they collaborate with Probation department in assisting mental offenders petition for mercy.</li> <li>• Provides progress and psychiatric assessment reports for mentally ill offenders who are under consideration by the Committee.</li> <li>• The Ministry further provides on-going care and treatment to pardoned offenders as may be required.</li> </ul>
13.	Ministry of Defence	<ul style="list-style-type: none"> <li>• To defend and to protect the sovereignty and territorial integrity of the republic, assist and cooperate with other authorities in situations of emergency or disaster and restore peace in any part of Kenya affected by unrest or instability as assigned.</li> </ul>	<ul style="list-style-type: none"> <li>• Kenya Defence Forces through the Ministry of Defense aids in processing of petitioners who were tried and convicted through the court martial.</li> </ul>

14.	Ministry of Foreign Affairs and Diaspora Affairs	<ul style="list-style-type: none"> <li>To project, promote and protect Kenya's interests and image globally through innovative diplomacy, and contribute towards a just, peaceful and equitable world.</li> </ul>	<ul style="list-style-type: none"> <li>Assist in mutual transfer of offenders.</li> </ul>
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15.	Non-State Actors	<ul style="list-style-type: none"> <li>Established for the benefit of public at large and for promotion of social welfare, development, charity or research in education and supply of amenities and services.</li> </ul>	<ul style="list-style-type: none"> <li>The Committee similarly partners with non-state actors that have established linkages with correctional services in Kenya. These include among others; religious organizations, community-based organizations and non-government organizations.</li> </ul>
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Such organizations work on various programs including offender rehabilitation, offender resettlement and re-integration, human rights, capacity building and training.

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|-----|--|--|---|
| 16. | County Governments /Council of Governors (CoG)             | <ul style="list-style-type: none"> <li>• The committee partners with county governments through the Council of Governors.</li> <li>• The mandate of the Council of Governors includes; offering a collective voice on policy issues, initiating preventive or corrective action, facilitating capacity building for governors and receiving reports among others.</li> </ul> <p>The Committee engages county governments to provide support for the re-integration and resettlement of pardoned offenders.</p> | <ul style="list-style-type: none"> <li>• The Committee engages county governments to provide support for the resettlement and re-integration of pardoned offenders.</li> </ul>  |
| 17. | Media  | <ul style="list-style-type: none"> <li>• Disseminates public information</li> <li>• Creates public awareness</li> <li>• Enhances accountability</li> </ul>   | <ul style="list-style-type: none"> <li>• The Media acts as an important intermediary between the Committee and the public by way of disseminating information on the petition processes and work of the Committee.</li> </ul> |
| 18. | The National Committee on Community Service Orders (NCCSO) | <ul style="list-style-type: none"> <li>• The Committee is responsible for providing policy guidance on the implementation of Community Service Orders in Kenya.</li> </ul>   | <ul style="list-style-type: none"> <li>• POMAC has collaborated with the NCCSO in creating synergies through stakeholders' engagement forums.</li> </ul>  |

19.	National Crime Research Centre (NCRC)	<ul style="list-style-type: none"> <li>• They are mandated to carry out research into the causes of crime, its prevention and to disseminate the research findings and recommendations to Government Agencies concerned with the administration of criminal justice.</li> </ul>	<ul style="list-style-type: none"> <li>• The Committee partners with the National Crime Research Center to conduct relevant research.</li> </ul>
20.	General Public	<ul style="list-style-type: none"> <li>• The citizens of Kenya, who are key stakeholders in the mercy process.</li> </ul>	<ul style="list-style-type: none"> <li>• They are key in the mercy process and the Committee partners with them to provide relevant information through public forums and interaction with government officers during sensitization sessions and social enquiries.</li> </ul>

# KEY ACHIEVEMENTS DURING THE COMMITTEE'S TENURE

In addition to successfully implementing its core mandate including recommending 8,756 petitioners for pardon, the following milestones were achieved:

### **Digitization of the Petitions Management Process**

In acknowledgement of the challenges and recommendations by various stakeholders, the Committee in partnership with the ICT Authority developed and implemented an Electronic Power of Mercy Petitions Management Information System (ePOMPMIS) that is intended to automate the entire petition process. The system has:

- i. Eased access to the Committee for petitioners, key stakeholders and the general public.
- ii. Simplified the process of commencing a petition and reduced time required in filing and processing of petitions for pardon.
- iii. Provided a reliable tracking mechanism that will improve real time monitoring of the status of a petition.
- iv. Enabled timely acquisition of necessary reports from various stakeholders such as the security agencies, Probation Service, Prisons Service, victims and the general public.
- v. Provided a centralized petitioner's database that can be easily accessed by stakeholders.
- vi. Provided a dependable records management system that helps to ensure the integrity of petition records.
- vii. Enhanced transparency, credibility and accountability of the petition process.
- viii. Contributed to the prudent use of public resources.

- ix. Enabled the processing of a total of 1,945 petitions from all correctional facilities to-date.
- x. Issued all correctional facilities with system credentials to facilitate application and tracking of petitions.
- xi. Enabled members of the public or representatives of petitioners to make petition applications on behalf of a convicted offender through a simplified online application form.
- xii. Impacted the lives of ordinary citizens since it is convenient, easily accessible and with minimal costs to the user.
- xiii. Enabled Committee members to conduct hearings and interviews digitally.
- xiv. Enabled petitioners or their representatives to track petitions status remotely.
- xv. The electronic power of mercy petitions management information system has been onboarded to the e-Citizen platform.

### **Legal Reforms**

The Mandate of the Power of Mercy was provided for under section 27, 28 and 29 of the retired Constitution of Kenya, 1963 which was implemented pursuant to various laws which have not been amended to accord to provisions of Article 133 of the Constitution of Kenya, 2010. This led to gaps and challenges of conflicting mandates and overlapping jurisdictions that affected the implementation of the Committee's mandate. The Power of Mercy Act, 2011 was also not informed by a policy framework since none existed.

It is in the purview of the above challenges that the Attorney-General vide Gazette Notice No. 7382 of the 25th September, 2020 and Gazette Notice No. 10186 of the 30th November, 2020, established a Taskforce to the Review the Laws Relating to the Exercise of the Power of Mercy.

It was considered that a power of mercy policy be developed and that repeal of the existing law was necessary due to the extent of new policy decisions.

### **Power of Mercy Policy Framework**

During the Committee's term, the Policy Framework on the Exercise of the Power of Mercy has been developed. The framework provides comprehensively the four reliefs of mercy that may be exercised by His Excellency the President pursuant to Article 133 of the Constitution of Kenya, 2010. In doing this, the Policy provides for the circumstances when each relief of mercy may be granted and the effect of each reprieve. This has brought much needed clarity, certainty and predictability on the substantive and procedural aspects of the mercy process.

The Policy has also provided measures for fostering accountability which include supervision of pardoned offenders and provisions on recall where there is breach of conditions of release.

As at 30th June, 2023 the Draft Policy was awaiting Cabinet approval.

### **Restructuring Organization Structure of the Power of Mercy Advisory Committee**

Proposals have been made to the Public Service Commission for the Committee's organizational structure to be reviewed to enable it to give full effect to Article 133 of the Constitution. This includes the recommendation that the Secretary to the Committee be designated as an accounting officer as well as an authorised officer.

### **Multi-Agency Partnerships**

The Committee adopted a multi-agency approach in implementing its mandate and was able to build a strategic partnership with its key stakeholders including among others the Directorate of Criminal Investigations, National Government Administrative Officers, Kenya Prisons Service and Probation and Aftercare Service.

### **Capacity Development of Committee Members**

Committee members were trained on strategic leadership at the Kenya School of Government and on Corporate Governance by the Institute of Directors (Kenya).

### **Covid Pandemic**

During the Committee's tenure, physical visits to prisons were temporarily suspended as an outcome of the Covid-19 pandemic. In order to surmount this challenge to its operations, the Committee adapted by conducting virtual hearings and interviews.

## CHALLENGES AND RECOMMENDATIONS

During the course of its term, the Committee encountered the following challenges:

### **1. Organization Structure**

The Power of Mercy Advisory Committee as currently structured is unable to fully implement the constitutional provisions on power of mercy.

### **2. Operational and Budgetary Autonomy**

The Committee has faced considerable challenges in implementing its mandate as it lacks the budgetary and operational autonomy to give full effect to Article 133 of the Constitution. The Secretary to the Committee is neither an accounting officer nor an authorized officer for the Committee.

### **3. Funding**

During its term the Committee has seen the funding of its activities decrease. The decrease in funding and untimely release of funds has impacted on service delivery. The Committee's printed estimates has drastically declined from the initial 101 million in 2014/2015 to 41 million in 2022/2023.

### **4. Human Resource Constraints**

The Committee lacks key technical staff to effectively undertake its mandate. The shortage of staff has affected the ICT, Legal, Research and Investigations functions.

### **5. Workload**

The Committee has a considerable workload since it receives and processes petitions from all prisons in the Country. This poses a serious challenge in the implementation of its mandate by virtue of the fact that the Committee works part time.



## **6. Access to Key Records**

The Committee relies on databases held by other agencies. However, there are instances where these databases are not accessible which denies the Committee full grasp of aspects related to a petition.

## **7. Attitude and Perception of the Pardon Process**

Stakeholders do not understand or appreciate the rehabilitation process and the various processes through which offenders leave prisons which has resulted in stigmatization of pardoned offenders and the pardon process.

### **Arising from the challenges the Committee has made the following recommendations;**

1. The Cabinet to consider and approve the Power of Mercy Policy Framework as well as The Power of Mercy Amendment Bill, 2023. Copies attached.
2. The Public Service Commission consider and approve the proposed Power of Mercy Organization Structure.
3. The Power of Mercy Advisory Committee shall be granted operational and budgetary autonomy to effectively undertake its mandate. The Committee recommends that the Secretary/CEO be both the accounting and authorized officer.
4. The annual allocation to Committee should be enhanced so that the Committee can effectively undertake its mandate.
5. Committee strongly recommends the establishment of a parole system modelled along the Canadian system of Pardons and Parole. The establishment of a parole system will enable taxpayers to make substantial savings in terms of financial resources. Adoption of parole will also enhance public safety.
6. The Committee recommends tailored training programmes for members.
7. Appointments of Committee members should be staggered so as to ensure institutional memory is maintained during transition from one Committee to another.
8. Arising from the post release convict monitoring programme that was conducted by the Committee during its term, the Committee recommends the development of an Aftercare Policy and Bill that will facilitate the successful resettlement and reintegration of pardoned offenders including those with mental illness.
9. There is need for a centralized database that reconciles records held by the Judiciary, Office of the Director of Public Prosecutions, Victim Protection Agency, Police, Probation and Prisons.

## 1. KEY ENTITY INFORMATION AND MANAGEMENT

### (a) Background information

The Power of Mercy Advisory Committee was established in the year 2011 pursuant to Article 133 of the Constitution of Kenya, 2010.

The Committee comprises of the Hon. Attorney General who is the Chairman, the Cabinet Secretary responsible for Correctional Services, and seven (7) other members appointed by His Excellency the President. A Vice Chair is elected by the members from amongst the seven appointed members.

### (b) Principal Activities

The principal mission of POMAC is to receive petitions from convicted criminal prisoners, consider, review, hear and conduct interviews, investigate, research, collect data, educate and collaborate with other state and non-state organs to ensure His Excellency the President receives timely, objective, independent and accurate advice on the pardon of deserving petitioners in a just, fair and ethical manner.

### Key Management

The entity's day-to-day management is under the following key organs:

The Secretariat, and

The Advisory Committee

### (c) Fiduciary Management

The key management personnel who held office during the financial year ended 30th June 2023 and who had direct fiduciary responsibility were:

No.	Designation	Name
1.	Secretary/Chief Executive Officer	Dr. Lydia Muriuki



**Dr. Lydia Muriuki, EBS**  
SECRETARY

The Secretary, POMAC has direct fiduciary responsibility for the Power of Mercy Advisory Committee (POMAC). She assumed the position of Secretary in (19th April, 2021) and is entrusted with providing strategic leadership to the Committee to facilitate delivery of its mandate as per the Constitution and POMAC Act. She holds a PhD in Business Management (Strategic Management) and Masters in Business Administration from Moi University, Eldoret.

CHAPTER SEVEN

## FINANCIAL STATEMENTS



### **THE POWER OF MERCY ADVISORY COMMITTEE (POMAC)**

REPORTS AND FINANCIAL STATEMENTS  
FOR THE FINANCIAL YEAR ENDED  
JUNE 30<sup>TH</sup>, 2023

Prepared in accordance with the Cash Basis of Accounting Method  
Under the International Public Sector Accounting Standards (IPSAS)

#### **(d) Fiduciary Oversight Arrangements**

The Power of Mercy Advisory Committee provides a fiduciary oversight role to the management through:

- Policy directions on the activities to be implemented
- Approval of annual work plans
- Consideration of activity budgets

#### **(e) Entity Headquarters**

2nd floor Maktaba Kuu Building  
(Kenya National Library Service)  
P.O. Box 79960-00200  
Upper Hill-Nairobi, KENYA

#### **(f) Entity Contacts**

Telephone: (+254) 2210144  
E-mail: [sec.pomac@headofpublicservice.go.ke](mailto:sec.pomac@headofpublicservice.go.ke)  
Website: [www.powerofmercy.go.ke](http://www.powerofmercy.go.ke)  
Petitions portal: [epmis.powerofmercy.go.ke](http://epmis.powerofmercy.go.ke)

#### **(g) Entity Bankers**

Central Bank of Kenya  
Haile Selassie Avenue  
P.O. Box 60000  
City Square 00200  
Nairobi, Kenya.

#### **(h) Independent Auditors**

Auditor General  
Kenya National Audit Office  
Anniversary Towers, University Way  
P.O. Box 30084  
GOP 00100  
Nairobi, Kenya

#### **(i) Principal Legal Adviser**

The Attorney General  
State Law Office  
Harambee Avenue  
P.O. Box 40112  
City Square 00200  
Nairobi, Kenya

## I.STATEMENT OF COMMITTEE MANAGEMENT RESPONSIBILITIES

Section 29 (1) of The Power of Mercy Act, 2011 requires that, at the end of each financial year, the Power of Mercy Advisory Committee shall cause annual report to be prepared. Section 29 (3) (a) further require that the report shall contain, in respect to that financial year to which it relates, the financial statements of the Committee. Section 81 (3) of the Public Finance Management Act, 2012 requires the financial statements so prepared to be in a form that complies with relevant accounting standards as prescribed the Public Sector Accounting Standards Board of Kenya from time to time.

The Secretary in charge of The Power of Mercy Advisory Committee is responsible for the preparation and presentation of the entity's financial statements, which give a true and fair view of the state of affairs of the entity for and as at the end of the financial year (period) ended on June 30, 2018. This responsibility includes: (i) maintaining adequate financial management arrangements and ensuring that these continue to be effective throughout the reporting period; (ii) maintaining proper accounting records, which disclose with reasonable accuracy at any time the financial position of the entity; (iii) designing, implementing and maintaining internal controls relevant to the preparation and fair presentation of the financial statements, and ensuring that they are free from material misstatements, whether due to error or fraud; (iv) safeguarding the assets of the entity; (v) selecting and applying appropriate accounting policies; and (vi) making accounting estimates that are reasonable in the circumstances.

The Secretary in her role as the accounting officer for the Power of Mercy Advisory Committee accepts responsibility for the entity's financial statements, which have been prepared on the Cash Basis Method of Financial Reporting, using appropriate accounting policies in accordance with International Public Sector Accounting Standards (IPSAS). The Accounting Officer is of the opinion that the entity's financial statements give a true and fair view of the state of entity's transactions during the financial year ended June 30, 2023, and of the entity's financial position as at that date. The Accounting Officer in charge of the Power of Mercy Advisory Committee further confirms the completeness of the accounting records maintained for the entity, which have been relied upon in the preparation of the entity's financial statements as well as the adequacy of the systems of internal financial control.

The Accounting Officer in charge of The Power of Mercy Advisory Committee confirms that the entity has complied fully with applicable Government Regulations and the terms of external financing covenants (where applicable), and that the entity's funds received during the year under audit were used for the eligible purposes for which they were intended and were properly accounted for. Further the Accounting Officer confirms that the entity's financial statements have been prepared in a form that complies with relevant accounting standards prescribed by the Public Sector Accounting Standards Board of Kenya.

Approval of the financial statements

The entity's financial statements were approved and signed by the Accounting Officer on 30th September 2023.



SECRETARY



ASSISTANT ACCOUNTANT GENERAL

## II. STATEMENT OF RECEIPTS AND PAYMENTS

	Note	2022-2023	2021-2022
		Kshs	Kshs
<b>RECEIPTS</b>			
Exchequer releases	1	33,065,614	106,246,600
<b>TOTAL RECEIPTS</b>		<b>33,065,614</b>	<b>106,246,600</b>
<b>PAYMENTS</b>			
Use of goods and services	2	32,877,834	105,893,881
Acquisition of Assets	3	187,780	352,719
<b>TOTAL PAYMENTS</b>		<b>33,065,614</b>	<b>106,246,600</b>
<b>SURPLUS/DEFICIT</b>		<b>nil</b>	<b>nil</b>

The accounting policies and explanatory notes to these financial Statements form an integral part of the financial statements. The entity financial statements were approved on 30th September, 2023 and signed by:

  
SECRETARY

  
ASSISTANT ACCOUNTANT GENERAL

### III. STATEMENT OF CASHFLOW

	Note	2022-2023	2021-2022
		Kshs	Kshs
<b>Receipts for operating income</b>			
Exchequer Releases	1	33,065,614	106,246,600
<b>Payments for operating expenses</b>			
Use of goods and services	2	32,877,834	105,893,881
<b>Adjusted for:</b>			
Adjustments during the year		-	-
Net cash flow from operating activities		187,780	352,719
<b>CASHFLOW FROM INVESTING ACTIVITIES</b>			
Proceeds from Sale of Assets		-	-
Acquisition of Assets	3	187,780	352,719
<b>Net cash flows from Investing Activities</b>		-	-
NET INCREASE IN CASH AND CASH EQUIVALENT		-	-
Cash and cash equivalent at BEGINNING of the year		-	-
Cash and cash equivalent at END of the year		-	-

The accounting policies and explanatory notes to these financial statements form an integral part of the financial statements. The entity financial statements were approved on 30th September, 2023 and signed by:


  
 .....  
 SECRETARY

  
 .....  
 ASSISTANT ACCOUNTANT GENERAL

## I. SUMMARY STATEMENT OF APPROPRIATION: RECURRENT

Receipt/Expense Item	Original Budget	Adjustment	Final Budget	Actual on Comparable Basis	Budget Utilisation Difference	% of Utilisation
	a	b	c=a+b	d	e=c-d	f=d/c %
<b>PAYMENTS</b>						
Communication, supplies and services	305,349	509,925	815,274	786,704	28,570	96%
Domestic travel and subsistence	1,248,420	2,497,065	3,745,485	3,744,316	1,169	100%
Foreign travel and subsistence	161,300	303,280	464,580	185,888	278,692	40%
Printing, advertising and information supplies & services	0	468,665	468,665	170,030	298,635	36%
Training expenses	49,984	414,988	464,972	460,123	4,849	99%
Hospitality supplies and services	11,024,025	12,838,890	23,862,915	23,860,015	2,900	100%
Insurance Costs	300,000	300,000	600,000	0	600,000	0%
Specialized materials and services	0	325,050	325,050	320,522	4,528	99%
Office and general supplies and services	0	941,992	941,992	932,456	9,536	99%
Fuel oils and Lubricants	175,000	700,685	875,685	875,685	0	100%
Other operating expenses	65,940	433,180	499,120	489,563	9,557	98%
Routine maintenance – vehicles and other transport equipment	378,075	378,075	756,150	756,047	103	100%
Routine maintenance – other assets	0	297,675	297,675	296,485	1,190	100%
Purchase of Office Furniture and General Equipment	0	187,780	187,780	187,780	0	100%
<b>Total Payments/Expenditure</b>	<b>13,708,093</b>	<b>20,597,250</b>	<b>34,305,343</b>	<b>33,065,614</b>	<b>1,239,729</b>	<b>96%</b>

The entity financial statements were approved on \_\_\_\_\_ 2023 and signed by:

  
 ..... ASSISTANT ACCOUNTANT GENERAL



## NOTES

### 1. EXCHEQUER RELEASES

	2022-2023	2021-2022
	Kshs	Kshs
Total Exchequer Releases for quarter 1	16,532,807.00	14,000,000.00
Total Exchequer Releases for quarter 2	16,532,807.00	13,000,000.00
Total Exchequer Releases for quarter 3	16,532,807.00	14,246,600.00
Total Exchequer Releases for quarter 4	16,532,807.00	65,000,000.00
<b>Total</b>	<b>33,065,614.00</b>	<b>106,246,600.00</b>

### 2. USE OF GOODS AND SERVICES

	2022-2023	2021-2022
	Kshs	Kshs
Communication, supplies and services	786,704	956,815
Domestic travel and subsistence	3,744,316	8,969,880
Foreign travel and subsistence	185,888	558,816
Printing, advertising and information supplies & services	170,030	903,025
Training expenses	460,123	6,304,306
Hospitality supplies and services	23,860,015	81,683,331
Insurance Costs	0	421,962
Specialised Materials and Supplies	320,522	649,109
Office and general supplies and services	932,456	1,846,628
Fuel oils and Lubricants	875,685	1,401,374
Other operating expenses	489,563	866,371
Routine maintenance –Other Assets	756,047	755,994
Routine maintenance – Motor Vehicle	296,485	576,270
	<b>32,877,834</b>	<b>105,893,881</b>

### 3. ACQUISITION OF ASSETS

	2022-2023	2021-2022
	Kshs	Kshs
Non-Financial Assets		
Purchase of Office Furniture and General Equipment	187,780	352,719
<b>Total</b>	<b>187,780</b>	<b>352,719</b>

