



THE PRESIDENCY

# THE POWER OF MERCY ADVISORY COMMITTEE **NEWSLETTER**

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*The Power of Mercy Advisory Committee during a paper-hearing session of petitions at the secretariat boardroom.*

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*Dear Readers,*

It is indeed a great honour to be the Editor of POMAC Newsletter as we launch the first Issue. The Newsletter will be Quarterly and will be issued in March, June, September and December. I note with immense pleasure that this inaugural newsletter covers a broad spectrum of subjects that emphasize on the various activities in which POMAC members were actively involved in. Further, the Newsletter highlights articles on the Petition Process and the Recommendations by the Taskforce on the Review of the Laws related to Article 133 of the Constitution. Other key highlights include articles on the Electronic Petition Management Information System – EPMIS and the emerging trends in the Clemency process.

We recognize the dedication and commitment of the Editorial Team and wish to congratulate them for the valuable time spent in polishing this Edition. A special thank you to all the persons who contributed writing all the inspiring articles, without which there wouldn't have been this newsletter issue. Am encouraged by the quality of the Articles which is evidence that future editions will be extremely successful and will continue improving year in year out.

Last but not least, I would like to thank all our stakeholders and POMAC Members for their immense support throughout the creation of this edition

Ultimately we commit ourselves to rebrand the future publications and leverage on technology so that we rely heavily on electronic distribution of our newsletter.

Thank you

*Dr. Lydia Muriuki*  
**EDITOR**

## THE EDITORIAL TEAM

Mr. Stephen Gitau  
Mr. Merceline N. Macharia  
Mr. Aja Imagoro  
Mr. Njoroge Ndung'u

# INTRODUCTION

The power of mercy has its early origins in ancient Babylonia whereby kings would grant a general discharge from both civil and criminal liabilities, followed centuries later by medieval Europe where prerogative of mercy began to be exercised as the absolute prerogative of monarchs.

Over time, the unrestricted power was perceived to be applied unfairly, so that the British Parliament imposed restrictions on its use, but it continued to be applied not only by the British monarchs in the United Kingdom, but also by delegation to colonial authorities in the British colonies.

The modern prerogative power of mercy is administered in the majority of countries across the world and is variously referred to as 'clemency' and as 'pardon' generally, and is ultimately exercised by the Executive branch of government through the President or Prime Minister, though the methods or process of decision-making, including involvement of other branches of government, varies by jurisdiction.



*The committee, led by Vice Chairperson Dr. Janet Kirui conducting a physical interview at the secretariat boardroom.*

## Rationale for Power of Mercy

In Ex parte United States the role of the various actors in the justice system was described thus: the authority to define and fix the punishment for crimes is legislative; the jurisdiction to try offences and to impose punishment provided by law is judicial; and the right to give relief from the punishment imposed is executive.

Constitution in majority of jurisdictions globally provide for inclusion of power of mercy for the following reasons:

- the prerogative of mercy enables the Head of State to pardon persons convicted under laws which are considered repressive or draconian.
- the power of mercy may be granted for humanity reasons. Pregnancy, insanity and young age being some of the reasons.
- on occasions where a person may breach the law in such circumstances that attract public sympathy, people feel compassion and want the

person to be released.

- this power could be advantageously applied to restore public tranquility in the event of insurrection. For instance, if there exists civil disorder by members of the public who are calling for the release of an imprisoned individual.
- Presidential pardons and commutations are useful in promoting the contemporary penal policy which is correction and reformation of criminal offenders, which replaced retributive policies that were in place previously. This encourages others to change their behaviour as well.
- Power of mercy may be used to maintain or repair diplomatic relations between countries. Prisoner exchange where failure may lead to disruption of diplomatic relations or even eruption of war.

*Continued page 4*

- The power of mercy affords the Head of State an opportunity to correct mistakes that occur in the course of administration of criminal justice. It is for this reason that Heads of State are granted the constitutional power to grant pardons in many jurisdictions.

On account of the above listed reasons, the prerogative of mercy is an important tool in any society and it is therefore in the public interest for these powers to be retained in a country's Constitution.

### **Principles Guiding the Exercise of Clemency**

- There must be evidence of substantial injustice or undue hardship
- The exercise of the power of mercy is concerned solely with the applicant
- The exercise of the power of mercy is not intended to circumvent other existing legislation
- The independence of the judiciary shall be respected
- The power of mercy should be applied in exceptional circumstances only
- The power of mercy, by its very nature, should not result in an increased penalty

### **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 exercise of the Power of Mercy.

The Act provides for the appointment, tenure of office of the members, the powers and functions of the Advisory Committee and connected purposes. The current Committee is the second serving, since the inception and operationalisation of The Power of Mercy Act.

POMAC is made up of the Honourable Attorney General as the Chairperson, the Cabinet Secretary responsible for Correctional Services, and seven other members who are not State Officers or in public service; appointed by the President.

Section 14 of the Power of Mercy Act provides for the functions of the Committee to include; to undertake or commission research and collect data, work with state organs responsible for correctional services to educate persons in correctional facilities on the Power of Mercy and procedures relating to applications for its exercise, carry out any necessary investigation required to make a determination on petition for power of mercy, partner with state and non-state actors to educate the public on nature and implications of the Power of Mercy and to undertake such other activities as may be necessary for the discharge of its functions and exercise of its powers.

The Committee ensures that the process of exercising the power of mercy is transparent, free from bias, just and used for public good. The Committee studies

the critical issues surrounding a petition, carries independent research, hears both the beneficiary of the petition and where necessary the testimony of the victims. It also reviews reports and recommendations from relevant government agencies. This ensures the Committee formulates and forwards to the President well developed and thoughtful recommendations on all petitions for the exercise of power of mercy made by convicted criminal offenders or their representatives. The Committee's role therefore guarantees that the pardon system is fair and procedural.

The principle of anchoring the Power of Mercy in the Constitution removes the veil of mystery surrounding clemency. It enhances public participation while ensuring only deserving persons are granted pardon. This further guarantees public confidence in the petition system, safeguards state and public security and provides an environment that is conducive for the resettlement and reintegration of pardoned convicts.

During the performance of its functions; where necessary and applicable the Committee takes into consideration the views from victims of the convicted offenders, while making its recommendations to the President.

The Act is functioned to give the Advisory Committee as much leeway as possible to perform its duties, while at the same time it emphasizes the fact that it is a presidential power and hence the President makes the final decision and the committee only advises.

# COMMITTEE MEMBERS



Hon. P. Kihara Kariuki, EGH  
CHAIRPERSON



Dr. Janet Kirui, OGW  
VICE CHAIRPERSON



Dr. Fred Matiang'i, EGH  
MEMBER



Mr. Jerim Oloo, MBS  
MEMBER



Dr. Scholastic Adeli, OGW  
MEMBER



Mr. David Macharia, MBS  
MEMBER



Mr. Richard Mativu  
MEMBER



Mr. Abdi Hassan, OGW  
MEMBER



Dr. Lydia Muriuki, EBS  
SECRETARY



*The Power of Mercy Advisory Committee Members Led by the Vice Chair Dr. Janet Kirui, when they paid a courtesy call to the Director DCI Mr. George Kinoti, at DCI Headquarters.*

## Courtesy call to the DCI

The Power of Mercy Advisory Committee members led by the Vice Chair Dr. Janet Kirui and secretariat staff, paid a courtesy call to Mr. George Kinoti Director DCI at the Directorate of Criminal Investigations headquarters. POMAC holds regular meetings with relevant Ministries Departments and Agencies (MDAs) in the criminal justice system, in view to spruce up operations while undertaking its core mandate of advising the President on exercise of the Power of Mercy.

The successful meeting led to adoption of a process by both organisations that will support the process of vetting applications for mercy, according to Article 133 of the constitution and the Power of Mercy Act of 2011.

The DCI Director gave a clarification that there is no law requiring the directorate to issue Police Clearance Certificate, popularly known as the certificate of good conduct. Public and private institutions are the ones who require individuals to produce the certificate. In addition, the certificate does not criminalise the persons who are issued with. It gives records of a person's conduct.

The Committee had sought a solution, due to numerous concerns raised by pardoned offenders whom they had visited. They reported difficulty in getting a favourable document from the police, which would help them find jobs post release without being stigmatized based on their past.

## Pardon Officers and Their Role in The Petition Process

Pardon officers are prison officers appointed and gazetted by the CS responsible for correctional services. They are stationed at the various correctional facilities across the country. Their work is to advise the internal mechanisms in each correctional facility on all matters related to the Power of Mercy. They report to the Committee through their respective Officer in Charge, on all matters related to Power of Mercy.

They are responsible for assisting applicants or any person acting on behalf of a convicted prisoner, in preparation of their petitions. Moreover, the officers provide general information concerning power of mercy and the pardon process in prisons especially to the new clients in the facilities. Pardon officers help organise prison visits by POMAC at their respective stations and are present during petition hearings whether physical or virtual.

Pardon officers regularly communicate with documentation officers based at the Pomac secretariat, who maintain all active petition files and ensure they contain necessary documents like prison reports, duly filled petition forms and testimonials. They also inform the committee when a petitioner has transferred prisons.

# Presentation of the Taskforce Report

*[PHOTO] The Hon. Attorney General Mr. Paul Kihara Kariuki (centre), receives a copy of the report from the taskforce Chair Mr. Kennedy Kihara. Witnessing is Secretary Power of Mercy Advisory Committee, Dr. Lydia Muriuki.*



The taskforce report on review of the laws relating to the exercise of mercy was handed over to the Hon. Attorney General Mr. P. Kihara Kariuki on 16th December, 2021. The Taskforce Chair Mr. Kennedy Kihara was accompanied by few members of the taskforce, for the report presentation event held at the Attorney General's boardroom.

The taskforce was constituted by the Hon. Attorney General through Kenya Gazette Notice No. 7382 of 25th September, 2020 and Gazette Notice No. 10186 of 30th November, 2020 on review of the laws relating to the exercise of the Power of Mercy under Article 133 of the constitution.

The purpose of the taskforce was to formulate a comprehensive policy and review the Power of Mercy Act, 2011 and other related legislations like the Prisons Act, the Criminal Procedure Code, the Mental Health Act and the Probation of Offenders Act with a view to ensure that Article 133 is fully effected.

## Electronic Petitions Management Information System (EPMIS)

The Power of Mercy Advisory Committee is developing an online petition filing platform in collaboration with the ICT Authority. Implementation of the Committee mandate involves various procedures and processes that required the development of an electronic information system.

Development of the digital platform aims to improve the Committee's service delivery to its clients through ease of access to information, significantly reducing time used

to file and process petitions and reliability of the petition process for clemency.

The EPMIS system will simplify the process of commencing a petition, and provide a reliable tracking mechanism that will improve real time monitoring of status of the petitions filed. Equally, the system will establish a centralized petitioner's database and a dependable record system that assures integrity of the petition records



*The team tasked to transfer the petition files from the manual system to the newly developed digital platform EPMIS.*

# Show a Trade Certificate to Prove You Can Earn a Living



A magistrate court in Milimani has declined to recognise a biblical studies certificate acquired by a convict, as proof that he is now reformed. "I do not want you to present me with a pastoral and Biblical studies certificate as a proof you have reformed. I require you to bring before this court a trade certificate to prove you can earn a living once you are through with your jail term," said Milimani Senior Principal Magistrate Martha Nanzushi.

The magistrate was addressing Chrispin Omondi Majanga alias Evans Kiprono Cheruiyot, a convict who was once again jailed for 27 years, for forging a Jubilee Insurance Company Limited card and attempting to defraud The Nairobi Hospital drugs valued at Shs.12,688.

This comes as a wakeup call to all prisoners who wish to petition for the Presidential Pardon through the Power of Mercy Advisory Committee. The Committee requires an applicant to attach documentation as proof of skills earned in prison, that the convict would rely upon to earn a living and reduce the chances of recidivism.

All pardoned ex-offenders released by the President had trained in the various craft courses offered by the Kenya Prisons Service such as; Carpentry and joinery, Upholstery, Masonry, Tailoring and dress making, panel beating and spray painting, welding among others.



*Inmates exhibiting products made at the metalwork section in prison.*



*The Power of Mercy Advisory Committee vice chair Dr. Janet Kirui (Left) flanked by other Committee members when they paid a courtesy call to Hon. Safina Kwekwe Principal Secretary State Department of Correctional Services.*





*The Commissioner General of Prisons Brigadier (Rtd) John Kibaso Warioba, (in striped tie) when he paid a courtesy call to Dr. Lydia Muriuki (centre) the CEO Power of Mercy, at the secretariat offices in Kencom House. With them are secretariat staff.*



*(From left) Members of the Power of Mercy Advisory Committee Mr. David Macharia, Vice Chair Dr. Janet Kirui, Director DCI Mr. George Kinoti, CEO power of mercy Dr. Lydia Muriuki and Mr. Patrick Dunda co-opted member representing DCI in the Committee.*



*Taskforce members pose for a photo with Attorney General Paul Kihara after official presentation of the taskforce report.*



*Kenyan delegation with officers of the State Department for Correctional Services, South Africa during their benchmarking visit.*



*Power of Mercy Secretariat at Fort Jesus, Mombasa.*



*POMAC CEO Dr. Lydia Muriuki chairing a Staff meeting at the secretariat boardroom.*

# Benchmarking trips to Namibia and South Africa



*The Chair of the taskforce Mr. Kennedy Kihara (third from left) POMAC CEO Dr. Muriuki (second right) during their visit at the State Department for Correctional Services, South Africa. With them is Kenya's Deputy High Commissioner to South Africa Ms. Beatrice Karogo (third from right), Mr. Stephen Gitau (extreme right).*

In reviewing the four powers of mercy and making recommendations for their reform and operationalization, the Taskforce conducted benchmarking in Namibia and South Africa jurisdictions.

The decision to choose Namibia and South Africa as ideal benchmark authorities was due to their progressive justice systems. The study was meant to achieve various objectives such as:

- a) To understand the legal, administrative, institutional and policy framework that underpins the implementation of executive clemency;
- b) To evaluate linkages between the various ministries, departments and agencies tasked with implementation of executive clemency;
- c) Analyse the relevant structures and processes relating to the exercise of executive clemency in Namibia with the aim to identify best practices; and
- d) To establish a mechanism for technical cooperation and capacity building between South Africa, Namibia and Kenya in the areas of executive clemency.



*Mr. Kennedy Kihara the Cabinet Affairs Office Principal Administrative Secretary (centre), POMAC secretariat CEO Dr. Lydia Muriuki (right) and Mrs. Rose Wanjohi the Director Human Resources, Cabinet Affairs Office during the official closing of the retreat.*

## Power of Mercy Staff Retreat

The power of mercy advisory committee secretariat held a week-long staff team building at Mombasa Beach Hotel between the 17th and 23rd of October, 2021.

The staff were taken through different sessions that enhance workplace productivity and the importance of concerted team efforts towards the attainment of individual and organisational goals. Some of the topics covered were;

- i. Unpacking human resource policies and procedure manual;
- ii. Code of conduct for cabinet office;
- iii. Stress management and healthy work life balance; and
- iv. Training on how the online performance appraisal system works.

During the event, the staff were updated on the various projects under implementation, to enhance the efficiency of staff in their various duties of supporting the Committee achieve its mandate.

The presentations were The Power of Mercy Legal Framework which is under review, through the taskforce established by the Attorney General on review of the laws relating to the exercise of the Power of Mercy under Article 133 of the constitution. The Electronic petitions Management System which is meant to ease filing of applications, for the processing and consideration for mercy.

Finally, the secretariat team got to engage in teambuilding events at Diani Beach. All activities were

designed to underscore the importance of each staff in the organisation and how working in synergy leads to overall success. Leisure activities like visiting the Fort Jesus - a historic site located in old-town of Mombasa saw the culmination of the exercise.

Mr. Kennedy Kihara, the Principal Administrative Secretary (PAS) in the Cabinet Affairs office officially closed the retreat. In his remarks, the PAS underscored the importance of having a team building activity among staff. He also highlighted philosophies by renowned men in both leadership and business and said, "Hire for integrity, then teach skills and great confidence."

# Secretariat

The Secretariat is headed by the Secretary who is also the Chief Executive Officer (CEO), Dr. Lydia Muriuki.



DR. LYDIA MURIUKI, EBS  
**Secretary/CEO**



MR. STEPHEN GITAU, HSC  
**Undersecretary**



MR. MERCELINE NJIRU, HSC  
**Senior Assistant Secretary**



MS. GLADYS MBUI, HSC  
**Deputy Director/OAS**



NANCY MUTITU HSC  
**Principal Assistant/OAS**



MR. AJA IMAGORO  
**Research Officer**



MS. FRIDAH MIRITI  
**Assistant Director ICT**



MS. JOYCE OGATO  
**Office Administrative Assistant**



MR. SUNDAY NAMISI  
**Documentation officer**



MR. CLIFFORD KIPOTO  
**Documentation officer**



MS. MARY KARAN  
**Senior Records Management Officer**



**MR. JAMES KATONI**  
**Senior Clerical Officer**



**MS. NAOMI WATHIRA**  
**Documentation officer**



**MS. MERCY OCHIENG'**  
**Documentation officer**



**MS. ROSE WAIRIMU**  
**Senior Clerical Officer**



**MS. RHODA CHEPTOO**  
**Senior Support Staff**



**MR. DOUGLAS LUSIRO HSC**  
**Senior Support Staff**



**MR. RODGERS MORONDI**  
**Driver**



**MR. SAMUEL KAGIRI**  
**Driver**



**MR. NJOROGE NDUNG'U**  
**Communications Officer**



**MR. JAMES KARICHO**  
**Legal Assistant**



**MR. MICHAEL MUNGA**  
**ICT Officer**



**MS. LYDIA MWANGI**  
**Support Staff**



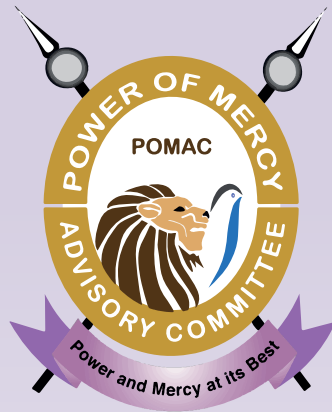
**MR. KENNEDY BIWOTT**  
**Legal Intern**



**MS. PHILOMENA GITAU**  
**Communication Attachee**



**MR. JEREMY GITHUBA**  
**ICT Attachee**



## THE 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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All Enquiries and Petitions to be sent to:

## **THE POWER OF MERCY ADVISORY COMMITTEE**

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