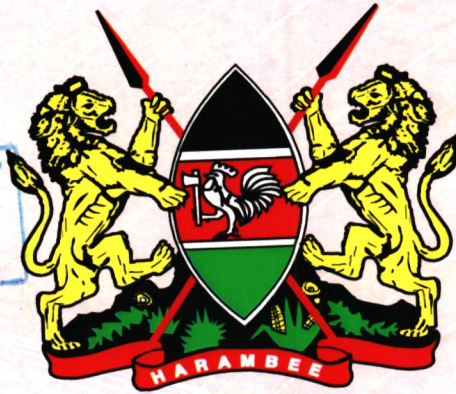


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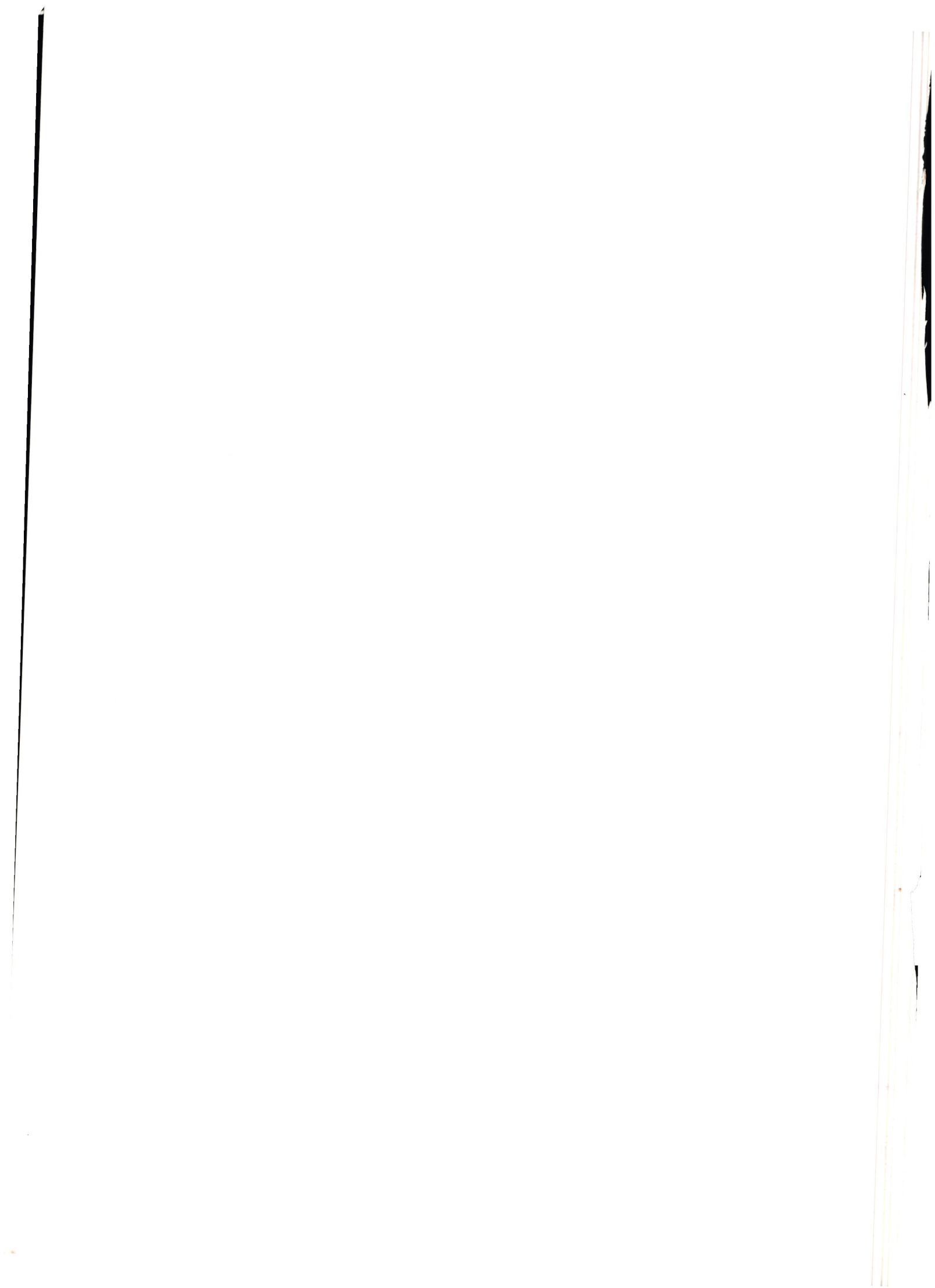


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**THE PRESIDENCY
POWER OF MERCY ADVISORY COMMITTEE
(POMAC)**

**2012- 2013
ANNUAL REPORT**





THE PRESIDENCY
POWER OF MERCY ADVISORY COMMITTEE
(POMAC)

ANNUAL REPORT FOR THE FINANCIAL YEAR

Commencing
1st July, 2012 to 30th June, 2013

Vision

"Power and Mercy at its best"

Mission

"To mercifully exercise power through pardon and re-integration of convicted criminal offenders into society"

Core Values

Integrity

Social justice

Transparency

Accountability

Professionalism and Team work



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COMMITTEE MEMBERS

The Power of Mercy Advisory Committee members are:

Hon. Prof. Githu Muigai, EGH, SC	-	Chairman
Ms. Regina Saira Boisabi	-	Vice-Chair
Mr. Joseph Ole Lenku	-	Member
Mrs. Cathyrn K. Rimberia	-	Member
Rev. Canon David Kipkogei Sawe	-	Member
Mr. Mohammed Omar Ahmed	-	Member
Mrs. Ann W. N. Waihura	-	Member
Most Rev. Charles Franco Anabaka	-	Member
Dr. Hemed Twahir	-	Member
Mr. John N. Gacivih	-	Secretary

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Nairobi, Kenya

CHAIRMAN'S STATEMENT



Prof. Githu Muigai

BACKGROUND

The Power of Mercy Advisory Committee whose primary purpose is to advise His Excellency the President on the exercise of the Power of Mercy is provided for by **Article 133** of the Constitution of Kenya and established through the Power of Mercy Act, 2011.

COMMITTEE'S MANDATE

The Committee receives petitions from any convicted criminal offender. Upon receipt of the petitions the Committee carefully reviews the petitions, conducts interviews and hearings of petitioners, considers and recommends eligible convicted criminal offenders for release to His Excellency the President as the exercise of Power of Mercy is a prerogative of His Excellency the President.

The Committee's responsibility is therefore advisory and, primarily to ensure that the legal system is applied in a just, consistent, fair and moral way without malpractice in line with the Government of Kenya initiative on reforming the criminal justice process and within the Constitution of Kenya, 2010. In view of this, the Committee is guided by set down strict criteria and has further formulated Power of Mercy Procedural Regulations to this effect.

ACTIVITIES

A number of activities and initiatives were undertaken by the Committee in the year ended June, 2013. These were geared towards ensuring that the Committee effectively exercises its constitutional mandate.

The Government of Kenya's decision to have the correctional services department under The Presidency where the Committee is domiciled is not only commendable but has gone a long way to ensure that unlike in the past, the Committee is now effectively positioned to perform more effectively its expanded noble mandate.

The Committee has focused in enhancing its capacity in the exercise its mandate by partnering with key

CHAIRMAN'S STATEMENT


stakeholders while also embracing its need to educate, sensitize, create awareness and rally the country's support towards the implementation of the Committee's operations and plan in the next fiscal year.

CHALLENGES

However, the Committee's efforts were greatly hampered by the provisions of the Sixth Schedule Article 262 of the Constitution, limited resources and Government funding in the financial year 2012/2013.

ACKNOWLEDGMENT

Finally, the Committee received valuable contribution and support from The Presidency and Cabinet Affairs Office, the Kenya Correctional Services, the Kenya Law Reform Commission, the Judiciary, the State Law Office, the Kenya Police Services, the community inclusive of victims and various other state and non-state stakeholders. The Committee acknowledges efforts from the above institutions which have greatly contributed to the operationalization of the Committee's mandate and obligations.



Githu Muigai
CHAIRMAN

COMMITTEE MEMBERS



PROF. GITHU MUIGAI
Chairman



MS. REGINA SAIRA BOISABI
Vice-Chair



MOST REV. CHARLES F. ANABAKA
Member



MRS. CATHRYN K. RIMBERIA
Member



HON. JOSEPH OLE LENKU
Member



MR. MOHAMED OMAR AHMED
Member



REV. CANON DAVID K. SAWE
Member



MRS. ANN WANJIKU N. WAIHURA
Member



DR. HEMED TWAHIR
Member



MR. BENJAMIN NJOGA, EBS
Member



MR. JOHN N. GACIVIH
Secretary

STATEMENT FROM THE SECRETARY

In Kenya, the doctrine of power of mercy was adopted by the colonial masters wholesome from the British Criminal Justice to accentuate their mode of administration. Of course the power was skewed to benefit more the whites than Africans. This changed in the advent of independence and our taking the reigns of power.

Cases relating to power of mercy were mainly handled by the Board of Review under the Prisons Act, Cap. 90, and the Kenya Board of Mental Health under the auspices of Ministry of Health. The two bodies have served the country, albeit with challenges. Issues have arisen as to whether pardons have been granted with due diligence and transparency, free from bias, absolute fairness, just, given to deserving inmates, used for public good and without malpractice.

Due to the above concerns, there arose a need to remove the mystery and secrecy in the granting of power of mercy and create inclusion by way of public participation, provide a system whereby only deserving persons are granted pardon, ensure enhanced public confidence in the new petitions system, guarantee state and community issues are critically considered and not compromised as far as security is considered and more importantly, provide a platform where deserving petitioners who are

considered to have reformed after conviction are successfully re-integrated into society through well thought-out process by all parties is involved.

Towards this end, the Constitution of Kenya, 2010, established the Power of Mercy Advisory Committee anchored on Article 133 of the Constitution and which is mandated under Article 133 (1) to advise H.E. the President on the exercise of the power of mercy. Consequently thereto, the Power of Mercy Act, 2011 was passed as No. 21 of 2011. This was an Act of Parliament to make further provision with respect to the power of mercy pursuant to Article 133 of the Constitution; to provide for the appointment, tenure of office of the members and the powers and functions of the Advisory Committee on the Power of Mercy, and for other connected purposes.

Thus, the Power of Mercy Advisory Committee is a Constitutional body as enshrined in the Constitution with specific roles and mandate. It is towards this mandate that Article 133 (2) of the Constitution is explicit in the Committee's role as the only body which shall advise the President on his exercise of the Power of Mercy at the exclusion of any other body. The major drawback is that the drafters of the Power of Mercy Act, 2011, unfortunately, did not address

STATEMENT FROM THE SECRETARY

very pertinent and critical issues both on enabling the Act to operationalize, but also consider the mandate and extent of the scope of the Committee. This lacunae has created laws and bodies which are in conflict and operating at cross-purposes. Hence, there is need for some of the existing laws to be repealed and some bodies to be de-gazette or remolded to remove conflicts and ambiguities arising from the existence of the various sections of our laws. Legal foundation is the fulcrum for any success of an organization and this includes its procedures and regulations.

Now that the Committee has been cultivating good will amongst all the stakeholders, it needs reciprocity not only in its needs but in its fore-planning from all involved.



J. N. Gacivih
SECRETARY

THE ADVISORY COMMITTEE'S STATEMENT

THE POWER OF MERCY ADVISORY COMMITTEE

The Committee comprises of nine (9) members. These are:-

1. The Attorney-General who is the Chairman
2. The Cabinet Secretary responsible for Correctional Services
3. Seven (7) other members none of whom is a state officer or in public service appointed by His Excellency the President and
4. The Secretary

The Vice Chair is elected at the first Committee meeting by Committee members and the Secretary to the Committee appointed by the Public Service Commission. The profiles of the Committee members who possess a broad range of skills, qualifications and experience required in carrying out their mandate are on page 18 to 22.

The Committee held several meetings in the fiscal year ending June, 2013 and carried on numerous activities in the exercise of its mandate. In arriving at a decision the Committee is guided by strict criteria, the power of mercy legal framework that includes, but is not limited to;

- a) The age of the convicted criminal offender at the time of committing 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
- f) The length of period served by the convicted criminal offender 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 interests of the state and the community
- i) The post-conviction conduct, character and reputation of the inmate
- j) Where the petitioner has opted to pursue other available remedies, the outcome of such avenue
- k) The representations of the victim where applicable.

In exercise of its mandate the Committee has developed its procedural regulations, received both oral and written submissions, established sub-committees, co-opted

THE ADVISORY COMMITTEE'S STATEMENT

into its sub committees persons whose expertise and knowledge it has required, visited several correctional facilities across the country, conducted petition interviews and hearings, worked very closely with state organs and key stakeholders, carried out investigations required to make a determination on the grant of the power of mercy and carried out various other activities necessary for the discharge of its functions in the exercise of its powers.

The Committee has plans in the next fiscal year to undertake, commission, research and collect data on matters relating to the power of mercy. Further, it shall continue to strive to act beyond minimum requirements and to benchmark its performance against best practices.

POMAC'S ACTIVITIES IN THE FINANCIAL YEAR 2012/2013

The Committee carried out various activities as indicated below during the year under review including receiving, reviewing petitions, conducting hearings and sensitizing the public. However, the implementation of the Committee's activities were greatly hampered due to the provisions of the Sixth Schedule, Article 262 of the Constitution of Kenya, 2010.

1. PRISON VISITS, HEARINGS AND PUBLICITY

In the period under review the Committee visited Thirteen (13) Correctional facilities in the Coast, Nairobi, Central, Eastern and Rift Valley regions namely:

1. Manyani Maximum Prison
2. Voi Prison
3. Kin'gorani Remand Prison
4. Kwale Prison
5. Kilifi Prison
6. Kilifi Women Prison
7. Malindi Prison
8. Kamiti Maximum Prison
9. Nyeri Maximum Prison
10. Embu Prison
11. Embu Women Prison
12. Naivasha Maximum Prison
13. Nakuru Maximum Prison

There are One Hundred and Six (106) correctional facilities across the country. The committee intends to visit most of the correctional facilities in the financial year 2013-14.

During the prison visits the Committee carried out amongst many others, several activities which included creating awareness on its mandate and functions to the convicts and prison staff, conducting hearings and interviews of the convicts who had filed petitions, re-receiving petitions

THE ADVISORY COMMITTEE'S STATEMENT

from convicts and, also made necessary investigations and verifications required to make a determination on petitions for the power of mercy.

2. PETITIONS REVIEWS INTERVIEWS AND HEARINGS

An application for the power of mercy can be made by any person who is a convicted criminal offender and not serving a non-custodial sentence or having a pending judicial remedy application.

In the period under review the Committee received Six Thousand Five Hundred and Twenty four (6,524) petitions from various Correctional facilities from all counties across the country.

a) Number of reviewed petitions

The Committee reviewed Two thousand four hundred and twenty five (2,425) petitions and made necessary recommendations therefrom having satisfied itself with the criteria set out in the Power of Mercy Legal framework, due diligence on petitions before the Committee. In arriving at its decisions the committee held inter-views and hearings at various correctional facilities.

b) Nature of petitions

The Committee received petitions from prisoners serving both short term and long term sentences. The short term petitions were from inmates convicted of petty or minor offences serving a jail term of less five (5) years while long term prisoners are convicted of felonies and are serving long term sentences over five (5) up to death sentence.

c) Number of interviewed convicts

The committee interviewed Four Hundred and Twenty Five (425) petitioners from various correctional facilities to verify information availed by the petitioners, petitioners' reports inclusive of state reports, prison reports, medical reports and any other documents in support of the petitions.

3. POMAC PUBLICATIONS AND PETITION DOCUMENTS

The committee reviewed the Power of Mercy Procedural Regulations 2012, POMAC petition forms and further, developed publicity materials for sensitization of prisoners in correctional facilities on the power of mercy and procedures relating to its exercise.

THE ADVISORY COMMITTEE'S STATEMENT

The Committee also partnered with the media to educate, sensitize and create awareness to the public on the nature and applications of the Power of Mercy. Several POMAC activities were covered in the print and electronic media.

4. EVENTS, COLLABORATION AND ENGAGEMENT WITH STAKE-HOLDERS

The Committee continued to consult and interact with its key stake-holders during the year and, held seven (7) days retreat in Mombasa whose major purpose was to interact, inform and engage with the stakeholders for effective partnership in the exercise of the constitutional mandate.

5. COURTESY CALLS

The committee paid courtesy calls to its key stakeholders and partners in the spirit of consultation, cooperation,

engagement and sensi-tization. These included, The Secretary to the Cabinet, The Principal Administrative Secretary Cabinet Affairs (PAS), Commissioner General of Prisons, Officers in-Charge of Thirteen (13) Correctional facilities, the Vice President, Permanent Secretary Home Affairs and the Chief Registrar, Judiciary.

6. ANNUAL WORK PLAN ACTIVITIES AND BUDGET

The Committee developed a work plan and a budget for the financial year 2013/14. The provision of sufficient Government funding will greatly enable the committee execute its mandate as the committees' activities and operationalization has in the past been greatly hampered by insufficient Government funding.

POMAC PICTORIAL ACTIVITIES AT VARIOUS CORRECTIONAL FACILITIES

Elderly Prisoners waiting to be heard by POMAC Members at Nyeri Prison



Petition Hearings at Nyeri Prison



POMAC PICTORIAL ACTIVITIES AT VARIOUS CORRECTIONAL FACILITIES



POMAC PICTORIAL ACTIVITIES AT VARIOUS CORRECTIONAL FACILITIES

POMAC Members conduct a hearing at Naivasha Prison Sick Bay



POMAC PICTORIAL ACTIVITIES AT VARIOUS CORRECTIONAL FACILITIES

**A Special Stage (Trustee) Prisoner with POMAC Members
at Naivasha Prison School Library**



**Inmates engaging the Committee Members
during the Prison visit at Malindi**



POMAC PICTORIAL ACTIVITIES AT VARIOUS CORRECTIONAL FACILITIES

**Inmates engaging the Committee Members
during the Prison visit at Malindi**



A skilled masonry inmate at work at Malindi Prison



POMAC PICTORIAL ACTIVITIES AT VARIOUS CORRECTIONAL FACILITIES

**POMAC Members with the Officer-in-charge outside
Malindi Prison after Petition Hearings**



**POMAC Members with Prison Officers outside
Kilifi Prison after Petition Hearings**



POMAC PICTORIAL ACTIVITIES AT VARIOUS CORRECTIONAL FACILITIES

Convicts listen keenly to POMAC Members at Kilifi Prison

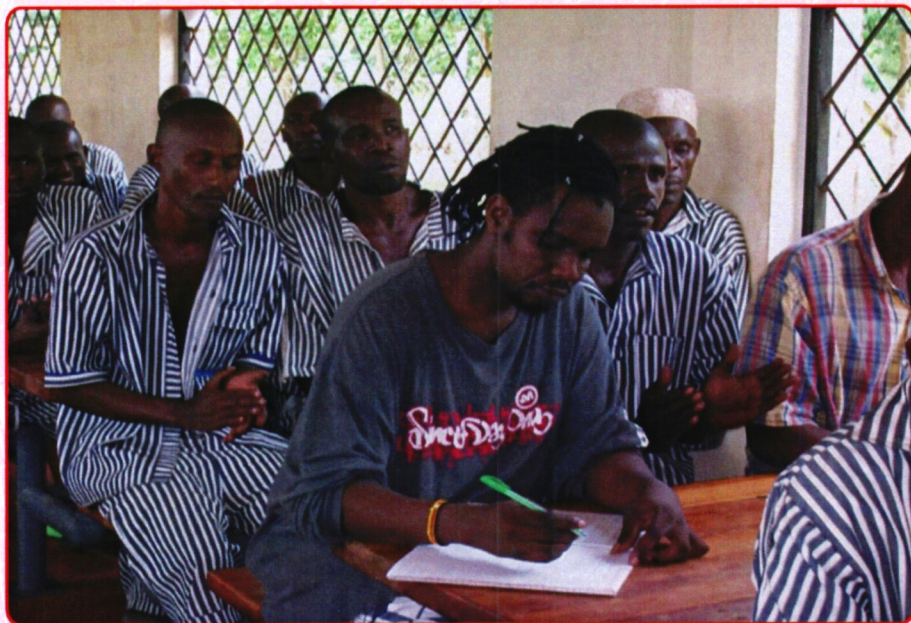


Members consult during the visit at Kilifi Prison



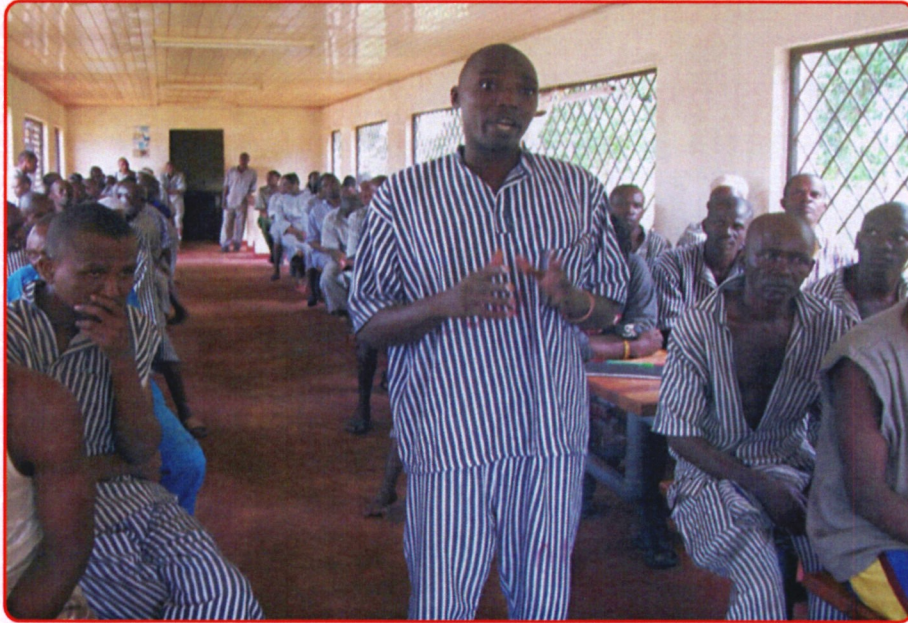
POMAC PICTORIAL ACTIVITIES AT VARIOUS CORRECTIONAL FACILITIES

Inmates keenly listen to POMAC Members at Kwale Prison



POMAC PICTORIAL ACTIVITIES AT VARIOUS CORRECTIONAL FACILITIES

An Inmate engages the Committee at Kwale Prison



Kwale Women Prison Inmates follow the proceedings during POMAC Visit



POMAC PICTORIAL ACTIVITIES AT VARIOUS CORRECTIONAL FACILITIES

Inmates at Embu Prison entertaining POMAC Members before Petition Hearings



POMAC PICTORIAL ACTIVITIES AT VARIOUS CORRECTIONAL FACILITIES

Prisoners engage POMAC Members after Petition Hearings at Nakuru Prison



COMMITTEE MEMBER'S PROFILES

COMMITTEE MEMBERS' PROFILES

Prof. Githu Muigai (Chairman)

Prof. Githu Muigai is the Attorney General of the Republic of Kenya. He holds a Bachelor of Laws (LL.B) and a Doctorate in Laws (Ph.D.) degrees from the University of Nairobi and further, a Master of Laws (LL.M) Degree from Columbia University School of Law, New York.

He is also a Fellow of the Chartered Institute of Arbitrators (UK) and a member of the American Association of Trial Lawyers. He holds a Post Graduate Diploma in Law from the Kenya school of Law (KSL) and was admitted to the Bar in 1985.

In addition to many years in legal practice, Prof. Githu Muigai is an Associate Professor of Public Law at University of Nairobi School of Law. He specializes in Public law and International Legal Practice. He is a recognized authority on Business Regulatory matters, and International Commercial Arbitration.

Prof. Githu Muigai has been awarded the Elder of the Golden Heart (EGH) by His Excellency Hon. Mwai Kibaki, the President of the Republic of Kenya and is a Senior Counsel.

Ms. Regina Saira Boisabi (Vice-chair)

Regina is an Advocate of the High Court of Kenya and a Commissioner of Oaths. She holds a Bachelor of Laws (LL.B) degree and Master of Laws (LL.M) from the University of Nairobi. She possesses valuable and vast experience in the legal field gained over Twenty (20) years' experience both on the Kenyan Bar and Bench.

She has practiced law for over thirteen (13) years and served as a Magistrate for over seven (7) years at busy stations including Mombasa, Nairobi and Nyeri Law Courts.

She served as a Legal Counsel Assistant in the Commission of Inquiry into the Kenya 2007 Post Election Violence (Waki Commission) and sits on various Boards as a Director.

She is currently actively engaged in specialized legal consultancy and private practice, as a facilitator in the Kenya National Integrated Media Civic Education (K-NICE) Programme and is also, an active pro bono lawyer for numerous Human Rights and Governance Institutions.

COMMITTEE MEMBER'S PROFILES

Mr. Joseph Ole Lenku **Cabinet Secretary**

Mr. Joseph Ole Lenku is the Cabinet Secretary, Ministry of Interior and Coordination of National Government. He holds a Bachelor of Commerce Degree from the University of Nairobi (Marketing Major) and a Diploma in Hotel Management from Kenya Utalii College.

He is a recognized authority in hotel management, Project Management, Marketing, Contract Negotiations and Business Development having worked for over twenty (20) years in the hotel industry and hospitality.

He is also actively involved in community service.

Mrs. Cathryn K. Rimberia **(Member)**

Cathryn holds a Master's degree in Business & Administration (MBA) with specialization in Human Resource Management (HRM), a Bachelor of Arts (Hons) degree, and a Post-graduate Diploma in Education, all from the University of Nairobi. Additionally, she has a Higher National Diploma in Human Resource Management (HND-HRM) and a Diploma in Project Management. She is currently undertaking PhD studies at the University of Nairobi School Of Business in Human Resource Management.

Cathryn has twenty-seven years of

diversified and progressive work experience in senior management functions. This includes her seven-teen (17) years' experience in the Education sector where she started her career with the Teachers' Service Commission as a high school teacher and later a lecturer at the Kenya Technical Teachers' College. She also served as a Deputy Director at the Kenya Education Staff Institute in the Ministry of Education. She also taught business management courses at the Africa Nazarene University and Strathmore University respectively.

She worked for the Constitution of Kenya Review Commission (CKRC) for six (6) years from 2000 to 2006 and later from 2007 served as a Project Coordinator / Technical Implementation Specialist with the African Development Bank (AFDB).

She is currently engaged in management consultancy and is a member of the Institute of Human Resource Management (IHRM).

Mr. Mohammed Omar Ahmed **(Member)**

Mr. Omar has a B. Ed (Early Childhood, Kenyatta University, and M. Ed. (Educational Planning). He has previously worked as a Lecturer and Principal in secondary schools and is currently working for IOM as National Officer on matters of education. He is

COMMITTEE MEMBER'S PROFILES

the National Officer on Vulnerable Refugee Children, IOM.

Charles F. Anabaka, DSM (Member)

Charles Franco Anabaka holds a Masters in Theology and Development from the University of Edinburgh, Scotland (UK), a bachelor's degree in education (B. ED Arts) from the University of Nairobi. He has a Diploma in social work from Kenya School of Government formally KIA. He has undertaken several short courses including counseling, management, project planning, integrity issues, conflict resolution and management.

He worked with the civil service for 28 years. At the time of retirement, he had risen to the grade of Deputy Provincial Probation Officer, Nyanza Province. He has also worked as a part-time Lecturer with Kima International School of Theology. He is currently the Archbishop of African Interior Church, Kenya having been ordained into the church ministry in 1989. He has also served as Chairman of NCKK Scholarships Board, Chairman of Kijana Educational Empowerment Initiative (International NGO) from 2006 - 2010, a member of the following Boards: Dream Sponsors (US), Eburngwe, Ebusiloli, Mwituha and Esibeye Secondary Schools. In 1998, he

was honored by the President and awarded the Distinguished Service Medal.

Mrs. Ann W. N. Waihura (Member)

Mrs. Waihura holds a Master's degree in Educational Leadership. She is currently pursuing a PhD at Kenyatta University in the department of Education Management, Policy and Curriculum Studies.

She undertakes consultations on Strategic Leadership and development of Strategic plans for organizations as well as team building for groups. She has wide experience as an educationist which involves teaching in high school for over 15 years; continues to help young people acquire life skills to help them face challenges of life.

She has worked with USAID funded projects to promote the quality of education for marginalized children in Kenya by building capacity of Head teachers, School Management Boards and teachers working in non-formal Schools. This involves managing grants from donors and implementing programs with the aim of providing improved school environments for better learning of marginalized children in Kenya.

COMMITTEE MEMBER'S PROFILES

Dr. Hemed S. Twahir (Member)

Dr. Twahir is a Medical Doctor by Profession. He holds a Master's Degree in Pediatrics (childhood diseases) and Pediatric Nephrology (Childhood Kidney Problems). He hails from the county of Mombasa. He has a vast experience in his line of work, having worked as a civil servant in different capacities for more than ten years. His last stint in civil service was at the Coast Provincial General Hospital as the Head of Department of Pediatrics. He currently works in the same capacity at the Aga-Khan Hospital, Mombasa.

Rev. Canon David K. Sawe, MA, (PhD. Cand.) (Member)

Rev. Canon David. K. Sawe is an Anglican Priest. He holds a Bachelor of Divinity Degree from St. Paul's University Limuru and a Masters Degree in Church History from the Africa International University Karen. In addition, he is pursuing a PhD. degree in Peace and Conflict Studies at Masinde Muliro University of Science and Technology, Nairobi Campus. Prior to being posted to all Saint's Cathedral Nairobi in January, 2012, he served in various capacities in the ACK Diocese of Eldoret for sixteen (16)

years. In January, 2005 to June 2006, he taught at St. Paul's University, Berea Theological College in the ACK Diocese of Nakuru. From June 2006, he was appointed the Assistant Provost of All Saint's Cathedral Church Nairobi until December, 2009. In January 2010 to December, 2011, he was appointed the Administrative Secretary of the ACK All Saint's Cathedral Diocese of Nairobi.

In addition to his church work, he has served as a Board Member of several secondary schools and community projects. He has also served for ten (10) years as a Civil Servant.

Mr. John N. Gacivih (Secretary)

He is an Advocate of the High Court of Kenya qualifying in Diploma of Laws (Dip. Laws) Kenya School of Law, is pursuing his Doctor of Philosophy (Ph.D) in International Law with the University of Nairobi. He has Master in Laws (LL.M) from University of Nairobi; has Bachelor of Laws (LL.B) from University of Dar-es-salaam; pursuing Fellowship of the Chartered Institute of Arbitrators (London); has attended courses on Bio-technology and Bio-safety (Uganda), Corporate Governance, Strategic Leadership Development Programme, Making,

COMMITTEE MEMBER'S PROFILES

Implementing and Evaluating Public Policy, Continuing Legal Professional Development (CPD), Integrated Financial Management Information System (IFMIS), Strategies on Fraud Prevention (S.A.), Training for Prosecutors on Anti-Corruption and Drugs (UN/SA), Betting Control and Creating of a National Lottery (Finland).

He is also a member of the RedCross and other organizations in social-economic development of the society both at grassroots and at National level. He is also involved in free legal advice to the poor and the disadvantaged.

FINANCIAL STATEMENTS

(NOT AVAILED BY SECRETARY)

AUDITORS REPORT

**From the Kenya National Audit Office
Signed by the Auditor- General**

(NOT AVAILED BY SECRETARY)

STATEMENT OF FINANCIAL POSITION

(NOT AVAILABLE BY SECRETARY)

STATEMENT OF COMPREHENSIVE INCOME

(NOT AVAILABLE BY SECRETARY)

STATEMENT OF CHANGES IN FUND BALANCES

(NOT AVAILED BY SECRETARY)

STATEMENT OF CASHFLOW

(NOT AVAILED BY SECRETARY)

NOTES TO THE FINANCIAL STATEMENTS

(NOT AVAILED BY SECRETARY)



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

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