PARLIAMENT OF KENYA LIBRARY

Approved
Hon. Farah
13/08/2026

REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT – FIFTH SESSION – 2026

DIRECTORATE OF DEPARTMENTAL COMMITTEES

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

THE NATIONAL ASSEMBLY
PAPERS LAID
DATE: 13 AUG 2026 DAY. THUR
TABLED BY: CHAIRPERSON, JLAC
CLERK-AT THE-TABLE: OBIERO

REPORT ON:

THE CONSIDERATION OF THE POWER OF MERCY BILL (NATIONAL ASSEMBLY BILL NO. 56 OF 2025)

NATIONAL ASSEMBLY
RECEIVED
13 AUG 2026
SPEAKER'S OFFICE
P.O. Box 41842-00100 NAIROBI

CLERK'S CHAMBERS
DIRECTORATE OF DEPARTMENTAL COMMITTEES
PARLIAMENT BUILDINGS
NAIROBI

AUGUST 2026

TABLE OF CONTENTS

Table of Contents i
List of Abbreviations and Acronyms ii
List of Annexures iii
Chairperson's Foreword iv

CHAPTER ONE 1
1 Preface 1
1.1 Establishment of the Committee 1
1.2 Mandate of the Committee 1
1.3 Committee Membership 3
1.4 Committee Secretariat 4

CHAPTER TWO 5
2 Overview of the Power of Mercy Bill (National Assembly Bill No. 56 of 2025) 5
2.1 Background 5
2.2 Summary of Legal Provisions 5

CHAPTER THREE 6
3 Public Participation and Stakeholder Engagement on the Bill 6
3.1 Legal Framework on Public Participation 6
3.2 Memoranda Received on the Bill 6
3.2.1 Submissions in Support of the Bill 7
3.2.2 Submissions on Proposed Amendments 7

CHAPTER FOUR 33
4 Committee Observations 33

CHAPTER FIVE 34
5 Committee Recommendations 34

CHAPTER SIX 35
6 Schedule of Amendments 35

LIST OF ABBREVIATIONS AND ACRONYMS

CAJ	-	Commission on Administrative Justice
CBS	-	Chief of the Order of the Burning Spear
COG	-	Council of County Governors
CMD	-	Centre for Multiparty Democracy Kenya
DCI	-	Director of Criminal Investigations
EBS	-	Elder of the Order of the Burning Spear
EGH	-	Elder of the Order of the Golden Heart
FORD	-	Forum for the Restoration of Democracy
JD	-	Justice Defenders
KLRC	-	Kenya Law Reform Commission
KNCHR	-	Kenya National Commission on Human Rights
KPS	-	Kenya Prisons Service
LSK	-	Law Society of Kenya
MCCP	-	Maendeleo Chap Chap Party
MCK	-	Media Council of Kenya
MFA	-	Ministry of Foreign and Diaspora Affairs
MGH	-	Moran of the Order of the Golden Heart
MP	-	Member of Parliament
NGEC	-	National Gender and Equality Commission
NIS	-	National Intelligence Service
NPS	-	National Police Service
ODM	-	Orange Democratic Movement
OGW	-	Order of the Grand Warrior
ODPP	-	Office of the Director of Public Prosecutions
POMAC	-	Power of Mercy Advisory Committee
SG	-	Office of the Solicitor-General
TI	-	Transparency International
UDA	-	United Democratic Alliance
UDM	-	United Democratic Movement
WDM	-	Wiper Democratic Movement
WPA	-	Witness Protection Agency

LIST OF ANNEXURES

Annexure 1: Adoption Schedule
Annexure 2: Minutes
Annexure 3: Power of Mercy Bill (National Assembly Bill No. 56 of 2025)
Annexure 4: Advertisement inviting the public to submit memoranda on the Bill
Annexure 5: Letter from the Clerk of the National Assembly inviting key stakeholders to a meeting to submit views on the Bill
Annexure 6: Memoranda by Stakeholders

CHAIRPERSON'S FOREWORD

This Report contains the proceedings of the Departmental Committee on Justice and Legal Affairs on its consideration of the Power of Mercy Bill (National Assembly Bill No. 56 of 2025). The Bill was published in the Kenya Gazette on 25th November 2025 and was read a First Time in the House on 26th February 2026. Pursuant to Standing Order 127(1), the Bill was committed to the Committee for consideration and reporting to the House.

The Bill seeks to give effect to Article 133 of the Constitution on the exercise of power of mercy by the President by providing for the appointment, tenure of office of the members of the Advisory Committee on Power of Mercy, and the powers and functions of the Advisory Committee on the Power of Mercy.

In compliance with Article 118(b) of the Constitution and Standing Order 127(3), the Committee placed an advertisement in the print media on 28th February 2026, inviting the public to submit memoranda in the form of written statements on the Bill. In addition, the Committee, vide letters referenced *NA/DDC/JLAC/2026/032* and *NA/DDC/JLAC/2026/035* dated 19th March 2026 and 9th April 2026, respectively, invited key stakeholders to submit views on the Bill and to attend public participation forums on 9th and 16th April 2026. The memoranda were to be received on or before 6th March 2026, at 5.00 pm (East African Time). By the close of the submission deadline, the Committee had received twenty (20) memoranda.

The Power of Mercy Advisory Committee (POMAC), National Intelligence Service (NIS), State Department for Internal Security and National Administration; Ministry of Defence, Ministry of Foreign and Diaspora Affairs (MFA), State Department for Correctional Services, Kenya Prisons Service (KPS), National Police Service (NPS), Office of the Director of Public Prosecutions (ODPP), Commission on Administrative Justice (CAJ), Witness Protection Agency (WPA), Kenya National Commission on Human Rights (KNCHR), Kenya Law Reform Commission (KLRC), National Gender and Equality Commission (NGEC), Law Society of Kenya (LSK), Media Council of Kenya (MCK), Council of County Governors (COG), Centre for Multiparty Democracy (CMD), Transparency International (TI) and Justice Defenders (JD) submitted their views on the Bill which the Committee considered in the preparation of this Report.

While considering the Bill, the Committee observed that the Bill seeks strengthen the institutional and administrative framework for the exercise of the power of mercy as provided under Article 133 of the Constitution.

The Committee is grateful to the Offices of the Speaker and Clerk of the National Assembly for the logistical and technical support accorded to it during its consideration of the Bill. The Committee further wishes to thank POMAC, NIS, State Department for Internal Security and National Administration; Ministry of Defence, MFA, State Department for Correctional Services, KPS, NPS, ODPP, CAJ, WPA, KNCHR, KLRC, NGEC, LSK, MCK, COG, CMD, TI and JD who submitted their views on the Bill.

Finally, I wish to express my appreciation to the Honourable Members of the Committee and the Committee Secretariat who sat for long hours and made useful contributions towards the preparation and production of this Report.

On behalf of the Departmental Committee on Justice and Legal Affairs and pursuant to the provisions of Standing Order 199(6), it is my pleasant privilege and honour to present to this

House the Report of the Committee on its Consideration of the Power of Mercy Bill *(National Assembly Bill No. 56 of 2025)*.

It is my pleasure to report that the Committee has considered the Power of Mercy Bill (National Assembly Bill No. 56 of 2025) and has the honour to report back to the National Assembly with the recommendation that the House **approves the Bill with amendments.**

Hon. Murugara George Gitonga, CBS, MP
Chairman, Departmental Committee on Justice and Legal Affairs

CHAPTER ONE

1 PREFACE

1.1 Establishment of the Committee

1. The Departmental Committee on Justice and Legal Affairs is one of twenty departmental committees of the National Assembly established under **Standing Order 216** whose mandate pursuant to the **Standing Order 216 (5)** is as follows:
   i. *To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;*
   ii. *To study the programme and policy objectives of ministries and departments and the effectiveness of the implementation;*
   iii. *To, on a quarterly basis, monitor and report on the implementation of the national budget in respect of its mandate;*
   iv. *To study and review all legislation referred to it;*
   v. *To study, assess and analyse the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;*
   vi. *To investigate and inquire into all matters relating to the assigned ministries and departments as they may deem necessary, and as may be referred to them by the House;*
   vii. *To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments);*
   viii. *To examine treaties, agreements and conventions;*
   ix. *To make reports and recommendations to the House as often as possible, including recommendations of proposed legislation;*
   x. *To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and*
   xi. *To examine any questions raised by Members on a matter within its mandate.*

1.2 Mandate of the Committee

2. In accordance with the Second Schedule of the Standing Orders, the Committee is mandated to consider:
   a) The Judiciary;
   b) Tribunals;
   c) Access to Justice;
   d) Public prosecutions;
   e) Ethics, Integrity and Anti-corruption;
   f) Correctional services;
   g) Community service orders and witness protection;
   h) Constitutional Affairs;
   i) Sovereign immunity;
   j) Elections including referenda;
   k) Human rights;
   l) Political parties; and
   m) The State Law Office including insolvency, law reform, public trusteeship, marriages and legal education.

3. In executing its mandate, the Committee oversights the following Ministries, Departments and Agencies:
    a) The Judiciary;
    b) Judicial Service Commission;
    c) State Department for Correctional Services;
    d) State Law Office and Department of Justice;
    e) State Department for Justice, Human Rights and Constitutional Affairs;
    f) Office of the Director of Public Prosecutions;
    g) Ethics and Anti-Corruption Commission;
    h) Independent Electoral and Boundaries Commission;
    i) Commission on Administrative Justice;
    j) Office of the Registrar of Political Parties;
    k) Witness Protection Agency;
    l) Kenya National Commission on Human Rights;
    m) Kenya Law Reform Commission; and
    n) Council of Legal Education.

1.3 Committee Membership

4. The Committee comprises the following Members:

Chairperson
Hon. Murugara George Gitonga, CBS, MP
Tharaka Constituency
UDA Party

Vice-Chairperson
Hon. Mutuse Eckomas Mwengi, OGW, MP
Kibwezi West Constituency
MCCP Party

Hon. Gladys Boss, MGH, MP
Uasin Gishu Constituency
UDA Party

Hon. Maalim Farah, EGH, MP
Dadaab Constituency
WDM-Kenya

Hon. Onyiego Silvanus Osoro, CBS, MP
South Mugirango Constituency
UDA Party

Hon. Francis Kajwang' Tom Joseph, CBS, MP
Ruaraka Constituency
ODM Party

Hon. Wetang'ula Timothy Wanyoyi, CBS, MP
Westlands Constituency
ODM Party

Hon. (Dr.) Otiende Amollo, SC, EBS, CBS, MP
Rarieda Constituency
ODM Party

Hon. Muchira Michael Mwangi, MP
Ol Jorok Constituency
UDA Party

Hon. Aden Daud, EBS, MP
Wajir East Constituency
Jubilee Party

Hon. Makali John Okwisia, MP
Kanduyi Constituency
FORD-Kenya

Hon. Mogaka Stephen M., MP
West Mugirango Constituency
Jubilee Party

Hon. Timothy Kipchumba Toroitich, MP
Marakwet West Constituency
Independent

Hon. Harold Kimuge Kipchumba, MP
Nominated Member
ODM Party

Hon. CPA Suleka Hulbale Harun, MP
Nominated Member
UDM Party

1.4 Committee Secretariat

5. The Committee is facilitated by the following staff:

Mr. Ahmed Salim Abdalla
Clerk Assistant I / Head of Secretariat

Mr. Ronald Walala
Principal Legal Counsel

Mr. Samuel Wanjiru
Clerk Assistant III

Mr. Isaac Nabiswa
Legal Counsel I

Mr. John Nduaci
Serjeant-At-Arms

Ms. Rhoda Muchiri
Hansard Officer III

Mr. Abdikafar Abdi
Clerk Assistant III

Mr. Omar Abdirahim
Fiscal Analyst I

Ms. Vivienne Ogega
Research Officer III

Ms. Rahab Chepkilin
Audio Officer III

Mr. Wilson Murimi
Media Relations Officer III

Ms. Esther Mbatha
Public Communications Officer III

CHAPTER TWO

2 OVERVIEW OF THE POWER OF MERCY BILL (NATIONAL ASSEMBLY BILL NO. 56 OF 2025)

2.1 Background

6. The Bill, sponsored by the Leader of the Majority Party, was read a First Time in the House on 26th February 2026 (*Annexure 3*). It was thereafter committed to the Committee in line with Standing Order 127(1) of the National Assembly Standing Orders.

2.2 Summary of Legal Provisions

7. The Bill seeks to give effect to Article 133 of the Constitution on the exercise of power of mercy by the President by providing for the appointment, tenure of office of the members of the Advisory Committee on Power of Mercy, and the powers and functions of the Advisory Committee on the Power of Mercy.

8. In particular:

a) **Part I (Clauses 1-4)** provides for the preliminary provisions including the short title, interpretation, objects of the Act and guiding principles.
b) **Part II (Clauses 5-24)** provides for the composition of the Advisory Committee on the Power of Mercy as well as procedure for appointment of members of the Advisory Committee on Power of Mercy pursuant to Article 133(2)(c) of the Constitution. It also provides for the functions and powers of the Advisory Committee and provisions on the administration of the Advisory Committee including headquarters of the Advisory Committee, establishment of the Advisory Committee Secretariat and remuneration of the members of the Advisory Committee.
c) **Part III of the Bill (Clauses 25-36)** provides for forms of mercy recognised by Article 133(1) of the Constitution as well as the process of petitioning for the exercise of the various forms of mercy and eligibility criteria for each form of mercy.
d) **Part IV (Clauses 37-39)** provides for financial provisions including the source of funds of the Advisory Committee, the financial year, preparation of annual estimates, accounts and audit.
e) **Part V (Clauses 40-45)** provides for creation of awareness and capacity building by the Advisory Committee, sensitization of offender, public education on the power of mercy and procedures relating to the petition for exercise of power of mercy and access to information.
f) **Part VI (Clauses 46-51)** provides for miscellaneous provisions, including collection and publication of data by the Advisory Committee, record keeping, duty of others to cooperate with the institutions established under the Act, general penalty for contravention of the provisions of the Act and forms by the Advisory Committee to be used for filing petitions.
g) **Part VI (Clause 52)** provides for power to make regulations by the Cabinet Secretary responsible for correctional services for the proper carrying into effect the provisions of the Act.
h) **Part VII (Clauses 53-68)** provides for repeal, savings, transitional provisions and consequential amendments.

CHAPTER THREE

3 PUBLIC PARTICIPATION AND STAKEHOLDER ENGAGEMENT ON THE BILL

3.1 Legal Framework on Public Participation

9. Article 118 (1)(b) of the Constitution provides that:

"Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees."

10. The National Assembly Standing Order 127 (3) and (3A) stipulates that:

"(3) The Departmental Committee to which a Bill is committed shall facilitate public participation on the Bill through an appropriate mechanism including-

(a) inviting submission of memoranda;

(b) holding public hearings;

(c) consulting relevant stakeholders in a sector; and

(d) consulting experts on technical subjects.

(3A) The Departmental Committee shall take into account the views and recommendations of the public under paragraph (3) in its report to the House."

3.2 Memoranda Received on the Bill

11. Pursuant to the aforementioned provisions of the law, the Committee placed an advertisement in the print media on 28th February 2026 *(Annexure 4)* inviting the public to submit memoranda by way of written statements on the Bill. Further, the Committee vide letters referenced *NA/DDC/JLAC/2025/032 and NA/DDC/JLAC/2025/035* dated 19th March 2026 and 9th April 2025, respectively, *(Annexure 5)* invited key stakeholders to submit views on the Bill and attend public participation forums on 9th and 16th April 2026.

12. To this end, the Committee received twenty (20) memoranda from the Power of Mercy Advisory Committee (POMAC), National Intelligence Service (NIS), State Department for Internal Security and National Administration; Ministry of Defence, Ministry of Foreign and Diaspora Affairs (MFA), State Department for Correctional Services, Kenya Prisons Service (KPS), National Police Service (NPS), Office of the Director of Public Prosecutions (ODPP), Commission on Administrative Justice (CAJ), Witness Protection Agency (WPA), Kenya National Commission on Human Rights (KNCHR), Kenya Law Reform Commission (KLRC), National Gender and Equality Commission (NGEC), Law Society of Kenya (LSK), Media Council of Kenya (MCK), Council of County Governors (COG), Centre for Multiparty Democracy (CMD), Transparency International (TI) and Justice Defenders (JD). The memoranda are annexed to this Report as *Annexure 6*.

13. In addition, the Power of Mercy Advisory Committee (POMAC); Executive Office of the President; Office of the Solicitor-General (SG); State Department for Justice, Human Rights and Constitutional Affairs; Commission on Administrative Justice (CAJ); Office of the Director of Public Prosecutions (ODPP); Director of Criminal Investigations (DCI); WPA; Victim Protection Board; and TI attended the public participation forum on 9th April 2026 and submitted their views on the Bill.

14. The POMAC; Ministry of Defence; State Department for Correctional Services represented by the Kenya Prisons Service (KPS) and Probation and Aftercare Services;

State Department for Justice, Human Rights and Constitutional Affairs; DCI; National Police Service (NPS); Kenya National Commission on Human Rights (KNCHR); ODPP; CAJ; WPA; LSK; Transparency International (TI); Justice Defenders; and Crime si Poa attended the public participation forum on 16th April 2026 and submitted their views on the Bill.

3.2.1 Submissions in Support of the Bill

15. The SG supported the Bill in its entirety.

3.2.2 Submissions on Proposed Amendments

16. Whilst proposing amendments to the Bill, POMAC, NIS, Ministry of Defence, MFA, State Department for Correctional Services, KPS, NPS, ODPP, CAJ, WPA, KNCHR, KLRC, NGEC, LSK, MCK, COG, CMD, TI and JD submitted as follows:

Clause 2

Actuarial assessment

17. NIS noted that the proposed of "actuarial assessment" does not provide for a procedural framework governing its conduct including factors to be considered such as criminal history and likelihood of behavioural change, the assessment tools to be applied, timelines for assessment and qualification requirements of the assessors. In NIS's view, the Bill should be amended to provide for this framework, expressly, or alternatively, the details be addressed substantively through Regulations to enhance transparency, consistency and accountability in the implementation of the Bill.

Committee Observation

18. The Committee observed that the words "actuarial assessment" has not been used in the Bill therefore the definition of "actuarial assessment" should be deleted from Clause 2 of the Bill.

Capital offence

19. The State Department for Correctional Services and KPS submitted that the definition of 'capital offence' in the Bill incorrectly equates capital offences with offences punishable by life imprisonment. Further that, clause 30(1)(b) on commutation of sentences to life imprisonment confirms that capital punishment refers to the death penalty. Hence, KPS proposed amending the definition of 'capital offence' to align with the Penal Code and constitutional sentencing jurisprudence to ensure clarity, doctrinal accuracy and prevent interpretive confusion in eligibility for pardon consideration.

20. CAJ proposed an amendment to the definition to align with the Penal Code, Cap. 63 (death penalty offences, not life imprisonment). The current definition incorrectly equates capital offences with life imprisonment, which creates inconsistency with Kenyan criminal law and may lead to misapplication of mercy provisions.

Committee Observation

21. The Committee observed that the Penal Code (Cap. 63) does not define "capital offence". The Bill has used the words "capital offence" in reference to an offence which attracts the gravest form of punishment which is a death sentence.

Correctional facility

22. ODPP proposed retaining the definition of "correctional facility" contained in the Power of Mercy Act, Cap. 94 which is more exhaustive and non-restrictive.

Committee Observation

23. The Committee observed that the definition of "correctional facility" as contained in the Bill is limiting. Therefore, the definition contained in the Power of Mercy Act (Cap. 94) is more exhaustive since there are other institutions which are used to detain offenders such as borstal institutions.

Felony and Misdemeanour

24. State Department for Correctional Services proposed deleting the definitions of "felony" and "misdemeanour" to enhance doctrinal clarity and avoid interpretive disputes. This is because Kenyan criminal procedure reforms and sentencing frameworks no longer operationalize felony and misdemeanour distinctions as eligibility thresholds within executive mercy processes.

Committee Observation

25. The Committee observed that there is need to align the definitions of "felony" and misdemeanour" with the provisions of the Penal Code.

High-risk offender

26. NIS proposed defining "high-risk offender" as a "person who has committed a serious crime and who is likely to commit another crime if not restrained," to prevent legal and social risks to public safety and institutional integrity that could arise from the absence of a definition in the Bill.

Committee Observation

27. The Committee observed that POMAC has proposed an amendment to Clause 31(1) of the Bill to remove the exception of high-risk offender from being granted remission of all part of a sentence as a form of mercy.

Indefinite

28. KLRC proposed deleting the definition of "indefinite" in its entirety as the term is described in the English language and not as a technical term that needs description.

Committee Observation

29. The Committee observed that the term "indefinite" is an ordinary word in the English language that is well understood which requires no definition.

Mercy

30. The State Department for Correctional Services proposed amending the definition of "mercy" to underpin it to the Constitution because, as framed in the Bill, it presents the power of mercy as an unfettered discretion by the President.

Committee Observation

31. The Committee observed that Article 133 of the Constitution on the exercise of power of mercy by the President. However, the Constitution does not define the term.

Therefore, a definition of the term "mercy" in the Bill should align with the provision of Article 133 of the Constitution.

National interest

32. State Department for Correctional Services proposed amending the definition of 'national interest' because, as framed, it is overly restrictive and does not reflect the broader constitutional and legal understanding of the concept encompassing wide range of considerations such as public welfare, administration of justice, social stability, equity and good governance.

33. MFA proposed amending the definition of "national interest" to define how it is used in clause 27 and intended to uphold diplomatic relations between Kenya and other nations. Furthermore, KLRC stated that this amendment would be in line with its subsequent proposal to clause 27 seeking to have national interest appear in all categories of Power of Mercy.

34. NIS noted that the definition of "national interest" contained in the Bill is not comprehensive and noting that there is no universally accepted definition of the term, proposed that the definition be omitted from the Bill altogether.

Committee Observation

35. The Committee observed that the term has been used in the eligibility criteria in granting of free pardon and postponing of the carrying out of a punishment. However, the Bill limits the definition to interest of international relations or to save human lives. Therefore, there is need to expound the definition to include other elements such as public welfare.

Pardon

36. The State Department for Correctional Services and KPS proposed amending the definition of "pardon" to align with Article 133 of the Constitution. In KPS' view, the definition, as currently framed, appears to suggest that it relates to permission for an offender who has competed the sentence to have their records separated or kept apart contrary to the reflected constitutional scope of pardon which provides for remission or mitigation of the legal consequences of a conviction or sentence.

37. NGEC proposed an amendment to the definition of "pardon" to include in free, conditional and absolute pardon., submitting that the current definition is not comprehensive. The Commission further proposed definition of the new terms 'free pardon', 'conditional pardon' and 'absolute pardon'.

Committee Observation

38. The Committee observed that the Article 133 does not define the term "pardon" but it lists the forms of to include free or conditional pardon. The Bill however defines the terms free pardon and conditional pardon which are the forms of mercy recognized by Article 133(1)(a) of the Constitution. Therefore, the definition of the term "pardon" may not be necessary.

Recidivism

39. LSK proposed amending the definition of "recidivism" because, as drafted, it is conceptually inaccurate as it conflates recidivism (actual repeat offending) with the risk of

recidivism (likelihood of offending). In LSK's view, this introduces ambiguity and shifting the framework from an evidence-based concept to a predictive and subjective one.

Committee Observation

40. The Committee observed that the term "recidivism" is the commission of a subsequent offence by a person who has been previously convicted. The term as defined in the Bill incorrectly refers to the likelihood of an offender to re-offend. Therefore, a definition of the term should on an evidence-based concept rather than a predictive one.

Vulnerable offender

41. ODPP proposed aligning the definition of "vulnerable offender" with section 2 of the ODPP Act, Cap. 6B for consistency.

42. NGEC proposed the definition of the term "vulnerable offender" to give an open interpretation to cater for more vulnerable categories including juveniles, substance dependants, trauma or abuse victims, among others

Committee Observation

43. The Committee observed that the term "vulnerable offender" is used in Clause 27 which identifies the eligibility criteria for the grant of free pardon. Vulnerability involves being exposed to heightened risk of harm by reason of age, status, health, etc. Therefore, the definition may be expanded to cater for other categories such as children

New Definitions

44. State Department for Correctional Services proposed including the definition of 'Chief Registrar' as used in clause 9.

45. LSK proposed defining 'designated high-risk offenders' as used in clause 31(1)(a) to provide clarity and consistency in application.

46. KLRC proposed defining 'decision-making entities' as used in clause 12(2)(a) for clarity.

47. NPS proposed defining 'exceptional circumstances' referred to in clause 27(1) for clarity.

48. NPS proposed defining 'critically ill' as used in clauses 29(1)(a)(iii) and 30(1)(a)(iv) to avoid ambiguity.

49. KLRC proposed defining 'law enforcement officer' used in the Bill as it is not a commonly used term.

50. WPA proposed the inclusion of the definition of the terms "protected person" and "former participant" as contained under the Witness Protection Act, Cap. 79.

51. CMD-Kenya, proposed to include a formal definition for "femicide" in the interpretation section, stating that while homicide is criminalized, the law doesn't recognize femicide as a specific gender-based crime. Defining it helps track motives, capture patterns and improve prosecution and prevention.

Clause 3

52. ODPP submitted that the clause is too broad and does not capture the criteria and procedure of lodging a petition and hence, proposed aligning the clause with Article 133 of the Constitution.

53. The State Department for Correctional Services proposed inserting new paragraphs (c) and (d) to expressly provide for the procedure and criteria of POMAC as objects of the Act as contemplated by Article 133(3) of the Constitution.

54. Furthermore, the State Department for Correctional Services proposed inserting a new paragraph (e) to explicitly anchor procedural fairness safeguards in exercise of the power of mercy to strengthen constitutional compliance and protect POMAC against arbitrariness challenges in line with Articles 10 and 47 of the Constitution.

55. CAJ proposed an amendment to expressly include the promotion of victims' rights and restorative justice as a key objective of the Act. The amendment aligns the Act with the Victim Protection Act, Cap. 79A and promotes a balanced approach between offender rehabilitation and victims' interests, thereby enhancing fairness and justice.

56. MCK proposed that the clause be retained but should be expanded by expressly providing that the Act shall also facilitate public reporting, structured publication of anonymized decisions, and responsible public communication on the exercise of the power of mercy. While the Bill recognizes transparency and accountability, it does not expressly provide a mechanism through which these values are to be operationalized.

Committee Observation

57. The Committee observed that the object clause sets out the purpose that a law seeks to achieve. In this case, the anchoring provision of the enactment of a legislation on the exercise of the power of mercy is Article 133(2)(c) and (3). Therefore, the object clause should align with the provisions of Article 133 of the Constitution.

Clause 4

58. The State Department for Correctional Services and KPS proposed inserting a new paragraph (aa) to sub-clause (2) to explicitly recognize judicial independence by clarifying that the power of mercy must not be interpreted as an appellate substitute or quasi-review mechanism of court decisions.

59. The State Department for Correctional Services and KPS also proposed adding an additional guiding principle to promote equitable consideration of vulnerable offenders including children, elderly persons, persons with disabilities (PWDs) and terminally-ill persons in accordance with Articles 28, 54 and 57 of the Constitution.

Committee Observation

60. The Committee observed that a clause on guiding principles sets out the fundamental values that guide the interpretation, application and implementation of an Act. The clause as drafted is exhaustive.

Clause 5

61. LSK proposed introducing a new sub-clause (5) to designate the Attorney-General as the Chairperson of POMAC to ensure clarity and institutional stability.

62. The State Department for Correctional Services and KPS proposed inserting a new sub-clause to expressly provide for compliance with the two-thirds gender principle under Article 27(8) of the Constitution in appointment of POMAC. In their view, this would prevent constitutional litigation risks and align with established statutory drafting practice across independent commissions and advisory bodies.

63. CAJ proposed an amendment to expressly provide that the five members appointed under Article 133(2)(c) of the Constitution shall reflect diversity in gender, regional representation, and inclusion of persons with disabilities, and that none of the members shall be a State officer or hold public office.

Committee Observation

64. The Committee observed that the Power of Mercy Act (Cap. 64) designates the Attorney-General as the chairperson of the Advisory Committee. However, the Bill is silent on the chairperson of the Advisory Committee. Therefore, the Attorney-General may be designated as the chairperson of the Advisory Committee since the Attorney-General is the principal legal adviser to the government.

Clause 5 and 8

65. TI proposed introducing Parliamentary vetting in the approval of nominees and the inclusion of representatives from the Judiciary and civil society to POMAC to ensure gender and regional diversity.

Committee Observation

66. The Committee observed that parliamentary approval of persons before appointment to office serves to ensure transparency and accountability in public appointments. In this case, the Advisory Committee plays an advisory role and not a decision-making function. Therefore, parliamentary approval of the members appointed to the Advisory Committee may be less compelling.

Clause 6

67. KNCHR proposed amending the clause to retain the appointment process provided in the Power of Mercy Act, Cap. 94 of a selection panel to suit the multi-stakeholder nature of POMAC. In KNCHR's view, the current appointment process ensures representation from critical governance institutions, guarantees domain-specific expertise and maintains the delicate constitutional balance required for clemency decisions.

68. ODPP proposed including religious institutions as members of POMAC.

69. NPS proposed inserting new paragraphs to sub-clause (1) to provide for new qualifications to include a degree from a university recognized in Kenya and a distinguished career in their respective field.

70. KPS and NPS proposed amending sub-clause (1)(b)(iii) to expand the professional experience to include criminology, correctional administration, restorative justice or

rehabilitation sciences, human rights, and children and disability matters. This would strengthen evidence-based decision-making capacity of POMAC.

71. NPS added that sub-clause (1)(b)(iv) be amended to require that a person for appointment as a member of POMAC from any of the disciplined forces be one who has served in a managerial position to ensure that s/he possess the necessary experience in decision-making and administration.

72. Additionally, KPS proposed inserting a new sub-clause to provide for appointment to POMAC to ensure representation of persons with knowledge and experience in victim protection and support services as contemplated in Article 50(9) of the Constitution. KPS further submitted the need to consider representation from faith-based and civil society organizations.

73. LSK proposed amending sub-clause (1)(b)(i) to require that a person who possesses the qualifications of an advocate of the High Court be nominated by the Law Society of Kenya in line with best practice where professional bodies nominate representatives to public bodies.

74. JD proposed amending sub-clause (1)(b)(iv) to retain the ten-year professional experience qualification for appointment as a member of POMAC in the Power of Mercy Act, Cap. 94. In addition, JD submitted that the clause unjustifiably excludes other professionals, hence, proposed broadening the professional qualifications for members of POMAC to include religious leaders, human rights experts, gender specialists and PWD experts

Committee Observation

75. The Committee observed that the inclusion of educational qualifications such as a having a degree from a recognized university is necessary in the eligibility for appointment as a member of the Advisory Committee.

Clause 6 to 8

76. NIS proposed that the Bill be amended to provide for the removal and termination of the membership of the Advisory Committee after clause 6 to safeguard the continuity of the Committee's operations in the event of a conflict of interest or incapacitation of a member.

Committee Observation

77. The Committee observed that the Bill provides for the appointment of members of the Advisory Committee but does not provide for vacancy in the membership. Therefore, it proposes an amendment to include vacancy in the membership.

Clause 7

78. ODPP proposed rearranging the clause to appear after the provisions on appointment of POMAC. Further, amending the clause to specify the frequency of POMAC meetings.

Committee Observation

79. The Committee observed that, to ensure a logical flow of the Bill, the Clause may appear after Clause 12.

Clause 8

80. ODPP proposed including a clear timeframe taken for appointment of POMAC by the President to avoid delays. In ODPP's view, the timeframe could mirror section 9(3) of the existing Power of Mercy Act, Cap. 94.

81. The State Department for Correctional Services and KPS proposed amending the clause to provide for parliamentary vetting of nominees for appointment as members of POMAC to enhance transparency, accountability and public confidence whilst aligning with best practice for public appointments affecting constitutional functions.

82. KLRC proposed amending sub-clause (2) to require POMAC to advertise vacancies in a newspaper with national circulation and also publish the advertisement on its website instead of two newspapers. In KLRC's view this would ensure prudent use of financial resources.

83. NGEC proposed an amendment by inserting a new sub clause (4) to require the Commission to observe the principle of gender balance, ethnicity and fair representation of disability in considering the nominees or appointment.

84. CAJ proposed an amendment to require that nominees to POMAC be subject to parliamentary vetting and approval prior to appointment by the President.

85. JD proposed retaining the existing appointment process provided in the Power of Mercy Act, Cap. 94 of a multi-stakeholder selection panel comprising religious organizations, human rights and gender organizations. In JD's view, this this would be in line with Article 10 of the Constitution on public participation.

Committee Observation

86. The Committee observed that the current procedure of appointment of the members of the Advisory Committee involves selection of nominees for appointment by a panel. This procedure seeks to promote merit-based appointments, enhances transparency and strengthens independence.

Clause 11

87. The State Department for Correctional Services proposed inserting a new paragraph to sub-clause (1) to provide for a structured criteria for decision-making by requiring POMAC to develop and publish guidelines for the consideration of petitions. This would enhance predictability, fairness and administrative justice as contemplated in Article 47 of the Constitution.

88. The State Department for Correctional Services proposed inserting a new sub-clause 1(h) to mandate POMAC to publish annual reports detailing the petitions received, considered and determined to promote transparency and public accountability in accordance with Article 10 of the Constitution.

89. ODPP proposed amending the sub-clause (1) to specifically capture the core mandate of POMAC and by deleting paragraph (f).

90. ODPP proposed revising sub-clause (2) to reflect the fact that POMAC only enjoys independence when exercising their mandate but are subject to the direction of the President upon forwarding its recommendations.

91. NGEC proposed an amendment to sub-clause (1)(b) by inserting a new paragraph (iii) to require POMAC to partner with relevant stakeholders to facilitate the rehabilitation, empowerment and re-integration of pardoned offenders through programs that promote development, education, employment skills and community re-integration.

92. CAJ and MCK proposed an amendment to obligate POMAC to publish periodic (annual) public reports on its activities, decisions and performance.

93. COG proposed amending sub-clause (1) to require POMAC to collaborate with county governments in public education and awareness creation and guaranteeing offender reintegration in the community.

Committee Observation

94. The Committee observed that the core function of the Advisory Committee is to advise the President in the exercise of power of mercy. The Clause provides for additional functions of the Advisory Committee such as collaborating with other organs to sensitize offenders and others on the procedures. However, the Clause may be relooked to separate powers with functions.

Clause 11 and 17

95. TI proposed mandating POMAC to table quarterly and annual reports to Parliament and publish anonymized decisions to enhance transparency while safeguarding privacy.

Committee Observation

96. The Committee observed that the requirement of the Advisory Committee to prepare and submit annual reports to the President and National Assembly promotes transparency.

Clause 12

97. ODPP proposed amending sub-clause (1) to specify the powers of POMAC to ensure the Committee can effectively discharge its mandate.

98. ODPP proposed amending sub-clause (2) to align with Article 133(3) of the Constitution which mandatorily obligates Parliament to determine POMAC's procedure including the procedure of arriving at a decision.

99. ODPP proposed amending sub-clause (2)(e) to align with clause (1) and sections 8 and 12 of the Oaths and Statutory Declarations Act, Cap. 15 on who has the power to administer an oath.

100. ODPP proposed deleting sub-clause (3) because POMAC cannot delegate powers delegated to it in accordance with the principle of *delegatus non potest delegare* maxim.

101. ODPP submitted that the clause be relooked in general to ensure that it provides for powers that speak to the objects of POMAC.

102. NPS proposed amending sub-clause (2)(b) to a law enforcement officer as one of the persons who may make submission to POMAC as a critical person in the criminal justice system.

103. WPA proposed an amendment to sub-clause (2)(b) to include protected person. This would allow POMAC to receive written or oral submissions from a protected person.

Committee Observation

104. The Committee observed that a power describes the means by which a function is carried out. Therefore, the powers of the Advisory Committee should describe ways in which the Advisory Committee shall perform its functions. On the power to delegate, the Committee observed that the principle of *delegatus non potest delegare* bars the Advisory Committee from delegating an already delegated function.

Clause 13

105. The State Department for Correctional Services proposed amending sub-clause (2) to remove 'appointed by the President' to strengthen independence of appointment. In the State Department for Correctional Services view, this removing Executive dominance in appointments enhances institutional independence and reduces perceived political influence over mercy processes.

106. ODPP proposed deleting sub-clause (4)(b) because, in its view, the position of CEO is not necessary given that POMAC sits on a part-time basis as provided in clause 5(4). Furthermore, the Constitution does not envisage having public officers as members of POMAC; it establishes an Advisory Committee and not an Office of the Power of Mercy.

107. NGEC proposed an amendment to sub-clause (2) by substituting the phrase 'nominated by the Public Service Commission, and appointed by the President' with 'recruited by the Advisory Committee in consultation with the Public Service Commission'. This is in line with Clause 12 that bestows all powers to POMAC necessary for the execution of its functions under the Constitution and the Act.

Committee Observation

108. The Committee observed that the secretariat is the administrative unit that facilitates the work of the Advisory Committee. The Bill seeks to shift from a secretariat provided by the Office of the President to an independent secretariat to enhance efficiency and professionalism.

Clause 15

109. KLRC proposed amending sub-clause (1) to include the ground 'being declared bankrupt' in line with the constitutional standards on removal from public office.

110. KLRC proposed including the Fair Administrative Act, Cap. 7L in sub-clause (2)(b) as the Act operationalizes Article 47 of the Constitution referenced in the clause.

Committee observation

111. The Committee observed that many statutes provide that a person who is declared bankrupt maybe removed from office due to the significant financial pressures associated

with being bankrupt that may an office holder vulnerable to undue influence or conflict of interest.

Clause 17

112. The State Department for Correctional Services proposed inserting a new sub-clause (3) to provide that confidentiality obligations must not preclude notification of victims in accordance with the Victim Protection Act, Cap. 79A to guarantee victim participation rights.

113. NPS proposed including a penalty for violation of confidentiality in the clause to act as a deterrent measure.

114. CAJ submitted an amendment to clearly define the limits of confidentiality, including exceptions for disclosure in cases of illegality or misconduct, and to provide for whistle-blower protection in accordance with applicable law.

115. MCK proposed that the clause be amended to clarify that confidentiality shall not prevent the publication of anonymized of aggregated information, and shall only apply to the extent necessary to protect privacy, safety, national security, victim welfare, or other legitimate protected interests

Committee Observation

116. The Committee observed that confidentiality is an important safeguard because applications typically contain highly sensitive information, including medical reports, prison records, psychological assessments, victim impact statements, security reports, and personal information relating to applicants and their families. The Clause provides that the confidential information may be disclosed where required by written law and through an order of the court.

Clause 18

117. LSK proposed reviewing the penalty to provide for a proportionate and graduated sentencing framework, including lower penalties for non-wilful breaches and enhanced penalties for deliberate or fraudulent concealment.

118. The State Department for Correctional Services and KPS proposed inserting a new sub-clause to mandate POMAC to maintain a register of declared conflicts of interest as required under section 24 of the Conflict of Interest Act, 2025.

Committee Observation

119. The Committee observed that the Conflict of Interest Act, 2015 provides for the management and regulation of conflict of interest which applies to the members of the Advisory Committee and its secretariat.

Clause 20

120. TI proposed to include the requirement that any engagement of experts or consultants be conducted strictly in accordance with the Public Procurement and Asset Disposal Act, Cap. 412C including the use of competitive procurement processes, clear terms of reference and full disclosure of the nature, cost and outputs of the consultancy services.

This would prevent over-reliance on consultants, reduce the risk of misuse of public resources and promote value for money.

Committee Observation

121. The Committee observed that the power to hire experts or consultants may be in conflict with the provisions of Clause 16 where officers with necessary skill and knowledge are recruited to facilitate the effective discharge of the functions of the Advisory Committee.

Clause 21

122. NIS proposed amending sub-clause (1) to provide for the members of the Power of Mercy Case Management Committee.

123. ODPP proposed amending the clause to specify the membership, functions and responsibilities of the ad hoc Committee. In addition, ODPP submitted that the functions of the ad hoc Committee overlap with those of the Pardon Officers under clause 22. In ODPP's view, the ad hoc Committee, being based in prisons, is more useful and practical then the Pardon Officers, who are employees of POMAC.

124. ODPP also proposed amending sub-clause (2)(c) to include specific details required from victims useful to POMAC in making recommendations such as the impact of the offence on the victim, whether any contact has been established by the offender and the status of the victim at the point of application for the Power of Mercy, among others.

125. The State Department for Correctional Services and KPS proposed inserting new provisions before clause 21 to provide for a regional Power of Case Management Committee as to oversee an ad hoc Power of Mercy Case Management Committee in each correctional facility. This would ensure uniform standards, better oversight and efficient coordination across justice sector institutions.

126. Subsequently, the State Department for Correctional Services proposed amending sub-clause (1) to provide for establishment of a Power of Mercy Case Management Committee in each correctional facility to comprise five persons, three of whom shall be Pardon Officers from the Kenya Prisons Service and Probation and Aftercare Service as the key players.

127. The State Department for Correctional Services also proposed amending sub-clause (2)(b) to mandate the Power of Mercy Case Management in each correctional facility to include preparation of probation reports as well. In the State Department for Correctional Services view, probation reports are crucial in informing POMAC on suitability for release, safety of prisoner upon release and other matters such as reintegration of the offender in the community.

128. NPS submitted that the ad hoc Committee be made a multi-agency entity to incorporate relevant stakeholders in the criminal justice system.

129. LSK and NPS proposed amending the clause to provide for the composition and qualifications of members of the Power of Mercy Case Management Committee to ensure uniformity, accountability and legal certainty.

130. KLRC proposed providing more information in sub-clause (1) to include the mode of prescription of the Power of Mercy Case Management Committee for clarity.

131. WPA proposed amending paragraph (c) in sub-clause (2) to require POMAC to also consult the Witness Protection Agency on matters relating to protected witnesses (former participants) because the risks extend beyond the trial including when offenders are being pardoned.

132. CAJ proposed an amendment to provide clear criteria and procedures for the appointment and composition of the Case Management Committee, including qualifications and representation.

Committee Observation

133. The Committee observed that the functions of the Power of Mercy Case Management Committee appear to be overlapping with the functions of the pardon officers appointed under Clause 22.

Clause 22

134. The State Department for Correctional Services proposed deleting the clause because its proposal to clause 21 addresses the appointment of Pardon Officers as members of the Power of Mercy Case Management Committee who shall be officers from the Kenya Prisons Service and Probation and Aftercare Service.

135. ODPP submitted that Pardon Officers are not necessary as it is the work of the ad hoc Committee established under clause 21 which is already stationed at the prison where the candidates for Power of Mercy are.

136. KPS proposed amending sub-clause (1) to provide that Pardon Officers be designated from among prison officers because they are lawful custodians of convicted persons serving custodial sentences and maintain the primary institutional records required for processing petitions under Article 133 of the Constitution. Further that, locating the function outside the Kenya Prisons Service risks duplication of mandate, fragmentation of offender records management systems and delays in petition processing. In KPS' view, this amendment would promote institutional coherence, administrative efficiency and fidelity to the correctional structure established under Kenyan law.

137. LSK proposed expressly providing for the qualification, functions and appointment criteria of the Pardon Officers to promote transparency, accountability and consistency in the administration of the power of mercy.

Committee Observation

138. The Committee observed that functions of the pardon officers appear to be overlapping with the functions of the Power of Mercy Case Management Committee appointed under Clause 21.

Clause 24

139. TI proposed a framework that mandates comprehensive public disclosure of all funding sources, including grants and donations, to ensure accountability under Article 201 of the Constitution. TI also proposed requiring annual audits by the Auditor-General for

parliamentary review and implements strict controls on external funding to prevent conflicts of interest.

Committee Observation

140. The Committee observed that Clause 24 on the funds of the Advisory Committee should be provided under Part IV of the Bill on financial provisions.

Clause 26

141. The State Department for Correctional Services proposed deleting sub-clause (2)(c) as the Constitution does not limit mercy jurisdiction where judicial proceedings are ongoings. In the State Department's view, the provision undermines the President's constitutional discretion.

142. KNCHR proposed amending sub-clause (2) to remove the exclusion of persons with pending judicial proceedings, replace the categorical exclusion of persons on probation with a discretionary power for the Committee to defer proceedings, and permit suspended sentence cases to be considered where the suspension itself causes ongoing collateral consequences. KNCHR submitted that this was in accordance with the court's findings that the power of mercy under Article 133 is an independent constitutional power contingent on exhaustion of remedies in ***Francis Muruatetu & Another v Republic [2017] eKLR***. Further, that mercy petitions may proceed in parallel with judicial proceedings as was held in ***Lewis v Attorney General of Jamaica [2001] 2 AC 50***.

143. ODPP proposed merging sub-clauses (3) and (4) and providing for a prescribed form of the Petition and its supporting documents for the grant of Power for Mercy under a Schedule in the Bill.

144. KNCHR proposed amending sub-clause (5) to require that any adverse material in the Pardon Officer's report be disclosed to the petitioner in advance of the Committee's deliberations and that the petitioner be given a reasonable opportunity to make representations thereon in line with Article 50 of the Constitution on right to fair hearing.

145. ODPP proposed amending sub-clause (5) to remove the unnecessary bureaucracy in POMAC's mandate to make recommendations to the President and to align with the proposal to omit Pardon Officers. In ODPP's view, the sub-clause, as drafted, entails a long chain of command as the Case Management Committee submits a report to the Pardon Officer, who then submits the report to POMAC through its Secretariat who thereafter submit it to POMAC who refer it to the President.

146. The State Department for Correctional Services and KPS proposed inserting a new sub-clause (6) to provide for notification of victims and affording them an opportunity to submit representations in line with Article 50(9) as read with article 133(4) of the Constitution and restorative justice principles.

147. WPA proposed an amendment to add the words 'the Witness Protection Agency' after the word 'pardon officer'. This would ensure that POMAC considers the reports submitted by WPA while making recommendations to the President pursuant to Article133(1) of the Constitution.

148. CAJ proposed an amendment to prescribe specific timelines within which petitions for the exercise of the power of mercy shall be processed and determined.

149. MCK proposed an amendment to require the development of clear procedural guidelines, including timelines, notice requirements, record standards, and communication of outcomes to petitioners and affected persons.

150. TI proposed replacing rigid, blanket exclusions on eligibility for petitioning for the power of mercy with a flexible, case-by-case assessment that considers individual rehabilitation and circumstances. This approach aims to uphold constitutional rights to equality under Article 27 and relief under Article 133 of the Constitution by incorporating clear, humanitarian criteria, for example, cases of terminal illness or advanced age.

151. CMD proposed including a new paragraph (d) to sub-clause (1) to explicitly bar offenders of gender-based violence and femicide from petitioning the President for mercy, justifying that applying the power of mercy to these grave crimes is seen as perpetuating impunity, violating survivors' rights and eroding public trust in the justice system.

152. JD proposed amending the clause to include Article 47 of the Constitution on fair administrative action to ensure petitioners receive responses within a reasonable timeframe.

Committee Observation

153. The Committee observed that the exclusion of offenders with pending appeals or review in court from petitioning preserves the principle that a form of mercy is an exceptional remedy typically exercised after the judicial process is complete.

Clause 27

154. The State Department for Correctional Services proposed amending sub-clause (1)(b) to provide clarity and address the aforementioned ambiguity with the definition of 'capital offence' because the constitutional context presupposes a distinction between capital punishment and other forms of punishment including life imprisonment. Hence, paragraph (b) may be amended to read, "to deserving convicted offenders below the age of 18 except those convicted of a capital offence or an offence punishable by life imprisonment."

155. KNCHR proposed deleting sub-clause (2) because, in its view, the circumstances for free pardon do not qualify for automatic granting of a Police Clearance Certificate. Furthermore, the applicant can follow the procedure provided in clause 35 of the Bill.

156. MFA proposed amending sub-clause (1)(c) by replacing the phrase 'which may include for purposes of fostering diplomatic relations' with 'in all categories of Power of Mercy under sections 28, 30 and 31' in line with the proposed definition of 'national interest' in clause 2. This would give the Committee and the President the discretion to decide on the category of power of mercy to be given as opposed to limiting it to only free pardon and further to ensure that there is reciprocity from the requesting state.

157. CAJ proposed an amendment to define 'national interest' by providing clear and objective criteria, including circumstances such as humanitarian considerations, public safety, or international obligations, and exclude vague or discretionary interpretations.

158. CMD proposed amending paragraphs (a) and (b) in sub-clause (1) to ensure that even "vulnerable" or "deserving" offenders below age 18 are ineligible if their crime involved GBV or femicide, to prevent the inadvertent pardoning of sexual and gender-based violence (SGBV) perpetrators, which forces victims to relive trauma and nullifies hard-won convictions.

Committee Observation

159. The Committee observed that free pardon is the most complete form of pardon since it releases an offender from all the legal consequences of a conviction without conditions. Therefore, it should be granted in extraordinary circumstances where the interest of justice clearly outweighs the interest in maintaining the consequences of the conviction. Such circumstances include the vulnerability of the offender, rehabilitation, humanitarian considerations and in the national interest.

160. Further, the Committee observed that section 35(f) of the National Police Service Act provides that maintaining of criminal records is a function of the Directorate of Criminal Investigations (DCI). This function involves collecting, preserving and updating the criminal information of a person. This information is usually contained in a Police Clearance Certificate issued to a person upon making an application to the DCI. Therefore, if the intention is to expunge or seal the criminal records of an offender who has been granted free pardon, then placing this obligation of expunging or sealing the criminal records with DCI would be appropriate.

Clause 28

161. KNCHR proposed deleting sub-clauses (1) and (2) because, in its view, making inmates eligible for conditional pardon after serving a third of their sentences when a third was already deducted by the prison defeats the purpose of criminal law which had envisaged specific sentence periods as commensurate to the crime and also necessary for rehabilitation. Furthermore, one should only be eligible for a conditional pardon after serving at least half of their sentence to ensure accountability for the crime whilst accommodating a rehabilitative system. The Commission added that there was need to reconsider sub-clause (1)(b) noting the risks relating to felonies.

162. KLRC and NPS proposed replacing the word 'determine' with 'determined' in sub-clause (2)(a) to correct a typographical error.

163. The Ministry of Defence proposed amending sub-clause (4) to include the Director of Military Prosecutions to ensure that the exercise of the power of mercy does not compromise national security or undermine the unique requirements of military discipline and command authority essential for operational effectiveness.

164. NPS proposed substituting the word 'Director' with 'Directorate' in sub-clause (5)(c)(ii) to make reference to the entity as opposed to the office holder.

165. The State Department for Correctional Services proposed amending the clause to introduce flexible eligibility because fixed timelines undermine individualized justice and rehabilitation-based decision-making.

166. The State Department for Correctional Services proposed amending sub-clause (4) to expand it to introduce a requirement to consult the Cabinet Secretary responsible for correctional services whose docket oversees the supervision of persons released on conditional pardon.

167. KLRC proposed setting out who provides the proof in sub-clause (1)(b) to avoid ambiguity.

168. KLRC proposed replacing the word 'database' with 'databases' in sub-clause (7) to correct a typographical error. Additionally, KLRC proposed adding the word 'offender' after the word 'pardoned' to provide clarity.

169. NGEC proposed amending the clause by inserting additional sub-clauses to provide for conditional pardon for a person suffering from an incurable terminal illness or is entirely incapacitated requiring assistance with the activities of daily living or old and frail. Prison conditions in most cases are not able to offer meaningful accommodation to this category of persons.

170. WPA proposed an amendment to sub-clause (4) to include the agency to require POMAC to consult the Witness Protection Agency while considering application(s) for sealing of criminal records for persons granted conditional pardon.

171. CMD proposed amending the wording in sub-clause (5) to ensure sexual and violent offenders (including those motivated by gender-based discrimination or FGM) are barred from applying for record suspension. This would ensure that offenders of serious crimes cannot hide their criminal history through a record suspension after serving their sentence.

172. JD proposed amending the sub-clause (3) to require sealing of records to be done immediately upon pardon for survival purposes and that the President should not be involved in sealing of records.

173. JD submitted that the Bill creates unprecedented DCI involvement in mercy decisions. In JD's view, the DCI has no statutory role in the exercise of presidential mercy under Article 133 of the Constitution. Hence, JD proposed amending sub-clauses (3), (4) and (5) to provide that upon pardon sealing of criminal records becomes automatic and disclosure be upon application by an interested party.

Committee Observation

174. The Committee observed that the Bill provides that a conditional pardon shall be granted to deserving offenders who have served at least one-third of their determinate custodial sentence or at least fifteen years of their indeterminate custodial sentence.

175. On sealing of criminal records after being granted a conditional pardon, the Bill provides that a person shall apply to the President through the Advisory Committee. However, the function of maintaining criminal records including sealing of criminal records is a function of the DCI and not the President.

Clause 29

176. KNCHR proposed amending sub-clause (1)(a)(iii) to extend the presumption to the primary caregiver, regardless of gender, of a child under two years.

177. KNCHR proposed deleting sub-clause (1)(b) and (c) because it allows for Executive overreach and interference with the judicial process without justification. The law should not be ambiguous as to when the Executive can be allowed to interfere with judicial pronouncements.

178. NPS proposed deleting sub-clause (1)(c) as it is discretionary and may be subject to abuse.

179. The State Department for Correctional Services proposed inserting a new clause (4) to prevent abuse and ensure objectivity in medical-based decisions.

180. NGEC proposed amending sub-clause (1)(a)(i) by deleting the phrase 'suffers from an incurable terminal illness' and the deletion of the entire paragraph (ii). Postponement of punishment may not serve meaningful purpose in the two circumstances. Compassionate unconditional release or substitution with another appropriate punishment would serve the purpose of retributive justice as proposed in clause 30 on substituting a less form of severe punishment or a conditional pardon in Article 133(1)(a) of the Constitution.

Committee Observation

181. The Committee observed that the criteria of postponing of a punishment includes granting the mercy on medical grounds which includes where an offender is the sole caretaker of dependent children. Therefore, this provision adequately caters for primary caregivers irrespective of the gender.

182. The Committee noted that the provisions are firmly anchored in Article 133 of the Constitution which expressly vests the exercise of power of mercy on the President upon advice of the Advisory Committee.

Clause 30

183. NPS proposed deleting sub-clause (1)(c) as it is discretionary and may be subject to abuse.

184. The State Department for Correctional Services proposed amending sub-clause 2(a) to enhance supervision of non-custodial measures.

185. The State Department for Correctional Services proposed an amendment on review of substituted punishment periodically or upon reasonable cause in sub-clause (3).

186. The State Department for Correctional Services proposed inserting a new sub-clause (4) to introduce a risk assessment requirement for evidence-based decisions and public safety considerations.

Committee Observation

187. The Committee observed that the Bill adequately provides for a clear eligibility criteria hence the application of other circumstances must satisfy the specified criterial which safeguards against abuse.

Clause 31

188. KNCHR submitted that sub-clause (1)(a) is discriminatory to the extent that it provides exceptions for high-risk offenders. In the Commission's view, the Prisons Act, Cap. 90 provides for an automatic remission of a third of sentences and therefore defeats the clause on remission after serving two thirds if the sentence as the offender will already be due for release. Instead, the Commission proposed a different threshold providing for part remission which should be either calculated from the already remitted sentence from prison or if calculated from the total sentence, to be deducted from the remitted sentence.

189. ODPP proposed amending sub-clause 4 to expand the list to include other offences besides assault such as peddling drugs and contraband in prison, engaging in conmanship, sexual offences against fellow inmates.

190. KPS proposed amending sub-clause (1)(b) to align with section 46 of the Prisons Act, Cap. 90 on statutory remission of one-third of a custodial sentence subject to discipline and compliance conditions. This would ensure coherence between administrative remission and constitutional power of mercy remission processes and avoid unintended operational conflict between the two regimes. KPS further proposed inserting a new clause under clause 31 to provide that nothing in the Act shall derogate from or limit the powers of the Commissioner of General to grant remission under section 46 of the Prisons Act, Cap. 90.

191. JD proposed amending the entire clause to align with section 46 of the Prisons Act, Cap. 94 on remission of sentences.

Committee Observation

192. The Committee observed that noted that the exclusion of high-risk offenders from being granted a remission of all of a punishment is discriminatory.

193. The Committee noted that Part VII of the Prisons Act provides for remission of a sentence where a convicted offender who is sentenced to imprisonment may earn a remission of one-third of their sentence by way of good conduct. This means that the offender requires to have served at least two-thirds of their sentence. Therefore, the provision of the Bill to grant a remission after serving two-thirds of the sentence aligns with the provisions of the Prisons Act.

Clause 31 – 34

194. The State Department for Correctional Services proposed deleting clauses 31 to 34 and replacing with provisions relevant to remission as a result of the exercise of the power of mercy under the Constitution.

Committee Observation

195. The Committee observed that remission under the Article 133 of the Constitution is distinct from the remission provided under the Prisons Act since the remission under the Constitution is a power exercised by the President while the remission under the Prisons Act is administrative. Both regimes serve different purposes and should co-exist.

Clause 35

196. The Ministry of Defence proposed amending sub-clause (1) to align with the timelines set out in clause 28(3) to ensure harmonious application of the provisions.

197. KNCHR proposed splitting sub-clause (1) to cover issues of police clearance and sealing of records under a different clause. Further, that the provision specifies the period before one can apply for a Police Clearance Certificate. The Commission also noted that the clause provides for issuance of the Certificate by POMAC which may overlap with the mandate of the National Police Service.

198. The State Department for Correctional Services and ODPP proposed deleting the clause as it places the responsibility of issuing a Police Clearance Certificate to POMAC which is not within its purview but that of the DCI.

199. KLRC proposed deleting the apostrophe and the letter "s" in the word 'offender' to correct the grammatical error.

200. CAJ submitted that there is a need to amend the clause to provide a clear procedure for application and issuance of a Police Clearance Certificate, including a specified timeline (6 months) within which the certificate shall be issued upon grant of pardon.

201. In line with its proposal to amend clause 28(3), (4) and (5), JD proposed amending clause 35 to require automatic issuance of Police Clearance Certificates upon sealing of criminal records.

Committee Observation

202. The Committee observed that section 35(f) of the National Police Service Act provides that maintaining of criminal records is a function of the Directorate of Criminal Investigations (DCI). This function involves collecting, preserving and updating the criminal information of a person. This information is usually contained in a Police Clearance Certificate issued to a person upon making an application to the DCI. Therefore, if the intention is to expunge or seal the criminal records of an offender who has been granted free pardon, then placing this obligation of expunging or sealing the criminal records with DCI would be ideal.

Clause 36

203. The State Department for Correctional Services proposed amending the clause for clarity because the word 'recidivist' is a noun and is used incorrectly therein.

204. The State Department for Correctional Services proposed inserting a new sub-clause to introduce judicial oversight, protect privacy rights under Article 31 of the Constitution and prevent arbitrary reopening of records.

205. The State Department also proposed inserting a new sub-clause to provide procedural safeguards and due process protections in the activation of sealed criminal records. In the State Department's view, this would ensure protection of rights of the offenders.

206. CAJ proposed an amendment to require that activation of sealed criminal records shall only occur following due process, including prior notice to the affected individual, an opportunity to be heard, and a reasoned decision by a competent authority.

Committee Observation

207. The Committee observed that maintaining of criminal records is a function of the Directorate of Criminal Investigations (DCI) which is an administrative function that is governed by the right to fair administrative action which involves giving a person notice and opportunity to be heard.

Clause 38

208. NIS proposed amending sub-clause (2) to insert new paragraphs (d) and (e) to further indicate what the estimates shall provide for. This is to cater for unseen circumstances that may occur.

209. The State Department for Correctional Services proposed inserting a new sub-clause to align with the Public Finance Management Act, Cap. 412A on preparation of Estimates in consultation with the National Treasury.

Committee Observation

210. The Committee observed that preparation of annual estimates refers to the process of forecasting and setting out the expected revenues and expenditures of an entity for a forthcoming financial year. Therefore, the Clause is aligned with the Public Finance Management Act.

Clause 40

211. The State Department for Correctional Services proposed mandating POMAC to develop a national awareness and outreach strategy to enhance access to justice and public awareness.

212. WPA proposed amending sub-clause (1) to include the word 'protected person' between the words 'victim' and 'public'. This would ensure creation of awareness and capacity building of public and private actors on their responsibility to promote the successful rehabilitation and reintegration of offenders and to promote the safety of victims, protected persons and the public.

213. MCK proposed an expansion to expressly include collaboration with relevant public communication institutions and media sector stakeholders in sensitization and public education programmes.

214. COG proposed amending the clause to provide for capacity building and technical assistance to county governments on effective reintegration of offenders in the community.

Committee Observation

215. The Committee observed that the function of creating awareness and undertaking capacity building can be justified where the objective is to promote understanding, accessibility, and effective implementation of the process of grant of mercy. However, the function

should be framed carefully to avoid suggesting that the Advisory Committee is an advocacy body.

Clause 40 to 45

216. CAJ proposed amending clauses 40 to 45 to strengthen the obligation of POMAC to conduct nationwide awareness and sensitization campaigns, while clarifying that access to information shall be exercised in accordance with the Access to Information Act, Cap. 7M under the oversight of the Commission on Administrative Justice. Further, an amendment to include a provision that any person aggrieved by a decision relating to access to information under this Act may lodge a complaint or appeal with the Commission on Administrative Justice.

Committee Observation

217. The Committee observed that the Bill sufficiently addresses public awareness and capacity building within the power of mercy framework. Further, the Access to Information Act automatically applies to the processes of the exercise of power of mercy.

Clause 42

218. MCK proposed an amendment to require POMAC to develop and implement a national public education strategy, including simplified public-facing information on eligibility, process, victim participation, decisions and legal effects of mercy.

Committee Observation

219. The Committee observed that addresses public awareness and capacity building within the power of mercy framework which shall be done in collaboration with other public and private sector actors in the criminal justice system.

Clause 43

220. MCK proposed an amendment to include advisory services on public communication, victim-sensitive communication, and information dissemination protocols.

Committee Observation

221. The Committee observed that the obligation given to the Advisory Committee under Clause 40 to educate and train persons involved in implementation of the power of mercy may involve public communication and information dissemination.

Clause 43 and 52

222. COG proposed amending the clauses to provide for multi-stakeholder consultation that includes county governments in the issuance of guidelines/advisories by POMAC and development of Regulations by the Cabinet Secretary to ensure devolution-sensitive frameworks governing reintegration efforts.

Committee Observation

223. The Committee observed that rehabilitation and reintegration of offenders is an aspect to correctional services which is a function of the national government as provided for under paragraph 7(c) of Part I of the Fourth Schedule to the Constitution.

Clause 44

224. The State Department for Correctional Services proposed inserting a new sub-clause to introduce timelines to align with the existing statutory framework.

225. MCK proposed that the clause be amended to expressly recognize that access shall be governed by Article 35 of the Constitution, the Access to Information Act, and the Data Protection Act, Cap. 411C.

226. TI proposed that the Bill should clearly define and limit grounds to legitimate and justifiable exceptions, such as protection of personal data and ensure that any refusal is reasonable and accompanied by written reasons. Additionally, that the clause should establish a clear and accessible appeal or review mechanism for applicants whose requests for information have been denied, including recourse to an independent oversight body or tribunal.

Committee Observation

227. The Committee observed that the provisions of Access to Information Act and Data Protection Act shall apply to the processes and procedures of the Advisory Committee in their performance of their functions.

Clause 45

228. NIS proposed amending sub-clause (1) to specify the kind of information to be contained in the electronic database to ensure that the public is aware of what information to expect in the database. Similarly, this would ensure compliance with the Data Protection Act.

229. The State Department for Correctional Services proposed providing for anonymization safeguards to enhance privacy and protect the dignity of affected persons.

230. WPA proposed amending sub-clause (2) to provide for inclusion of the word 'protected person' between the words 'involving and "vulnerable victims". This would provide for the anonymisation of details of such persons.

Committee Observation

231. The Committee observed that the clause already provides that the information to be contained in the database is the decisions of the Advisory Committee and where this information involves vulnerable persons, the Advisory Committee is obligated to protect the privacy of such persons.

Clause 47

232. WPA proposed an inclusion of a protected person under categories of persons whose sensitive data may be kept confidentially and exempted from disclosure in accordance with section 6 of the Access to Information Act, Cap. 7M.

Committee Observation

233. The Committee observed that the confidentiality of information involving protected persons is catered for under Clause 45(2) which obligates the Advisory Committee to anonymize data on decisions made against vulnerable victims.

Clause 50

234. The State Department for Correctional Services proposed replacing the criminal sanction with administrative sanctions. In the State Department's view, criminal penalties for administrative breaches are disproportionate.

Committee Observation

235. The Committee observed that the general penalty clause serves as a residual enforcement provision for offences created under the Act where no specific penalty has been prescribed. It ensures that breaches of the Act do not go unpunished simply because the legislation omitted a specific sanction. However, the Committee noted that the Bill does not create offences where no specific penalty has been prescribed.

Clause 52

236. The State Department for Correctional Services proposed amending the clause to strengthen oversight by providing for the Regulations to be subject to Parliament's approval.

237. MCK proposed an amendment to provide for mandatory regulations on the process of making petitions, media and public communication protocols; and access procedures.

238. TI proposed that the Bill should include a mandatory requirement for all regulations to be tabled before and approved by Parliament prior to taking effect. To prevent executive overreach, TI, further recommended that these delegated powers be strictly circumscribed to administrative implementation, ensuring that substantive policy matters remain the exclusive domain of primary legislation.

Committee Observation

239. The Committee observed that the provisions on parliamentary scrutiny under the Statutory Instruments Act shall apply to the regulations made by the Cabinet Secretary.

Clause 66

240. KLRC proposed deleting the entire clause as it is already provided for in clause 59.

Committee Observation

241. The Committee observed that provisions of clause 66 are already covered by clause 59.

First Schedule

242. LSK proposed deleting paragraph 2(1) in line with the proposal relating to clause 5.

Committee Observation

243. The Committee observed that the proposed amendment to Clause 5 designates the Attorney-General as the chairperson of the Advisory Committee. However, paragraph 2(1) provides for the procedure of electing a vice-chairperson.

Third Schedule

244. The Ministry of Defence proposed deleting the consequential amendments to the Kenya Defence Forces Act, Cap. 199 as indicated in the Schedule. In the Ministry's view, persons unfit for trial or those in respect of whom a special finding of insanity has been made, are not proper subjects for the exercise of the power of mercy, as they are neither convicts

nor persons serving any punishment as contemplated by Article 133(1)(a) and (b) of the Constitution. In addition, the Ministry submitted that the proposed amendments may be forwarded to KLRC for consideration.

245. CAJ proposed deletion of the consequential amendments to section 281(1) of the Criminal Procedure Code, Cap. 75 and section 11 of the Penal Code, Cap. 63. A justification should be provided explaining how provisions not substantively included in the Bill are deemed consequential.

246. In line with its proposals to clause 28(3), (4) and (5), JD submitted that giving the DCI power to veto the retrieving and sealing of criminal records subjects the POMAC's recommendations to DCI approval. In JD's view, this could create an internal executive conflict where the DCI could override POMAC's recommendation.

Committee Observation

247. The Committee observed that consequential amendments are changes to existing laws to align them with the new law. Therefore, there needs to be a correlation between power of mercy and the Acts of Parliament being amended.

General Submissions

248. The State Department for Correctional Services submitted that there was need to reconsider the administrative structure envisioned in the Bill to ensure constitutional alignment, administrative clarity and regulatory authority. In the State Department's view, the Bill creates structural discord: although the Constitution designates the Attorney-General as the Chairperson of POMAC, the Bill relegates the Cabinet Secretary responsible for correctional services to mere membership of POMAC yet most matters relating to power of mercy fall within the latter's portfolio.

Committee Observation

249. The Committee observed that the composition of the Advisory Committee complies with Article 133(2) of the Constitution. Also, neither Article 133 of Constitution or the Bill designates the Attorney-General as the chairperson of the Advisory Committee. However, there is a proposed amendment to designate the Attorney-General as the chairperson because the Attorney-General is the principal legal adviser of the government.

New Proposals

250. NIS proposed inserting a new clause to incorporate a structured oversight mechanism to guard against the likelihood that the power of mercy may be exercised in a manner that could give rise to perceptions of arbitrariness.

Part IIA

251. KNCHR proposed inserting a new Part IIA titled 'Special Provisions for Child Offenders' to establish a specialized sub-committee of POMAC for child offenders, require all petitions involving persons who committed offences below eighteen years be processed within twelve months, require child-specific risk and needs assessments and create a presumption in favour of mercy for juvenile offenders. This would align with Article 53 of the Constitution, national legislation, international law and judicial precedent on the rights of children.

New 27(1)

252. ODPP proposed inserting a new clause 27(1) to provide for power of mercy for persons with mental disability in the criminal justice system who are detained in mental institutions at the President's pleasure.

253. New clause under Part III NPS proposed inserting a new clause under Part III to provide for the criteria that POMAC will adopt in making its recommendations under Article 133 of the Constitution to guide it in the performance of its mandate.

New Clause after 44

254. MCK proposed a new clause after 44 to read as follows:

"Public Reporting Obligations: The Advisory Committee shall publish annual reports, in such manner as may be prescribed, containing anonymised information on petitions received, decisions made, categories of relief granted or denied, processing timelines, and such other statistical or explanatory information as may be necessary to promote transparency and accountability."

New Clause 45

255. MCK proposed a new clause 45 to read as follows:

"Public Communication Framework: The Advisory Committee shall establish and implement a public communication framework for the timely, accurate and responsible dissemination of public information relating to the exercise of the power of mercy, subject to the Constitution and any law relating to privacy, access to information and data protection.

Classification of Records: Records held under this Act shall be classified into public, restricted, confidential and protected information in accordance with the Constitution and relevant written law, and regulations may prescribe access conditions for each category."

New Clause under Part V

256. MCK proposed a new clause under Part V to read as follows:

"Stakeholder Engagement and Public Awareness: In carrying out public education under this Act, the Advisory Committee may collaborate with relevant public institutions, civil society, professional bodies and media sector institutions to promote public understanding of the power of mercy framework."

CHAPTER FOUR

4 COMMITTEE OBSERVATIONS

257. Upon reviewing the Bill and the submissions received, the Committee made the following observations:

(a) Before the promulgation of the Constitution of Kenya 2010, the power of mercy in Kenya was governed by the former Constitution of Kenya (repealed Constitution) under the provisions relating to the prerogative of mercy. The power was largely an executive prerogative vested in the President, although the President was constitutionally required to consider the advice of an advisory committee in specified cases. There was limited statutory regulation of the process, and the exercise of the power was not subject to the elaborate procedural safeguards.

(b) The Constitution of Kenya, 2010 fundamentally restructured the exercise of the power of mercy by replacing the prerogative of mercy with the power of mercy under Article 133; establishing the Advisory Committee on the Power of Mercy as a constitutional body; requiring Parliament to enact legislation governing the composition of the Advisory Committee, procedures of the Advisory Committee and criteria that shall be applied by the Advisory Committee in formulating its advice. Further, the Constitution of Kenya, 2010 introduced greater transparency, accountability and victim participation in the process.

(c) the Bill repeals the Power of Mercy Act (Cap.94) in order to align the statutory framework with Article 133 of the Constitution and strengthen the institutional and administrative framework for the exercise of the power of mercy.

(d) the Bill distinguishes the forms of mercy provided for under Article 133 of the Constitution by providing for the legal consequences of each form of mercy and outlining the eligibility criteria for each form of mercy.

CHAPTER FIVE

5 COMMITTEE RECOMMENDATION

258. The Committee, having considered the Power of Mercy Bill (National Assembly Bill No. 56 of 2025) and the submissions from members of the public and stakeholders, recommends that the House **approves the Bill with the amendments** contained in the Schedule of Amendments forming Chapter Six of this Report.

SIGNED..... DATE 13.8.026

HON. GEORGE GITONGA MURUGARA, CBS, MP
CHAIRMAN
DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

CHAPTER SIX

6 SCHEDULE OF AMENDMENTS

259. In view of the observations made, the Committee proposed the following amendment to the Bill—

CLAUSE 2

THAT Clause 2 of the Bill be amended by—

(a) deleting the definition of "actuarial assessment";

Justification: The words are not used in the Bill.

(b) deleting the definition of "anonymized" and substituting therefor the following new definition—

"anonymize" means to remove personal identifiers from personal data so that the data subject is no longer identifiable;

Justification: The definition of "anonymized" in the Bill refers to the meaning assigned to it under the Data Protection Act. However, the Act defines "anonymisation". Therefore, the new definition seeks to align with the Data Protection Act.

(c) deleting the definition of "capital offence" and substituting therefor the following new definition—

"capital offence' means an offence which is punishable by death as prescribed under any written law;

Justification: A capital offence is an offence which attracts the gravest form of punishment which is the punishment by death.

(d) deleting the definition of "community service";

Justification: The words are not used in the Bill.

(e) deleting the definition of "correctional facility" and substituting therefor the following new definition—

"correctional facility" means a prison and includes any place established or designated as a place for the reception, detention, training or rehabilitation of offenders;

Justification: To provide a more exhaustive definition.

(f) deleting the definition of "felony" and substituting therefor the following new definition—

"felony" means an offence which is declared by law to be a felony or, if not declared to be a misdemeanour, is punishable, without proof of previous conviction, with death, or with imprisonment for three years or more;

Justification: To align the definition with the definition of felony as contained in the Penal Code (Cap. 63).

(g) deleting the definition of "indefinite";

Justification: The word is an ordinary word in the English language that is well understood which requires no definition.

(h) deleting the definition of "legal representative capacity";

Justification: The words are not used in the Bill.

(i) deleting the definition of "mercy" and substituting therefor the following new definition—

"mercy" means the exercise of the powers set out under Article 133(1) of the Constitution by the President on the advice of the Advisory Committee;

Justification: To underpin the definition with the provisions of Article 133(1) of the Constitution.

(j) deleting the definition of "mental health facility";

Justification: The words are barely used in the Bill. However, the words are extensively used in the schedule of consequential amendments.

(k) deleting the definition of "national interest" and substituting therefor the following new definition—

"national interest" means the advancement and protection of the welfare of the people of Kenya, including—

(a) the promotion and preservation of Kenya's international relations and diplomatic standing with other nations and international organisations;
(b) the preservation of human life and prevention of harm;
(c) the promotion of public welfare, social stability, and equitable access to justice;
(d) the proper administration of justice and the maintenance of the rule of law;
(e) the promotion of good governance, accountability, and the constitutional order; and
(f) such other considerations as may be necessary for the overall well-being and security of the people and the State of Kenya;

Justification: To broaden the understanding of the national interest which encompasses a wide range of considerations such as public welfare, administration of justice, social stability, equity and good governance.

(l) deleting the definition of "pardon" and substituting therefor the following new definition—

"pardon" means the grant of mercy by the President in accordance with the advice of the Advisory committee where a convicted offender is freely or conditionally relieved the legal consequences of the conviction;

Justification: To provide a correct definition of "pardon". As currently framed, the definition appears to suggest that pardon relates to permission for an offender who has completed their sentence to have their records separated or kept apart from other records.

(m) deleting the definition of "person with disability";

Justification: The words are not used in the Bill.

(n) deleting the definition of "prosecutor";

Justification: The words are not used in the Bill.

(o) deleting the definition of "recidivism" and substituting therefor the following new definition—

"recidivate" means the commission of an offence by a person who had been formerly convicted and granted mercy;

Justification: To provide a clear and precise definition within the context of the exercise of mercy powers.

(p) inserting the following new definitions in proper alphabetical sequence—

"determinate custodial sentence" means a custodial sentence whose period can be determined; and

"indeterminate custodial sentence" means a custodial sentence whose period cannot be determined.

Justification: The terms have been used extensively in the Bill.

CLAUSE 3

THAT the Bill be amended by deleting Clause 3 and substituting therefor the following new Clause—

3. The object of this Act is to give effect to Article 133 of the Constitution and to provide for—

(a) the appointment and tenure of the members of the Advisory Committee;
(b) the procedure of the Advisory Committee;
(c) the criteria that shall be applied by the Advisory Committee in formulating its advice to the President; and
(d) any other matter necessary for the operationalization of the provisions of Article 133 of the Constitution.

Justification: To align the objects of the Act with the provisions of Article 133(2) and (3) of the Constitution.

CLAUSE 5

THAT Clause 5 of the Bill be amended—
(a) in subsection (2), by deleting the words "not exceed" appearing immediately after the word "shall";

Justification: To be specific on the number of members of the Advisory Committee appointed under Article 133(2)(c) of the Constitution.

(b) by inserting the following new subclause after subclause (3)—

(3A). The Attorney-General shall be the chairperson of the Advisory Committee.

Justification: To designate the Attorney-General as the chairperson since the Attorney-General is the principal legal adviser of the government.

(c) by deleting subclause (4) and substituting therefor the following new subclause—

(4) The members of the Advisory Committee specified under Article 133(2)(c) shall serve on a part-time basis for a term of five years.

Justification: To clarify the terms of service of the members of the Advisory Committee prescribed under Article 133(2)(c) of the Constitution.

CLAUSE 6

THAT Clause 6 of the Bill be amended in subclause (1) by inserting the following new paragraph immediately after paragraph (a)—

(aa) holds a degree from a university recognized in Kenya;

Justification: To include possession of degree certificate as an educational qualification.

CLAUSE 7

THAT the Bill be amended by deleting Clause 7.

Justification: The provisions of Clause 7 will be better placed after Clause 12 to ensure logical flow of the Act.

CLAUSE 8

THAT the Bill be amended deleting Clause 8 and substituting therefor the following new Clause—

Constitution of a panel.

8. (1) At the commencement of this Act or whenever a vacancy arises in the membership of the Advisory Committee under section 5, as the case may be, the President shall, within fourteen days after the commencement of this Act or of the occurrence of the vacancy, by notice in the *Gazette*—

(a) declare vacancies in the panel; and

(b) constitute the panel.

(2) The panel referred to under subsection (1) shall comprise of—

(a) a chairperson, who shall not be a State officer or public officer, appointed by the President;

(b) the Principal Secretary in the State Department for the time being responsible for matters relating to justice or his or her representative appointed in writing;

(c) the Principal Secretary in the State Department for the time being responsible for correctional services or his or her representative appointed in writing;

(d) the Secretary to the Advisory Committee;

(e) the Commissioner of Prisons or his or her representative appointed in writing;

(f) a representative of the Office of the President;

(g) a representative of the joint forum of the religious organizations described in subsection (3);

(h) a representative of the commission for the time being responsible for matters of human rights; and

(i) a representative of the commission for the time being responsible for matters of gender.

(3) The joint forum of religious organizations referred to in subsection (2)(g) shall consist of representatives of—

(a) the Supreme Council of Kenya Muslims;

(b) the Kenya Episcopal Conference;

(c) the National Council of Churches of Kenya;

(d) the Evangelical Fellowship of Kenya; and

(e) the Hindu Council of Kenya.

(4) The Advisory Committee secretariat shall provide secretariat services to the panel.

(5) A vacancy in the panel arising after it has been constituted shall be filled within seven days by the nominating body in accordance with this section

(6) The quorum of the panel shall be five members.

(7) Subject to this section, the panel shall regulate its own procedure.

(8) The panel shall stand dissolved upon the appointment of the members under section 5(3).

Justification: To retain the use of a multi-sectoral selection panel who will be responsible for nominating persons for appointment.

CLAUSE 11

THAT Clause 11 of the Bill be amended in subsection (1)—

(a) by deleting paragraph (d) and substituting therefor the following new paragraph—

(d) prepare an annual report to the President and the National Assembly on the activities of the Advisory Committee;

Justification: To specify that that reports of the Advisory Committee to the President and National Assembly are made on an annual basis to give an opportunity for carrying out oversight function. Also, to specify that the reports shall be made to the National Assembly which is the House of Parliament mandated to oversight the performance of the function of exercise of power of mercy.

(b) in paragraph (b), by deleting subparagraph (ii);

Justification: The provision may be provided as a power of the Advisory Committee to carry out investigations.

(c) deleting paragraph (e).

Justification: The provision is covered by Clause 12(1) of the Bill.

CLAUSE 12

THAT Clause 12 of the Bill be amended by—

(a) deleting subclause (2) and substituting therefor the following new subclause—

(2) Despite the generality of the provisions of subsection (1), the Advisory Committee shall have powers to—

(a) carry out investigations necessary required to make a determination on a petition for power of mercy;
(b) receive oral or written submissions from a petitioner, victim or any other person;
(c) call for any document from any person or body;
(d) administer oath or affirmation; and
(e) subject to this Act, determine its own procedure.

Justification: To clearly specify the power of the Advisory Committee.

(b) deleting subclause (3).

Justification: To deter the Advisory Committee from delegating its powers in accordance with the principle of *delegatus non potest delegare.*

CLAUSE 13

THAT Clause 13 of the Bill be amended by—

(a) deleting subclause (1) and substituting therefor the following new subclause—

(1) There shall be a secretariat of the Advisory Committee comprising of such staff and headed by the Secretary to the Advisory Committee.

(b) deleting subclause (2) and substituting therefor the following new subclause—

(2) The Secretary to the Advisory Committee shall be a public officer nominated by the Commission through a competitive process and appointed by the President.

(c) deleting subclause (3) and substituting therefor the following new subclause—

(3) The Secretary to the Advisory Committee shall serve for a term of five years and shall be eligible for re-appointment for one further term of five years.

Justification: To align the provisions with proper drafting techniques.

CLAUSE 14

THAT Clause 14 of the Bill be amended in paragraph (b) by deleting subparagraph (ii).

Justification: Correctional science generally falls under social sciences.

CLAUSE 15

THAT Clause 15 of the Bill be amended by deleting subsection (2) and substituting therefor the following new subsection—

(2) Where a decision is taken to remove the Secretary from office in accordance with subsection (1), the Commission shall—

(a) inform the Secretary of the reasons of the intended removal in writing; and
(b) provide the Secretary with an opportunity to be heard in accordance with the principles of fair administrative action prescribed by Article 47 of the Constitution and the Fair Administrative Action Act.

Justification: To correct the legislative sentence and make reference to the Fair Administrative Action Act which operationalizes the right to fair administrative action provided under Article 47 of the Constitution.

CLAUSE 16

THAT the Bill be amended by deleting Clause 16 and substituting therefor the following new Clause—

Staff of the Advisory Committee

16. (1) The Commission shall, in consultation with the Advisory Committee, competitively recruit officers as are necessary for the proper discharge of functions of the Advisory Committee as provided under this Act.

(2) The Commission may, upon request by the Advisory Committee, second public officers from the national government department or agency to the Secretariat in accordance with section 42 of the Public Service Commission Act.

Justification: To provide that the secretariat of the Advisory Committee shall be recruited by the Public Service Commission and not the Advisory Committee which is not a body corporate.

CLAUSE 17

THAT Clause 17 of the Bill be amended by deleting subsection (1) and substituting therefor the following new subsection—

(1) The members of the Advisory Committee and secretariat shall not discuss the decisions of the Advisory Committee or disclose information that those decisions are based upon with any other person other than members of the Advisory Committee or secretariat unless legally required to disclose the information in accordance with the Access to Information Act or by an order of court.

Justification: To correct grammatical errors.

CLAUSE 18

THAT Clause 18 of the Bill be amended by deleting subclause (4).

Justification: The Conflict of Interest Act adequately caters for matters of conflict of interest including penal provisions.

CLAUSE 19

THAT the Bill be amended by deleting Clause 19 and substituting therefor the following new Clause—

Remuneration of members of the Advisory Committee.

19. The members of the Advisory Committee shall be paid such allowances on the advice of the Salaries and Remuneration Commission.

Justification: To clearly provide that the members of the Advisory Committee are to be paid allowances based on their part-time service.

CLAUSE 20

THAT the Bill be amended by deleting Clause 20.

Justification: The provision may be in conflict with the provisions of Clause 16 where officers with necessary skill and knowledge are recruited to facilitate the effective discharge of the functions of the Advisory Committee.

CLAUSE 21

THAT the Bill be amended by deleting Clause 21.

Justification: There is no sufficient rationale in establishing the Power of Mercy Case Management Committees in each correctional facility and at the same time have Pardon Officers who are stationed at correctional facilities.

CLAUSE 22

THAT the Bill be amended by deleting Clause 22 and substituting therefor the following new Clause—

Pardon Officers.

22. (1) For the purpose of this Act, the Cabinet Secretary shall, by notice in the *Gazette*, appoint pardon officers, who shall be public officers seconded to the Advisory Committee and stationed at correctional facilities as shall be prescribed.

(2) The pardon officers appointed under subsection (1) shall—

(a) report directly to the Advisory Committee on all matters related to the power of mercy;

(b) advise the internal mechanism in each correctional facility on all matters relation to 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.

Justification: To retain the appointment and functions of pardon officers as is currently provided.

CLAUSE 23

THAT the Bill be amended by deleting Clause 23 and substituting therefor the following new Clause—

23. A member of the Advisory Committee or the secretariat shall not be personally liable for any act or omission done in good faith in the performance of any function or exercise of any power under this Act.

Justification: To clearly provide for protection of the members of the Advisory Committee and its secretariat from litigation arising from lawful discharge of their duties.

CLAUSE 24

THAT the Bill be amended by deleting Clause 24.

Justification: The provision is on funds of the Advisory Committee and may be better placed under Part IV of the Bill on financial provisions.

CLAUSE 25

THAT the Bill be amended by deleting Clause 25 and substituting therefor the following new Clause—

Exercise of power of mercy.

25. (1) Pursuant to Article 133(1) of the Constitution, on the petition of any person, the President may exercise a power of mercy in accordance with the advice of the Advisory Committee by—

(a) granting a free or conditional pardon to a person convicted of an offence;
(b) postponing the carrying out of a punishment, either for specified or indefinite period;
(c) substituting a less serve form of punishment; or
(d) remitting all or part of a punishment.

(2) In formulating its advice to the President, the Advisory Committee shall consider—

(a) the age of the offender at the time of commission of the offence;
(b) the circumstances surrounding the commission of the offence;
(c) whether the offender is a first offender;
(d) the nature and seriousness of the offence;
(e) the length of period served by the offender in a correctional facility;
(f) the length of period served by the offender in remand;
(g) the personal circumstances of the offender at the time of making the petition including physical and mental health;
(h) the national interest;
(i) the conduct, character and reputation of the offender after conviction; and
(j) the outcome of any remedy pursued by the applicant.

Justification: To align the legislative text with the text of Article 133(1) of the Constitution and to introduce general criteria which shall be considered in addition to the specific criteria for each form of mercy.

CLAUSE 26

THAT Clause 26 of the Bill be amended—

(a) by deleting subclause (1) and substituting therefor the following new subclause—

26. (1) Any person may petition the President, through the Advisory Committee, for the exercise of power of mercy specified under Article 133(1) of the Constitution if they satisfy the eligibility criteria specified under this Act.

Justification: To make the provision clear.

(b) by deleting subclause (2) and substituting therefor the following new subclause—

(2) Despite subsection (1), a petition shall not be permitted where the offender—
(a) is on probation;
(b) is serving a suspended sentence; or
(c) has an application for any judicial remedy that is pending before a court.

Justification: To clarify that the inadmissibility is on a petition and align with the rules of drafting.

(c) by deleting subclause (3) and substituting therefor the following new subclause—

(3) The petition to the President to exercise the power of mercy shall be in the prescribed form and shall be accompanied by the prescribed supporting documents.

(d) by deleting subclause (4);

Justification: To merge the ideas of having a prescribed form and the accompanying documents.

(e) by deleting subclause (5) and substituting therefor the following new subclause—

(5) The Advisory Committee shall, in advising the President pursuant to Article 133(1) of the Constitution, consider the reports submitted by the pardon officers.

Justification: To align the text with the provisions of Article 133(1) of the Constitution and the proposed amendments to the functions of the pardon officers.

CLAUSE 27

THAT the Bill be amended by—

(a) deleting subclause (1) and substituting therefor the following new subclause—

(1) The President may, on the advice of the Advisory Committee, grant a free pardon in exceptional circumstances to—
(a) a vulnerable offender;
(b) a deserving offender below the age of eighteen years; or
(c) an offender in the national interest.

Justification: To align the text with the provisions of Article 133(1) of the Constitution and align with the rules of drafting. Also, to allow all persons who are deserving to be eligible for free pardon.

(b) deleting subparagraph (2).

Justification: The clause provides for issuance of a police clearance certificate to an offender which is a function of the Directorate of Criminal Investigations as provided under the National Police Service Act.

CLAUSE 28

THAT Clause 28 of the Bill be amended by—

(a) by deleting subclause (1) and substituting therefor the following new subclause—

(1) The President may, on the advice of the Advisory Committee, grant a conditional pardon—

(a) in the case of a determinate custodial sentence, to a deserving offender who has served at least one third of the custodial sentence;

(b) in the case of an indeterminate custodial sentence, to a deserving officer who has served at least fifteen years of the custodial sentence.

Justification: There is no need to segregate between misdemeanour and felony since a person convicted of a misdemeanour cannot be sentenced to an indeterminate custodial sentence. Though a person convicted of a felony may be sentenced to either a determinate custodial sentence or an indeterminate custodial sentence.

(b) deleting subclause (2);

Justification: To introduce the definitions in the interpretation section.

(c) deleting subclause (3).

(d) deleting subclause (4);

(e) deleting subclause (5);

(f) deleting subclause (7);

Justification: The procedures of sealing of criminal records may unduly expound the scope of the Bill.

CLAUSE 29

THAT Clause 29 of the Bill be amended—

(a) by deleting subclause (1) and substituting therefor the following new subclause—

(1) The President may, on the advice of the Advisory Committee, postpone the carrying out of a punishment either for a specified or indefinite period—

(a) on medical grounds where the offender—

(i) suffers from a terminal illness or a highly contagious disease;
(ii) is entirely incapacitated requiring assistance with activities of daily living;
(iii) is critically ill; or
(iv) is pregnant, a lactating mother or the sole caretaker of a dependent child;
(b) on grounds of national interest; or
(c) such other circumstances as the President may deem fit or just.

Justification: To align with the rules of legislative drafting.

(b) in subsection (2), by deleting the word "release" in paragraph (b) and substituting therefor the word "postponement".

Justification: To clarify that the effect of the form of mercy is postponement.

CLAUSE 30

THAT Clause 30 of the Bill be amended—

(a) by deleting subclause (1) and substituting therefor the following new subclause—

(1) The President may, on the advice of the Advisory Committee, substitute a less severe form of punishment—
(a) on medical grounds where the offender—
(v) suffers from a terminal illness or a highly contagious disease;
(vi) is entirely incapacitated requiring assistance with activities of daily living;
(vii) is of advanced age;
(viii) is critically ill; or
(ix) is pregnant, a lactating mother or the sole caretaker of a dependent child;
(b) on recommendation of the Commissioner of Prisons for purposes of decongesting of prisons or commuting death sentences to life imprisonment; or
(c) such other circumstances as the President may deem fit or just.

Justification: To align with the rules of legislative drafting.

(b) by deleting subclause (2) and substituting therefor the following new subclause—

(2) The substitution of a less serve form of punishment may constitute—
(a) replacement of custodial sentence with a non-custodial sentence;
(b) reduction of the duration of a custodial sentence; or
(c) relief of part of the legal consequences of a conviction.

Justification: To align with the rules of legislative drafting.

CLAUSE 31

THAT the Bill be amended by deleting Clause 31 and substituting therefor the following new Clause—

31. The President may, on the advice of the Advisory Committee, remit all or part of a punishment of a convicted offender. Remission of all or part of a sentence.

Justification: To align with the provisions of Article 133 of the Constitution which allows the President to remit all or part of a punishment. The Clause limits the grant of the power to persons who have been punished by imprisonment.

CLAUSE 32

THAT the Bill be amended by deleting Clause 32.

Justification: The deletion is as a consequence of the proposed amendments to Clause 31.

CLAUSE 33

THAT the Bill be amended by deleting Clause 33.

Justification: The deletion is as a consequence of the proposed amendments to Clause 31.

CLAUSE 34

THAT the Bill be amended by deleting Clause 34.

Justification: The deletion is as a consequence of the proposed amendments to Clause 31.

CLAUSE 35

THAT the Bill be amended by deleting Clause 35.

Justification: The procedures of sealing of criminal records may unduly expound the scope of the Bill.

CLAUSE 36

THAT the Bill be amended by deleting Clause 36.

Justification: The procedures of activating sealed criminal records may unduly expound the scope of the Act.

CLAUSE 37

THAT the Bill be amended by deleting Clause 37 and substituting therefor the following new Clause—

37. The financial year of the Advisory Committee shall be the period of twelve months ending on the thirtieth of June each year.

Justification: To delete the definition of "Institution" and any reference of the Institution to mean the Advisory Committee.

CLAUSE 38

THAT Clause 38 of the Bill be amended by—

(a) deleting subclause (1) and substituting therefor the following new subclause—

38. (1) At least three months before the commencement of each financial year, the Advisory Committee shall cause to be prepared the estimates of the revenue and expenditure of the Advisory Committee for that financial year.

(b) deleting subclause (2) and substituting therefor the following new subclause—

(2) The annual estimates shall make provision for all estimated expenditure of the Advisory Committee for the financial year concerned and in particular shall provide for the—

(a) the payment of allowances in respect with the members of the Advisory Committee; and
(b) the payment of salaries, allowances, pensions, gratuities and other charges in respect of the staff of the Advisory Committee.

Justification: To delete any reference of the Institution to mean the Advisory Committee and align the information that may be contained in the estimates considering the fact that the Advisory Committee is not a body corporate.

CLAUSE 39

THAT the Bill be amended by deleting Clause 39 and substituting therefor the following new Clause—

39. (1) The secretary to the Advisory Committee shall cause to be kept all proper books and records of accounts of the income, expenditure, assets and liabilities of the Advisory Committee.

(2) Within a period of three months from the end of each financial year, the Advisory Committee shall submit to the Auditor-General the accounts of the Advisory Committee together with—

(a) a statement of the income and expenditure of the Advisory Committee during that financial year; and
(b) a statement of the assets and liabilities of the Advisory Committee as at the last day of that financial year.

(3) The accounts of the Advisory Committee shall be audited and reported in accordance with the Public Audit Act.

CLAUSE 46

THAT Clause 46 of the Bill be amended by deleting the opening statement of subclause (1) and substituting therefor the following new subclause—

(1) The Advisory Committee shall collect and publish data on its website and in other manner as may it may approve on its processes and outcomes including—

Justification: To correct grammatical errors.

CLAUSE 47

THAT Clause 47 of the Bill be amended in subsection (1) by deleting the word "established" appearing immediately after the word "Committee".

Justification: To correct an error.

CLAUSE 54

THAT the Bill be amended by deleting Clause 54 and substituting therefor the following new Clause—

Consequential amendments.

54. (1) Section 16 of the Mutual Legal Assistance Act be amended in subsection (5) by inserting the words "including any eligibility for release on remission pursuant to the Power of Mercy Act" immediately after the word "custody" in paragraph (a).

Cap. 79A.

(2) Section 20 of the Victim Protection Act is amended in subsection (1) by deleting paragraph (c) and substituting therefor the following new paragraph—

(c) The Advisory Committee on Power of Mercy established under the Power of Mercy Act on the pardon of an offender.

Cap. 94.

Justification: There is no correlation between the power of mercy and the consequential amendments to the Criminal Procedure Code, the Penal Code, the Prisons Act and the Kenya Defence Forces Act. The deletion of the proposed amendments to the National Police Service Act is as a result of the proposed deletion of matters providing for sealing of criminal records from the Bill.

CLAUSE 55

THAT the Bill be amended by deleting Clause 55 and substituting therefor the following new Clause—

55. The saving and transitional provisions are as set out in the Fourth Schedule.

Justification: To provide for the transitional provisions in a schedule.

CLAUSE 56

THAT the Bill be amended by deleting Clause 56.

CLAUSE 57

THAT the Bill be amended by deleting Clause 57.

CLAUSE 58

THAT the Bill be amended by deleting Clause 58.

CLAUSE 59

THAT the Bill be amended by deleting Clause 59.

CLAUSE 60

THAT the Bill be amended by deleting Clause 60.

CLAUSE 61

THAT the Bill be amended by deleting Clause 61.

CLAUSE 62

THAT the Bill be amended by deleting Clause 62.

CLAUSE 63

THAT the Bill be amended by deleting Clause 63.

CLAUSE 64

THAT the Bill be amended by deleting Clause 64.

CLAUSE 65

THAT the Bill be amended by deleting Clause 65.

CLAUSE 66

THAT the Bill be amended by deleting Clause 66.

CLAUSE 67

THAT the Bill be amended by deleting Clause 67.

CLAUSE 68

THAT the Bill be amended by deleting Clause 68.

Justification: To provide for the saving and transitional clauses in a schedule.

THIRD SCHEDULE

THAT the Bill be amended by deleting the Third Schedule.

Justification: The remaining consequential amendments do not require to be provided in a schedule.

NEW CLAUSES

1. **THAT** the Bill be amended by inserting the following new Clause immediately after Clause 8—

Appointment of members of the Advisory Committee.

8A. (1) The Panel shall, within seven days of being constituted, invite applications from persons who qualify for appointment as members of the Advisory Committee under section 5(3) through an advertisement in at least two daily newspapers of national circulation and its website.

(2) The panel shall—

(a) consider the applications received under subsection (1) to determine their compliance with the provisions of the Constitution and this Act;

(b) shortlist the applicants and publish the names of the shortlisted applicants and the qualified applicants in at least two daily newspapers of national circulation and its website;

(c) conduct interviews of the shortlisted persons; and

(d) recommend to the President ten suitably qualified persons for appointment as members of the Advisory Committee.

(3) In recommending or appointing members of the Advisory Committee, the panel and the President shall—

(a) have regard to ethnic and regional diversity of the people of Kenya;

(b) ensure that not more than two-thirds of the members are of the same gender;

(c) ensure that the competencies provided in section 6 are reflected in the membership of the Advisory Committee; and

(d) take into account the national values set out in Articles 10 and 232 of the Constitution.

(4) The President shall, within seven days of receipt of the recommended persons under subsection (2), by notice in the *Gazette*, appoint members from among the persons recommended by the panel.

Vacancy in the office of the member of the Advisory Committee.

8B. (1) The office of the member of the Advisory Committee shall become vacant if the holder—

(a) dies

(b) resigns from office by notice in writing addressed to the President;

(c) is convicted of an offence and sentenced to imprisonment for a term exceeding six months without the option of a fine;

(d) is absent from three consecutive meetings of the Committee without good cause;
(e) is adjudged bankrupt;
(f) is unable to perform any functions of the office.

(2) The President shall notify every vacancy in the *Gazette* within fourteen days.

(3) Where a vacancy occurs in the membership of the Advisory Committee, the appointment procedure provided for under section 8A shall apply with necessary modifications.

Justification: To provide that the members of the Advisory Committee prescribed under Article 133(2)(c) shall be appointed by the President after selection by a panel constituted for that purpose as currently provided. This seeks to promote fairness, accountability, inclusivity and adherence to constitutional principles of good governance while providing an appropriate check on the exercise of appointment powers by the appointing authority.

Further, the new Clause 8A seeks to make provisions on the occurrence of a vacancy in the membership of the Advisory Committee and the procedure of filing such a vacancy.

2. **THAT** the Bill be amended by inserting the following new Clause after Clause 12—

Conduct of business and affairs of the Advisory Committee.

12A. (1) The conduct of business and affairs of the Advisory Committee shall be as set out in the First Schedule.

(2) Except as provided in the First Schedule, the Committee may regulate its own procedure.

Justification: To ensure the provisions of the Bill flow logically.

3. **THAT** the Bill be amended by inserting the following new Clause after Clause 36—

Funds of the Advisory Committee.

36A. The funds of the Advisory Committee shall comprise—

(a) money appropriated by the National Assembly for purposes of the Advisory Committee;
(b) money and revenue as may accrue to or vest in the Advisory Committee in the course of performance of its functions under this Act or any other written law; and
(c) grants and donations made to the Advisory Committee with the approval of the Cabinet Secretary responsible for matters related to finance.

Justification: To provide for a predictable funding for the Advisory Committee to effectively perform its functions.

4. **THAT** the Bill be amended by inserting the following new Schedule immediately after the Third Schedule—

FOURTH SCHEDULE (s. 55)
SAVINGS AND TRANSITIONAL PROVISIONS

Rights, obligations and contracts.

1. Any rights, obligations and contracts which, immediately before the commencement of this Act, were vested in or imposed on the former Advisory Committee shall be deemed to be the rights, obligations and contracts of the Advisory Committee.

Tenure of members of the Advisory Committee and secretary.

2. The members of the Advisory Committee and the secretary to the Advisory Committee shall continue to serve for the remainder of their term upon the commencement of this Act.

Staff.

3. (1) A person who, immediately before the commencement of this Act was member of staff or officer of the former Advisory Committee, not being then under notice of dismissal or resignation shall, on the commencement of this Act, become a member of staff or officer of the Advisory Committee on such terms and conditions of service as the Advisory Committee may determine.

(2) Despite subsection (1), a member of staff or officer who was serving in the former Advisory Committee as a substantive member of staff or officer, seconded member of staff or officer, deployed member of staff or officer, shall upon the commencement of this Act be given an option to elect to serve in the Advisory Committee or be redeployed in the public service or the relevant parent Ministry, Department or Agency within a period of three years.

Statutory instruments.

4. Any statutory instrument in force made immediately before the commencement of this Act shall remain in force as if it were made under this Act and shall be applied with necessary modifications.

Petitions and other matters.

5. Any petitions or other matters pending consideration by the former Advisory Committee shall after the commencement of this Act, be continued as if the proceedings were instituted under the provisions of this Act.

Administrative decisions.

6. Any administrative decisions made by the former Advisory Committee which is in force immediately before the commencement of this Act, shall, on the commencement of this Act, have force as if it were a decision made by the Advisory Committee under this Act.

Disciplinary proceedings.

7. (1) On the commencement of this Act—

(a) any disciplinary proceedings against any member of staff of the former Advisory Committee are in the course of being heard or instituted, or have been heard or investigated by the former Advisory Committee but no order or decision has been made thereon, the Advisory Committee shall carry on and complete the hearing or investigation and make an order or render a decision, as the case may be;

(b) any such member of staff is interdicted or suspended, the Advisory Committee shall deal with such member of staff in such manner as it deems appropriate having regard to the offence committed by him, including the completion of disciplinary proceedings that have been commenced against that member of staff.

(2) On the commencement of this Act, any penalty, other than dismissal, that has been imposed on any member of staff of the former Advisory Committee pursuant to disciplinary proceedings and the penalty

has not been, or remains to be, served by such member of staff, the member of staff shall upon transfer to the Advisory Committee, serve or continue to serve such penalty to its full as if it had been imposed by the Advisory Committee, where applicable.

(3) Despite the generality of subsection (1), the provisions on discipline in the human resource instruments of the former Advisory Committee shall apply until conclusion of the disciplinary process.

Pension.

8. (1) A member of staff of the former Advisory Committee who becomes a member of staff of the Advisory Committee shall continue to be governed by the existing government pension arrangements or any other statutory voluntary pension scheme.

(2) Where any person whose services are transferred to the Advisory Committee is, on the commencement of this Act, a member of any statutory voluntary pension scheme or provident fund, the person shall for the purpose of this Act, continue to be governed by the same regulations under those schemes or funds, as if the person had not been so transferred, and for purposes of the regulations governing those schemes or funds, service with the Advisory Committee shall be deemed to be service in the former Advisory Committee.

(3) The Advisory Committee may, by order, make provisions with respect to pension or provident fund benefits of the members of staff of the Advisory Committee and with respect to the pension scheme and provident fund of the former Advisory Committee.