

**NO. 21 OF 2011**

**THE POWER OF MERCY ACT**

SUBSIDIARY LEGISLATION

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**THE POWER OF MERCY COMMITTEE (PROCEDURE) REGULATIONS**

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**THE POWER OF MERCY COMMITTEE (PROCEDURE) REGULATIONS**

[Legal Notice 133 of 2016]

**1. Citation**

These Regulations may be cited as the Power of Mercy Committee (Procedure) Regulations.

**2. Interpretation**

In these Regulations, unless the context requires otherwise—

"chairperson" has the meaning assigned to it under section 2 of the Act;

"Committee" has the meaning assigned to it under section 2 of the Act;

"secretary" means the secretary to the Committee appointed under section 16(2) of the Act.

**3. Form of petition**

(1) A person who intends to apply for the exercise of the power of mercy under section 20 of the Act shall apply to the Committee by way of a petition in Form A set out in the Schedule.

(2) Where a petitioner intends to rely on any document in the petition filed under paragraph (1), the petitioner shall annex the document to the petition at the time of filing.

(3) The Secretary shall cause the prescribed form under 3(1) to be made available in all correctional facilities.

**4. Pardon officer to assist in filing petitions**

A pardon officer stationed in a correctional facility shall assist a petitioner in making a petition.

**5. Procedure on receipt of petitions**

Upon receipt of a petition, the Secretary shall—

- (a) acknowledge receipt of the petition by stamping and endorsing the date on which the petition is received;
- (b) enter the particulars of the petition in a register kept by the Secretariat for that purpose;
- (c) inform the petitioner, in writing, of the reference number of the petition as entered in the register;
- (d) advise the applicant of the address to which notices and communications to the Committee shall be sent; and
- (e) advise the applicant of any action required to be performed on his part to enable the Committee determine the application.

**6. Amendment of petition and submission of supplementary grounds of petition**

(1) The petitioner may, at any time before the petition is heard, amend the petition or any statement of grounds of application or deliver to the Committee a supplementary statement of grounds of application.

(2) Where hearing of the petition has commenced, the petitioner may, with leave of the Committee on such terms and conditions as the Committee may consider fit and just, allow the petitioner to amend the petition or the statement of grounds of the application of supplementary grounds of application.

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## **7. Application by minors and persons with a disability**

(1) Where the petitioner is a minor or is a person with a disability, the petition may, subject to conditions which may be specified by the Committee, be brought by a person legally authorized to act on behalf of the minor or person with a disability or by a person appointed by the Committee.

(2) A person acting under paragraph (1) shall take all necessary steps required for the purpose of the petition as a petitioner is required by these Regulations.

## **8. Determination of merit of petition**

A petition filed under regulation 3 shall be placed before the Committee within seven days of its filing for a decision regarding whether it has merit or otherwise.

## **9. Refusal to hear petition**

(1) The Committee may decline to hear a petition if it considers that—

- (a) the petitioner does not meet the eligibility criteria under section 19 of the Act; or
- (b) the petition has no merit, is frivolous or is not made in good faith.

(2) If the Committee decides not to consider a petition on any grounds provided under paragraph (1), the Committee shall inform the petitioner in writing of that decision and shall state the reasons for the decision.

## **10. Hearing date**

Where the Committee decides that the petition has merit, the Committee shall fix a date for the hearing and the Secretary shall give written notice to the petitioner.

## **11. Notice of hearing of petition**

(1) The Committee shall, by notice in the *Kenya Gazette* notify the public, of the petition that has been filed under regulation 3 and shall invite interested parties to give their views on the petition.

(2) The Committee shall avail, at the Secretariat, a list of all applications and shall specify the date, place and time when the applications shall be heard, for public inspection.

## **12. Hearings**

(1) Subject to the provisions of paragraph (2), all proceedings before the Committee shall be held in public.

(2) Despite the provisions of paragraph (1) the Committee may take into account the need to protect any matter that—

- (a) relates to the intimate personal matters or financial circumstance of any party;
- (b) is commercially sensitive; or
- (c) consists of information communicated or obtained in confidence or concerns national security,

and may order that all or part of the evidence of a person be heard in private or prohibit or restrict the publication of that evidence.

(3) The Committee shall not compel a person to give any evidence or produce any document or other material that the person cannot be compelled to give or produce in a trial for an action in a court of law.

## **13. Subpoenas and orders**

(1) A person summoned to appear before the Committee shall be given at least seven days' notice of the hearing unless the person has informed the Committee that he accepts the shorter notice given.

(2) The Committee may from time to time, on its own motion or on the application of a party to the proceedings, adjourn the hearing and if the date, place and time of the next

hearing is announced in the presence of all the parties at the time of the adjournment, no hearing notice shall be required to be issued to any party.

(3) Subject to this Regulation, the Committee may, if it considers fit and just, visit any correctional facility, and may conduct a hearing at the facility on the day of the visit.

(4) The Committee shall transact business from Monday to Friday during official business hours.

#### **14. Exclusion of persons disrupting proceedings**

The Committee may, without prejudice to any other powers it may have exclude from the hearing or part of it, any person whose conduct has disrupted or is likely, in the opinion of the Committee, to disrupt the hearing.

#### **15. Procedure during hearing**

(1) The chairperson shall, at the commencement of the hearing, explain the order of proceedings which the Committee proposes to adopt.

(2) The Committee shall conduct the hearing in such manner as it considers suitable for the determination of the petition or the clarification of issues before it and generally for the just handling of the proceedings and shall, so far as it appears to it appropriate, avoid legal technicality and formality in its proceedings.

(3) The parties shall be heard in such order as the Committee shall determine, and shall be entitled to address the Committee on both evidence and generally on the subject matter of the application.

(4) Evidence before the Committee may be given orally or, if the Committee so orders, by affidavit or written statement, but the Committee may at any stage of the proceedings require the personal attendance of any deponent or author of a written statement.

(5) The Committee may receive evidence of any fact which appears to it to be relevant to the petition.

(6) The Committee may, during the hearing and if it is satisfied that it is just and reasonable to do so, permit a party to rely on grounds not stated in the petition.

(7) Where the Committee decides that there is need to contact a victim, the Committee shall notify the victim by way of a notice in Form B set out in the Schedule that—

- (a) a petition for the power of mercy has been filed; and
- (b) the victim may submit comments.

(8) The Committee shall conduct the hearings in English or Kiswahili.

(9) Despite paragraph (8), the Committee shall, taking into consideration, all the circumstances, grant the assistance of a competent interpreter at no costs to a party or witness who does not understand or speak the language used at the hearing or who is deaf.

#### **16. Applications to be heard expeditiously**

The Committee shall hear and determine all applications before it within the shortest time possible.

#### **17. Re-petition**

A petitioner whose application is refused shall not apply for the exercise of the power of mercy until the expiration of one year after the date of refusal.

#### **18. Withdrawal of petition**

(1) The petitioner may, with leave of the Committee and at any time before or at the hearing of the petition, withdraw his petition upon such conditions as the Committee considers fit and just, and the petition shall be marked as withdrawn.

(2) Where a petition is withdrawn under paragraph (1), no petition shall be heard by the Committee in relation to the same subject matter unless the Committee, for good reason shown by the petitioner, otherwise determines.

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19. Recording of proceedings

(1) The Chairperson shall take or cause to be taken notes of all proceedings before the Committee or may order that the record of any proceedings before it shall be taken by short hand notes, tape recorded or, at the discretion of the Committee, be electronically recorded.

(2) A verbatim record of every hearing shall be made by the Committee, and copies of the transcript shall be circulated to all members of the Committee and, on request, to any party to the petition.

(3) The record of the proceedings shall be maintained in the register referred to under regulation 20(4).

20. Recommendation of the Committee

(1) A recommendation of the Committee may be made by a majority of the members present and the decision shall record whether it was unanimous or taken by a majority of the members present.

(2) The decision of the Committee shall be—

- (a) in writing whether or not there has been a formal hearing; and
(b) signed and dated by the Chairperson and every member who was present during the hearing or determination of the matter.

(3) A dissenting opinion may be pronounced separately by the member who dissented and shall be dated and signed by that member.

(4) Every document containing a decision referred to in this regulation shall, as soon as may be reasonable, be entered in the register.

21. Recommendation to the President

The Committee shall forward the recommendation made pursuant to regulation 20, to the President and shall state the reasons for the recommendation.

22. Notice of decision

(1) Where the President approves or rejects the recommendation of the Committee pursuant to section 23 of the Act, the Committee shall inform the petitioner of the outcome of the petition in Form C set out in the Schedule.

(2) The Committee shall, in the case where a victim was summoned to appear, inform the victim of the outcome of the petition.

SCHEDULE

FORMS

FORM A (r. 3(1))

THE PETITION OF POWER OF MERCY

To: The President
Republic of Kenya
Through
The Power of Mercy Advisory Committee

1. The humble petition
of (Name of convicted criminal offender)
Prison
No Nationality
Name of Prison where held



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Court where convicted .....

Court Case No. ....

Age at conviction ..... Current

Age when offence was committed .....

Next of kin .....

Relationship .....

Contact person ..... Tel. No .....

Home County ..... Sub-County .....

Location .....

Nearest School .....

Name of Home Chief .....

Where the offence was committed .....

Date of conviction .....

Date of custody (remand) .....

2. Number of counts and sentence terms(s) imposed .....

.....

3. Relief sought or nature of the petition (*tick as appropriate*)

(a) Free or conditional pardon

(b) Postponing the carrying out of a punishment for a specified or indefinite period

(c) Substituting a less severe form of punishment

(d) Remitting all or part of punishment

4. The nature, particulars and circumstances surrounding the commission of the offence

.....

.....

*(attach a separate sheet for additional information where necessary)*

5. Were you charged alone for the offence?

(a) Yes                      (b) No                      if No, gives Names of the co-accused and prison held if they were convicted

.....

.....

6. Do you know the victim of the offence for which you were charged?

(a) Yes                      (b) No                      if yes, provide details.

Name of victim .....

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Area of residence (if known) .....

7. State and explain any previous conviction(s) .....

8. Has the prisoner made any previous petition? .....

(a) If yes, Date of the previous petition was .....

(b) Reason of denial of previous petition .....

9. Reasons for current petition .....

10. Any Documents submitted in support of the petition .....

11. Have you had any disciplinary action taken against you while in prison? Give details .....

12. Any special condition e.g. physical ability challenges, terminal sickness, very sickly, mental health etc. ....

13. Are you a Trustee .....

(a) Yes (b) No if yes, please explain .....

14. Are you recognized for special attributes, achievement or skills attained in prison? .....

(a) Yes (b) No if yes, please explain .....

15. Did you appeal against the conviction? .....

(a) Yes (b) No if yes, please explain the outcome and indicate the Appeal Case Number .....

16. Do you have any pending court matter even if not related to your conviction? .....

(a) Yes (b) No if yes, please explain .....

The Petitioner further states:

17. That during the service of the sentence term, the convicted criminal offender has demonstrated good conduct, change of character, and remorse for the crime for which the prisoner was convicted and sentenced

18. That the petitioner humbly requests the President of the Republic of Kenya to exercise the power of mercy and grant the relief sought.

19. That the petitioner binds himself/herself to the conditions that may be attached to any relief granted by the President, including post release supervision by any government agency.

20. That the convicted criminal offender commits and undertakes to maintain and improve on the good character and recognizes that should the relief be

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granted it could be revoked, upon recommendation of the Power of Mercy Advisory Committee, in the event of commission of any criminal offence.

Dated at .....this .....day of. .... 20 .....

.....  
(Name of the petitioner) Signature/thumb print

If applicant is different from the petitioner

This petition was drawn and filed on behalf of the petitioner by:

Representative/Advocate .....

Relationship with convicted offender.....

P.O. Box.....

Telephone No.....

Signature.....

FORM B (r. 15(7))

NOTICE OF PETITION

To: .....

(name of the victim(s) of the petitioner's offence)

**TAKE NOTICE** that a petition for grant of mercy has been filed by.....in respect of his/her conviction arising from criminal case number .....of..... In which .....the court sitting at ..... found the petitioner guilty of ..... and sentenced him/her to .....

**TAKE NOTICE THAT** you may submit your views in regard to the said application within 30 days from the date of service of this notice upon you inclusive of the day of such notice, and you may make such views, should in person or by your representative or advocate at the power of mercy registry at Nairobi you think fit so to do.

**TAKE NOTICE THAT** in default of your so doing, The Power of Mercy Advisory Committee will proceed to hear the petition and make its recommendation to the President of the Republic of Kenya to grant or deny the petition.

This notice is issued by the Power of Mercy Advisory Committee whose address for for purposes of this petition is of Post Office Box Number ....., Nairobi.

Dated at Nairobi this ..... Day of ..... 20.....

.....  
Chairperson  
Power of Mercy Advisory Committee  
FORM C (r. 22(1))

NOTIFICATION OF GRANT OF PETITION

TO: .....

**TAKE NOTICE** that following your petition to the President of the Republic of Kenya for Grant of Mercy dated ..... day of ..... in respect of your conviction arising from Criminal Case Number ..... of..... in which the High Court sitting at ..... found you guilty of ..... and sentenced you to .....and following the considerations of the POWER OF MERCY ADVISORY COMMITTEE and its recommendation to the President, your petition has been .....

Dated at Nairobi this ..... Day of ..... 20.....

.....  
CHAIRPERSON  
Power of Mercy Advisory Committee  
Copy to:

*Power of Mercy*

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[Subsidiary]

The Principal Secretary/Interior and Coordination of National Government  
The Commissioner General of the Kenya Prisons Service  
The Director, Probation and After Care Services  
The Director, Immigration Department (where applicable)  
The Inspector-General of the Kenya Police Service (where applicable)

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