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NATIONAL ASSEMBLY OF KENYA

NINTH PARLIAMENT (SIXTH SESSION)

**DEPARTMENTAL COMMITTEE ON ENERGY,
COMMUNICATIONS AND PUBLIC WORKS**

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REPORT ON THE FREEDOM OF INFORMATION BILL, 2007

**CLERKS CHAMBER,
PARLIAMENT BUILDINGS,
NAIROBI**

JUNE, 2007

1.0 PREFACE

Mr. Speaker, Sir,

The Departmental Committee on Energy, Communications and Public Works was constituted at the commencement of the Ninth Parliament pursuant to the provisions of Standing Order No. 151. The said Standing Order No. 151 (1) (c) mandates the Committee, among other things:-

(c) to study and review all legislation after the First Reading subject to the exemptions under Standing Order No. 101 A (4)

2.0 SUBJECTS

The Committee's subjects are as follows:-

- (a) Energy production and distribution;
- (b) Transport, information, broadcasting and Communications;
- (c) Construction and Maintenance of public roads, rails and Buildings; and
- (d) Air and sea ports.

The Committee oversees the performance of the following Ministries:-

- (a) Energy;
- (b) Information and Communications;
- (c) Roads and Public Works and
- (d) Transport.

3.0 MEMBERSHIP

The Committee comprises the following Members:-

The Hon. Gideon K. Moi, MP – **Chairman**
The Hon. Maoka Richard Maore, MP
The Hon. Jimmy Nuru Ondieki Angwenyi, MP
The Hon. Gonzi S. Rai, MP
The Hon. Lucas Baya Mweni Maitha, MP
The Hon. Wafula Athanas Wamunyinyi, MP
The Hon. Julius Odenyo Arungah, MP
The Hon. Elias Peter Mbau, MP
The Hon. Mohamed Abdi Haji, MP
The Hon. (Eng.) Philip Okoth Okundi, MP
The Hon. Viscount Kariuki Kimathi, MP

4.0 SUMMARY

Mr. Speaker, Sir,

On behalf of the Departmental Committee on Energy, Communications and Public Works, I am pleased to present to the House the Committee's recommendations on the Freedom of Information Bill, 2007, pursuant to the provisions of Standing Order 162. The Bill was referred to the Committee after it was read a First Time in the House on 16th May, 2007.

I take this opportunity to thank all Members of the Committee and the secretariat for their dedication, hard work and desire to improve the Bill.

The Committee held three sittings to deliberate on the Bill with various stakeholders (see annex) some of whom sent in their memoranda. The stakeholders' views have been incorporated in the form of proposed amendments.

5.0 BACKGROUND

Mr. Speaker, Sir,

The Freedom of Information Bill seeks to establish an independent Freedom of Information Commission with a maximum number of Nine Commissioners. The Commissioners shall be vetted by the National Assembly.

The Commission shall provide for systems, processes and procedure in which the public can access information held by government or any public authority.

The Bill further gives the right of access by the public to information held by or under the control of any public authority, in addition to providing for proactive disclosure, either through designation of Public Information Officers, briefing at regular intervals or through the media.

Mr. Speaker, Sir,

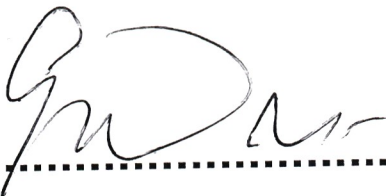
The Bill further provides for applications for accessing information, submission through any language or mode, processing and transfer of applications.

Fees may be levied for making copies of the information but no fees are levied on the submission of an applications seeking to provide information.

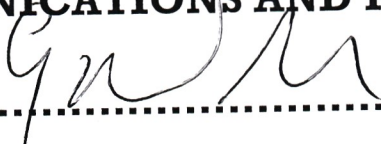
The Bill provides for the Commission to report to the National Assembly either quarterly or annually and for the implementation process since it is new legislation and repeals the Official Secrets Act, (Cap. 187)

Mr. Speaker, Sir,

The Committee recommends enactment of this Bill into Law,
but with the attached proposed amendments.

SIGNED..... 

HON. GIDEON KIPSIELE T.MOI, MP
CHAIRPERSON,
DEPARTMENTAL COMMITTEE ON ENERGY,
COMMUNICATIONS AND PUBLIC WORKS

Date.....  . 14-08-2007

**PROPOSED AMENDMENTS TO THE FREEDOM OF INFORMATION
BILL, 2007**

ARRANGEMENT OF CLAUSES: That arrangement of Clauses be amended as follows:

- (i) That the words "**THE INFORMATION COMMISSIONER**" appearing on sub title for Part IV be deleted and substituted therefor with the word "**FREEDOM OF INFORMATION COMMISSION**";

LONG TITLE OF THE BILL: That the long Title of the Bill be amended as follows:

- (i) That the word "**enable**" be deleted and the word "**provide for the establishment of the Freedom of Information Commission, public access to information in possession of the government and public authority**" be inserted in place therefor;
- (ii) That the interpretation of "**Periodical Payments**" be amended by inserting the words "**this Act**" after the word "**of**" appearing in the second line.

PREAMBLE: That the preamble of the Bill be deleted

CLAUSE 1: - SHORT TITLE – That the short title be amended by inserting the words '**and shall come into operation on such date as the Minister may, by notice in the Gazette; appoint , and different dates may be appointed for the implementation of the different provisions**'.

CLAUSE 2: - That Clause 2 be amended as follows;

- (i) That the interpretation of "**Appellate Authority**" be amended by deleting it entirely and be substituted by the interpretation of the words '**Internal Review Committee includes** ';
- (ii) That the interpretation of "**Commissioner**" to include any person appointed under section 21 of this Act;

- (iii) That the interpretation of the word "**Committee**" to include **Parliamentary Committee as set out in the Standing Orders and in section 21 of this Act, which is responsible for information;**

CLAUSE 3: That clause 3 be amended by moving it from Part II to Part I of the Bill;

CLAUSE 5: That Clause 5 be amended as follows:

- (i) That sub clause 2 (b) be amended by deleting the word '**Commissioner**' and substituting therefor the word "**Commission**" whenever it appears;

CLAUSE 6: That Clause 6 be amended as follows:

- (i) That sub clause 1 (a) (xiv) be amended by deleting the word '**Commissioner**' appearing after the word '**Information**' and substituting therefor with the word "**Commission**" whenever it appears;

CLAUSE 7: That Clause 7 be amended as follows:

- (ii) That sub clause (1), be amended by deleting the words "**as many**" and insert the words "**or designate**" after the word "**appoint**" appearing in the second line;

CLAUSE 13:

- (i) That the sub clause (1)(c) be amended by deleting the words '**Appellate authority**' after the word "**the**" and substituting therefor the words '**Internal Review Committee**';

CLAUSE 21: that clause 21 be amended by inserting a new clause under part iv

PART IV: That Part IV be amended as follows: -

- (i) That the sub title be re-named as '**Establishment, Powers and Functions of the Kenya Freedom of Information Commission**';

- (ii) That Part IV be amended by deleting clause 16, 17 and 18, substituting therefor the new clauses as below;
- (iii) That clause 21 be amended by inserting sub clause (11);

Removal of Information Commissioner. *(11). (1) A person holding the Office of Commissioner may be removed from office before expiry of term only for inability to exercise the functions of the office, whether arising from infirmity of body or mind or any other cause, or for misbehaviour.*

(2) The Commissioner shall be removed from the office by the President if the question of the Commissioner's removal has been referred to a Tribunal appointed under this section and the Tribunal has so recommended.

(3) The President shall appoint the Tribunal consisting of a chairman and four other members from among persons -

- (i) who hold or have held the office of judge of the High Court or Court of Appeal; or*
- (ii) who are qualified to be appointed as judges of the High Court.*

- (iii) That the rest of the clause in Part V be re-numbered accordingly.

PART IV – ESTABLISHMENT, POWERS AND FUNCTIONS OF THE KENYA FREEDOM OF INFORMATION COMMISSION

16. (1) *There is hereby established a Commission to be known as the Kenya Freedom of Information Commission.*

Establishment of Commission.

(2) The Commission shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of-

- (a) suing and being sued;*

- (b) *taking, purchasing or otherwise acquiring, holding, charging and disposing of movable and immovable property;*
- (c) *borrowing or lending money; and*
- (d) *doing or performing all such other things or acts for the proper performance of its functions under, and for furtherance of the provisions of this Act which may be lawfully done or performed by a body corporate.*

17.(1) *The functions of the Commission shall be—*

Functions of the Commission

- (a) *to investigate, on its own initiative or upon a complaint made by any person or group of persons, the violation of the provisions of this Act;*
- (b) *to inspect public authorities with a view to assessing and evaluating the collection, processing and dissemination of information to the public and making appropriate recommendations thereon;*
- (c) *to inform and educate the public as to their rights under this Act by means of a continuing programme of research, publication, lectures and symposia and by such other means as the Commission may deem fit;*
- (d) *to recommend to all public authorities effective measures to promote access to information;*
- (e) *ensure that all public bodies comply with Kenya's obligations under international treaties and conventions on access to information;*
- (f) *to approve information dissemination procedures including schemes for proactive disclosure of information by all public authorities;*
- (g) *to hear complaints and appeals;*
- (h) *to perform such other functions as the Commission may consider necessary for the promotion of access to information.*

(2) The Commission may enter into association with such other bodies or organizations within and outside Kenya as the Commission may consider desirable or appropriate and in furtherance of the purpose for which the Commission is established.

18. Except as provided under this Act or any other law, the Commission shall operate without any political or other bias or interference and shall be wholly independent and separate from the government, any political party, or of the nominating authority.

Independence of the Commission.

19.(1) The Commission shall consist of-

Membership of Commission

- (a) A chairperson appointed from amongst the Commissioners in accordance with Section 21.*
- (b) Eight Commissioners nominated by the National Assembly and appointed by the President in accordance with Section 21.*

20. A person shall be qualified for appointment as a Commissioner if such person —

Qualifications of Commissioners.

- (a) is a citizen of Kenya;*
- (b) is a person of high moral character and proven integrity and has knowledge and experience in matters relating to access to information; and*
- (c) in the case of the chairperson, is qualified to hold office as a Judge of the High Court of Kenya.*

Proced
ure for
appoint
ment of
commis
sioners

21.(1) The Clerk of the National Assembly shall, within fourteen days of the commencement of this Act, by advertisement in the Gazette and in at least three daily newspapers of national circulation, invite applications from persons qualified under this Act for nomination as Commissioners.

(2) An application under subsection (1) shall be forwarded to the National Assembly within twenty-one days of the advertisement and may be made –

(a) by any qualified person; or

(b) by any person, organization or group of persons proposing the nomination of any qualified person.

(3) The National Assembly shall, within seven days of the expiry of the period prescribed under subsection (2), cause the Committee to consider all the applications received under subsection (2).

(4) The National Assembly shall, within thirty days, consider all applications received under subsection (2) and shall recommend to the National Assembly therefrom, twelve persons for nomination as Commissioners.

(5) In the performance of its functions under this section, the committee may co-opt any person who in its opinion possesses the relevant expertise in the field of information to assist it in its work.

(6) The Clerk of the National Assembly shall, upon receipt of the recommendations of the committee under subsection (4), nominate nine persons for appointment as Commissioners and shall submit the list of nominees to the Minister for onward transmission to the President.

(7) The Minister shall forthwith forward the names of the persons nominated under subsection (6) to the President who shall, by notice in the Gazette, appoint nine Commissioners.

(8) In nominating or appointing persons as Commissioners, the National Assembly and the President shall have regard to-

(a) Kenya's ethnic, geographical, cultural, political, social and economic diversity; and

(b) the principle of gender equity.

(9) The Minister shall, within fifteen days of the appointment of the Commissioners, convene the first meeting of the Commission at which the Commissioners shall elect from amongst their number –

(a) a chairperson; and

(b) a vice-chairperson,

who shall be of opposite gender?

(10) The chairperson and the Commissioners shall, upon appointment, hold office on a full time basis and shall enjoy –

(a) in the case of the chairperson, the status of a judge of the Court of Appeal ; and

(b) in the case of a Commissioner, the status of a judge of the High Court.

*Secreta
ry to the
Commis
sion*

22. (1) There shall be a Secretary to the Commission who shall be appointed by the Commission upon such terms and conditions of service as the Commission may determine.

(2) Subject to the general control of the Commission, the Secretary shall –

(a) be responsible for the carrying out of the policy decisions of the Commission and the day-to-day administration and management of the affairs of the Commission and the control of the other staff of the Commission; and

(b) perform such other function as may be assigned by the Commission.

(3) The Secretary shall, unless in any particular case the Commission otherwise directs in writing, attend all meetings of the Commission but shall have no vote on any matter falling to be decided by the Commission at any such meeting.

Terms
and
Condi-
tions of
Service
of the
Commis-
sioners

23. (1) The salaries and allowances payable to, and other terms and conditions of service of the chairperson and the Commissioners shall be such as may be determined by the Committee in consultation with the Treasury.

(2) The salaries and allowances provided for under subsection (1) shall be a charge on the Consolidated Fund.

Staff of
the
Commis-
sion.

24. The Commission may appoint such officers or servants as are necessary for the proper discharge of the functions of the Commission under this Act or any other written law, upon such terms and conditions of service as the Board may determine.

Commis-
sion to
have
powers
of a
court

25.(1) In the performance of its functions under this Act, the Commission shall have the powers of a court to –

- (a) issue summonses or other orders requiring the attendance of any person before the Commission and the production of any document or record relevant to any investigation by the Commission;*
- (b) question any person in respect of any subject matter under investigation before the Commission;*
- (c) require any person to disclose any information within such person's knowledge relevant to any investigation by the Commission.*

(2) The Commission may, if satisfied that there has been an infringement of the provisions of this Act, order-

- (a) the release of any unlawfully withheld information;*
- (b) the payment of compensation; or*
- (c) any other lawful remedy or redress.*