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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,

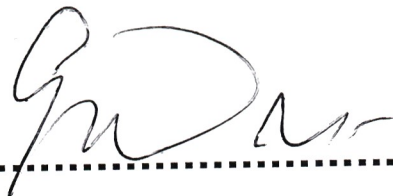
The Bill further provides for applications for accessing information, submission through any language or mode, processing and transfer of applications.

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.

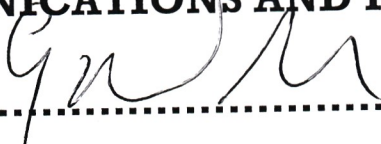
The Bill provides for the Commission to report to the National Assembly either quarterly or annually and for the implementation process since it is new legislation and repeals the Official Secrets Act, (Cap. 187)

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.

*Indepe
ndence
of the
Commis
sion.*

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.

*Membe
rship of
Commis
sion*

19.(1) The Commission shall consist of-

- (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.*

*Qualific
ations
of
Commis
sioners.*

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

- (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.*

(3) A person or authority dissatisfied with an order made by the Commission under subsection (2) may appeal to the High Court within twenty-one days of such order.

(4) An order of the Commission under subsection (2) may be filed in the High Court by any party thereto in such manner as the Commission may, in Regulations made in consultation with the Chief Justice, prescribe and such party shall give written notice of the filing of the order to all other parties within thirty days of the date of the filing of the order.

(5) If no appeal is filed under subsection (3), the party in favour of whom the order is made by the Commission may apply *ex parte* by summons for leave to enforce such order as a decree and the order may be executed in the same manner as an order of the High Court to the like effect.

(6) A person who -

(a) fails to attend before the Commission in accordance with any summons or order issued under subsection (1)(a); or

(b) having attended before the Commission, refuses to be sworn or to make an affirmation, or having been sworn or affirmed, refuses without lawful excuse, to answer any question or to produce any information; or

(c) knowingly gives any false or misleading information to the Commission; or

(d) causes an obstruction or disturbance in the course of any proceedings before the Commission,

commits an offence and shall, on conviction, be liable to a fine not exceeding three hundred thousand shillings, or to imprisonment for a term not exceeding six months, or to both.

*Powers
Relating
to
Investig
ation* 26. (1) The Commission may, for the purpose of conducting any investigation pertaining to an inquiry, utilize the services of any public servant or investigation agency of the Government and where a public servant is so utilized under this subsection, the Commission shall pay such public servant or agency for the service rendered.

(2) For the purpose of investigating into any matter pertaining to an inquiry, a public servant or agency whose services are utilised under subsection (1) may, subject to the direction and control of the Commission -

(a) summon and enforce the attendance of any person for examination;

(b) require the discovery and production of any information; and

(c) Subject to the provisions of this Act, requisition any public records or copy thereof from any public servant.

(3) The provisions of section 16 shall apply in relation to any statement made by a person before any public servant or agency whose services are utilised under subsection (1) as they apply in relation to any statement made by a person in the course of giving evidence before the Commission.

(4) The public servant or agency whose services are utilised under subsection (1) shall investigate into any matter pertaining to the inquiry and submit a report thereon to the Commission in that behalf.

(5) The Commission shall satisfy itself on the correctness of the facts stated and the conclusion, if any, arrived at in the report submitted to it under subsection (4) and for that purpose, the Commission may make such inquiry (including the examination of any person or persons who conducts or assists in the investigation) as it deems fit.

*Annual
Reports
to
Parliament*

27. (1) The Commission shall submit an annual report to the National Assembly through the Minister and may at any time submit special reports to the National Assembly on any matter.

(2) The annual report submitted by the Commission under subsection (1) shall include an overall assessment by the Commission of the performance of the Government with regard to access to information during the period under review.

(3) The Minister shall lay the annual report of the Commission before the National Assembly within two months of receipt thereof, with any comments thereon which the Minister considers necessary.

*Inquiry
into
complai
nts*

28. (1) *A person wishing to lodge a complaint under this Act shall do so orally or in writing addressed to the Secretary or such other person as may be duly authorised by the Commission for that purpose.*

(2) A complaint under subsection (1) shall be in such form and contain such particulars as the Commission may, from time to time, prescribe.

(3) Upon receipt of a complaint under subsection (1), the Commission may —

(a) call for information or a report regarding such complaint from the public authority or any other body within such reasonable time as may be specified by the Commission:

Provided that -

(i) if the information or report is not received within the time stipulated by the Commission, the Commission may proceed to inquire into the complaint without such information or report;

(ii) if on receipt of the information or report the Commission is satisfied either that no further action is required or that the required action has been initiated by the public authority, the Commission shall, in writing, inform the complainant accordingly and take no further action;

(b) without prejudice to paragraph (a), initiate such inquiry as it considers necessary, having regard to the nature of the complaint.

*Funds
of the
Commis
sion*

29. (1) *The funds of the Commission shall be derived from such sums as may, from time to time, be appropriated by Parliament for that purpose.*

(2) The Commission may receive grants and donations from any other source provided that such grants and donations shall not be made or received for purposes of influencing the decision or ability of the Commission in any way and shall be disclosed in the annual report of the Commission.

*Financi
al year.*

30. *The financial year of the Commission shall be the period of twelve months ending on the thirtieth June in each year.*

Annual
estimates.

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

(2) The annual estimates shall make provision for all estimated expenditure of the Commission for the financial year concerned, and in particular shall provide –

- (a) for the payment of the salaries, allowances and other charges in respect of the staff of the Commission and the Commissioners;*
- (b) for the payment of the pensions, gratuities and other charges in respect of retirement benefits to staff of the Commission;*
- (c) for the proper maintenance of the buildings and grounds of the Commission;*
- (d) for the proper maintenance, repair and replacement of the equipment and other movable property of the Commission;*

(3) The annual estimates shall be submitted to the Commission for approval before the commencement of the financial year to which they relate:

Provided that once approved, the sum provided in the estimates shall not be increased without the prior consent of the Commission.

(4) No expenditure shall be incurred for the purposes of the Commission except in accordance with the annual estimates approved under sub-section (3) or in pursuance of an authorisation of the Commission.

*Account
s and
audit.* **32. (1)** *The Commission shall cause to be kept all proper books and records of accounts of the income, expenditure, assets and liabilities of the Commission.*

(2) Within a period of three months after the end of each financial year, the Board shall submit to the Controller and Auditor- General or to an auditor appointed under sub-section (3), the accounts of the Commission together with –

*(a) a statement of income and expenditure during that year;
and*

(b) a statement of the assets and liabilities of the Commission on the last day of the financial year.

(3) The accounts of the Commission shall be audited by the Controller and Auditor-General or by an auditor appointed by the Board with the written approval of the Controller and Auditor-General.

(4) Nothing in this Act shall be construed to prohibit the Controller and Auditor-General from carrying out an inspection of the Commission's accounts or records whenever it appears to him desirable and the Controller and Auditor-General shall carry out such an inspection at least once every six months.

(5) Notwithstanding anything in this Act, the Controller and Auditor General may transmit to the Minister a special report on any matters incidental to his powers under this Act, and section 19 (3) and (4) of the Exchequer and Audit Act shall, mutatis mutandis, apply to any report made under this section.

*Cap.41
2*

(6) The Minister shall lay the audit report before the National Assembly as soon as reasonably practicable after the report is submitted to him under this section.

*Bank
Account
s* **33. (1)** *The Commission may open and maintain such bank accounts as are necessary for the performance of its functions.*

Annual
Financial
report.

34.(1) The Commission shall, within three months after the end of each financial year, prepare and submit to the Minister a report of the operations of the Commission for the immediately preceding year.

(2) The Minister shall lay the annual report before the National Assembly within three months of the day the Assembly next sits after the report is presented to him.

The
common
seal of
the
Commission

35 (1) The common seal of the Commission shall be kept in such custody as the Commission may direct and shall not be used except on the order of the Commission.

CLAUSE 36 That Clause 36 be amended as follows:

- (i) That the sub clause (1) be amended by deleting the words '**Appellate authority**' after the word '**the**' appearing on the fourth line and substituting therefor the words '**internal Review Committee**';
- (ii) That sub clause (3) and (4) be amended by deleting the word '**Commissioner**' after the word '**information**' and inserting the word "**Commission**" in place therefor;

CLAUSE 37 That Clause 37 be amended as follows:

- (i) That sub clause (1), (2), (3), (4), (5), (6), (7), (8), (9), (10), (11) and (12) be amended by deleting the word '**Commissioner**' after the word '**information**' and inserting the word "**Commission**" whenever it appears;

CLAUSE 40 That Clause 40 be amended as follows:

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

- (ii) That sub clause (4) be amended by deleting the word '**Commissioner**' after the word '**information**' appearing on the first line and substituting therefor the words '**commission or agents**;
- (iii) That sub clause (4), be further amended by deleting the word '**Commissioner**' after the word '**information**' and inserting the word "**Commission**" whenever it appears;

CLAUSES 44 to 47: That Clause 44 to 47 be amended as follows:

- (i) That clauses 44, 45, 46 and 47 be amended by deleting the word '**Commissioner**' after the word '**information**' and inserting the word "**Commission**" whenever it appears;

CLAUSE 48: agreed to:

FIRST SCHEDULE: - That FIRST SCHEDULE be introduced to provide the implementation procedure in Public Authorities:

FIRST SCHEDULE

First Year

State House;
Headquarters of all Government Ministries;
Headquarters of all Statutory Corporations;
The National Assembly
The Judiciary (High Courts);
Commission of Inquiry;
City and Municipal Councils

Second Year

All Public Authorities;

SECOND SCHEDULE: - That the SECOND SCHEDULE be introduced to provide for consequential amendments as follows:

**SECOND SCHEDULE
CONSEQUENTIAL AMENDMENTS**

National Archives and Documentation Service Act;

That Section 5A be amended by inserting the words "***provided that such documents or records qualify to be exempt information according to the provisions of section 5 of the Freedom of Information Act, 2007***" as below;

5A. (1) Every Permanent Secretary or Head of Government department or chief executive of the state corporation or local authority shall supply to the Director two copies of any published or generally circulated document or report produced by that office whether in hard copy or electronic form; and the creating office may prescribe the period for which the document shall remain restricted from circulation to other public offices or members of the public "***provided that such documents or records qualify to be exempt information according to the provisions of section 5 of the Freedom of Information Act 2007***".

Public Access to Public Archives

That Section 6 (2) be amended by deleting it entirely

Destruction of Public Archives

That Section 7 be amended by inserting the words "**in consultation with Kenya Freedom of Information Commission and**":

Where the Director is of the opinion that any public archives or records are duplicated, or that for some

other special reason any public archives or records should not be preserved, may **in consultation with Kenya Freedom of Information Commission**, and with the approval of the Minister and of such other person as the Minister considers to be primarily concerned with public archives or records of the category in question, authorize the destruction or other disposal of such public archives or records.

Records Destruction Act

That Sub-section 2(1) be amended by deleting the words "**Chief Archivist**" and substituting therefor the words "**Kenya National Archives and Documentation Service and the Kenya Freedom of Information Commission**" as indicated below:

2. (1) The Chief Justice after consultation with the Kenya National Archives and Documentation Service and the Kenya Freedom of Information Commission, and subject to the public Archives and Documentation Service Act and the Freedom of Information Act, may from time to time make rules to provide for the disposal by destruction or otherwise of such records, books and papers, belonging to or being in the custody of the High Court or of courts of civil or criminal jurisdiction subordinate thereto, as he may consider to be of no further use or unworthy of being permanently preserved.

(2) The Attorney-General may, after consultation with the Kenya National Archives and Documentation Service and the Kenya Freedom of Information Commission, and subject to the provisions of the Public Archives and Documentation Service Act and the Freedom of Information Act, from time to time make rules to provide for the disposal by destruction or otherwise of such records, books and papers, belonging to or being in

the custody of the Registrar-General, as he may consider to be of no further use or unworthy of being permanently preserved.

Statistics Act, 2006

That Section 11 be amended by inserting the words **“Provided that the information relates to exempt information provided in section 5 of the Freedom of Information Act 2007”**.

11. Every person employed by the Board under the provisions of this Act shall take the oath of secrecy prescribed in the Third Schedule, before a Magistrate, Commissioner for Oaths, or the Director-General, before commencing the duties relating to the provisions of this Act. Provided in section 5 of the Freedom of Information Act 2007.

Public Officer Ethics Act, 2003

That Section 41 of the Public Officer Ethics Act be amended by inserting the sentence **“Provided that the information relates to exempt information provided in section 5 of the Freedom of Information Act 2007”**.

11. Every person employed by the Board under the provision of this Act shall take the oath of secrecy prescribed in the Third Schedule, before a Magistrate, Commissioner for Oaths, or the Director-General, before commencing the duties relating to the provisions of this Act. Provided that the secrecy relates to exempt information provided in section 5 of the Freedom of Information Act 2007.

MINUTES OF THE FIRST SITTING OF THE DEPARTMENTAL COMMITTEE ON ENERGY, COMMUNICATIONS AND PUBLIC WORKS HELD ON THURSDAY, MAY 24, 2007 IN THE COMMITTEE ROOM, FIFTH FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 10.00 A.M.

PRESENT:

The Hon. Gideon Moi, MP. - **Chairman**
The Hon. Julius Arunga, MP.
The Hon. Jimmy Angwenyi, MP.
The Hon. Viscount Kimathi, MP.
The Hon. Elias Mbau, MP.
The Hon. Mohammed Abdi Haji, MP.
The Hon. Lucas Maitha, MP.
The Hon. Wafula Wamunyinyi, MP.
The Hon. Gonzi Rai, MP.

ABSENT WITH APOLOGY

The Hon. Maoka Maore, MP.
The Hon. (Eng). Philip Okundi, MP.

IN ATTENDANCE

NATIONAL ASSEMBLY:

Mr. Rana Tiampati - Clerk Assistant.
Mr. Joseph Odero - Parliamentary Intern

MIN NO.4/2007: INTRODUCTION

The Chairman called the meeting to order at 10.30 a.m and welcomed the Members and other persons present in the meeting.

MIN NO. 5/2007: CONFIRMATION OF MINUTES OF PREVIOUS SITTING

Confirmation of minutes of the previous meetings was postponed to a later date

MIN NO.6/2007: FREEDOM OF INFORMATION BILL, 2007

The Chairman informed the Members that the bill has been referred to the Committee and called on all members to co-operate in the review of the Bill.

The Bill was brought by the Hon. (Prof.) Anyang Nyong'o, MP and hence, the Committee must take him on board during the deliberation of the Bill. He further called on the Members to be taking on board all views of the various stakeholders whatever they present then consolidated them during the final workshop on the Bill.

MIN NO.7/2007: WORKSHOP

After deliberations, the Committee concluded to attend a three day workshop in Mombasa to discuss the three committed Bills and equally listen to various stakeholders invited as follows;

June 4 th	The Media Bill
June 5 th	The Freedom of Information Bill
June 6 th	The Kenya Roads bill

MIN NO. 8/2007: ADJOURNMENT

And there being no other business, the Chairman adjourned the Sitting at Twelve O'clock until Monday, June 4, 2007 in Whitesands Hotel, Mombasa at 8.30 a.m

SIGNATURE _____
Chairman

DATE _____

MINUTES OF THE SECOND SITTING OF THE DEPARTMENTAL COMMITTEE ON ENERGY, COMMUNICATIONS AND PUBLIC WORKS HELD ON THURSDAY, MAY 28, 2007 IN THE COMMITTEE ROOM, FIFTH FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 10.00 A.M.

PRESENT:

The Hon. Gideon Moi, MP. - **Chairman**
The Hon. Julius Arunga, MP.
The Hon. Jimmy Angwenyi, MP.
The Hon. Viscount Kimathi, MP.
The Hon. Elias Mbau, MP.
The Hon. Mohammed Abdi Haji, MP.
The Hon. Lucas Maitha, MP.
The Hon. Wafula Wamunyinyi, MP.
The Hon. (Eng). Philip Okundi, MP.
The Hon. Gonzi Rai, MP.
The Hon. Maoka Maore, MP.

IN ATTENDANCE

NATIONAL ASSEMBLY:

Mr. Rana Tiampati - Clerk Assistant.
Mr. Joseph Odera - Parliamentary Intern

MIN NO.9/2007: INTRODUCTION

The Chairman called the meeting to order at 10.30 a.m and welcomed the Members and other persons in attendance.

MIN NO. 10/2007: CONFIRMATION OF MINUTES OF PREVIOUS SITTING

Minutes of the previous meetings were confirmed by Members present as true deliberation of the Committee sitting and signed by the Chairman;

MIN NO.11/2007: MATTERS ARISING

The Committee noted the public outcry made by the Media Owners Association and the Media Council and resolved to invite them to give their views and submissions. The Media Council and Media Owners Association are recommending that the Bill be withdrawn.

The Committee learned that even though there is a perceived public outcry on the Bill, there is absolute need to consult instead of being part of the outcry. The Committee resolved to provide a forum for all Kenyans and aggrieved parties, if any, to give evidence on the Bill.

The Committee was informed that the Freedom Of Information Bill, 2007 provides for the establishment of a commission which is not suitable noting the kind of freedom needed.

MIN NO.12/2007: WORKSHOP

After deliberations, the Committee concluded to attend a three day workshop in Mombasa to discuss the three committed Bills and equally listen to various stakeholders invited as follows;

June 4 th , 2007	The Media Bill
June 5 th , 2007	The Freedom of Information Bill
June 6 th , 2007	The Kenya Roads bill

The Committee resolved to invite the Hon. Prof. Anyang Nyong'o, MP to attend the workshop.

MIN NO. 13/2007: ADJOURNMENT

And there being no other business, the Chairman adjourned the meeting at Twelve O'clock until Monday, June 4, 2007 at the White Sands Hotel, Mombasa at 8.30 a.m

SIGNATURE _____

Chairman

DATE _____

MINUTES OF THE THIRD SITTING OF THE DEPARTMENTAL COMMITTEE ON ENERGY, COMMUNICATIONS AND PUBLIC WORKS HELD ON MONDAY, JUNE 5, 2007 IN THE WHITESANDS HOTEL, MOMBASA AT 8.00 A.M.

PRESENT:

The Hon. Gideon Moi, MP. - **Chairman**
The Hon. Jimmy Angwenyi, MP.
The Hon. Viscount Kimathi, MP.
The Hon. Mohammed Abdi Haji, MP.
The Hon. Lucas Maitha, MP.
The Hon. Wafula Wamunyinyi, MP.
The Hon. Gonzi Rai, MP.

ABSAENT WITH APOLOGY

The Hon. Julius Arunga, MP.
The Hon. Elias Mbau, MP.
The Hon. (Eng). Philip Okundi, MP.
The Hon. Maoka Maore, MP.

IN ATTENDANCE

NATIONAL ASSEMBLY:

Mr. Rana Tiampati - Clerk Assistant.
Mr. Joseph Odero - Parliamentary Intern

STAKEHOLDERS

Mr. Justus Munyithya - Law Society of Kenya
Mr. Maurice Makoloo - Institute of Law and Environmental Governance
Dr. James Kulubi - Ministry of Information and Communication
Mr. Henry Mungasia " "
Mr. Ezekiel Mutua - Kenya Union of Journalists
Kamweru Esther - Media Council of Kenya
Priscilla Nyokabi - International Commission of Jurists

MIN NO.14/2007: INTRODUCTION

The Chairman called the meeting to order at 8.30 a.m and welcomed the Members and other persons present in the meeting. He further called on the stakeholders present to introduce themselves.

MIN NO. 15/2007: CONFIRMATION OF MINUTES OF PREVIOUS SITTING

The confirmation of the minutes of 2nd and 3rd sitting was postponed to a later date.

MIN NO.16/2007: PRESENTATION BY STAKEHOLDER

(1) Media Council of Kenya

The Committee was informed that currently very little information flows to the Citizen since there is no legal frame work which allows information flow to the public.

The freedom of information is a citizen's right hence the need to put in place a legal framework.

(2) Institute for law and Environmental Governance

The Committee was informed that in discussing the Bill with the stakeholders the spirit of give and take should be embraced for the benefit of all Kenyans.

The Committee learned that access to information leads to accountability in the society and therefore free flow of the information to the public needs to be secured.

MIN NO.17/2007: FREEDOM OF INFORMATION BILL

The Committee then went through the Bill clause by clause during discussion and proposed amendments.

MIN NO. 18/2007: ADJOURNMENT

And there being no other business, the Chairman adjourned the meeting at Thirty minutes past six O'clock until Wednesday, June 6, 2007 at the White Sands Hotel, Mombasa at 8.30 a.m

SIGNATURE _____
Chairman

DATE _____