

SPECIAL ISSUE

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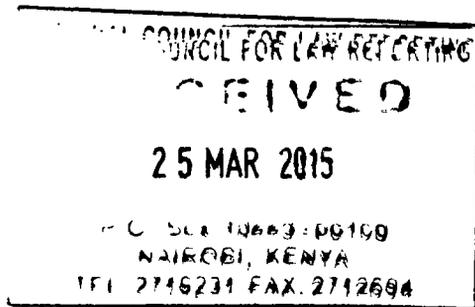
NATIONAL ASSEMBLY BILLS, 2015

NAIROBI, 13th March, 2015

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THE FAIR ADMINISTRATIVE ACTION BILL, 2015**A Bill for****AN ACT of Parliament to give effect to Article 47 of the Constitution, and for connected purposes****ENACTED** by the Parliament of Kenya, as follows—**PART I—PRELIMINARY**

1. This Act may be cited as the Fair Administrative Action Act, 2015.

Short title.

2. In this Act, unless the context otherwise requires—

Interpretation.

“administrative action” includes the powers, authorities and duties exercised by public authorities or judicial or quasi-judicial tribunals in the course of administration, or any act, omission or decision of an executive authority that affects the legal rights or interests of any person to whom such action relates;

“administrator” means a State organ or any natural or juristic person taking administrative action;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for the administration of justice;

“decision” means any administrative or quasi-judicial decision of an administrative nature made, proposed to be made, or required to be made, as the case may be, under any written law;

“disciplined forces” includes—

- (a) the Kenya Defence Forces;
- (b) the National Intelligence Service;
- (c) the National Police Service;
- (d) the Kenya Prisons Service;
- (e) the Kenya Wildlife Service;
- (f) the Kenya Forest Service;
- (g) the National Youth Service; and
- (h) any other organisation related to security which is established by an Act of Parliament;

“empowering provision” means a law, a rule of common law, customary law, or an agreement, instrument or other document in terms of which an administrative action was purportedly taken;

“failure”, in relation to the taking of a decision, includes a refusal to take the decision;

“state organ” has the meaning assigned to it under Article 260 of the Constitution;

“tribunal” means any independent and impartial tribunal established under any written law for the purpose of reviewing administrative action.

PART II—FAIR ADMINSTRATIVE ACTION

3. (1) This Act applies to all state and non-state agencies, including any persons exercising administrative authority, judicial or quasi-judicial function under the Constitution or any written law.

Application

(2) Notwithstanding subsection (1), this Act shall not apply to the disciplined forces.

4. (1) Any administrative action shall be undertaken in an expeditious, efficient, lawful, reasonable and procedurally fair manner.

Administrative action to be expeditious, efficient, lawful, reasonable and procedurally fair.

(2) In any case which adversely affects or is likely to affect the right or fundamental freedom of any person the administrator shall for purposes of subsection (1), give a person affected by a decision—

- (a) adequate notice of the nature and purpose of the proposed administrative action;
 - (b) a reasonable opportunity to make representations in that regard;
 - (c) adequate notice of any right of review or internal appeal, where applicable; and
 - (d) a statement of the right to request reasons pursuant to section 6.
- (3) In order to give effect to the right to fair administrative action, an administrator shall accord the person referred to in subsection (1) an opportunity to—
- (a) appear in person, whether alone or in the company of any person or intermediary of their choice, other than a legal representative.
 - (b) state his or her case in answer to any matter in question.

(4) Nothing in this section limits the rights of any person to appear or be represented by a legal representative in judicial or quasi-judicial proceedings.

(5) Where an administrator is empowered by any empowering provision to follow a procedure which is in conformity with the principles set out in Article 47 of the Constitution, the administrator may act in accordance with that different procedure.

5. (1) In any case where any proposed administrative action is likely to materially and adversely affect the legal rights or interests of a group of persons or the general public, an administrator shall—

Administrative
action affecting
the public.

- (a) issue a public notice of the proposed administrative action inviting public views in that regard;
- (b) consider all views submitted in relation to the matter before taking the administrative action;
- (c) consider all relevant and material facts; and
- (d) where the administrator proceeds to take the administrative action proposed in the notice—
 - (i) give reasons for the decision of administrative action as taken;
 - (ii) issue a public notice specifying the internal mechanism available to the persons directly or indirectly affected by his or her action to appeal; and
 - (iii) specify the manner and period within the which such appeal shall be lodged.

(2) Nothing in this section shall limit the power of any person to—

- (a) challenge the decision of the administrator under the Commission on Administrative Justice Act, 2011;
- (b) apply for reviews of the administrator's decision by a court of competent jurisdiction in exercise of his or her right under the Constitution or any written law; or
- (c) institute such legal proceedings for such remedies as may be available under any written law.

No. 23 of 2011