

In The First Meeting of the Third Session of the Fifth Parliament of The Fourth
Republic of Ghana.

REPORT

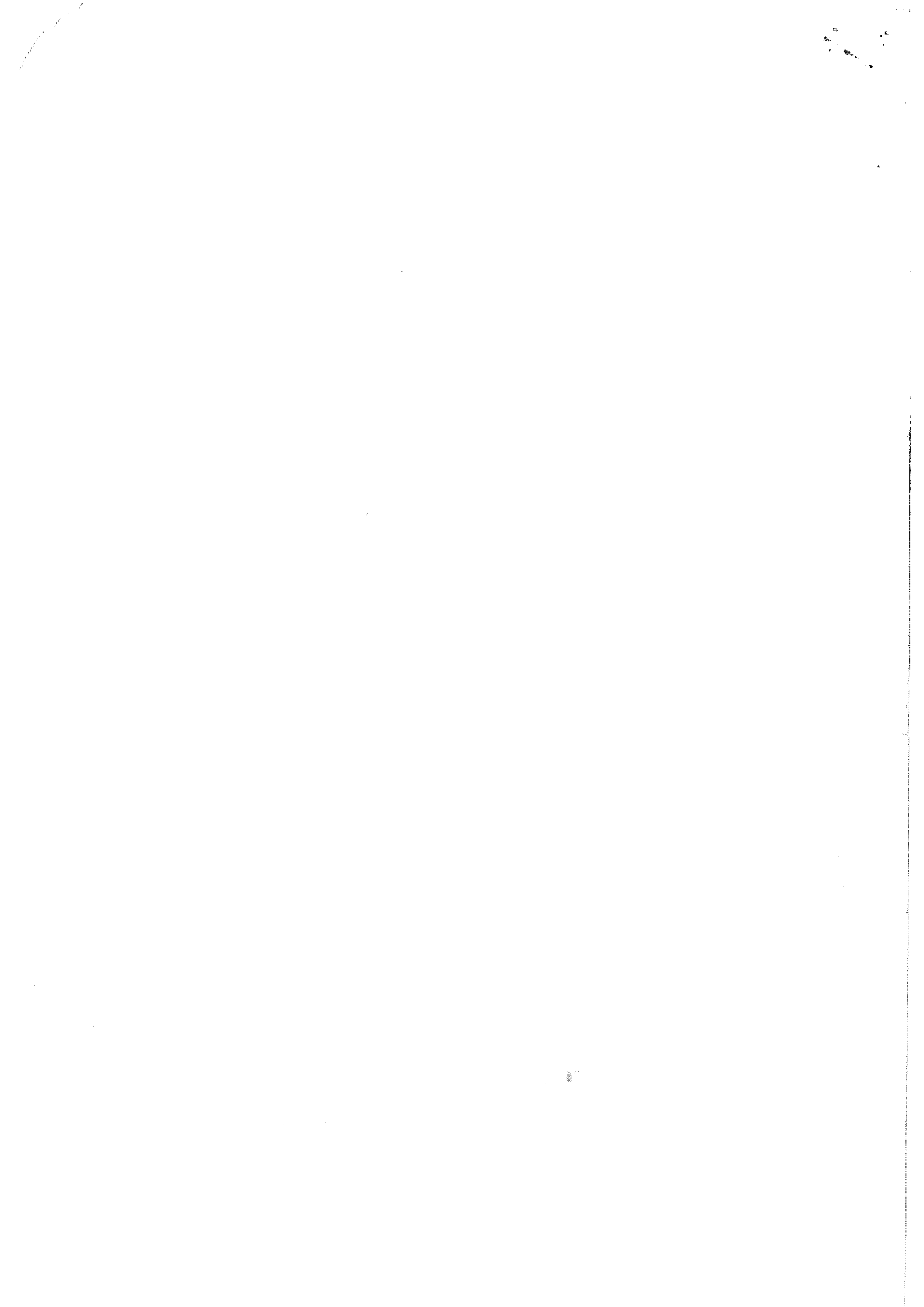
OF THE

JOINT-COMMITTEE ON
COMMUNICATIONS AND CONSTITUTIONAL, LEGAL
& PARLIAMENTARY AFFAIRS

ON THE

DATA PROTECTION BILL, 2010

PARLIAMENT OF GHANA LIBRARY



1.0 INTRODUCTION

The Data Protection Bill was laid in Parliament on 29th November 2010 and subsequently referred to the Joint Committee on Communications and Constitutional, Legal & Parliamentary Affairs in accordance with Article 106(4) of the Constitution and Orders 125, 179 and 182 of the Standing Orders of the House for consideration and report. The Committee having considered the Bill, hereby reports as follows:

2.0 REFERENCE DOCUMENTS

The Joint Committee referred to the following documents during deliberations on the Bill

- i. The Constitution of the Republic,
- ii. The Standing Orders of the House,
- iii. National Identification Authority Act, 2006 (Act 707),
- iv. National Identity Register Act, 2008 (Act 750),
- v. Credit Reporting Act 2007, (Act 726), and
- vi. National Health Insurance Act, 2003 (Act 680)

3.0 BACKGROUND

The Data Protection Bill is a single most important attempt by Government to give effect to the provisions of article 18(2) of the Constitution of the Republic which seeks to protect the privacy of the individual against unwarranted interference of any form or kind.

Article 18(2) of the Constitution specifically provides as follows:

“No person shall be subjected to interference with the privacy of his home, property, correspondence or communication

except in accordance with law and as may be necessary in a free and democratic society for public safety or the economic well being of the country, for the protection of health or morals, for the prevention of disorder or crime or for the protection of the rights or freedoms of others”

The emergence of advanced communication technology has made serious inroads into the privacy of the individual and continues in its wake to expose massive information on the individual to third parties. The Ministry of Communications, in a proactive step to protect residents of the country against breach of their privacy, thought it necessary to introduce the legislation to regulate the conduct of data controllers and data processors. This is intended to prevent the abuse of personal data of data subjects by data controllers and data processors or other third party handlers of data of data subjects or such other use of personal data without the consent of data subjects.

While other laws exist to place obligations on data controllers and processors with regards to handling of the personal data of data subjects, the Bill goes further to simplify the enforcement of the right to privacy on behalf of the individual by establishing an agency that will be charged with the responsibility of ensuring the inviolability of personal data of data subjects.

4.0 OBJECT OF THE BILL

The Bill seeks to protect the privacy of the individual and personal data by regulating the collection and processing of personal information, the

process and mode of obtaining, holding, using or disclosing such information and for related matters.

5.0 ORGANISATION OF THE BILL

The Bill contains 83 clauses grouped under five subtitles, namely rights of data subjects and others; processing of special personal data; data protection register; exemptions; enforcement; miscellaneous and general provision.

Clauses 1 to 18

Clauses 1 to 18 set out the principles underlying data protection, collection of data under various circumstances, the processing and retention of records, registration of data controllers and processors, security of data subjects and the country as a whole and the access and mode of access to personal data.

Clauses 19 and 20

These clauses relate to the rights of data subjects among others and provide for the obligations of data controllers and the imposition of restrictions.

Clauses 21 to 29

These clauses also provide for the processing of special data.

Clause 21 to 26 provides for the grounds prohibiting the processing of special personal data indicating the circumstances under which the right to process special personal data is given.

Clauses 27 provide for compensating the affected data subject in the event of failure on the part of a data processor to comply with the prohibition.

Clauses 28 and 29 provide for rectification, blocking, erasure and destruction and for the general application of the Act.

Clauses 30 to 43

These provide for the establishment of a Data Protection Register and related matters. These include application and grant of registration,

renewal and removal from the register, offences, appointment of data protection supervisors and fees.

Clauses 44 to 58

This section of clauses deal with all kinds of exemptions including national security concerns, data relating to journalism, literature, the armed forces and confidential references which a claim to legal professional privilege could be maintained.

Clauses 59 to 65 sets out the enforcement of the law upon the passage of the Bill.

Clauses 66 to 83 detail miscellaneous and general provisions of the Bill. These include functions of the commission, presentation of its report before Parliament, obtaining records under data subject's right of access, disclosure and confidentiality of information.

Clause 75 considers a Credit Bureau as a data controller and subjects it to the direction of the Commission to be exercised under the ambit of the law.

Clause 76 sets out the general application of the law and indicates the manner in which it applies to the various bodies.

Clauses 77 and 78 relate to the transmission of notices by the commission and expands the scope of the method of serving notices to include electronic means.

Clauses 79 and 80 provide for Regulations and Interpretation respectively while Clause 81 deals with transitional provisions. Repeal and savings are contained in clause 82 whereas Clause 83 deals with the date of commencement of the Act which shall be indicated by the Minister responsible for communications.

6.0 DELIBERATIONS

The Joint Committee held a couple of meetings to deliberate on the Bill.

This followed announcement in selected news media to solicit memoranda from stakeholders. While the Committee received no memoranda from the

general public, the Minister of Communications, Officers of the Ministry and other technical persons attended upon the Joint-Committee to assist in its deliberations. The Joint-Committee is grateful for their invaluable assistance.

7.0 OBSERVATIONS

7.1 *Appointment of the Commission on Human Rights and Administrative Justice as Data Commissioner*

The Joint Committee observed that the rather strong linkage between privacy rights and human rights naturally facilitated the choice of the Commission of Human Rights and Administrative Justice (CHRAJ) as the Data Commissioner. The Joint Committee observed that the choice was also intended to save public funds from being expended to establish an entirely new entity to enforce provisions of the Bill upon its passage into law when there was an existing entity with the capacity to perform the needed functions.

While the choice of CHRAJ would have given yet another advantage of obviating the design and use of new administrative systems and procedures for initiating and investigating complaints, the Joint Committee observed that CHRAJ was already over-burdened with work and its choice would be counterproductive.

The Joint Committee was aware of the back-log of complaints pending before CHRAJ and therefore thought that the establishment of a new entity would be more productive in realizing the full objectives of the Bill.

The Joint Committee accordingly recommends the establishment of a Data Commission for the purpose.

7.2 *Business Processing and Outsourcing (BPO)*

The Joint Committee also observed that, while ensuring that Ghanaian data subjects are always protected regardless of where their data are processed, the Bill also complies with international standards and best practices as it takes due cognizance of the laws of foreign data processors. The Joint Committee noted this to be a positive step towards creating a congenial atmosphere for attracting vital Business Operating Outsourcing ventures and thereby creating jobs and income to the country.

The Joint Committee accordingly recommends that a Data Commission, when finally set up upon the passage of the Bill, should ensure that it is always guided by the need to maintain the country's attractiveness to BPOs to facilitate the country's accelerated development.

7.3 *Development of Information Communication Technology*

The Joint Committee observed that when the Bill is passed into Law, it will provide the framework that will encourage the use of the Information Communication Technology platform for administrative and other economic activities and this will further entrench the E-Governance strategy of the country.

In the process, the Joint-Committee noted, the regulation of issues related to data subject privacy and third party use of data subject information would ensure confidence in the development of information communication technology, mediated platforms and technology.

The Joint-Committee therefore recommends that the Ministry takes advantage of the law to continuously create the requisite atmosphere for the entrenchment of the E-governance strategy.

8.0 AMENDMENTS PROPOSED

- i. Clause 4 – Amendment proposed – sub-clause (1), line 2 after “subject” delete “and” and insert “unless”
- ii. Clause 4 – Amendment proposed – sub-clause (1) paragraph (e) lines 1 and 2 delete “responsible party” and insert “data controller” and do same wherever “responsible party” occurs in the Bill.
- iii. Clause 6 – Amendment proposed – line 1 delete “person” and insert “data controller”
- iv. Clause 7 – Amendment proposed – line 1 delete “person” and insert “data controller”
- v. Clause 8 – Amendment proposed – line 1 after (3), delete “person” and insert “data controller”
- vi. Clause 9 – Amendment proposed – sub-clause (1), line 1 after “where” delete “person” and insert “data controller”
- vii. Clause 9 – Amendment proposed – sub-clause (3), paragraph (e) subparagraph (ii) line 1 delete “that”
- viii. Clause 10 – Amendment proposed – line 1, delete “person” and insert “data controller”
- ix. Clause 11 – Amendment proposed – sub-clause (1) line 1, delete “person” and insert “data controller”
- x. Clause 11 – Amendment proposed – sub-clause (2) line 1, delete “person” and insert “data controller” and in line 1 after “to” delete “collect” and insert “process”

- xi. Clause 11 - Amendment proposed - sub-clause (4) line 1, after "following" delete "situations" and insert "where it is necessary"
- xii. Clause 13 - Amendment proposed - sub-clause (1) line 1, delete "an operator or a person" and insert "a data processor"
- xiii. Clause 13 - Amendment proposed - sub-clause (1), paragraph "A" after "process" delete "the"
- xiv. Clause 14 - Amendment proposed - sub-clause (4), line 1 & 2, delete "controller" and insert "processor" and in line 3, delete "operator's" and insert "processor's."
- xv. Clause 15 - Amendment proposed - sub-clause (4), line 2, at end delete "subject" and insert "controller"
- xvi. Clause 18 - Amendment proposed - Delete all of Clause 18 and replaced with the following:

"The provisions of any legislation relating to the right to information of any data subject shall be additional to data subject rights under this Act"
- xvii. Clause 26 - Amendment proposed - sub-clause (3), line 3, after "Commission" delete and insert "shall give the appropriate notice"
- xviii. Clause 29 - Amendment proposed - sub-clause (2), line 1, "after "not" delete "established" and insert "incorporated"
- xix. Clause 31 - Amendment proposed - sub-clause (2), line 3, at end delete "more" and insert "less"
- xx. Clause 40 - Amendment proposed - headnote delete and insert "Failure to Register"
- xxi. Clause 41 - Amendment proposed - headnote, delete and insert "Assessable Processing"
- xxii. Clause 41 - Amendment proposed - sub-clause (1), line 1, after "by" delete "order" and insert "Executive Instrument"

- xxiii. Clause 43 - Amendment proposed - line 1, delete "Commission" and insert "Minister"
- xxiv. Clause 44 - Amendment proposed
- xxv. Clause 55 - Amendment proposed - headnote, delete "Civil,"
- xxvi. Clause 75 - Amendment proposed - before the headnote, section caption, delete
- xxvii. Clause 75 - Amendment proposed - sub-clause (1), line 1, delete "Each" and insert "A"
- xxviii. Clause 76 - Amendment proposed - sub-clause (4), paragraph (b), after "Clerk" delete "of" and insert "to"
- xxix. Clause 76 - Amendment proposed - sub-clause (4), paragraph (c), delete "Chief Justice" and insert "Judicial Secretary"
- xxx. Clause 77 - Amendment proposed - sub-clause (1), line 2, delete "section" and insert "Act"
- xxxi. Clause 78 - Amendment proposed - sub-clause (1), paragraph (b), subparagraph (i), line 1, delete "proper" and insert "principle"
- xxxii. Clause 78 - Amendment proposed - sub-clause (1), paragraph (b), subparagraph (ii), line 1, delete "proper" and insert "principle"
- xxxiii. Clause 79 - Amendment proposed - Delete all of Clause 2
- xxxiv. Clause 80 - Insert new Clause 80

"General provisions relating to offences and Penalties"

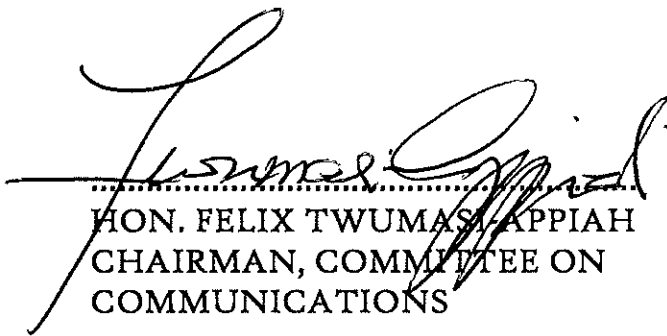
A person who commits an offence under this Act in respect of which the fine or imprisonment specified shall be liable on summary conviction to a fine of not more thanpenalty point or imprisonment not exceedingYears or both"

- xxxv. Clause 81 - Amendment proposed - delete "Commission on Human Rights and Administrative Justice" and insert - "Data Commission"

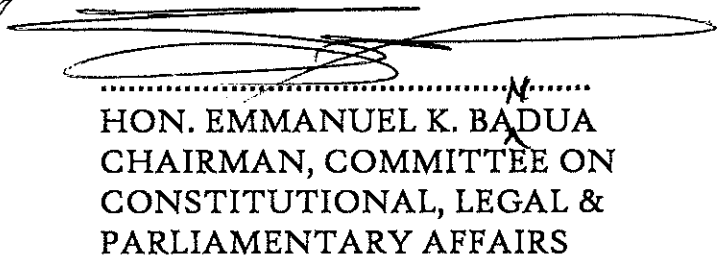
9.0 RECOMMENDATION AND CONCLUSION

The Joint-Committee has examined the provisions of the Bill in the light of its object and purpose and is of the view that they are consistent with the Constitution and other relevant statutes and accordingly recommends its passage by the House subject to the above proposed amendments.

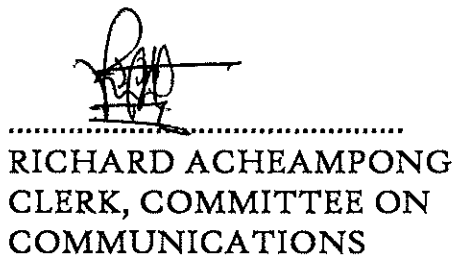
Respectfully submitted.



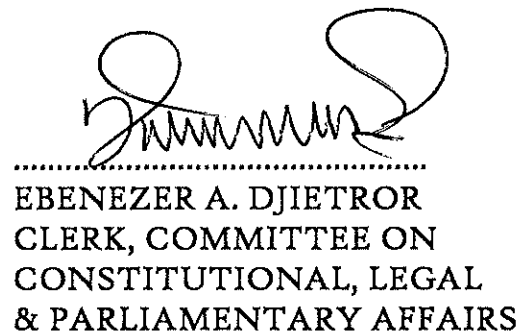
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