



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

BILLS, 2008

NAIROBI, 6th March, 2008

CONTENT

Bill for Introduction into the National Assembly—
The Constitution of Kenya (Amendment) Bill, 2008 1

AN ACT of Parliament to amend the Constitution

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Constitution of Kenya (Amendment) Act, 2008.

Short title.

2. The Constitution is amended in section 3 by inserting the following new proviso immediately after the word "void"—

Amendment to section 3 of the Constitution.

"Provided that the provisions of this section as to consistency with this Constitution shall not apply in respect of an Act made pursuant to section 15A (3)."

3. The Constitution is amended by inserting the following new section immediately before section 16—

Insertion of new section in the Constitution.

15A. (1) There shall be a Prime Minister and Deputy Prime Ministers.

Minister of the Government of Kenya.

(2) There shall be two Deputy Prime Ministers of the Government of Kenya.

(3) Parliament may, by an Act of Parliament and notwithstanding any other provision of this Constitution, provide for—

(a) the appointment and termination of office of the Prime Minister,

MEMORANDUM OF OBJECTS AND REASONS

This Bill emanates from the agreement reached between His Excellency President Mwai Kibaki on behalf of the Government/Party of National Unity and Hon. Raila Odinga on behalf of the Orange Democratic Movement. The agreement was witnessed by His Excellency President Jakaya Kikwete, President of the United Republic of Tanzania and Chairman of the African Union, and His Excellency Kofi Annan, Chairman of the Panel of Eminent African Personalities, who chaired the deliberations of the National Dialogue and Reconciliation Committee. The Committee was formed after a political crisis ensued following a dispute on the outcome of the Presidential elections held on 27th December, 2007. The political crisis brought to the surface deep-seated and long-standing divisions within the Kenyan society.

The Committee held its deliberations under the auspices of the Panel of Eminent African Personalities comprising the former Secretary-General of the United Nations, His Excellency Kofi Annan, His Excellency Benjamin Mkapa, former President of the United Republic of Tanzania and Her Excellency Madam Graca Machel. The Government/Party of National Unity team was led by Hon. Martha Karua, Minister for Justice and Constitutional Affairs, and consisted of Hon. Prof. Sam Ongeri, Minister for Education, Hon. Moses Wetangula, Minister for Foreign Affairs and Mr. Gichira Kibara, while the Orange Democratic Movement team was led by Hon. Musalia Mudavadi, and consisted of Hon. William Ruto, Hon. Sally Kosgei, Hon. James Orengo and Mr. Caroli Omondi. It proposed and agreed on a raft of constitutional, legal and political measures to defuse the crisis, which culminated in the signing of an agreement entitled "Agreement on the Principles of Partnership of the Coalition Government" on 28th February, 2008.

The Agreement provided for the establishment of the offices of Prime Minister and Deputy Prime Ministers, and the formation of a coalition Government. A team chaired by the Hon. S. Amos Wako, the Attorney-General of the Republic of Kenya, and comprising the Hon. Mutula Kilonzo, the Hon. James A. B. Orengo, Mr. Gichira Kibara and Mr.

Deputy Prime Ministers and Ministers;

(b) the functions and powers of the Prime Minister and Deputy Prime Ministers;

(c) the establishment of a coalition Government;

(d) any other matter incidental to or connected with the foregoing.

(4) Subject to the provisions of any Act made under subsection (3), the Prime Minister and the Deputy Prime Ministers shall be Ministers of the Government of Kenya.

(5) The Act made pursuant to subsection (3) immediately following the commencement of this section shall, while in force, be read as part of this Constitution.

(6) Nothing contained in or done under the authority of an Act of Parliament made pursuant to subsection (3) immediately following the commencement of this section shall be held to be inconsistent with or in contravention of any provision of this Constitution.

Amendment to section 17 of the Constitution.

4. Section 17 of the Constitution is amended in subsection (1), by inserting the expression "Prime Minister, two Deputy Prime Ministers" immediately after the expression "the Vice-President".

Caroli Omondi, was mandated to draft a constitutional amendment Bill to entrench the Agreement into the Constitution.

This Bill therefore seeks to give effect to this Agreement. It seeks to amend the Constitution to provide for the establishment of the offices of a Prime Minister and Deputy Prime Ministers.

The Bill also seeks to provide for the enactment of an Act providing for the appointment and termination of offices of the Prime Minister, Deputy Prime Ministers and various Ministers of the Government of Kenya, the functions and powers of the Prime Minister and Deputy Prime Ministers, and the establishment of a coalition Government.

The enactment of this Bill shall occasion additional expenditure of public funds to be provided for through the estimates.

Dated the 6th March, 2008.

MARTHA KARUA,
Minister for Justice and Constitutional Affairs.

Section 3 of the Constitution which it is proposed to amend—

Constitution of
Republic of
Kenya.

3. This Constitution is the Constitution of the Republic of Kenya and shall have the force of law throughout Kenya and, subject to section 47, if any other law is inconsistent with this Constitution, this Constitution shall prevail and the other law shall, to the extent of the inconsistency, be void.

Section 17 of the Constitution which it is proposed to amend—

Cabinet.

17. (1) There shall be a Cabinet consisting of the President, the Vice-President and the other Ministers.

(2) The function of the Cabinet shall be to aid and

(3) The Cabinet shall be collectively responsible to the National Assembly for all things done by or under the authority of the President or the Vice-President or any other Minister in the execution of his office.

(4) The provisions of subsections (2) and (3) shall not apply in relation to—

- (a) the appointment and removal from office of the Vice-President, Ministers and Assistant Ministers under sections 15, 16 and 19, the assignment of responsibility to any Minister under section 18, or the giving of consent under section 20 to the Vice-President, a Minister or an Assistant Minister absenting himself from Kenya;

(b) the dissolution of Parliament; or

(c) the matters referred to in section 27 (which relates to the exercise of the Prerogative of Mercy).



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CONTENT

Bill for Introduction into the National Assembly—
The National Accord and Reconciliation Bill, 2008 7

ARRANGEMENT OF CLAUSES

Clause

- 1—Short title.
- 2—Commencement.
- 3—Appointment of Prime Minister and Deputy Prime Ministers.
- 4—Functions of the Prime Minister, etc.
- 5—The Cabinet.
- 6—Dissolution of coalition.
- 7—Salary and allowances.
- 8—Act to cease to apply.
- 9—Interpretation.

SCHEDULE – AGREEMENT ON THE PRINCIPLES OF PARTNERSHIP OF THE COALITION GOVERNMENT

THE NATIONAL ACCORD AND RECONCILIATION BILL, 2008

A Bill for

AN ACT of Parliament to give effect to the Agreement on the Principles of Partnership of the Coalition Government, to foster national accord and reconciliation, to provide for the formation of a coalition Government and the establishment of the offices of Prime Minister, Deputy Prime Ministers and Ministers of the Government of Kenya, their functions and various matters connected with and incidental to the foregoing

ENACTED by the Parliament of Kenya, as follows—

Short title.
1. This Act may be cited as the National Accord and Reconciliation Act, 2008.

Commencement.
2. This Act shall come into force upon its publication in the Kenya Gazette, which shall not be later than fourteen days from the date of assent.

Appointment of Prime Minister and Deputy Prime Ministers.
3. (1) There shall be a Prime Minister of the Government of Kenya and two Deputy Prime Ministers, who shall be appointed by the President in accordance with this section.

(2) The person to be appointed as Prime Minister shall be an elected member of the National Assembly who is the parliamentary leader of—

- (a) the political party that has the largest number of members in the National Assembly; or
- (b) a coalition of political parties in the event that the leader of the political

party that has the largest number of members in the National Assembly does not command the majority in the National Assembly.

(3) Each member of the coalition shall nominate one person from the elected members of the National Assembly to be appointed a Deputy Prime Minister.

4. (1) The Prime Minister—

- (a) shall have authority to co-ordinate and supervise the execution of the functions and affairs of the Government, including those of Ministries;

Functions of the Prime Minister, etc.

- (b) may assign any of the co-ordination responsibilities of his office to the Deputy Prime Ministers, as well as one of them to deputise for him;

- (c) shall perform such other duties as may be assigned to him by the President or under any written law.

(2) In the formation of the coalition Government, the persons to be appointed as Ministers and Assistant Ministers from the political parties that are partners in the coalition other than the President's party shall be nominated by the parliamentary leader of the party in the coalition and thereafter there shall be full consultation with the President on the appointment of all Ministers.

(3) The composition of the coalition Government shall at all times reflect the relative parliamentary strength of the respective parties and shall at all times take into account the principle of portfolio balance.

(4) The office of the Prime Minister and the Deputy Prime Minister shall become vacant only if—

(a) the holder of the office dies, resigns or ceases to be a member of the National Assembly otherwise than by reason of the dissolution of Parliament;

Salary and allowances.

(b) the National Assembly passes a resolution which is supported by a majority of all the members of the National Assembly, excluding the *ex-officio* members, and of which not less than seven days notice has been given, declaring that the National Assembly has no confidence in the Prime Minister or Deputy Prime Minister, as the case may be; or

Act to cease to apply.

(c) the coalition is dissolved.

Interpretation.

(5) The removal of any Minister nominated by a parliamentary party of the coalition shall be made only after prior consultation and concurrence in writing with the leader of that party.

5. The Cabinet shall consist of the President, the Vice-President, the Prime Minister, the two Deputy Prime Ministers and the other Ministers.

The Cabinet.

Dissolution of coalition.

6. The coalition shall stand dissolved if—

- (a) the Tenth Parliament is dissolved;
- (b) the coalition parties agree in writing; or
- (c) one coalition partner withdraws from the coalition by a resolution of the highest decision-making organ of that party in writing.

7. The Prime Minister and Deputy Prime Ministers shall be entitled to such salaries, allowances, benefits, privileges and emoluments as may be approved by Parliament from time to time.

8. This Act shall cease to apply upon dissolution of the tenth Parliament, if the coalition is dissolved, or a new Constitution is enacted, whichever is earlier.

9. In this Act, the Agreement on the Principles of Partnership of the Coalition Government means the Agreement set out in the Schedule.

SCHEDULE (s. 9)

ACTING TOGETHER FOR KENYA

AGREEMENT ON THE PRINCIPLES OF PARTNERSHIP OF THE COALITION GOVERNMENT

Preamble:

The crisis triggered by the 2007 disputed presidential elections has brought to the surface deep-seated and long-standing divisions within Kenyan society. If left unaddressed, these divisions threaten the very existence of Kenya as a unified country. The Kenyan people are now looking to their leaders to ensure that their country will not be lost.

Given the current situation, neither side can realistically govern the country without the other. There must be real power-sharing to move the country forward and begin the healing and reconciliation process.

With this agreement, we are stepping forward together, as

political leaders, to overcome the current crisis and to set the country on a new path. As partners in a coalition government, we commit ourselves to work together in good faith as true partners, through constant consultation and willingness to compromise.

This agreement is designed to create an environment conducive to such a partnership and to build mutual trust and confidence. It is not about creating positions that reward individuals. It seeks to enable Kenya's political leaders to look beyond partisan considerations with a view to promoting the greater interests of the nation as a whole. It provides the means to implement a coherent and far-reaching reform agenda, to address the fundamental root causes of recurrent conflict, and to create a better, more secure, more prosperous Kenya for all.

To resolve the political crisis, and in the spirit of coalition and partnership, we have agreed to enact the National Accord and Reconciliation Act, 2008, whose provisions have been agreed upon in their entirety by the parties hereto and a draft copy thereof is appended hereto.

Its key points are:

- There will be a Prime Minister of the Government of Kenya, with authority to co-ordinate and supervise the execution of the functions and affairs of the Government of Kenya.
- The Prime Minister will be an elected member of the National Assembly and the parliamentary leader of the largest party in the National Assembly, or of a coalition, if the largest party does not command a majority.
- Each member of the coalition shall nominate one person from the National Assembly to be appointed a Deputy Prime Minister.

- The Cabinet will consist of the President, the Vice-President, the Prime Minister, the two Deputy Prime Ministers and the other Ministers. The removal of any Minister of the coalition will be subject to consultation and concurrence in writing by the leaders.

- The Prime Minister and Deputy Prime Ministers can only be removed if the National Assembly passes a motion of no confidence with a majority vote.
- The composition of the coalition government will at all times take into account the principle of portfolio balance and will reflect their relative parliamentary strength.
- The coalition will be dissolved if the Tenth Parliament is dissolved; or if the parties agree in writing; or if one coalition partner withdraws from the coalition.
- The National Accord and Reconciliation Act shall be entrenched in the Constitution.

Having agreed on the critical issues above, we will now take this process to Parliament. It will be convened at the earliest moment to enact these agreements. This will be in the form of an Act of Parliament and the necessary amendment to the Constitution.

We believe by these steps we can together in the spirit of partnership bring peace and prosperity back to the people of Kenya who so richly deserve it.

Agreed this date 28 February, 2008.

H.E. President Mwai Kibaki
Government/Party of National Unity

Hon. Raila Odinga
Orange Democratic Movement

Witnessed By:

H.E. President Jakaya Kikwete
President of the United Republic of
Tanzania and Chairman of the African Union

H.E. Kofi A. Annan
Chairman of the Panel of
Eminent African Personalities

MEMORANDUM OF OBJECTS AND REASONS

This Bill emanates from the agreement reached between His Excellency President Mwai Kibaki on behalf of the Government/Party of National Unity and Hon. Raila Odinga on behalf of the Orange Democratic Movement. The agreement was witnessed by His Excellency President Jakaya Kikwete, President of the United Republic of Tanzania and Chairman of the African Union, and His Excellency Kofi Annan, Chairman of the Panel of Eminent African Personalities, who chaired the deliberations of the National Dialogue and Reconciliation Committee. The Committee was formed after a political crisis ensued following a dispute on the outcome of the Presidential elections held on 27th December, 2007. The political crisis brought to the surface deep-seated and long-standing divisions within the Kenyan society.

The Committee held its deliberations under the auspices of the Panel of Eminent African Personalities comprising the former Secretary-General of the United Nations, His Excellency Kofi Annan, His Excellency Benjamin Mkapa, former President of the United Republic of Tanzania and Her Excellency Madam Graca Machel. The Government/Party of National Unity team was led by Hon. Martha Karua, Minister for Justice and Constitutional Affairs, and consisted of Hon. Prof. Sam Ongerii, Minister for Education, Hon. Moses Wetangula, Minister for Foreign Affairs and Mr. Gichira Kibaara, while the Orange Democratic Movement

team was led by Hon. Musalia Mudavadi, and consisted of Hon. William Ruto, Hon. Sally Kosgei, Hon. James Orengo and Mr. Caroli Omondi. It proposed and agreed on a raft of constitutional, legal and political measures to defuse the crisis, which culminated in the signing of an agreement entitled the "Agreement on the Principles of Partnership of the Coalition Government" on 28th February, 2008.

The Agreement provided for the establishment of the offices of Prime Minister and Deputy Prime Ministers, and the formation of a coalition Government. The parties also agreed on a draft National Accord and Reconciliation Bill. A team chaired by the Hon. S. Amos Wako, the Attorney-General of the Republic of Kenya, and comprising the Hon. Mutula Kilonzo, the Hon. James A. B. Orengo, Mr. Gichira Kibaara and Mr. Caroli Omondi, was mandated to refine the proposed Bill.

This Bill therefore seeks to give effect to the Agreement and reflects the document entitled "The National Accord and Reconciliation Act, 2008" which was attached to the said Agreement.

Clause 3 provides for the establishment of the offices of Prime Minister and two Deputy Prime Ministers, and provide for the appointment of the holders of the respective offices by the President. For appointment as a Prime Minister, a person should be an elected member of the National Assembly, and in addition, should be the parliamentary leader of the party with the highest number of elected members, or the leader of a coalition of parties in the event that the leader of the party with the largest number of members of the National Assembly does not command a majority in the National Assembly. Deputy Prime Ministers are to be appointed from among two persons nominated from among members of the National Assembly by the coalition partners.

Clause 4 lays down the functions of the Prime Minister, among which is the co-ordination and supervision of the affairs and execution of functions of Government by various Ministries, and also provides for the appointment of Ministers and Assistant Ministers in the coalition Government from the political parties that are partners in the coalition other than the President's party. It also sets out how the Prime Minister's office shall fall vacant. **Clause 4** also requires that prior to removal from office of a Minister or Assistant Minister nominated by a coalition partner, there has to be consultation and concurrence in writing with the

parliamentary leader of the party which nominated such Minister or Assistant Minister.

Clause 5 provides for the composition of the Cabinet while clause 6 provides for the dissolution of the coalition.

Clause 7 provides for the salaries and allowances of the Prime Minister and Deputy Prime Ministers, while clause 8 lays down the instances under which the Bill, once enacted as an Act, shall cease to apply. The Schedule contains a text of the Agreement on the Principles of Partnership of the Coalition Government which this Bill seeks to give effect to.

The enactment of this Bill shall occasion additional expenditure of public funds to be provided for through the estimates.

Dated the 6th March, 2008.

S. AMOS WAKO,
Attorney-General.