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REPUBLIC OF KENYA

***KENYA GAZETTE SUPPLEMENT***

**BILLS, 2008**

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**NAIROBI, 6th March, 2008**

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THE CONSTITUTION OF KENYA (AMENDMENT) BILL, 2008

A Bill for

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.

Prime Minister and Deputy Prime Ministers.

15A. (1) There shall be a Prime 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;

- 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".

## 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 27<sup>th</sup> 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 Onger, 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 "Agreement on the Principles of Partnership of the Coalition Government" on 28<sup>th</sup> 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 Kibaara and Mr.

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 6<sup>th</sup> 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 advise the President in the government of Kenya.

(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).