

The Constitution of Kenya (Amendment) Bill, 2008

*(This Bill supercedes the Bill published on the 20th June, 2008,
bearing the same title.)*

THE CONSTITUTION OF KENYA (AMENDMENT) BILL, 2008

A Bill for

AN ACT of Parliament to amend the Constitution of Kenya

ENACTED by the Parliament of Kenya as follows: -

Short title.

1. This Act may be cited as the Constitution of Kenya (Amendment) Act, 2008 and shall come into operation upon its publication in the Gazette which shall not be later than fourteen days from the date of assent.

Insertion of
new section
47A in the
Constitution.

2. The Constitution is amended by inserting the following new section immediately after section 47 –

Replacement
of the
Constitution.

47A. (1) Subject to this section, this Constitution may be replaced.

(2) Notwithstanding anything to the contrary in this Constitution-

- (a) the sovereign right to replace this Constitution with a new Constitution vests collectively in the people of Kenya and shall be exercisable by the people of Kenya through a referendum, in accordance with this section;
- (b) when a draft Constitution proposing the replacement of this Constitution has been

introduced into the National Assembly, no alteration shall be made in it unless such alteration is supported by the votes of not less than sixty-five per cent of all the members of the Assembly (excluding the *ex officio* members); and

- (c) the National Assembly shall, within thirty days of the introduction in the Assembly of a draft Constitution proposing the replacement of this Constitution, debate all proposed amendments to the draft Constitution, and submit to the Attorney-General the draft Constitution and any proposed amendments thereto as may be approved by the Assembly in accordance with paragraph (b).

(3) Proposals for amendment to a draft Constitution under subsection (2) shall be considered and the draft Constitution published in such manner as may be prescribed by or under an Act of Parliament.

(4) The Electoral Commission shall, not later than ninety days from the date of publication of a draft Constitution pursuant to subsection (2), hold a referendum as may be prescribed by or under an Act of Parliament to give the people of Kenya the opportunity to ratify the draft Constitution.

(5) The following provisions shall apply with respect to a referendum on a draft Constitution -

- (a) section 43 shall apply with necessary modifications with respect to the

referendum;

- (b) the draft Constitution shall be ratified if –
 - (i) more than fifty per cent of the valid votes cast are for ratification; and
 - (ii) at least twenty-five per cent of the votes cast in at least five of the eight provinces are for ratification.

(6) If a draft Constitution is ratified pursuant to subsection (5)(b), the President shall, not later than fourteen days from the date of the publication of the final result of the referendum, promulgate and publish the text of the new Constitution in the Kenya Gazette.

(7) Subject to any provisions in the new Constitution relating to its commencement, and notwithstanding anything to the contrary in this Constitution, the new Constitution shall become law and this Constitution shall forthwith cease to have effect when the new Constitution is published under subsection (6), or on the expiry of a period of fourteen days from the date of the publication of the final result of the referendum in the Kenya Gazette, whichever is the earlier.

(8) In this section-

- (a) references to this Constitution are references to this Constitution as from time to time amended; and

- (b) references to the replacement of this Constitution are references to the repeal of this Constitution and its replacement with a new Constitution.

MEMORANDUM OF OBJECTS AND REASONS

This Bill is the result of the deliberations of the National Accord and Reconciliation Committee formed after the political crisis triggered by the disputed elections held on 27th December, 2007. 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 Anan, His Excellency Benjamin Mkapa, former President of the United Republic of Tanzania and Her Excellency Madam Graca Machel. Its deliberations culminated in the signing of an agreement on the principles of partnership of coalition Government, amendment of the Constitution of Kenya to create the office of the Prime Minister, the enactment of the National Accord and Reconciliation Act and ultimately the establishment of a coalition government.

As a lasting solution to the underlying problems that brought about the political crisis, the National Dialogue and Reconciliation Committee resolved to complete the comprehensive review of the Constitution of Kenya within a period of twelve months. This Bill therefore seeks to give effect to the completion of the comprehensive review of the Constitution.

The Bill proposes to amend the Constitution in order to insert a new section 47A to provide for the procedure for the replacement of the current Constitution with a new Constitution. The Bill provides that upon the introduction of the draft Bill proposing the replacement of the Constitution into the National Assembly, the Assembly shall debate it and may propose amendments thereto, subject to such limitations as may be prescribed by or under an Act of Parliament. Such proposals for amendment may be passed by the votes of not less than sixty-five per cent of all the members of the Assembly (excluding the *ex officio* members).

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The draft Bill and any proposals for its amendment so approved by the Assembly shall be submitted to the Attorney-General for preparation and publication in the Gazette of a final text of the draft Constitution. It is on the basis of the draft Constitution as published that a referendum shall be held.

The Bill provides for ratification of the draft Constitution by the people of Kenya in a referendum and for the promulgation and coming into effect of the new Constitution.

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

Dated the 1st August, 2008.

MARTHA KARUA,
Minister for Justice and Constitutional Affairs.