

# ANNEX 23

# THE CONSTITUTION OF KENYA (AMENDMENT) BILL, 2009

## A Bill for

AN ACT of Parliament to amend the Constitution of Kenya

ENACTED by the Parliament of Kenya, as follows-

Short title and commencement.

1. This Act may be cited as the Constitution of Kenya (Amendment) Act, 2009 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 3A.

2. The Constitution is amended by inserting the following new section immediately after section 3-

Statute for the special tribunal for Kenya.

**3A.** (1) Parliament may, by a Statute of Parliament and notwithstanding any other provision of this Constitution, establish a special tribunal with exclusive jurisdiction in accordance with the Statute, to investigate, prosecute and determine cases against persons responsible for-

(a) genocide, gross violations of human rights, crimes against humanity;

(b) such other crimes as may be specified in the Statute,

committed in Kenya in connection with the December, 2007 General Election.

(2) For the avoidance of doubt, the provisions of the Statute shall not be deemed to be inconsistent with this Constitution.

(3) Where any law is in conflict with the Statute, the provisions of the Statute shall prevail.

(4) This section shall cease to have effect upon the expiry of the Statute.

## 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 27<sup>th</sup> 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 Annan, His Excellency Benjamin Mkapa, former President of the United Republic of Tanzania and Her Excellency Madam Graca Machel.

The Bill seeks to implement the recommendations of the Commission of Inquiry into Post Election Violence submitted to the President on 16<sup>th</sup> October, 2008 (“the Waki Report”).

The Bill proposes to introduce a new section 3A to anchor the Statute establishing the Special Tribunal for Kenya in the Constitution in order to insulate the Tribunal against objections on grounds of unconstitutionality.

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

Dated the 28<sup>th</sup> January, 2009.

MARTHA KARUA,  
*Minister for Justice, National  
Cohesion and Constitutional Affairs.*