THE CHIEFS' (AMENDMENT) BILL, 2009

A Bill for

AN ACT of Parliament to amend the Chiefs’ Act to make provision for the mode of remuneration and terms of service of village headpersons, and for connected purposes

ENACTED by the Parliament of Kenya. as follows—

1. Citation

This Act may be cited as the Chiefs (Amendment) Act, 2009 and shall come into operation on such date as the Minister may, by notice in the Gazette, appoint which date shall not exceed ninety days from the date of publication.

2. The long title to the Chiefs’ Act, in this Act referred to as the “principal Act”, is amended by inserting the words “assistant chiefs and village headpersons” immediately after the word “chiefs’.

3. Section 7 of the principal Act is amended by renumbering the existing provision as subsection (1) and inserting the following new subsections immediately after subsection (1) -

(2) A person employed under this section shall-
(a) be known as a village headperson:
(b) work under the direction and authority of the chief through the assistant chief.

(3) The remuneration and terms of service of a person employed under this section shall be from public funds as determined by the Minister in consultation with the Treasury.

4. The principal Act is amended by inserting the following new sections immediately after section 7 -

7A. (1) No person shall be employed under subsection (1) of section 7 unless such person -
(a) is a citizen of Kenya;
(b) is of high integrity;
(c) has attained a certificate in at least a primary level of education;
(d) has resided in the area of service for a period of at least ten years immediately preceding the appointment;
(e) has a good knowledge of the people and area of service.

(2) Whenever there is a vacancy for the position of village headperson, the chief for the area of service shall-
(a) advertise for the position on all Government premises within the area of service:

(b) circulate the advertisements as widely as possible within the area of service.

(3) The advertisement under subsection (2) shall set out—

(a) the qualifications as required under this Act:
(b) duties of the village headperson:
(c) the deadline for submitting applications which shall be not less than thirty days from the date of the advertisement.

(4) Applications made pursuant to the advertisement under this section shall be delivered to the offices of the chief for the area of service who shall—

(a) within twenty one days after expiry of the period within which the applications were to be submitted, make a short list of candidates from the applications received:

(b) within thirty days after the short listing referred to in paragraph (a), invite all the shortlisted candidates for an interview.

(d) has resided in a period of immediately appointment:

(5) The Chief may receive views from members of the public on the suitability of any candidates interviewed under this section and shall appoint the most suitable candidate to be the village headperson.

7B (1) The number of village headpersons for each administrative district shall be determined by the Minister in accordance with the criteria set out in this section but the total number of village headpersons in the Republic shall, at any time, not exceed such number as may be prescribed.

(2) All districts shall contain as nearly as possible equal numbers of village headpersons as appears to the Minister to be reasonably practicable.

(3) The Minister may depart from the provisions of subsection (2) to the extent that it expedient in order to take into account the -

(a) population density and trends so as to ensure that each village headperson has as nearly as possible the same number of people to serve;

(b) the means of communication in the area:

(c) geographical features of the area:
(d) historical origin of the people of that area.

7C (1) A village headperson appointed under this Act, shall be subject to the provisions of the Public Officer Ethics Act, 2003 and the provisions of section 20 of this Act.

(2) Inquiry into the conduct of a village headperson may be instituted by the chief or upon complaint addressed to the chief in writing, made by or on behalf of any person.

(3) The chief may require the complainant to file further particulars of any of the matters complained of and may require the complaint or any part thereof to be verified by affidavit.

(4) Upon receipt of a complaint under this section, the chief shall notify the village headperson complained of, giving the grounds of the complaint but the chief may not disclose the identity of the complainants.

(5) The chief may call upon the village headperson whose conduct is complained of or is under investigation to file, within ten days thereafter, an explanation in answer to the complaint and may require such explanation to be verified by affidavit.

(6) The chief may summon any village headperson against whom any complaint has been lodged or whose conduct may appear to the chief to require investigation and may call upon such person to produce any document or item under his control relating to or concerning the complaint or matter under investigation and may hear any evidence and inspect any document which the complainant or the village headperson may desire to adduce.

(7) The village headperson against whom a complaint is made shall have the right to appear before the chief and to be heard either personally or through his advocate and may call such evidence and produce such documents as may be relevant.

(8) The chief, having inquired into the alleged misconduct of a village headperson may -

(a) caution or censure the village headperson; or

(b) suspend the village headperson from service for a period not exceeding six months; or
(c) dismiss from service the village head person.

7D. (1) Any person who, prior to the commencement of this Act, was serving as a village headperson shall, upon the coming into operation of this Act, continue to serve as such headperson as if appointed under this Act but subsequent appointments shall be made in accordance with the provisions of this Act.

(2) The Minister shall, within thirty days after the coming into operation of this Act, cause to be carried out a census of all existing village headpersons for the purpose of subsection (1).

(3) Nothing in this Act shall be construed as imposing any financial obligations to the Government for any period prior to the commencement of this Act.

MEMORANDUM OF OBJECTS AND REASONS

The principle object of this Bill is twofold.

Firstly the Bill seeks to amend the Chief’s Act (Cap. 128) so as to give statutory recognition to the important role played by village headpersons (formally known as “village elders”) in the governance of this country.

Secondly, the Bill seeks to cure the anomaly in section 7 of the Chiefs’ Act which allows the chief to employ persons to assist him in the execution of his duties but does not expressly provide for the mode of determination of their remuneration, terms of service or termination of their services. The clear wording of section 7 of the Act which empowers the Chief to “employ persons”, already imposes the necessary charge on the Consolidated Fund.

This Bill will go a long way in fighting corruption at the grassroot level, institutionalizing the quasi-judicial role played by village elders in alternative dispute resolution, dissemination of important policy information at the grassroots, enhancement of peace building and integration efforts and enhancement of community policing.

Clause I of the Bill provides for the short title of the Bill.

Clause 2 of the Bill seeks to amend the long title to the Chiefs’ Act so as to take cognizance of the widened scope of the Act to include village headpersons.

Clause 3 of the Bill seeks to amend section 7 of the Chiefs’ Act so as to provide for the terms of service and remuneration of village headpersons whom the Act already empowers the Chief to employ to assist him in the performance of his duties under the Act.
Clause 4 of the Bill seeks to amend the Act so as to provide for amongst others, the mode of employment and removal of village headpersons. The clause contains a transitional provision which ensures that persons currently serving as village headpersons shall not lose their positions by virtue of the enactment of this Bill and that the coming into force of the proposed Act shall not be construed as imposing any financial obligations to the Government for any period prior to the commencement of this Act.

The enactment of this Bill shall not occasion additional expenditure of public funds.

Dated the 22\textsuperscript{nd} April, 2009

EUGENE WAMALWA  
Member of Parliament

The long title to Cap. 128 which it is proposed to amend –

An Act of Parliament to make provisions in regard to the powers and duties of chiefs and to provide for matters incidental thereto.

Section 7 of Cap. 128 which it is proposed to amend –

A chief or assistant chief may employ any person or persons subject to his jurisdiction to assist him in carrying out the duties imposed upon him by this Act or otherwise by law, and any person so employed may carry out and give effect to any lawful order given by a chief or assistant chief.