

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

**Tuesday, 18th March, 2008**

The House met at 2.30 p.m.

*[Mr. Speaker in the Chair]*

PRAYERS

### COMMUNICATION FROM THE CHAIR

#### LIVE COVERAGE OF HOUSE PROCEEDINGS

**Mr. Speaker:** Hon. Members, I have two important matters that I would like to communicate to you at this stage. You will notice that there is live coverage of the proceedings of the House this afternoon. I have exercised the powers bestowed upon the Chair by Standing Order No.1. You are, no doubt, aware that the Standing Orders are being amended to provide for the live coverage of the proceedings of this House. Indeed, a Sub-Committee of the previous Standing Orders Committee had concluded this matter. It now awaits consideration and approval of this House.

I have, subsequently, allowed live coverage of the proceedings due to the very special nature of the business before the House this afternoon. As you are all aware, Kenyans throughout the country are eager to follow the proceedings and to know the fate of the two Bills before the House. I would like to inform you that there was a precedent on 4th November, 2004, when a camera crew was sent in by the Nobel Foundation from Norway. We allowed them to capture on film Prof. Maathai at work, prior to the presentation of the Nobel Peace Prize.

However, I would like to advise the camera crew that they should only focus on the hon. Members speaking or the Chair while covering the proceedings. However, during the voting, camera crews will be permitted to focus on hon. Members as they proceed to the voting lobbies both on my right and on my left. May I draw the attention of the camera crews that these instructions must be followed to the letter.

Thank you.

*(Applause)*

#### AFRICAN UNION AND MARTIN LUTHER KING FOUNDATION DELEGATIONS IN SPEAKER'S ROW

Secondly, hon. Members, we are privileged this afternoon to have guests currently seated at the Speaker's Row, who have come to learn and share with us our experiences, especially during this time of peace-building.

The first delegation is from the African Union led Mediation Team headed by Ambassador Oluyemi Adeniji, who is a past Foreign Affairs Minister of the Nigerian Federal Republic.

*(Applause)*

Ambassador Adeniji is the Chief Mediator. He is accompanied by the following officials from the Mediation Team:-

1. Ambassador Nana Apentang.
2. Prof. Baba Tunde Thomas.

*(Applause)*

Hon. Members, the second delegation is led by Martin Luther King III, the first son of the late Dr. Martin Luther King Junior.

*(Applause)*

He is the Chief Executive Officer and President of Realizing the Dream Foundation. He is dedicated to continuing the dream of his late father. He is accompanied by the following officials from the Foundation:-

1. Mr. Johnie Mark.
2. Mr. Stephen Seda.

*(Applause)*

On behalf of all Members of Parliament, and on my own behalf, I wish to welcome the two delegations to the House and hope they will enjoy their stay in our beloved country.  
Thank you.

*(Applause)*

### **PAPERS LAID**

The following papers were laid on the Table:-

Annotated Agenda and Time Table dated 1st February, 2008.

Public Statement dated 1st February, 2008.

Public Statement dated 4th February, 2008.

Public Statement on Progress dated 14th February, 2008.

Agreement on Principles of Partnership of the Coalition Government dated 28th February, 2008, together with the National Accord and Reconciliation Act, 2008.

Independent Review Committee dated 4th March, 2008.

Truth Justice and Reconciliation Committee dated 4th March, 2008.

Commission of Inquiry of Post-Election Violence dated 4th March, 2008.

Long-term Issues and Solutions: Constitutional review dated 4th March, 2008.

*(By the Minister for Justice  
and Constitutional Affairs  
(Ms. Karua))*

### **COMMUNICATION FROM THE CHAIR**

PROCEDURE ON CONDUCT OF DEBATE DURING SECOND STAGE  
OF CONSTITUTION OF KENYA (AMENDMENT) BILL

**Mr. Speaker:** Hon. Members, as we proceed to the next Order, I have the following Communication on the Constitution of Kenya (Amendment) Bill, Bill No.1 of 2008.

May I, before commencement of debate on Order Nos. 6 and 7 on the Constitution of Kenya (Amendment) Bill, Bill No.1, provide the following procedural guidance. The consideration of a Constitution of Kenya (Amendment) Bill is guided both by the Standing Orders and the Constitution, in particular Section 47(2). Standing Order No.61(a) and (b) provide that before a vote is taken on a Constitution (Amendment) Bill, both at the Second and Third Reading Stage, the prerequisite number, namely, 65 per cent of 222 must be present in the House.

Specifically, Standing Order No.61(a) states:-

"The House shall not proceed to a division on the question Constitution (Amendment) unless and until a number of Members equivalent to such fixed majority is present at the time for directing the division".

The rules of division are clearly set up under part (XI) of the Standing Orders. Therefore, hon. Members, as you debate Order No.6, bear in mind that the Second Reading will only be taken if the prerequisite number prescribed both by the Standing Orders and the Constitution are ascertained to be present in the House. In terms of numbers, 65 per cent of 222 add up to 144.3 Members, which is rounded upwards to 145 Members since the words used are "not less than 65 per cent of all Members of the Assembly excluding the *ex-official* Members. The nearest figure to 0.3, therefore, of a complete person is one. This House will accordingly not proceed to division unless there are, at least, 145 Members present in the House at the time of directing the division.

Order No.7, Committee of the whole House, will only be taken with the leave of the House. The leave of the House under Standing Order No.2 means that there being no objection by any Member, either with the sympathy of Mr. Speaker or with the support of, at least, two other Members.

Thank you.

**BILL**

*Second Reading*

THE CONSTITUTION OF KENYA  
(AMENDMENT) BILL

**The Minister for Justice and Constitutional Affairs** (Ms. Karua): Mr. Speaker, Sir, I beg to move that the Constitution of Kenya (Amendment) Bill, 2008, be now read a Second Time.

We all know the background to this constitutional amendment. We are all aware of the signing of an agreement on partnership of the Coalition Government by His Excellency the President and the Prime Minister-designate, hon. Raila Odinga, on 28th February, 2008. Before I go to the contents of the Bill, I would like to draw the hon. Members' attention to the contents of that Accord.

Mr. Speaker, Sir, it was stated in the agreement that the two leaders commit themselves to work together in good faith, as true partners, through constant consultation and willingness to compromise. Further, the agreement is designed to create an environment conducive to such a partnership and to build mutual trust and confidence. It is also said that the agreement is for promoting the greater interest of the nation as a whole and it provides the means to implement a

coherent and far-reaching reform agenda to address the fundamental root causes of the recurrent conflict and to create a better and more secure and prosperous Kenya for all. We all know what transpired after the Presidential poll results were declared; the turmoil that has engulfed the nation and, therefore, the need for reconciliation and healing. It is against this background that the Constitution of Kenya (Amendment) Bill, 2008, was published.

Mr. Speaker, Sir, from the outset, I would like to say that the Bill, along with another statute that is not yet due for discussion, are negotiated agreements. Being negotiated agreements, I believe that it is for the Members to fully embrace them and pass them as they are without any amendments. That is my view.

*(Applause)*

Looking at the Constitution of Kenya (Amendment) Bill, the Memorandum of Objects and Reasons, it is very clear that this Bill emanates from the agreement reached between His Excellency the President, hon. Mwai Kibaki, on behalf of the Government and Party of National Unity (PNU), and hon. Raila Odinga, on behalf of the Orange Democratic Movement (ODM). The agreement was witnessed by the President of Tanzania, His Excellency hon. Jakaya Kikwete and His Excellency Kofi Annan, the former Secretary-General of the United Nations and the Chairman of the Panel of Eminent Personalities, who chaired the deliberations of the National Dialogue and Reconciliation Committee.

Mr. Speaker, Sir, the Memorandum of Objects and Reasons also acknowledges the teams that negotiated. I would like to draw to the attention of the hon. Members that the earlier Bill published mistakenly omitted the name of a very eminent Kenyan, Senior Counsel, hon. Mutula Kilonzo. However, a few copies that were printed yesterday, one of which I am holding, have corrected that error and, therefore, his name is firmly included in the team that negotiated the agreement. I would want to plead with him not to take offence. It was inadvertent, noting that all this was being done very quickly.

I want to say that this Bill is about providing and establishing the offices of Prime Minister, Deputy Prime Ministers and the formation of a Coalition Government in terms of the National Accord that I have just referred to.

The proposed Clause 2 of the Bill seeks to amend Section 3 of the Constitution by providing in the proviso that:-

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

Mr. Speaker, Sir, we all know that Section 3 of the Constitution clearly states that no law that is inconsistent with the Constitution can stand because of the doctrine of supremacy of the Constitution. This provision is intended to exempt the National Accord and Reconciliation Bill from this Section 3 in case any of its sections is found to be inconsistent. I have indicated that this is a negotiated agreement. This is a temporary agreement pending the full review of our Constitution and it is not possible to change the power arrangement by merely amending one section. We would have to run through the Constitution, amend some 19 or more sections to achieve complete acceptance, in the Constitution, of the new power arrangement under the Agreement.

Therefore, this section is intended to provide the leeway, that we do not have to overhaul 19 sections. So, whatever is contained in the National Accord and Reconciliation Bill will not be considered as inconsistent with the Constitution. So, it is a very necessary clause. I know we have had occasion to hear comments from mainly lawyers; that this section actually goes against the known jurisprudence. It is so, but law is made to serve man and not the other way round. I want to quote an eminent Tanzanian scholar, Pascal B. Mihil(?), who says that: "The law is an ass, an idiot". So, we need to flog it to make it work for us. Although the jurisprudence tells us that the

Constitution is supreme, because of our special circumstances on this one instance, we are seeking to introduce a clause that enables a law made subsequent to this amendment to withstand any inconsistency it may have with the Constitution, and I have explained the reasoning behind it.

I, once again, want to say that this is a temporary arrangement. One of the commitments that we made at Serena, and it is contained in the Statements I have just tabled, is that we should jointly overhaul the Constitution of this country within months of passing the necessary legislation.

Mr. Speaker, Sir, in Clause 3 of this proposed Bill, the Constitution is amended by inserting the following section immediately before Section 16, namely, Section 15A. You have your copy of the Bill which clearly states:-

"(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".

It is intended to introduce all these clauses, so that they will be in accord with the legislation that will be proposed thereafter. The functions and powers of the Prime Minister and Deputy Prime Ministers can also be provided for by an Act of Parliament, and that is going to come soon. We know that the establishment of a Coalition Government is again included in the National Accord and Reconciliation Bill that will be tabled here and any other matter incidental thereto or connected with the foregoing.

Then Subclause 4 states that:-

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

This, again, is to enable the Prime Minister and the Deputy Prime Ministers to have Cabinet portfolios. You will remember the description in the Constitution currently does not have Prime Minister and Deputy Prime Ministers. So, this is to make them rhyme with the section of the Constitution that provides for Ministers.

Then I wish to go to Subclause 5, which states:-

"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".

If you go over that again, you will see that we are not talking about any Acts of Parliament. It is the Act that we are going to enact immediately following the enactment of this constitution amendment. That Act will now be read after its passage and assent as part of the Constitution.

Mr. Speaker, Sir, again, this is to enable the Act to be in accordance with the Constitution. Once it is read as part of the Constitution, it is like amending the sections that it contradicts to the extent of the inconsistency. Again, this is necessary. Otherwise, we would have had to literally overhaul the Constitution by amending some 19 sections or more.

The last Subclause 3(6) says:-

"Nothing contained in or done under any 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."

Mr. Speaker, Sir, most people have said that, maybe, we are opening a floodgate where any Act of Parliament can be made under this subsection, which may drastically change our constitution of basic law. That is not true. The wording that "an Act of Parliament made immediately following the commencement of this subsection---" We have only one Act in the

pipeline. So, we all know that it is talking about the proposed National Accord and Reconciliation Bill.

This Bill is also amending Section 17 of the Constitution. Clause 4 says:-

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

Mr. Speaker, Sir, this is the description of the Members of the Cabinet. Our Constitution does not have Prime Minister and Deputy Prime Ministers. So, all these are necessary additions which will then make it possible for this House to debate the National Accord and Reconciliation Bill. Otherwise, these provisions would be viewed as unconstitutional. Once we pass these provisions, then they will pave the way for their discussion.

Mr. Speaker, Sir, this is a Bill being enacted in special circumstances. So, in my view, it cannot be used tomorrow as a precedent. It is designed wholly for these circumstances. It is also negotiated wholly for these circumstances. So, for those who feel that it defies jurisprudence, I would want to say, yes, perhaps, it is not a good legal precedent, but it is of absolute political necessity.

*(Applause)*

Mr. Speaker, Sir, it is also of absolute practical desirability. We know very well that, immediately after the signing of the National Peace Accord, on 28th February, 2008, a semblance of normalcy did, immediately, return to this country. We know that our people are beginning to experience normal life again, save for those who are still internally displaced and whom we, as hon. Members, have a duty to ensure that we accelerate their re-settlement by creating a conducive environment. I, therefore, want to say, and specifically to lawyers, that even though it defies the jurisprudence in law, we must enact it. Does any one of us have a right to deny Kenyans normalcy?

*(Applause)*

Mr. Speaker, Sir, we can conquer the problems we have. Sometimes, when there is civil unrest, you can conquer it through the use of might, or state apparatus. However, I do not think you can use state apparatus and force to remove bitterness and hate in peoples' hearts. You can only negotiate and win the people back. That is why I am saying, maybe, it is not "legally correct" in terms of the law and jurisprudence that we have read, but it is absolutely necessary for our times.

I want to end by saying that it is time to make hard choices that require courage for the sake of our country. The way has been paved for us by our leaders. I also want to say that there has been a lot of talk about the help from our friends, which I want to acknowledge, especially from the African Union. This help was received without any threats or coercion. I want to also acknowledge the help from the West, with reservations about their threats and coercion.

*(Applause)*

Mr. Speaker, Sir, a nation is sovereign, however tiny or poor it is. Just like a human being is a human being, however weak and frail he is. Friends must talk as friends, and not as a slave-master relationship. That is the issue I take exception to but, nevertheless, acknowledge that they did show concern.

Finally, I want to pay tribute to our President, His Excellency Mwai Kibaki. When we were urging him to quickly form a Government - and he did form a Government - he only formed a half of it. We did not understand why. Some of us were, indeed, pushing him to quickly complete

forming the Government. He did not. I can now see that he foresaw, right from the beginning, that there would be need to reconcile the country, by leaving room to accommodate all shades of opinion for the sake of the country moving back.

*(Applause)*

So, I want to acknowledge that he is a leader with foresight. At that particular stage, I do not think many of us foresaw the need, or that a time would come when we would have to sit and unite in Government, for the sake of uniting the country.

Mr. Speaker, Sir, I, therefore, want to say that although we pay tribute to our international friends, let it go down in the annals of history that even Kenyans--- I am sure there may be others who actually felt and saw the need, but definitely, our President did see the need and that is why he left half of the Cabinet unnamed. I wondered why he formed only a half of the Cabinet. Why could he not have formed three-quarters of the Cabinet, for instance? He saw the need to re-unite the country and give as much as could be given.

With those many remarks, I beg to move. Mr. Orenge will second the Bill.

**Mr. Orenge:** Thank you very much, Mr. Speaker, Sir. I beg to second this Bill and commend it to the House. I do not need to go through the Bill. Ms. Karua, with her presentation, has gone through the Objects and Reasons of the Bill.

I would want to take a different dimension to this: That, our two principals, namely, Mr. Raila Odinga, who is the Prime Minister-designate, and the President, Mr. Mwai Kibaki, rose to the occasion when it was required of them to do so.

*(Applause)*

In the words of Julius Caesar, when he crossed the rubicon more 2,050 years ago, said: "The die is cast". Indeed, today, the die is cast. Will we rise to the occasion? The occasion that we are required to rise to is a patriotic duty which is spelt out very clearly in the National Accord itself. I am indebted to Ms. Karua for reading this particular part of the Accord, the agreement itself, and I will read it again. Sometimes, we may not get the substance of this Accord I think not so much in the legalese, but in the reason the two principals themselves stated in it. I am glad, again, for purposes of history, this Accord has been laid on the Table. The Accord reads, in the third paragraph, as follows:-

"With this agreement, we are stepping forward together as political leaders to overcome the current crisis and to steer 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."

Mr. Speaker, Sir, the two principals have shown in every way possible, that they meant the words of this Accord. Even before we have enacted this Bill, and it is assented to, they have been working together and moving together. They have provided a basis and a bridge for us to now debate this Bill and pass it, so that Kenya can heal and come together. They have also shown us that Kenya is not just a geographical expression. It is more than that, and that spirit is in this House today. We are sitting together as one Parliament and National Assembly committed to do what is right for the country. I want to tell my learned friend, Ms. Karua, that sometimes constitutions which are too rigid are in themselves a great problem. In Europe and France and other places there have republic after republic, because of rigid constitutions; because people are used to the status quo, and do not want to move with the times. One of the greatest constitutions in this regard is the United States of America (USA) Constitution.

Mr. Speaker, Sir, even the question of the limitation of tenure came more than one-and-half centuries after that document was enacted, yet that is the greatest principle in all modern

constitutions. Therefore, we must rise to the occasion, and show by word and deed that we want to build one patriotic Kenya. In any case, democracy as understood is about sharing. We should not be taken aback when we want to build this principle into our Constitution.

Mr. Speaker, Sir, this Accord and the Constitution of Kenya (Amendment) Bill encompasses a political settlement which has an objective. It is not just for the sake of creating other centres of power for some people who feel uncomfortable with that. It is for the purpose of building a foundation for a better Kenya that we can only have a new constitutional order when we work together. That is the purpose of this political settlement.

Mr. Speaker, Sir, agenda number four, which is still not concluded, talks about the Truth, Justice and Reconciliation Commission, and the building of institutions to ensure that we have a legal framework and administrative reforms that can make the spirit of democracy prevail in all parts of our land without any problems such as the one we experienced two months ago. There is a former American President, Harris S. Truman, who said that a statesman is a politician who has been dead for 10 years or 15 years. A lot of times people see statesmen when they are dead and gone.

I think in the last two months, we have seen two great statesmen who, in the hour where there was tension and pressure, were willing to come together and say that Kenya is bigger than all of us and we must look for a way forward to make sure that we have a new constitutional order, where Kenya is at peace with itself. That is what Ms. Karua was referring to when she said that peace cannot be kept by use of force, but can be kept by understanding. As a nation, we need to understand each other; remember that at the end of it, when you go to your constituency, you may be a member of that constituency, but at the end of the day, you are a Member of the Kenya National Assembly. In this Bill, we are trying to urge you to do what is good for Kenya and for everybody in the country, so that the country can come to peace with itself.

Finally, I would like to make some comments on the Bill itself. First, I would like to talk about the specific provision, which is found in the Accord itself but, in terms of the Bill, it enables-- Ms. Karua talked about it. If you read Section 16 of the Constitution, the President can create an office, which is called the Office of the President. That is a Ministry within the Government. He can establish portfolios. We are trying to ensure that by this constitutional device, and the consequential amendments, that, indeed, the Prime Minister and the Deputy Prime Ministers, other than their duties which are created by virtue of the constitution and their powers are vested in the Constitution, no mistake should be made about that, that they are quite entitled to occupy Cabinet positions. To that extent, even Section 17 of the Constitution, as you may see from the Bill, has also been amended. So for avoidance of doubt, it is not just the President, the Vice-President and other Ministers who are members of the Cabinet but also the Prime Minister and the Deputy Prime Ministers. I think that this Bill, despite what many lawyers have talked about, whether it is offensive to certain jurisprudence, I think the jurisprudence that we are creating is about coalition building. This is the way to the future, that in moments like this, we will be required to have a Government which can serve moments of emergency. Even when Kenya is at war, we can come together and do our patriotic duty under one umbrella.

With those few remarks, I beg to second.

*(Question proposed)*

**The Vice-President and Minister for Home Affairs** (Mr. Musyoka): Mr. Speaker, Sir, I wish to thank you for giving me the opportunity to be able to speak about this very important work before us. Allow me to very heartily congratulate the President, Mr. Kibaki, and Mr. Raila, the Prime Minister-designate for doing this country proud. When I ran to challenge both gentlemen in the last general election, I was very serious. I could see that our country was at a cross-road. I am



now very proud of them. I am very proud to be a Kenyan. It is not like last year when we had an assertion that *najivunia kuwa mkenya* while, in fact, as occasion would have it, *tulikuwa tunavumiliana*.

But now, this is a very historic moment. This is the time for the country to stand tall again. Even as the country stands tall, it will be remiss on our part not to mention the wonderful contribution by our continental body, the African Union (AU). When President Kufuor first came in, obviously rising to the occasion when a neighbour's house was on fire, at the end of one day's serious deliberations, he left and said that he was going to send in some eminent personalities. Therefore, we want to congratulate His Excellency, Kofi Annan, and my good friend, with whom I had occasion to serve as a foreign Minister, who is now sitting across this room, Ambassador Adeniji, and the whole team for a wonderful job. I also thank our own people, the eight people from both sides of the House. I remember Mr. Kofi Annan telling me that he could not have had better minds to deal with this crisis. They even congratulated each other on the Floor of the House. That shows the seriousness of the business before us this afternoon. I know that His Excellency the President, in his capacity as the Member for Othaya, might even want to come in at any time and be part of these proceedings. When he does, I am sure that it will reach his ears that those of us who will have spoken were very proud of him, just like we are proud of our colleague, Mr. Raila.

Mr. Speaker, Sir, legal jurisprudence notwithstanding, this is a statute, or an amendment, that this country cannot do without at this particular time. I hope that immediately we come to passing the enactment of this constitutional amendment, we shall be able to go beyond the 145 hon. Members that we want to see.

I think all of us will stand in one accord. Mr. Speaker, Sir, this morning, as the Government coalition, we met before the coming into force of the grand coalition and agreed that all of us would speak with one voice. Taking into account that time is extremely of the essence, and that even those amongst our Members who might have wanted to raise issues and bring amendments at the Committee Stage were in agreement with the current spirit that we have in the country, and in solidarity with all of us, we can do a quick job of amending the Constitution today, and possibly, go on to the Accord Bill itself. If this is not possible today, then latest should be tomorrow. We hope that this country will have managed to get over both pieces of legislation.

Mr. Speaker, Sir, our people are still in those camps. Internally Displaced Persons (IDPs) is a new terminology in this country. They are not people; they are our own citizens. I know that they are looking up to us, as this august House, to quickly do the right thing and enhance the spirit of tolerance and forgiveness - and the President spoke about it - so that, hopefully, they can go back to their farms. It is now the planting season in the Rift Valley, which is the bread-basket of this country. We hope our people will see the mood in this House today, and know that the country is serious. It is standing in solidarity with them. It is urging them to go back to their homes and farms, to do the necessary thing of building the country.

Mr. Speaker, Sir, I really would not like to take much time because I know if we can--- I want to urge colleagues that if it were ever possible, that the President assents to this Bill today, it would be the right thing to do.

I beg to support.

*(Applause)*

**The Member for Sabatia** (Mr. Mudavadi): Thank you, Mr. Speaker, Sir. I stand to support the Bill and to really say that I think the legalities of it have been very well articulated by both hon. Karua and hon. Orendo. The spirit of it, I think, is what we should really emphasize at this point in time.

Mr. Speaker, Sir, I want to agree with the previous speakers, especially, hon. Karua on one

issue; that, indeed, on the occasion of the signing of this Accord between hon. Raila Odinga and President Mwai Kibaki, there was spontaneous jubilation and relief in the entire country. That was a message that was being given to us by our electors. They said: "We want peace and stability. We want a nation that is now ready to move forward. A nation that can chart new waters." We are charting new territory here. We are laying the foundation to tackle what we were unable to do a few years ago. We were unable to agree on the principle of power sharing previously. We were also unable to agree on the principle of being able to amend some of the contentious issues within our Constitution previously. Indeed, this country went through a very rigorous Referendum process that, perhaps, was the genesis, or one of the core areas that led to the dispute that we saw, and that was triggered off by the election process.

We have now laid the foundation and broken new territory. We can now, as a nation, actually start talking about bringing in that new Constitution within 12 months. Indeed, in our mediation team, with the spirit that was at times very prevalent and, indeed, it was prevalent for the better time of it, we were able to say that, in fact, if we work faster, because the country has already done quite a bit of homework on the new Constitution, we can actually deliver a new Constitution to the people of Kenya in less than 12 months. It is a possibility.

*(Applause)*

Mr. Speaker, Sir, apart from that, I think we all need to recognise that the economy of this country, under the prevailing circumstances, was beginning to go into a very dangerous situation. It is quite clear that, as a country, if we do not pull together now, the aspects and management of the economy for whoever will be in the Government will be extremely difficult for that Government and, indeed, the Kenyan people. It is time to move forward and rally behind this new proposal. That way, we can say that Kenya can start afresh and, indeed, even become greater than it has been, bearing in mind that we are now coming to with the fact that we all need each other. Nobody is superior or greater than the other. We are all equal.

Mr. Speaker, Sir, one of the issues that is also very critical to the issues that we are debating today is about the IDPs. The IDPs still have some doubts. In some parts of the country, some of them still ask: "Will this Accord hold? Will this agreement hold?" What better signal can we send to them that it will hold other than actually ensuring that the Constitution is amended? That is, perhaps, the most important signal that they need to be able to feel: "Yes! Now, the country is on the right path. We can start moving back. We can start reconstructing and re-building our nation."

Mr. Speaker, Sir, so, I would like to tell Members of Parliament that this is a historic moment for the Tenth Parliament. It is not just about bringing peace in this country. It is about laying the foundation for completely transforming this country. There will be hiccups, naturally, in the management of this country. Even now, there are hiccups with the current Constitution that we have. There will be hiccups in the new areas that we are bringing in. But if we are unable to take some risks and, actually, move over to those new territories, then we shall remain static.

I do not think, with the number of unemployed youths in this country, Kenya can afford to remain static. So, I think we all need to support this Accord and the Constitution of Kenya (Amendment) Bill.

I beg to support.

**Mr. K. Kilonzo:** On a point of order, Mr. Speaker, Sir. Clearly, looking at the mood of the House and, particularly, the fact that the two Principal Deputies have supported this Bill, and given that we are waiting for His Excellency the President to come so that he can be given room to assent to this Bill, would I be in order to request you to call upon the Mover to reply?

*(Applause)*

**Mr. Speaker:** Mr. K. Kilonzo, at this point in time, you will be out of order! There are still many Members who are interested. It is important that they are given an opportunity to ventilate their views. That is because this is a historic moment for this country.

Hon. Members, please, take note that in 1982, this House rushed a Constitutional amendment that we lived to regret for ten years, before it was corrected.

Bear that in mind even as we all note that there is need to expedite the passage of this amendment.

Yes, Prof. Saitoti!

**The Minister of State for Provincial Administration and Internal Security** (Prof. Saitoti): Thank you, Mr. Speaker, Sir, for giving me this opportunity to contribute to this very historical Bill, at an extremely interesting time. Before I move on, I would like to pay tribute to hon. Members from the Orange Democratic Movement (ODM) and the Party of National Unity (PNU) and its affiliates. They did us proud, as hon. Members. They took a lot of time to deliberate on an important matter, at a time when this country was beset by violence of the kind that has never been seen for a long time. As a matter of fact, this country has never experienced such violence.

Mr. Speaker, Sir, it will be recalled that the violence started almost immediately after the announcement of the results of the general election. The violence degenerated to the extent that many Kenyans died. It is important that we understand that the blood of innocent Kenyans was spilt.

From the figures we have, 1,200 Kenyans lost their lives. When we talk of Kenyans who lost their lives, we cannot forget innocent children and women who were killed in a church. These are people who thought that by seeking refuge in a church, at least, those who were pursuing them would not touch them; that they would have respected the house of God.

Mr. Speaker, Sir, unfortunately, these very callous people did not see it that way. They even decided to kill children. What had these children done? These children were not involved---

**Hon. Members:** *Tosha! Tosha!*

**The Minister of State for Provincial Administration and Internal Security** (Prof. Saitoti): Mr. Speaker, Sir, I know there are some hon. Members who do not want to listen to issues of children dying! Shame on you! This is a moment to tell the truth. This is a moment to make sure that, if there are some of us who were involved in those criminal and brutal activities, they are ashamed!

*(Applause)*

Children who were not involved in the issue of the general election were killed! Women were also killed. We have never witnessed such a shame in this country. But it did happen.

Mr. Speaker, Sir, over 200,000 Kenyans had to flee from their homes, because they were torched. Their homes were burnt down. It is these Kenyans who are now living in the IDP camps. Kenya has been the haven---

**Mr. Rutto:** On a point of order, Mr. Speaker, Sir.

**Mr. Speaker:** Order! Can we, please, hear Prof. Saitoti?

**Mr. Rutto:** Mr. Speaker, Sir, but I have a point of order!

**Mr. Speaker:** Mr. Rutto, I am aware that you are seeking to stand on a point of order. I will give you permission at an appropriate time!

Proceed, Prof. Saitoti!

**The Minister of State for Provincial Administration and Internal Security** (Prof. Saitoti): Mr. Speaker, Sir, this is a moment of truth for Kenyans. This is a moment for us. We cannot debate this Bill without knowing what has brought us to where we are. We have to do that.

We have to do so, so that as we pass this Bill, we ensure that what happened never happens in this country again. That is the gist of what we are talking about today.

This Bill is so important, because it is supposed to make us ask ourselves questions. We are supposed to ask ourselves: How come this country went to an extent where we have had to come to this? This Bill needs to be passed without much ado. I support it wholeheartedly. I support this Bill, because those of us who have been able to move around and see those people who are living in the IDP camps---

When you see those people, and you have got some conscience, your tears drop, because you see the faces of people who are very tortured, very troubled people. In the camps are children in very difficult situations. These children are not going to school. People have become beggars.

Mr. Speaker, Sir, I want to thank His Excellency Kofi Annan. He is a very distinguished international civil servant, who toiled here, even when things were difficult, to ensure that this Accord was agreed on. I remember talking to him and he told me, as a friend: "I am not going to leave Kenya. I am going to be patient until some agreement has come up". He said so because Kenya is a strategic country. He said that if this country broke down, the economy of the neighbouring countries would collapse, and Africa would have a very bad name. The key thing is that, although the Accord has been agreed on, this Bill is going to be the cement that will be put in to ensure that this Accord will not be torn into pieces; it will remain. While it is in place, I hope that Kenyans will have confidence that hon. Members have now agreed and resolved in no uncertain terms that we want peace. We want our people to live together. We want a prosperous nation.

Mr. Speaker, Sir, when we are done with this particular Bill and the next one, I want to ask all of us, as hon. Members, to go out all over the country on a campaign of reconciliation, and tell our people to live together. This campaign should be to tell our people to reject tribalism, and to reject anybody who tries to divide Kenyans.

Mr. Speaker, Sir, it is God who brought us to this country; it is not an individual. Whatever tribe you are, it is God who brought you here. You, as a human being, cannot pretend whatsoever to be able to correct God.

I also want to urge hon. Members that, if they have IDPs in their constituencies, they should be in the forefront to ensure that those people go back to where they moved from. I know that will be the most difficult exercise. But, as patriotic Kenyans, we should stand firm. We should ensure that nobody remains in the IDP camps. This is going to require courage and humility. It may very well require that we recant some of the sentiments we may have had. This is why I believe that the IDPs should go back to their homes.

In the same breath, in this era of the free primary education programme, no child in this country should go without attending school. It is criminal to deny a child that right. The children in the IDPs should go to school.

Mr. Speaker, Sir, with those few remarks, I beg to strongly support the passage of this Bill.

**Mr. Balala:** Mr. Speaker, Sir, I am honoured to be here in this historic day, where we are sitting together as brothers and sisters, patriotic Kenyans. Early this year, we came here in a very hostile situation and elected you as the Speaker. We thought that justice would not prevail. All this trouble that has affected this country was caused by the announcement of the fraudulent Presidential election results. It is sad when we have institutions that we trust, to take sides and yet they are the ones which have created this violence.

Mr. Speaker, Sir, today is a historic day not only because we are going to pass these Bills, but also because there is a change of system. We are taking the first step of changing our system of Government from a Presidential system to a Parliamentary system. I hope that one day we will have a Parliamentary system of Government so that we can understand what political parties are all about and what political ideologies our political parties have.

This Parliament has a duty to understand the change we are taking today because it brings people together and the concept of a Coalition Government is paramount at the moment. We want understanding and peace. It is true that at one point, we rushed to make constitutional changes and we messed up the country. This time round, it is not about rushing; it is about building institutions that are answerable to the people of Kenya.

With regard to the issue of legality, the Constitution of Kenya or any other constitution is not a holy book; it is not a Bible or Quran. It is a document consisting of rules that are used to govern people and they can be changed at the will of the people. I believe that this House has the mandate to change any clause of the Constitution for as long as it is good for this country.

Mr. Speaker, Sir, we need to recognise the people who have brought us together by rising above selfish interests. I am talking about His Excellency hon. Mwai Kibaki and hon. Raila Odinga. These two gentlemen, perhaps, could have been seen to be dying for positions, but that was not the case. It is about the people.

I would like to talk about hon. Raila Odinga. If he only wanted the presidency, we would not be here today because this country would have split into two. However, it is about the people of Kenya. It is about how we can live together in harmony. He saw the need to bring peace back by accepting a lower position of Prime Minister and not the President.

Mr. Speaker, Sir, however, I always say, it is not about Raila and Kibaki; it is about a system that can accommodate everyone in this country. It is not about positions in Government, rather it is about how leaders will be sensitive to the people. This is the time to put our people first. It is the time to put their interests, and not ours, first.

Mr. Speaker, Sir, I am privileged to be sitting in the Transitional Committee that is meant to harmonise the manifestos. We want to build a national agenda that has harmonised manifestos which address key issues. For the first time in this country, we have seen political parties being issue-oriented and determined to serve people by addressing their needs. There are long-term issues such as land issues, the issues affecting the poor, unemployment and the issue of a devolved system of Government. There is change in the air all over the world. Why should there be no change in Kenya? This is the time!

When we see distinguished guests sitting up there and eminent persons like hon. Kofi Annan coming to Kenya to broker peace, it is not about Kenya, rather it is about stability and peace in the Sub-Saharan part of Africa. It is about the economy of a bigger region than just Nairobi and Mombasa. It is about Africa. I am glad that we will be the first country to show the direction of a Grand Coalition. Let us all pledge to make sure that this Grand Coalition works. It is not about the individuals who will be in that Grand Coalition; it is about the nation. It is time we all supported these Bills and gave honour and distinction to the meaning of leadership as opposed to mere ordinary persons making noise or heckling out there. We all ought to support this Bill.

*(His Excellency, the President,  
hon. Mwai Kibaki, and Member for  
Othaya was applauded as he  
entered the Chamber)*

Mr. Speaker, Sir, this is a historic day. It is really historic. His Excellency the President has come in to sit and vote with us for what is good for the country. Your Excellency, Sir, we welcome you and we thank you dearly.

*(Applause)*

Finally, this is time for Kenyans to show patriotism and particularly hon. Members of

Parliament in this House, because it is not about individuals; it is about Kenya. It is about the people of Kenya, stability and peace of the region. We should all commit ourselves to passing these Bills without any doubt because I know and believe that it is good for Kenya.

I beg to support.

**The Member for Mbooni** (Mr. M. Kilonzo): Thank you, Mr. Speaker, Sir, for giving me this opportunity to contribute to this very crucial Bill in the history of our country.

First of all, I want to join my colleagues in paying special tribute to His Excellency Kofi Annan and the Team of Eminent Persons who have helped this country to come to terms with the problems that we have faced in the last two months. I would also like to take this opportunity to pay special tribute to His Excellency the President and Mr. Odinga, the Prime Minister-designate, for offering leadership at a time when it was required so much.

Mr. Speaker, Sir, it will not be fair if I do not mention the teams consisting of Mr. Samoei and the others who joined us at Serena Hotel where we used to spend long hours debating this. Above all, I want to pay special tribute to Mr. Orendo, the Attorney-General, Mr. Wako and Messrs. Kibaara and Karori who joined us in the Attorney-General's Office in drafting this law, which I beg to support this afternoon.

Mr. Speaker, Sir, the other words for "Constitution" is what we call basic law. Basic law that becomes a hindrance to peace and security is basic law whose time for amendment has come. As we all know, a Constitution or basic law which is too rigid, faces the problem of having to grapple with difficulties and obstacles that may become very insurmountable for a country. The Bill that we are presenting to this House this afternoon, apart from being firstly, substantive in creating the position of Prime Minister and two deputies. It is also enabling in the sense that it is enabling Parliament, immediately after it comes into force, to pass a law in order to meet the requirements of Kenyans.

It is hardly surprising that political analysts and a large number of lawyers may have confused what we are doing this afternoon with the need for a substantive and overall review of the Constitution. I would like to ask a rhetorical question, if you allow me. That question is: "What is law if in following it the country dies?" Therefore, the time has come and I would like to encourage hon. Members and the country at large, to look at the eight agreements that Ms. Karua, the Minister for Justice and Constitutional Affairs has tabled in the House. These are agreements that go to the debate that has driven and informed this legislation.

Mr. Speaker, Sir, you will notice that the amendments that we are proposing, in fact, suggest that there may be a time when the law that would be required to be passed may not be in force. This is partly because, as will become apparent, your negotiators created a certain clause to facilitate for what this country is doing this afternoon. In fact, if you allow me to use an example, I would like to say, without any doubt, that in passing this amendment, we are merely giving the country crutches so that it can limp to the next target which is the creation of a new Constitution because the amendments we are proposing today are only targeting the Executive.

Mr. Speaker, Sir, there are many other institutions that will require to be addressed and I hope that the spirit that is being demonstrated this afternoon will be demonstrated when we will be debating a new Constitution and the reforms in some of those institutions. That is because if we do not do so, we will be failing our country.

Mr. Speaker, Sir, with those few remarks, I want to encourage this honourable House to accept this Bill.

I beg to support.

Thank you.

**The Member for Mbita** (Mr. Kajwang): Thank you, Mr. Speaker, Sir, for seeing the BackBench. Thank you, again for giving me this opportunity. I am glad that I am in this House this afternoon because this is a momentous moment in this country. It is of tremendous national

importance that the country is looking at us. It is waiting for what this House will do this afternoon. The last time I was in this House in such a momentous moment, I was sitting at the Public Gallery. I was then a teacher of the law in 1982. I had come here because I was suspicious that this House would pass Section 2A. I had come there to protest in the best way I knew how. When the Attorney-General then rose to speak, he said: "This House will this afternoon amend this Constitution!". It was amended in 15 minutes. I am glad that this House will this afternoon amend this Constitution, but for the good of this country.

*(Applause)*

Mr. Speaker, Sir, I have heard of jurisprudence coming from the teachers of law and practising lawyers. But I want to tell them that when I read law, I knew of only one meaning of jurisprudence. It means the "command of the sovereign". The sovereign are the people of Kenya. They have commanded us to make this law this afternoon.

*(Applause)*

As I understand it, that is the jurisprudence! Of course, the courts will apply the law and the teachers of law will teach the law. But this House will make the law. That is the difference between this House, the professors and the courts. We make the law. This afternoon, we are making the law.

Mr. Speaker, Sir, Kenya should be proud because it is a fortunate country. During the crisis, if I could give you just a few examples, we had two Presidents from Tanzania; one former and one current. Then, we had two United Nations Secretaries-General; one retired and the other current. Then, we had several other former Presidents. They were from Zambia, Botswana, Mozambique and even South Africa contributed. Uganda also contributed. I am telling you that even the religious sector in Africa contributed through Archbishop Tutu. Everybody was wishing Kenya well. I think we should be grateful to God that He has done that to our country.

*(Applause)*

If you asked me about how many others spoke--- Superpowers spoke about Kenya. I did not know that they knew the location of Kenya. But now, I know that America knows where Kenya is. Britain was anxious to settle that crisis. I am telling you that Germany, France and all the other superpowers spoke about Kenya. They wanted Kenya to be stable and to prosper. Even China spoke - not negatively. Ghana produced two distinguished men - one is the current President and the other is their son, who is the former UN Secretary-General. Everybody contributed to the goodwill that we now enjoy in this country.

The law that we are passing this afternoon will do two or three major things. We have made a great stride in having a new jurisprudence in this country. We have, for the first time, described political parties and their powers in the Constitution. We only used to say: "Kenya shall be a multiparty democracy." But we never said what political parties will do. However, for the first time, this amendment does something about that. For the first time, power has been shared between the Executive and this House. That is because this House will, first, make the law and have the Chief Executive sit with us here so that we, sometimes, ask him serious Questions. Of course, if he does not behave well, we will vote him out! That is very sweet! Mr. Kajwang can have the power to vote out a Prime Minister! That is very nice!

*(Laughter)*

So, these are extraordinary circumstances and we are angry, of course. I saw some of us talking very angrily. But I think we should be happy that, with all that pain that we have gone through, we shall start building with new building blocks which will bring a happy and prosperous country.

Let us pass this Bill!

Thank you very much.

**The Member for Central Imenti** (Mr. Imanyara): Mr. Speaker, Sir, indeed, today is a historic occasion. We are, today, cutting the *Mugumo* tree. We are cutting it when His Excellency the President is sitting in this House so that he can witness that, finally, Kenyans are making giant steps towards establishing a democratic nation where the will of the people prevails.

These are the first steps towards transferring power from an imperial presidency to a parliamentary system where the people govern themselves.

*(Applause)*

It is unfortunate that we are doing so over the bodies of 1,000 Kenyans who are not with us today. It is unfortunate that over 300,000 Kenyans are in IDP camps and over 5,000 others are refugees outside this country. But I am glad that with the handshake that we witnessed between the President of this Republic and the Prime Minister-designate, we can today sit down as one nation, united to advance it.

Mr. Speaker, Sir, I am certain that the Late Jaramogi Oginga Odinga is a very happy man wherever he lies in eternal peace. I am certain that Jean Marie Seroney, wherever he is today, looks down at this country and says: "Thank God, it was not in vain!" I am certain that the late Messrs. George Anyona and Michael Wamalwa, wherever they are, are very proud when they look down and see what is happening in Kenya today. I am also certain that Messrs. Kenneth Matiba, Charles Rubia, Martin Shikuku, Paul Muite, Prof. Wangari Maathai and former hon. Members who are not with us today must be very proud because they can see they were not labouring in vain.

Mr. Speaker, Sir, today, we pay tribute to thousands who have given their lives so that, this day, we can start shaping our new Constitution. The signing of the National Accord was witnessed by the entire world. It was, indeed, a great moment not just for Kenya or East Africa, but for the entire African Continent where general elections will be, from henceforth, measured by the yardstick of Kenya. I am glad that we have taken---

*(Mr. Muthama crossed the Floor  
without bowing to the Chair)*

**Hon. Members:** Aaaa!

**An hon. Member:** On a point of order, Mr. Speaker, Sir.

*(Loud consultations)*

**Mr. Speaker:** Order, hon. Members! I know that Mr. Muthama somehow is not quite so used to what he should do in Parliament. It is like he was chasing goats somewhere in Ukambani!

*(Laughter)*

However, that notwithstanding, I think we should proceed.

Mr. Imanyara!

**The Member for Central Imenti** (Mr. Imanyara): Thank you, Mr. Speaker, Sir. I am sure



my hon. friend, Mr. Muthama, was not chasing goats, but probably he was searching for diamonds--

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*(Laughter)*

However, I am glad that those diamonds can play a role through the Deputy Chief Whip of the Government side in these last days before it becomes a Grand Coalition.

Mr. Speaker, Sir, the people of Kenya have debated. The people of Kenya expect nothing less of us than passage of this Bill and passing it as of yesterday.

Mr. Speaker, Sir, I have had the privilege of looking at this Act. I do not see any jurisprudential shortcomings in it. Law is an evolving process. Those of us in Kenya who are making law, do so, so that those who interpret can interpret it in the context of which law we want to make it.

There were many, for example, who purported to transfer the supreme power of the people, that is the Parliament to another institution known as Judiciary. We could pass laws here which then would be subjected to greater scrutiny by the Judiciary. Some of the reasons for bringing this Bill before this House is to make it clear to the members of the Judiciary that we, the elected people of Kenya, have spoken and have done so, on behalf of the people of Kenya. We do not expect after passing this Bill, with the necessary two-thirds majority, that they will entertain shortcomings that will send us back rather than forward.

Mr. Speaker, Sir, this House today stands united. It is my expectation and prayer that we can pass this Bill today and make it law, so that tomorrow, we can move forward and see a proper transition of the country's governance from an imperial presidency to a parliamentary system in which the people of Kenya exercise power through a Prime Minister.

*(Applause)*

Mr. Speaker, Sir, this situation that we face today halfway between an imperial presidency and a prime minister whose powers are being defined, not by the people, but by a president must be a very temporary arrangement to facilitate the passage of this Bill, so that we can achieve that which we have sought to attain since the 1990s.

With those few remarks, I beg to support.

**Prof. Anyang'-Nyong'o:** Mr. Speaker, Sir, I would like to add my voice to those who have congratulated His Excellency the President and the Prime Minister-designate plus the mediation team and the Panel of Eminent Persons for bringing us where we are today.

Mr. Speaker, Sir, having said that, I do not know how many of you read the *Daily Nation* which I do. However, today when I was reading the *Daily Nation*, there was a conversation between Maina Kiai and His Excellency Kofi Annan. Mr. Maina Kiai reminded Dr. Annan that when two elephants fight, it is the grass that suffers. Dr. Annan retorted by saying: "When they make love the same grass suffers". But if they had asked Jomo Kenyatta, he would have said: "Yes, the grass suffers, but it is suffering without bitterness, because the music that comes from the love-makers is very sweet music."

*(Laughter)*

Mr. Speaker, Sir, we are here today in this House because of the famous saying: "It takes two to tango". We in this House who have previously been antagonists are just about to tango together to produce good music to Kenyans who have been suffering tremendously as my friend, "G.I. , Mr. Gitobu Imanyara, has said. For many years, Kenya has suffered from what my dear friend, Mr. Gitobu Imanyara, has called imperial presidency.

Mr. Speaker, Sir, if I remember well, all the manifestos of all parties, beginning with the National Democratic Party (NDP) which was a precursor to FORD - a party that ushered in the great march towards multipartyism in this country - have fostered for a national democratic and prosperous Kenya. A Kenya in which the separation of powers in government would be real. A Kenya in which this Parliament would, indeed, be the supreme lawmaker in this nation.

Mr. Speaker, Sir, I would like to pay tribute to all those gallant Kenyans who have made tremendous sacrifices to bringing us here where we are today. I want to particularly thank the "Young Turks" who are not so young any more. I am glad the majority of them are in this House. I would like to thank Messrs: Gitobu Imanyara, Kiraitu Murungi, Raila Odinga, James Orengo and Prof. Anyang'-Nyong'o. This is a moment for which we are very proud and happy. I do hope that as we move forward to make this a reality, we remember that we should never resist change.

Mr. Speaker, Sir, one of the major contradictions about human beings is that although we live in a state of constant change, we tend to resist change. The philosopher Heraclitus once said that no human being can step in the same river twice. Whenever you step in a river, that river is in a constant state of flux and you are always stepping on different water all the time. Life, like that river, is also in a constant state of flux and yet, we, as human beings, tend to be conservative. We want to conserve what we have because we are resisting change even though biologically we are also changing on a daily basis. As Shakespeare once said: "Towards my grave on a daily basis, do I travel every second". Yet, we tend to resist this change which is so real to us. I think today this House coming together and accepting that change is necessary in this country, is coming face to face with reality.

Mr. Speaker, Sir, we have had an authoritarian system of Government. A system of Government that tends to be exclusive, both in its ideologies and also in its practices. In its ideology we tend to be exclusive by worshipping the ideology of tribalism. In practice, we tend to be exclusive by excluding the majority of Kenyans from the mainstream of national life. At the same time, we tend to believe on a narrow elite that must have both wealth and political power. We are now being asked today by the people of Kenya that let us move towards the politics of inclusion and the economics of equity.

This authoritarian system has also tended to tolerate corruption in society which deprives us of the opportunity for economic growth and better social welfare. This authoritarian system has also tended to entrench unequal development in our nation. We are now being driven to be more participatory and make sure that both resources and wealth are more devolved to our people, so that they can feel that they have a Government for the people, of the people and by the people.

We sit today in this House knowing fully well that we are here, indeed, to serve the masses of our nation, as, indeed, it is written at the entrance of this Parliament: "For the welfare of the society and the just governance of our people". Today, we are together to change the Constitution and bring in a system of Government. As we leave this Parliament, I believe that we will be responsive to that saying on top of that door. I believe that if we unite with this purpose in mind, as many Members have said, this House shall have laid a foundation for one of the major things we must do this year; to usher in a Constitution that will guarantee national prosperity, democracy and the just governance of our people.

Mr. Speaker, Sir, I was very impressed when the Minister for Justice and Constitutional Affairs was moving this Motion. The recognition that a moment comes in our lives when we have to recognise that although differences will persist in this society, but a moment of unity to get this nation going is important for each and everyone of us to make maximum sacrifices. This is, indeed, something that this House, today, is demonstrating to the nation and the world as a whole, that a new Kenya is possible. Today, as we sit here and debate this Motion, we can say with one voice, never again shall this nation break down into civil strife because of a stolen election. Never again shall this nation break down into civil strife because of the worship of the ideology of tribalism.

Never again shall this nation break down into civil strife, because we are resisting change. Never again shall this nation break down into civil strife because for two decades, we have been looking for a new Constitution, but we cannot rise above our selfish motives to enact that Constitution, although we can recognise what is good in it. Never again in the life of this nation shall we resist to listen to the people of Kenya, who are poor and down-trodden. But a few who are wealthy and well looked after, do not want to listen to them. Never again shall we continue to believe that the privileges that we have in society are made by us and not driven from that society.

Mr. Speaker, Sir, Mwalimu Julius Nyerere once said something very interesting; that the rich enjoy their riches because next to them are the poor people. They cannot enjoy those big houses if they cannot compare them to something else. If they compared them to small houses, then they enjoy living in those big houses. But as my great grandfather said at one point, when he was burying his uncle: "This man used to fight for us to get land from neighbouring clans and fought great wars and great battles. Today, when we are burying him, we are only giving him a small piece of the earth, that is, six feet by three and four feet deep". That is all he will own for the rest of his life whether on earth or in Heaven. I wonder whether we ever stop for a moment and think that all these riches that we keep on amassing for ourselves, all these capital that we keep on accumulating for our families, all these jobs that we keep on piling for our relatives, when we die, do we take them with us, either to hell or to Heaven? The truth is that each one of us only gets a small piece of the earth, six feet by three feet by four feet. If all that is what we get, why is it so important for us that when we are on this earth, we cannot listen and pay attention to the suffering of others and treat them as we treat ourselves?

Mr. Speaker, Sir, when somebody asked Jesus: "Who is my neighbour"? Jesus replied: "Treat your neighbour as yourself". If there is anything that the last three months have taught Kenyans, it is that when you stop treating your neighbour as yourself, sooner rather than later, somebody is also not going to treat you as his or her neighbour. The measure that you have used to harm somebody else will be used to harm you.

So, I would like to appeal to this House that this is a golden opportunity to change the Constitution. It is not just because we want to change the Constitution in and of itself, but because we want to open a window for change. We want to open a window for change, first, we should enact this Accord document, which is going to bring change to the governance of this country. There will be another window for more opportunity; The window for opportunity to usher in a new Constitution. But too, there will be a window for yet some more change; a window for change for more equity and better governance in this country, more attention to the plight and needs of the masses.

With those few remarks, I beg to support.

**Dr. Khalwale:** Thank you, Mr. Speaker, Sir. I want to compliment the Minister for finding the good language and attitude to present this particular Bill, which is very important to this country.

Mr. Speaker, Sir, I am thinking about the history of constitutional amendments in this country and elsewhere in the world. We tried two years ago in Bomas and we, eventually, went through a Referendum to amend the Constitution, but were terribly unable to achieve anything. What I learnt from this is that like in other countries in the world, where people have successfully changed their Constitution, to change a Constitution, we must be directed by great national need for the same. That need sometimes might not necessarily be out of our own choice, but out of a crisis. If it is not a crisis, it would be something as bad as the absence of peace.

Mr. Speaker, Sir, now that we have moved closer to a great national need, national crisis and almost to the total absence of peace; I am convinced that given the goodwill I am seeing in the country, and in this particular Parliament, will allow us to pass this Bill into law. But as we pass this law, the real challenge, in my heart, is not necessarily what we should have done. We are doing

this to achieve peace. Even if the President assents to this proposed law, it cannot guarantee peace to this country. Real peace in this country will come upon these laws being enacted after we have addressed serious national issues in this country. We have issues in this country, which if addressed, then, indeed, what we are going to do this afternoon, will be cemented in stone. By this I mean that until what we do today is accompanied with physical and peaceful resettlement of Kenyans who were internally displaced, that peace, we might as well be talking about it to the birds. This is because the people who were internally displaced are not the first ones to be displaced in this country.

In the Ninth Parliament, we used to clash here very seriously on the issue of the people who were evicted from the Mau Forest. My immediate former boss at the Ministry of East African Community, hon. John Koech, whom I once accompanied to Chepalungu, was heckled by his constituents when he tried to justify the need for preservation of forests and therefore, displacement of the people. The former Minister was seriously heckled before us. When he lost his seat, I said, maybe, Members of Parliament from areas where we have internally displaced persons (IDPs) might actually fear to go home. They may fear to tell the public to accept the people who were displaced during the crisis. Members of Parliament must be the first people to go home and ask their constituents to accept the people who were displaced. It is my pleasure to announce here, on the Floor of the National Assembly, that, as the people of Omulembe from Western Province, we have opened the gates and welcomed them. They are free to settle in the areas they were evicted from in Western Province.

There is the issue of the new constitutional order. If we do not bring a new constitutional order in this country, then even the law that we are passing today will be for nothing. We have the issue of land in this country. Even if we sign this thing into law, and we do not address the land question, there will be no peace in this country.

Mr. Speaker, Sir, there is the issue of the youth. The youth of this country have given us a second chance. I can assure you that when I saw people in street battles and running, in my measured judgement as a medical doctor, I never saw anybody who looked like he or she was over 50 years old. These people were youths. So, they have given us a break--- If we only engage in our job of wanting to be this and that--- The youth have given you a break; if you do not address them, then that job that you are craving for in this particular Government will count for nothing.

Mr. Speaker, Sir, I have been reading newspapers and listening to the electronic media. I have really been disappointed by some of us. People have been making claims, such as "I want to be the First Deputy Prime Minister or the Second Deputy Prime Minister". My sisters and brothers, you should use your time to show Kenyans that you care, not for purposes of having that job but for purposes of making sure that the people who are downtrodden are seen to benefit. A case in point is the issue of the Deputy Prime Ministers. His Excellency the President has always insisted that 30 per cent of national offices should be for women. When hon. Raila was launching his presidential campaign he said he was increasing it from 30 per cent to 50 per cent. Yes, if it is that way, then if the President is a man, the Vice President is a man, the Prime Minister is man, why can the two Deputy Prime Ministers not be women?

*(Applause)*

Mr. Speaker, Sir, I am saying this knowing very well that I also qualify to be a Deputy Prime Minister. However, we have to play affirmative action!

*(Laughter)*

Mr. Speaker, Sir, we are not going to have peace in this country unless we address the issue

of unemployment. Until we have a clear master plan for our youths--- We would like our graduate youths to know that upon qualification from our universities, as they await to be absorbed into the job market, they have something that can keep them doing what graduates used to do those days when we used to have jobs. They can be allowed to do *tarmacking*. Since we have got a very small proportion of diploma and degree holders in this country who are jobless, I do not see why the Government cannot roll out some welfare money, which can be given to these people on a monthly basis as they look for jobs. They can use it to polish their shoes as they go for interviews in offices, for bus fare and that kind of thing.

Mr. Speaker, Sir, we are not going to have peace in this country unless we deliberately make sure that we narrow the wide gap between the haves and the have-nots. If you do not do this, it is just a matter of time before the so-called ethnic wound, that is driving some of the forces, turns into a class wound where the have-nots will turn against the haves.

Mr. Speaker, Sir, some of the youths who live in places like Mathare and Kibera slums are very highly educated. Just during the recent elections we saw boys who were riding bicycle taxis, popularly known in western Kenya as "*boda boda*", become chairmen of county councils and mayors. A case in point is a *boda boda* boy in Siaya who has become the mayor. A former football player, who drove a taxi for a while in Kakamega, also became the mayor. This simply teaches us that in the pool of the people who live in slums, we have highly trained people; therefore, the issue of slums must be addressed.

Mr. Speaker, Sir, since many people want to speak on this, may I conclude by talking about ethnicity. I am glad that in the President's Address he mentioned that we shall have a Bill to specifically address that problem. For God's sake, let us not forget that we are black people. I strongly believe in culture. If we are going to criminalise ethnicity, then we are going to kill our culture. As we address the issue of ethnicity in this country, we should actually condemn, not ethnicity, but negative ethnicity.

With those many remarks, I beg to support.

**Mr. Raila:** Mr. Speaker, Sir, this is a very historic occasion for our country. I want to thank you for recognising the historic nature of this day, and using your discretion to allow for the live coverage of the deliberations in the House today.

*(Applause)*

Mr. Speaker, Sir, for the first time, today, because of its very nature, we have the Member for Othaya, President Kibaki, sitting here as the Member for Othaya. That underscores the significance of today. We are discussing a matter of great national importance.

Mr. Speaker, Sir, I want to thank the people of Kenya for their resilience, fortitude and dedication to the nation of Kenya. Secondly, I want to thank friends of our country, who came to our assistance at our time of need.

Mr. Speaker, Sir, we were quarrelling among ourselves, and it was very difficult for us to have sat together and talked. In that situation, friends of Kenya came in very handy and facilitated dialogue among us. I would specifically like to thank the African Union (AU), the United Nations (UN), the European Union (EU), the United States of America (USA), and all those countries which expressed concern and showed their willingness to support us at our hour of need.

Mr. Speaker, Sir, when Dr. Kofi Annan decided to suspend negotiations, there was gloom all over the country. Kenyans were in a state of despair. They did not know what was going to happen next. I want to thank the four from both sides, that is the team of eight, who participated in those negotiations. I think they deserve commendation by this House.

*(Applause)*

Mr. Speaker, Sir, Dr. Kofi Annan suspended the negotiations and said he was taking them up with us. When we met in the Office of the President, President Jakaya Kikwete, former President Mkapa, Dr. Kofi Annan, President Kibaki and myself, we knew that we had a very onerous responsibility to discharge. I want to commend, in this House, His Excellency, hon. Mwai Kibaki. Nobody knows what had gone on inside that room. Mr. Kibaki said, "We must finish this matter today before we leave this room".

*(Applause)*

We knew that the entire country's eyes were glued on what was happening inside Harambee House. We were told that television cameras were directed there, and the whole country was waiting with bated breath! We knew that we were like the Catholic Church cardinals, who had gone to the Vatican to elect a new Pope. People were waiting to see the type of smoke that was going to come out of the election room. We had a break in order that Dr. Annan and his team could go and draft the final resolution, and when we came out the country saw black smoke coming out.

Mr. Speaker, Sir, when we came down and people saw chairs being arranged, everybody knew there was finally the white smoke. The entire country was in jubilation when Kofi Annan read the final Accord. In some places, people took to the streets, in demonstrations, in joy. You should have seen scenes of people sweeping the streets that particular afternoon. I was told that the East African Breweries recorded the highest sales of beer on that particular evening. So, I think it is important that this House recognises the significance of this agreement.

We had reached a stage where we were receiving phone calls everyday, from people saying: "No compromise! Let us stay in the opposition and wait for another five years". I have said and would like to say it again here, that we felt that Kenya was greater and bigger than all of us.

*(Applause)*

We are all mortals. We, therefore, must look at what we want to bequeath the future generations of our country. We want to bequeath a better country to our children and our children's children, than the one we have lived in, ourselves. This requires that we combine our efforts in the development of our country. We should not look at what we have done here as an end but as a means to an end.

Mr. Speaker, Sir, we have now laid a foundation that will enable us to carry out the reforms that this country has been needing for a long time. This is the time for us to come together because it is not possible for any side to carry out comprehensive constitutional reforms that we need. This country needs a comprehensive land reform, because land, a factor of production, has become a means of speculation. People who need land for the purpose of production have been denied access to it. It is, therefore, important that somebody looks at our land laws and carries out a comprehensive land reform that will enable our people to own and live in every part of this country.

We also need to reconcile our people. Therefore, we need to face that ugly animal called "ethnicity" head-on. A country that is torn along ethnic lines is a country which is at war with itself and, can therefore, not hope to develop. Let us come together.

I propose that we hold a national ethnicity conference where we will have representatives from all ethnic communities in our country, to deliberate on how our ethnic communities will live with each other; the inter-ethnic relationships, so that we can develop proper codes of conduct for our people. It should be an offence for somebody to deride somebody simply because he has pierced his ears, removed two or six of his teeth, or he has not been circumcised. When we do that, we will be in the front path of uniting our people.

At the moment, we know that if you are going to attend an interview, you have to look at

the panel that is going to interview you for employment. If you are a Mutua and you do not see a Kamba in that panel, then you have no confidence that you will be hired. If someone said that his name is Wanyama, that already would register some bias in someone else's mind. If it is a Kamau, one already knows that, that is not the person that they were looking for. At the end of it, people say that they were looking for merit. What sort of merit were you looking for? You know very clearly that your mind is already very biased and you are not a Kenyan! That person belongs to the Kenya of yesterday and not the Kenya of today and tomorrow that we want to develop.

*(Applause)*

Mr. Speaker, Sir, as we pass these Bills here, let them not just lay a foundation but be a beginning for a journey that we want to travel together. A journey that will end by giving this country a new beginning, that will give us a new constitutional dispensation and the legal reforms that we need. We know why we are where we are. We know what has brought us here. However, let us get out of this place. Let us not continue to live in the past. Let us look at the past as a way of trying to prevent recurrence of the past. Let us not use it for muck-raking. Let us not use it for revenge. Let us not revenge because, as the Bible says: "Leave revenge to the Lord". We need to feel part and parcel of the same.

Let us not look at each other as Members of PNU, ODM-K, ODM and so on. Let us now fuse together as one people who want to do something together for the people of Kenya, who are 34 million. Let us not look at our political divide, but let us strengthen the foundation for multiparty democracy in our country. If we do so, then we will be truthfully living to the creed; "For the Welfare of Society and the Just Government of Men and Women." With those few remarks, I beg to support.

**His Excellency the President** (Mr. Kibaki): Thank you, Mr. Speaker, Sir. I am very pleased today, very pleased because of where we have got to. We were developing apart earlier on, but now we are going together. Going together is a joy because we will succeed. Kenya is a country of God. Indeed, when you saw it a little while ago, and if you thought about it and you were trying to find an answer to the problem we seemed to have at that particular moment, I thought about it and realised that God did not want Kenya to degenerate to the kind of situation that was coming.

There is no point going back to describe to you what things we went through before we made up our minds that we must find a way of working together.

*(Applause)*

Mr. Speaker, Sir, I am personally very grateful and we should thank God for what has happened. Knowing where we were, where we have come to now, it is a joy. We are going to succeed because we are now genuinely seeking a solution to our problems. Everybody is looking for a solution and I am sure we will find it. I have no doubt, whatsoever. However, I tell you that God loves this country. The way we were headed a little while ago was terrible! I am quite sure that we have found an answer. I have no doubt at all, that everybody in this House, will agree that as we are here, we will find a solution and write it in the Constitution of Kenya. Let us, above all, write that constitution so that we can follow it. We will write it! I am saying that because we have tried now--- It is almost ten years and I am telling you that these brains, and those brains that were there at that time, and even many others, were all there. They were all there! The **[His Excellency the President]**

only reason was, somehow, they could not get their minds working towards one goal.

*(Applause)*

They could not! Everybody had a goal of his own. It was terrible! It was absolutely terrible!

So, Mr. Speaker, Sir, we now know--- I believe that God will help us to sustain this spirit for this period, so that we will work on the new Constitution for Kenya. That is all we need!

*(Applause)*

That is all we need! That is all we have needed for the last 20 years. That is all we have been arguing about. It is all because of small differences which made everything look big. But it is not!

So, ladies and gentlemen, personally, I pray that we get God's own blessings and we continue now in a determined manner, to find a way in which we, Kenyans, shall come out as one nation. We shall forget those other things which were trying to divide us. "That you have your own land here! You have your home here!" Yet, we were buying everybody's land everywhere! Everywhere in Kenya, you could find a Kenyan who is from any part of Kenya moving to another part buying land! Yet, some fellow Kenyan who is very educated would, one day, wake up and go and tell him: "You know, this is not part of your world. Why are you here?"

*(Laughter)*

This is our "part of the world!" Now, that is what we have to reject!

*(Applause)*

That is what we have to reject! That is all we have to say! That, this Kenya was made by God for all the people who live in this Kenya! That is all! And once we know that, and we have known it--- But for some reason, we follow it. After a little while, we give up and pursue something else.

*(Laughter)*

Then, eventually, we come back - after we have wasted 20 years talking, writing new constitutions, forming committees--- That is terrible! I think it is just terrible!

*(Laughter)*

Because we could have spent that time--- And there is no point now arguing about it or wishing. Let us spend the time now available in writing the new Constitution. We know how it is. Indeed, we only need to give this work to Mr. Orenge alone! He will write it!

*(Laughter)*

He will! I am telling you! He knows what we have all talked about! All this time, whatever we have talked about, he can put it down and you will see that it is agreeable to whatever you like. I am telling you!

So, Mr. Speaker, Sir, I have no doubt, myself, that in the next few years---In the next one year, together, we shall write that Constitution!

*(Applause)*

That is the Constitution that we want to guide this country. To guide the country is to acknowledge that all the people belong to this country. That is the truth! They can go and settle anywhere in



Kenya. Nowadays, in the whole of Africa, you will find that Kenyans are more travelled, more settled and more---

You will find them developing other parts of Africa than any other people from anywhere! It is the truth!

*(Applause)*

It is the truth! I will tell you it is the truth! If you want to get the details, ask me or ask anybody else who knows.

*(Laughter)*

We will give you the details of it! It is the truth! Kenyans can leave Kenya and go and settle anywhere else. They will settle very well! It is the truth. I am sure, first and foremost, each one of us, because we are all too educated---

Mr. Speaker, Sir, can you abandon the concept that there is land which is yours and some other land that is for some other people? By doing that, you are going backwards to a backward point which has no meaning whatsoever! Absolutely! We have known that but, somehow, I do not know what has stopped us from going forward, when we have wanted to go forward. We have seen it. We still slide back and go there.

However, ladies and gentlemen, it is not important for me to speak now, but since we have now found the way, let us get these people or additional people, or those who are here writing a little bit of something for us, and they can write it.

Mr. Speaker, Sir, they can write this Constitution for us! In the next three weeks, they will write a Constitution.

*(Applause)*

I am telling you because they have discussed every chapter in that Constitution. They have discussed it endlessly! Honestly, if we left them alone by themselves, and they did not worry about us, they would write a very good Constitution for Kenya. It would be very suitable. Then, we can now focus our minds on the new Kenya that we want to build!

What I know - and that is what makes me sad--- When I look at our children who have been to schools and got educated, they are talking about the new world, which everybody else is talking about in the rest of the world. They are not wasting time arguing about the kind of things which we are killing each other about. They are not! They are talking about the new world as they know and see it! Those children--- Well, we call them children because they are our children. But they are not children. They are university students and they are knowledgeable. They can write that Constitution for us! I am sure that we can do it here. I am sure, myself, that we know where we are going to go. I am sure we will get there!

So, ladies and gentlemen, let us make up our minds to move in that direction quickly, and have that Constitution. Then, we can now work to build the new Kenya in the spirit that the new generation would like to see that Kenya. If we put our mind there, I am sure we can build Kenya to be good. It will grow. The spirit in which it will grow will be very enormous. I have no doubt at all that, that is the way it would be. I am quite sure that, that is the way it will be. I know that, that is the way that we shall go. I know that each one of us has a mission.

Preach to the person who lives where you live why we must all be together. Preach also to him why we must move in this spirit and build a new Kenya. Preach to them why that is the only thing which has meaning in the present day's world. Actually, our own children will go that way.

That is the only way they know is meaningful. The present world is going that way. So, let us go that way. I am sure, we will because that is the way we shall go. Mr. Speaker, Sir, we were saved from a crisis somehow.

Mr. Speaker, Sir, I do not want to spend a lot of time talking about that particular thing. However, if you want to know, I am quite willing to tell you, quietly somewhere, what it is that we were headed to. But we have now come back.

*(Laughter)*

Honestly, that is the main thing. That is what every Kenyan want. Every young man and woman in this country wants us to move in that direction. I am sure, if we follow that way, we shall succeed.

Mr. Speaker, Sir, today, we are amending the Constitution. It is good to do so. I thank you very much, Mr. Speaker, Sir. I know that you will feel happy that we will give you the joy of our passing of this constitutional amendment, which is heading us towards that direction. During the short time you will be our Speaker, whether it will be ten years or 20 years or 30 years---

*(Laughter)*

It is a short time! We would, in fact, have written a new Constitution a long time ago. We shall be moving forward. We shall now be headed in the right direction, because nobody will argue with each other, asking: "*Wewe ni kabila gani? Wewe ni mtu wa wapi?*" That is actually crazy when you think about those lines because the young people in this country do not even speak those languages. Young people in this country do not think along those lines. I am very happy that they do not do so. That is where the future of this country lies. Anyway, I know that we shall move in that direction.

Mr. Speaker, Sir, finally, after we pass this Bill, we have another Bill before us. We should also pass it.

*(Applause)*

Let us pass both Bills and get on with the other business. Above all, let us decide to help all Kenyans who have been destabilized by the crisis which came to this country. Let us help each other in a genuine manner and in every way. We should not go on harbouring very primitive thoughts about land belonging to you or to your father. That is your father's place. Yes, he has left it to you, but he has not left you the whole world.

*(Laughter)*

He only owns a piece of it. He knows the size of that piece of land. *Ukimuuliza, atakwambia*. He will tell you what piece of land is his because he knows. Then why does he want to claim the whole world? It is not valid and it should not be allowed. We should not pretend that he can do so, because he cannot. He will not be able to do so. Let us know that nobody will do so. That is all we need to do. Let us allow our children to grow up together. We all know that they go to same schools and even universities together.

How can we now send them back? We cannot do so. We have not allowed that to happen. They will also not allow us to do so. They are now very many. They are not few. The young generation in Kenya is the majority of our population. It will not allow those other people, whose minds are quite primitive, to divide them along tribal lines. They will go along with the modern world. That is the way it will go. I am quite sure, it will.

Mr. Speaker, Sir, finally, we are here because we have survived in this nation all these

years. We have also made progress in those years. Right now, we are making progress. We are going on. We had reached an economic growth of seven per cent. We are now going to move to eight per cent growth and we will move on. We have been meeting with many groups. We want to register a 10 per cent growth rate every year. I am sure, we can get there. So, why do we not do it? There is no reason for not doing so. So, let us do so. Let us build the new Kenya that we all want.

I am also sure that you can get together any two or three people, talk to them and reach an agreement. There is nobody who is still very backward. It is only that certain individuals occasionally listen to some backward thoughts. They think there is a little loophole to reach that backward-minded goal. That one is not there. Forget it. Just see the world as it truly is. You have a piece of land; that is yours. If you want more land, you can buy it. If you want to buy more land in the rest of Africa, you can do so. There is no other way. Ladies and gentlemen, I do not want to speak much more on this subject.

Mr. Speaker, Sir, the only reason why I personally decided to attend this Session is to be able to have the occasion to say "thank you" to every one of you for having agreed to what was proposed. I strongly believe that during your time as Members of Parliament, you will work towards the common objective of building the one Kenya that we all want. That is wonderful!

*(Applause)*

With that spirit, I am sure, we shall get where we want to go. We have more progressive Kenyans around the whole world than any other country. They are succeeding. They are sending their money back to Kenya. They are investing in Kenya. I have no doubt that we shall make that progress. I am sure, we will. I am sure that God will help us. That is true.

Mr. Speaker, Sir, I thank you very much. Continue giving us that sense of direction; let us proceed in that way.

I beg to support.

*(Applause)*

**Mr. Balala:** On a point of order, Mr. Speaker, Sir. After the principal leaders and statesmen of this country have spoken, is it in order to move that the Mover be now called upon to reply?

**Mr. Speaker:** Mr. Balala, although you are expressing a legitimate concern, you are out of order because it is tantamount to being selfish. You have had a chance to contribute.

**Mr. Ethuro:** Mr. Speaker, Sir, I ask for the indulgence of the Chair for the sake of the entire membership of the House who should be contributing. Is it fair for the pecking order to be followed for people who are already part and parcel of the negotiations? I think it is our turn to get an opportunity to make our useful contributions.

**Mr. Speaker:** Mr. Ethuro, I do not know what "pecking order" you are referring to, because, as far as the Chair is concerned, all hon. Members turned up this afternoon for this Sitting as Members of Parliament. I have no notice of "pecking orders."

**Mr. Omingo:** On a point of order, Mr. Speaker, Sir. Having listened carefully to the eloquent presentation by His Excellency the President and the Prime Minister-designate, and judging by the mood of the House and the repetitiveness, would I be in order to move that the Mover be now called upon to reply.

**Mr. Speaker:** Hon. Members, it seems that, that is the mood of the House. May I call upon the Mover to reply.

*(Consultations)*

*(Question, that the Mover be now called upon to reply, put and agreed to)*

**The Minister for Justice and Constitutional Affairs** (Ms. Karua): Mr. Speaker, Sir, I want to begin by thanking all hon. Members, who have contributed to this Bill and supported it, and also all hon. Members, because we can see that the mood is in support of the Bill. I want to pay tribute to the President and Member of Parliament for Othaya and to the Prime Minister-designate and Member of Parliament for Lang'ata, for leading the way not only in signing the Accord, but also for joining in the debate this afternoon. I want to say that it is, indeed, historic. I have been seeking information around as to whether a sitting President has ever contributed to debate, other than delivering an address from the Chair of State. I do understand that a sitting president only came here to vote, which I witnessed the former President Moi do on one occasion. This is the first time that contribution to debate by a sitting President has been made, and it is, indeed, historic.

Mr. Speaker, Sir, I want to urge hon. Members to reflect on the words that our leaders have spoken, including those of His Excellency the Vice-President and the Member of Parliament for Mwingi North, which other hon. Members have echoed. It is time for each one of us to make their contribution to ensure that normalcy returns to each Kenyan, and that we fulfil our promise of a new constitution and reformation of society to the nation. I want to put it on record that when His Excellency Mr. Kofi Annan suspended the negotiations it was because we, the negotiating team, indicated that the issues remaining were for the principals. Those issues were the sharing of Cabinet positions, the proportionality and the issue of entrenching the matter in the Constitution. I am glad they were resolved in a manner that the House has found fit to support.

To my good friend, whom I call "the bull-fighter, Dr. Khalwale, ambition is not wrong. It can never be wrong. It moves the world. Ambition is only wrong when it blinds one to reality and to the needs of others. So, do not worry that people have voiced the wish to become Deputy Prime Ministers. You voiced your wish to become a Member of Parliament. That is why we are all here. We are ambitious.

*(Applause)*

Mr. Speaker, Sir, I also want to say that as we contribute, it is my plea that we moderate our language, so that we do not rub each other the wrong way. I appreciate the contribution of Prof. Anyang'-Nyong'o but to say "stolen election", in quotes, are words that will excite passions, because then we will talk of "deception" about the results. I do not think we want to go back there. We want to go forward. We have already moved forward by coming to this House as we have done. When I use one example, it covers all.

I want to say to my dear former classmate, Mr. Kajwang, that it is the law that is the command of the sovereign; jurisprudence is the philosophy of the law and both are related. I want to agree that we are not slaves to the law. The law is dynamic and must go with the times. That is why we are saying that today we are committed to what is happening. I urge that we all make our best efforts to make sure that Kenyans enjoy the fruits of our coming together.

With those many remarks, I beg to move.

**Mr. Speaker:** Hon. Members, given that this is a Constitution (Amendment) Bill, it is necessary that we go into a Division. So, I order that the Division Bell be rung, so as to ascertain that we have the right numbers in the House.

*(The Division Bell was rung)*

**Mr. Speaker:** Order! Order, hon. Members! Let us resume our seats! You may now lock the doors and have the Bars drawn. We have four tellers. Hon. Kareke Mbiuki will be for the Ayes, jointly with hon. Omingo. The order, really, does not matter. You can begin with hon. Omingo followed by hon. Kareke Mbiuki. The tellers for the Noes are hon. E. Wamalwa and hon. C. Kilonzo.

Hon. Members, those that wish to vote for the Ayes will go to the lobby on my right. Those that wish to vote for Noes will go to the lobby on my left. Abstentions will be recorded by the Clerk-at-the-Table.

I will now put the Question so that we can proceed to vote.

*(Question put and the House Divided)*

*[Mr. Speaker left the Chair]*

*[The Temporary Deputy Speaker  
(Mr. J. Nyagah) took the Chair]*

*[The Temporary Deputy Speaker  
(Mr. J. Nyagah) left the Chair]*

*[Mr. Deputy Speaker took the Chair]*

## DIVISION

*(Loud consultations)*

**Mr. Speaker:** Order! Order, hon. Members! Please, resume your seats. Could Tellers bring the result?

*(Question carried by 200 votes to nil)*

**AYES:** Messrs. Ababu, Abdalla. A, Abdikadir, Abdirahaman, Abuchiaba, Affey, Ahmed, Akula, Ali, Aluoch, Prof. Anyang'-Nyong'o, Messrs. Anyanga, Anyango, Baiya, Balala, Baya, Bett, Bifwoli, Chanzu, Chepchumba, Chepkitony, Cheruiyot, Dache, Duale, Ethuro, Dr. Eseli, Messrs. Farah, Gaichuhie, Ganya, Gesami, Gitau, Githae, Githunguri, Gumbo, Gumo, Gunda, Haji, Imanyara, Jeffah, Jirongo, Kaino, Kajembe, Kajwang', Prof. Kaloki, Messrs. Kamama, Kamau.I, Kamau. M, Kambi, Kapondi, Kariuki, Ms. Karua, Messrs. Kathuri, Kenneth, Kenyatta, Keter, Keya, Keynan, Dr. Khalwale, Messrs. Khang'ati, Khaniri, Kibaki, Kigen, Kiilu, Mrs. Kilimo, Messrs. Kilonzo.K, Kilonzo.C, Kilonzo.M, Kimunya, Kinyanjui, Kioni, Kipkiror, Kiuna, Kiunjuri, Kivuti, Koech, Kombo, Kones.K, Kones.J, Mr. Kosgey, Dr. Kutu, Mr. Kutuny, Ms. Laboso, Messrs. Lagat, Lankas, Lekuton, Lesrima, Lessonet, Letimalo, Linturi, Litole, Lugano, M'Mithiaru, Dr. Machage, Messrs. Magara, Magerer, Magwagwa, Maison, Mrs. Mathenge, Ms. Mbarire, Messrs. Mbau, Mbiuki, Metito, Michuki, Midiwo, Mohamed. E, Mohamed. M, Monda, Mudavadi, Mrs. Mugo, Messrs. Mung'aro, Mungatana, Munya, Munyaka, Munyes, Muoki D., Mureithi, Murgor, Muriithi, Murungi, Musila, Rev. Musyimi, Messrs. Musyoka, Muthama, Mututho, Mwadeghu, Mwahima, Mwaita, Mwakulegwa, Mwakwere, Mwangi. B.C, Mwangi. W, Mwatela, Mwathi, Mwau, Mwaura,, Mwiru, Nanok, Ndambuki, Ms. Ndeti, Mr. Ng'ang'a, Mrs.

Ngilu, Messrs. Ng'ongo, Ngugi, Maj-Gen. Nkaisserry, Messrs Ntimama, Nyagah. J, Nyamai, Nyammo, Nyongesa, Ms. Noor, Messrs Obure, Dr. Oburu, Mr. Odhiambo, Ms. Odhiambo, Messrs. Ogindo, Ojaamong, Ojode, Okemo, Prof. Olweny, Messrs. Omagwa, Ombui, Omollo, Prof. Onger, Ms. Ongoro, Messrs. Onyancha, Onyonka, Oparanya, Orengo, Osebe, Otieno, Outa, Poghishio, Rai, Raila, Rege, Ruteere, Rutto , Prof. Saitoti, Prof. Sambili, Messrs. Sambu, Samoei, Sasura. H., Ms. Shabesh, Messrs. Sirma, Shitanda, Simiyu, Maj. Sugow, Messrs. Thuo, Twaha, Waibara, Wamalwa. E., Wambugu, Bishop Wanjiru, Messrs. Warugongo, Washiali, Wekesa, Were. D., Wetangula, Yinda.

Tellers for the Ayes: Messrs. Kareke Mbiuki and Omingo Magara.

**NOES:** Nil

Tellers for the Noes: Messrs. Wamalwa. E. and Kilonzo. C.

**ABSTENTIONS:** Nil.

## PROCEDURAL MOTION

### EXTENSION OF HOUSE SITTING TIME

**The Vice-President and Minister for Home Affairs** (Mr. Musyoka): Mr. Speaker, Sir, I beg to move the following Procedural Motion.

THAT, notwithstanding the provisions of the Standing Order No.17(2) the House orders that the Sitting time be extended from 6.30 p.m until the business appearing under Order No.9 is concluded.

**The Minister for Justice and Constitutional Affairs** (Ms. Karua) seconded.

*(Applause)*

*(Question proposed)*

*(Question put and agreed to)*

## COMMITTEE OF THE WHOLE HOUSE

*(Order for Committee read)*

*[Mr. Speaker left the Chair]*

IN THE COMMITTEE

*[Mr. Chairman took the Chair]*

THE CONSTITUTION OF KENYA  
(AMENDMENT) BILL

*(Clauses 2, 3, and 4 agreed to)*

*(Title agreed to)*

*(Clause 1 agreed to)*

**The Minister for Justice and Constitutional Affairs** (Ms. Karua): Mr. Chairman, Sir, I beg to move that the Committee doth report to the House its consideration of The Constitution of Kenya (Amendment) Bill and its approval thereof without amendments.

*(Question proposed)*

*(Question put and agreed to)*

*[The House resumed]*

*[Mr. Speaker in the Chair]*

### REPORT AND THIRD READING

#### THE CONSTITUTION OF KENYA (AMENDMENT) BILL

**Mr. Farah:** Mr. Speaker, Sir, I beg to report that a Committee of the whole House has considered The Constitution of Kenya (Amendment) Bill and approved the same without amendments.

**The Minister for Justice and Constitutional Affairs** (Ms. Karua): Mr. Speaker, Sir, I beg to move that the House doth agree with the Committee in the said Report.

**The Minister for Finance** (Mr. Kimunya) seconded.

*(Question proposed)*

*(Question put and agreed to)*

**The Minister for Justice and Constitutional Affairs** (Ms. Karua): Mr. Speaker, Sir, I beg to move that the Constitution of Kenya (Amendment) Bill, be now read a Third Time.

**The Minister for Education** (Prof. Ongeru) seconded.

*(Question proposed)*

**Mr. Speaker:** I thought that hon. Members had some interest in contributing at this point. However, if this is the mood of the House, I will now order that the Division Bell be rung.

*(The Division Bell was rung)*

**Mr. Speaker:** Shall we now have the doors locked and the bar drawn?

*(The doors were locked and the bar drawn)*

Hon. Members, the tellers for the "Ayes" will be Messrs. E. Wamalwa and C. Kilonzo. Those for the "Noes", will be Messrs. Kareke and Omingo. You will note that there is a swap now. That is the only change. Otherwise, the tellers remain essentially the same.

The Ayes will proceed to vote in the Lobby to my right as the Noes proceed to vote in the Lobby to my left. I would want all hon. Members going to vote in the Ayes Lobby to proceed from the southern entrance. The southern entrance is the direction where the Sergeant-At-Arms is with his staff. You will find Mr. Gitobu Imanyara, who will give you direction. You will then proceed to vote at the northern end and come out through the northern door. The only exception to that is the Member for Othaya, the Member for Langata, the Leader of Government Business and his deputy. Those are the only exceptions to that direction.

**Hon. Members:** Ntimama! Ntimama!

**Mr. Speaker:** Hon. Members, going by the mood of the House, we shall increase the exceptions with the addition of Mr. ole Ntimama.

*(Loud consultations)*

Order! Order, hon. Members! Hold your horses. Freeze where you are, if you are standing. I will now put the Question, which is that the Constitution of Kenya (Amendment) Bill be now read a Third Time.

You may proceed.

*(Question put and the House divided)*

### DIVISION

*(Question carried by 197 votes to nil)*

**AYES:** Messrs. Ababu, Abdalla. A, Abdikadir, Abdirahaman, Abuchiaba, Affey, Ahmed, Akula, Ali B., Ali M., Aluoch, Prof. Anyang'-Nyong'o, Messrs. Anyanga, Anyango, Baiya, Balala, Baya, Bett, Bifwoli, Chanzu, Chepchumba, Chepkitony, Cheruiyot, Dache, Duale, Ethuro, Dr. Eseli, Farah, Gaichuhie, Ganya, Gesami, Gitau, Githae, Githunguri, Gumbo, Gumo, Gunda, Haji, Imanyara, Jeffah, Jirongo, Kaino, Kajembe, Kajwang', Prof. Kaloki, Mr. Kamama, Prof. Kamar, Messrs. Kamau I., Kamau M., Kambi, Kapondi, Ms. Karua, Messrs. Kathuri, Kenyatta, Keter, Keya, Keynan, Dr. Khalwale, Messrs. Khang'ati, Khaniri, Kibaki, Kigen, Kiilu, Mrs. Kilimo, Messrs. Kilonzo K., Kilonzo C., Kilonzo M., Kimunya, Kinyanjui, Kioni, Kipkiror, Kiptanui, Kiuna, Kiunjuri, Kivuti, Koech, Kombo, Kones K., Dr. Kones J., Dr. Kosgei, Mr. Kosgey, Dr. Kuti, Mr. Kutuny, Ms. Laboso, Messrs. Lagat, Lankas, Lekuton, Lesrima, Lessonet, Letimalo, Linturi, Litole, Lugano, M'Mithiaru, Dr. Machege, Messrs. Magara, Magerer, Magwanga, Maina, Mrs. Maison, Mrs. Mathenge, Mr. Mbai, Ms. Mbarire, Messrs. Mbau, Mbiuki, Metito, Michuki, Midiwo, Mohamed E., Mohamed M., Dr. Monda, Mr. Mudavadi, Mrs. Mugo, Messrs. Mung'aro, Mungatana, Munya, Munyaka, Munes, Muoki D., Mureithi, Murgor, Muriithi, Murungi, Musila, Rev. Musyimi, Messrs. Musyoka, Muthama, Mututho, Mwadeghu, Mwahima, Mwaita, Mwakulegwa, Mwakwere, Mwangi D., Mwangi M., Mwathi, Mwaura, Mwiru, Nanok, Ndambuki, Ms. Ndeti, Mr. Ng'ang'a, Mrs. Ngilu, Messrs. Ng'ongo, Nganga, Ngugi, Nkaiserry, ole Ntimama, Ms. Noor, Messrs. Nyagah J. Nyamai, Nyamweya, Nyongesa, Obure, Dr. Oburu, Mr. Odhiambo, Ms. Odhiambo, Messrs. Ogindo, Ojaamong, Ojode, Okemo, Prof. Olweny, Messrs. Omagwa, Ombui, Omollo, Prof. Ongeru, Ms. Ongoro, Messrs. Onyancha, Onyonka, Oparanya, Orengo, Osebe, Otieno, Outa, Poghishio, Rai, Raila, Eng. Rege, Messrs. Ruteere, Rutto, Prof. Saitoti, Messrs. Samoei, Prof. Sambili, Messrs. Sambu, Sasura, Ms. Shebesh, Messrs. Sirma, Shitanda, Messrs. Thuo, Twaha, Waibara, Wamalwa, E., Wambugu, Ms. Bishop Wanjiru, Messrs. Warugongo, Washiali, Wekesa, Were, Wetangula, Yakub and Yinda.



Tellers of the Ayes: Messrs. Kareke Mbiuki and Omingo.

**NOES:** Nil.

Tellers of the Noes: Messrs. Wamalwa, E. and Kilonzo. C.

**ABSTENTIONS:** Nil.

*(The Bill was accordingly read the  
Third Time and passed)*

*Second Reading*

THE NATIONAL ACCORD  
AND RECONCILIATION BILL

**The Attorney-General** (Mr. Wako): Mr. Speaker, Sir, I beg to move that The National Accord and Reconciliation Bill, 2008, be now read a Second Time.

Mr. Speaker, Sir, first of all, I want to congratulate Parliament for passing the Constitution of Kenya (Amendment) Bill this afternoon. The Constitution of Kenya (Amendment) Bill will entrench the Bill which we are about to discuss. I believe it was said that we can have a new Constitution even within three months. I do agree. I want to assure this House that as far as the Constitution of Kenya (Amendment) Bill that you have just passed is concerned, I have just received volumes of copies from the Government Printer of that Bill. Mr. Clerk will certify it as being a true record of what has been enacted this afternoon and then I will kindly ask Your Excellency, The President to give the assent.

*(Applause)*

So, the sooner you enact this Bill we are about to embark on, the faster the President will give his consent. I hope that provides a motive for quickly passing The National Accord and Reconciliation Bill.

*[Mr. Speaker left the Chair]*

*[Mr. Deputy Speaker took the Chair]*

Mr. Deputy Speaker, Sir, this Bill is to give effect to the agreement on the principles of partnership of the Coalition Government. We have already touched on the process that led to that agreement. Let me also put on record my appreciation and the appreciation of the nation to all those who were involved in the mediation talks, the Chairman, Dr. Kofi Annan and our four man team on each side. Let me also put on record the appreciation of the concern and interest of others starting with the African Union (AU) who clearly showed that Kenya as a nation is valued. We do appreciate their concern and interest. I hope that concern and interest will continue. I want particularly to put on record our utmost appreciation to His Excellency the President and the Prime Minister-designate who made it possible. We have been told that the mediation team went as far as they could go. However, there were certain issues which only the two principals could decide. I am glad that they were able to meet and decide on those issues. In so doing, the President ceased being a mere politician or a political leader. He became a statesman. Statesmen are found in moments of national crisis. If you look throughout the history of the world, you will not remember leaders who were there during normal and peaceful times. But you remember those leaders who responded

effectively and properly to national crisis that the country was facing. His Excellency, President Mwai Kibaki, and hon. Raila Odinga showed vision on where they wanted this country to go. They also showed focus. You can have a vision but lose out on focus because of people surrounding you. I am quite sure that both leaders were surrounded by people who, although well meaning, were not focused in that one direction, the Kenyan nation, properly. So, they showed not only vision but also focus. Even more importantly, both leaders showed courage in arriving at this agreement. It is true that after the mediation teams had done its work, the matter went to the two principals. Thereafter, the drafting team was appointed. Here, of course, I apologise to hon. Mutula Kilonzo, for his name having missed out in the original Bill I had published but it is now there. Him and myself are the only senior counsel in this Parliament. So, I owe him an apology in that regard. But I can tell you that the drafting team of Messrs. James Orengo, Mutula Kilonzo, Karoli Omondi and Gichira Kibara did an excellent job. But our job was really more focused on the Constitution (Amendment) Bill that we have just enacted. That was, indeed, a challenge. I want to tell members of my legal profession, that in a developing country such as ours, we cannot afford to follow blindly the jurisprudence of the developed countries.

In fact, leading jurists from the Third World countries, including Africa, Asia, Latin America and so on, long time ago, at the dawn of our Independence, actually said that the rule of law in our countries will not just be particular to the niceties of law. The rule of law is a dynamic concept, which uses law as an instrument of social engineering. It is not only an instrument of social engineering for its own sake, but social engineering to bring about economic, social and political development in our countries. Therefore, when you look at the amendments that have come, they are in that light. We are saying we are in that light. We are setting proper jurisprudence. Even in the United Kingdom (UK), we have a judge called "Lord Denning" who at that time was seen to be a radical. But, later on, his judgments, which are pretty effective, became the norm, and are so even today. So, what we have done, I am quite sure, will not only be precedent-setting in Kenya but also in Africa and other countries. That is why Kenya is seen to be precedent-setting in many issues.

Mr. Deputy Speaker, Sir, although the drafting team drafted the Constitution of Kenya (Amendment) Bill, let me confess bravely that as far as this Bill is concerned we never really drafted it. What happened on that day was that His Excellency the President, the Prime Minister Designate, Mr. Raila Odinga, President Jakaya Kikwete, Dr. Kofi Annan and Mr. Mkapa, sat and had before them various drafts that emanated from the mediation team. They were alone. They went through it clause by clause, removing here, adding there, discussing, arguing and everything. The process that took place that morning is the product of this National Accord and Reconciliation Bill. Therefore, it is a very carefully crafted Bill, sensitively done and very well balanced. We would do well, as a Parliament, if we gave assent to it without any amendment.

*(Applause)*

Mr. Deputy Speaker, Sir, what I have just said is well reflected in the agreement itself at page 12. It says:

"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".  
It is that draft copy which was appended to this agreement that is before this House. The only thing we removed was the preamble, it is not law. However, the main body of this Bill is what they actually agreed on, with the commas and full stops. As the drafting team, we did not deem it fit that

we should, ourselves, begin redrafting this Bill, which had been agreed to by the two principals.

Mr. Deputy Speaker, Sir, to underline the importance of this, His Excellency the President and the Prime Minister-designate witnessed by President Jakaya Kikwete and former United Nations Secretary-General, Dr. Kofi Annan, actually signed each and every page, not only of the agreement but also of this Bill. This is what has been laid on the Table of the House by the Minister for Justice and Constitutional Affairs. You will see that there are initials, so that if there is any change, then you know where it came from. It did not come from them. It could have come from somebody else. That somebody else has to be blamed.

Mr. Deputy Speaker, Sir, a lot has already been said about this Bill. When we were discussing the Constitution of Kenya (Amendment) Bill, we touched on this Bill establishing the post of Prime Minister, Deputy Prime Minister, how the Prime Minister will be appointed, what his functions will be, how the Cabinet will be formed and so on. I do not really have to go into detail. You know what is contained in this Bill. All I can plead with you is that you enact it as it is.

Mr. Deputy Speaker, Sir, we are here, passing these important legislations not just for the sake of passing them. I am glad that in the agreement, they stated that these two documents are not about creating positions that reward individuals, as stated at page 12. It is for a particular purpose and that purpose is to enable Kenyan political leaders look beyond partisan considerations, with a view to promoting the greater interest of the nation as a whole. In order to do that, we have laid emphasis on having a new constitutional dispensation within 12 months. "Within 12 months", can mean one month, two months or three months. Therefore, that is a challenge to all of us. We expect to take the shortest time possible to have a new constitutional dispensation for Kenya.

This is about a new political dispensation for Kenya. It is about addressing the causes of what has gone wrong in our society since we attained Independence. This will give people the opportunity to do that. I very much hope that the speed which has prevailed this afternoon, of enacting the Constitution of Kenya (Amendment) Bill, will be the same spirit which will continue until we have a new constitutional dispensation.

Mr. Deputy Speaker, Sir, it is not enough to cry; peace! peace! For me, it is not enough to merely say from the mountain top that we must all be Kenyans. When we talk about leadership, I think the two have shown the way. The political leadership that is here must start with us. The buck stops with us. As somebody said, change has to start with an individual. In other words, if you want a Kenya free of ethnicity and tribalism, then you, as the individual, should not shout at others. You, as a political leader, must be the change we want to see. If you want to see a society free of tribalism, you as a leader must be free of tribalism. If you want to see a corrupt free Kenya, then you, as a leader, must be corruption free. I am calling upon you to be that change you want to see in Kenya. Let us start with us and let it percolate down to the grassroots level and so on.

So, I will not go into the details of what is here. I believe you have read everything that is contained here and you have talked about it. I can only commend you to support it, *na tuiipitisha haraka* so that I can present it to my President for assent today.

I call upon my friend, Mr. Samoei, to second.

I beg to move.

**Mr. Samoei:** Thank you, Mr. Deputy Speaker, Sir. I rise to second this Bill which, as the Attorney-General has said, is part of the negotiations that went into the mediation efforts that came after the last General Elections.

Mr. Deputy Speaker, Sir, let me add my voice to what my colleagues have said about these Bills - the previous Bill and the Bill that is before us now. What we are witnessing today in our country is a historic moment. I want to ask this House, as we have done before, to rise up to the challenge that faces our country at this point in time. I want to ask this House to pass this Bill which was negotiated and agreed upon by His Excellency the President and His Excellency the

Prime Minister-designate. It forms the foundation of where we want to go as a nation.

Mr. Deputy Speaker, Sir, allow me to commend the Panel of Eminent Persons. They did provide elaborate and distinguished leadership for those of us who were engaged in the mediation efforts.

Mr. Deputy Speaker, Sir, I want to thank my colleagues from both sides. I want to thank our respective parties for giving us the opportunity, on behalf of the parties and for the sake of the people of Kenya, to participate in the mediation efforts.

Mr. Deputy Speaker, Sir, the document you see is as a result of very delicate but intensive negotiations. We engaged each other and decided that we can have all the levels that there are, but we will tell each other the truth and we will call a spade a spade. We never attempted to call a spade a big spoon. As a result of those intense negotiations--- I want to congratulate my colleagues for being candid. When things became difficult, and we had to make difficult choices, we took refuge in the words of Martin Luther King Junior who said: "A nation which continues to produce soft-minded men purchases its spiritual death on the instalment basis". We decided to make the hard choices and take the hard decisions.

Mr. Deputy Speaker, Sir, when it came to the time of our Principals to do their bit, they did not let this country down. His Excellency President Mwai Kibaki and the Prime Minister-designate Raila Odinga rose to the challenge and had the courage to make the necessary compromises for us to get the Bills that are before us today.

Mr. Deputy Speaker, Sir, the Bills that are before this House are not an end in themselves. They are a means to an end. They give this country and us an opportunity to create a vehicle that is going to give the people of Kenya the necessary leadership, so that we can address ourselves to the real issues that affect this country.

Mr. Deputy Speaker, Sir, through these Bills, we have an opportunity to create the vehicle that will allow us to do several things. First amongst them is to address very serious issues. As we talk today, there are many Kenyans - thousands of them - who do not sleep at home because they live in camps. We need to move with dispatch to deal and process those Kenyans, so that they can go back to their homes and live again as the rest of us.

*(Applause)*

Mr. Deputy Speaker, Sir, as a leadership, it should concern us that unfortunately, most of the people who are Internally Displaced Persons (IDPs) today are not IDPs for the first time. Some of them are unfortunate to be IDPs for the second or third or fourth time. It should concern us, as a leadership. We should sort out the issues that make Kenyans fight, whenever there is a contest. In the wisdom of the coalition Government that will be formed, I would beg that we should not gloss over those issues. We do not want, in another five or ten years from now, Kenyans, again, to rise up against each other with axes, *pangas*, bows and arrows. We should settle our past, and settle it in an appropriate manner.

It is important for us to make the hard decisions. If we continue with the soft options, we will recycle the problem. We must make the hard decisions. We must close our past, and bring it to a closure in a manner that is fair to everybody. This Bill gives us the vehicle that will help this country sort out the things that bring about conflict.

Mr. Deputy Speaker, Sir, we have very serious issues of marginalisation, inequality and tribalism. As I speak, these issues have divided this country in a very tragic way. Now, with the passage of these two Bills, we have an opportunity to rise up to the challenge of putting in place the mechanisms that will enable us deal with inequality, tribalism and marginalisation.

Mr. Deputy Speaker, Sir, I believe that with these instruments, we are going to put together

a Government which, if it does not do anything else, will sort out these issues, which are of concern to the majority of Kenyans. I want to agree with the Attorney-General that these two Bills are not about us; they are about the people of Kenya. The spirit of this agreement is good. Allow me to read out again what the Attorney-General read out, on page 12, which says:

"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 leadership to look beyond partisan considerations with a view to promoting the greater interest 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 better and more secure and more prosperous Kenya."

Those are very heavy words from the signed agreement by His Excellency the President and the Prime Minister-designate.

I think the issue of a new Constitution arises after we have crossed our path and put in place instruments that will enable us deal with tribalism, marginalization and issues of inequality that bring about conflict in our country. As we have all undertaken, we should provide a firm foundation for the future of this country; we should provide for an equitable democratic nation by having a new Constitution in the 12 months that we have said. I agree that it is possible for us to have a new Constitution under 12 months.

Let me conclude by saying that I am particularly happy that we are well on the road towards a more democratic nation. The creation of the position of the Prime Minister is an indication of where we are heading. I want to say that I have a very special attachment to this position of Prime Minister. In the last general election, in my party, I was promised that position.

*(Laughter)*

As you can hear from my colleagues on the other side, at that time, many people used to ask me: "How do you agree to be promised a position that does not exist?" I kept wondering how that position would ever come to be. I am happy today that, although the circumstances are different, all the same we are going to create the position of the Prime Minister today. As a party, and now as a nation, we are all embracing a new way of doing things in our country. I think it is a pointer to better things to come.

With those remarks, I beg to support.

*(Question proposed)*

**The Member for Laikipia East** (Mr. Kiunjuri): Mr. Speaker, Sir, may I join my colleagues in supporting this Bill. At the same time, I want to express my sympathy to the Kenyans who really suffered after the general election that was held on 27th December, 2007. We have thanked the panel of eminent persons and our leaders, the hon. Mwai Kibaki, the President of Kenya, and Raila Odinga, for coming to a consensus and agreeing that the country must move forward. But we have forgotten that they could not have arrived at that decision if we did not have millions of Kenyans who voted and committed no offence, but suffered and some of them are still suffering.

I am also hoping that the passage of these two Bills will not make us, as leaders, forget the genesis of the whole process, or where it came from. If you look at the Memorandum of Objects and Reasons in the Constitution of Kenya (Amendment) Bill, which we have passed, it is indicated clearly that the negotiations committee was formed after a political crisis ensued following a dispute over the outcome of the presidential election held on 27th December, 2007. The political

crisis brought to the surface deep-seated and long-standing divisions.

If we look at the Bill that we are discussing now; that is the National Accord and Reconciliation Bill, it clearly indicates--- If you look at the agreement of the Principals of the Coalition Government, it is clear that the crisis triggered by the 2007 disputed presidential elections has brought to the surface deep-seated and long-standing divisions within the Kenyan society. Unless we want to run away from the facts--- It is true that the issues were not just the disputed presidential elections. The truth of the matter is that there are deep-seated issues that must be addressed by this House. Even if we come here and pass as many Bills as possible, without realising that they will not take us anywhere, we shall have lost this game.

We had laws which could have taken care of what happened in this country, but they were totally violated! To me, what could have been the most urgent thing - and I am not saying that what we have done today is not urgent--- It is important! That is because for us to move, we have to get the engine. But the engine itself cannot do the work of the trailer. What we are doing today is what my psychology teacher told me. That if you get a child crying, the first thing you do is to treat the child, and that is just conditioning. If we are not going to look at the actual problem as to why the child is crying, we will not solve the problem. We must know whether there is pain or the child has not eaten the whole day. That way, you will be able to solve the problem.

Mr. Deputy Speaker, Sir, the nation is crying and all what we shall have done through these two Bills is just to condition the nation. Otherwise, we must enact the relevant laws that will solve the problems and reinforce this nation. We have only come out of the Intensive Care Unit (ICU). There is no way you can tell a patient who is coming out of the ICU to go back home and actually have a meal of *githeri*. What we have done is to come out of the ICU. We are now in the High Dependency Unit.

I am wishing that after the passage of these two Bills, we shall not be called anywhere to go and celebrate. That is because, at the end of the day, we have nothing to celebrate about. We cannot go to celebrate while Kenyans are still in the IDP camps. The only time that we shall be able to celebrate is when we enact Section 47(a) of the Constitution. That should be done in the next few days, so that we can have a new Constitution that will address those deep-seated problems that we have. The only time we can celebrate is when we shall ensure that there is nobody in the IDP camps; that everybody is settled in their original homes or alternative areas.

Mr. Deputy Speaker, Sir, there is no way we, as leaders, shall have given any justice to Kenyans when, after we get the Cabinet positions and sit in the offices of the Prime Minister and Deputy Prime Ministers, we forget those who suffered. Those are the people we should be concerned about. The first thing we should be doing now is to make sure that, tomorrow, a Committee of Members of Parliament should sit down and ask ourselves: What are we going to do to Kenyans who are in Eldoret, Naivasha, Ruiru and Nakuru because the short rains are coming? In the next one or two weeks, there will be short rains. What will be the consequences of the short rains?

**Hon. Members:** Long rains!

**The Member for Laikipia East** (Mr. Kiunjuri): Thank you for the correction. The long rains are coming. What will be the consequences? Already, we have seen the tents that those people are living in. Will they be able, really, to accommodate them and resist those rains? What shall we do to make sure that at least, there are some permanent buildings that can take care of those families? What are we doing to make sure that as a result of the long rains, we shall not have communicable diseases such as typhoid, cholera and malaria? How are we going to cope with those diseases in the IDP camps? Those questions must be addressed. We would like Kenyans to also enjoy the benefits of the Accord and the peace from the two Bills that we are going to enact today.

Mr. Deputy Speaker, Sir, the issue of the Constitution should be addressed, so that we can address the questions of land, inequality and marginalisation. The issue of marginalisation should be looked at both ways.

It does not mean that if your people are the majority they cannot be marginalised, or if they are a minority they are the only people who can be marginalised. Marginalisation can come in two ways. Let us look at the issue of the Constitution, so that at the end of the day, it will be able to address the questions of the constituencies, the security of this country and ensure that we shall no longer again violate our Constitution.

Mr. Deputy Speaker, Sir, after the apartheid era in South Africa and the independence of that country, it required a truth and reconciliation commission. That did not stop the likes of Mrs. Winnie Mandela, much as she had supported the fight and struggle against apartheid, from appearing in court and answering for her misdeeds. This did not stop the South African Government, knowing that she was the wife of former President Nelson Mandela, from taking her to court to answer charges for the wrongs she had committed, crimes against humanity, yet she had fought for the liberation of South Africa. After the Second World War, the Americans are still responsible for what happened in Hiroshima. We must be responsible for our actions.

Mr. Deputy Speaker, Sir, reconciliation should make us come to terms with reality. We, as a House, must make sure that we vote money through the forthcoming Budget, so that we can erect a monument of shame. There is no way we can pretend in this House that we shall forget the cries of those children who were burnt at Kiambaa Village, in Eldoret, and in Naivasha. We must vote money in this House to erect a monument of shame, so that in our lifetime we can remember what really happened in this country. We cannot just sit here and pass very good laws. We can decorate them whichever way, but we must remember the deep feelings of those who suffered.

*(His Excellency the President  
withdrew from the Chamber)*

This Bill will act as a catalyst. It will enable us to speed up the events, so that we can move ahead.

Mr. Deputy Speaker, Sir, we also realise that this Parliament might not be having a vibrant Opposition. That is why we shall soon be proposing the likes of Mr. Kajwang to be the Leader of the Official Opposition. He can do it very well! Mr. Mungatana can also shift to the other side, as some of us might get something on the way---

*(Laughter)*

But we must have a vibrant Opposition.

Mr. Deputy Speaker, Sir, we cannot forget the past. We remember that after 2002 and the Memorandum of Understanding (MOU), which in a way brought problems in the original NARC, still there were divisions in the Cabinet. We only hope that this time round, there will be no divisions in the Cabinet. If there are divisions in the Cabinet, that means that we cannot move with the speed that is required by Kenyans for us to have new laws in this country. There is no way we can talk of enacting new laws in this country and completing the review of the Constitution if we have a divided Cabinet. I hope that the coming Cabinet will be united. I also hope that the three offices; that of the Prime Minister and the two deputies, will have somebody to supervise them. From this Bill, it is clear in Clause 4(1)(a) that:-

"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 the Ministries."

I hope that the Prime Minister and the Deputy Prime Ministers, if they will have Ministries--- I am wondering how they will be supervised. However, I still support this Bill.

Mr. Deputy Speaker, Sir, there are some clauses, for example, Clause 2(4), that still has not recognised the office of Assistant Minister. In this Bill, there is no courtesy of just elevating the Assistant Minister to a Deputy Minister. For those of us who have been in such offices, we can tell you that Ministers can really frustrate you! Fortunately, I had Ministers who were very good to me; one of them was my age mate and the other one was Mr. Murungi. They gave me freedom in that Ministry. However, I know of Assistant Ministers who really suffered.

**Hon. Members:** Kalembe Ndile!

**The Member for Laikipia East** (Mr. Kiunjuri): Mr. Speaker, Sir, I know of an Assistant Minister who, when attending international conferences to represent the Government--- You would hear it being announced, for example, that the Minister of State of Tanzania is going to give a key-note address, while an Assistant Minister from Kenya was seen as a personal assistant to the Minister. They are not recognised anywhere in the world! I am also hoping that as we constitute this--- *Pole* to the Assistant Ministers! I have been a senior one, but for sure we could really have been courteous to give them that title of "Deputy Minister" and responsibilities. That way, we shall be able to move forward as a team. Otherwise, we cannot have teamwork where some of the players are not recognised. They are not even reserve players!

Mr. Deputy Speaker, Sir, if you look at Clause 4(4) of this Bill, it states thus:-

"The office of the Prime Minister and the Deputy Prime Minister shall become vacant only if---"

They have said everything else, but I am wondering - God forbid - if the Prime Minister or his deputies are incapacitated, what do you do with them? It is not provided here! What about if they become bankrupt and they have just come from campaigns? It could happen that I am appointed a Deputy Prime Minister when I am not very "loaded" and then tomorrow, I become bankrupt. We have not addressed that in this Bill. I remember Mr. Speaker saying that in 1992, we enacted laws here and for 10 years we could not change those laws. These are issues we could have looked at, but in the spirit of reconciliation, we are not going to highlight anything. We are going to pass the Bill as it is, hoping that we shall address that question as soon as possible, lest it is overtaken by events when we bring the actual amendments to the Constitution, whichever comes first. I hope that none of them will be incapacitated or become bankrupt by then. There is this issue of---

**Hon. Members:** Time! Time!

**The Member for Laikipia East** (Mr. Kiunjuri): Mr. Deputy Speaker, Sir, just the last point so that I give a chance to others to also contribute.

I hope that through this Bill, Kenyans will now learn from their mistakes. We have been there before; for example, during the referendum. I supported the creation of the position of Prime Minister from the word, "go"; that is, from the conference at Bomas of Kenya to Mombasa, and here in Parliament. I even tried to move that amendment at a time when all my colleagues could not support me. So, I have no problem with the office of the Prime Minister. In fact, I remember telling my colleagues that, one day, we will need the position of Prime Minister. That might soon happen. So, I have no problem with it.

Mr. Deputy Speaker, Sir, however, I would like to urge those who will get these positions not to forget what happened during the French Revolution. If you look at H.L. Peacock's book and the revolution in France, what happened is that, the same causes led them to a revolution; the arrogance of Marie Antoinette, the extravagance of the State machinery and so on. When the war was won, they forgot why the struggle was there in the first place. They continued with business as usual. Napoleon forgot those who fought alongside him. He went ahead and the first business was to call for celebrations. One of his Generals was heard saying during that ceremony: "The only



thing missing in this ceremony is the thousands of the bones of the dead who really died in order to do away with this nonsense." Today we are seated here. We might start celebrating and forget those who died in order for this liberation to come into place.

We should not forget that until we address the question of land in this country, the ceremony will not be over. I hope that before we celebrate, the question of land and a new Constitution will be addressed properly.

I beg to support.

**The Member for Narok North** (Mr. ole Ntimama) Mr. Deputy Speaker, Sir, at the outset, I want to say that I really support these two Bills - the one on the Constitution and this one on reconciliation.

We have seen with our own eyes His Excellency President Kibaki on the other side, and Mr. Raila, the Prime Minister-designate, on this side. We have seen them both speaking here. They have supported the amendment to the Constitution. They have supported peace, reconciliation and togetherness. That is a testimony that they had properly agreed to work together and to bring this nation together. It is testimony to all of us! Those doubting "thomases" must now know that Kenya has two leaders who have agreed to give us back a nation called Kenya.

Mr. Deputy Speaker, Sir, I support the amendment to the Constitution because, to me--- I have been in the leadership of this country in many portfolios, whether it is in the local authority or Parliament. This is my fifth term in Parliament! I want to say very clearly that we have had no Constitution at all. When the Lancaster House Accord was abrogated by the then President - I think I support the young man, Mr. Imanyara! When Mr. Kenyatta abrogated the Lancaster House Constitution, we stayed without a Constitution. All that there was, was heaping power and more power to the Presidency. The problem today is that power has been given to one individual without sharing it at all! That has killed democracy. That has killed unity in this country. It has all been over 44 years of the presidency everywhere! The President in Parliament, the President everywhere! The President decides that and nobody else. Parliament can even be overruled! We do not control our calendar even today. It is a serious affair because the President can actually prorogue Parliament. He can send us all home if he wants. One individual!

We are lucky that we have got an opportunity to look and examine our Constitution properly. We attempted it at the Bomas of Kenya, but it was shot down by a few individuals, and yet I think it was one of the best Constitutions that we ever got in this country. So, I am saying that we have got an opportunity to craft and frame a Constitution that is going to help this country for many years to come.

I say very frankly that there has not been a Constitution apart from the one Mr. Kenyatta used his officials, the Attorney-General and everybody else and got a Constitution that we call so today. However, we cannot say frankly and fairly that we, the people of Kenya, framed this Constitution. We cannot!

Mr. Deputy Speaker, Sir, it is as the Americans say, or some other people who have got good lasting, fair and just constitutions. So, we have got an opportunity to frame up the Constitution now at this particular stage.

Mr. Deputy Speaker, Sir, secondly, I want to say very clearly that this Accord is definitely as a result of goodwill and trust. If there is no goodwill and trust, this Bill will not help us to heal. We will go back to the trenches. We want to make sure that there is trust and goodwill among all of us and the principals as it were. If there is no goodwill, then we are not moving anywhere.

Mr. Deputy Speaker, Sir, I want to say very clearly that we are all very sympathetic to Internally Displaced Persons (IDPs). We all wish them to go back to their homes as it was. However, let us look at the root causes of these conflicts because they keep on recurring. They keep flaring up. If you look at Ulster today in Northern Ireland, the British, Scots and Germans cannot

stop it. It was done the wrong way because the Irish were not considered as human beings equal to the British or the Scots. That is why they used tricks to rob the Irish of their land. We must not make a mistake. We must not put this thing under the carpet again. We better discuss these conflicts openly. We better talk like brothers and we better agree or disagree fairly when we have spoken and talked because we are all equal. This Accord here is about fairness, liberty and people being accorded human rights and not being trampled upon.

Mr. Deputy Speaker, Sir, I agree entirely that we must look into this thing very carefully. If you rush it like you did last time and put it under the carpet, then you are not doing anything, but let us get it done properly.

Mr. Deputy Speaker, Sir, I have heard the President say that we want a new Kenya. Mr. Raila Odinga has said we want a completely new Kenya. Let us be truthful. In fact, as a matter of fact, the President has emphasised that we want everybody to live everywhere and anywhere in this country. The boundaries were created in 1887 by the European powers and we cannot do anything since we are within them. We cannot change these boundaries, but we must be honest to live and work everywhere. From Mount Kenya to Isebania; from Eldoret to Kathiani. We must not have political, social and economic impediments. Rift Valley Province is not the only place with a fertile soil. Central Province also has a fertile soil and farmers there grow coffee, tea and other crops. So, we must not be blamed because we have accommodated everybody else. We want those boundaries to be lifted so that people could live together truly and fairly and not just by mouth.

Mr. Deputy Speaker, Sir, my grandparents told me that I came from Katheri in Meru! I want to go back to Katheri. I even understand that all the Meru elites come from Katheri. So, I am also an elite! I want to say that if we do not do that, then we are cheating ourselves. The Agreement that was signed by the two principals is simple but it is also captivating. It says that no one group could rule this country on their own. If anybody tries hypocritically to think that they could rule this country on their own, they should forget it because the other groups must be there. If they are not there, it will be too bad. If we try to amend the Constitution to benefit a few people, it will be too bad. Unlike Ambassador Muthaura, we have a single file in the sharing of power. We have number one, two, three, four and five. I think we should move together. If we do not move together, it will be too bad. We are not in a single file when we share power here. So, I want to say very clearly that we are all brought together by the truth of the matter.

It was also agreed that power must be shared on a 50-50 basis. This Accord was signed by President Kibaki and hon. Raila. It was also witnessed by the Tanzanian President, Jakaya Kikwete, and the Chief Mediator, Dr. Kofi Annan. It was agreed that there must be real sharing of power. That is a simple word "real". It is not otherwise. If it is shared by *chini chini* stuff and we pretend that it is shared when it is not, then it is not fair.

Mr. Deputy Speaker, Sir, I want to say that I was a little bit taken aback this morning when my friend, the Member of Parliament for Kajiado North, Prof. Saitoti, was making his contribution. I am sorry he has gone out. I wanted to speak about it when he is here. He spoke very bitterly about the students who were killed. We are all sorry that the students were killed. I am sure he was referring to an incident which took place in Eldoret, if I am not mistaken. But what about the people who were burnt alive in their houses in Naivasha?

**The Minister of State for Public Service** (Mr. Kamama): On a point of order, Mr. Deputy Speaker, Sir. With all due respect to our senior Member of Parliament, hon. ole Ntimama, is it really in order for him to discuss the names of civil servants like Ambassador Muthaura, or even hon. Saitoti, who is not here, without moving a substantive Motion? I have a lot of respect for him, but I think he is not in order.

**The Member for Narok North** (Mr. ole Ntimama): Mr. Deputy Speaker, Sir, the statement I am referring to was written and signed by Ambassador Muthaura. It was also televised

and we have to talk about it. So, I do not agree that I am out of order.

Secondly, we need to be truthful. We want to believe that when we are contributing in this House, we are trying to make this country peaceful. I have just mentioned about Prof. Saitoti because he is the Minister of State for Administration and National Security. He should also have mentioned all those incidents. He should have mentioned the people who were smoked out of their slums in Kibera and shot at point-blank. The Minister should have also controlled the police.

The international community and everybody else have blamed the police for abuse of powers. They directed their bullets so carelessly that they shot a lot of innocent people.

*(Applause)*

**Mr. Deputy Speaker:** Order, hon. Members! Hon. ole Ntimama, please, let us stay within the Bill! We are discussing the Bill and let us not get out of it.

**The Member for Narok North** (Mr. ole Ntimama): Mr. Deputy Speaker, Sir, you know I have not finished my contribution---

**Mr. Deputy Speaker:** Order! Hon. Members, in fairness, if we want this debate to have the participation of both sides of the House or the whole House, let us take as little time as possible so that every hon. Member---

**The Member for Narok North** (Mr. ole Ntimama): But I have not finished, Mr. Deputy Speaker, Sir.

**The Member for Gem** (Mr. Midiwo): On a point of order, Mr. Deputy Speaker, Sir. I understand the mood of this House. Given that these issues have been debated in the other Bill, and we are debating them again and the Attorney-General has asked the membership of this House to expedite debate so that the President can sign this Bill tonight, would I be in order to ask you to call upon the Mover to reply?

*(Applause)*

**Mr. Deputy Speaker:** Order, hon. Members! I think we will not be doing justice to this Bill. If you rush it through---

**Hon. Members:** No! No!

**Mr. Deputy Speaker:** Order, hon. Members! We do not want to get into the Ayes and Noes on whether we should continue with the Bill. However, I think that the mood in the House is that a few more hon. Members should make contributions to---

**Hon. Members:** No! No!

**Mr. Deputy Speaker:** Order, hon. Members! You are going to be out of order, and the first ruling I am going to give is to kick you out the House.

Dr. Kuti, please, proceed!

**The Member for Isiolo North** Dr. Kuti: Mr. Deputy Speaker, Sir, I would like to begin by joining the other hon. Members in thanking those who have made this historic moment happen.

Mr. Deputy Speaker, Sir, above all, I would like to recognise Kenyans who have actually made this day. This is because it is them who demanded their country back.

Mr. Deputy Speaker, Sir, there was hue and cry and Kenyans---

*(Loud consultations)*

Mr. Deputy Speaker, Sir, can you protect me?

**The Member for Runyenjes** (Ms. Mbarire): On a point of order, Mr. Deputy Speaker, Sir.

Surely, the mood of this House is that we have debated enough. We agreed on passing these two Bills. Could you kindly call upon the Mover to reply?

*(Applause)*

**The Member for Turkana Central** (Mr. Ethuro): On a point of order, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** She has just risen on a point of order!

**The Member for Turkana Central** (Mr. Ethuro): On a point of order, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** Mr. Ethuro, what is your burning point of order?

**The Member for Turkana Central** (Mr. Ethuro): Mr. Deputy Speaker, Sir, this is a debating Chamber. It is important that every hon. Member has an opportunity to be heard! We are not just going to use the tyranny of the majority to dictate how we should make our contributions! We also want to be heard! We have contributions to make. This is a historical moment in this nation.

**Mr. Deputy Speaker:** Hon. Members, we understand the rules of the House. I will, therefore, now put the question!

*(Question, that the Mover be now called upon to reply, put and agreed to)*

**The Attorney-General** (Mr. Wako): Mr. Deputy Speaker, Sir, I beg to reply. First of all I wish to thank all hon. Members who have contributed very positively to this Bill.

Mr. Deputy Speaker, Sir, Shakespeare in his book called Julius Caesar stated: "There is a tide in the affairs of men, which, if taken at the float, leads on to fortune, but omitted, the rest of their lives are in shallows and miseries". On such a tide are we now afloat.

I can only say, with confidence, that this House has risen to its responsibilities and is now afloat over a tide and we can now move on.

Mr. Deputy Speaker, Sir, as Mr. Samoei said, these two Bills are a vehicle to make the Kenyan nation realise its or her dreams of a united, prosperous, dynamic nation, following the precepts of democracy, the rule of law, transparency and accountability in which every Kenyan feels secure and every property is also upheld.

Mr. Deputy Speaker, Sir, I got here when most contributions had been made. However, I would like to emphasise that when this Bill was drafted - as I told you, it was drafted by our two Principals - all we did, which was a bit novel, was to add as an appendix, the actual agreement so that whoever is implementing this Bill has in mind the objectives that were intended to be fulfilled; all of which have been eloquently put in the agreement which the various contributors have quoted from time to time. That is why we attached that agreement, so that the Act is not just read and implemented in isolation, but it takes into account the very spirit of what made the Act come into being.

Mr. Deputy Speaker, Sir, Mr. ole Ntimama talked about good faith and so on. Obviously, everything special that is passed in this Parliament is supposed to be implemented in good faith. As we talked about sharing of real power - and we have a right to talk about that - it is not there for its own sake. I wish, as we conclude debate on this, hon. Members of Parliament will focus, not so much on real power, but on what that real power brings about. That power brings about a shared responsibility. It is up to the hon. Members of this House and the hon. Members of the coalition, to live up to the shared responsibilities of bringing this nation where it ought to be.

So, let us now begin talking about shared responsibilities because power for its own sake is nothing. In fact, someone said that absolute power corrupts absolutely. So, as we are talking about power, let us remind ourselves as to why we are having that power; it is to bring this nation to the level where we want it to be.

Finally, I kneel and pray that you pass and enact this Bill quickly.  
With those few remarks, I beg to move.

*(Question put and agreed to)*

*(The Bill was read a Second Time  
and committed to a Committee of the  
whole House today by leave of the House)*

### COMMITTEE OF THE WHOLE HOUSE

*(Order for Committee read)*

*[Mr. Deputy Speaker left the Chair]*

IN THE COMMITTEE

*[The Temporary Deputy Chairman  
(Mr. Imanyara) took the Chair]*

THE NATIONAL ACCORD  
AND RECONCILIATION BILL

**The Temporary Deputy Chairman** (Mr. Imanyara): Order, hon. Members! We [**The Temporary Deputy Chairman**] are now in the Committee of the whole House to facilitate scrutiny of the Bill. We shall go through it clause by clause.

*(Clause 2 agreed to)*

**Prof. Anyang'-Nyong'o:** On a point of order, Mr. Temporary Deputy Chairman, Sir.

**An hon. Member!** No amendment!

**Prof. Anyang'-Nyong'o:** No, Mr. Temporary Deputy Chairman, Sir! Please, do not preempt what I am going to say.

Mr. Temporary Deputy Chairman, Sir, I just want to draw the attention of the Attorney-General to an issue which affects the Bill as a whole. I am wondering at what point will the Attorney-General deal with it. I notice that we have this Bill, but we have no schedule of interpretations of certain key words or concepts in the Bill that would need interpretation in law. Usually, we have the first page saying: "Government means...", and so on. But it is not part of this Bill. I know that it is possible, in Government practice, that, that can be taken care of by the Attorney-General, subsequently. Could the Attorney-General reassure the House that, that can be done so that certain key concepts in the Bill have an interpretation at the beginning of the Bill, so that the people could know what they mean? I am just raising a concern. Maybe, the Attorney-

General could clarify the issue.

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, it is not all the Bills that have an interpretation clause. This is a unique Bill. It does not have an interpretation clause. But as I moved, I did inform hon. Members that the two principals, His Excellency the President and the Prime Minister-designate, negotiated this Bill. They wanted it passed the way it is. I am quite sure--- I am quite confident that if there is any interpretation to be done, the two will provide that interpretation. In other areas, the Interpretation and General Clauses Act will provide an interpretation. In other areas, maybe, the Political Parties Act will also provide an interpretation. The best interpretation will be to use this Bill together with the Interpretations and General Clauses Act, other Acts and what the two principal authors felt was the meaning of whatever they put here.

**The Temporary Deputy Chairman** (Mr. Imanyara): Prof. Anyang'-Nyong'o, are you satisfied?

**Prof. Anyang'-Nyong'o**: Mr. Temporary Deputy Chairman, Sir, I thank the Attorney-General. At least, I wanted it to go on record in the HANSARD, so that no mischief can be carried henceforth. That is because the Attorney-General has entered those words in the HANSARD. I think the nation will be satisfied with that.

Thank you, Mr. Temporary Deputy Chairman, Sir.

**The Member for Mbooni** (Mr. M. Kilonzo): Thank you, Mr. Temporary Deputy Chairman, Sir. I would like to draw the attention of the House to page 11, Clause 9. This is an extremely unusual situation.

I would like to urge the House to take account of the circumstances surrounding this Bill. You will find that in Clause 9, we have put in what we are calling an interpretation clause. Unusually for an Act of Parliament, we have gone on to re-produce the actual Accord between the principals.

So, I would like to beg and plead with the learned professor, please, accept the circumstances surrounding the drafting of this particular legislation and support the Attorney-General in what he has said. We could not, on our own, as a drafting team comprising of senior lawyers, attempt to amend that which had been signed by the President.

I support the wording of the Attorney-General and wish to persuade my good professor to accept them.

**The Temporary Deputy Chairman** (Mr. Imanyara): Mr. M. Kilonzo, he did accept that wording.

*(Clause 3 agreed to)*

*Clause 4*

**The Temporary Deputy Chairman** (Mr. Imanyara): Hon. Members, as you will have noted, there is an amendment proposed to Clause 4 by Mr. Baiya.

Mr. Baiya, do you still wish to move your proposed amendment to Clause 4?

**Mr. Baiya**: Mr. Temporary Deputy Chairman, Sir, I wish to withdraw the proposed amendment.

*(The proposed amendment withdrawn)*

*(Clauses 4, 5, 6, 7, 8  
and 9 agreed to)*

*(Schedule agreed to)*

*(Title agreed to)*

*(Clause 1 agreed to)*

*(The House resumed)*

*[Mr. Deputy Speaker in the Chair]*

*(Mr. Imanyara continued sitting at the  
Table consulting with the Clerks)*

**Mr. Deputy Speaker:** Mr. Imanyara, please, leave the Chair at the Table and sit somewhere else and then the Attorney-General can proceed.

*(Mr. Imanyara left the Chair at the  
Table and resumed his seat at the Benches)*

**The Vice-President and Minister for Home Affairs** (Mr. Kalonzo): Mr. Deputy Speaker, Sir, I think it is simple. Normally, the Chair of the Committee of the whole House reports progress. He should simply say that the Committee of the whole House has considered this matter, then the Attorney-General will move that the House agrees with the Committee in the report.

**Mr. Deputy Speaker:** Order, hon. Members! It is the Attorney-General first.

**An hon. Member:** No!

**Mr. Deputy Speaker:** Yes, that is the procedure. That is what we did last time. Go on, Mr. Raila!

**Mr. Raila:** Mr. Deputy Speaker, Sir, I think the procedure has been breached here. First, when the Temporary Deputy Chairman was still here, the Attorney-General should have come up and moved that the Committee of the whole House doth report its consideration of the Bill and its approval without amendment. Then the Temporary Deputy Chairman should have put the question that the Committee had considered the Bill and approved it without amendment. I think the procedure has been breached. Maybe, the best procedure would be for the Deputy Speaker to retreat, so that we can go through the right procedure.

*[Mr. Deputy Speaker left the Chair]*

#### IN THE COMMITTEE

*[The Temporary Deputy Chairman  
(Mr. Imanyara) took the Chair]*

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, we are now in order. I think it is me who moved a bit too fast.

Mr. Temporary Deputy Chairman, Sir, I beg to move that the Committee doth report to the House its consideration of the National Accord and Reconciliation Bill and its approval thereof without amendment.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*  
*[Mr. Deputy Speaker in the Chair]*

## REPORT AND THIRD READING

### THE NATIONAL ACCORD AND RECONCILIATION BILL

**Mr. Imanyara:** Mr. Deputy Speaker, Sir, I beg to report that a Committee of the whole House has considered the National Accord and Reconciliation Bill and approved the same without amendment.

**The Attorney-General** (Mr. Wako): Mr. Deputy Speaker, Sir, I beg to move that the House doth agree with the Committee in the said Report.

**The Minister for Education** (Prof. Ongeru) seconded.

*(Question proposed)*

*(Question put and agreed to)*

**The Attorney-General** (Mr. Wako): Mr. Deputy Speaker, Sir, I beg to move that The National Accord and Reconciliation Bill be now read the Third Time.

**The Minister for Education** (Prof. Ongeru) seconded.

*(Question proposed)*

**Mr. Musila:** Thank you, Mr. Deputy Speaker, Sir. Now that we have passed the National Accord and Reconciliation Bill, I think we owe ourselves some congratulations for taking very positive measures towards reconciling our nation. All I want to say this evening is that I am reminded--- This Tenth Parliament will go on record as having taken a bold step which will go a long way in returning this country to normalcy. I do hope that those who will be lucky to get responsibilities of leading Ministries will move with expediency to ensure that Kenyans live peacefully. We do not want to have a repeat of what we have gone through.

Mr. Deputy Speaker, Sir, I beg to support.

**Hon. Members:** Put the Question!

**Mr. Deputy Speaker:** Order, hon. Members! I am told that it is allowed under the tradition to accept also one hon. Member from the other side.

Yes, the hon. Member for Keiyo North!

**Mr. Chepkitony:** Thank you very much, Mr. Deputy Speaker, Sir, for giving me this opportunity.

Now that we have passed the two Bills, I hope hon. Members will be serious and committed. I hope they will also be sincere so that the healing process can start immediately. Let us cultivate mutual trust as Kenyans and move ahead.

I beg to support.

*(Question put and agreed to)*



*(The Bill was accordingly read  
the Third Time and passed)*

**ADJOURNMENT**

**Mr. Deputy Speaker:** Hon. Members, it is now time for the interruption of business. The House is, therefore, adjourned until tomorrow, Wednesday, 19th March, 2008, at 9.00 a.m.

The House rose at 8.45 p.m.