

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

### Tenth Parliament – Fourth Session

*(Tenth Parliament established by Proclamation –  
Legal Notice No.15 of 3<sup>rd</sup> February, 2010)*

**Tuesday, 23<sup>rd</sup> February, 2010**

### STATE OPENING OF A NEW SESSION

*The National Assembly met at Three o'clock at  
Parliament Buildings on 23<sup>rd</sup> February, 2010, it  
being the first day of the Fourth Session*

### ARRIVAL OF HIS EXCELLENCY THE PRESIDENT

*[His Excellency the President (Mr. Mwai Kibaki) escorted  
by the Speaker and accompanied by the Mace of the  
National Assembly entered the Chamber  
at ten minutes past Three o'clock]*

*(Hon. Members rose in their places while  
His Excellency the President took his seat in the Chair of State)*

*(The Mace of the National Assembly was placed on the Table)*

### PRAYERS

**Mr. Speaker:** Order, hon. Members! It is now time for us to be led in prayer by our Spiritual Leaders.

*(Prayers were then said by the following: The Most Rev. (Dr.)  
Archbishop Eliud Wabukala; Fr. Vincent Wambugu;  
The Rt. Rev. (Dr.) David Ritho Gathanju; Sheikh Hammad Kassim,  
the Chief Kadhi and Mr. Siopin Lekoolool)*

### COMMUNICATION FROM THE CHAIR

#### WELCOME TO HIS EXCELLENCY THE PRESIDENT

**Mr. Speaker:** Your Excellency the President and Commander-in-Chief of the Armed Forces of the Republic of Kenya, Honourable Members, distinguished guests, ladies and gentlemen, it is with great pleasure and honour that, on behalf of the entire

membership of the House, I welcome you to the State Opening of the Fourth Session of the Tenth Parliament today.

Your Excellency, this day is specially set aside by practice, tradition and custom at your disposal to pronounce to the nation the Government's legislative agenda during the on-coming Session. I wish, however, advisedly, to make use of this unique and important opportunity to say a few things about the Legislature and the Parliamentary Service Commission.

To begin with, I thank Your Excellency for your generous and unflinching support you have personally given to the Parliamentary Service Commission over the years, including officially launching the Commission's Strategic Plan for the period 2008-2018 on 13<sup>th</sup> February last year at the Safari Park Hotel.

The Strategic Plan summarizes the reforms the Commission intends to carry out in the Legislative arm of Government so that our people can have a Parliament that is empowered to make laws that will anchor and promote good governance and assist the country to attain Vision 2030. We live in a fast-changing world such that Parliament is obligated to enact laws that enable it keep abreast with adequate capacity to discharge its constitutional mandate effectively and remain relevant in step with the citizenry responsive to the latter's concerns and tribulations.

The Parliamentary Service Commission is committed to ensuring that Parliament remains a public watchdog with teeth to bite any public servant unwilling to conduct public affairs in accordance with the law.

In particular, Agenda Four of the National Accord has specific targets which the National Assembly is expected to actualize. These include electronic voting and live television and radio broadcasts of the proceedings of the House and its Committees. I am happy to report that we have had the necessary financial and technical support from the Government to carry out extensive renovation of the Chamber to facilitate the smooth installation of the requisite equipment to make this happen. The renovation works will soon commence and the sittings of the House will shift to the old Chamber which is much smaller than where we are. The renovation is expected to last roughly one year and I plead that Honourable Members gracefully bear some inconveniences that are unavoidable in a project of this nature.

It is worthy of mention and significant for the House and, indeed, the whole country, to note that when the Commission was first established in 2000, Your Excellency was among the first ten Commissioners. Your pioneering role in the Commission was instructive in laying the firm foundation that I and my colleagues, ten Commissioners, found when I became the Chairman two years ago. We are proud of your indelible role in pioneering execution of the Commission's mandate. This, to me, explains why the Parliamentary Service Commission and the Executive arm of the Government have largely read from the same script with respect to the implementation of projects since you ascended to the leadership of this country. We commend you, Your Excellency, for the warm understanding and close co-operation that we have enjoyed with your Government.

Although *prima facie* the House would seem to have passed fewer Bills during the Third Session than it did in the 2<sup>nd</sup> Session, the House was instrumental in consolidating our nationhood and cohesion by jump-starting the operations of the various Commissions to commence and carry out their specific mandates either contained in

Agenda Four of the National Accord or under the general reform measures the Government has undertaken to institute. The House, inter alia, approved membership of the following Commissions on the dates indicated:-

<u>Commission/Committee/Tribunal</u>	<u>Date</u>
1. Committee of Experts	4/2/2009
2. Interim Independent Electoral Commission	30/4/2009
3. Interim Independent Boundaries Review Commission	7/5/2009
4. National Cohesion and Integration Commission	12/5/2009
5. Truth, Justice and Reconciliation Commission	28/5/2009
6. Political Parties Disputes Tribunal	01/9/2009
7. Interim Independent Constitutional Dispute Resolution Court	24/11/2009

Beyond the foregoing, Parliament, commendably, through its bipartisan Parliamentary Select Committee, rose to the occasion and the national challenge of the time when the Committee of Experts on the Constitutional reform handed over its report to it. Pursuant to the provisions of the Constitution of Kenya Review Act, the Committee went into a retreat in Naivasha and, against all possible cynicism, put Kenya first and came up with an agreed position and produced a unanimous, if not improved, Harmonized Draft Constitution.

*(Applause)*

The jury is still out on whether or not they did well, but as at where we are, felicitation is in order and deserving.

Kenyans yearn for reforms because they love their country. They want peace in the hope and expectation that their aspirations for development, good governance and better life would be realised in their lifetime, and that they will in turn bequeath these to their children and children's children and on to prosperity. Kenyans have for many years hosted refugees at immense sacrifice and are, therefore, disenchanted with the continued presence of IDPs in their midst. We must do all what it takes to reverse this enigma, with us. Hon. Members in the forefront, to bring about the necessary if not essential reforms to deliver this. This country is ready to move forward. What our people expect of us, especially as their elected representatives sitting in this House, is leadership. I emphasize "leadership". Our people would like to see the leadership of this country stand firm in defending our national values as enshrined in our National Anthem which the spiritual leaders have very ably recited parts of this afternoon. The people of Kenya have accorded us the privilege to be their elected representatives so that we subscribe to and uphold their dignity.

Your Excellency, at this juncture, I would like to appeal to Members to approach debate on the new Constitution with full sobriety. We have no reason, nay business, to call each other names merely because of a difference in opinion or stand on a given article or clause in the Harmonized Draft Constitution. We shall stand accused of confusing the public or worse still, of sowing seeds of discord, disharmony and animosity among our people.

In constitution-making, Parliament is comparable to the Court of Appeal because the final draft that will go to the public for adoption through a referendum will be approved by this House. A Court of Appeal does not begin to consider a case until it is seized of it. It is in this House that it matters. We must all stop antics and shadow-boxing at all manner of fora including pre-wedding parties. Men and women of substance must and will be heard here; where it counts. The changes all of us would like to see in the Harmonized Draft should be subjected to mature debate.

Hon. Members would do a great job for this country if they spent most of their time listening to what the people are saying instead of advocating to the public what they want removed from the draft, *et cetera*. For my parting shot on this subject, I quote from an eminent 18<sup>th</sup> Century American lawyer:-

“The Constitution is not an instrument for the government to restrain the people; it is an instrument for the people to restrain the government.”

Your Excellency, every politician – all hon. Members are politicians – has an ambition to capture state power through the electoral process and form or be part of the Government. The people of Kenya expect us, hon. Members, to give them a Constitution that will restrain the Government from unnecessarily interfering in their affairs, and not restrain them from prying into the affairs of the Government. The new Constitution we must have will be measured against this primary benchmark.

This far, I may sound idealistic but I must confess that I am a dreamer, awake to the reality that Government is the greatest reflection of human nature and that men and women, of whom politicians are part, are not angels for if they were, no government would be necessary. Our focus, therefore, has to be, to give it our all so that Kenyans have premier leadership.

Your Excellency, you are the longest serving hon. Member of this House and with that unique unparalleled tenure, you have direct personal knowledge, skills and experience on parliamentary procedures and diplomacy. In the year 2006, the National Assembly successfully hosted the 114<sup>th</sup> Inter-Parliamentary Union (IPU) meeting in Nairobi. The Government played an indispensable role in ensuring that the meeting was a resounding success.

During my tour at international parliamentary meetings, I have met several delegates who came to Nairobi for the IPU meeting in 2006. They still cherish fond and fresh memories of Kenya and its people, whom they say are warm, friendly and kind. Once again, in the month of September this year, we are going to host the 56<sup>th</sup> Commonwealth Parliamentary Association Plenary (CPA-P) meeting here in Nairobi.

The Government has already assisted the National Assembly in several ways to ensure the successful hosting of the Commonwealth Parliamentary Association meeting. We shall, Your Excellency, keep you posted, as the presiding patron of the CPA, on the progress towards the meeting since your personal experience and advice on all these is peerless. And we value it. As a country, we must live up to our reputation to always go for the best, if not emerging the best

Your Excellency, it is now my honour and proud privilege, with all the humility I can command, to invite you to make your Speech.

(Applause)

**His Excellency the President** (Mr. Mwai Kibaki): Mr. Speaker, Sir, it is my pleasure to welcome hon. Members to the Fourth Session of the Tenth Parliament after a two month recess. I am sure that this well-deserved recess gave you time to replenish your energy, consult with your constituents and support development activities in your constituencies.

This House is reconvening at a particularly important time in which we are steadily overcoming the challenges we have faced in the recent past. It is also a time when we are implementing bold reform measures that will define the future of our country and people. This is, therefore, a critical time that demands our selfless and dedicated service to our people.

Furthermore, it is a time when the future of our country so much depends on our ability to forge a common vision for national unity, development and cohesion. God bequeathed us a beautiful country with determined and patriotic people. We should, therefore, always cherish and protect our nation as enumerated in our National Anthem: *“firm may we stand to defend.”*

Mr. Speaker, Sir, as hon. Members will recall, our country has sought to obtain a new Constitution for the last two decades without success, but now we seem very close to this goal. During the just ended recess, the Parliamentary Select Committee (PSC) on the constitutional review process did this House and the nation proud, following their consensus after two weeks of deliberations in Naivasha. On behalf of all Kenyans and this House, I take this opportunity to commend the Select Committee for a job well done.

*(Applause)*

I also welcome the progress made by the Committee of Experts on Constitutional Review. We are looking forward to the presentation of a consensus Draft Constitution to this august House by the PSC in the next few days. This Tenth Parliament has a historic opportunity to rise to the occasion by passing a new Constitution for the Republic of Kenya. We must be successful in this endeavour at this defining moment in our nation's history. I, therefore, urge hon. Members to uphold the spirit shown by the PSC in Naivasha. It is upon this House to maintain a national consensus on the New Constitution and thus ensure that the people of Kenya stand united during the referendum to be held later this year.

Mr. Speaker, Sir, the national concern over corruption has been on top of the national debate for many years now. We have put in place institutions and enacted laws aimed at eradicating corruption in our country. Corruption undermines Government policies and distorts allocation of public resources. It gives our country a poor image and discourages investment. We, the Grand Coalition Government, have resolved to deal with the matter decisively. I am calling on the august House to work with the Government in this endeavour. In order to win this war, we must apply the law in a manner that is impartial and just. We must also not politicise or personalise the fight against corruption.

*(Applause)*

Mr. Speaker, Sir, in the last few months we have intensified the war against corruption. This momentum will be accelerated to cover all vulnerable sectors of the

Government. In this regard, all anti-corruption agencies should fast-track and conclude pending corruption cases. All anti-corruption agencies have also been directed to enhance preventive measures. Secondly, we will enhance the investigative and prosecution capacity of the respective agencies. Thirdly, the Judiciary should also speed up the court process because speedy conclusion of corruption-related cases is a key pillar in this fight.

The Government will provide adequate resources to improve the capacity of these institutions to speed up the processes. The public service has been directed to apply the law and regulations firmly and impartially. The Government is also consulting with the Judiciary on ways of placing a time-frame on the period within which a corruption-related case should be concluded.

Mr. Speaker, Sir, I now turn to the matter of national cohesion. Hon. Members will be aware that nearly two years after signing the National Accord, we have made substantial progress in managing our diversity as a country. We now have a National Cohesion and Integration Commission and a new law that prescribes tough penalties for those promoting hate, hate speeches and ethnic tendencies. I call on Members to make national cohesion a main agenda for this Fourth Session and the remaining two Sessions of the Tenth Parliament.

I encourage all Members of this august House to lead by example. All Kenyans are looking upon us to champion an uplifting agenda. They are looking upon us to lead them as a united and patriotic people of this country. Kenyans should trust the leadership of the country and abandon the temptation to look externally for solutions that can easily be found locally.

*(Applause)*

Kenya belongs to all of us. We should be in a caring and working nation. In that regard, we should spend more of our time discussing ideas and programmes that create jobs and opportunities for our youth. These ideas should uplift the standards of living of our people. We need to squarely confront poverty which is so prevalent amongst our people. The best thing we can do is to invest in the education of our children and unleash the potential and productive capacities of our people. Let us have mixed delegations of Members of this House reaching out to the people with one message of unity for all Kenyans.

*(Applause)*

Although we come from diverse origins, we are one people. We are one family. Let us strive to ensure that every Kenyan is treated with respect and has the opportunity to live a dignified life wherever they choose to settle. Never shall we fight one another again.

Mr. Speaker, Sir, on the economy, hon. Members will appreciate that economic growth and shared prosperity will go a long way in creating the much needed opportunities for our people. It will be recalled that in 2007, we recorded Domestic Gross Product (GDP) growth rate of 7.1 per cent. This was the highest growth rate in three decades. In 2008, due to the unfortunate events in our country as well as on the global arena, the economy grew by only 1.7 per cent. Last year, the recovery in tourism and

some key sectors mitigated effects of the severe drought that caused food, water and energy shortages. As a result, the economy grew at 2.5 per cent. This year, we are optimistic that the forecast 4.5 per cent growth rate will be achieved.

However, to experience real growth and success in the war against poverty, we must get our act together on two fronts. First, our politics must promote political stability and public confidence in the future of our country.

Secondly, we must take policy initiatives that will reduce and maintain low interest rates. This will enable Kenyans access affordable credit for investment in wealth creation and expansion of employment opportunities. In this regard, I wish to thank the Kenyan people for heeding my call to engage in increased production.

In particular, I note that dairy farmers have tremendously increased milk production. I commend them for their hard work. I assure them of continued Government support that began with the revival of the Kenya Co-operative Creameries (KCC).

The challenges we are facing now of excess milk calls for diversification of our dairy products and markets. The Government is encouraging the industry to take up this challenge. At the same time, we have instructed the Ministries of Special Programmes, Livestock Development and Co-operative Development and Marketing to incorporate powder milk into the national food security reserves.

Mr. Speaker, Sir, before I outline this Session's legislative and policy agenda, I wish to express my appreciation to the House for the Bills passed in the Third Session of the Tenth Parliament. The laws addressed several policy concerns. For instance, the Proceeds of Crime and Anti-Money Laundering Act will go a long way in reducing the emerging organised crime in our country. Some of the laws passed in the last Session include:-

1. The National Youth Council Act;
2. The Arbitration (Amendment) Act;
3. The Office of Minister Act;
4. The Statute Law (Miscellaneous Amendments) Act;
5. The Supplementary Appropriation Act;
6. The Appropriation Act; and,
7. The Finance Act.

I thank hon. Members for their contributions during the last Session.

During this Session, the Government will be tabling a wide range of Bills, including those which will arise out of the new constitution. In the sector of law enforcement and administration of justice, the Government will be tabling a number of Bills.

With regard to police reforms, this House and the Kenyan people have been urging for reforms of the police. The Government is responding to these concerns by presenting two Bills namely; one, the Independent Policing Oversight Commission Bill and two, the Police Reforms Bill. The proposed laws are expected to improve police accountability and enhance the public image of the police as servants of the people.

Public concerns have also been constantly raised on the need to improve efficiency and integrity of our judicial system. The Government will, therefore, re-introduce the Judicial Service Bill, which will entrench the independence of the judiciary and make it more effective in the administration of justice. This will also enable the Judiciary to recruit judges and magistrates more efficiently. It will also lead to the

required numbers to cope with the national case load. There should be no reason why at this point of our development, Kenya should not have enough judges and magistrates.

Indeed, an efficient and effective judiciary will be the cornerstone of a revived economy as well as creating confidence in the justice system. One of the key elements in fighting crime is the effective protection of whistle blowers and witnesses. To this end, the Government will soon table amendments to the Witness Protection Act. The aim is to establish an autonomous witness protection agency that is capable of effectively protecting any witnesses to corruption, organised crime and international crimes from reprisals. It will also cover witnesses who have crucial information in regard to the post-election violence that rocked our country.

Mr. Speaker, Sir, in regard to reforms in our electoral system, we are all agreed on the urgent need to put in place a credible and efficient system. This is the best way of ensuring that the public have confidence in the final outcome of our elections.

The Government will table before this House the Elections Bill which will consolidate all election laws in Kenya. This will prevent malpractices in general elections as well as provide the procedures for conducting referendums. Similarly, the Government proposes to table the Local Government Bill, with the principal objective of repealing the current Local Government Act. The Bill will provide for a legal framework, that will enhance accountable and effective management at the local Government level. It will provide for the direct election of mayors and deputy mayors of city and municipal councils. Direct elections will also be held for chairpersons and deputy chairpersons of county councils. The Bill also provides for reorganisation of local authorities and the establishment of metropolitan councils.

Mr. Speaker, Sir, Vision 2030 seeks to transform Kenya into a competitive and prosperous middle income economy. In order to achieve this goal, we must change the way we carry on business in our country. We must provide an enabling legal framework to make Kenya more competitive for business and investment. The Government will, therefore, table several business-friendly Bills in this Session. The current outdated Companies Act will be replaced by the proposed Companies Bill.

The Bill will seek to amend and simplify the law relating to the companies. The Bill will be accompanied by the Partnership Bill and the Limited Liability Partnership Bill. The Government will also table the Insolvency Bill to replace the Bankruptcy Act and streamline procedures in bankruptcy and insolvency law. The Bill will also provide for the rehabilitation of the insolvent debtor, unlike the present situation where insolvency almost always results in liquidation.

Mr. Speaker, Sir, other business related Bills that will be tabled during this Session include:-

1. The Kenya Deposit Insurance Bill
2. The Nairobi Stock Exchange Bill to review the ownership of the Exchange
3. The Tourism Bill
4. The National Housing Bill; and,
5. The Special Economic Zones Bill

The year 2010 will be a momentous year for our region. Last year, Kenya, together with its partner States in the East African Community, signed the Common Market Protocol that is set to take effect in July this year. As a result, there will be no duty charged on the goods originating from within the community. Later this year, other

elements of the protocol such as the free movement of persons will also take effect. These developments are of enormous economic importance for our country. Given the sustained high economic growth rates enjoyed by the regional economies, we must place ourselves strategically to supply the region with such needed goods and services. In this regard, the Government has proposed several policies and projects, some of which will be tabled before this House. We shall be tabling the Special Economic Zones Bill and Sessional Paper, both of which will seek to transform Kenya into a regional hub. I appeal to hon. Members to educate Kenyans on the opportunities that are being offered by the East African Community. We shall also be presenting to this House financing approvals for new infrastructure projects and other national investment projects, including; one, standard gauge railway to Uganda border; two, free port at Dongo Kundu and the new transport corridor in Northern Kenya which incorporates Lamu-Port-Southern-Sudan-Ethiopia Transport and Development Corridor.

*(Applause)*

Mr. Speaker, Sir, all the business and economy related Bills, policies and projects that I have mentioned are important. They are critical to reducing poverty, achieving equitable development throughout the country and creating numerous jobs and decent income for our youth. I, therefore, urge the House to give them priority in their discussion and passage during this Session.

As we commence the Fourth Session of the Tenth Parliament, I appeal to hon. Members to shun divisive partisan politics and focus on greater good of our country. Whatever differences that may arise between us, should be amicably resolved in national interest.

*(Applause)*

In conclusion, may I note that in my nearly half a century as a legislator, there has not been a Session of Parliament with the potential to bring as much positive change to Kenya as this one. Hon. Members, I have confidence that this House is up to the task and that it will fulfill its national duty and secure a memorable place in history. It is, therefore, my pleasure to declare the Fourth Session of the Tenth Parliament, officially opened.

Thank you very much!

*(Applause)*

### **PAPER LAID**

The following Paper was laid on the Table:-

The Presidential Statement on Exposition of Public Policy

*(By Mr. Midiwo)*

**NOTICE OF MOTION**

## THANKS FOR PRESIDENTIAL ADDRESS

**Mr. Thuo:** Mr. Speaker, Sir, I beg to give notice of the following Motion:-

THAT, the thanks of this House be recorded for the exposition of public policy contained in His Excellency's Presidential Address from the Chair on 23<sup>rd</sup> February, 2010.

**DEPARTURE OF HIS EXCELLENCY THE PRESIDENT**

**Mr. Speaker:** Hon. Members, His Excellency the President will shortly leave at his pleasure. I will request all hon. Members to be upstanding until after His Excellency the President has left, followed by our Judges of the Court of Appeal, the High Court and spiritual leaders. All hon. Members as well as guests are subsequently invited for refreshments at Parliament Gardens.

*(Hon. Members rose in their places while His Excellency the President left the Chamber)*

**ADJOURNMENT**

**Mr. Speaker:** Hon. Members, it is now time to adjourn the business of the House. The House, therefore, stands adjourned until tomorrow, Wednesday, 24<sup>nd</sup> February, 2010 at 9.00 a.m.

The House rose at 4.10 p.m.