

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Tuesday, 3rd June, 2014

*The Senate met at County Hall,
Parliament Buildings, at 2.30 p.m.*

[The Speaker (Hon. Ethuro) in the Chair]

PRAYERS

POINT OF ORDER

ABSENCE OF SENATORS ON THE GOVERNMENT SIDE

Sen. Abdirahman: On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): What is it, Sen. Abdirahman?

Sen. Abdirahman: This is an afternoon that we have resumed this very important sitting and we observe with great seriousness that the benches on the Jubilee side are almost empty and I think business in this House precedes all other business including those of parties. I think it is important as a tradition of this House to respect the timing and business of the House. That is an observation from our side and it is good to take great exception on that.

Sen. Murungi: On a point of order, Mr. Speaker, Sir. From where you sit, you are supposed to be blind as to the membership of our political parties. We are here as Senators and the Senate is properly constituted because it has a quorum and we can proceed.

The Speaker (Hon. Ethuro): Order, Senators. I do not know to what extent I am expected to be blind. I am only supposed to be blind in terms of instigating it but once a Member has brought it to my attention, I, definitely, acquire eyes and see. So to the extent that the numbers are limited on the other side, that is true. In fact, when I was bowing to my right hand side, I was almost wondering whether I should do it or not. As to what the Chair can do about it, I am afraid, Sen. Abdirahman, there is not much I can do. The Chair is only interested that we have a quorum when we are transacting business and you never raised the issue of quorum. So, I presume that you are satisfied that your side has the requisite quorum for us to proceed with business. I think you should not be

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worried because if you are the majority, then whatever business in the House will be according to your side.

Sen. Abdirahman: Thank you very much, Mr. Speaker, Sir. We just wanted it as an observation and you can realize how committed our team is towards the business of this House.

The Speaker (Hon. Ethuro): Let us proceed.

MESSAGE FROM THE NATIONAL ASSEMBLY

CONCURRENCE OF THE SENATE ON THE PUBLIC PROCUREMENT AND DISPOSAL (AMENDMENT) BILL

The Speaker (Hon. Ethuro): Hon. Senators, I have a message to make but before I do so, I wish to welcome everybody from recess and I hope we will have a great time for this period.

I wish to report to the Senate that pursuant to Standing Order No.40(3) and (5) of the Senate Standing Orders, I received the following Message from the Speaker of the National Assembly on 5th May, 2014 regarding the approval by the Assembly of the Public Procurement and Disposal (amendment) Bill, National Assembly Bill No.31 (2013) with amendments. I quote:-

“Pursuant to the provision of Standing Order No.142 of the National Assembly Standing Orders, I hereby convey the following Message from the National Assembly that the Public Procurement and Disposal (Amendment) Bill, National Assembly Bill, No.31 of 2013 which was published in the Kenya Gazette Supplement No.31 of 18th October, 2013 and was passed by the National Assembly on Thursday, 24th April, 2014 in the form attached hereto and further that the National Assembly now seeks the concurrence of the Senate to the said Bill as passed by the National Assembly.”

Hon. Senators, you will notice that this message was received while the Senate was in recess and vide my letter reference Sen/Messages/Correspondence/2014/3 dated 8th May, 2014, I circulated the message to all hon. Senators, I now, therefore, direct that the Bill be read a First Time tomorrow.

Thank you.

PAPER LAID

REPORT OF THE SPECIAL COMMITTEE ON THE PROPOSED REMOVAL FROM OFFICE OF THE GOVERNOR FOR KERICHO COUNTY

Sen. Obure: Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the House.

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The Report of the Special Committee on the proposed removal from office of the Governor of Kericho County.

(Sen. Obure laid the document on the Table)

COMMUNICATION FROM THE CHAIR

PROCEDURE OF ADOPTING REPORT OF THE SPECIAL COMMITTEE ON THE PROPOSED REMOVAL FROM OFFICE OF THE GOVERNOR FOR KERICHO COUNTY

The Speaker (Hon. Ethuro): Hon. Members, after the Paper has been laid, I would like to give further directions on how we will proceed from now.

As you are aware, this is not the first time the Senate is conducting a business of this nature. We shall therefore proceed along similar lines as we have done in the past when Senators receive a similar special committee report. As in the earlier cases, the Chairperson of the Special Committee will lay the Report of the Committee first, which he has done, after which Senators will have time to peruse it. The Report will, therefore, not be debated immediately. The House will adjourn for one hour in order to allow Senators to go through the Report. We shall proceed in this manner because at the point at which the Report has been laid is not known to the House which of the two procedures provided by Section 33(6) of the County Governments Act and Standing Order No.68 (4) will be applied. The contents of the Report will determine that.

Just to refresh your memories, both Section 33(6) of the County Governments Act and Standing Order No.68 (4) provide as follows:-

If the Special Committee reports any particulars of the allegations against the Governor have not been substantiated, further proceedings shall not be taken under this section in respect of that allegation or;

If it has been substantiated, the Senate shall, after according the Governor an opportunity to be heard, vote on the impeachment charges. I hope the Clerk can confirm that the Governor is in the building. I think he has confirmed.

Consequently, after hon. Senators have had an opportunity of perusing the report of the Special Committee and its finding thereof, a Notice of Motion will be given and later a Motion moved on the Report which will be listed in a Supplementary Order which will be circulated shortly. As in earlier instances, if the Special Committee reports that any particulars of the allegations have been substantiated, the Senate will vote on each of the impeachment charges after according the Governor the opportunity to be heard.

Hon. Senators, I wish to inform you that if the Governor chooses to exercise his right to appear and be heard by the Senate, he will be heard here either by himself or his advocate in total silence and his speech shall not be followed by any question or

comment. The Senate shall therefore proceed to vote on each allegation found to have been substantiated.

I want to thank you and also adjourn the House for one hour.

(The Senate temporarily adjourned for one hour at 2.50 p.m.)

*(The Senate resumed its sitting at County Hall,
Parliament Buildings at 4.20 p.m.)*

[The Speaker (Hon. Ethuro) in the Chair]

PRAYERS

COMMUNICATION FROM THE CHAIR

REPORT OF THE SPECIAL COMMITTEE ON THE PROPOSED REMOVAL FROM OFFICE OF THE GOVERNOR OF KERICHO COUNTY

The Speaker (Hon. Ethuro): Hon. Senators, I have a communication to make to that effect. Having seen the Report of the Special Committee, it is clear that the House shall apply the provisions of Section 33 (6) (a) of the County Governments Act and Standing Order No.68 (4) (a) as it is the finding of the Special Committee that the allegations have not been substantiated.

In these circumstances, under the County Governments Act and our own Standing Orders, we are not permitted to take any further proceedings in respect of the allegations made.

However, owing to the importance of the task that this House vested in the Special Committee and to the overwhelming public interest in this matter, I will allow the Chairperson of the Special Committee to make a few remarks in respect of the assignment his Committee undertook on the instructions of the House. I would thereafter also permit a few interventions of a general nature on the Report, which comments cannot go to the merits or demerits of the findings of the Special Committee.

Sen. Obure, you have not more than 30 minutes.

Sen. Khaniri: On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): What is it, Sen. Khaniri? Order, Sen. Khaniri!

Sen. Khaniri: Mr. Speaker, Sir, had you given me the Floor?

The Speaker (Hon. Ethuro): Yes, I had given you the Floor but I have also stopped you because I need to make this point while I appreciate that maybe you have something burning. A point of order also deals with procedures and you cannot interrupt the Chair when he is communicating.

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Proceed, Sen. Khaniri!

Sen. Khaniri: My apologies, Mr. Speaker, Sir. I rise under the same Standing Order that you cited in your speech; that is the Standing Order that deals with the procedure of removal of a Governor; that is Standing Order No. 68(4) (a). This Standing Order states that if the Special Committee reports that the particulars of any allegation against the Governor have not been substantiated, further proceedings shall not – I want us to mark this because we may be setting a very bad precedence – be taken under this section in respect of the allegations. I think as a House, we are known by the country to follow the rule of law, to adhere to the Constitution and the Standing Orders that guide us in our debate.

The provision here is very clear, I may not be a lawyer but I know that the words “shall not” means it is compulsory or mandatory. It does not say “may”. If it said “may”, then the Speaker would have applied the provisions of Standing Order No.1 to allow us to debate, but the Standing Orders are very clear; it says, “shall not”. I think we are contravening our own Standing Orders and if we continue this way, we are setting a very bad precedence.

Sen. (Dr.) Khalwale: On a point of order, Mr. Speaker, Sir. I rise under Standing Order No.1 (i). Allow me to read it:-

“In all cases where the matters are not expressly provided for by these Standing Orders or by the Standing Orders of the Senate, any procedural question shall be decided by the Speaker”.

Mr. Speaker, Sir, why I am citing this particular Standing Order is because of what you have directed; that you allow the House to ventilate to an extent. There would be no reason why you cannot do that, but I want to urge the Chair, that for the respect of the rule of law, for you to restrain yourself because Standing Order No.1 (i) is only asking you to proceed the way you are proceeding if it is not provided for but this is provided for under Standing Order No.68 (4). If then you choose to proceed that way, which Motion on the Order Paper has been tabled that then you want us to debate? On the Order Paper which is right here, there is no Motion for which Notice of Motion has been given and there is no Motion further, which provides that after that notice, that Motion be debated. However exciting and important this matter is, the Standing Orders will ask the Republic and the public to read the Report because it is now a public Report. We cannot debate it in this House.

I beg that you reverse your order.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, I thank you. I have listened to the point of order by the Senator for Vihiga, Sen. Khaniri, supported by the Senator for Kakamega, Sen. (Dr.) Khalwale, and I beg to differ. The purpose of the Standing Orders is not to tie this House from doing what the Constitution in the law asks us to do. I do not even think we have to go to Standing Order No.1. My own understanding of Standing order No.68 (4)(a) is that if the Committee so established finds that none of the charges have been substantiated, further proceedings shall not be

taken under this section in respect of that allegation. Proceeding means that you cannot go Standing Order No.68(4) and start voting. It simply states “no further proceedings”. Secondly, it is proceedings about the allegations. So, you cannot say that once the Committee comes here and gives us a report, you cannot say anything or make any comments because these are matters of general public interest. I think a narrow interpretation of these Standing Orders will make us just a debating chamber and not a House of general public utility as we are supposed to be. I beg to differ.

Sen. (Dr.) Khalwale: On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): Order, Sen. (Dr.) Khalwale! You do not have to demonstrate any expressions. The Chair will give you as much opportunity as you have just been given, to say whatever you wish to tell the House.

Sen. Murkomen: Mr. Speaker, Sir, my reading of Section 33 of the County Governments Act and Standing Order No.68 is exactly what the Senate Majority Leader has said, that the proceedings being contemplated in Section 33 and Standing Order No.68 is the proceedings against the Governor.

My understanding is that there are so many reports that are done by this House, some of which are debated for purposes of noting, like the Presidential Speech and there are others that are done for the purpose of taking action. I believe that when Section 33 talked about no further proceedings ensuing, it is in regard to what to do to the Governor as a person. We are not going to reverse the Report and we are not going to add anything to the Report. What we need to do here is basically to note and to appreciate so that for the record we know that this is what the Senate has done. So, I think that is my understanding about what exactly Section 33 of the County Governments Act is saying.

The Speaker (Hon. Ethuro): Yes, Sen. (Dr.) Khalwale.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir. I am rising on this point of order in order to clarify further what I meant in view of the understanding by Sen. (Prof.) Kindiki. This is where experience comes in. This country remembers that after the elections of 2007, during the swearing, it became extremely difficult for us to move either forward, backwards or sideways. What saved the House on that day – you were there – was Standing Order No.1 (ii) which then referred, as you will remember, to the traditions and usages and so on. It saved the situation and the swearing-in was able to take place that day. To allow the point of order by Sen. (Prof.) Kindiki to pass, that we are not tied by these Standing Orders, it is to open the possibility that we shall never create a tradition or usages in this House.

Professorial as he is, I beg him only for today to acknowledge that he has no experience whatsoever on how Standing Orders can save a national crisis. We must treat these Standing Orders just in the same way you treat any other statute on the shelves that you teach students. I beg that you find him out of order.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, I depart from the point of order raised by Sen. (Prof.) Kindiki that we are not bound because we are bound and that is for sure. But my two distinguished colleagues, my “kid brother”, Sen.

Khaniri and the “bull fighter”, the distinguished Senator for Kakamega are interpreting Standing Order No.68 (4) (a)---

Sen. Murungi: On a point of order, Mr. Speaker, Sir.

The Senate Minority Leader (Sen. Wetangula): I am on a point of order.

Sen. Murungi: I know.

The Speaker (Hon. Ethuro): Order! There are various types of points of order. What is it, Sen. Murungi?

Sen. Murungi: Mr. Speaker, Sir, we know that the distinguished Senator for Bungoma is the Leader of the Minority in this House, but is he in order to belittle the Senator for Vihiga by calling him a “kid brother”?

The Senator Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, the distinguished Senators of Vihiga and Kakamega have not complained and they really appreciate that I am a big brother figure to Sen. Khaniri. He is my kid brother and I do not think there is anything offensive about that.

The two Senators are putting a very narrow interpretation of Standing Order No.68 (4) (a). A broad interpretation of the Standing Order will tell us and inform us that further proceedings shall not be taken under this section. This means that we cannot now call the Governor and his lawyer to stand there and defend themselves against any of the allegations which the Committee has determined. But this House has the right, apart from noting the Report and approving it, we also have the right to make comments of a general nature in our duty as the protectors and defenders of devolution including Governors and counties and in the manner in which we perceive and understand the proceedings that came to this House. Without going to the merits, the matter is closed, it is *fait accompli* and we cannot now start saying whether Governor Chepkwony flouted the Constitution or not, the Committee has said that he did not. We cannot say whether he flouted procedural issues on procurement or not, the Committee has said that he did not. But we have a duty to make comments like you have directed on how this matter and what our duty is and so on and so forth. I can assure you that some of us have issues that we want to raise about not the conduct of that Governor or the Committee but some of these Members in relation to this matter and you must allow us to do so.

Sen. Orengo: Mr. Speaker, Sir, I also rise to take the position taken by the Senate Majority Leader and the Senate Minority Leader. The reason why we are in this quagmire is because of the selective reading of the provisions of the law. If you read Section 33 of the County Governments Act in its entirety, then the word “proceedings” makes sense, but if you refer to the word “proceedings” in the Standing Orders in isolation to the word “proceedings” as used in Section 33, then you end up into in a lot of trouble. For example, Section 33 (1) (ii) (b) says:-

“The Governor shall continue to perform the functions of the office pending the outcome of the proceedings required by these sections”.

So, the proceedings that are contemplated are proceedings under Section 33. It is not any proceedings before the House. This is so because if you look at the provisions of

Section 33, it spells out what the proceedings are. After the charges have been substantiated, there are several proceedings that are required to take place under the law. For example, the Governor must be given an opportunity to be heard. That is part of the proceedings. The charges are supposed to be read out. Those are the proceedings that are contemplated under this section. Any other thing that comes before the House like the communication from the Chair by the Speaker is not part of the proceedings under Section 33. If you were contemplating that the communication from the Chair is part of the proceedings, then you are reading the wrong provisions of the Standing Orders. So, what this means is that as we stand here, there are no charges, there is no accused person and there is no person who is being impeached. Indeed, the impeachment proceedings are no more. They are over.

It would be very wrong on any matter before a House of Parliament, that you can completely gag the House and say that you cannot refer to it in any other way which is allowed by the Standing Orders. For example, if I found that there were a lot of typographical errors in the Report, which means that the Report does not make any sense, I have to point out and say, yes, it is not about the proceedings, but I am just looking at the Report which is laid before the House. Otherwise, the Chairperson would not have brought the Report in the House. He could have told the Speaker through some other message like the way the Speaker of the National Assembly writes to you a letter and you give us a message. So, I urge the House that let us read the law not in part but completely, in totality and let it make some sense. Otherwise if we gag ourselves, the public will not even understand what we have done so far.

The Speaker (Hon. Ethuro): Let me just take the last three.

Sen. Billow: Mr. Speaker, Sir, I appreciate your ruling. Many reports are usually tabled in the House but, generally, even when it is for noting, a Motion normally would be moved. The tradition of the House is that there would be a Motion to note, and that would then give every Member an opportunity to debate it. Even when we are debating reports of Committees who visited some place, it is normally submitted just for the value of that discussion. But I think without a Motion, even noting that report, I do not know in what sense, even for the record of the House, unless we are contributing to your communication, it becomes a bit of a challenge. That is the observation I have.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): Sen. (Dr.) Machage.

Sen. (Dr.) Machage: Mr. Speaker, Sir, I think Sen. (Dr.) Khalwale and Sen. Khaniri may have misunderstood Standing Order No.68(4)(a) because, really, all you did communicate was for the Chairperson of the Committee to make a few remarks, which could have been to thank the Committee for the good work they did, and so on. Unless in his remarks, he moved into the allegations, then you stop it or, then, Sen. (Dr.) Khalwale and Sen. Khaniri would have been in order, therefore, to stand with that remark. But I think it was premature; they should have left that to the discretion of the Speaker to determine whether the Chairperson is deviating from your instructions of just a remark.

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The Speaker has that discretion to request any Member of the House to make a remark on any issue and at any one particular time.

The Speaker (Hon. Ethuro): Finally, Sen. Hassan Omar.

Sen. Hassan: Mr. Speaker, Sir, mine is just to say that we should not be very hard on Sen. Khaniri. As he was making his point of order, his first remarks were actually acknowledging the fact that he is not a lawyer. Therefore, he knew the probability of making a mistake in his interpretation.

(Laughter)

Sen. (Dr.) Khalwale: On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): What is it, Sen. (Dr.) Khalwale?

Sen. (Dr.) Khalwale: Thank you so much for indulging me, Mr. Speaker, Sir. So as to make the process tidy, because I am seeing Sen. Khaniri and a few others, in my view are in the minority, I beg that you consider the possibility of having a Motion that will read:-

“This House notes---”

Or:-

“THAT, this House wants to register its appreciation---”

Because as far as I am concerned, proceedings are not just on the charges and limited to the voting; when we started the exercise, even the very process of hearing was part of the proceedings.

Mr. Speaker, Sir, after the proceedings of the Special Committee had been tabled, when you go to the next stage whereby you debate that report, those are proceedings. After those proceedings, when you ask the Governor to come and defend himself and voting, those are proceedings. So, the moment we discuss, we would have carried out proceedings.

Could you, Mr. Speaker, Sir, consider that we do not rush and, indeed, because Sen. Orenge is answering me, if Sen. Wetangula and Sen. Orenge have issues they want to register because of the behavior of some people, a Motion can be brought so that we deal with them accordingly in the normal manner up to and including a Motion of censure on the conduct of a Member? This is the law!

(Laughter)

The Speaker (Hon. Ethuro): Order, Senators! At least I am happy that Sen. (Dr.) Khalwale is ending with a bit of a smile which is not forthcoming, but it is in the process, unlike when he started.

First, I want to thank Sen. Khaniri and Sen. (Dr.) Khalwale for raising that particular matter. As you can see, these things are not very neat; so, there is definitely room for interpreting it the way you did. So, I would not take the hard route that others

have attempted. This being a debating Chamber, it is always good to debate on some of these issues. But in terms of disposing the matter, the issue you raised first is whether there is a Motion before us. I think that is valid. Of course, you tried to invoke Standing Order No.1, which is in reverse – which I do not think it was really necessary – and whether in Standing Order No.68(4), the word “shall” is that restrictive. So, the Senate Majority and Minority Leaders and other leaders who contributed – and just to forestall Sen. Murkomen, who may wish also to be enlisted – I have responded very well in terms of my understanding. We actually agonized on the route to proceed on this. If you remember on the Deputy Governor of Embu, we just noted and left it there. But we are also pressed with time because we have the other report, which we needed to deal with.

Two, on a matter like this one, we gave the Committee, on our behalf, a job to do. They have done it, but because there is also immense public interest and because we also have the fear that other people who are not competent enough, like the Chairperson of the Committee and the Members of this House, may interpret it the way they wish to, so it is important for the House to be on record in terms of putting certain positions abundantly clear. So, we felt the safer route, taking into consideration of all those fears, is this one of entertaining points of order on the Communication from the Chair so that everybody who wants can have an intervention; but not as a Motion. Because the other problem with a Motion is that when it is a Motion before you, you can also decide to amend it. But the law requires to actually adopt the recommendations of the Committee as they are. So, this is the dilemma that we are in, and I am happy that the Senate Majority Leader was not even at the Rules and Business Committee (RBC), but he is spot on.

(Applause)

When I am very clear – and I think the lawyers have explained it very well – the meaning of ‘further proceedings;’ and when you say “shall not be taken under this section in respect of that allegation.” In fact what our Standing Orders have not anticipated is, you know, this Standing Order is talking about that particular allegation. It is working on the assumption that other allegations would have been substantiated. Now, in the scenario where all of them have not been substantiated, what do you do? So, those are the issues that Sen. (Dr.) Khalwale---

(Laughter)

So, we will still be refining this so that we can look at all possible scenarios and as we have already learnt a lot from the previous instances, this is also going to be another learning experience, just to tidy these procedures. But one thing is very clear in my mind; that the Chairperson has acted in the best interest on all the issues that are pertinent to this particular discussion and that process cannot be faulted. It cannot be faulted.

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So, I thank you. We proceed.

(Applause)

Sen. Obure: Thank you very much, Mr. Speaker, Sir, for this opportunity. With your indulgence, I will take a little shorter time than you directed, and I will – with your indulgence – request that we allow Senior Counsel, the Senator for Meru, Sen. Kiraitu Murungi, to brief the Members on a few issues that informed the decisions of the Committee.

Hon. Senators will be aware of the Communication from the Chair on 23rd May, 2014, in which he informed the Senate that he had received correspondence from the Speaker of Kericho County Assembly regarding a Motion he had approved for impeachment of the Governor of Kericho County---

(Laughter)

Sen. Orengo: On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): What is it, Sen. Orengo?

(Loud consultations)

Sen. Orengo: Mr. Speaker, Sir, I think the conflict is gone, so I cannot---

(Laughter)

The Speaker (Hon. Ethuro): Proceed, Chairperson.

Sen. Obure: Mr. Speaker, Sir, hon. Senators will remember that the day after, the Senate Majority Leader brought the Motion under Section 33(b) of the County Governments Act, which led to the appointment of this Special Committee.

Mr. Speaker, Sir, on behalf of the Members of the Special Committee, I thank colleagues, hon. Senators, for the confidence and trust they expressed in each one of us by electing us to serve on this Committee, whose responsibilities were not only huge and onerous, but were also constitutional in nature.

I also thank you personally, Mr. Speaker, Sir, for providing us with clear guidelines in respect of the task ahead of us during your communication from the Chair on that day, Friday 23rd May, 2014.

Mr. Speaker, Sir, I give special recommendation to the staff of the Senate, the Clerk and his team, who served as the Committee's Secretariat. We found them to be diligent, professional and extremely resourceful.

(Applause)

Their efforts and hard work in supporting the Committee throughout the weekends and public holiday enabled the Committee to meet the tight timelines for production of the report. The Committee is truly grateful to the Senate staff. The Committee further extends its appreciation to the parties to this matter, namely the County Assembly of Kericho and its advocates, and the Governor of Kericho County and his advocates for the well-researched and eloquent submissions in this matter. The Committee also appreciates the media for the coverage of its proceedings during the course of the investigations and, further, the Committee acknowledges the members of the public who expressed great interest in the proceedings sitting throughout the hearings as they keenly followed the proceedings in the matter.

Mr. Speaker, Sir, the Committee has concerns over two matters; the first relates to media reports. The Special Committee was extremely disturbed by statements appearing in both the print and electronic media suggesting that the Special Committee had been instructed, so to say, to come out with a certain outcome after its investigation. The reports were largely attributed to some Members of this hon. Senate and other office holders in the national Executive. The Committee took strong and great exception to the timing and content of these statements, whose objectives could be interpreted---

Sen. (Dr.) Khalwale: On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): What is it, Sen. (Dr.) Khalwale?

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, you have heard the Chairperson of the Committee reporting to this House that certain Members of this House and another Member or other Members of the Executive are to blame for the negative publicity that the Committee was given. Could the Chairperson substantiate?

(Loud consultations)

Sen. Obure: Mr. Speaker, Sir, this is public knowledge, but I have addressed you separately in connection with this. What I was going to ask is that we do not understand the objectives of some of these statements; but they were interpreted as undermining the work of the Senate in exercise of their quasi-judicial function conferred on it by the Constitution.

Mr. Speaker, Sir, even as the Special Committee asks you to investigate the source of these reports and to take appropriate action, I wish to assure you and the public that the Members of the Special Committee remained focused and determined to perform their task without fear or favour---

Sen. Orengo: On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): What is it, Sen. Orengo?

Sen. Orengo: Mr. Speaker, Sir, I am afraid that Sen. (Dr.) Khalwale could have been right, because when there is now reference to the report and what impacted on the

Committee, then they stand the danger of actually going into the report. I would seek your guidance on this; if the Chairperson could just make general comments or comments of a general nature. Otherwise, then, Sen. Khaniri may be quite right in what he raised.

The Speaker (Hon. Ethuro): Order, Sen. Orengo! I think you are also becoming too protective. I thought I heard the Chairperson very clearly; he was talking about externalities to the report and the way the Committee was supposed to be doing its job. I think to that extent, he has not really strayed into the areas that were being warned against. So, the moment he steps there, we will deal with him at that point but I think for now he is on safe ground.

(Applause)

Sen. Obure: Thank you very much, Mr. Speaker, Sir. The second point I wanted to---

Sen. Musila: On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): What is it, Sen. Musila?

Sen. Musila: Mr. Speaker, Sir, I regret to interrupt my brother here, but I think Sen. (Dr.) Khalwale asked that he substantiates the statement that he made. But I have not heard anything to substantiate what he was challenged to substantiate. Could you urge the Chairperson to substantiate, because he made a statement on the Floor of the House and we would like substantiation?

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): I am afraid, Sen. Musila, the Chairperson cannot help you there. My understanding of substantiation is to the extent that you have been adversely affected. The way the Chairperson has used that – and I think it is in the public domain and it is a small issue, considering the matter before us – and in any case, the substantive one was addressed when you raised a matter yourself, Sen. Musila. I think that still informs us.

Let us just proceed.

Sen. Obure: Thank you very much, Mr. Speaker, Sir. The second area of concern relates to the fact that the Special Committee observed that owing to the fact that devolution is still in the early stages in our country, the report of the Special Committee may be useful to all the 47 counties, as it may inform the counties in the discharge of their functions. The Committee, therefore, recommended that in the exercise of the Senate's functions under Article 96(1) of the Constitution and pursuant to Standing Orders No.42 and 43 of the Senate Standing Orders, that the hon. Speaker of the Senate directs that the report of the Special Committee be transmitted by way of a message to all the 47 county assemblies and to all the 47 county governors.

Mr. Speaker, Sir, I will not go into any details about the various specific charges raised, but I will recommend that there are issues which are contained in the report which I will strongly recommend to Senators to read. I also want to state that we have, as a

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Committee, made a number of observations outside the specific charges that were raised, which will apply not only to the issue of Kericho, but also to the challenges being faced by many other counties around the country.

Mr. Speaker, Sir, you will note that we have specifically recommended that the Memorandum of Agreement (MoA) signed between Kericho County Government and Bluetechs UK Group Ltd, which was at the centre of this dispute, be terminated to avoid any possibility of liabilities accruing to that county now and in the future.

Mr. Speaker, Sir, you will also notice that we have recommended that not just the Kericho Governor, but also the Governors in various other counties improve the technical capacity and advise available within their own offices to avoid some of the pitfalls which are being experienced.

[The Speaker (Hon. Ethuro) left the Chair]

[The Deputy Speaker (Sen. Kembi-Gitura) took the Chair]

Mr. Deputy Speaker, Sir, we have also made recommendations with respect to the legal regime relating to the Public Private Partnerships (PPP) Act of 2013. We are saying that although that Act is in place today, the rules that are supposed to have been formulated under that Act have not been formulated; certain organs which were supposed to have been created under that Act cannot, therefore, be created and, therefore, that Act cannot be implemented in full as it is today. We are also saying that the unit in charge of Public Private Partnerships (PPPs) that is based at the Treasury here in Nairobi, to a certain extent is hampering the implementation of the PPPs around the country. Therefore, we are recommending that this unit extends its services to the counties by devolving itself.

Mr. Deputy Speaker, Sir, we have also taken note of the oversight mandate of the County Assembly of Kericho and are commending it for its various initiatives in respect to matters of oversight. You will notice also that we have made some recommendations regarding reconciliation amongst the leadership in Kericho County. We are asking the Senator for Kericho to take the initiative in reconciling the communities in that area for the benefit of the general citizenry in that county.

Mr. Deputy Speaker, Sir, with those few remarks, may I now request Sen. Kiraitu to elaborate further. I thank you and the Senate for bestowing the Special Committee with the honour and privilege of executing this task. Thank you very much, indeed.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Kiraitu, I believe that you are sharing the 30 minutes that were allocated to the Chairperson.

Sen. Murungi: How many minutes?

The Deputy Speaker (Sen. Kembi-Gitura): Ten minutes!

Sen. Murungi: Thank you, Mr. Deputy Speaker, Sir. First, I would like to thank the House for appointing us to this important Committee. I would also like to thank my

colleagues in the Special Committee. We worked very hard and thoroughly. We even worked over the weekend, including the Madaraka Day. So, I wish to thank my colleagues for doing their best to promote the integrity and name of this Senate.

Mr. Deputy Speaker, Sir, I would also like to highly commend our secretariat and the legal team, who did an excellent job using the law and evidence. I would like to appeal to you to give special recognition and reward to this team, because of the excellent job that they did.

Mr. Deputy Speaker, Sir, some of the Members are commending us while others are accusing us of letting the Governor of Kericho go off the hook. Other Members are saying that they will save the Governor. I would like to confirm to you that we have not let the Governor of Kericho off the hook or saved him. Indeed, it is the Constitution and the law of Kenya which has saved the Governor or let him off the hook, and not us.

Mr. Deputy Speaker, Sir, it is very clear that this Committee was not motivated by any ill-will or benevolence. We just strictly did our job. I would like the House to note the language in Article 181 (a) of the Constitution. This is because the Article just says that a Governor may be removed from office of gross violation of the Constitution or any other law. So, the language is “may” and not “shall”. So, it is not mandatory. Even if the Governor is found to have grossly violated the Constitution, the Senate still has discretion, because of the language used under Article 181. So, the hands of the Senate are not tied by the language of this article.

Mr. Deputy Speaker, Sir, I would also like the Governors to know the nature of the impeachment process. Impeachment is a unique political process in which a political leader is tried by other political leaders for political crimes and the punishment that is meted is also a political punishment. Impeachment is supposed to punish bad Governors. The punishment that we get for bad Governors is removal from office, so that they do not continue committing harm to society from that office.

Mr. Deputy Speaker, Sir, there has been a lot of debate regarding the threshold or standard of proof for impeachment. Those who are prosecuting and, indeed, the county assemblies, are prosecutors in an impeachment process. They go for a very low standard of proof. They will take something like the balance of probabilities which we see in civil cases. The Governors would want a very high standard of proof, some like what we see in the criminal cases; proof beyond reasonable doubt. But in this process, neither of those standards is applicable.

Mr. Deputy Speaker, Sir, there has been a lot of analysis in that Report which you are going to read, because this matter has been extensively discussed in the conduct of US Senate in impeachment proceedings. What they say is that whereas there should be an overwhelming preponderance of evidence, there is really no agreed standard and the choice of the applicable standard of proof is left to each individual Senator. So, as the Senator makes the decision, the decision is not a legalistic or formalistic one. The Senator makes the decision on pragmatic grounds, which takes into account various factors,

including facing the consequences of the action, balancing the harm or wrongness against the public interests and welfare.

Mr. Deputy Speaker, Sir, there is a good analysis of President Clinton's impeachment process on pages 82 to 83 of the Report. In that report, it was found that although President Bill Clinton had broken the law, he was not impeached because his conduct did not constitute an impeachable offence and there was really no great harm to the American society by what he did.

Mr. Deputy Speaker, Sir, what constitutes gross violation is also defined in the Report. Gross violation is seen as a flagrant violation, glaring error, severe transgression of the Constitution or the law. Indeed, the matter was also canvassed in Wambora's case, where the High Court, sitting at Kerugoya, said that what constitutes gross violation depends on the facts of each case, and not every violation of the Constitution or the law can lead to a removal of a Governor. The allegation has to be serious, substantial and weighty.

Mr. Deputy Speaker, Sir, the issues that have arisen in the course of these proceedings are limited to Kericho County. In fact, one can say that they are of general application. Governors in almost all the 47 counties are very busy signing memorandums of agreements with investors from various parts of the world. Sometimes Governors are acting alone in signing those agreements. Some are signed in secrecy and even their own county executive members and Members of the County Assemblies do not know about them. Even the public does not know. I think that the Senate should make it very clear that, that process is unconstitutional and illegal, because the Constitution makes it clear; that in so acting, the Governors must involve all the elements of public participation.

Mr. Deputy Speaker, Sir, in this case, public participation is minimal. You are invited to the signing ceremony. If you call people after the agreement has been signed to tell them what you have done, that is not public participation. Public participation has to come before the act and inform people before the decision is made. So, Governors have to be warned that most of those agreements are going to be declared illegal, null and void, and especially also because they are not following the Public Private Partnerships Act. The bottom of this case, in my view, is also applicable to other cases. What we have is a political struggle for supremacy between the Governors, Speakers and Members of the County Assemblies. We are going to undermine devolution in Kenya and retard development in our counties, so long as those struggles are not managed. I really appreciate what our Chairman has said; that the Senator for Kericho County should play his role in bringing these people together, so that we can save the welfare of that county.

Thank you, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): Hon. Senators, we have canvassed the issue of whether or not there is a Motion in front of the House, and there is none. This is not a Motion for Adjournment either. So, we are just making remarks, pursuant to a ruling made by the Speaker. So, I cannot say that we are going to do it for 30 minutes, 20 minutes, 10 minutes or whatever number of minutes you want to speak. But for

beginners, I am going to allow ten minutes each for people who want to speak; appreciating the earlier ruling of the Speaker both in his Communication and also in answer to the point of order that was raised by Sen. Orengo. So, we will not go to the merits of the Report. I think that, that was part of the ruling. We are going to make general remarks pursuant to the Communication from the Chair and also to your reading of the Report. If you understand that, I am sure that it is going to reduce the number of points of order that are going to be made and we are going to make some progress, so that as many people as possible are able to speak to the Report. I hope that, that is clear for now.

Sen. Orengo: Thank you very much, Mr. Deputy Speaker, Sir. Let me also join the rest of the House in congratulating the Committee for a job well done, within the timelines as specified in the County Governments Act.

Mr. Deputy Speaker, Sir, I will not take a long time. In fact, I will probably try to restrict myself to five minutes. There is a campaign out there that either the courts or some body out there should set the threshold for impeachment. Now, I find that to be a very dangerous statement which must be countered. So far, I think that the Senate has behaved and conducted itself very well in these proceedings, to show that justice will be done in accordance with the law. Nothing but the law will be applied in dealing with impeachment cases as they come to the Senate.

Mr. Deputy Speaker, Sir, I heard the Chairman of the Constitutional Implementation Commission (CIC) asking either the courts or some other tribunal to establish a threshold for these impeachment proceedings. So far, reading the two Reports, I think that there is a lot of literature in these reports about the question of threshold for impeachment. It is an issue which the Senate is very conscious about. In fact, in all these proceedings, and as I read this Report, I find that it is an issue that we have addressed time and again. Therefore, we do not need an opinion from another body or arm of Government, to tell us how to do our job. This is because the Constitution is a product of Parliament. It may not be the only organ of Constitution making, but even this Constitution, if we wanted to amend it, there is a parliamentary process by which Parliament, including the Senate, can amend. So, the lawmaker is not supposed to be lectured really on the law.

Mr. Deputy Speaker, Sir, Article 181 of the Constitution is very clear on what circumstances one can be impeached, in relation to those who have been elected as Governors. Therefore, what I am proud about, reading the two Reports that have come before this House, is that the Senate is up to the task and it looks very clear as to why the Constitution makers in this country decided to vest this power on the Senate. They could have vested this power on the National Assembly, special tribunal or it may have been pointed out that, probably, under the Commissions of Inquiries Act whenever there is a matter of this nature, then a judicial commission should be appointed. But the Constitution makers were very clear that this is a mandate that rests with the Senate. Therefore, in receiving this Report and the previous Report, I fell very proud as a

Senator. Nobody can accuse the Senate of being a lynch-mob. Out there, they should declare that any case that will come before this Senate will be dealt with in accordance with the merits of the case.

So, Governor Chepkwony, if you are in any part of the Chamber, go back to Kericho and praise the Constitution of Kenya; that this is a great document and the Senate has used it to apply the law and not saved you. Before the law, you are the Governor of Kericho and nobody will stand between you and that position; and the Senate has confirmed as much. But to those who doubt the capacity of the Senate to deal with this matter; a matter probably which could take a day or two to resolve, you may end up being before the Committees and the Senate for long unnecessarily because you would think that another tribunal out there may do you better justice. But I can assure you that this responsibility was put in the hands of the Senate for a good cause. So, have respect and confidence in the Senate and justice will be done.

Thank you, Mr. Deputy Speaker, Sir.

Sen. Haji: Thank you very much, Mr. Deputy Speaker, Sir. I am, indeed, pleased to contribute today, something which I have not done in the last couple of impeachment Motions that were discussed in this House.

Mr. Deputy Speaker, Sir, I agree with the sentiments expressed by Sen. Kiraitu, as he cited the Constitution which has set the Governor free and also the many other reasons that he has given. I personally feel very strongly that one year in the dispensation, we should not have hurried in impeaching Governors, because that will send a very wrong message to members of the county assemblies, who can use this as a pretext to remove Governors. In the process, they would send a misconceived idea to the public that the new system is not working.

Secondly, anything new must have its own problems. The new Constitution created county assemblies. We knew that they would have problems. We need to nurture them, guide them and to tell them that they should consider service delivery to the people rather than dealing with an individual who may not have committed such a serious crime as we can see from this Report. I congratulate the Committee because it has done very good work. I hope that this will send a strong message to Members of County Assemblies (MCAs) who think it is easy to impeach Governors. It is not that easy if we are to follow the Constitution.

With those few remarks, I support.

The Senate Minority Leader (Sen. Wetangula): Thank you, Mr. Deputy Speaker, Sir. I want to salute the men and women that we put in the Committee. Just like the previous Committee that dealt with the Wambora case, I think the Senate has distinguished itself as a House of fairness and as a House that will discharge its responsibility under the law and the Constitution as established.

I salute the distinguished Senator for Kisii, Sen. Chris Obure, who was given the privilege to chair the Committee. I also salute the distinguished *Njuri Ncheke* Leader, the

distinguished Senator for Meru who was the Vice Chairperson and all the Senators who did a wonderful job.

In so doing, I also want us, as a Senate, to send a message out there that we are not hounds that have tasted blood, ready, available and willing to bite anything in site. We are not! Every case of a Governor or President that will come to this Senate for impeachment will be heard on its merit and decided on merit. The charges and evidence will be looked at. If they prove that there was violation of the Constitution and gross misconduct, then the law will take its course.

I also want to salute the humility of the Governor of Kericho. I think he distinguished himself. We treated him as innocent until proven guilty. He conducted himself with humility, civility, and did not go out there throwing brickbats at the Senate and telling us how incompetent we are to hear his case. Humility opens doors. Humility can also give you a fair hearing before the most hostile court. I think that Governor deserves what he has got. He did not violate the law. Let him go back and work and salute the Constitution of the country.

More importantly, there is a notion that we must discourage. This is a notion by those out there who are thinking that we need to bring a law on impeachment. The law on impeachment is in this grand norm; the law of the country, the Constitution. An impeachment court is like a court of equity if you look at the Constitution with regard to the impeachment clause. For instance, when you talk about gross misconduct, nobody can embark on defining what gross misconduct is. A Governor who persistently and consistently drinks and strips himself before the electorate would still be brought here. He may not have stolen any money but he would have embarrassed the electorate and that is gross misconduct. We can deal with him. We do not need to design anything. This is like a court of equity and equity shall always be equal to the chancellor's foot and nothing else. I want to caution those who have been talking about drafting a law to bring to this House that yours truly here will lead this troops and that law will fail. We do not need that law, the Constitution is sufficient and the law has drafted it sufficiently.

Finally, I want to encourage this Senate to remain as we have remained the custodian of the interests of the counties and the custodian of the interests of devolution. Any Governor who is brought before this Senate will be looked at as an individual. No Governor will ever come to this Senate to be tried on behalf of other Governors. When you offend the law, you offend it as an individual. When you err in your conduct, you do so as an individual. The Committee has done a wonderful job. We have a wonderful Report. For those who come here and exhibit arrogance the way the Governor of Embu did will meet the same arrogance in equal measure but within the law.

I beg to thank the Committee.

Sen. Moi: What a wonderful day!

(Laughter)

I would like to commend Sen. Obure and his Committee for a splendid job done. I want to add one thing that Sen. Wetangula said; to commend the humility of Dr. Chepkwony, the Governor. When he was called upon by the Committee to present his case, he did it in the most humble and civil manner in due respect to this House. I would like to commend him for that.

Mr. Deputy Speaker, Sir, what more can I say? *Asante sana*.

Sen. Musila: Thank you, Mr. Deputy Speaker, Sir. I would like to join my colleagues in congratulating Sen. Obure and his able Committee for producing a wonderful Report. This Report, going by the verdict that has been given, this Committee and the Senate by extension has sent a very strong signal to the Members of the County Assemblies (MCAs) that they should now go to work and stop chasing Governors. There is a lot of work to be done out there. Ever since we were elected, most of them have been filing Motions against Governors and there is a lot of hue and cry. They have been talking about impeachment. The word “impeachment” has been mentioned by all the MCAs. At times, they have been threatening Governors.

The House has now spoken and said that it will be fair in the dealings and considerations of Governors. Therefore, I urge MCAs to go back to work now and only refer matters that are obvious to this Senate because we will be very fair. At the same time, we have also sent a signal to the Governors that they are not above the law. They must be looking carefully and ensuring that whatever decisions they make are in accordance with the law and the Constitution because they will be scrutinized as it has been demonstrated by our Committee.

There is one thing I want to raise. The second time that Motion came here to impeach Governor Wambora; I raised an issue of discussing these matters outside before they are brought to the Senate. I do not think we have taken this matter as serious as we ought to. In the case of the Governor for Kericho, I heard comments – in complete disbelief – by our colleagues saying that they will ensure that he is safe and that he will not be impeached. That is belittling the House. We want to apply rules to Members who flout our rules. Some Members took it upon themselves to acquit the Governor even before the Senate and the Committee discussed the matters. That way, people end up thinking that we are not a serious House. I am pleading to my colleagues, particularly on the other side, to stop giving verdicts of matters that are before the Senate before we discuss them. Whatever Report is produced, people may think was predetermined. I cannot ever emphasise this matter. It is for the benefit and the integrity of the Senate.

I thank you and the Committee. I urge MCAs to go back to work. Our colleagues in the county assemblies should deliver services to our people and stop bringing allegations that are not substantiated.

Sen. Kagwe: Mr. Deputy Speaker, Sir, I would like to start with the last point that Sen. Musila made in thanking the Committee and, indeed, Sen. Obure for his good stewardship to the Committee. However, let me start by saying that there should never be

a ruling that will inadvertently say that the Governors can start ignoring MCAs because the Senate will not take action on based on MCAs' recommendations.

The word that should go forward from here regarding matters of impeachment is that we will be fair. Those who are brought before us may not be as clean as Caesar's wife. However, they may not have violated the Constitution or the law to the extent that they need to be impeached. So, the reason why one Governor or the other may not be impeached is not that they have done everything correctly. However, the degree that they did it and the action they took to address what they did is probably what went on to save them.

There are two offices that can be brought before this House for impeachment; that is the office of the Governor and the President of the Republic of Kenya. There are those who say out there that if the President and the Governors can be impeached, then it should follow that Senators and Members of Parliament should be impeached. There should be a possibility that they can be impeached. They forget one small thing that the Office of the President and the Office of the Governor are both executive offices. These are offices that hold huge quantities of funds. They hold Kenya's taxpayers money that they can use when and if in a manner that they can abuse. In the case of a Senator, he is not capable of using Kshs100. There is no Kshs100 that is given to the Senator for use by the county for construction of roads or hospitals in the counties that we live. There would be no reason to contemplate an issue of impeaching a Senator. Indeed, this is what a Senator would call *ab initio*. Sen. Mutula Jnr. is my friend in the Committee on ICT and I have been learning a bit of law from him. In doing what we have done as a Senate, in going ahead to say that not every Governor who comes to this House will lose their job, let it be clear that we did not do this because we have already impeached a Governor and, therefore, are trying to balance.

There are those out there who are saying that we are doing a balancing act. If ten Governors come here and they are all guilty, the ten will be impeached. Let that be clear. If ten Governors come here and none of them is guilty, let us also be clear that they will not be held accountable for something that they did not do.

I saw the Chairman table documents here, files upon files, my feeling was that if we have to photocopy all the documents in front of us and all the paper work with the Chairman, including what has come as a Report, can you imagine the waste of paper and Government resources? I think it should be obvious to the House that we cannot continue printing this quantity of documents in hard copy. I want to take this opportunity to say that it is too late to be copying documents like this. This is pure analogue! We must get to a point where documents are sent to our ipads or computers. We cannot be throwing away documents. This is a lot of money. This is money that can build a whole classroom if it was not being wasted on photocopying.

We were sent out there to get documents and I saw Sen. Musila waiting in a massive queue to get massive documents to go and read outside there in the grass. This is not something we can continue to do. Let it be clear to Members that in future, as we get

these massive documents, they should be read electronically and not documents that can be photocopied any time.

I congratulate Members of the Committee. You did a great job and we are proud of you as a Senate.

(Several Senators stood up in their places)

The Deputy Speaker (Sen. Kembi-Gitura): Everybody will talk because we do not have any other business. We only have to do a balancing act. Since we are having the first gender interest, I will call upon Sen. Ongoro.

Sen. Khalwale, you are sure you have not spoken?

Sen. (Dr.) Khalwale: No, Mr. Deputy Speaker.

Sen. Ongoro: Thank you, Mr. Deputy Speaker, Sir. I also want to add my voice in congratulating the Committee that presented this massive Report to us. Just before I give my sentiments, I want to accept and agree that it is time that we turned to something else other than the analogue. This is very punishing because we were given an hour to go through it and it is not possible for one to interrogate this massive document with that short period. Had it been sent to our ipads, we would have time to interrogate the Report.

I just want to say that when we were handling the first impeachment case that was presented to us, we were under attack from all sorts of people stating that Senators have an issue with Governors and so on and so forth. We have wavered that storm and we can prove to everybody that really in executing our mandate as a Senate and individually as Senators, we only pledge our allegiance to the Constitution. In the Senate, we do not pledge our allegiance to anybody and not to any political party. We do not bring to fore our ethnic affiliations or backgrounds. We simply execute our mandate as provided by the Constitution and we hold nobody accountable to anything apart from the facts that are presented. Therefore, it is upon the MCAs to present us with facts that have grounds and not weak ones that cannot withstand any test of what we are going to interrogate.

Mr. Deputy Speaker, Sir, I want to congratulate this Governor although I have not had occasion to meet him. Definitely, according to the Report, the manner in which he handled himself, he did not become erratic in his words, he was very compliant and he exhibited a lot of humility in dealing with the Senate and that means that he respects us, as Senators, and the institution of the Senate.

I just want to state that this is not a balancing act as has been stated out there by some people; that we are simply impeaching one Governor and then letting another one go scot free. That is far from it. If we are presented with 20 cases that deal with facts that lead to impeachment, we will do that. But we are not going to crucify somebody when the facts presented before us do not meet those standards. This is what we have done this time round.

Finally, at the beginning of the debate, I was very thrilled by the manner in which matters are interrogated in the Senate. You find that people are really alive to all the

issues contained in the Standing Orders and our Constitution. We thoroughly interrogate any matter that is presented here before we proceed. That simply shows the maturity and the intellect we have and any other good thing that is presented in the Senate according to the number of Senators.

I beg to support.

The Senate Majority Leader (Sen. Prof.) Kindiki: Thank you, Mr. Deputy Speaker, Sir. I will also be brief because I know that many of us want to speak. I want to take this opportunity to thank Sen. Obure and his Vice Chairperson, Sen. Murungi, and all the Members of this Committee for doing us proud and especially for coming up with a very concrete and useful report which I have had the advantage of looking at.

Secondly, I want to say that what we are witnessing here is once again a trial not only of the Governor of Kericho County which has come to a close, but also the continuous trial that this Chamber goes through as Kenyans put a lot of hope in what we do and how we approach issues. This process has been a bit different from what we had last time and I cannot sit down without thanking everyone. First and foremost, I thank the Members of the County Assembly of Kericho. It would be very wrong if we appear as if we are saying that when MCAs are doing their accountability work, they are wrong or they are abusing their roles. They are not. We want to send a message to all the MCAs across this country that they must exercise their responsibilities as an oversight institution without fear or favour and without ill will or affection. That way, devolution will help us realize the dream of a better Kenya. So I want to salute the MCAs because they were doing their work.

I know we are not allowed to speak about the merits of the Report, but I have seen the Committee recommending some action, which means that those MCAs were saying something and so, I want to thank them. Secondly, I take this opportunity to thank the Hon. (Prof.) Chepkwony, the Governor for Kericho County, for approaching this matter judicially with humility. I know this has been said but I want to emphasize that humility is not cowardice. The Governor said: "I have been accused, the matter is now before the Senate, I will submit myself to the authority of the Senate and I will abide by the outcome of that process". So, we are also sending a message to all the Governors in the Republic of Kenya that they must not live under a notion that they can wish the Senate of the Republic of Kenya away. We are there by law, we do our work, we know what to do when and we follow the Constitution and the law when we are doing our work. This should be the spirit. We do not want people to come and beat their chests here and start boasting here that they will go somewhere else. Where will they go to? This is Parliament and they will go nowhere. I have kept on repeating that what Parliament has done cannot be undone. You can try doing certain things but it would not work. The earlier the Governors realize that Senators are equal partners in this journey and that you cannot wish the Senate away, the better for devolution and the prosperity of this country.

Mr. Deputy Speaker, Sir, lastly, I want to take this opportunity also to thank our brother and colleague, the Senator for Kericho County, Sen. Keter. I know it is not easy

as a leader in that county. You have your Governor here, the MCAs, and the Members of Parliament who all have an interest in this matter. To remain steadfast and clear minded in such circumstances is not easy. Some will accuse you for siding with the Governor while others will accuse you for siding with the MCAs. So, I think through the example of Sen. Keter, we have learnt a lesson that as a Senator, you are the father figure of a county and you can actually steer the county to unity and prosperity.

I want to emphasize in the end the words that I have used in the last paragraph of the Report. It is easy to say that the Committee has made this recommendation and therefore, there should be no further proceedings but for my brother and our friend, Sen. Keter, the hard work of reconciling Kericho County starts now. This is not about who has won and who has lost. It is about a process that has ended and going forward, Kenyans want to see Kericho County working together and leaders in every other county in this country working together for the betterment of the people who voted for us.

Thank you.

Sen. Abdirahman: Thank you, Mr. Deputy Speaker, Sir, for allowing me to contribute to this Motion. I want to begin by saying that just like my colleagues have done, I was a Member of the Committee and I am not going to congratulate the Committee because other colleagues who were not part of it have done it. I want to thank the Secretariat for their good work as we worked for the last few days. I want to begin by saying that the action of the Senate this afternoon is a demonstration of the fact that it is Parliament that is able to discharge its duties with justice, fairness and get rid of the notion that this is a place to witch-hunt Governors. This is a place to separate what is wrong from what is right. I think if we do not pick things as they are, we will still be having cases here. I have a feeling that the Report will help to guide county governments and particularly Governors to understand what the gaps are.

Mr. Deputy Speaker, Sir, we have not had so many cases being brought to the Senate, but probably they are on the way, but there is evidence in almost all the counties that there are issues that have either got to do with financial management, human resource management, public private partnerships which is an entirely new concept for many people; its operations, the framework under which such partnerships are expected to move and development planning and programming where most of us have expertise in only one area. Governors only have expertise in areas in which they trained. They have gaps and they really need to recruit people who understand all these areas that we are talking about.

There is also knowledge gap in terms of humanitarian aid, responses and planning. Quite a number of counties have a problem in cohesion because Governors are not bringing on board all other elected leaders. If only this can be used as a learning process, I am sure counties will not have the problems that we are seeing. In the long-term, what we have done now as a Senate and what we did in the Embu case should help improve governance in this country. The fact that the county assemblies are impeaching Governors, it is not good to impeach because of emotions, but it should be with good

grounds. So, the MCAs should not shy away from continuing with their oversight responsibility just because we have decided this case in this manner. Each case was considered on its own merits. I want to call for unity, sobriety and teamwork in all the counties.

Thank you.

Sen. Murkomen: Mr. Deputy Speaker, Sir, I would like to, first of all, congratulate the Committee Members for doing a very good job. I have been in their situation before and it is not an easy job. The weight that was on their shoulders was not an easy one and they have performed their task professionally and to the requirements of the law. The decision of this Senate this afternoon is a victory for Governor Chepkwony but for us, it is a victory of the law. It shows that our institutions are working. We have been accused out there of being in the business of balancing and that we are baying for the blood of county Governors. Nothing is further from the truth. We are not in the business of Ocampo of balancing both sides. We just look at the law. It must go on record that three decisions on impeachment of county officials have come to this House; two in the case of the Deputy Governor of Embu and the Governor of Kericho have been dismissed because they have not been substantiated and one in the case of the Governor of Embu has been substantiated. So, this argument that the Senate has not been fair is not true because our fairness is looking at the law.

Mr. Deputy Speaker, Sir, we understand the decision of the Committee. I have read through this Report and what I get is not a situation where we are saying the MCAs of Kericho County are wrong. It is about a new jurisprudence of this House. The first part of our jurisprudence was that in the case of the Deputy Governor of Embu, it was not substantiated. In the case of the Governor of Embu, it was substantiated. In the case of the Governor of Kericho, the allegations were not substantiated as a result of not meeting the threshold. So, you can look at the three cases and realize that our jurisprudence has grown from a case of no substantiation, where it was substantiated and where it was not substantiated because of the threshold. So, looking at the Report, you will realize that you cannot fault the County Assembly because in their wisdom and knowledge, they read the law as it is and found that there was violation of the law, but they also went ahead and said that the threshold was not achieved. In that regard, therefore, it is wrong for us who are going to be quoted to have said that the county assemblies have run rogue.

I have heard my colleague – and with due respect to the Senator for Kitui, Sen. Musila – trying to say that “Oh, the Members of County Assembly (MCAs) should go back to business;” that is their business! Their business is oversight of the county executive so that they can perform. That exercise is supposed to be done meticulously, with passion and commitment, because the end objective is to ensure that the Governor performs well; and to ensure that the County Executive Committee (CEC) members perform well. So, we cannot fault our colleagues, because the MCAs are our colleagues. They are doing oversight work, they are doing legislative work; it is because of that hard work that this report was written and it is saying that certain corrective measures must be

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carried out in Kericho. So, for that reason, therefore, I would like to go to the next point; that the task – as the Senate Majority Leader, Sen. (Prof.) Kindiki, said – for reconciling the Kericho County is now beginning.

(Applause)

Mr. Deputy Speaker, Sir, I want to request the MCAs not to be vindictive towards the Governor, because the Governor came here with a lot of humility; he has submitted to the authority and jurisdiction of this House. He might have said one or two things to the Committee about the County Assembly, but I am sure any other person who was in his situation would have hanged on to anything to ensure that he can defend himself. But that should not be held against the Governor; it must be the beginning of a process of reconciling the county. I want to request the MCAs to approach the way forward with an open mind, understanding that they can begin a good relationship and move forward. I want to tell the Governor of Kericho, Prof. Chepkwony – my former colleague at Moi University – that this is also an opportunity for you to extend the same humility you demonstrated to this House to the county government so that they can approach the County Assembly Speaker and MCAs with humility, because it is humility that will set us free. I want the same humility to be extended to the Members of Parliament (MPs) and particularly to Sen. Charles Keter so that, together as a family of the leadership of Kericho, we can build our county and we can really be proud of as the county of tea, and we can move forward progressively.

Mr. Deputy Speaker, Sir, it is important to note – and I agree with Sen. Wetangula – that we do not need a legislation on impeachment of any person at the moment, because Article 145 of the Constitution is clear. We have already legislated on Article 181, which was a copy of Article 145. What is important is that when we are exercising that responsibility both at the county level and at the national level, it is important that, that responsibility is exercised in the manner in which our Committee has done. I want to quote Article 175---

The Senate Majority Leader (Sen. (Prof.) Kindiki: On a point of order, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Hon. Ethuro): Yes, Senate Majority Leader?

The Senate Majority Leader (Sen. (Prof.) Kindiki: Mr. Deputy Speaker, Sir, I hate to disrupt people, but I have listened to Sen. Kipchumba Murkomen and earlier on, Sen. James Orenge. I am just wondering whether it is in order, because I am on record to have said that we will need to look at possible legislation on impeachment, which legislation perhaps none of them has read. But what they are trying to do here – and I want you to direct us whether it is in order – is actually to try to anticipate and pre-empt debate, which I do not think is healthy because this House is about generating legislation. Therefore, to try and scare away potential legislation without even reading it – because it is not just about threshold; it is about many things about impeachment.

Mr. Deputy Speaker, Sir, I would request you kindly to rule Sen. Kipchumba Murkomen and, earlier on, Sen. James Orengo completely out of order!

(Laughter)

Sen. Murkomen: Mr. Deputy Speaker, Sir, you must have---

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. Murkomen! He has asked me to make a ruling, has he not?

Sen. Murkomen: I thought I should respond to it---

The Deputy Speaker (Sen. Kembi-Gitura): No; there is no point of you responding on that issue. You see, it is in common domain, Senate Majority Leader, because we read the newspapers and I know that it is an issue going out there about threshold. I know that even the Constitution Implementation Commission (CIC) was reported twice saying that they want to bring legislation on threshold. I think this is an important issue of whether or not there should be legislation. So, with a lot of respect to you, Senate Majority Leader, I think it will not be right to gag Senators from expressing their views, whether they are pre-empting or not, because they are going to discuss it anyway when the time comes.

(Applause)

So, Sen. Murkomen, you can proceed.

Sen. Murkomen: Thank you, Mr. Deputy Speaker, Sir. I think you shied away from saying he is completely out of order!

(Laughter)

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Murkomen, are you now going to direct me? I have made my ruling on the issue!

(Laughter)

Sen. Murkomen: It is to guide you, Mr. Deputy Speaker, Sir. Suffice to note that what Sen. (Prof.) Kindiki is talking about is not a Bill yet; they are just proposals by various people.

Mr. Deputy Speaker, Sir, I just wanted to note that Article 181 of the Constitution on grounds of removal include abuse of office or gross misconduct. Had the charges been brought under Article 181(c) on abuse of office, or if in future, the question of charges of abuse of office are to be brought in relation to any Governor, the question of gross violation does not arise. So, that is important for us to note; that when you move to Article 181(c) on abuse of office or gross misconduct--- I wanted to note – just for

purpose of public consumption –that if you read Article 75 of the Constitution, it says that:-

“A State officer shall behave, whether in public and official life, in private life, or in association with other persons, in a manner that avoids—

(c) demeaning the office the officer holds.”

Mr. Deputy Speaker, Sir, the Constitution we passed creates very interesting issues, including concerning itself on behaviour and manners of public officers. As Sen. Orengo was saying, if a public officer or a Senator is rowdy and urinates on himself in public or does particular things in public that perhaps can be said to be “manners and behaviours that demean his office,” that legislator can be recalled. If it is a Member of the Executive, he can be impeached on that basis. So, we want to also request our officers in the county governments, as we also warn ourselves, that the standards of integrity that are provided for in the Constitution are high and, therefore, each one of us is expected to behave in a very honorable and respectable manner.

Finally, Mr. Deputy Speaker, Sir, I want to tell the Governor that we wish him all the best. Go home, do your job and avoid repeating the same issues. Go home knowing that we did not do you a favour; we were just simply doing our job.

Thank you, Mr. Deputy Speaker, Sir.

(Applause)

The Deputy Speaker (Sen. Kembi-Gitura): We have 25 minutes or thereabouts and there are about seven of you who want to talk now. So, you cannot all have ten minutes. So, I am going to unilaterally direct that you are going to talk for a maximum of five minutes for the remaining people who want to talk; and we are going to have Sen. Mutula Kilonzo Jnr. next. Or do you want to concede your chance to Sen. (Dr.) Khalwale?

Sen. Mutula Kilonzo Jnr.: Not now, Mr. Deputy Speaker, Sir.

(Laughter)

The Deputy Speaker (Sen. Kembi-Gitura): I would have been surprised!

Sen. Mutula Kilonzo Jnr.: Thank you, Mr. Deputy Speaker, Sir. I was a Member of this Committee and I must say that I have a great admiration for judges, because this was not an easy task that we were performing. But most importantly, I want to repeat what Sen. Murkomen and Sen. Wetangula have said; that the persons who are telling the public that we need a law on impeachment should read this very carefully, because the Constitution has provided clear parameters as to what we need to do when it comes to impeachment.

Two, something that has not been mentioned is that there are persons who are reported to be stating that another House, other than the Senate, ought to conduct

impeachment. From the reading of this, I think we have vindicated ourselves, as the Senate, that there is no reason to amend any law so that any other body other than the Senate should be given the mandate to conduct impeachment proceedings.

Three, if there was a time that the Bill that was passed by this House, famously known as the “Sang Bill” was important, this is the time. Why do I say so? Because in the raft of recommendations we have made, we have told the Governors that under no certain circumstances that public participation is not a cup of coffee that they are supposed to offer members of the public; it is a must. It is a must under the law and it cannot be something that you can do as window dressing for purposes of ensuring that you comply with the law.

Fourthly, Mr. Deputy Speaker, Sir, I have heard Senators say “Oh, you know some people are saying that we are trying to balance.” We, Members of the Committee, are going to tell Members of the Senate that we considered nothing else but the law. You have no apologies to make because we have none; because we adhered with the law strictly!

(Applause)

Mr. Deputy Speaker, Sir, I want to tell Governors, MCAs and Members at large that those who had doubts about the Senate, their doubts should be assuaged because other than being politicians, we are Members who understand the law. We are also Members who were elected to gauge public opinion and gauge the standards of the law. Therefore, in passing this report in the manner it is, we have considered all those factors.

Lastly, Mr. Deputy Speaker, Sir, I am happy to say that we have set legal precedent on what the threshold is with regard to impeachment now and forever. Those conditions set out in that report that we have presented are conjunctive; it is and, and, and. Therefore, any person who seeks to impeach a Governor must read this carefully.

Mr. Deputy Speaker, Sir, my Chairperson forgot to say – and I am going to say this on his behalf – that we had recommended that this report be sent to all the counties, Speakers and Governors so that they can read it. Therefore, any person who imagines, thinks or is dreaming of conducting an impeachment proceeding---

Sen. Kagwe: By soft copy!

(Laughter)

Sen. Mutula Kilonzo Jnr.: By soft copy; thank you, Chairperson for ICT.

Therefore, any person who imagines, thinks or is dreaming of conducting an impeachment proceeding can read this, and read this very carefully, because we have bothered to get into very detailed research on impeachment, both in the Commonwealth and other areas for purposes of people who want to teach law, like Sen. (Prof.) Kindiki here. This is something that should be taught in many other places.

Mr. Deputy Speaker, Sir, those are my comments on this important report. Thank you, Mr. Deputy Speaker, Sir.

(Applause)

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Karaba.

Sen. Karaba: Thank you, Mr. Deputy Speaker, Sir, for giving me this chance to say something about the report on the impeachment of the Governor of Kericho. First, I would like to thank the Members and the Senate for appointing me as one of the Committee Members. I was happy to serve in that Committee to the best of my knowledge and intellect.

The other thing, Mr. Deputy Speaker, Sir, is that we were faced with quite some challenges earlier on as we were trying to interpret the newspaper reports. But going by what we were able to absorb, we were mature enough to understand that newspapers or no newspapers; politics or no politics, we stood by our grounds. I can assure this House that whatever report is given, it did not have any prejudice; we did not even suffer from any influence from any quarters. We went by what we assessed as per the information provided. I would like to support the Committee for being so courageous to the point of not being influenced by anybody or any kind or source of news which came during that time.

Mr. Deputy Speaker, Sir, this is a Committee which worked during very hard times; it was during the times when we had the Madaraka Holiday and a long weekend. Fortunately, the Members decided to hold themselves in some very secretive hotels and they were able to come up with the report, which is already tabled. I congratulate myself and other people for doing so well.

Mr. Deputy Speaker, Sir, it is also important to note that this is a very important turning point for our Governors and the counties, where we have one person who has been impeached and another one who has been cleared, going by the report. So, it is up to the Governors and MCAs to find out when is somebody to be impeached; what wrongs should one be impeached for? They should study that report. They can also study and find out when should somebody not be impeached. So, the MCAs and Governors have a lesson to learn, and that is very good, and the credit to the Senate is important.

Mr. Deputy Speaker, Sir, it is also important to note that the MCAs might have had a feeling that it is very easy to impeach somebody on the grounds that they need to have their hands oiled. However, they should now realize that it is not only oil that is important but concrete evidence while arguing with somebody. When it comes to the Commission on Revenue Allocation (CRA), you will find that some companies are receiving less. Senators are being accused of not giving enough. That is the reason why Governors are not working the way they are expected. That is why there is a collision between the MCAs and Governors and even Senators who are assumable not giving too much to them.

The tabling of this Report will dispel fears that we are not trying to antagonize counties out there. We want to be fair and we have seen that we can be fair.

I support the Committee.

Sen. Sang: Mr. Deputy Speaker, Sir, I would like to join my colleagues in thanking Members of the Committee, although I was one of them for a job well done. Listening to the comments made by many contributors to this Motion, you easily get the impression that the MCAs did not do a very good job. I want to be categorical that we dug through the allegations and issues raised by MCAs. The technicality that arose was on the basis of threshold. We want to agree that the Constitution---

Sen. Kagwe: On a point of order, Mr. Deputy Speaker, Sir. I am getting a little bit concerned regarding what was raised, earlier by Sen. Khalwale. When we start talking about the Report and what the MCAs are doing, are we not getting into the Report?

The Deputy Speaker (Sen. Kagwe): Sen. Sang, are we getting to the Report?

Sen. Sang: No! No!

The Deputy Speaker (Sen. Kembi-Gitura): But you must appreciate that the line is very thin. First and foremost, the line is very thin, whether you are discussing it generally or specifically.

The Speaker made a ruling on this earlier. I will ask that you be careful, particularly if you were a Member of the Committee. If I had taken time to look who the Members of the Committee were, I most likely would not have given time to them since the Chairperson and the Deputy Chairperson have already spoken. I appreciate that the line is very thin. However, try and not to be argumentative or to defend the Report. If you want to talk about threshold, talk about it but do not talk about the Report.

The Deputy Speaker (Sen. Kembi-Gitura): Are we in agreement?

Sen. Sang: We are in agreement but I want to mention that the line was equally thin when the other contributors were making their points.

I would like to clarify that the Members of the County Assembly did their job. The Constitution talks about threshold. However, threshold is in the mind of the person deciding at that particular moment. That means that when MCAs sat in Kericho to decide on this issue, they thought that the threshold had been met. When we sat as a Committee, we made a different decision. That does not mean that the MCAs did not do a good job.

I want to be on record to thank the Members of Kericho County Assembly for doing a very good job. I brought a Bill to this House, an amendment to the County Government Act. I had already seen the challenges that Kericho County would face. One of the recommendations we have made is that the Sen. Charles Keter should spearhead reconciliatory efforts between the County Assembly and the County Executive. Within that Bill, we agreed that the Senator should chair the responsibility we are giving Charles Keter as the Senator for Kericho County. That gives credit to the Bill I had brought. We needed a platform where the Senator would come in and help sort out some of the challenges that exist in the counties. That is very important.

Finally, it is important for all of us and especially coming from this Report, to note that there are several grounds upon which a Governor can be impeached. One of them is gross violation of the Constitution or any other written law. This is the route that was taken by the County Assembly of Kericho. However, if they had taken the abuse of office or any other, the issue of threshold may not have been required. Therefore, the same charges and the same facts could easily have led to a different outcome.

The Governors should read this Report carefully. We are not saying that the Governor was absolutely clean. They need to know that depending on what articles these issues were premised, they could find themselves impeached. I think it is important to have that distinction so that we do not see people holding thanksgiving and celebrations thinking that some of the things that were raised were not correct.

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, when we realized that it was the County Assembly of Kericho which was coming before us, those of us who know Kericho very well said; that cannot be Kericho. Kericho is very unique. I refer to Kericho as the county of one colour; the green colour of peace and environment. It is a beautiful place.

The MCA should know that as I have consistently supported them in the need to exercise of oversight over their Governors, they should know that the Senate will not say wolf just because MCAs have cried wolf. They should come with facts the same way that MCAs of Embu did.

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. Khalwale. I do not think I want to entertain that Report. That is the point that Sen. Sang is making. I do not want this to appear to be an MCA bashing situation. You made a Report and there is a finding on the Report. The issue, as Sen. Sang has said, is threshold if you read the Report carefully. I will not preside over a Senate where we seem to be bashing MCAs and talking about their crying wolf. I think we need to be careful so that we do not digress to the line that the Speaker spoke about earlier in the afternoon.

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, I would like to mention to my brother, Sen. Charles Keter, that there are many things that are not in this Report; the many politics that were in play in Kericho that may have emotionally affected issues to proceed one way or the other. As we request you to take charge, it is important for MCAs, Senators and MPs to realise that oversight demands serious impartiality.

At bullet No.41, the Report tells us that the Governor presented evidence to confirm that they were asking for money from him. That shows how important it is for us, once again, to commit ourselves to the issues of impartiality.

Sen. Sang: On a point of order, Mr. Deputy Speaker, Sir. I was a Member of that Committee. Sen. Boni should be candid and honest. He should read the section where we said; “the Governor provided evidence to show---” That is not there.

Sen. (Dr.) Khalwale: I said bullet No.41.

Sen. (Prof.) Lesan: We have consistently said that we do not want to refer to the Report. What we are hearing are people citing parts of the Report. We are waiting to make comments in the three minutes that you gave us and we are still waiting.

The Deputy Speaker (Sen. Kembi-Gitura): This will be my ruling, Sen. Khalwale. First of all, you are not discussing the generality of the Report. What you are calling bullet 41 could be read out of context. Read it in context to see if it is an allegation and if there is a finding. I will not allow us to go into details regarding this Report. If you have some political issues in the backyard of Kericho, then we do not know. We are relying on this Report by the Special Committee – those of us who do not come that part of the world. We need to be careful on how we handle this Report and how we look at it so that we are fair to everybody; the Governor, MCA, the residents and citizens of Kenya who are following this debate very keenly to see how we deal with it.

Sen. (Dr.) Khawale: Mr. Deputy Speaker, Sir that is why I said that it was a generality. I was ending this issue of impartiality and I now want to introduce the issue of integrity. There are Members of this House and the Members of the Executive who chose to tell the audience in a public forum that they had talked to this Senate and the Governor would be set free. If integrity means anything to them and if they respect the Senate, then they should use that opportunity to withdraw those remarks and if possible apologise. The success of this process depends on us convincing---

Sen. G.G. Kariuki: Mr. Deputy Speaker, Sir, I want to thank my friend, Chris, for the good job he did with his team. Secondly, I would like to say something different from what is being said here. I agree with your ruling. Let us not appear as if we are here siding with one group of people. If there was no misappropriation or any other bad dealings, there would not have been problems.

We are called to be responsible in terms of impeachment so that we solve the problem like the one that was in Kericho. We should form a committee, go there like *wazees* and decide on this case. We are making it big because it is a political act. We must know that impeachment is a political act even if the law supports it. It is not in a court of law where our issues are presented. I want to make this statement short. The message this evening is that we should have responsible Governors and MCAs. If MCAs are condemned by anyone from here, we would be making a terrible crime because they are there to do their job of oversight.

Sen. (Prof.) Lonyangapuo: Thank you, Mr. Deputy Speaker, Sir. I join my colleagues in thanking the Committee for working tirelessly. I have read through the work they have done and now justice has been dispensed. Since devolution is new in Kenya, all offices that matter in the counties need to play their roles clearly and carefully, so that we do not misuse the powers that we have. The Members of the County Assemblies (MCAs) should play their role appropriately, but at the same time the Governors should do the same. Where some of us come from, some Governors have been held hostage by the MCAs, but at the same time, the Governors have also not played their roles appropriately.

Mr. Deputy Speaker, Sir, the funds that the Senate allocates comes from the diligent work of the Senators. But as soon as they land on the ground, everybody that works under the Governor must know that, that money does not belong to them. So, they should be very responsible. I want to congratulate Prof. Chepkwony, who was my colleague in the university - a very brilliant Professor in Chemistry – for standing firm and displaying honesty and integrity in his work. At the same, I want to applaud the MCAs of Kericho County---

The Deputy Speaker (Sen. Kembu-Gitura): Your time is up!

Sen. Lesan, you have two minutes.

Sen. (Prof.) Lesan: Thank you, Mr. Deputy Speaker, Sir. First, I would like to appreciate the ruling of the Speaker, which has enabled us to have a chance to debate this Report which is before us.

Mr. Deputy Speaker, Sir, like my colleagues, I also wish to congratulate the Committee for a job well done. The word “investigate” is scientific. It is used when we form a Committee here. It means that the decisions that we make are as a result of the findings that we arrive at after investigations. So, I wish to address the nation and let people know that we make decisions after carrying out investigations. Therefore, the decisions that we are making have been arrived at validly.

Mr. Deputy Speaker, Sir, I just want to make a comment regarding the impeachment process. The impeachment process is a very traumatizing thing. I witnessed this in my neighbouring county. I know that things have been at a standstill in Kericho County, as a result of this process. Impeachment kills hope, motivation and aspiration. It even breeds hatred among the communities. I want to take this opportunity to urge that the word “reconciliation” should be a very important asset in the next few days in Kericho County. There is a group of elders in Kericho called “*Miot*” that has been referred to in the Report. I really want to urge that this group of elders rises up and serves the community at a higher interest like they have not done before. It is this group of elders that should do their best to heal the rifts in Kericho County. We wish them as well as the Governor success.

Thank you, Mr. Deputy Speaker, Sir.

Sen. Keter: Mr. Deputy Speaker, Sir, I want to echo the sentiments by most of my colleagues who have spoken and thank Sen. Obure and his team of 11 Members for the Report which we have. This is a good Report and all of us, including the Governors and MCAs, should read it.

Mr. Deputy Speaker, Sir, I will take the challenge by my colleagues and ensure that Kericho County can come back on track. It is a good county and I want to assure my fellow Senators that Kericho will talk and agree, so that we can move forward as suggested in the Report.

Sen. Melly: Mr. Deputy Speaker, Sir, I know that time is not on our side, but let me also take this opportunity to thank my colleagues and Members of the Committee for the good job that they did.

Mr. Deputy Speaker, Sir, it is very clear that Kenyans want to reap the fruits of the new Constitution. One of the fruits is devolution. All the challenges that we are facing today are actually associated with devolution. Kenyans want to see the fruits of devolution and the current situation both in Embu County and Kericho County is a concern. All of us want to see things being done well. It is not our core function---

ADJOURNMENT

The Deputy Speaker (Sen. Kembi-Gitura): Order, Members! It is now 6.30 p.m. It is time for interruption of business. The House stands adjourned until tomorrow, Wednesday 4th June, 2014, at 2.30 p.m.

The House rose at 6.30 p.m.