

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Thursday 24th October, 2019

*The House met at the Senate Chamber,
Parliament Buildings, at 2.30 p.m.*

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

PRAYER

STATEMENTS

The Speaker (Hon. Lusaka): Proceed, Sen. Faki.

APPOINTMENT OF THE MAMA NGINA WATERFRONT MANAGEMENT BOARD

I do not see him; the Statement is deferred.

(Statement deferred)

Next Statement by Sen. (Prof.) Ekal.

IMPACTS OF FLOODS IN TURKANA COUNTY

I do not see him; the Statement is deferred.

(Statement deferred)

Next Statement by Sen. (Dr.) Ali.

UPGRADING OF MARORROR SLAUGHTERHOUSE IN WAJIR COUNTY

I do not see Sen. (Dr.) Ali; the Statement is deferred.

(Statement deferred)

Sen. Kihika, please, approach the Chair.

(Sen. Kihika consulted the Speaker)

BUSINESS FOR THE WEEK COMMENCING
TUESDAY, 5TH NOVEMBER, 2019

Sen. Kihika: Mr. Speaker, Sir, pursuant to Standing Order No.52(1), I hereby present to the Senate the Business of the House for the week commencing Tuesday, 5th November, 2019.

As you may be aware, the Senate is scheduled to proceed on a 10-day recess from tomorrow, 25th October, 2019, to Monday, 4th November, 2019, pursuant to the Calendar of the Senate passed by the House on 14th February, 2019. The Senate will resume its regular sessions on Tuesday, 5th November, 2019.

Mr. Speaker, Sir, on Tuesday, 5th November, 2019, the Senate Business Committee (SBC) will meet to schedule the Business of the Senate for the week. The following Bills will be due for Second Reading and the Committee of the Whole stages respectively, and will be scheduled accordingly.

The Bills at Second Reading Stage are:-

1. The Registration of Persons (Amendment) Bill (Senate Bills No.14 of 2019), which is appearing in today's Order Paper;
2. The Care and Protection of Child Parents Bill (Senate Bills No.11 of 2019);
3. The Kenya Sign Language Bill (Senate Bills No.15 of 2019);
4. The County Licensing (Uniform Procedure) Bill (Senate Bills No.17 of 2019);
5. The Statute Law (Miscellaneous Amendments) (No.2) Bill (National Assembly Bills No.13 of 2018);
6. The Alternative Dispute Resolution Bill (Senate. Bills No.19 of 2019);
7. The Public Finance Management (Amendment) Bill (National Assembly Bills No.63 of 2019); and,
8. The Independent Electoral and Boundaries Commission (Amendment) (No.3) Bill (National Assembly Bills No.35 of 2019)

The Bills at Committee of the Whole Stage are:-

- 1) The Retirement Benefits (Deputy President and Designated State Officers) (Amendment) Bill (Senate Bills No.2 of 2018);
- 2) The Election Laws (Amendment) Bill (Senate Bills No.33 of 2018);
- 3) The Kenya Medical Supplies Authority (Amendment) Bill (Senate Bills No.38 of 2018);
- 4) The Cancer Prevention and Control (Amendment) Bill (Senate Bills No.9 of 2019);
- 5) The Street Vendors (Protection of Livelihood) Bill (Senate Bills No.10 of 2019);
- 6) The Establishment of Children's Homes Bill (Senate Bills No.12 of 2019);
- 7) The County Tourism Bill (Senate Bills No.5 of 2019); and,
- 8) The County Hall of Fame Bill (Senate Bills No.39 of 2018).

Should the House proceed on recess today, pursuant to its Calendar, I urge respective Standing Committees to use the recess period to expedite the consideration of the aforementioned Bills, pending Petitions and Statements, and to table reports pursuant

to the Standing Orders. I also urge respective Movers of scheduled businesses to be in the Chamber whenever the same is scheduled on the Order Paper.

Mr. Speaker, Sir, I thank you and hereby lay the Statement on the Table of the Senate.

(Sen. Kihika laid the document on the Table)

The Speaker (Hon. Lusaka): Okay. Although we had gone past Sen. Faki's Statement, I will give him an opportunity to read his Statement.

Proceed, Sen. Faki.

APPOINTMENT OF THE MAMA NGINA
WATERFRONT MANAGEMENT BOARD

Sen. Faki: Thank you, Mr. Speaker Sir. My apologies for coming in late. We overstayed in our Committee.

Mr. Speaker, Sir, I rise pursuant to Standing Order 47(1) to make a Statement on an issue of national concern, namely; the purported appointment of The Mama Ngina Waterfront Management Board.

Mr. Speaker, Sir, on Friday 27th September, 2019, the Cabinet Secretary (CS) for Tourism and Wildlife, hon. Najib Balala, inaugurated The Mama Ngina Waterfront Management Board with the prime mandate of managing the Mama Ngina Waterfront.

The appointment was allegedly done pursuant to the Tourism Act, No.28 of 2011. Prior to the appointment, the CS had published a Gazette Notice No.8552 on 13th September, 2019, expressing his intention to appoint the said Board.

Mr. Speaker, Sir, from the outset, this appointment is illegal, null and void. As leaders from Mombasa County, we call upon the CS to revoke the appointment and follow the due process in appointing a competent Board. Under Schedule 4 of the Constitution, tourism is both a national and a devolved function. Therefore, the CS cannot come to Mombasa and establish a project on land managed by the County Government of Mombasa, and then appoint a Management Board, only allocating one position to the County Government of Mombasa.

Mr. Speaker, Sir, the CS should have either handed over the project to the County Government of Mombasa to fully manage it, or appointed a joint Board with the Mombasa County Government to manage the facility. The national Government has previously funded the extensions to Kongowea Market and, upon completion, handed it over to the County Government of Mombasa to manage it. The same scenario should have applied with regard to The Mama Ngina Waterfront.

Mr. Speaker, Sir, secondly, the appointment is *ultra vires* the Tourism Act. I have gone through the said Act and it seems the Cabinet Secretary has not made any regulations that confer upon him the power to appoint such a Board. It is very surprising that the Cabinet Secretary, with all the legal resources at his disposal, could make such a grave error. No regulations have been made. The appointment has been made without the relevant legislation and is, therefore, null and void.

Mr. Speaker, Sir, thirdly, the appointments fall foul of the gender rule. Out of the 10 members appointed to the Board, there is only one-woman appointee; in a Board that requires at least one-third membership of the other gender.

Mr. Speaker, Sir, finally, there seems to be no local representation on the Board. At a time when the region is crying for its equitable share of the national cake, the Cabinet Secretary appointed a Board in Mombasa without a single person from Mombasa County representing the interests of the common mwananchi.

Historically, the land on which the project sits was owned by the Swahili Community, known as the *Pua ya Mbaraka* and later *Mzimle*. This land was owned by the Swahili people. During the excavation of the site, a Swahili settlement was discovered at the site. It is, therefore, difficult to fathom why the Swahili people were left out of the Management Board.

The Swahili people, and the general public maintained this place even when the national Government had allocated part of it to private developers. They fought tooth and nail to make sure that it remained a public recreational land and now a Board has been appointed without any representation from the members of the public. This is not fair, and is contrary to the Constitution and the Tourism Act.

Mr. Speaker, Sir, I call upon the Cabinet Secretary to immediately rescind and revoke the appointment of the Board and, in any event, within seven days.

I wish to add in view of the fact that this Statement touches on the issue of land that belongs to the County Government of Mombasa, I will pray that the matter be referred to the Committee on Tourism, Trade and Industrialization, and the Committee on Labour and Social Welfare so that the two committees can look at the issue.

Thank you, Mr. Speaker, Sir.

Sen. (Dr.) Zani: Thank you, Mr. Speaker, Sir. I stand to support this Statement.

It touches on very critical issues that we have disposed of this House before; issues of resources and communities participating in processes that touch on the resources within those particular counties. An anomaly has been well pointed out. The one I have picked out, which is very key, is to get to the bottom of how a Board could be put in place without the regulations.

Time and time again, especially where legislation is made, and where certain procedures are meant to be followed, then it is important that they are followed. It is not like they are put there in place just for them to remain there. Even as we interrogate this within the Committee on Tourism, Trade and Industrialization, we need to find out exactly what went wrong.

We will be able to have the Cabinet Secretary coming there to explain how he could appoint a Board without coming up with the regulations? How could we have a Board that does not meet specific threshold? This is becoming more and more an anomaly and a way of doing things. We know, for example, that the composition even within the local communities is very important. They are the ones who know the expertise that they have, how things are run there and have the biggest interest in those matters.

The issue of gender rule has been pointed out. I think this is very critical especially for the people of Mombasa, and by extension the people of the coast region. It

is important for us to contextualize this, be able to ask the questions and get answers expeditiously.

Thank you, Mr. Speaker, Sir.

Sen. Seneta: Thank you, Mr. Speaker, Sir for giving me a chance to also add my voice on the same Statement.

I want to congratulate the Senator of Mombasa for bringing this important Statement. This Statement speaks not only for the Mombasa case on the appointment of the Board but it points out to what is going on in terms of these appointments.

Recently, we have experienced appointment of people, some of whom are even deaf. This is simply because they are appointed to these boards and the issue of competence is not looked into. People should be appointed to areas they can serve in terms of competency, knowledge and what value they will bring to that board. This will ensure that we have people in boards who can add value to what those boards are supposed to do.

In this particular case, when you look at this Board that Sen. Faki is talking about, it is supposed to serve a local tourist firm. Local Tourism according to the Constitution is a devolved function. In this case, the people of Mombasa County should be involved and considered when this Board is being constituted.

From the Statement, we are also informed this Board has no women. It is against the Constitution to continue appointing people without taking note of diversity and gender.

In appointment of boards, this House and the National Assembly should wake up to correct this. It is a practice that is going to kill the fabric of this country, if boards will be composed of one tribe, one gender and if appointments to these boards will be made against the Constitution. I think this House and the two committees that this Statement should go to; Labor and Tourism, should stand their ground and tell the CS to do the right thing in the appointment.

It is very frustrating, as a country, if we go on appointing people without looking at the diversity of Kenya. We should not have parastatals and boards that have one tribe, one gender and are not even taking note of the constitutional requirements.

Thank you, Mr. Speaker, Sir.

Sen. Boy: Asante sana, Bw. Spika, kwa kunipa fursa hii kuchangia *Statement* hii ambayo imeletwa hapa na Sen. Faki wa Mombasa County. Kusema ukweli, bodi hii ambayo imechaguliwa na Waziri, ukiangalia vizuri sana, sio sawa kwa sababu watu wa Mombasa hawakujumulishwa au kuhusishwa. Hata Seneta wa Mombasa mwenyewe ambaye ndiye mwenye kaunti hakujulishwa wala watu wa Mombasa hawakujulishwa kwamba kuna kwamba Waziri anataka kubuni bodi ya usimamizi.

Mimi kama Seneta wa Kwale pia namuunga mkono Seneta wa Mombasa kuhusu taarifa hii ambayo ameleta kwa Bunge hili la Seneti. Kwa hivyo, pale ambapo utakapoelekeza kwamba hiyo Kamati ichunguze habari hii bodi, basi, ichunguzwe vizuri waangalie hao waliowekwa hapo ni nani.

Hii ni kwa sababu watu wa Mombasa wana haki yao na watu wa nje wana haki yao. Wanafaa kujua ni nani ambao wamewekwa katika hiyo Bodi.

Kwa hivyo, Mhe. Spika, mimi naunga taarifa hiyo mkono.

(Interruption of Statement)

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM GRASTEN ACADEMY
SCHOOL, KIAMBU COUNTY

The Speaker (Hon. Lusaka): Before we proceed, I have a Communication.

I would like to acknowledge the presence in the Public Gallery this afternoon of visiting students and teachers from Grasten Academy School, Kiambu County.

In our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them. On behalf of the Senate, and on my own behalf, I wish them a fruitful visit.

Thank you.

(Applause)

(Resumption of Statement)

Sen. Wetangula: Mr. Speaker, Sir, I rise to fully share the sentiments of the distinguished for Mombasa County. This is the height of infamy and abuse by a Cabinet Secretary of Government.

If we will appoint public boards to every single establishment in the country, then we are headed in the wrong direction. Why do we not have a board running Uhuru Park, Fort Jesus, Gede Ruins or Hell's Gate? At this rate, for a Government that is committed to austerity and says that it is cutting down on expenditure, we still have a reckless Cabinet Secretary appointing a board of 10 people – nine men and one woman - out of which he even forgets that we have a one-third gender rule, purportedly to run a waterfront facility that has been there for years.

Mr. Speaker, Sir, this is a clear case where a Cabinet Secretary like this should be impeached because this is an abuse of office. Tourism is half devolved and half national Government.

(Loud consultations)

The Speaker (Hon. Lusaka): Order, Members! Let us consult in low tones.

Sen. Wetangula: Mr. Speaker, Sir, these waterfront grounds of Mama Ngina are under the exclusive jurisdiction of Mombasa County. What business does the Cabinet Secretary for Tourism and Wildlife have appointing a board?

The County Executive Committee (CEC) Member for Tourism in Mombasa County can have a manager of the facility; an officer in his ministry as a manager to just ensure that the place is clean, criminals are not allowed to run around, and people who go there enjoy whatever activities are available. However, this kind of behavior by Cabinet Secretaries of Government should and cannot be tolerated.

The whole of yesterday and today, two Committees directed by you have been grappling with the issue of debt ceiling, and we are being told that the Government is

broke and has no money. However, the broke Government is busy appointing dead people to boards, creating new boards and doing all manner of things.

Mr. Speaker, Sir, we salute the Senator for Mombasa for standing up for devolution, equity, gender parity and above all, against abuse of office by a reckless and rogue Cabinet Secretary. We condemn it.

Sen. (Eng.) Hargura: Thank you, Mr. Speaker, Sir. I would like to join Sen. Mohamed Faki in questioning the manner in which the Cabinet Secretary appointed the management board. Even before going into the manner in which it was done, even the viability of having a board for a small waterfront that could have been handled properly by the County Government of Mombasa---

Generally, the way people have been nominated to boards leaves a lot to be desired. Recently, there was the case of the National Cohesion and Integration Commission, where I know very competent people applied and were interviewed. However, some people who have been involved in cohesion for many years were left out. Others who have nothing to do with cohesion are the ones who were appointed. We need to look at how people are appointed to the boards, because they are supposed to add value and not just to create employment.

Mr. Speaker, Sir, I would like to add my support to the Statement and ask the relevant Committee to make sure that we get to a position where boards are created only where they are required, the right people are appointed and even the law is followed in terms of the two-third gender rule.

Thank you.

Sen. Ochillo-Ayacko: Thank you, Mr. Speaker, Sir, for giving me an opportunity to make my remarks on this very important matter.

I want to congratulate my brother, Sen. Faki, for raising this very important matter. This is a matter for which he deserves accolades. Devolution is under threat from encroachment by Cabinet Secretaries who are colonial and imperialistic in thinking. They think that once you have power, you should exercise it without boundaries. It is important that all of us who believe in devolution say very clearly to the Cabinet Secretary that this is a domain that should be left for a devolved unit like the county government.

We complain about the wage bill in this country and excessive debt. However, we can see a Cabinet Secretary of the national Government that is quietly claiming to be broke, trying to create unnecessary board appointments that would occasion further burden on the Exchequer. I want to urge that particular Cabinet Secretary to be mindful of Kenyans who are overburdened by taxation and take away the burden of having to meet expenditure that relates to this board, by removing it and allowing the running of this institution to be carried out by the county government. This is because the County Government of Mombasa is capable of running it prudently.

Mr. Speaker, Sir, with those very few remarks, I thank my brother, Sen. Faki, for raising this matter.

(Loud consultations)

The Speaker (Hon. Lusaka): We have to move to the next Statement. You will make comments on the next Statement, including Sen. (Dr.) Musuruve.

SAFETY OF ROAD USERS ON
SYONGILA-TULIA ROAD IN KITUI COUNTY

Sen. Wambua: Thank you, Mr. Speaker, Sir. I rise pursuant to Standing Order 48 (1) to seek a Statement from the Standing Committee on Roads and Transportation concerning---

(Loud consultations)

Mr. Speaker, Sir, can I request that the Senator of Kitui be heard in silence?

The Speaker (Hon. Lusaka): Order, Members! Let us consult in low tones.

Sen. Wambua: Thank you, Mr. Speaker, Sir. I rise pursuant to Standing Order 48 (1) to seek a Statement from the Standing Committee on Roads and Transportation concerning the safety of road users on Syongila-Tulia Road in Kitui County.

In the Statement, the Committee should:

(1) Explain why the road between Syongila and Tulia, which is traversed by rivers Vyanyu, Ndiang'u, Mutindi, Kakumuti and Muthini does not have a single bridge.

(2) Explain why there are no rail guards on all the drifts along the road, a situation that caused a motor vehicle to plunge into River Mutindi, resulting in the death of four persons, including two brothers.

(3) Explain why the dangers posed by the drifts have not been addressed and state what the Government is doing to avert more accidents on the road, which increase every rainy season.

(4) Explain plans are in place to upgrade the road which serves several schools, hospitals, markets and administration offices to bitumen standards.

(Several Senators walked into the Chamber)

(Loud consultations)

The Speaker (Hon. Lusaka): Order, Members! There is a lot of movement. Can Senators take their seats? You are becoming nomadic.

(Hon. Senators sat at their places)

Sen. Wambua: Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): Proceed, Sen. Wambua.

Sen. Wambua: Mr. Speaker, Sir, I am done with my Statement. I am not sure whether any Senator heard what I said.

The Speaker (Hon. Lusaka): I do not see any interest. That means they either understood everything or did not understand.

Sen. Wetangula proceed.

Sen. Wetangula: Mr. Speaker, Sir, there were loud consultations and I did not quite hear the Senator making his Statement.

(Loud consultations)

Mr. Speaker, Sir, save me from Senators.

The Speaker (Hon. Lusaka): Order, Members! We are hardly listening to what is going on. Therefore, it is even difficult to make comments. Let us be a bit serious than we are performing.

Sen. Wetangula, proceed.

Sen. Wetangula: Mr. Speaker, Sir, in fact, the Statement by the distinguished Senator for Kitui County affects almost half of the counties represented in this House. Water from torrential rains is ravaging every single county. Animals and people are dying, especially in northern Kenya.

The Meteorological Department warned that we were going to have heavy rains beyond ordinary expectations. We have Ministries in both national and county governments responsible for disaster management and mitigation. How come that rains pounding the country for only two or three weeks are sweeping away virtually everything?

People have died in Kitui, Mandera, Wajir and many other places, not to mention – my colleague from Nakuru County is here – that there was a recent disaster in Hell's Gate where a heavy downpour of three hours swept away tourists. Where is our capacity to anticipate preventable natural disasters? Where is our capacity to mitigate unexpected happenings such as heavy rains?

Mr. Speaker, Sir, through you, I suppose the Committee on Lands, Environment and Natural Resources which is responsible should look into this matter and interrogate the Ministries concerned with matters disaster and management and mitigation wherever they arise, so that we save Kenyans. Rains are supposed to bring life and fodder for our animals and enable us grow food. However, they arrive with death. The death is due to man-made negligence.

I thank you.

The Speaker (Hon. Lusaka): Sen. (Dr.) Langat proceed.

Sen. (Dr.) Langat: Thank you, Mr. Speaker, Sir, for also giving me this chance to support this Statement.

Yesterday, I was shocked when I saw how four pupils who were coming from school were killed by torrents of rain and floods in Wajir County. It is also interesting that since four months ago, the Meteorological Department has been talking about heavy rains ahead of us. Despite that warning, disaster preparedness in this country has never worked.

We have been talking here for almost three months about disaster preparedness and management in this country. Beginning next week, our pupils in primary schools will be sitting for their examinations. Yesterday, I saw parents in Kirinyaga County helping children to cross seasonal rivers that have been caused by heavy rains. How long will those parents continue escorting their children to and pick them from school instead of looking for food for them?

I urge the Committee that will take up this issue to ask the Cabinet Secretary concerned about the strategies that have been put in place to ensure our children sit for

their examinations despite the floods and heavy rains. It is a great concern to all of us, particularly those of us in the Committee on Education.

As I support the Statement. This matter should be taken seriously.

The Speaker (Hon. Lusaka): Sen. (Dr.) Musuruve, you have the Floor.

Sen. (Dr.) Musuruve: Thank you, Mr. Speaker, Sir, for giving me this opportunity to support this Statement. We are fully aware that rains are almost there throughout. Throughout the year, there is a rainy season and floods occur all the time.

There is need for us, Kenyans, to ensure that we prepare for disasters like floods. Sometimes floods come with negative effects. There are times when houses are destroyed because of floods. Sometimes drivers are unable to drive safely on the roads. As a result, quite a number of people lose their lives. As a nation, there is need for us to ensure that we come up with mechanisms and ensure that we are prepared to manage disasters.

When disaster comes, first of all, it is usually a shock. For instance, there have been floods and quite a number of people have died. We have to speak about the shock and how to prevent it. It is better we prevent disaster that result to lose of lives, for example, as a result of floods rather than losing lives and looking for mechanisms of how to resolve.

As I support this Statement, the Committee that will deal with it should ensure mechanisms are put in place in all counties so that we do not lose more lives as a result of floods.

The Speaker (Hon. Lusaka): Sen. Dullo, proceed.

Sen. Dullo: Mr. Speaker, Sir, I wish to support this Statement. It is really unfortunate that in the 21st Century, this country is not prepared for disaster especially as a result of floods and drought. We are losing many people and roads and animals are being swept away. Where are we heading as a country? We cannot be entertaining this year-in, year-out.

This morning, I spoke to the CS for Devolution and ASAL Areas. The way they are preparing to counter rain disasters is not realistic. They met today to discuss how to intervene. Something needs to be done. This should be the last time to sing about disaster in this country.

Mr. Speaker, Sir, the Committee should critically look into it and also summon the CS for Devolution and ASAL Areas, so that they give a report on how they will handle issues of current intervention measures in terms of emergencies. The Government spends a lot of money both at the county and national level but we do not know where that money goes. The money does not reach the real people who are affected in this country.

I request the Committee to summon the CS so that they give a strategy in terms of intervention on what is happening in our counties.

Sen. (Dr.) Kabaka: Thank you, Mr. Speaker, Sir, for giving me this opportunity to air my voice and support the Statement by my brother, Sen. Wambua, with regards to this important Statement.

Mr. Speaker, Sir, disasters do occur and they will occur, but how prepared are we, as a Government? What is lacking is coordination. We need to summon all those related Ministries to appear before the Senate to answer serious questions and give us practical

and timely solutions. If we do not do that, we are going to continue losing Kenyans, just like we have lost Kenyans in Kitui. The family members---

The Speaker (Hon. Lusaka): What is your point of intervention, Sen. Kinyua?

Sen. Kinyua: Mr. Speaker, Sir, I thought that Sen. (Dr.) Kabaka is in the Committee on Devolution and Intergovernmental Relations. I also thought that he was standing to confirm that we are going to summon the Cabinet Secretary so that he can give us more information.

Sen. (Dr.) Kabaka: I did not get what he meant, but if I can be allowed to finish--

The Speaker (Hon. Lusaka): It was just a point of information.

Sen. (Dr.) Kabaka: Okay.

Mr. Speaker, Sir, I want to wind up on my statement so that I can give other Members an opportunity to contribute to this worthy Statement or debate. I urge, repeat and reiterate that it is imperative that the Government departments concerned with management of disasters and the like need to come before the Senate and give a comprehensive solution to what they are going to do, now that the rains are causing havoc.

Thank you, Mr. Speaker, Sir. I beg to support.

The Speaker (Hon. Lusaka): Proceed, Sen. Seneta.

An hon. Senator: *Hayuko.*

The Speaker (Hon. Lusaka): Proceed, Sen. Cherargei.

Sen. Cherargei: Thank you, Mr. Speaker, Sir, for giving me this opportunity.

I support Sen. Wambua on this Statement. As we have already said, the rains should be a blessing. We have heard from the Meteorological Department that probably as we go into the next few months, there will be heavy rains across the country. It is sad that we have lost some children in some parts of north eastern region. We continue to condole with their parents and relatives, and wish them well.

Mr. Speaker, Sir, it is so sad that the Ministry of Devolution and Planning, where the issues of disaster are domiciled, are now planning it. It is the right time that even as we process the Disaster Management Bill, which is at the National Assembly level, we need to fast track and assist counties on how they can be part and parcel of handling disasters at their level. We cannot wait for people in Nairobi to decide what happens in Isiolo, Kakamega, Nandi, Busia or whichever part of this country. Going forward, we need to stop, as a country, from being reactive to being proactive in terms of the mechanisms that we need to put in place.

Mr. Speaker, Sir, I heard that at the beginning of the year, when the rains were about to be begin, the Ministry of Devolution and Planning commented that they are going to ensure they have 21 dams. Those dams were to be used for intervention to harvest flood waters. For some areas that are experiencing rains, especially north eastern and *Ukambani* areas, this is the time they should be harvesting rain water. This water can then be used during dry season for animals and even for agricultural purposes. It is so sad that we are discussing this matter at a reactive level. Even during the planning across the cities such as Kisumu and Nairobi, the necessary agencies of Government must come out strongly. It is high time that county governments must be given full mandate in terms of disaster management in this country.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): We will hear from Sen. Khaniri, and then we will move to the next Statement. Others can make comments on the next Statements.

Sen. Khaniri: Thank you, Mr. Speaker, Sir, for the opportunity. I rise to support the Statement requested by my friend, Sen. Wambua.

Let me begin by conveying my condolences to the families that have lost their loved ones due to the ravaging floods which the country is experiencing now.

Mr. Speaker, Sir, the Government Spokesman has issued a statement today just confirming that up to now---

(Loud Consultations)

(Sen. Omanga interjected)

The Speaker (Hon. Lusaka): Order, Members! Order! Order, Sen. Omanga.

Sen. Khaniri: Mr. Speaker, Sir, 29 people have lost their lives due to the ravaging flash floods that the country is experiencing. The state of preparedness by the Government is very wanting. The irony of all this is that during the dry season, the people in Kitui die of drought and lack of water. Then when it rains, they die from floods. Where is the Government in all this?

Mr. Speaker, Sir, we urge the Government to be proactive in these matters, and prepare for these disasters, because they are expected. This happens year-in, year-out and, therefore, we must be prepared. We cannot say that we were taken by surprise.

Mr. Speaker, Sir, we condemn this and support the Statement strongly. I was a victim. Recently, I visited Kitui as a guest to Sen. Wambua, and I experienced the bad roads. I almost spent the night on the road because my car could not move. We got into a ditch because of the bad roads he is talking about. We, therefore, urge the Government to ensure that this is done. We also urge the Chair to expedite in bringing the Statement so that we know what the Government is doing for the people of Kitui and the country at large.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): The next Statement is by Sen. (Dr.) Ali.

(Sen. (Dr.) Ali spoke off record)

I said that the others will comment on the other Statements, because we have to make progress.

Sen. (Dr.) Ali: Mr. Speaker, Sir, the people of Wajir die---

The Speaker (Hon. Lusaka): You should have pressed it faster.

Sen. (Dr.) Ali: I pressed it!

The Speaker (Hon. Lusaka): I saw it later on. In fact, I saw it after Sen. Wetangula talked. After Sen. Wambua talked, nobody who wanted to talk on this Statement.

Sen. (Dr.) Ali: I pressed ahead of all these others. Anyway, there is no problem.

The Speaker (Hon. Lusaka): Proceed.

UPGRADING OF MARORROR SLAUGHTERHOUSE
IN WAJIR COUNTY

Sen. (Dr.) Ali: Mr. Speaker, Sir, pursuant to Standing Order 48(1), I rise to seek a Statement from the Standing Committee on Agriculture, Livestock and Fisheries regarding abattoirs and slaughter houses. In the Statement, the Committee should: -

1. Explain the measures that relevant Government authorities have put in place to ensure that hygiene standards are maintained in abattoirs and slaughterhouses; and explain why Marorror Abattoir in Wajir County is operating in very unhygienic conditions; and,
2. Provide a report on the status of construction of the Lafale Abattoir in Wajir, indicating the cost of the project, the money allocated so far by both the national and the county government; the status of completion explaining the reason for stalling of the project, and the expected date of completion.

Mr. Speaker Sir, a lot of money has been spent on the Wajir Abattoir – over Kshs200 million – and up to now, there is nothing there. There is no proper infrastructure, it is not functional and there are no holding grounds, yet the funds have stopped.

For the Makorror Abattoir, it is in very unhygienic conditions. Recently, a reporter went there and reported on what is happening there. Animals are slaughtered and they have no place to put them. They are putting polythene papers outside and putting the meat on top. When it rains, there is sand and dirt there; and there are marabou storks all over the place scavenging and fighting for that same meat.

Mr. Speaker Sir, these are the problems which are in Wajir Slaughterhouse. I request that the Committee looks into this issue. They should possibly visit Wajir and come up with appropriate measures on what can be done.

Thank you, Mr. Speaker Sir.

The Speaker (Hon. Lusaka): I do not see any interest; therefore, we go to the next order.

(Sen. Farhiya waved to the Speaker)

The Speaker (Hon. Lusaka): I do not see your interest here.

Sen. Farhiya: But I pressed the button!

(Loud consultations)

The Speaker (Hon. Lusaka): It is not here. You do not raise up your hand, but let me give you an opportunity.

Proceed, Sen. Farhiya.

Sen. Farhiya: Thank you, Mr. Speaker, Sir, for giving me this opportunity. As protectors of counties, we need to investigate what has led to the situation of that slaughterhouse.

Mr. Speaker Sir, Kenyans wanted devolution, and they got it. They also wanted their government to be close to them. If the said government is still not serving the people---

Mr. Speaker Sir, I can assure you there is a lot of outbreak of cholera in that county because there are shallow wells, and there is no proper sanitation. Now, compounded with this, we are facing a catastrophe, whereby year-in, year-out, disease outbreaks affect the residents of Wajir.

Mr. Speaker Sir, I urge the Committee to expedite that issue so that that matter is tackled adequately. They should address where the gaps are and make recommendations to this House or any other any other agency that needs to tackle that.

We do not want to waste resources up to the tune of Kshs300 million just for the slaughterhouse not to serve the people of Wajir County.

Mr. Speaker, Sir, I also wish to thank the Senator for Wajir for bringing this matter to this House.

I support.

The Speaker (Hon. Lusaka): I do not see any more interest in the matter.

Next Order.

MOTION

ADOPTION OF CPAIC REPORT ON INQUIRY INTO FINANCIAL OPERATIONS OF VARIOUS COUNTIES FOR FY 2014/2015

THAT, the Senate adopts the Report of the Sessional Committee on County Public Accounts and Investments on the Inquiry into the Financial Operations of Baringo, Busia, Elgeyo Marakwet, Embu, Kajiado, Kericho, Kilifi, Kirinyaga, Kisii, Kwale, Lamu, Makueni, Marsabit, Meru, Nakuru, Narok, Nyamira, Uasin Gishu, Vihiga and West Pokot Counties for Financial year 2014/2015 (1st July, 2014 to 30th June, 2015), laid on the Table of the Senate on Wednesday, 9th October, 2019.

(Sen. M. Kajwang' on 15.10.2019)

(Resumption of Debate interrupted on 23.10.2019)

The Speaker (Hon. Lusaka): Sen. Halake, contribute on Order No. 8.

Sen. Halake: Thank you, Mr. Speaker, Sir, for the opportunity to contribute. Please allow me then to contribute to both the Statement by Sen. Wambua and congratulate him as well as the Senator for Wajir County who has brought the issue of the abattoir that was---

The Speaker (Hon. Lusaka): Order, Sen. Halake. You are supposed to continue debate on Order No. 8. That is why I am saying you minimise noise so that you get to know what is going on.

You are supposed to be contributing to Order No. 8.

Sen. Halake: Which one?

The Speaker (Hon. Lusaka): If you are not ready, we get---

Sen. Halake: No, I am always ready. Mr. Speaker, Sir, I need to get the order number.

Thank you, Mr. Speaker, Sir. Sorry for the confusion.

I rise to support the Motion on the adoption of the Report on Sessional Committee on County Public Accounts and Investments on Accounts of county governments that are listed for Busia, Elgeyo Marakwet, Embu, Kajiado, Kericho, and the rest.

The issue of public accounts is one that is very worrying. I am sure in a few minutes we are going to discuss the country's debt. However, when I looked through the accounts of all these counties, each one of them has so much debt that when we talk of perhaps a debt ceiling for this country, we must include what counties are owing. This is because I think the numerical ceiling perhaps would already have burst.

I think we have seen that our counties are really dying under the pending bills. These pending bills, most of them may not even be verifiable. Throughout the accounts of these counties, each one of them is suffering from very irregular procurements that do not adhere to any public financial management accounts. These procurements are not following any procedure and or any system. Each one of the items that cannot be accounted for and which is contributing to the pending bills is the irregular procurement in our counties that is causing a lot of problems for supplies and service provision to our counties.

Mr. Speaker, Sir, again, I have seen in the report that there is poor bookkeeping all across these counties, where the financial accounts and procurement documents are not in order and there is no support documentation for any of the things that have been incurred.

(Loud consultations)

I can hardly hear myself. There are very loud consultations.

The Speaker (Hon. Lusaka): Let us consult in low tones. Today, there is a lot of excitement; I need to know what is happening.

Sen. Halake: Mr. Speaker, Sir, these accounts show very irregular procurement procedures.

The Speaker (Hon. Lusaka): Sen. M. Kajwang', what is your intervention?

Sen. M. Kajwang': Mr. Speaker, Sir, I just wanted to bring to the attention of the House that the matter being discussed is a matter that affects 20 counties, which is virtually half the Republic of Kenya. If you allow me, we are discussing the Report of Baringo, Busia, Elgeyo Marakwet, Embu, Kajiado, Kericho, Kilifi, Kirinyaga, Kisii, Kwale, Lamu, Makueni, Marsabit, Meru, Nakuru, Narok, Nyamira, Uasin Gishu, Vihiga and West Pokot Counties.

If everybody else would be consulting in loud tones and would be unruly, then the Senators for those 20 counties ought to provide maximum attention to the sentiments of Sen. Halake.

The Speaker (Hon. Lusaka): Sen. Sakaja, what is your intervention?

Sen. Sakaja: Mr. Speaker, Sir, is the Senator for Homa Bay who is also the Chair of the County Public Accounts and Investments Committee insinuating that Members cannot read the Order Paper, because he is starting to read for us the counties as listed?

This House is a House of very honourable men and women who are very clear about what they are doing in the House. That insinuation that there are certain Members from those counties who do not know that their counties are being discussed is not right.

The Speaker (Hon. Lusaka): I think he is just reminding you that with such a heavy matter being discussed, you need to listen to what is going on.

Sen. Wetangula: Mr. Speaker, Sir, the Senator for Homa Bay is so right. In law, we have a maxim called *res ipsa loquitur*; things speak for themselves. If your county is being discussed in the manner of how money has not been properly spent and you are busy walking up and down the Chamber, it means that you are not interested in what is being discussed.

The Chairman of CPAIC is spot on that Members need to listen. We are crying about governors misusing our funds, public funds; and instead of contributing to this, we are busy excited about non-existent issues.

The Speaker (Hon. Lusaka): Members, let me remind you that we are live on TV from 2:30 pm to 6:30 p.m. and we are discussing very serious matters concerning counties, accountability and oversight that we are carrying out.

Please, let us pay attention so that we are able to give it the attention it deserves.

Sen. Halake: Thank you Mr. Speaker, Sir, and for all the people that intervened. I was on the point of pending bills or irregular procurements. Looking across all the counties - and I am glad the Chair of CPAIC did actually go through each of these counties - a single one of them has escaped the poor bookkeeping that was very evident, that is cutting across all our counties and irregular procurements.

A lot of the expenditure that has been incurred could not be supported in many of our counties. The irregularities of the procurement is also contributing to the high debt and pending bills. There is a vicious cycle that is observed in this Report where the irregular procurements are leading to non-verification of bills. Therefore, the bills then continue to pile up because they cannot be verified and the cycle continues as more irregular procurement occurs.

It could be an issue of capacity but most probably, it is an issue of either lack of attention to detail or just commission where these bills then should not be verified.

Mr. Speaker, Sir, we have seen counties even in the recent audit reports where the counties have got a clean bill of health, yet we have 60 pages of irregular procurements, pending bills, irregularities in finance expenditures, unsupported documentation, unsupported expenditures and irregular payments before the procured goods have arrived.

I think the issue of adherence to the Public Finance Management Act is very important in our counties. It is about time our counties started to take these things very seriously. I know some of these reports date back but there is no excuse why by now, these counties have not figured out how to pay their bills and have not regularised their procurement processes and have not kept good books of account for us then to follow. This is because some of the things that are brought to this Senate and to CPAIC do not have head or tail. We have looked at things where you do not know where to begin because you are told the documents got lost while there was movement. Some of the excuses and management responses are ridiculous.

The same issues keep recurring from the audit reports to the CPAIC reports, oversight reports, quarterly reports, name it. I do not know at what point we will deal with these issues.

Mr. Speaker, Sir, if it is an issue of capacity, at what point will we put the right people in place? If it is an issue of right systems, at what point will we put the right

systems in place, including the systems for revenue collection? This is because any Government, whether at county or national level, should make sure that they manage their revenues well.

Mr. Speaker, Sir, this Report has such a big thread of these issues that we cannot even separate them. Reading one report for one county, you feel like you are reading for all the other 19 counties.

With those few remarks, I submit that this House should pronounce itself going forward on how we will deal with non-adherence to the Public Finance Management Act, and also the poor state of our financial systems in our counties. I look forward to working with the relevant Committee to see that these things are rectified.

Mr. Speaker, Sir, I support.

The Speaker (Hon. Lusaka): Proceed, Sen. Cheruiyot.

Sen. Cheruiyot: Thank you, Mr. Speaker, Sir, for this chance. As has been pointed to rightly by the Chairman of CPAIC, this is a very important Report. As a House, if there has ever been a report or an item being on the agenda for our deliberations that should have the attention of all the 67 of us, then this is one of them.

There are very grave issues that have been raised in this Report on various counties that I want to speak to generally, and also as a way of concluding, give a suggestion. There is growing concern by various Members of this House on the net value of what we are trying to do.

I listened to the Chairman of CPAIC while he moved the Motion for the adoption of this Report. He addressed himself specifically to the issue where Members feel that we are considering the reports of the Financial Year 2014/2015 in 2019. Therefore, many of our colleagues are wondering of what importance it will be. I assure my colleagues that it is not in vain that our CPAIC does this exercise.

That is not to say that there is no need for us to properly scrutinise and ensure that if it is in 2019, in as much as it is possible to check through the accounts of the previous years--- That is possible because at the close of every financial year, six to eight months later, the Office of the Auditor General releases its report on the findings of the various counties in this Republic.

Mr. Speaker, Sir, we must be advised as a House on what it is that we need to do to ensure that when we next consider Motions of this kind, we shall be speaking to present issues and issues that citizens consider to be more pressing at this time. That is not to say that this Report is not important. It is import because the records of this House must reflect that as a House, we deliberated and went through, with a tooth comb, each and every proposal from the Office of the Auditor General on the specific accounts of a specific county and made proposals.

Where there is need to call for additional documents, as I have seen, they have requested that the county must provide. Where there is need to direct and say that a particular county complies with a particular regulation, law or regularise certain appointments, that is clearly spelt out in this Report.

Perhaps, the only challenge we will be facing that will need our attention and joint wisdom, as a House, is what happens after this. This is where there are issues of non-compliance with a resolution of the House, especially in light of the fact that there has been a push in the last few days to revive the Implementation Committee of the Senate.

There is good reason for people to say that each committee follows through the implementation of the agendas that are before. However, given how busy, for example, this particular Committee is, I want to know what it is in terms of proposals that we are able to consider and do, so that we ensure that if a specific county has been directed to carry out a particular exercise, they will be able to do that. As it is today, that is not clearly spelt out for us.

What is the rate of compliance? That is the question. If I am asked to reduce my point of argument to one simple sentence I would ask: what is the compliance level to our resolutions of the House for this Report and those that have previously come before us?

Many of the resolutions are quite far-reaching, and if they were adhered to, we would address all these issues of pilferage of public resources and counties struggling with huge wage bills and unpaid debts; collapsing the businesses of many of our young people and women. I urge my colleagues that this is an issue that we need to seriously deliberate, think through and give a proposal on how we think we can make it better.

I must commend this Committee. Despite the enormous responsibility that is bestowed upon them, you can clearly see that there is an attempt and effort to try and catch up where there is a lot of backlog and work. It will be interesting to note that in each of the 20 counties that have been featured in this Report, there are very adverse findings that are being mentioned about the various departments of a specific county.

Many are the times when we speak as the Senate that our attention is only focused on the county governor. I understand the implication because this is the Chief Executive Officer (CEO) of the county and the person responsible for giving directions to a specific county on all matters of leadership. However, it will also be more important - and I suggest this to the Committee - that where they find a particular County Executive Committee (CEC) Member culpable, let him or her be mentioned and barred from holding public office. Let people tremble.

Mr. Speaker, Sir, as we speak about this, my mind is still stuck on one of the things that the Governor of Murang'a, who is also the Vice-chair of the Council of Governors (CoG), said about this Senate, which we must dispel. If we do not do so, it leaves it as scar on our records.

While comparing the current Senate and the previous one, Gov. Mwangi wa Iria is on record as having said that previously when governors were summoned to appear before this House, they would tremble and even file a sick charge, and that kind of a thing. However, nowadays, when they come, everything is okay. They feel as if they have been invited to a hotel. That is a challenge that has been left to us. I do not buy his assertion.

I did not insinuate that the Committee has made it light for our governors to appear before it. Until we have a report here because many governors and their County Executive Committee (CEC) members fight over World Bank resources, they should be barred from holding public office. If after carrying out investigations and requesting for document which are not availed, the Committee should recommend that so-and-so should be barred from holding any public office. The recommendation should be approved by this House so that it serves as a lesson. If that is the case, it will remove from the minds of Kenyans the assertions that were made by this particular governor. They do not have to do it in a hurry and neither are we forcing them to find fault where there is none.

If you go to counties and ask whether citizens feel the impact of devolution, many of them will celebrate because they can see one or two things that have been done. However, many of them know what is happening in our counties. They are aware that a lot of resources we take to the counties end up in the pocket of few well-connected individuals. Until we point out particular individuals and the people who aid them, we will not have lived up to billing as a House.

Mr. Speaker, Sir, it is instructive to note that an audit process only deals with a few samples. For example, if you audit public accounts of Kericho County, chances are when they get to the Roads Department, they will not check 200 or 300 transactions carried out by the Department in the entire financial year. Chances are they will only check three or four. What happens to the rest of the activities that are not captured in the Auditor-General's report?

That brings me to a point that I have been trying to prosecute. I have also prosecuted it with the leadership of this House on many occasions. This is about the role each Senator plays in the audit process of their respective counties. What can they do? They should not just wait for audit reports that are done by our colleagues. When the CPAIC considers audit reports for Kericho County, for example, where the governor paid for a road twice, which is the common practice in counties, the Senator of that county is better placed to point out such mistakes.

I have argued that there is need for each Senator to be incorporated in the process. We must devise a mechanism where they give their input before the final report gets to the Floor of this House. The Committee should perhaps consider forwarding the reports to our offices. For example, they could inform me about the audit report for Kericho County for FY 2015/2016 and seek my comments before making final recommendations as a Committee. That is one of the avenues.

Alternatively, we can think creatively about what else we can do so that the input of the respective Senator is noted. It should not be that we just come to react to reports of the Committee. This is a point I want to emphasize and request that our colleagues consider it.

Updating the master rolls of assets of counties is an issue that cuts across all the 20 counties that we are looking at. This is not an issue to be treated casually. It is because between 2013 and 2017. We expected the Transition Authority (TA) to carry out an audit of all the resources that changed hands from the defunct municipal and county councils to the county governments. If there were no updated master rolls, then a lot of public land and assets were lost during the transition period.

All it takes is for some crafty fellows to be in a place for 10 years before beginning to build on public land. There is nothing to show even for land that you are sure is public land after checking the updated register of assets of a particular county. The report by the TA was supposed to be presented in the previous term. Unfortunately, we were not supplied with it.

As I speak, many Senators in this House cannot tell you the exact level of indebtedness or assets of their counties. They do not know whether all assets, especially land, were transferred during the transition period. We all know the appetite for land by Kenyans and we know what happened during transition period.

There is also the issue of own-source revenue. When the Mover comes to reply, he should perhaps guide this House on why we have never seen it fit to have a standard policy direction on this issue seven years down the line after devolution started. We should recommend that we have a standard way of conducting the exercise electronically across all the counties or propose the mechanisms and standards.

As it has been mentioned, some counties use crafty electronic means where governors team up with their friends to set up the system such that when some funds go directly to the County Revenue Funds (CRFs), others go to their accounts. As a House, this is a responsibility we have abdicated. Time has come for us to ensure we have a policy proposal or make a law on the standard application practice that should be used by all the 47 counties of this Republic when it comes to raising own-source revenue.

Mr. Speaker, Sir, I am aware that there is a Bill which unfortunately officers of the National Treasury, in their usual disregard of this House, took it to the National Assembly instead of bringing it to the Senate. That Bill has been in the National Assembly for more than one year. They do not feel the pinch. Whether the National Assembly appreciates the challenges in our county governments or not, if that Bill had been brought to this House, we would have dispensed of it and it would have become a law.

There is also the business where multinationals negotiate with county officials. Corrupt county officials in counties like Kiambu, Kericho and Bomet do not want their specific counties to gain. They negotiate with multinationals and ensure that they do not update the land value rolls. You will find that for 20 years, multinationals have been paying land rates for more than Kshs5 million or Kshs10 million an acre but nobody is concerned.

I propose to the Chairman of the Committee that as he comes to reply, it will be good to for him guide this House on the persistent and cross-cutting issues in all the 47 counties. In addition, he should tell us their proposal as a Committee, so that the various departmental committees of this House propose via legislation how to address those challenges. That will be a proper and more efficient way of performing our oversight role.

With those many remarks, I beg to support.

(Interruption of debate on Motion)

COMMUNICATION FROM THE CHAIR

PROCEDURE FOR CONSIDERATION OF THE REPORT OF THE SPECIAL COMMITTEE ON THE PROPOSED REMOVAL FROM OFFICE OF THE GOVERNOR OF TAITA-TAVETA COUNTY

The Speaker (Hon. Lusaka): Hon. Senators, the Chairperson of the Special Committee will lay the Report of the Committee this afternoon. Once it is laid, Senators will have time to peruse it. It will, therefore, not be debated immediately, but the Senate will adjourn for 20 minutes in order to allow Senators to go through it. This is because at the point at which it is laid, it will not be known to the House which of the two

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

procedures provided by Section 33(6) of the County Governments Act and Standing Order No.75(4) will be applied. Its contents will determine the procedure to be applied.

Hon. Senators, for your information, both Section 33(6) of the County Governments Act and Standing Order No.75(4) provide as follows: -

“If the special committee reports that the particulars of any allegation against the governor—

- a) have not been substantiated, no further action shall be taken under this section in respect of that allegation; or
- b) have been substantiated, the Senate shall, after according the governor an opportunity to be heard, vote on the charges.”

Consequently, after you, hon. Senators, have had the opportunity of perusing the report and after establishing whether or not the particulars of the allegations against the governor have been substantiated, the Motion to consider it will be listed for business in a Supplementary Order Paper which once prepared will be circulated when we reconvene after 20 minutes. If the special Committee reports that any particulars of the allegations have been substantiated, the Senate will proceed to vote on each of the impeachment charges after according the governor the opportunity to be heard.

Hon. Senators, in this regard, an invitation has been extended to the Governor of Taita Taveta County to sit in the Speaker’s Gallery during debate on the Motion in the event that the special Committee finds any of the allegations against him have been substantiated. At the appropriate time, before I put the question on the Motion, if present, he will appear before the Senate and be heard either by himself or his legal representative.

I wish to inform the hon. Senators that if he chooses to exercise his right to appear and be heard by the Senate, he shall be heard here either by himself or through his advocate in total silence. His speech shall not be followed by any question or comment. The Senate shall thereafter immediately proceed to vote on each allegation found to have been substantiated.

Hon. Senators, in the event that the special Committee finds that the charges have not been substantiated, further proceedings on this matter shall not be taken and I will give further guidance on how to proceed.

I thank you.

Sen. Mutula Kilonzo Jnr.: On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): What is your point of order, Sen. Mutula Kilonzo Jnr.?

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, we established a practice in the past where, in the case of no further proceedings in respect of the Report, hon. Senators nevertheless make general comments on matters of impeachment. Your communication is very clear, but there is a practice that we established for comments, so that where a report tabled is not substantiated, it does not end there.

I thank you.

The Speaker (Hon. Lusaka): Sen. Mutula Kilonzo Jnr., you are jumping the gun. I will give direction after we have reconvened.

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, I thank you. I am sure that you will give me another opportunity after we reconvene.

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

The Speaker (Hon. Lusaka): What is your point of order, Sen. Wetangula?

Sen. Wetangula: Mr. Speaker, Sir, we were on a different Order and I did not hear the Speaker direct that we will stay the other Order so that we get on to a new order for the Report of the special Committee to be tabled.

Kindly give direction for purposes of record. Many of us had queued to speak on the earlier Order. Therefore, if you have ordered a stay on the earlier Order, it should be communicated so that the distinguished Senator for Embu County can then lay the Report for you to give your directions.

The Speaker (Hon. Lusaka): Thank you, Sen. Wetangula, for that observation. I direct that the earlier order be stayed. We will come back to the Motion after debating the report of the special Committee.

Chairperson of the Special Committee, kindly proceed to table the report.

PAPER LAID

REPORT OF THE SENATE SPECIAL COMMITTEE INVESTIGATING THE PROPOSED
REMOVAL FROM OFFICE BY IMPEACHMENT OF THE GOVERNOR OF
TAITA-TAVETA COUNTY, HON. GRANTON SAMBOJA

Sen. Ndwiga: Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate today, Thursday, 24th October, 2019:

The Report of the Special Committee on the Proposed Removal from office by Impeachment of the Governor of Taita Taveta County, hon. Granton Samboja.

(Sen. Ndwiga laid the document on the Table)

The Speaker (Hon. Lusaka): Hon. Senators, the House stands suspended for 20 minutes. We will reconvene at 4.20 p.m.

(The Senate adjourned temporarily at 3.55 p.m.)

(The Senate resumed at 4.20 p.m.)

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

The Speaker (Hon. Lusaka): Hon. Senators, I want to remind you that the Report is also on your *Ipads*. So, you can also see it there.

Hon. Senators, I believe that you have now had the occasion to go through the Report of the Special Committee on the Proposed Removal from Office of the Governor of Taita Taveta County. As you may have noticed, the Committee has found all the allegations against him to have not been substantiated.

Consequently, hon. Senators, in this case, the procedure to be followed is as set at Section 33(6)(a) of the County Governments Act and Standing Order 75(4)(a), both of which provide as follows:-

“If the special committee reports that any particulars of the allegations against the governor-

(a) have not been substantiated, no further action shall be taken under this section in respect of that allegation;”

That being the case, hon. Senators this matter stands concluded, and no further proceeding shall be taken thereon.

However, pursuant to Standing Order 1, I shall now allow the Chairperson of the special Committee to make brief remarks on the process undertaken by the Committee, and in particular, any recommendations that the Committee would wish to make regarding the process.

The Chairperson will have not more than 10 minutes. Thereafter, I shall allow Senators to make general comments and observations thereon for not more than 30 minutes. After which, we shall resume debate on Order No.8 in today’s Order Paper.

I thank you.

Proceed, Chairperson.

Sen. Ndwiga: Thank you, Mr. Speaker, Sir. You will recall that at the sitting of the Senate of 15th October, 2019, the Hon. Deputy Speaker of the Senate, by way of Communication from the Chair, informed the Senate that he had received correspondence from the Speaker of the County Assembly of Taita Taveta communicating the approval of a Motion by the County Assembly of Taita Taveta to remove from office by impeachment the Governor of Taita Taveta County.

Mr. Speaker, Sir, on the same day, the Senate Majority Leader gave notice of Motion and moved it. I will not go through the Motion that was moved, because of the time that you have given me.

Mr. Speaker, Sir, I wish to thank the House because the Committee that was formed was an impeccable one. It was a very high level Committee consisting of Sen. George Khaniri, Sen. (Dr.) Ochillo-Ayacko, Sen. (Dr.) Agnes Zani, Sen. Cheruiyot Aaron, Sen. Charles Kibiru, Sen. Boniface Kabaka, Sen. (Dr.) Steve Lelegwe, Sen. Beatrice Kwamboka, Sen. Farhiya Ali and Sen. (Rev.) Naomi Waqo. This Committee was mandated to investigate the proposed removal from office of the Governor of Taita Taveta County. Following the debate on the Motion, the Senate resolved to establish the special Committee.

Mr. Speaker, Sir, the special Committee met on several occasions. In fact, I am skipping the number of the meetings that we met. The following charges had been proffered against the Governor:-

(1) Misappropriation of funds contrary to Section 196 of the Public Finance Management (PFM) Act, 2012. The particulars include:

- a. expenditure on unbudgeted projects;
- b. unwarranted formation of task forces;
- c. stalled projects; and,
- d. failure to prudently implement the development budget.

- (2) Failure to submit to the county assembly annual reports on the implementation status of the county policies and plans as required by Section 30(2)(j) of the County Governments Act, 2012.
- (3) Failure to deliver the annual state of the county address as required by Section 30(2)(k) of the County Governments Act, 2012.
- (4) Failure to remit statutory deductions to the relevant institutions, including the Kenya Revenue Authority (KRA), the National Hospital Insurance Fund (NHIF), and the National Social Security Fund (NSSF), contrary to the Income Tax Act, Cap 470, the National Hospital Insurance Fund Act, Cap 255, and the National Social Security Fund Act, Cap 258 of the Laws of Kenya.
- (5) Misleading the people of Taita Taveta County contrary to Section 19 of the Public Officers Ethics Act, Cap 183, Laws of Kenya, as read together with Article 73 and 260 of the Constitution of Kenya, 2010.
- (6) Misleading the members of the Taita Taveta Assembly contrary to Section 19 of the Public Officers Ethics Acts, Cap 183, as read with Article 260 of the Constitution of Kenya, 2010. The particulars include:
 - a. the allocation of Kshs274 million for casual workers; and,
 - b. the use of Kshs120 million being road maintenance from the Fuel Levy Equalization Fund.
- (7) Misconduct, and the particulars include:
 - a. failure to adhere to county assembly resolutions on the ratification of the acting county executive member;
 - b. misrepresentation of facts to the public with the aim of inciting public against county assembly;
 - c. collapse of county government's devolved structures; and,
 - d. failure to provide leadership in the current budget stalemate.

Mr. Speaker, Sir, the Committee interrogated all these issues.

In the course of its investigation of this matter, the special Committee observed a number of issues which, outside the specific charges made against the Governor of Taita Taveta County, are germane to the totality of the situation of the Taita Taveta County and merit the attention of the Senate.

These include-

(a) The toxic environment prevailing in Taita Taveta County; this has exposed a deep chasm between the county assembly, on the one hand, and the county governor on the other.

(b) The Committee is unimpressed and must express its reservations on the pattern of conduct of the governor that it has perceived on the basis of the material brought before it. For example, while it is open to the governor to indulge in musical extravaganzas or other social activities, it is an uninspiring and disturbing picture when the governor cannot similarly find time to appear before the county assembly to present the Annual State of the County Address nor to submit the annual report on the implementation status of county policies and plans.

The governor requires to be reminded of the high calling of his office and the responsibilities of leadership as set out in Article 73 in the Leadership and Integrity Chapter of the Constitution.

(c) The Committee observes that the impeachment process before the Senate or the special Committee, as in the present case, is a solemn *quasi-judicial* process. The Committee is cognizant of the rights of parties to determine the manner in which they shall appear. It will assist the Committee if they are prepared for such appearances and avail such material that will enable it to reach a fair determination on the matter.

The Committee is adversarial rather than inquisitorial in its orientation and can only rely on such evidence.

(d) Further investigations by relevant bodies; the Committee observes that the impeachment process is not a panacea for all incidents of maladministration or criminal conduct. Where allegations of a criminal nature are made, it may be the case that while the Committee has neither the time nor the resources to make a conclusive finding, the matter is nevertheless serious in nature and may require the relevant organs of Government to pursue. The Committee's view is that some of the allegations made in the present impeachment process merit such consideration.

These include the allegations relating to-

- (i) irregular procurement of a drilling rig;
- (ii) irregular shipping of three paramedic ambulances;
- (iii) failure or delay in remittance of statutory deductions to National Hospital Insurance Fund (NHIF), Kenya Revenue Authority (KRA) and National Social Security Fund (NSSF); and,
- (iv) recruitment of casual workers by the county executive.

(e) Statutory timelines for conclusion of the impeachment process can hardly be gainsaid. The Committee observes that the impeachment process provided for in Article 181 of the Constitution requires utmost judiciousness and circumspection.

The Speaker (Hon. Lusaka): I will add you two more minutes because your 10 minutes are over. Pick the pertinent points.

Sen. Ndwiga: Mr. Speaker, Sir, having considered all the matters, it then fell on the special Committee to discharge its mandate under Section 33 of the County Governments Act, Standing Order No.75 and part II of the Fifth Schedule of the Senate Standing Orders.

Mr. Speaker, Sir, I will not go into those particulars. I will go straight to the allegations.

Allegation number one is expenditure on unbudgeted projects. The Committee finds that the allegation was not proved and was, therefore, not substantiated

Allegation number two is unwarranted formation of taskforces. The Committee finds that the allegation was not proved and was, therefore, not substantiated.

Allegation number three is on stalled projects. The Committee finds that the allegation was not proved and was, therefore, not substantiated.

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

The Speaker (Hon. Lusaka): Sen. Wamatangi, what is your intervention.

Sen. Wamatangi: Mr. Speaker, Sir, this is a serious and important impeachment proceeding of a governor and the people of Taita-Taveta County are curious to find out

his fate. Is it in order to curtail the time of the Chairperson to the extent that the people of Taita-Taveta and the country are denied the opportunity to get the details and gist as to the reasons why the governor will be impeached or not? Is that in order? Should he not get more time?

The Speaker (Hon. Lusaka): First of all, there should not have been any discussion at all according to the Standing Orders. I have used my discretion under Standing Order No.1 to allow for debate. Therefore, do not misuse it. Use the little time to communicate. Otherwise, the law says that the matter should have died the moment the Committee found that the governor is not guilty.

Sen. Wamatangi: Mr. Speaker, Sir, I am guided. However, now that you have opened the window, you should open it fully.

The Speaker (Hon. Lusaka): I cannot open the window beyond that. Mr. Chairman, please, summarize.

Sen. Ndwiga: Mr. Speaker, Sir, I am properly guided.

The Committee worked under interesting times where the governor tried to injunct the Senate not to discuss this matter. The county assembly also appeared through their advocate, but there was no evidence to the allegations as it is required.

I thank you for giving me a little opening to state what I have and also allow Members of the Committee to say a few things.

The Senate Majority Leader (Sen. Murkomen): Thank you, Mr. Speaker, Sir, for opening this window. This is the first time this is happening since we started impeachments. In Governor Mwangi wa Iria's situation, we wanted a similar process. However, we could not and we only made few comments. The statue says that the impeachment is over and it also gives the reasons of why the governor was not impeached. So, I respect the County Government Act and the Standing Orders which does not give us the latitude to discuss why the governor was not impeached. That is gone and done. That is how we drafted the County Governments Act and the Constitution for purposes of the President. If the Committee does not approve, that is the end of it.

Mr. Speaker, Sir, let me talk about the other incidental issues that are beyond the question of impeachment of the governor.

First of all, the Speaker made the right decision. Also, this House after a protracted debate we made the right decision on whether Senate can be impeached.

An hon. Member: It is "injuncted".

The Senate Majority Leader (Sen. Murkomen): Mr. Speaker, Sir, pardon me. I meant injuncted, but it seems my mind is on impeachment. We made the right decision on whether Senate can be injuncted. Many of us spoke on the Floor of this House – and it is in the record of Parliament - on what is the right position. Regarding the ruling of the Speaker as to whether Senate can be injuncted or not, it is very clear that Parliament cannot be injuncted.

Mr. Speaker, Sir, the product that comes from Parliament can be challenged in courts or declared by courts to be null and void, or to be in violation of the Constitution. We have no problem with whatever decision the courts will take. What is important is that Parliament has the responsibility to carry out parliamentary processes and make parliamentary decisions. There is respect when we say there is separation of powers, but there is also interdependence among institutions of governance.

Secondly, I want to appreciate the fact that even in this debate, there is always this argument that a Governor has not been given a fair hearing. It is not only in this impeachment process, but in all the other six impeachment processes that went before us, the argument has always been that fair hearing has not been given to the governor at the county level. It is established as ruled by the Supreme Court that those issues can be raised at the Senate, because this is where the trial is taking place.

Mr. Speaker Sir, I am happy that the Committee made recommendations and observations as to whether the Governor was given a fair hearing or not. I want to commend the Chairperson and the Members of this Committee for acquitting themselves that they are not seeking for vendetta. Even when the governor refused to appear before the Committee, the Committee stuck to the law, the rules and regulations. They decided that they will be fair to him despite the fact that he did not appear before them.

I have looked at some of the recommendations of the Committee; they required certain evidence that was not supplied by the county assembly. They required certain representation from the county assembly that was not substantiated. Based on that, they were fair and made a decision which is the right decision.

Thirdly, I said this last time and I want to repeat. The process of impeachment is a process of accountability. It is about bringing out the issues that are affecting county assemblies. It is not a vendetta to pursue a particular individual. As a result of that accountability process, there are very pertinent recommendations that have been made in this report. There is a serious recommendation that has been given there that independent institutions - particularly the Ethics and Anti-Corruption Commission (EACC) - should investigate the allegations that have been leveled against the governor, particularly allegations related to purchase of rigs and hiring of casual staff which increased the wage bill.

Taita-Taveta County is among the top five county governments in Kenya that have the highest wage bill despite the fact that it is also among the five counties that receive the lowest allocation from the national Government. I hope your office - through the Clerk's Office - will quickly submit this report to the EACC. They have been given 60 days to investigate and come back to Parliament through the relevant committee, which is the County Public Accounts and Investment Committee (CPAIC), so that a process of accountability can be achieved when it comes to the resources of the people of Taita-Taveta. That might be a better process than even this House, because that process will be forensic. It will be done by people who are experts and they will report back to this House through CPAIC. Through that, we will have achieved accountability.

Mr. Speaker Sir, I am also glad that as a result of this process I am told that already there is a communication between the governor and the county assembly and they are beginning to work out a formula of working together. That is exactly what we are talking about, that a public process of accountability that involves the House whose responsibility it is protect and defend counties will play a major role in bringing those county assemblies together. I will not be surprised soon they will have the budget passed and they will begin to walk together because there is a process of accountability. This House is able to hold them accountable.

There is a recommendation that a mediation process be initiated in this House. I want to congratulate the Chairperson of the Committee on Devolution, Sen. Kinyua

because, together with various actors, including the former Prime Minister, the CS Devolution among others, they tried to look for a solution in an *ad hoc* manner and it did not work. However, through a mandatory process of this House, there will be a mediation process lead by the Committee on Devolution.

Mr. Speaker, Sir, I want to request Governor Samboja to appreciate that this is the Senate; it is not a kangaroo court. When the Senate tells you to come here, we are taking judicial notice of what is happening. He is happy to be a DJ in his radio station. He attends faithfully to the process of becoming a DJ in his radio station, but he has no time to appear before the Senate.

In this report, the Committee has captured that he has been able to go for cultural events, public dances, and even trying to initiate a process of dissolving the county which still comes to this Senate, but he is disrespecting the same Senate that he will have to depend on in making that particular decision.

Mr. Speaker Sir, I want to congratulate the Committee and to tell the Senate that this is the right thing to do. If another impeachment comes, we will just focus on the law and the due process of the law. I thank you for giving us this opportunity. This is a very important Report. We must ensure that its recommendations are implemented, particularly the recommendations that are outside the impeachment process.

The Speaker (Hon. Lusaka): The Senate Minority Leader, Sen. Orengo.

The Senate Minority Leader (Sen. Orengo): Thank you, Mr. Speaker, Sir.

Let me say from the outset that when this matter came up before the Senate, I gave my views on the issue of the court order. When there is a court order - because of the functionality of State institutions and the need for harmony between State organs - there should be room to show respectability between institutions of Government. That is quite different from whether or not, there should be an impeachment process.

I still believe that since judicial authority rests with the courts, just like legislative authority rests with Parliament; therefore, whenever courts render decisions, it is still my belief that those court orders should be obeyed. That is why we say nobody is above the law. Whenever a question arises as to what is the true determination and statement of the law, the courts have the final word. That is not to say that an impeachment process should never take place.

I said at the beginning when we were dealing with the first impeachment process, that it was deliberate that the makers of this Constitution gave the powers for impeachment court to the Senate as against any other organs of state, the National Assembly included. Quite easily, the question of impeachment could be a judicial process and yet the framers of the Constitution decided that that process should come to the Senate.

Mr. Speaker Sir, we need to reach an understanding because, in the practice of law, a lot of conventions are established. For example, when one arm of Government is engaged in a process or has the duty to deal with a particular matter, other arms of Government should stand down. What has happened now is, probably, a lesson to the Judiciary, that when a matter lies with the Senate or with Parliament, they should defer to the processes taking place in Parliament before making orders, until that is exhausted.

If you have a matter that is before an inferior court and you went to the High Court, they would normally tell you to exhaust the process that is going on before you

come to us. I agree with the advisory that was given by the Supreme Court in the first case of Governor Wambora, that processes within the Senate or Parliament should be completed before the Judiciary can exercise jurisdiction on any particular matter.

The Senate has rendered itself very well. It has proven again because this has been said again and again; that when a matter is before the Senate, it will be decided in accordance with the evidence and what the law is. The Committee needs to be congratulated for doing so.

I hope that this will also go out to the county assemblies; that when they want to impeach a governor, they should do a little homework. They should not rush to judgement, but bring a concrete and well researched case to the Senate. This is so that the case can be dealt with in accordance with the evidence, law and merits of the case. I think this is a lesson to the county assemblies.

Mr. Speaker, Sir, sometimes governors also tend to ignore county assemblies. In fact, what is happening in Taita-Taveta County arose out of lack of respect between the two arms of the county government. It is not just Taita-Taveta County, but there are many counties where governors take county assemblies for granted. That should not be the case, because county assemblies have responsibilities of legislation and oversight at the county level.

Any governor, therefore, who does not respect the county assembly is a matter that should be amenable to some form of remedy, including an impeachment if the grounds of impeachment are met. To that extent, I hope that the governor, going back to Taita-Taveta County, will take it upon himself to go through a process of reconciliation. This is so that the people of Taita-Taveta do not suffer from the differences and conflict which have emerged between the county assembly, the governor and, probably, the executive as a whole.

Mr. Speaker, Sir, if we cannot apply the impeachment processes effectively, probably, then a more parliamentary system would have commended itself, where it is easy to remove a Prime Minister or a governor if he or she was a regional premier, for example. However, in our system, the impeachable offences are not left to guesswork; they are stated in the Constitution and the County Governments Act.

Eventually, when we sit down from these experiences, we still need to go back under the County Governments Act and the law regarding impeachment, which we tried to put in place. We should articulate these processes in a manner that governors, in the first place, should be made to appear before county assemblies when matters of impeachment arise.

The Senate Majority Leader (Sen. Murkomen): On a point of information, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): What is your point of information, Sen. Murkomen?

The Senate Majority Leader (Sen. Murkomen): Mr. Speaker, Sir, it is about what Sen. Orengo has said regarding the possibility of a court process that is going on. Just to inform him, I have established that there is truly that court process, both against the county assembly and one which was purported against the Senate.

Senior Counsel, as you conclude your comments, do you think that the governor will now still go back to the court? If he was to be faithful the way he was trying to be, now that we will not impeach him, will he go back to the same court and continue

insisting that the Senate has not completed the process? If the courts make a decision that the impeachment process should continue, can we come and continue afresh? What do you think?

The Senate Minority Leader (Sen. Orengo): That is very good information, although it is a rhetorical question. However, in law, there is never no solution. If I can give the governor free advice, he should go back to court and he can say: “Arising out of the decision of the Senate, the matter has been compromised and there should be no further proceedings.” However, if he elects to go on, the courts can still hear it irrespective of the decision that has been made and say the debate in Parliament or the Senate has been vitiated. He can make that election. However, if he is brought again, he will not expect any mercy.

I remember when we were doing the Governor Wambora matter, every Senator was waiting for him to come back. He made sure that he did not come back. When he did, he went back to the courts, which shielded him. My point is that the courts will still have the final word, but the Senate cannot initiate a process of impeachment. That process either starts from the county assembly, who prepare the charges or, in respect to the President and Deputy President, it comes from the National Assembly.

If the governor wants peace in Taita-Taveta, and I think he has got some representatives here listening, he should go to court and say that the matter has been compromised in view of what the Senate has done. But if he goes on, the possibility is still there.

From my perspective, we need to sit down and spell out the impeachment processes, where an accused person elects not to attend. He is an accused person not in a criminal court, but in a political process. Impeachment is a political process and the governor should be held accountable.

Impeachment is also a process of accountability; to check and make sure that the governor or the President can be held to account. It does not matter really whether or not one is convicted. Even if the governor is not convicted, it is still an important process. Since there is no criminal trial as would take place in a criminal court, we should have in the impeachment law---

Since the governor is elected to serve the people, he should under that process be compelled to appear before the county assembly. When the matter is before the Senate, the governor or whoever is being impeached, must be compelled to appear before the Senate. If governors and other people will take their positions or the courts as a shield, then we need a law that the accused person can hear the testimony being adduced against them.

Having said that, I appreciate the Committee very much for what they have done; not because of the outcome, but because they have considered what is required in an impeachment process. They heard the evidence, considered the law and made a determination. Even if it had to go for a review – even though there is no other body above the Senate to review - I am sure that, that decision would not be changed in any circumstances.

Governor Samboja should count himself lucky because, as they say in United States of America (USA), whether or not an offence has been committed, it is what the Senators decide. We can talk about the law and the threshold, but at the end of the day, it

is really what Senators say. Even without any evidence, we may look unreasonable, but when you convict on an impeachment, it does not matter whether there was sufficient evidence. This is because we are not sitting as a court of law; it is partly a political process, so long as there are proper articles of impeachment. At the end of the day, the decision as to whether there is sufficient evidence or the law has been complied with, it is a decision that is made on a very pragmatic basis by the Senators.

In the USA, the Republican Party now supports President Trump quietly even when sometimes they do not agree with what he does. The Democrats could be going the other direction. What has been shown in the Senate is that we do not care about party positions during impeachment processes. Sometimes there seems to be some kind of unanimity and harmony between Members of the Select Committees in terms of the importance and the objectives of an impeachment process.

With those few remarks, I thank you, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): I can see there is a lot of interest. I will give five minutes each so that everybody has a chance to say something on this because this is an important debate we are having as a Senate.

Sen. Kinyua: Bw. Spika, kuna swali ambalo najjuliza. Seneti imetoa uamuzi wake. Je, tunaolewa mgogoro ulioko kule Taita Taveta? Uamuzi wetu ni kuwa madai yaliyoletwa hayana msingi wowote. Ukweli ni kwamba kuna mgogoro katika Kaunti ya Taita Taveta. Licha ya kuwa tumesema kuwa madai yaliyotolewa hayana msingi wowote, tunafaa kuwaunganisha watu wa kaunti hii. .

Mimi ndiye Mwenyekiti wa Kamati ya Ugatuzi na Mahusiano ya Kiserikali. Tulijaribu kuwaunganisha. Tulifanya hivyo mara si moja. Tulikutana na Wawakilishi wa Wadi na Naibu wa Gavana ili kujaribu kuwaunganisha. Hata hivyo, Seneti imeeleza katika Ripoti yake kwamba madai yaliyotajwa hayana msingi wowote. Hiyo itampa gavana nguvu nyingi. Huenda ataonyesha kuwa Wawakilishi wa Wadi hawawezi kufanya chochote. Sisi kama Seneti tumekubaliana mia kwa mia.

Ripoti inasema kwamba wakati gavana alipokuwa akisoma hotuba yake, alisema kuwa kisheria anaweza kuvunja Bunge la Kaunti ya Taita Taveta. Wanakamati wameeleza kuwa aliwahadaa wananchi wa Taita-Taveta. Licha ya kuwa nitajumuika katika kuwaunganisha, pengine tungeeleza katika hii Ripoti kuwa tulipata maoni yao. Inafaa kuwekwa wazi kuwa gavana alitwa lakini hakuja. Tunafaa kuwaunganisha watu wa Taita Taveta ili shughuli ziendelee.

Kuna Seneta ambaye alisema kuwa walikuwa wakiongea lakini kukawa na mtafaruku kuhusiana na kuondolewa kwa gavana mamlakani. Tumetoa maoni yetu lakini Wawakilishi wa Wadi wanafaa kwenda kortini. Tumefanya kazi yetu kama Seneti lakini pengine tungependekeza kuwe na umoja ili Kaunti ya Taita Taveta iweze kuendelea mbele kwa sababu kisheria kazi yetu ni kutetea ugatuzi. Hilo ndilo jambo ambalo tunafaa kufanya. Hata hivyo, naunga mkono Ripoti hii ambayo tumepitisha kwa asilimia.

Nawapongeza Wanakamati kwa kazi waliofanya. Ijulikane wazi kwamba kitakuwa kizungumkutu kujaribu kuwaunganisha watu wa Taita Taveta. Huenda gavana akasema kwamba hana makosa na yeye ni mweupe kama pamba kwa sababu Seneti iliamua. Ikiwa hivyo, itakuwa vigumu sisi kujaribu kuwaunganisha. Huenda gavana atawaambia kuwa Seneti ilisema kwamba hana makosa na kwamba walio na makosa ni wale walioleta ripoti katika Seneti.

Sen. Cheruiyot: On a point of order, Mr. Speaker, Sir. I am sorry to interrupt Sen. Kinyua. In his contribution, there is something I have noted and I heard the same from Senate Majority and Senate Minority Leaders when they made their contributions. I have also seen the same in print and electronic media.

It is like people are reading the final charge of what our Committee found out and saying that we cleared the governor of all the charges. That is not the truth. I understand the challenge because Members have not read through the entire Report. We found the governor to be culpable of three out of the seven charges. What we were interested with we, as a Committee, is whether they met the threshold of gross violation. It is important for Senators not to make debate out of it.

Many people are saying that all the charges were disposed of, but that is not the truth. We found three out of seven allegations to be true, but they did not meet the threshold of gross violation. That is an important thing for people to know.

The Speaker (Hon. Lusaka): That is important information.

Sen. Kinyua, tafadhali malizia.

Sen. Kinyua: Bw. Spika, nakubaliana na Sen. Cheruiyot kwa sababu Ripoti yenyewe ina kurasa 76. Pengine tungevinja rekodi ya dunia kuisoma kwa dakika 15. Huenda hapo ndipo makosa yalitokea.

Nakubaliana na Ripoti hii. Nimechangia yangu kuihusu.

Sen. Wetangula: Mr. Speaker, Sir, I will try to be brief and use the time provided. I thank the Committee that was set up by this House to deal with the issue of the impeachment of the Governor of Taita-Taveta County, His Excellency, Hon. Granton Samboja.

I have read through this Report and I agree fully with the intervention by the distinguished Senator for Kericho County, that finding that the allegations are not substantiated is different from a finding of innocence. Indeed, we, as lawyers, know that when you are taken to court on a criminal charge, the court does not declare you guilty or innocent. It acquits you on the basis of the evidence provided.

This is something that the people of Taita-Taveta County, the Governor and his people, MCAs and the people who elected them must now reflect on. A stand-off between elected people in any county or country has severe consequences on the provision of services to *wananchi*.

We have seen in Taita-Taveta County that the unhealthy relationship between the governor and MCAs – my party has several MCAs there whom I talk to – has occasioned a situation where service delivery literally broke down and it is the *wananchi* that suffer. It is the *wananchi* who are deprived of the approval of budgets, provision of medicare, good roads and other services that are required.

Mr. Speaker, Sir, now that the House has reached the verdict that is before us, it is important not to tell the governor, as my distinguished colleague from Laikipia says, *ati yeye ni mweupe kama pamba*. There is no such finding that he is now as white as cotton. What the Committee has found is that, even where there is culpability, the threshold for impeachment has not, in the opinion of the Committee, been reached. That is good enough.

Mr. Speaker, Sir, I also want to tell Governor Samboja that his fear of the unknown when dealing with the Senate was totally unfounded. His running to court – as

he has a right to do – to get injunctions that became unenforceable on the Senate, was totally unnecessary.

This is a House of fairness, justice and reason. You can see that even when Governor Samboja did not appear before the Committee, the Committee did not wear blinkers of bias, and said, “This is an arrogant governor who is not submitting to our jurisdiction or responding to what is before us.” The Committee looked at the record, perused through the evidence, scanned through the documents and found that the threshold of impeachment has not been reached. Therefore, Governor Samboja, you can now sit, relax and know that in the Senate, you have a pedestal for fairness, fair play and justice. Know that with or without your appearance, hon. Senators are sufficiently reasonable and knowledgeable to look at evidence without bias.

Mr. Speaker, Sir, arising out from this, what is even more important is a message to all governors. The message is that when you have a position of responsibility, like a governor, you have a corresponding duty to cultivate proper human relations with people. You also have a corresponding duty to ensure that you coexist in harmony and mutual respect with other elected leaders in the county.

I talked to the most senior of the elected leaders in Taita Taveta County, Hon. (Dr.) Naomi Shaban, who told me a very chilling story. This was a story of how attempts to bring the parties together were rudely and arrogantly rebuffed by the governor.

(The amber light on the timer went off)

Mr. Speaker, Sir, could you add me a minute?

Some religious leaders and everybody came in, but he would hear nothing of it. That is not the way to go.

The history of Embu, which is a precedent in this House, tells us that you can escape the dragon round one, and still encounter it in the second round, just like Governor Wambora realized, to the extent that he ran his full five-year term on an injunction. This House found twice that our good friend, Governor Wambora had violated the Constitution. The Constitution which he had sworn to defend, protect and uphold.

When such allegations are made, it is a wake-up call to any governor. It is not now for him to go away and say, “Somebody said that *mimi ni mweupe kama pamba*.” He must now look back and find where the first drop of rain landed on him. He must also find where his relationship with other elected leaders broke down.

Mr. Speaker, Sir, I wish the people of Taita-Taveta and our distinguished colleague who is in this House well. We hope that peace, self-respect, mutual respect and fairness between all offices that run that county will prevail so as to deliver services in the spirit of devolution.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): Proceed, Sen. (Eng.) Maina then we will have Sen. Mwaura.

Sen. (Eng.) Maina: Thank you, Mr. Speaker, Sir. First, I commend the Committee for the work they did in a very short time and came to some conclusion. When looking at this Report, we should be asking ourselves a few questions. What is the

likely genesis or the beginning of these serious differences between MCAs and the governor? When a man and his wife are divorcing, they never really disclose the real reason. In spite of all these major stories that have been told, to my mind and from when this story started coming about, it was about the allocation of money and who will control it.

Mr. Speaker, Sir, it is most unfortunate that, we, as the Senate, should be losing many hours fighting for more money to counties. However, our story ends in approving a check to the counties. After that, we have little or no control. The way I understood this matter from the public domain was that each of the MCA wanted to be given a portion of the money for their wards, where they would manage it maybe to finality. After that, it is upon you to imagine the results. The governor stepped in, and said, “No, that is not the way to go. It will be done in the manner that will be in consultation with the County Executive Committee (CEC) members.”

Mr. Speaker, Sir, we may say that we are praying they work in harmony. We say that we have delivered a point, that Taita-Taveta starts working in harmony, but we have not addressed the issue. How can we be assured that the people of Taita-Taveta will get the services they need from the money allocated to them?

The Committee has found that the governor, except on three allegations, is not culpable. I tend to believe that because if the genesis---

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

The Speaker (Hon. Lusaka): What is your point of intervention, Sen. Farhiya?

Sen. Farhiya: Mr. Speaker, Sir, I want to inform the Senator that it is not that we did not find him culpable---

(Sen. (Eng.) Maina remained standing in his place)

The Speaker (Hon. Lusaka): Take your seat, Sen. (Eng.) Maina. You cannot both be on your feet.

(Sen. (Eng.) Maina resumed his seat)

Sen. Farhiya: Mr. Speaker, Sir, if he allows me to inform him, it is not that we did not find him culpable. The only problem with that was that there was an allegation, but not enough evidence was provided to substantiate it. A part of the reason, we thought was because the MCAs were enjoined from coming to the Senate. As such, they did not have the opportunity to give proper witnesses. However, the allegations were there, but it is only the substantiation that is missing. It is not that we never found him culpable.

Sen. (Eng.) Maina: Mr. Speaker, Sir, I am not a lawyer, but an allegation where substantiation has not been adduced actually remains unproved. That is why I am saying. You cannot declare him guilty of all those allegations.

Mr. Speaker, Sir, my point was that we can be here praying – and that is the best we can do – that they work together. However, they will be working together towards what. That is my main point. Should they be working together towards giving services to *Wanjiku* in Taita Taveta, or for some selfish interest?

Mr. Speaker, Sir, there was a need when the Senator for Taita-Taveta came here and actually gave us all the information he had on this matter. Imagine how well it would

have been if the Senator had enough funds for oversight? He would already been ahead, and he would even know whether some of the things being mentioned here are true or not. However, chances are that he has no funds and has a scanty office.

Mr. Speaker, Sir, I want to tell this country that it does not make any sense with the corruption we are talking about and with the way we are saying we want to check corruption when this House is not being given the money to do the work of oversight. We have been reduced to being observers in a postmortem laboratory. To me, what the report concludes is correct.

The Speaker (Hon. Lusaka): You should be winding up Sen. (Eng.) Maina.

Sen. (Eng.) Maina: That is where I am heading. Please, give me another two minutes. All these interruptions cost time.

The Speaker (Hon. Lusaka): You have one minute, proceed.

Sen. (Eng.) Maina: Okay, one minute without calculating your time.

(Laughter)

I support the Report. I think the Governor was trying to defend his right of delivering services to the people of Taita-Taveta. The Senate should leave the matter to court and see where it heads. However, I doubt it will get any more than what we have concluded.

Thank you, Mr. Speaker, Sir.

Sen. Mutula Kilonzo Jr.: Thank you, Mr. Speaker, Sir. I rise to support the Report. Fortunately, the Committee has followed our precedent in the case of Kericho on what constitutes gross misconduct.

The only problem I have is that this Report is supposed to be noted. This Report has made certain recommendations for investigation yet this Senate will not make a resolution. The Constitution is clear that unless we make a resolution, the recommendation, Recommendation No.4 which calls for further investigation will not go anywhere. This is because we are not going to vote or make a decision. It will not be forwarded as it is. Therefore, the Chairman should have clarified how this portion of the Report ought to move forward.

Mr. Speaker, Sir, your direction that there be no further proceeding means that after we sit, deliberate and rise, that is the end. Despite this, you have made a recommendation here that says: "pursue further investigation on matters of illegal procurement". To me, that appears as a question mark.

Finally, for those who believed out there - and I think even the Senator of Taita-Taveta believed that we were out like hatchet men to hang his governor - I think this is vindication of the Senate.

I saw the lawyer of the governor leave. I was wondering; now that we have vindicated the governor, what will he tell the court and he did not believe that this Senate has men and women who can sit on a fair trial and he did not appear here. He will feel vindicated without appearing.

Since he was vindicated without appearing, I am waiting for him to issue a statement and say he does not believe in our verdict and, therefore, the court should proceed and determine the issue so that we do another impeachment.

We must tell governors that this is a fair House. This is a House of Members who believes in devolution. Impeachment is just yet another method of checking whether they are working.

For the county assemblies we want to tell them: “Do not be in a rush to impeach governors so that you get an allowance and push an agenda.” However, I am aware - Taita-Taveta being my neighbor - that they have sort of agreed on a framework on something. This means this impeachment was used as a method of negotiating, both by the governor and the county assembly. It is wrong and we must say so.

An impeachment must come when somebody has violated the Constitution. It should be a gross violation of the Constitution. ‘Gross’ means something above the balance of probabilities in a civil case, but slightly below reasonable doubt in a criminal case. We are not entirely bringing a suspect here, but there are certain thresholds that county assemblies must follow.

Lastly, the Committee has recommended that you call for a mediation. I am not sure who will do the mediation because it is not specified here. Will the mediation be done by the Committee on Devolution and Intergovernmental Relations? Are we going to constitute a special committee? Who exactly are you recommending to do this mediation? Lastly, since there is no resolution to have a mediation, how do you intend to follow this through? These are some of the things that have left me wondering.

I support on the basis that there is no gross violation.

Sen. Mwaure: Thank you, Mr. Speaker, Sir. I have gone through this Report. To be honest, the MCAs could have done better. These are just mere allegations stating that the county assembly was misled. Even if you decide to impeach somebody, have some substance. Just show us you also sat down and reasoned. To be very honest, there is no substance here.

Since you talked about the issue of budget misappropriation, who is in charge of the budget? Is it not the MCAs? When you talk about a task force; the governor can actually establish a task force. If you talk about stalled projects, then state which ones you are talking about. This governor has only been in power for about two years, but then you need to show. There is also the issue of development budget. This is the only one that is standing out, because there is no absorption.

Mr. Speaker, Sir, when we were considering the County Ward Fund Bill, we looked at Taita-Taveta. When we were apportioning that money, we decided that we will not take a huge portion because, otherwise, we would have taken the whole of development budget. So, it is also a shame to hear that MCAs and the governor cannot agree on what needs to be done for the people of Taita-Taveta.

Mr. Speaker, Sir, if a governor cannot also issue the annual state of the county address, it is to say he has no vision. This is something that you relish. I am sure even Senators here would want to address the county assemblies so that we can hear the exposition of public policy; the way the President does to the Parliament.

Governor Samboja, if you are listening to me, you need to pull up your socks because how will people share your vision? You do not address people, you do not utilize the budget; what is the work of a governor? Please, remember you are no longer a DJ. You have been a radio presenter. We love you very much, but then go now and become the Governor of Taita-Taveta County.

Mr. Speaker, Sir, one of the things about leadership is that those who survive are not necessarily the most intelligent or the most strong---

Sen. Cheruiyot: On a point of information, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): What is your point of information, Sen. Cheruiyot?

Sen. Cheruiyot: Mr. Speaker, Sir, I have heard Sen. Mwaura mention that Granton Samboja is no longer a DJ. I wish to inform him that actually one of the allegations that were brought before the Committee and substantiated by evidence - because video and audio recordings were presented before us - is that he is still a DJ. He has a show every Sunday afternoon on *Milele FM*. The MCAs found that not to be expected of a governor.

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

The Speaker (Hon. Lusaka): What is your point of intervention, Sen. Cherargei?

Sen. Cherargei: Mr. Speaker, Sir, in all fairness, because some of us are young, it is not a criminal offence to be a DJ. Sunday is the day we praise the Lord, so there is no problem. If the governor can discharge his duties as a DJ without necessarily interfering with his work as a governor, there is no problem. Being a DJ is good job. It is earning millions to many young people in this country. We cannot say to be a DJ is a bad thing. Let him be DJ on Sunday, but on Monday be in office by 8.00 a.m.

Sen. (Prof.) Ongeri: Mr. Speaker, Sir, is it in order to curtail a budding artist from his professional engagement to enrich the culture of Taita-Taveta and Kenya?

The Speaker (Hon. Lusaka): Sen. Mwaura, proceed bearing in mind the contribution of the distinguished Senator for Kisii and others.

Sen. Mwaura: Mr. Speaker, Sir, you will add me a minute or so, because Sen. Cherargei was not on a point of order, but on a point of argument.

We all know Granton Samboja from the time of *Citizen Radio*. He is a not a budding artist; he is a seasoned artist. In fact, the reason he was elected is because he was very popular with *Anguo FM*, which broadcasts in the Taita language. Therefore, right now, he needs to realise that he should not continue deejaying, but be seriously serving the people of Taita-Taveta County. May he play that music in development; in terms of how he is supposed to serve his people.

This is because much as these Members of the County Assembly (MCAs), were not able to fully argue their case and meet the threshold, I think they have legitimate concerns. They need to go back and clean their house, and ensure that this development money, Kshs1.2 billion---

We are arguing here at the Senate about our Oversight Fund. If we were to get that kind of allocation, we would be all over trying to ensure that we have more accountability.

The roads, hospitals, market places and Early Childhood Development Education (ECDE) centres all require a very dedicated governor. Even people with disabilities require to be attended to. It does not mean that because he plays music on Sundays, it has resulted in ensuring that all that has happened.

Mr. Speaker, Sir, I want to conclude by saying - I have said here before - that devolution is a revolution. However, maybe some people were not ready to be governors. Maybe they were also equally surprised that they actually made it.

(Laughter)

Therefore, this is a warning to anybody, that the work of a county governor is a serious endeavour and undertaking. You are the small president of your people, and you represent the wishes and aspirations of the *mama mboga* on the ground. Therefore, you have to be in touch with these people.

I know that the media plays a very critical role in trying to market us. Media can make or break you, but be a little bit more serious in the way in which you take up your job. This is because when you look at some of these allegations, much as they were not proven, it was also a question of; you did not fill that particular position. Basically, we can tell from this, that work is not happening in Taita-Taveta County.

Mr. Speaker, Sir, in short, we are a House of reason, and I think we have given a very good verdict. I want to join Sen. Mutula Kilonzo Jr. and Sen. Murkomen in asking Gov. Samboja that in the same manner, vein and vigour, he should now withdraw his case and say that he has realised that the Senate is a House where people sit to reason. This is because his going to court is against the separation of powers.

He also needs to understand that he cannot rule the County Government of Taita-Taveta alone; he needs everybody. He is my personal friend and we talk a lot, but he should now take matters seriously. Otherwise, when he comes back again, we will deal with him perpendicularly.

Thank you.

(Laughter)

The Speaker (Hon. Lusaka): Order, Senator. I hope that is not a threat to His Excellency Gov. Samboja.

I have a Communication to make before we proceed.

(Interruption of debate on the Motion)

COMMUNICATION FROM THE CHAIR

DATE FOR CONSIDERATION OF THE PUBLIC FINANCE MANAGEMENT (NATIONAL GOVERNMENT) (AMENDMENT) REGULATIONS, 2019

The Speaker (Hon. Lusaka): Hon. Senators, you will recall that on Wednesday, 16th October, 2019, the Public Finance Management (National Government) (Amendment) Regulations, 2019 were tabled in the House for consideration. They were consequently referred to the Sessional Committee on Delegated Legislation and the Standing Committee on Finance and Budget due to their significance to our nation.

Hon. Senators, you will also recall that the Speaker directed the two Committees to consider the Regulations and report within a maximum of 14 days, owing to the urgency in dispensing with the matter, given the statutory timelines available to the House.

Hon. Senators, as you are aware, the House is scheduled to proceed on a ten day recess today in accordance with our Calendar. Consequently, the maximum period given will end when the House will be on recess.

Therefore, for the avoidance of doubt and since the House is within the statutory timelines of dealing with the Regulations, I direct that the Committees table their Report when the House resumes on Tuesday, 5th November, 2019.

The Notice of Motion and debate on the Motion will ensue on the same day. I hope every Senator is guided accordingly.

I thank you.

What is your point of order, Sen. Mutula Kilonzo Jnr.?

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, just for the record, we want to inform the Senate that the two committees have completed their work and the Report is pending approval. Therefore, we just want to tell our colleagues and the Speaker that we have complied with your directions.

Thank you.

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

[The Temporary Speaker (Sen. (Dr.) Lelegwe) in the Chair]

(Resumption of debate on the Motion)

The Temporary Speaker (Sen. (Dr.) Lelegwe): Sen. Wamatangi.

Sen. Wamatangi: Thank you Mr. Temporary Speaker, Sir. From the onset, I want to take the opportunity to congratulate the Committee on the work they did. Since I have been a Member of a similar Committee before, I know that it is normally a very tough job and sometimes it calls for one or the Committee to spend sleepless nights.

I want to go straight to three quick issues, to avoid repetition of what my colleagues have said, that I think are important for us to pick out in this process. The first one is on the threshold of bringing impeachment proceedings to this House.

Just before these proceedings were brought to this House, the Governor of Taita-Taveta County had appeared before the County Public Accounts and Investments Committee (CPAIC) in which I serve. In the proceedings then, there was a spat or a contestation between the governor and the county assembly on the amount of money the county assembly is supposed to get from the executive.

Through a query in the audit process, the governor disclosed that he remits about 12 per cent of the county's shareable revenue to the county assembly. He was then advised by the CPAIC that the law requires that the maximum amount that can be disbursed to the county assembly is 7 per cent. From that point, and following discussions that were even in the media, I think that is when the friendship, so to say, started to hit the rocks.

When I speak about the threshold, when and how will we get this process to address issues specifically that meet that threshold that there are going to be substantive issues about; facts that would uphold an impeachment? It is not about a contest where

either the county assembly is dissatisfied or there are deals or an arrangement that has been disturbed that would require one side to show the other that they are powerful.

Mr. Temporary Speaker, Sir, this is not the first time; we had a similar case when the Governor of Kericho was brought here, and I think another governor. Therefore, what this House needs to take cognizance of is that, we have a law. We have a Bill that is yet to be passed by Parliament to ensure that matters impeachment have been raised to a threshold where it is in law and that when anybody, including county assemblies, determine that they want to impeach a governor, then they have to meet that threshold. Then, the Members of this House would not have to act in vain. Members of this Special Committee - I believe you were one of them - had sittings for several days, probably way past the working hours.

The second issue that I would want to raise as a matter of concern is on injunctions that are being served to this House when the process of impeachment is ongoing. One of the big determinations that I believe you would need to make while seated there is that in the process of hearing other impeachments, the Chair has made several rulings which are now not only part of House precedents, but also rules that the House must follow.

In determining how we decide that once we have been served with an injunction we will take a particular course, I am cognizant of the fact that a decision was made by this House when the injunction was served to this House in the Samboja proceedings.

However, it was not without various views and contestations from Members of this House. I believe that for us to be clean, clear and procedural, the Chair would have to pronounce himself, now that there precedents which have been ruled upon after hearing that, indeed, when this House is served at any one time with injunctions, this should be the route to follow.

Mr. Temporary Speaker, Sir, thirdly and that would be my last---

(Sen. Wamatangi's microphone went off)

The Temporary Speaker (Sen. (Dr.) Lelegwe): Sen. Wamatangi, we were giving five minutes for every speaker on this issue. I will add you one more minute.

Sen. Wamatangi: Mr. Temporary Speaker, Sir, allow me to conclude my thoughts. Can an accused person be a beneficiary of a process that they do not have faith in? As the ruling on the accused was being read, in this case the accused was absent save for a few people that were there. I am told that they were members of the Bar. The Governor did not appear before the Committee or this House on the day of judgement. That question must be answered. If *ab initio* a governor, for example, shows that they do not have faith in the process, should they be beneficiaries of the outcome of that process?

Since Gov. Samboja is a gentleman, I urge him to have more faith in this House and the process. He should agree with the process of Parliament, county governments and devolution. His safe haven is not the Judiciary. I do not want to belabour that point but I just want to make it clear to him that it is important because he could find himself back here to face stronger accusations.

What we would like to hear from Members of the Committee when giving their contributions is whether Gov. Samboja was a beneficiary of a technicality or

unsubstantiated results. If the Committee says that he only benefited from a process because of technicalities, then it is likely that very soon he could find himself back here. Let him show more faith in this House.

The Temporary Speaker (Sen. (Dr.) Lelegwe): Proceed, Sen. Wambua.

Sen. Wambua: Thank you, Mr. Temporary Speaker, Sir. I also support the Report by the Special Committee on the proposed removal from office of Hon. Granton Samboja, the Governor of Taita-Taveta County.

I want to begin by making full disclosure that Gov. Samboja is the only governor of the party that sponsored me to the Senate. He is a personal friend but I did not in any way try to interfere with this process.

Having made that full disclosure, I congratulate the leadership led by the Speaker of the Senate for allowing the Senate Special Committee to continue with the writing of the Report and receiving evidence against Gov. Samboja despite the fact that he went to court and sought an injunction. I also thank the Speaker for opening this window for senators to ventilate on the matter.

Mr. Temporary Speaker, Sir, special thanks must go to Members of the Special Committee. I am told that they sat until the wee hours of this morning to do the Report. I thank them because they have acquitted the dignity of this House. At a time that the Governor did not find time and reason to appear before the Committee, the Committee was led by evidence adduced before it to come up with its findings.

At times it is difficult to understand what kind of legal and political advice that a section of governors in this country receive. Since MCAs of Taita-Taveta County made baseless allegations against the Governor, he would have had the perfect platform to clear his name and put the record straight before the Senate but he chose not to appear.

Since I declared that the Governor is my friend, I want to adduce this advice to him: Going forward, he must realise that if he has any political enemies, they are not to be found in the Senate. When the Senate requires him to appear, the least he can do is to appear.

Mr. Temporary Speaker, Sir, I also thank Members of the Special Committee because they have lived up to the calling of this House; the defender of devolution and counties and their governments. There are lessons to be learnt out of this experience, especially for MCAs not just in Taita-Taveta County but across this country.

If there is need or reason to impeach a governor, we must insist on an evidence-based impeachment process where you do not bring personal vendetta to bear on the performance of a governor.

I have a case in point because I was following this matter. I am told none of the issues raised---

(The red timer went off)

Mr. Temporary Speaker, Sir, could I be added one minute?

The Temporary Speaker (Sen. (Dr.) Lelegwe): Proceed, Sen. Wambua for one minute.

Sen. Wambua: Thank you, Mr. Temporary Speaker, Sir. I have heard of an allegation surrounding the Moi Stadium Project and the process which was followed to award the tender. When you look at that matter keenly, you will realise that the tender

was awarded during the previous regime by a different governor. The allegation that the project has stalled has got no basis on the performance of the sitting governor.

There are Senators here who will be seeking the position of governor in the next election. It is unfortunate to have a governor taken through an impeachment process because their predecessor made a mistake in the issuance of contracts.

I thank Members of the Special Committee for coming up with this Report. I support it and urge the Governor of Taita-Taveta County to find time to make peace with the Senate.

Sen. (Prof.) Onger: Mr. Temporary Speaker, Sir, from the outset, I support the Report by the Special Committee because of two reasons: The first one is that the process of impeachment is the highest process that can be entered into by any organ, be it a county assembly or the Senate.

Impeachment is the penultimate decision that must be made. That process has some requirements. There must be fair hearing and one must be heard in public.

I have checked through these records in the Report that has been presented. He was not given a public hearing. Therefore, you cannot make a conclusion of impeachment without having undertaken that process.

Therefore, it was a flawed process right from the word go. They may have had some very interesting allegations, but they only remained to be allegations until such a time where a clear process will be done, witnesses adduced, a decision arrived at, and the verdict read out for him on what happened. That is point number one.

Point number two, what is the Senate supposed to do? We cannot legitimize an improper process. That is why I support the Committee in the process they went through and proved that these are mere allegations. Allegations cannot form a basis for an impeachment at the Senate level. Therefore, we better steer clear out of this suggestion that we have a case to impeach. We have no case to impeach, because even the process, in itself, is flawed.

Point number three, I will advise Gov. Samboja that where there is smoke, there is fire. I have looked at the allegations that have been brought forward, particularly the County Integrated Development Plan (CDIP), the annual budget and the budgeting process. It takes two to tango and, therefore, he should involve and create a good rapport with the County Assembly. That way, these processes will be done in a legal manner. At the end of the day, the processes will be justified.

Mr. Temporary, Speaker, Sir, finally, because I have only five minutes, while some of these elements being raised here are too premature at this stage, they will find their way to the Auditor-General's report, one way or the other. Therefore, we shall have an opportunity to interrogate this report at an appropriate time. They will not form a basis for impeachment, but they may form a basis of a report on which he will also have an opportunity to answer when he will be given the exit report. If he does not answer, he will appear before the County Public Accounts and Investment Committee (CPAIC).

Indeed, he has an opportunity to answer before the County Assembly Report, if he needs to do so, through his County Executive Committee (CEC) Member for Finance.

With those few remarks, I beg to support this process and the Committee's decision.

Sen. Halake: Thank you, Mr. Temporary Speaker, Sir. I also rise to support the Report of the Select Committee on the removal from office by impeachment of Gov. Granton Samboja.

Mr. Temporary, Speaker, Sir, a lot has been said about this Report. Even though the governor did not appear before the Senate, he had his chance to do so. Yes, we have seen that a lot of the allegations made against him did not have enough evidence to support his impeachment, however, with that said, looking at this Report, one of the things that was very clear to me is that this Committee has clearly conducted itself in accordance with Article 96 of the Constitution.

This Article stipulates that the Senate represents and serves to protect county governments. I see this report more as supporting devolution than a particular governor.

Mr. Temporary, Speaker, Sir, a lot of the allegations that were leveled against the governor were not substantiated. Therefore, according to the law, where you must then be proven guilty through substantiation, to that extent, I really support the findings of the Committee and the recommendations they have made.

Mr. Temporary, Speaker, Sir, looking at the allegations leveled against the Governor; having read the CPAIC report on the financial operations of the 20 counties that we discussed earlier on today, a lot of these allegations are also contained in all the financial management aspects of all the counties.

The Auditor-General's Report raised a lot of these issues as enumerated in a similar manner that was used to level the allegations to impeach the Governor of Taita Taveta. Therefore, the question around the threshold or the application of certain standards for impeachment need to be looked at by this House so that we do not bog ourselves down in looking at these things.

Mr. Temporary, Speaker, Sir, I do not believe that two wrongs make a right, or that 47 wrongs make one right. We must then try to make sure that we put legislation or certain frameworks that clearly spell out what the threshold for the impeachment of a governor should be. This is because this is an issue that cuts across almost all counties after reading the financial accounts as well as the Auditor-Generals' Report.

As it has been said by most of my colleagues, the absence of evidence does not necessarily mean that he is innocent. The Committee did very well to take it to an independent institution to look further into these issues, because we still bear the duty of oversight, as the Senate. Therefore, the fact that we could not find evidence should be the end of the story.

Mr. Temporary, Speaker, Sir, I am very proud of this Committee, who I am told worked so hard and stayed up to 2 a.m. to do this job. I am proud of them for having dispensed of this very quickly, but also very fairly; and for coming up with its conclusion. Having investigated the matter in accordance with its mandate under Section 33(4) of the County Governments Act and Standing Order 75(2) of the Senate, that it finds none of the particulars of the allegations against the governor to have been substantiated.

That does not mean that the Governor is not culpable. Therefore, as other Senators have said, I hope that a way of processing this further will be achieved. Doing that will ensure that we do not fail in our duty of oversight and financial stewardship or the oversight of misconduct of our governors does not get lost in all this.

Mr. Temporary, Speaker, Sir, this House also has to introspect as to why some of our governors do not either believe in, or are not very respectful of the Senate; or do not believe in the systems of the Senate. Therefore, in that introspection, I hope that the Senate will start looking at where we need to improve, if we do have to or where we need to engage with our governors so that they then start believing in our systems and processes. That way, we hope that they will start honouring and believing that we are in this together, as protectors of counties.

Thank you.

Sen. Cheruiyot: Thank you, Mr. Temporary, Speaker, Sir. As a Member of this Committee, it will be a bit weird if I say that I support the Report, because it is our Report. Maybe the better thing to say is that I believe in the work that we did. In all earnest and fairness, we did that job, trying to get the best solution for the people of Taita Taveta County.

I have heard many of my colleagues speaking. Therefore, in my contribution, I will try and allay some of the fears that have been brought up. I will also try to correct some of the things which I have heard from my colleagues which, maybe, because of the challenge of the Report having been brought to the House this afternoon, many of them have not read through it to understand exactly what we have said in it.

Mr. Temporary, Speaker, Sir, we did not let the governor go. You cannot let such a governor go scot-free. That is the first thing that I would wish to bring to the attention of this House. However, like I had explained earlier, the threshold that we were looking for so as to confirm whether the Governor has been properly impeached or not, was not reached. However, that is not to give him a clean bill of health.

I must quickly add that I am totally disappointed with all the MCAs of Taita Taveta County. This is because if how they treated our Committee is how they go about their responsibilities and duties, then it is no wonder that the governor is doing the things he is doing.

This County Assembly appeared before us by way of an advocate, and presented nine accusations on the conduct of the governor. We asked them for evidence, and they assured us that we will have all the evidence presented before us the following day at 9 a.m., for us to make a determination, but unfortunately by the time we retired to write our judgement yesterday in the evening, none of that evidence had been produced before the Committee. It is on that technicality that Gov. Samboja was able to escape from this impeachment process.

Mr. Temporary Speaker, Sir, had the county assembly dutifully taken their work seriously and presented before us; the county annual budget that they are alleging the Governor is implementing projects that are out of budget, the procurement plan as they had promised or evidence to confirm that the statutory deductions were not being remitted, the results would have been different. I am disappointed that the county assembly did not provide evidence.

I urge the many counties that are watching today's proceedings that if they bring a governor before the Senate of the Republic of Kenya, they better be ready to prove what they are alleging. If the county assemblies are not ready to prove their allegations, they should not bring allegations here in the first place because we are not a rubber stamp. One of the things that we are not about to do as the Senate, is to play politics about any

particular issue. We only protect the interests of devolution and counties to ensure that they live, thrive and change the lives of the people.

Mr. Temporary Speaker, Sir, we were able to confirm some of the charges that were brought before us. I heard people speak and make light of some of the charges, yet they are not. It is not easy to say that for an entire two years, a governor has not submitted the annual report on implementation status of the county policies. How can you not tell the representatives of the people who elected you into office what you are doing as a county governor? That is not right and it cannot be entertained.

When we looked at the provision in the County Governments Act, it is only a principle but it does not have a measure of guilt or punishment for a particular county governor if they do not observe this requirement.

The Senate must stand and make our position firmly known about it because county governors must be held accountable by the county assemblies. The governors must appear before the county assemblies and present a report on the policies that the county government adheres to in the county annual State of the County Address.

If President Uhuru Kenyatta can find time out of his busy schedule to address Parliament at least once every year, surely, Gov. Samboja, he who can find an afternoon to go and deejay at a radio station, should find one afternoon and address the County Assembly of Taita Taveta.

Mr. Temporary Speaker, Sir, Paragraph 177 answers what Sen. Mutula Kilonzo Jnr., was talking about. We recommended that there be mediation but did not place it on a particular committee.

The Temporary Speaker (Sen. (Dr.) Lelegwe): Your time is up Senator.

Sen. Cheruiyot: Mr. Temporary Speaker, Sir, kindly give me two minutes to conclude.

The Temporary Speaker (Sen. (Dr.) Lelegwe): Kindly proceed, Sen. Cheruiyot.

Sen. Cheruiyot: Mr. Temporary Speaker, Sir, we proposed that this House through its own procedures determines which departmental committee should summon the Governor and the County Assembly of Taita Taveta and go through the charges one by one and ensure that this particular issues that they were bringing are resolved so that the County Government of Taita Taveta can function because as it is, it is dysfunctional.

You cannot be on the fifth month of a financial year without having agreed on a budget. Despite the fact that challenges exist in the other 46 counties, they have agreed on a budget.

Mr. Temporary Speaker, Sir, in Paragraph 183, the Committee recommends that on all the charges of financial impropriety, the EACC should conduct an investigation into this issues and report to this House within 60 days. Any county government official; the governor, a CEC, a chief officer or procurement officer who is found to have misappropriated funds belonging to the people of Taita Taveta County should be brought to book.

I beg to support.

The Temporary Speaker (Sen. (Dr.) Lelegwe): Kindly proceed, Sen. Cherargei.

Sen. Cherargei: Mr. Temporary Speaker, Sir, I endeavour to be very precise. I am disappointed with the work of the Special Committee. It seems that they have assisted in rubber-stamping and letting go of Gov. Samboja by saying that he can now be referred

to the EACC or the DCI. I would like to go on record that we can no longer participate or be a process of ensuring that governors walk away scot free.

I have read that Report and the argument is that there was no substantiation of the allegations that can meet the threshold of Article 181 of the Constitution of Kenya. We are blaming the MCAs because they did not follow the procedures to ensure that the charges against the Governor were substantially proved. However, the fact that the Governor of Taita Taveta County, hon. Samboja, did not appear before the Senate, gives us the notion that he treats the Senate with disgust and does not respect the Senate.

I did not expect the Special Committee to handle Gov. Samboja with kid gloves. The fact that he did not appear before the Senate or even have the courtesy of coming here, how sure are we that in future, other governors will not quote him and say that they can as well send their advocates to appear before the Senate.

We are setting a dangerous precedent as the Senate and that is how the Senate will die in this country. If we can allow governors to treat the Senate with disgust and disrespect by not turning up even out of courtesy, we are treading on dangerous grounds.

Yesterday, the Chair made a wonderful ruling and stated that there is no institution that can injunct Parliament. Therefore, Gov. Samboja was aware that a Speaker's Ruling had been made on the issue of the court order. The Governor should have had the courtesy to explain some of these issues. I agree that the impeachment process is political and should have evidence base. However, that is not a justification.

Mr. Temporary Speaker, Sir, Gov. Samboja will now go to Taita Taveta County and say that the Senate has cleared him of the allegation and that he is '*mweupe kama pamba.*' The Senate will be made to look like a rubber stamp of Gov. Samboja's lethargic, ineffective, inefficient and bad leadership in Taita Taveta County. There is no resolution in this Report by the Special Committee on sanctions. It has not been stated that the Committee on Devolution and Intergovernmental Relations should lead the mediation between the county executive and the county assembly.

Lastly, I am aware that instead of the EACC and DCI fighting corruption, they have been in a process of encouraging bartering, stealing and pilferage of what we have in counties. For example, the allegations of corruption charges against the Samburu County Governor have never commenced because the investigation agencies that are supposed to fight corruption are doing a half-baked job. How sure are we that Gov. Samboja will be investigated by the EACC within 60 days?

The National Youth Service (NYS) 'Season One' has never been concluded, to date. Similarly there was NYS 'Season Two' which has not been concluded to date.

Mr. Temporary Speaker, Sir, what the EACC and the DCI can do is to make sensational comments and come up with soap operas about corruption and ensure that it makes it to the headlines which die after one week. Gov. Samboja should thank his gods because the Senate has assisted and aided some of his alleged crimes he continues to perpetuate on the people of Taita Taveta County.

In conclusion, these impeachment proceedings did not reach the level of impeachment as provided for under Article 181, but if this is the level of oversight that we are doing as the Senate, I am disappointed in the work of the Special Committee.

We should have had other hard hitting sanctions because the report in the media is that, governors are sharing champagne and saying that they now have the Senate on their side. I would have expected more radical sanctions to be meted against Gov. Samboja

Thank you.

The Temporary Speaker (Sen. (Dr.) Lelegwe): Kindly proceed, Sen. Mwaruma.

Sen. Mwaruma: Mr. Temporary Speaker, Sir, I thank you for giving me the opportunity to contribute to this report on the impeachment of Gov. Samboja. I would like to state that I never believed that what started as a little thing; a budget debacle, could have escalated to the issue of impeaching a governor.

I would like to commend the Special Committee for doing a very commendable job given that they were doing the job within a very constrained timeline. I know that they burnt the midnight oil to make sure that they dispensed this herculean and gigantic task that was ahead of them.

Like my fellow Senators have said, impeachment is an accountability tool. However, be it as it may, it must be used very sparingly in that, when we have such kind of allegations, we need to provide concrete evidence because each other time, an assembly can use impeachment to settle scores.

I, therefore, thank the Senate and the Special Committee at large, because then, this matter has been dispensed with in the shortest time possible. It has shown that the Senate is a House of wisdom and it is a very fair House.

I have tried as much as possible because I have not supported either side. I have been very non-partisan because the Governor belongs to me and the County Assembly belongs to me. It has been a very difficult task to try and balance the two.

Mr. Temporary Speaker, Sir, the trial has offered a precedence for which other impeachment proceedings would be followed. I am happy with the Committee because whatever proposals, findings, observations and recommendations that they have made, especially on the threshold for gross violation of law, have been anchored in other precedents. For example, they have quoted the impeachment process of Kericho, Embu and so on.

I have been following this impeachment process from the time that it was brought, to the time when the Speaker gave his ruling on the matter as being *sub judice*, until when the Committee did its work and presented it in Plenary. We are now having a precedence in which it will be used as a lens to determine other impeachment proceedings in future.

Mr. Temporary Speaker, Sir, having said that, this matter having lapsed, it provides a very good opportunity for us to go back as a county and finish what we had started. We had started a process of mediation between the County Assembly and the executive. For the record, we had done five meetings. I was co-chairing that process with the clerics led by the Bishop for ACK Rev. Mung'onda and other members from the Muslim community and from the Pentecostals.

Mr. Temporary Speaker, Sir, I now know this is a very good opportunity for people of Taita Taveta County to sit down, not only to mediate and come up with a working relationship but of most importance, to quickly come up with a budget which we can now present to the Controller of Budget so that money can start flowing to the county and so that the county does not suffer under-development or delayed development as a result of this debacle.

I am very happy that it has gone the way it has gone. Not that I am celebrating but then we needed also to settle down very fast as a county so that we can start enjoying the fruits of devolution.

As I have always said, Taita Taveta County is a very small county, whereas devolution is the best thing that happened to our county. For us who come from counties with very small populations, we were denied development simply because we could not afford to put a lot of votes on the table. Therefore, we were left behind in terms of development and we were marginalized.

Now we will go back to the county, thrash out all those issues that are remaining so that our county can move forward and people can benefit from development.

Thank you.

Sen. (Dr.) Musuruve: Thank you, Mr. Temporary Speaker, Sir, for giving me an opportunity to support this Report. I would like to say that the Special Report is quite meaningful. It is insightful, and an eye opener to county assemblies, Governors and all Kenyans.

The fact that they really burnt their midnight oil and left very late means that they were looking at the information that they had on the desk with a hawk eye because they did not want to miss out on anything. The issue of misappropriation of funds is a big offence. When we are talking of misappropriation of funds, it warrants an impeachment, but is there evidence to impeach? This Senate does not just work on hearsay, or allegations, it is a House of reason where we must have authentic information.

It is also an eye opener to county assembly members, when they are bringing issues of Governors to the Senate, they must have verifiable information, valid reasons as to why they are bringing governors before the Senate because we must have information that is authentic and stands the test of time.

Mr. Temporary Speaker, Sir, I would like to say that, this issue of misappropriation of funds does not hold any water because the evidence was not there. I also want to say that when we are talking of the county boss giving a hearing to county assemblies, in a democratic society, the county assembly needed also to give the county boss a fair chance to be heard.

Yes, they said what the Governor had done this and that but they needed also to listen to the Governor to explain himself. In explaining himself, maybe they would have understood the Governor's action. It would have given the Governor a chance to exonerate himself.

Mr. Temporary Speaker, Sir, there is need even for the county assembly to know that when they are bringing Governors here, in as much we are protecting the interests of the county governments, we must also ensure that all information that comes here is true, stands the test of time and is valid.

In a democratic society, the governor needed to be given time to be heard and say whatever he had to say. I also want to add that the governor was wrong in the sense that he needed to actually listen and address the County Assembly and let them know exactly the vision he has for the county and the propositions that can also be amended.

This is something that even the President himself does. Once in a year he addresses us and we listen to him. I remember what the President said a while back: "No turning back on corruption". He said no turning back on many ills of this society. Even

the county assembly should be able to hear the county boss saying something and even quoting what their executive said.

This is also an eye opener to all other governors that there is need for them to speak out to the county assemblies and share the vision they have with them so that they are walking the same talk. Still, this allegation does not warrant an impeachment. It is something that can be rectified and it is an eye opener to county bosses that they should look for mechanisms of ensuring that they are interacting with the county assemblies.

Mr. Temporary Speaker, Sir, another issue that came out was failure to remit statutory deductions to relevant institutions like Kenya Revenue Authority (KRA) and the NSSF. That is also an offence but it needed to be substantiated. In as much as the County Assembly came up with allegations, they also treated this Senate with a lot of contempt because they did not come with evidence. Even when they were told to come with evidence, they said they would do that, but eventually there was no evidence. This Senate does not operate on hearsay. This Senate operates on authentic information that is verifiable, that you can look at as empirical evidence of what is being stated.

There is need for people to know that when they bring issues on the Floor of this House, we do not just listen; we also look at information to confirm whether it really warrants an impeachment.

I also want to say that concerning the absorption of funds or failure to absorb funds, there are some counties where funds have been absorbed but when you look at the indicators of development, they are not there. The fact that there was money that was not absorbed, should have been proof to the Governor that he needed to absorb that money.

(Sen. (Dr.) Musuruve's Microphone went off)

There is need of the county assembly to go down and redraft their issues and look for evidence.

The Temporary Speaker (Sen. (Dr.) Lelegwe): Order, Senator. Your time is up. Conclude your contribution.

Sen. (Dr.) Musuruve: Thank you, Mr. Temporary Speaker, Sir, for the opportunity.

I support the verdict.

Sen. Were: Thank you, Mr. Temporary Speaker, Sir. Much has been said but I would like to add my voice and support the Report.

The impeachment from the County Assembly did not meet the threshold. However, it does not mean that nothing wrong was done by the governor. He is culpable of some of the nine listed charges that were substantiated. However, majority of them were not substantiated. That is why they did not meet the threshold.

I wish that this Plenary was given an opportunity to question the governor especially on the unsubstantiated charges so that county assemblies can be encouraged in their primary oversight role. As they do their job, they will have some level of support from the Senate. I encourage them not to give up because of what has happened with the Taita Taveta impeachment process. They should read this report carefully and take note of what was done right, so that next time, it informs their decisions. Before they bring an issue from the county assembly to the Senate, they should know that this is a legal

process. They should make sure that they have all the evidence they need and follow the law. It is a legal process as much as it is political. So, they should look at both sides and come with water-tight cases, so that we hold these governors accountable as we should.

I also urge county assemblies to meet at the County Assemblies' Forum (CAF) and discuss this issue in-depth. They should find out what Taita Taveta County did not do right and what the next county assembly should do if they want to go through this route. This is also a learning process for them. We shall not vindicate them for this. However, we encourage them to continue with their role because there were issues in the charges that we should look at independently.

The Temporary Speaker (Dr.) Lelegwe: Thank you, hon. Senators. This brings us to the end of our contribution on the Motion. I, therefore defer Order Nos. 9 to 14.

BILL

Second Reading

THE REGISTRATION OF PERSONS (AMENDMENT) BILL (SENATE BILLS NO. 14 OF 2019)

(Bill deferred)

MOTIONS

NOTING OF REPORT ON THE 3RD STATUTORY MEETING OF THE FP-ICGLR COMMITTEE ON ECONOMIC DEVELOPMENT

THAT, this House notes the Report on the 3rd Statutory Meeting of the Committee on Economic Development, Regional Integration and Natural Resources of the Forum of Parliaments of the International Conference of the Great Lakes Region (FP-ICGLR) held in Bujumbura, Burundi, from 13th to 14th March, 2019, laid on the Table of the House on Tuesday, 21st May, 2019.

(Motion deferred)

NOTING OF REPORT ON THE GLOBAL SUMMIT ON OPEN GOVERNANCE PARTNERSHIP

THAT, this House notes the Report of the Parliament of Kenya Delegation on the Global Open Governance Partnership Summit held in Ottawa, Canada, from 29th to 30th May, 2019, laid on the Table of the House on Thursday, 11th July, 2019.

(Motion deferred)

NOTING OF REPORT ON THE 6TH ORDINARY SESSION OF
THE 4TH PAP AND 1ST ORDINARY SESSION OF THE 5TH PAP

THAT, this House notes the Reports of the Sixth Ordinary Session of the Fourth Pan- African Parliament held in Midrand, South Africa, from 7th to 18th May, 2018, laid on the Table of the House on Tuesday, 24th July, 2018; and, the First Ordinary Session of the Fifth Parliament of the Pan African Parliament held in Kigali, Rwanda, from 18th October to 3rd November, 2018, laid on the Table of the House on Tuesday, 12th March, 2019.

(Motion deferred)

NOTING OF THE REPORTS ON THE 139TH AND 140TH
ASSEMBLY OF IPU AND RELATED MEETINGS

THAT, the Senate notes the reports of the Parliament of Kenya Delegation to the 139th Assembly of the Inter-Parliamentary Union (IPU) and related meetings held in Geneva, Switzerland from 14th to 18th October, 2018, laid on the Table of the Senate on Thursday, 6th December, 2018, and the 140th Assembly of the Inter-Parliamentary Union (IPU) and related meetings held in Doha, State of Qatar from 6th to 10th April, 2019, laid on the Table of the Senate on Tuesday, 23rd July, 2019.

(Motion deferred)

REPORT ON THE UN CONFERENCE ON CLIMATE
CHANGE (COP24)

THAT, the Senate notes the Report of the Parliament of Kenya Delegation to the United Nations Conference on Climate Change (COP 24) held in Katowice, Poland, from 3rd to 14th December, 2018, laid on the Table of the Senate on Thursday, 25th July, 2019.

(Motion deferred)

MOTION FOR ADJOURNEMENT

ADJOURNMENT OF THE SENATE PURSUANT TO THE
APPROVED CALENDAR FOR THE 2019 SESSION

Sen. Were: Mr. Temporary Speaker, Sir, I beg to move:

THAT, pursuant to Standing Order Nos. 28 and 29 the Senate do adjourn until Tuesday, 5th November, 2019.

Mr. Temporary Speaker, Sir, this is short recess of 10 days to allow Members of this House to interact with their constituents. Also, some have pending Committee work

that they need to look into. We have an *ad hoc* Committee on the medical leasing equipment that needs to do their work.

This is called ‘recess’ but it is not so for us because we still have work to do. We have to interact with our constituents and Kenyans at large and find out what needs to be done so that it can inform the next session of Parliament.

I call upon, Sen. Seneta, to second this Motion.

Sen. Seneta: Mr. Temporary Speaker, Sir, I support this Motion of adjournment of the House for 10 days to allow Members to interact with their constituents. It has taken a while for them to be in their counties. Many of them have been in Committees and will still have Committee work. Therefore, this short recess of 10 days will be of great assistance to them to, at least, get some time to interact with their counties and learn the challenges that face their constituents.

I also take this chance to congratulate the special Committee for investigating the issues surrounding the impeachment of the governor in a short time. However, I have some issues with the recommendations of the Committee because there are areas where the governor violated the Constitution. We all know that counties are a product and creation of the Constitution. However, some of them are clearly violating the Constitution which they are supposed to implement.

Gov. Samboja was not addressing the County Assembly in accordance with the Constitution. So, he violated the law and the Committee should have taken a further step on the same.

We were told that the governor was not remitting statutory deductions for his workers which is a total violation of the law. However, the Committee has not given us a recommendation or strong resolution on the same and also on other issues. There was also the issue of misappropriation of funds. Whether there was evidence or not, the people of Taita Taveta County have not benefited.

Mr. Temporary Speaker, Sir, the governor also wanted to dissolve the whole county. He should have given reasons why he wanted to dissolve it in the first place. Taita Taveta County still has a lot of issues to tackle, now that this House has not given a clear picture on what should be done to the governor. This is a governor who does not involve other institutions within the counties and is not performing. He also does not remit statutory deductions according to the law. However, he has been given a clear verdict to go back and do what he wants.

I urge this House and the investigative institutions to help the people of Taita Taveta. This kind of pull and push has really taken place in Taita Taveta County for a long time. So, it has disadvantaged them.

I, therefore, support the Report of the Committee but with my own reservations in that they have not given a clear path of what is to be done to resolve the standoff between the governor and the leadership of Taita Taveta County.

I wish Members all the best as they go to their counties to interact with their people.

ADJOURNMENT

The Temporary Speaker (Dr.) Lelegwe): Hon. Senators, It is now 6.30 p.m., time to adjourn the House. The Senate, therefore, stands adjourned until, Tuesday, 5th November, 2019, at 2.30 p.m.

The Senate rose at 6.30 p.m.