

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Friday, 26th June, 2020

Special Sitting

(Convened via Kenya Gazette Notice
No.4235 of 24th June, 2020)

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

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

PRAYER

COMMUNICATION FROM THE CHAIR

CONVENING OF SPECIAL SITTING OF THE SENATE TO
CONSIDER REPORT OF THE SPECIAL COMMITTEE
ON IMPEACHMENT OF GOV. WAIGURU

The Speaker (Hon. Lusaka): Hon. Senators, on the request of the Senate Majority Leader via letter Ref. No.SEN/SML/CORR, dated 22nd June, 2020, and with the support of the requisite number of Senators, I appointed today, Friday, 26th June, 2020 as a day for a Special Sitting of the Senate vide Gazette Notice No.4235, dated 24th June, 2020.

In the Gazette Notice, I indicated that the business to be transacted at this Special Sitting shall be the consideration of the Report of the Special Committee on the Proposed Removal from Office, by Impeachment, of Hon. Anne Mumbi Waiguru, the Governor of Kirinyaga County.

Hon. Senators, you will recall that by a letter, Ref No.CAK/SPK/SEN/1/001, dated 9th June, 2020, and received in the Office of the Speaker of the Senate on Wednesday, 10th June, 2020, the Speaker of the County Assembly of Kirinyaga informed the Speaker of the Senate that at a sitting of the County Assembly held in the morning of Tuesday, 9th June, 2020, the County Assembly of Kirinyaga approved a Motion, pursuant to Section 33 (2) of the County Governments Act, for the removal from office, by impeachment, of Gov. Anne Mumbi Waiguru, the Governor of Kirinyaga County.

In terms of Article 181 of the Constitution, Section 33 (3) (a) of the County Governments Act, 2012 and Standing Order 75 (1) (a) of the Senate Standing Orders, the Speaker of the Senate, upon receiving notice of the resolution from the Speaker of the

Kirinyaga County Assembly, convened a meeting of the Senate on 16th June, 2020, to hear charges against the Governor.

Consequently, hon. Senators, the Senate, on 16th June, 2020, pursuant to Section 33 (3) (b) of the County Governments Act, 2012 and Standing Order No. 75 (1) (b) (i), by resolution, established a Special Committee comprising 11 of its Members to investigate the matter of the proposed removal from office, by impeachment, of the Governor of Kirinyaga County, and to report to the Senate within 10 days of its appointment, on whether it finds the particulars of the allegations to have been substantiated.

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, further proceedings shall not 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.”

The Chairperson of the Special Committee will shortly lay on the Table of the House the Report of the Committee. Once it is laid, hon. Senators will have time to peruse it. No action will be taken immediately, but the Senate will be suspended for thirty minutes in order to allow hon. Senators some time to go through the Report. This is so because at the point at which the Report will be laid, it is not known to the House, which of the two procedures provided in Section 33(6) of the County Governments Act and Standing Order No. 75 (4), will be applied. The Committee Report will determine the procedure to be applied thereafter.

After the hon. Senators have had the opportunity of perusing the Report and establishing the findings of the Special Committee, in the event that the Special Committee reports that any particulars of the allegations have been substantiated, a Motion will be listed for business in a Supplementary Order Paper, which once prepared, will be circulated when we reconvene after thirty minutes. Debate will then ensue in the usual manner, and at the conclusion thereof, 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 Kirinyaga County to sit in the Gallery during debate on the Motion. At the appropriate time before I put the question on the Motion, the Governor will appear, if present, before the Senate and be heard, either by herself or her legal representative.

I wish to inform the hon. Senators that if the Governor chooses to exercise this right to appear and be heard by the Senate, she shall be heard here, either by herself or her advocate in total silence. The Governor’s speech shall not be followed by any question or comment and 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 against the Governor 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.

PAPER LAID**REPORT OF THE SPECIAL COMMITTEE ON THE PROPOSED REMOVAL
FROM OFFICE, BY IMPEACHMENT, OF GOV. WAIGURU**

Sen. Malalah: Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate today, 26th June 2020-

Report of the Special Committee on the Proposed Removal from Office by Impeachment of Hon. Waiguru, the Governor of Kirinyaga County

(Sen. Malalah laid the document on the Table)

The Speaker (Hon. Lusaka): Hon. Senators, I will now suspend the House for 30 minutes.

I just want to advise that if you go out, you must come back to your own seat to avoid contamination, or you hang around.

Copies of the Report of the Special Committee will be put on your desks.

(The Senate adjourned temporarily at 2.42 p.m.)

(The Senate resumed at 3.10 p.m.)

COMMUNICATION FROM THE CHAIR**PROCEDURE TO BE FOLLOWED FOLLOWING TABLING OF THE REPORT OF
SPECIAL COMMITTEE ON THE PROPOSED REMOVAL, FROM OFFICE,
BY IMPEACHMENT, OF THE GOVERNOR OF KIRINYAGA COUNTY**

The Speaker (Hon. Lusaka): Hon. Senators, welcome back for the resumption of proceedings of this Special Sitting. I believe that you have now had an opportunity to go through the Report of the Special Committee on the Proposed Removal from office, by impeachment, of the Governor of Kirinyaga County.

As you may have noticed, the Committee has found all the allegations against the Governor not to have been substantiated. Consequently, the procedure to be followed in this case is set out at Section 33(6) (a) of the County Governments Act and Standing Order No. 75(4) (a) of the Senate Standing Orders, both of which 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.

Hon. Senators, that being the case, this matter stands concluded, and no further proceedings shall be taken thereof.

According to Standing Order No.1, however, and cognizant that consideration of the proposed removal from office of a governor, by impeachment, is one of the most important functions of the Senate under the Constitution, I shall 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.

The Chairperson will have not more than 15 minutes. Thereafter, I shall allow Senators to make general comments and observations thereon for not more than 30 minutes, after which, the Senate shall adjourn.

I thank you.

Sen. Malalah: Thank you, Mr. Speaker, Sir. This is a very interesting day, ironically.

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

The Speaker (Hon. Lusaka): What is your point of order? When you want to raise a point of order, just press your button because I can see from here.

Proceed.

Sen. Madzayo: Thank you, very much for allowing me to interrupt Sen. Malalah. I was one of the Members of this Committee, and I know how detailed that Report is. I think 15 minutes is a little bit short for purposes of expounding on how certain decisions have been arrived at.

If we can be given at least half an hour, I believe he will be in a position to expound a little bit more on each decision that was arrived at. It is good because the country is watching.

The Speaker (Hon. Lusaka): In fact, it was 10 minutes. I added five to make it 15 because you will have an opportunity to read the Report.

Proceed, Chair.

Sen. Malalah: Thank you, Mr. Speaker Sir. I am well guided. I will try within my ability to utilize the 15 minutes. Where need be, I will come back to the honourable Chair and ask for extension of time.

This is a very interesting day. As I was presiding over the proposed impeachment of Governor Anne Waiguru, some funny people were hiding in some cocoon planning to remove me as the Senator for Kakamega---

The Speaker (Hon. Lusaka): Order, Sen. Malalah! Use your time properly. You are now dragging the House into your party issues and we are not party to that. Please, focus on your Report.

Sen. Malalah: Thank you, Mr. Speaker, Sir, I want to remind the people that I am the Senator for Kakamega, and I will remain to be the Senator for Kakamega.

(Applause)

Permit me to begin my remarks by conveying on behalf of hon. Senators of the Special Committee on the proposed removal from Office of the Governor for Kirinyaga County, our appreciation and gratitude to you and this Honorable House for the confidence you expressed in us to undertake the onerous task by appointing us to serve in this Committee.

Mr. Speaker, Sir, Section 33 (3)(b) of the County Governments Act of 2012 and Standing Order No.75 (1)(b) of the Senate states that, the Senate may, by resolution

appoint a Special Committee comprising 11 of its Members to investigate the matter or investigate the matter in Plenary.

Mr. Speaker, Sir, the Senate Majority Leader moved a Motion on Tuesday, 16th June, 2020 and following the debate in the House, it resolved to establish a Special Committee comprising of -

- (1) Sen. Abshiro Halake, MP;
- (2) Sen. (Dr.) Michael Mbito, MP;
- (3) Sen. Mwangi Paul Githomi, MP;
- (4) Sen. Beth Mugo, MP;
- (5) Sen. Anwar Loitiptip, MP;
- (6) Sen. Phillip Mpaayei, MP;
- (7) Sen. Cleophas Malalah, MP;
- (8) Sen. Beatrice Kwamboka, MP;
- (9) Sen. Stewart Madzayo, MP;
- (10) Sen. Judith Pareno, MP; and,
- (11) Sen. Moses Kajwang', MP;

to investigate the proposed removal from office by impeachment of the Governor of Kirinyaga County and report to the Senate within 10 days, pursuant to Standing Order No.75 (2) of its appointment on whether it finds the particulars of the allegations to have been substantiated or not.

Mr. Speaker, Sir, following its establishment, the Senate Committee held its first meeting on Wednesday 17th, June, 2020, pursuant to Standing Order No.193 (3)(a) of Part 2 of the Fifth Schedule of the Senate Standing Orders.

The Clerk of the Senate conducted the election for position of Chairperson and Vice-Chairperson. I wish to report that the Committee elected the Senator of Kakamega; Sen. Cleophas Wakhungu Malalah as the Chairperson and Senator Abshiro Halake, MP, as the Vice Chairperson.

(Applause)

Section 33 (5) of the County Governments Act, Standing Order No.75 (3) and Rule 4 (a) of Part 2 of the Fifth Schedule of the Senate Standing Orders provide that the Governor shall have the right to appear and be represented before the Special Committee during investigations. Rule 4 (b) of Part 2 of the Fifth Schedule to the Senate Standing Orders further accords the County Assembly the right to appear and be represented before the Special Committee.

Mr. Speaker, Sir, the Committee commenced its hearing on Wednesday, 24th June 2020, by convening a conference of parties where formal introductions of parties, recital of the mandates and the Committee adoption of the hearing program took place.

Among the preliminary issues that the Committee had to deliberate and make a decision on was a letter Referenced: Senate Letter 1/003 dated 20th June, 2020 from the Speaker of the County Assembly of Kirinyaga County requesting the Special Committee to summon Mr. Patrick Mugo, the Chief Officer, Finance and Economic Planning; Mr. Kennedy Ngiabi, the Chairperson, County Public Service Board and Mr. Joseph Otieno Carilus, the Director, Supply Chain Management.

The County Assembly stated in its letter that the said officers had refused, neglected or otherwise been unable to give their statements and produce documents requested by the County Assembly. The Committee deliberated on the matter and pursuant to Rule 9 (2) of the Fifth Schedule of the Senate Standing Orders, issued invitation to appear as witnesses. The invitations to appear were served on the witnesses on the same day.

Mr. Speaker, Sir, the County Assembly was represented by Mr. Ndegwa Njiru and Mr. Charles Mwangi Ndegwa. The Governor was represented by Mr. Paul Nyamodi, Advocate, Mr. Kamotho Waiganjo, Advocate and Mr. Andrew Muchiri, Advocate to appear on behalf of the Governor.

During the---

Sen. Murkomen: On a point of order, Mr. Speaker, Sir, I do not mean to interrupt Sen. Malalah but to start with, he is making comments pursuant to your generosity on application of Standing Order No.1. Ordinarily, we would not have gone this direction. The matter would have ended and we go home.

Since he is doing so, you said that because of the importance of the impeachment of a governor; I would suggest, with your direction, that Sen. Malalah forgets about all these introductions on who is a Member of the Committee, when it started and who are the lawyers and the parties and then go to the substrata; the real issues that happened so that we can apply this short time, this window that you have created, for purposes of the salient issues.

Otherwise, his time will be wasted on things that we know. We know that there is a Governor, a Member of County Assembly (MCA), lawyers, hearing and all these. Let him just go to the issues that the Committee faced as challenges and they ended up making this recommendation because of this. That way, we will use this time well, than the recitals that he is making. We can read the rest on our own.

The Speaker (Hon. Lusaka): Okay, Sen. Malalah, utilize your time properly. You are aware that it is 15 minutes.

Sen. Malalah: Mr. Speaker, Sir, you have given me 15 minutes. It is my prerogative to know how to use the 15 minutes. You cannot limit me on the time and again tell me how to spend the 15 minutes.

So, Sen. Murkomen, kindly allow me to discharge my duty as the Chairperson of the Select Committee.

(Loud Consultations)

Mr. Speaker, Sir, I will go directly to the charges against Governor Anne Waiguru. There were two main charges leveled against the Governor, which are -

- (1) Gross violation of the Constitution and other laws;
- (2) Abuse of office and gross misconduct.

To support the first charge, the County Assembly made the following allegations -

- (1) Failure to deliver the Annual State of the County Address for the Financial Year 2018- 2019 to the County Assembly.
- (2) Undermining the authority of the County Assembly.
- (3) Violation of Public Procurement and Asset Disposal Act, 2015 and the Public Finance Management (PFM) Act, 2012.

To support the second charge of abuse of office and gross misconduct, the County Assembly made the following allegations-

- (1) Violation of Section 46 of Public Procurement and Asset Disposal Act.
- (2) Improper conferment of benefits on a public officer.
- (3) Disregard of the recommendation of the County Public Service Board regarding the remuneration of members of the Board of Kirinyaga Investment Authority.
- (4) Payment of Kirinyaga Investment Development Authority (KIDA) Board members outside the Integrated Financial Management System Information System (IFMIS) and County Government payroll; and,
- (5) Payment of imprest amounting to more than Kshs14 million paid to Mr. Francis Muriithi Kariuki.
- (6) Violation of the right to health of the people of Kirinyaga.

Mr. Speaker, Sir, allow me to address this House on the issue of the threshold that is required to impeach the Governor.

The issue of the threshold for impeachment is complex and does not contain a simple mathematical formula. During the Senate's consideration of the Report of the Special Committee investigating the removal of the Governor of Kericho, on 3rd June, 2014, the Senate adopted the Committee's recommendation that the threshold for impeachment should take into account the following considerations -

- (1) The allegations must be serious, substantial and weighty.
- (2) The violation must be flagrant and glaring.
- (3) There must be a nexus between the violation and the governor
- (4) The violation must have led to harm, loss or damage to society.
- (5) The violation must have led to a loss of dignity in the office held and loss of confidence or trust in the person holding office, to carry out the functions of that office with integrity and accountability.

Mr. Speaker, Sir, the threshold was also used by the Senate in the subsequent consideration of the proposed removal from office, by impeachment, of Hon. Mwangi wa Iria, the Governor of Murang'a County in November, 2015.

This Special Committee adopted the above threshold for the consideration of removal, by impeachment, of Governor Ann Waiguru, as adopted by the Senate on 3rd June, 2015.

In the course of its investigation of this matter, the Special Committee has observed a number of issues that, though outside the specific charge---

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

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

Sen. Murkomen: Mr. Speaker, Sir, Sen. Malalah has made a very serious statement about the Senate adopting a particular criterion in the case of Kericho County in 2014, and subsequently, in the case of Murang'a County.

It would be erroneous if it goes to the public that the Senate adopted any of that procedure. The Senate did not have the opportunity to adopt any of those procedures, because the governors were cleared. Contrary to his assertion, it is actually the Committee, in its Report, that came up with that criteria. That Report was not adopted by

the House because Section 33 of the County Governments Act does not allow the House to adopt.

If it goes to the public out there that there is set criteria by this House, based on the two reports of Kericho and Murang'a counties, it will create the impression that this particular Committee found itself a cover to explain their clearance of the Governor, using a report of a Committee that was not adopted by this House, but rather a criterion used by the Committee to clear a certain governor.

Mr. Speaker, Sir, I would like you to rule whether it is in order for Sen. Malalah to use the words "adopted by the Senate" instead of saying "used by the relevant Committee".

The Speaker (Hon. Lusaka): Sen. Malalah, I think it is a matter of semantics.

(Loud consultations)

Sen. Malalah: Mr. Speaker, Sir, in English, we have what we call synonyms.

Sen. Mutula Kilonzo Jnr.: I tell you!

Sen. Malalah: Mr. Speaker, Sir, you will allow me to please my friend, Sen. Murkomen, and use a synonym for adopting. So, I will say that the Committee did not adopt, but used the precedent of the previous Committees. That is what we call 'synonym' in English.

(Laughter)

Mr. Speaker, Sir, in the course of its investigation of this matter, the Special Committee has observed a number of issues, which though outside the specific charges made against the Governor of Kirinyaga County, are germane to the totality of the situation of the Kirinyaga County and merit the attention of the Senate.

The Committee observes that the proceedings before it have exposed acrimonious, contemptuous and cold relationship between the County Assembly and the County Governor that threatens to grind the county to a halt.

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

The Speaker (Hon. Lusaka): Sen. Cherargei, where are you? What is your point of order?

Sen. Cherargei: Mr. Speaker, Sir, since this is a House of record, it is very important that you pronounce yourself on the ruling – because there are many reports that are never adopted in this House – on whether we can use this as a threshold. This is because the perception we are creating is that the Senate has its own criteria that is not within the Standing Orders, the Constitution or the County Governments Act that is being used as a cover by this Special Committee.

It is important that you rule, so that it goes on record. It is important for us and the future generation.

The Speaker (Hon. Lusaka): Okay. I think Sen. Malalah has explained himself and cleared. He has avoided saying that he adopted the report.

Sen. Murkomen: No. Point of Order!

The Speaker (Hon. Lusaka): He said it used the previous precedent.

An. Hon. Senator: That is not a point of order.

The Speaker (Hon. Lusaka): Let us proceed, Hon. Senators.

Sen. Murkomen: Point of Order!

What is your point of order, Sen. Murkomen?

Sen. Murkomen: Mr. Speaker, Sir, points of order exist in this House for a particular reason. It must not look like we are irritating people by raising these issues.

Sen. Malalah, in his reading of Kericho and Murang'a counties – the record bears me witness – said that we used a criteria adopted by the Senate and not the Committee. I explained myself very clearly and said that where governors have been cleared, like in the case of Kericho and Murang'a counties, the Committee Report was not adopted by this House. Therefore, that criterion is not a criterion of the Senate.

He would be right if he confines himself to say that we borrowed or adopted. I do not mind him using the word “adopted”. He should not teach me about what a synonym is. He can say “we adopted a criterion used by the Committee in Kericho and Murang'a counties” but not the Senate. If you say “a criterion adopted by the Senate”, you create an impression that there is criterion adopted by this House.

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

The Senate Majority Leader (Sen. Poghisio): Mr. Speaker, Sir, this is really on procedure now, because I think there is a threshold on what a point of order is. You cannot use a point of order to start debating the matter or even argue. If we keep ourselves to the threshold, I do not think we will have all these things.

I understand what it is, but you cannot use that provision to continue debating the issue out of these things.

The Speaker (Hon. Lusaka): Sen. Mutula Kilonzo Jnr., proceed.

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, this is a very strange argument coming from a lawyer; a person who was the Majority Leader of this House and who takes pride in the drafting of the County Governments Act.

I will read Article 124 of the Constitution, so that Sen. Murkomen can allow the proceedings of this House to continue.

It says -

“Each House of Parliament may establish committees, and shall make Standing Orders for the orderly conduct of its proceedings, including the proceedings of its Committees.”

In simple English, the orderly conduct of this Senate, Plenary and Committees, is the conduct of Parliament. Therefore, somebody who has been elected since 2013 cannot purport and pontificate that the conduct of a Committee---

(*Sen. Murkomen stood in his place*)

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

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, you must restrain Sen. Murkomen because he cannot interrupt us. We are not bystanders in this Senate. Some of us got more votes than him, and if we want to brag, we can do so. He must listen!

(*Applause*)

The Constitution is very clear that our Committees are Committees of the House, and the conduct of those Committees is the conduct of the Senate. Similarly, in Article 125, that is why we have given the mandate of the Committees to act as a court. It is a Committee. Why is Sen. Murkomen behaving like a stranger in Jerusalem? Dismiss that point of order.

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

The Senate Minority Leader (Sen. Orengo): Mr. Speaker, Sir, I really plead with you again, that we must have some form of debate in the Senate. If there is interruption in the middle of speeches, there will never be any debate. In fact, we have rules of debate because we conduct our business and make decisions on the basis of a debate.

Now, with this serious agenda before us, if Sen. Malalah cannot be given time to present a summary of the Report that he has---. This is a matter on which you have given us the courtesy to comment on, otherwise, business would have ended. You have given us the opportunity to comment.

Mr. Speaker, Sir, let me remind Sen. Murkomen that in the first impeachment we had in this House, he was here with me. The impeachment, twice, went through the High Court, the Court of Appeal and the Supreme Court.

In fact, the principles and the threshold that Sen. Malalah read out here was not really what we adopted. It was a direction by the Supreme Court in Petition No. 1 of Kerugoya, which is adopted in the Court of Appeal up to the Supreme Court.

In Governor Wambora's case, the threshold set out by Sen. Malalah was not set by the Senate. If you read that report, they say they were following the directions of the Supreme Court, the Court of Appeal and the High Court.

Mr. Speaker, Sir, the Committee adopted it on the basis of the judicial decision. That judicial decision is binding on the House, not just on the Committee. Therefore, what I am appealing to you is that let us have a serious debate on this matter.

Sen. Murkomen will also have his time. If he interferes the same way he is interfering with Sen. Malalah, he will not have even a minute to speak.

The Speaker (Hon. Lusaka): Sen. Malalah, kindly, proceed.

(Sen. Murkomen stood up in his place)

Sen. Murkomen, please, you are pushing me to the edge. You are not going to tell me what to do.

Sen. Malalah: Mr. Speaker, Sir, you will allow me proceed.

Mr. Speaker, Sir, before I was rudely interrupted, I was addressing the issue of the toxic relation between Governor Anne Waiguru and the County Assembly. In this respect, cognizant of the Senate's role as the custodian of the interests of the counties and their governments, the Committee recommends that the Senate through its relevant organs immediately assumes jurisdiction and invites the County Assembly and the County Governor to a consultative process that will restore a functioning government to the people of Kirinyaga County.

The area Senator, Sen. Charles Kibiru, should lead the various reconciliatory measures to bring together the County Executive and the County Assembly and all other institutions in order to restore harmonious working relations in Kirinyaga County.

Mr. Speaker, Sir, on the issue of the conduct of the Governor, it is worth noting that the Committee was unimpressed and must express its reservations on the pattern of conduct of the Governor that it has perceived on the basis of the evidence adduced before it. For example, while it is open to the Governor to indulge in less important activities, it is an uninspiring and disturbing picture when she cannot similarly find time to appear before the County Assembly to present the annual State of the County address. The condescending attitude of her towards the County Assembly is uncalled for and does not inspire confidence and trust in the County Executive leadership.

She appears to require to be reminded of the high calling of her office and the responsibilities of leadership as set out under Article 73 of the Leadership and Integrity Chapter of the Constitution.

Mr. Speaker, Sir, on the investigation by the Special Committee, I will go straight to the findings of the Special Committee. This is the gist of my presentation. Having considered all these matters, it then fell to the Special Committee to discharge its mandate under Section 33(4) of the County Governments Act, Standing Order No.75(2) and Rule 2 of Part II of the Fifth Schedule to the Senate Standing Orders.

The Committee's findings on each of the particulars of the allegations are therefore as follows-

Allegation 1: Gross Violation of the Constitution and Any Other Law;

The first allegation was: Failure to deliver the Annual State of the County Address for the Financial Year 2018/2019 to the County Assembly.

From the evidence adduced before the Committee, the Governor demonstrated that two Annual State of the County Address were made. One albeit was not delivered in the County Assembly. The Committee further noted that there is no county legislation to provide for the content of the Annual State of the County Address as required by Section 30(2)(k) of the County Governments Act.

The Committee also noted that there is no specific law that compels the Governor to make the State of the County Address in the County Assembly. The Committee, therefore, finds that the allegation was not proved by law and is, therefore, not substantiated.

Allegation 2: Undermining the Authority of the County Assembly

Evidence adduced before the Committee showed that the County Executive has always submitted County Policy Papers and Plans, including the County Strategy Paper before the County Assembly. Further, the County Assembly has always approved the Annual Budget which include the Annual Development Plans (ADPs), the County Integrated Development Plans (CIDPS), the Fiscal Strategy Paper and the County Outlook Papers.

There is evidence of Plans and Policy documents that have been presented to the County Assembly, received and approved by the same County Assembly.

The Committee finds that the allegation was not proved and it is, therefore, not substantiated.

Allegation 3: Violation of the Public Procurement and Asset Disposal Act, 2015 and the Public Finance Management Act, 2012

From the evidence adduced, the Committee noted a clear mismanagement of some tenders. I want to be very clear on this point. Of the 12 tenders listed in the Motion, the County Assembly only prosecuted four of them. The County Assembly used 12 tenders to allege mismanagement in the county, but they only prosecuted four of them. Eight were abandoned on the road. Of the four tenders prosecuted, the Committee notes that there was clear mismanagement of the tender process where tenders were awarded to companies whose bids were not responsive or where there were clear cases of conflict of interest.

The specific tenders in question include-

(a)Tender No.CGK/ICT/OT/047/2017-2018; Tender for the Design, Development, Installation and Commissioning of Integrated Hospital Management Information System.

In this tender, full payment was made long before the user testing was done. Further, the company awarded did not meet the qualifications prescribed in the tender documents.

(b)Tender No. CGK/MOW/OT/038/2017-2018; Tender for the Proposed Waterworks for Mwea-Makima Water Project, March 2018.

This tender was awarded to Eva Trading Agencies Limited, which was clearly owned by a member of the family, specifically the brother to the Accounting Officer who awarded the tender with no declaration of interest, yet he is the one who signed on behalf of the County Government.

The Committee recommends that investigatory authorities undertake investigations on the same and the culpable officers, including the respective Tender Evaluation Committee members be called to account. The Committee finds that the allegations were not directly linked to the Governor and, therefore, not substantiated.

Charge No.2 - Abuse of Office and Gross Misconduct

(1) Violation of Section 46 of the Public Procurement and Asset Disposal Act of 2015.

Evidence adduced before the Committee showed that the respective tender committees were by law established by the respective Accounting Officers. There was no evidence linking the Governor with the establishment of the Tender Evaluation Committee. The Committee, therefore, finds that the allegation was not proved and not substantiated.

(2) Conferring a Benefit to a Public Officer.

From the evidence adduced, the Committee established administrative malaise in the management of imprest in Kirinyaga County. The Committee first took great exception to the County Assembly for listing 12 imprests paid to the Governor and

alleging that the Governor was issued with imprest, but never travelled or surrendered the imprest.

The County Assembly on prosecuting only prosecuted two out of the 12. The County Assembly brought 12 allegations and only prosecuted two and abandoned 10. The Governor adduced evidence of the travel and where the travel was never undertaken, the imprest was surrendered throughout the time.

The Committee observes that Accounting Officers must adhere to the Public Finance Management Act of 2012, which requires imprest to be surrendered within seven days. In the event of delay, the refund should be made with interest. Governor Anne Waiguru was supposed to travel in January, but refunded the imprest in April. We, as a Committee, noted that, that was a malpractice which should not be entertained. The Accounting Officer should ensure that such members of the Public Service should be surcharged in case they do not remit or account for the imprest.

Mr. Speaker, Sir, the Committee, therefore, finds that this allegation was proved, but does not amount to an impeachable offence.

(3) Disregard of the recommendation of the County Public Service Board regarding remuneration of the members of the board of Kirinyaga Investment Development Authority (KIDA). Payment of KIDA board members outside the Integrated Financial Management and Information System (IFMIS) and County Government payroll and payment of imprest amounting to more than Kshs14 million paid to Mr. Francis Mureithi Kariuki.

Mr. Speaker, Sir, evidence adduced before the Committee - we are talking about ‘evidence’ nothing less than ‘evidence.’ Evidence adduced before the Committee demonstrates that payment was made in accordance with the Salaries and Remuneration Commission (SRC) circular on payment of allowances to Boards and Commissions. The Committee finds that this specific allegation was not proved and, therefore, not substantiated.

(4) Violation of the right to health of the people of Kirinyaga County.

From the evidence adduced before the Committee, it was established that there were significant systemic problems in the health sector in Kirinyaga that can be addressed by various organs, including the County Assembly and the national Government institutions.

The Committee further notes the high turnover of health workers in Kirinyaga County and the inordinate delay in the payment of health workers who pursuant to the Governor’s moratorium resumed work. This issue should be addressed forthwith.

The Committee finds that this allegation was not proved and is, therefore, not substantiated.

Mr. Speaker, Sir, allow me to conclude.

The Speaker (Hon. Lusaka): You have two minutes.

Sen. Malalah: Mr. Speaker, Sir, I do not know why you are not interested to know how we conclude this matter.

The Speaker (Hon. Lusaka): In fact, you have gone beyond the time I gave you.

Sen. Malalah: Mr. Speaker, Sir, we have recommended - I am not able to trace it, but I will go off script - that specific officers who constituted the tender committees, that is; the Chief Finance Officer and members of the tender committees; Wayne, Pauline and the Director Supply Chain Management, Mr. Carilus Otieno, should step aside as the Directorate of Criminal Investigations (DCI), the Ethics and Anti-Corruption Commission (EACC) and all other investigatory organs look into this matter.

Lastly, all the companies that were awarded unlawful tenders in Kirinyaga County; the EACC, DCI and any other investigatory organ should initiate investigation and report back within 60 days. However, in the meantime, those tenders should be paused until the matter is heard and determined.

Thank you and may God bless Kenya. I also want to remind people that I am still the Senator for Kakamega County.

(*Laughter*)

The Speaker (Hon. Lusaka): Thank you very much, Sen. Malalah. That is a Committee that worked on behalf of the Senate.

Hon. Senators, now I will allow each three minutes because this is just discretionary, so that you make a few comments.

Sen. (Dr.) Ochillo-Ayacko, you have the Floor.

Sen. (Dr.) Ochillo-Ayacko: Thank you, Mr. Speaker, Sir. I want to take this opportunity to thank the Committee that we appointed to look into this matter. This was a very explosive matter. The nation has been looking forward to the verdict which is not necessarily this one or that one.

Impeachments will come to this House. This is unlikely to be the last one. When an impeachment comes to a House like this one, we are expected to be sequestered. We are expected to be locked from hearing opinion external to us or from listening to feelings other than facts.

Mr. Speaker, Sir, I noticed when we were appointing this Committee, many of us got emotional and descended into the arena. We descended into the arena without waiting for evidence and giving anybody a chance to discern or understand what was coming. There were people or some of us who said: Let us listen to what the people of Kirinyaga would say.

For myself, I thought they would have opportunity before this Committee, which they did and presented whatever they presented. There are those who may disagree with what the Committee has said. However, I agree with the verdict because I watched a bit of the proceedings on television. It is my considered opinion that the conclusion the Committee has arrived at is based on what was presented before them.

In future when such matters appear before us, I plead that we sequester ourselves. We should not debate because we create a poisonous and toxic environment to make it impossible to objectively arrive at a finding.

I support that finding, but if other people feel aggrieved, we have public institutions like the EACC, the DCI and others. They can pursue what is left hanging and what the Committee did not have the mandate to do.

I thank you.

Sen. (Dr.) Langat: Thank you, Mr. Speaker, Sir, for also giving me this opportunity to make a comment on this particular Report. As Sen. (Dr.) Ochillo-Ayacko has said, we were observing the proceeding throughout because the process was live on television.

The process was tedious. I saw voluminous documents that I would like to make my suggestion on. In future, it will be important to give more time because we are required to examine voluminous documents yet some of us are not expert accountants, lawyers or procurement officers. In future, the Senate should bring experts to assist the committees in capturing the most important areas.

The Committee has done its part. They have given their verdict which I do not want to say anything about. However, in future, they must have more time.

Sen. Wako: Mr. Speaker, Sir, first, I want to congratulate the Committee led by the Senator for Kakamega because they have done a wonderful job.

I remember when we had our first impeachment proceedings here, we debated on whether we should go plenary or have a special Committee. We opted for a special Committee because it is through a special Committee that one can delve properly into the allegations made. The Report shows that this Committee delved into the allegations made. I doubt that in plenary, that type of analysis of each and every allegation would have been done.

Secondly, we are all learning. To me, it is a learning process. As you rightly stated, Mr. Speaker, Sir, impeachment is one of the most important work that we do. I noted that in the United States of America (USA), when it comes to impeachment proceedings, they do not rely on the oath they took after elections. In fact, they swear in the Senators again because it is a quasi-judicial function being performed.

Going forward, it will be important that in order to show the gravity of the issues being dealt with, we should do like the Senate of the USA by being sworn in again before we start the impeachment proceedings. This is because this particular function is unlike the other functions of legislations such as notices of Motions and so on. This will give signals to the public that we are entering into a serious process.

Thirdly, it also appears to me that you learn from experience and improve as you go on. MCAs discharge their functions and mandates on behalf of the people of a particular county by voting for impeachment. Therefore, going forward, the MCAs should desist from commenting on a matter once the county assembly decides that it should go to the Senate until it has been dealt with.

I noticed that after they did that, they again went public. Whereas public debate is important because impeachment proceedings are not only quasi-judicial function, but also political processes, I do not mind other people commenting on it---

The Speaker (Hon. Lusaka): Your time is up, Sen. Wako. I even added you more time. Let us have the Senate Majority Leader.

The Senate Majority Leader (Sen. Poghisio): Mr. Speaker, Sir, I just want to appreciate the special Committee led by the Senator for Kakamega who has assured us that he is still the Senator for Kakamega. We should reinforce that. On our behalf, I ask him to also thank others who are distinguished Members of this House.

When we were thinking about how to go about this, we agreed it should go to the special Committee. Sometimes you can have the plenary and sometimes a committee. I congratulate Members of the Committee for how they conducted the hearing because they observed the standards of how to conduct a hearing. I believe both parties will agree that justice was served. They should understand that not everybody will like their verdict, but the process seems to have received high ratings.

Mr. Speaker, Sir, you have allowed us to make some comments. We must be confident in our Committees. We must also have confidence in this House. Sometimes we read things written by Members of this House that degrade the House. People out there call us names because sometimes we call ourselves those names. We must desist from the populist ideas that degrade this House. This is a House of honour, unity and rules.

I appeal to my colleagues to try and restore the dignity of this House. We do not have to think that if a verdict comes out the way it has come out, then it is wrong. However, when it comes out the other way, then it is right. We all agree that our Committees represent us and the verdict they bring should be accepted.

The other thing people must realise is that the standards and threshold for impeachment are set out and there is precedent. What the Chairman of the special Committee said is correct. We must understand that we are here to follow the law and accept the verdict.

I thank Members of the special Committee and the parties involved. I also congratulate them for the process they carried out.

I thank you.

(Sen. (Dr.) Musuruve lifted her hand)

The Speaker (Hon. Lusaka): Sen. (Dr.) Musuruve, do not lift your hand up because your name is already here.

Proceed, Sen. Mutula Kilonzo Jnr. You will be followed by Sen. Mwaura who is in the extended Chamber.

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, this process was very important. It appears that we have a series of impeachments coming along the way. It is important that Sen. Malalah was clear about the threshold. Even if MCAs sleep in their county assembly or plant trees and the threshold is not met, we have set the standards.

I am glad that I sat in the Committee that looked at the impeachment of Governor Chepkwony because we set a standard. I want to ask all the MCAs to read the Authority of Supreme Court of Nigeria which was ably quoted by the Supreme Court of Kenya in the Wambora's case. It says:

“A Governor or Deputy Governor, as a human being, cannot always be right and he cannot claim to be right always. That explains why Section 188 talks about gross violation. Accordingly, where a misconduct is not gross, then Article 188 is not a weapon of removal and is not available to a House of Assembly.”

It continues to say that -

“It is useful to note the various meanings of the word “gross” in relation to violation. Gross violation is a flagrant violation. It is a glaring error, nasty,

unpleasant, vulgar, crass and it must be a severe transgression of the Constitution and the law."

That message is the one commandment that we are sending to all the county assemblies.

The Committee was bombarded with documents. They had heaps of paper and that is why we need to amend the timelines. I have not heard anybody congratulate the Vice Chairperson, Sen. Halake, for good conduct. The Chairperson and the Vice Chairperson are not lawyers, but they conducted themselves like judges. They were congratulated all over the place because of how they steered the Committee.

The Committee that looked into the impeachment of Governor Chepkwony asked the then Senator for Kericho County, who is now Waziri Keter, to reconcile the parties. The paragraphs on how they are relating to one another presupposes they think that they are going to migrate to Makueni County. We are not interested in them coming to Makueni County. They must live together. When we were listening to the impeachment of Deputy Governor Kiala, the late Sen. Kajwang' said that there is no divorce. The County Assembly of Kirinyaga and the Governor should know that there will be no divorce. They should look at what happened in Makueni County if they think that they can wind up the Government by collecting signatures. They must work together.

Sen. (Dr.) Mwaura: Thank you, Mr. Speaker, Sir. I want to congratulate the Senators who represented us through this Committee. We followed the proceedings. I congratulate them because they did not allow themselves to be persuaded by the court of public opinion. They have prosecuted this matter based on its own merit.

If you look at the allegations made against the Governor, you will realize that this was more about political hubris or innuendos. It was about ad hominem arguments against the character of Governor Anne Waiguru. This calls for a very important attribute on the position of a Governor. For this matter to come to this august House, it means that there was lack of consultations and highhandedness by the Governor and the County Assembly. I want to advise Governor Anne Waiguru to come down from the mountain. She would not have been here if she did that.

We are still reeling from the challenges of councilors and county councils. Our oversight has not developed to real subnational and substate level where we have a meek and accountable government. We cannot have impeachment as the only recourse to disciplining rogue governors. That is something that we need to look at. We need to look at how we can make public participation process consultative when developing the County Integrated Development Plan (CIDP), the Annual Development Plan, the County Fiscal Paper and other documents that ensure that people move in the same direction. That will help us ensure that accusations are not attributed to persons who seem not to understand the process. Sen. Wako had a Bill on public participation that we need to look at. These proceedings indicate that the Governor and the MCAs have not consulted.

It is also true to say that there is a new form of corruption that has morphed. It came when people learnt that they can be gotten through direct signatures. Right now, you cannot trace someone's signature, but they still end up benefitting. We need to be creative as a Senate to capture people who indirectly benefit from the direct actions of corruption of other officers in the public service. This is something that we need to crack.

Sen. Omogeni: Thank you, Mr. Speaker, Sir. First of all, I want to register my appreciation to the Committee for the good work that they have done within limited time. I think that we did stretch the Committee by giving them limited time.

To the people of Kirinyaga County and to the MCAs, those of us who are lawyers know that there is no case that is so good that it cannot be lost in court and neither is there a case that is so bad that it cannot be won in a court of law. In legal issues, one approaches each matter with an open mind. You at times win and lose at times. This House once impeached the Governor for Embu County twice and the court of law; the High Court, Court of Appeal and the Supreme Court, overturned its verdict.

The MCAs of Kirinyaga should learn from this process. They should identify the areas where they did not do the things right and the areas where they did not meet the threshold for impeachment. That should give them an aspiration of having a better case next time. This battle should not carry our emotions. We should approach our duty to the great people of Kenya with an open mind. That is the best spirit that we can give to the people of Kirinyaga County.

We should also appreciate that there are things that we can do as a House and that there are things that other institutions can do better than us. I am happy that the Committee has recommended for further investigation against certain officers and that should give hope to the people of Kirinyaga County. They should have hope that justice will be done to them if any resources were plundered or misused.

Sen. Cherargei: Thank you, Mr. Speaker, Sir. First, I want to condole with my people in Lessos, Nandi County. Three people were killed by police and I appeal for calm.

It will go down the history of this country that public relations and sanitization programme christened; '*muosho mmoja*', has gotten a foothold in this House. The Report sounds like a love poem to Governor Anne Waiguru. From the Chairperson's position, there were mistakes and illegalities, but there is no nexus to the Governor. No one should actually associate with this Report in the near future. I am disappointed because we knew from the beginning that the sanitization programme for Governor Anne Waiguru had started.

In her closing remarks, Governor Anne Waiguru said that she was being fought because of her support for Building Bridges Initiative (BBI) and Handshake. That is one of the worst defenses that I have heard in this country. I want to advise the four governors whose impeachment Motions are lying in the county assemblies to just shout, "BBI" and "handshake," and their problems will go away.

Mr. Speaker, Sir, I want to correct what the Committee said that out of 12 allegations, four were proved. Even when you are taken to a court of law, if one ground is proved, you are charged on it. What are all these issues? They say that the County Assembly brought 12 charges and four were proved. I have never had such a justification.

Finally, the fight against corruption in this country---

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

The Speaker (Hon. Lusaka): There is a point of order.

Sen. Malalah: Mr. Speaker, Sir, is Sen. Cherargei in order to mislead this House that I said on the Floor of the House that the County Assembly proved four allegations? I

said that they prosecuted. Sen. Cherargei should differentiate between the words “prosecution” and “proved”.

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

Sen. Cherargei: Mr. Speaker, Sir, Sen. Malalah is a thespian, so those are the theatrics that they use in comedy shows. The law is very clear. As I conclude, the law against corruption---

The Speaker (Hon. Lusaka): I hope that you are not imputing improper motives.

Sen. Cherargei: Mr. Speaker, Sir, I am not imputing improper motives. The MCA has already expelled him---

The Speaker (Hon. Lusaka): No! You are out of order!

Sen. Cherargei: Let me finalize, Mr. Speaker, Sir.

On the issue of corruption, I want to tell the President and Kenyans at large, that if the fight against corruption is as comical as it is, there will be no justice for the people of Kirinyaga. Justice should be served. Justice was not served to the people of Kirinyaga. The fight against corruption in this was story telling. This was a soap opera movie for the Governor of Kirinyaga. If you read the whole Report, it is just like a soap opera that was done somewhere behind Kirinyaga Road.

The Speaker (Hon. Lusaka): Sen. Olekina, proceed as Sen. (Prof) Ongeri comes from the extended Chamber.

Sen. Olekina: Mr. Speaker, Sir, I thank you. I rise to congratulate the young distinguished Senator for Kakamega who did this House proud, and my good friend, the Vice Chairperson, Sen. Halake. If the Committees in this House take time and read through this Report, we can follow up to ensure that the people of Kirinyaga get justice.

There are different things that have been alluded to here like the testaments that were made by the witnesses, including the issues of health. I hope the Committee on Health, which I sit in, will follow up and go check them out. Article 226 (5) of the Kenyan Constitution is very clear. It clearly states that if any holder of a public office misappropriates funds, he is accountable. I heard the Chairperson clearly state that there are certain officers who have been recommended to step aside so that they can be investigated.

I want to reiterate what I said from the beginning, that the management of a county is a collective responsibility. This is enshrined in the Constitution under Article 179. I want to remind the County Executive Committee members (CECs) in Kirinyaga and all 47 counties that they are responsible for whatever happens in the counties. In fact, if the Governor was found to have committed an offence, under Article 179(7), all those CECs would have gone home. Therefore, this is a collective responsibility. I find that this Committee did a fantastic job. I will spend some time and read through this Report so that I can contribute more in my Committee.

Finally, Mr. Speaker, Sir, this is something that is one of my pet peeves. Some of these MCAs have no clue on the rule of law. How can somebody say that imprest was not surrendered? It is not in their jurisdiction. I plead with any officer to spend some time and familiarize themselves with the rule of law because imprest is supposed to be recovered. If you do not surrender within seven days, it is supposed to be recovered.

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

The Speaker (Hon. Lusaka): What is your intervention?

Sen. (Dr.) Langat: Thank you, Mr. Speaker, Sir. I want to remind the Senator for Narok that MCAs are doing oversight and we should not look down upon their level of oversight. In fact, this House is killing the functions of the MCAs down there. They will no longer be willing to do their work because of what we do here. I want to tell the Senator for Narok not to insult the MCAs that they do not know anything. They know a lot. That is very wrong.

(Applause)

Sen. Olekina: Mr. Speaker, Sir, sometimes I think that some people sleep in this House when we are talking. My statement was very clear

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

(*Sen. (Dr.) Langat stood up in his place*)

Order, Sen. (Dr.) Langat! I have not given you a chance. Sit down.

Sen. Olekina, that is unparliamentary, so can you withdraw and apologize?

Sen. Olekina: Mr. Speaker, Sir, I remember clearly---

The Speaker (Hon. Lusaka): Withdraw and apologize!

Sen. Olekina: Mr. Speaker, Sir, as I am guided by you, there is nowhere in my statement that said Sen. (Dr.) Langat was sleeping.

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

Sen. Olekina: Mr. Speaker, Sir, as I respect your guidance and withdraw that, I want to remind the people of this country that the only way that we can ensure that everyone gets justice is if we, as citizens, familiarize ourselves with the law. This is because we keep pointing fingers. You point a finger and say: "Oh, this was not done, this was not substantiated."

I want to repeat what the Senate Majority Leader said here. It is absolutely ludicrous and ridiculous for our colleagues to go on social media and post saying, "the House of Sanitization". Let us have some respect. Otherwise, if we do not respect this House, you might as well fold and go back home.

Finally, the law is clear. If somebody committed a crime, and there are recommendations here, those investigating agencies should now get an opportunity to proceed. The Kenya Revenue Authority (KRA)---

The Speaker (Hon. Lusaka): Your time is up.

Sen. (Prof.) Ongeri.

Sen. (Prof.) Ongeri: Thank you, Mr. Speaker, Sir, for giving me the opportunity to weigh in on this matter. First and foremost, I want to thank the Committee for having carried out a very important responsibility of arbitrating and listening to the views of the people of Kirinyaga and the Governor. They were all given an opportunity to be heard in the public glare.

Issues were canvassed on the Floor of this House. They have been captured in the Report that I have seen and will peruse through. When you carefully read it – and I intend to do so – it is quite clear that there are issues of law that have been raised. There are issues where responsibility has been apportioned. We should take that responsibility.

I think that one area that came out quite clearly is the area of procurement. The items that are locally procured will be very important input to the proceedings of the County Government of Kirinyaga, and they will be able to censure them at that level.

Even if this were to go to the EACC, they would not have the capacity to see where specific projects are located and at what stage they are. Therefore, the people who are in the best element to deal with this matter at that level would be the MCAs.

I commend this Report. I think that it is a way forward. As a Senate, we must always build on a platform that helps us to have better jurisprudence in the future, rather than criticizing a process which I think has been successfully concluded.

My final remark is that there is now an opportunity because this is not the end of this Report. There was a call for the people of Kirinyaga, the County Assembly and the Governor to come together because the bottom line is their development and nothing else. The most important recommendation is that there should be harmony.

After all, this is what we are striving for in this Senate. We are striving to look for harmony and people working together; it is not our purpose to divide people. When we have an opportunity like this, we should commend this Report because it has made a very important recommendation that people, both at the county assembly level, the governor and people themselves, should come together and get their act together.

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

The Speaker (Hon. Lusaka): Sen. Wako, what is your point of information? Does Sen. (Prof.) Ongeri want to be informed?

Sen. Wako: In light of the excellent presentation by the Professor on the issue of harmony and unity, the Standing Committee on Devolution and Intergovernmental Relations is charged with the responsibility of governance and management of county governments. Do you not think that this Committee should be more proactive in other areas in future where they see toxic relationships between the county assembly and the county executive? They should intervene and try to see if they can bring them together.

That is my point of information.

Sen. (Prof.) Ongeri: Thank you, Mr. Speaker, Sir. I graciously accept that recommendation because the whole purpose of this Senate is to bring harmony and not disharmony.

Sen. (Prof.) Kamar: Thank you, Mr. Speaker, Sir. I join my colleagues in saying that the time given for interrogations like this needs to be considered. We saw the Committee work tirelessly for very long hours. We thank them for putting that effort.

Now that the story has ended there, there are few concerns that some of us observed. One of my concerns is what happened after the announcement of the impeachment. As the Senate, we have procedures. The procedure of impeachment starts in the county assembly, then it lands in this House. When it comes to this House, we have our procedure of doing things.

It was extremely sad for me to see the affected people of Kirinyaga speaking to the Senate on the streets and in *barazas*. We know that they were pained and were feeling bad. However, for them to tell us to do things in a certain way was very sad. It is not only the people of Kirinyaga, but also the leadership of Kirinyaga. That is why the Committee has given very strong recommendations of reconciliation.

As I listened to the Members of Parliament and our colleagues, Senators, expressing themselves; I asked myself that, at the end of this process, whichever way it takes, is there anybody who will leave Kirinyaga? Is there anybody who will be transferred from Kirinyaga, or all of them will live in the same county?

This House is supposed to not only take care of county assets, but also the county government. We need to ask ourselves how to protect ourselves and the government beyond impeachment. This is because impeachment will not lead to us expelling a person from the county. They will still live among the rest of the residents of the county.

Mr. Speaker, Sir, I really like the recommendation that has been given by the Committee. I also like the addition that has come from Sen. Wako that this House must involve itself in the interest of our counties in bringing peace among members of the county government; particularly by doing capacity building for the MCAs so that they are bold, but not terrified by their relationship with the governors. This is because it looks like there is some---

The Speaker (Hon. Lusaka): Your time is up.

Sen. Murkomen: First of all, I would like to appreciate the County Assembly of Kirinyaga for the fantastic job they did. Their preparation for the impeachment process was above board, in fact, it was exemplary. In many of the discussions that I have seen in print and electronic media, many people have praised the County Assembly of Kirinyaga as being acquainted and well versed with responsibilities of oversight.

In fact, the Chairperson of this Select Committee, Sen. Malalah, a former MCA, should have spent a few minutes appreciating his former colleagues and their role. I find it very sad because I have stood by the roles of the county assembly since 2013 when I came here.

I find it very sad that some Members of this House could disparage the role that MCAs are performing; or try to demean their responsibilities given the fact that they operate in difficult circumstances. Some of them are being intimidated by the county assemblies and denied resources.

I want to tell the County Assembly of Kirinyaga and county assemblies across the country that they have a friend in Sen. Murkomen and a number of Senators in this House who believe that we must strengthen the responsibility of oversight.

Mr. Speaker, Sir, it will be an insult to the county assemblies to use this Floor to demean county assemblies because the Speaker of this House is the patron of all county assemblies across the country. Annually, we hold a devolution conference to exchange ideas on what should be done on our responsibilities as overseeing agencies.

Mr. Speaker, Sir, many people have said here that the reputation of this House is in danger because of comments that Members make in social media and out there. I beg to disagree. The reputation and the dignity of this House is going to be determined by the consistency of the decisions we make and the manner in which we conduct ourselves on the Floor of this House.

I was in the first Committee of impeaching Gov. Wambora. I was the Vice Chairperson, Sen. Orengo was there and the Senator of Kakamega then, Sen. (Dr.) Khalwale was the Chairperson. We impeached Hon. Wambora for seeds that did not germinate in Embu despite the fact that he was not the procurement officer and he did not

plant them. We impeached Gov. Waititu for other reasons that could not have been substantiated if we could have forced ourselves to go through the real processes.

Mr. Speaker, Sir, we must demonstrate as a House the consistency of the impeachment standards. This is because in this House, we said that Governor Waiguru is not able to govern---

The Speaker (Hon. Lusaka): Unfortunately, it is done Sen. Murkomen. He is a former Leader, so I will give him one minute.

Sen. Murkomen: Mr. Speaker, Sir, we indicted the governor on tendering processes, failure to give state of the union address, inability to lead in a harmonious manner, then finally, said that it is not substantiated.

We must have consistency. Failure not have that consistency makes people out there to believe that we are not the Senate; we are sanitizers. As a House, we must show that consistency.

Finally, I propose that we amend Section 33 of the County Governments Act that all impeachments must go through Committees and all the reports from the Committee, whether they are substantiated or not, must be brought to this House for approval. This is because some of the recommendations given by the Committee have not been adopted by this House because we are not adopting the report. How will they be implemented?

I suggest that going forward, the Standing Committee on Devolution and Intergovernmental Relations should come up with a Motion that then adopts the recommendations of that Report so that this House can formally adopt the recommendations that are related to impropriety in Kirinyaga.

Mr. Speaker, Sir, I want to tell the people of Kirinyaga to take heart. You know what happened and I told you before. It was not a surprise. They should relax.

The Speaker (Hon. Lusaka): Your time is up.

Sen. Orengo, I will give you five (5) minutes.

The Senate Minority Leader (Sen. Orengo): Mr. Speaker, Sir, let me first congratulate the entire Committee for a job well done.

Sen. Malalah, other than the fact that you may not have a legal degree, your presentation of this Report and your going through the charges one by one and analyzing the evidence, I thank you. You have done justice to this matter with the entire Committee.

Mr. Speaker, Sir, secondly, I want to say this without fear of contradiction; let us not change because of changed circumstances. I want some people on the other side to look at the record of what they have said in this House in other impeachment proceedings. The narrative is beginning to change, but justice can never change. The question that we should ask ourselves in this particular matter is whether we have done justice. Justice is not done by listening to crowds. Justice is done by going through processes.

Impeachments were very popular in England. In fact, the last impeachment was that of a Governor General of India in the 18th Century. Because they found impeachments wanting, they stopped them. They were rendered obsolete. In the United States of America (USA), since they signed the Constitution in 1787, there have only been three impeachments, and no removal. This is because the founding fathers said that this is a tool that you use only in exceptional circumstances.

Mr. Speaker, Sir, in the USA, it is a political process. However, in Kenya, we have adopted a system in which our decisions are reviewable. The court system can review our conduct, whether really we did justice in accordance with the Constitution. So, the thresholds have been set in the law by the Supreme Court, the Court of Appeal and the High Court. In that regard, I think “Justice Malalah” --- I am calling him “Justice Malalah”, but he sat in the seat of a justice. I have found so many accolades on the way Sen. Malalah presided over the Committee and the process. This was properly done.

Also, we cannot accuse the County Assembly. They have done their work, just like the Supreme Court when the matters regarding Gov. Wambora went to the Supreme Court. I am glad that one of us was in that case. Senior Counsel, Sen. Omogeni, was there and defended the governor in that case. He has done many other cases, like the one of Gov. Munya in the election petition and so on.

Mr. Speaker, Sir, when institutions work, we should never be disappointed. In fact, when the impeachment proceedings went to the High Court, the Court of Appeal and the Supreme Court, our decision was overturned. I said that, at the end, it shows that our institutions and the legal processes are working. I assure the people of Kirinyaga County that what they have done through the County Assembly is within the law. What the Senate has done is also within the law. Nobody will stop the County Assembly of Kirinyaga from continuing to do its work and carrying out its oversight role. This is because without that, this kind of impeachment would never end in this Senate anyway.

What I would encourage, for those who were looking for other people's heads is that, next time, learn how to dance better for King Herod. You may get somebody's head at that time.

I thank you, Mr. Speaker, Sir.

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

Sen. Dullo: Thank you, Mr. Speaker, Sir. I wish to join my colleagues in congratulating the Committee, having carried out this impeachment process. Secondly, I congratulate the MCAs of Kirinyaga County because they have done their work very well.

I sat in two special Committees in the last Senate. The first one was during the impeachment proceedings of the Governor of Kericho County. In the impeachment, we made a very good recommendation. We said that there should be reconciliation between the county government and the Senator then. The recommendation we made then was that under the leadership of the Senator, a reconciliation should be arrived at. That happened and worked so well. Since then, we have never had any problem.

Mr. Speaker, Sir, secondly, for the MCAs of Murang'a County, we had the impeachment of Gov. Mwangi wa Iria. That impeachment did not go very well because the Senator then was devastated because we did not come up with this kind of recommendation by this particular Committee. If at all the relevant institutions will pick these recommendations and carry them to the end, the people who were involved should be investigated. That means that there is win-win in both cases.

I think we should not discourage MCAs; they have done their work and come this far. They should proceed doing what they are doing. As a House, we should look back and see where there are gaps and make proper recommendations. I hope that under the leadership of the Senator for Kirinyaga County, we should come up with

recommendations, where Alternative Dispute Resolution (ADR) should be held in Kirinyaga County. This is so that they can work together and come up with a solution to the current issues affecting them.

I thank you, Mr. Speaker, Sir.

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

Sen. Kihika: Mr. Speaker, Sir, thank you. I rise to make a few comments. I begin by appreciating and congratulating the County Assembly of Kirinyaga as well as the people of Kirinyaga County. By going through the process in the way that they did, they absolutely did what they are supposed to do, which is a good job in oversight.

When I sit here and hear some very condescending remarks directed at MCAs, it is quite disheartening having been a Speaker of a County Assembly, and sitting where you are sitting over MCAs, and now having been a Senator in this House for two-and-a-half years. The MCAs know their jobs better at times than the Senators in this House. They do not hold brief for anybody, but continue to carry out their jobs without fear or favour. That is something that you cannot find in this Senate.

Mr. Speaker, Sir, back on the afternoon of 16th June, 2020, we debated whether to go to Plenary or have a special Committee for this agenda. You could have thought that the Members here who are speaking as angels, were different Members when the Motion of the impeachment of Gov. Waititu was brought. Having heard them speak here today, it is a complete contradiction to what we have seen.

My hope is that as we go forward, if there are more impeachments, let the House be consistent. Otherwise, the supposed Majority Leader on the Majority side coming here to lecture us about what we put on social media and being populist or having honour, unity and dignity for the House, is lip service. People are watching what we are doing as the Senate and not what we are saying.

Mr. Speaker, Sir, what I said back on 16th June, 2020 has come to pass. We got a Committee that was very good at sanitization services and they have been able to carry that this afternoon. It was predetermined; the die was cast and I was expecting no different results.

As I conclude, the US President, Harry Truman---

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

The Speaker (Hon. Lusaka): There is a point of order from Sen. Mutula Kilonzo Jnr.

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, Sen. Kihika might have her problems with Jubilee Party, but the Senator of West Pokot County is the Senate Majority Leader and not ‘the supposed Leader of Majority.’ I do not think it is correct to use such sentiments against colleagues.

Since you are here and we count on you on having order, some people in this Senate are behaving as if they have monopoly on bad manners. We can insult one another if we want to, but we restrain ourselves because the Standing Orders require of us not to behave as if we are on the streets.

(Sen. Kihika stood up in her place)

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

Sen. Mutula Kilonzo Jnr.: The Standing Orders are called so because when somebody stands to talk, they are supposed to be guided by them. Sen. Kihika should withdraw the statement she has made about the Senate Majority Leader.

Mr. Speaker, Sir, these people who seat here were your erstwhile friends but, please, do not be too lenient on them. Otherwise, we are also going to misbehave in this House so that you are forced to enforce the law in this House.

(Loud Consultations)

The Speaker (Hon. Lusaka): Order Senators! I treat you as hon. Members. The whole world is watching us. Let us conduct ourselves as hon. Members. Let us respect each other. Do not push me to take action that I would not want to take. You must remember that whatever you say against another Senator will also be said against you.

Sen. Kihika, Kindly, conclude.

Sen. Kihika: Mr. Speaker, Sir, I would like you to let the House know whether Sen. Mutula Kilonzo, the Senate Minority Whip, is a new Member of Jubilee Party.

(Laughter)

The Speaker (Hon. Lusaka): Order, Sen. Kihika! You are out of order. Your time is up.

Kindly proceed Sen. (Dr.) Musuruve.

Sen. (Dr.) Musuruve: Mr. Speaker, Sir, I thank you for giving me this opportunity to comment on this report. I congratulate the MCAs of Kirinyaga County for bringing the impeachment Motion to the Senate which is a House of reason. I congratulate the Special Committee that dealt with this impeachment Motion for being objective. If the Committee had gone by the media portrayal of Gov. Waiguru or by the dictates of the County Assembly of Kirinyaga, they would not have done a commendable job. However, the Committee was impartial and went with the authentic data that they found. The Committee was evidence based and very impartial in their undertaking.

Mr. Speaker, Sir, the law allows the MCAs to bring impeachment Motions to this House. However, they need to learn from this impeachment process that they must have verifiable reasons that stand the test of time and meet the threshold for an impeachment. Going forward, there is need to have a tripartite relationship in terms of how the MCAs relate with their governors. The Senator for Kirinyaga needs to ensure that there is a cordial relationship between the Assembly and executive of Kirinyaga County Executive for purposes of development.

I thank the 11 team Member Special Committee that did a commendable job that would not have been done in Plenary considering the evidence was voluminous. The Committee did a commendable job. Going forward, we should ensure that we follow the example of the Special Committee which committed itself to ensure justice and impartiality is done to the impeachment Motion.

I thank you.

Sen. Boy: Asante Sana, Bw. Spika, kwa kunipa fursa hii ili niweze kutoa maoni yangu. Naipongeza Kamati iliyoshughulikia swala hili. Nampongeza Mwenyekiti wa

Kamati hi maalum, Sen. Malalah; Naibu Mwenyekiti, Sen. Halake, na wanakamati wengine waliochunguza swala hili. Nakubaliana na Maseneta wenzangu kwamba Maseneta waliohudumu katika Kamati hi ni watu wenye busara sana wakiwemo Sen. Madzayo. Kama Sen. (Prof.) Kamar alivyonena, namhimiza Seneta wa Kaunti ya Kirinyaga kuhakikisha kwamba Gavana na wawakilishi wa bunge la Kaunti ya Kirinyaga wanapatanishwa ili kutatua shida zinazowakumba.

Sio Kaunti ya Kirinyaga tu ambapo gavana haelewani na wawakilishi wa bunge la kaunti. Tatizo hili linakumba kaunti nyingi humu nchini. Hatuombi kwamba hoja kama hili iletwe hapa Seneti tena lakini shida inaweza kuwa ni wawakilishi wa bunge la kaunti au gavana. Nashukuru Kamati ya Seneti iliyoangazia swala hili kwani ilifikia uamuzi wa busara sana.

Kamati hiyo iliangazia kila mashtaka moja kwa moja na kuona kwamba kila kitu kiko sawa. Siku nyingine kukitokea tatizo kama hili, kamati itakayochaguliwa iweze kufanya kazi nzuri kama Kamati hii iliyoangazia swali hili.

Bw. Spika, naunga mkono ripoti ya Kamati Maalum.

The Speaker (Hon. Lusaka): Kindly proceed, Sen. Shiyonga.

Sen. Shiyonga: Mr. Speaker, Sir, I thank you for giving me the opportunity to contribute to this report.

I applaud the Special Committee on the Proposed Removal from Office, by Impeachment, of the Governor of Kirinyaga County considering the short time that they had to work.

I also applaud the MCAs of Kirinyaga County for bringing the impeachment Motion to the Senate.

From the report that has been tabled, it is clear that there is a problem with the tendering process in our county governments. It is important for the MCAs to be educated on how best to resolve issue of the county before coming to the Senate.

From the report prepared by the Special Committee, it is clear that without substantive evidence, prosecution is impossible. It is important for the MCAs to analyze the accusation that they bring before the Senate.

The role of the Senate is to support the MCAs in playing their oversight role because we want development in our counties. Many MCAs are suffering in silence while some are bribed by the governors to keep silent. The Senate's role is to look after the interests of the counties. I am glad that we are playing that role well. I would like to see more counties enjoying a cordial relationship between the executive and the county assembly for counties to achieve their development agenda.

I thank you, Mr. Speaker, Sir, and continue to urge the county assemblies and county executives to embrace communication.

The Speaker (Hon. Lusaka): Kindly, proceed, Sen. Faki.

Sen. Faki: Asante sana Bw. Spika kwa kunipa fursa hii kuchangia ripoti hii.

Kwanza kabisa, nawapongeza wawakilishi wa bunge ya Kaunti ya Kirinyaga kwa ujasiri wao wa kuleta mashtaka hapa Seneti pamoja na walivyoendesha mashtaka mbele ya Kamati Maalum iliyokuwa inashughulikia swala hilo.

Wawakilishi wa Bunge la Kaunti ya Kirinyaga walionyesha kwamba nia yao haikuwa tu kumwondoa Gavana bali wanataka kuona marekebisho fulani katika kaunti yao.

Naipongeza Kamati Maalum iliyoongozwa na naibu mkuu wa wachache katika Bunge la Seneti, Mhe. Malalah na naibu mwenyekiti wake, Sen. Halake. Nawapongeza Maseneta wengine pia waliohudumu katika kamati ile wakiwemo, Sen. Madzayo, Sen. Mugo, Sen. Mwangi na wengineo wote walioendesha kazi ile kwa tajiriba kubwa kabisa.

Kamati ile ilijitolea na kuhakikisha kwamba imekamilisha ripoti yake kwa muda uliowekwa.

Nampongeza Gavana Waiguru kwa kujitetea mbele ya Kamati.

Pia, tuliona umuhimu wa familia katika maswala kama haya. Wakili Kamotho Waiganjo alichukua mambo mikononi mwake ili kuhakikisha kwamba ndoa yake haiwezi kusambaratika kwa kumtetea mke wake, Gavana Waiguru, asing'atuliwe mamlaka ya ugavana.

Masomo ambayo tunasoma hapa ni kwamba si makosa yote yanaweza kusababisha gavana kuachishwa kazi. Ni kama vile si makosa yote yanaweza kusababisha kuwe na talaka. Ni jukumu letu kama Seneti kukubalina na mapendekezo ya Kamati hii. Ninaomba Kamati ya Ugatuзи itekeleze mapendekezo ya Kamati hii.

Vilevile Kamati ya Uhasibu yaani *County Public Accounts and Investments Committee* (CPAIC) iangalie ni mapendekezo yapi inaweza kuchukua kutoka Ripoti hii ili kuhakikisha kwamba Bunge za Kaunti zimetiliwa nguvu ili wakifanya kazi yao ya uhasibu na uchunguzi wa serikali za kaunti tuhakikishe kwamba wanafanya mambo sawa sawa.

Wakati huu ni msimu wa kuwafurusha magavana. Ni wajibu wetu kama Seneti kuhakikisha kwamba hatuathiriwi na mambo yanayozungumzwa nje ya Bunge. Tuangalie ushahidi ambao utaletwa mbele yetu au mbele ya Kamati kuhakikisha kwamba tunatenda haki katika maswala kama haya.

Sen. Kang'ata: Mr. Speaker, Sir, as a former Member of the County Assembly of Murang'a, let me celebrate the MCAs from Kirinyaga for initiating this impeachment process. I say that notwithstanding the fact that their case was not successful. I am celebrating them because it takes courage for one to initiate this process. Even if it was not successful, that does not mean the Governor will not take some remedial measures to ensure she is in tandem with the MCAs.

I also celebrate MCAs from the Mt. Kenya region, specifically central region. In Murang'a, Embu, Nyeri, Kiambu and now in Kirinyaga, MCAs initiated a process of impeaching their governors. When you compare our region where I some form vis-à-vis other regions, it shows MCAs have a high level of political consciousness. However, they should not just impeach for the sake of it, but they need to ensure there are grounds. To the extent that they have to take up this process even if it is not successful, to me, that is something positive. We need to celebrate our MCAs.

Mr. Speaker, Sir, I also urge our MCAs that before they initiate the process of impeachment, they should look at various issues. First, it is usually important, but not a must, that when they are bringing grounds to make sure they are verified by other entities. I give an example of Kiambu impeachment process. There were grounds that had been verified by the Directorate of Criminal Investigations (DCI) and the Directorate of Public Prosecutions (DPP). These are constitutional bodies. As a result of that verification, the Governor had been taken to court. To me, that was a fair and more cogent process.

In the same way, you would see in the Embu County impeachment which was also upheld by the first Senate, there were allegations which had been taken to the DCI and those matters had been verified by other entities. I would urge any other county that wants to institute this process to consider maybe, for instance, first taking the matter before the public accounts Committee of the various county assemblies. They should also be consulting the EACC and the DCI.

Here in the Senate, I propose as a way of enriching the impeachment procedure, we do the following things: One, we make DCI and EACC *ex-officio* members. We have done that in the CPAIC. This will be so that when a governor comes, we, as members of the CPAIC, can immediately make a recommendation and a governor can be arrested and taken to court pursuant to those allegations.

Maybe it is time we also borrowed from that practice when we are conducting impeachment. Therefore, we cause governors notwithstanding the case has been dismissed, the matter be escalated to that level.

I was personally attacked by some of the leaders from Kirinyaga County. In fact, there was that narrative that was being made by some attacking the great people of Murang'a. Let everyone know that those of us who come from Murang'a County are very proud of that heritage. I would not want this impeachment to be framed as if it is a fight between the people of Kirinyaga and Murang'a. We are all one and neighbours and therefore, we should not be seen as if we are fighting.

Finally, those leaders who attack this office of the Majority Whip through public *barazas*, let them know that whatever this office does is usually pursuant to political party positions which have been processed. Therefore, it was quite unfair for them to attack the Office of the Chief Whip in public *barazas*.

The Speaker (Hon. Lusaka): I had said that was the last one, but I can see Sen. Wambua dying to say something. Keep it brief. You have three minutes.

Sen. Wambua: Thank you very much, Mr. Speaker, Sir, for indulging me and giving me this opportunity to also contribute to the Report of the Special Committee on the impeachment of Gov. Waiguru.

I will be very brief and say only three things. One, I thank and more sincerely congratulate the MCAs of Kirinyaga for having the courage to prosecute this matter to where they have brought it. We, as a House, should help county assemblies to build capacity. What they have done is part of their constitutional mandate. They should not feel sorry about it or be made to feel bad about what they have done. They have done a good job. As previous speakers have said, when they are processing impeachment proceedings against a governor, they must be guided by evidence.

Secondly, we, as a Senate of the Republic of Kenya have done our job. The decision the Committee has made is not its decision, but of this Senate. So, all of us are bound by that decision. It is only fair that we also allow the public to pass judgement on what we have done. On our part, we feel that maybe we have served justice. The public must have a say on this matter.

Lastly, focus is now on the staff of county assemblies. When you read this Report, you will see that accountability is now shifting from governors to the accounting officers. I remember very well on 5th October, 2018, when we opened the County Assembly Chamber of Kitui County, you told the staff of Kitui County Government that,

at the end of the day, they are the accounting officers. Whatever they do they would be held responsible. Now I have heard recommendations that the accounting officers must step aside and be investigated---

The Speaker (Hon. Lusaka): Your time is up. Finally, we have Sen. (Dr.) Kabaka.

Sen. (Dr.) Kabaka: Thank you, Mr. Speaker, Sir. Let me pick from where Sen. Wambua's mind was and conclude his idea and then zero in on my one point. The burden of proof as established in the Evidence Act, Cap. 80, ordinarily, is that he who alleges must prove it. So, those who brought the charges against the Governor of Kirinyaga County had the burden to prove it. As things turned out of the resolute determination by the Special Committee of this Honorable House, according to what my brother, Sen. Wambua of Kitui is saying - I should support him - is that, the burden has now shifted from the Governor to the accusers. At times, it happens in law, where the burden can shift.

My point here is that, work has been done but what I would like to implore for future impeachments, because we are aware that other impeachments will come, for those who allege, they must come here with very concrete evidence because this is a court of law; it is a *quasi-judicial* body. If you do not bring watertight evidence, I am sorry politics will not take centre-play because the decisions that we make here are subject for judicial review by the High Court. They can be quashed by the order of *certiorari*. There can also be direction like *mandamus* or provision for certain things to be done.

Mr. Speaker, Sir, as I speak with that legal touch, I would say that we are ready to defend devolution in this country and to do it without fear or favor. However, for heaven's sake, let us not play ping-pong game of politics just to have the heads of the governors.

Thank you.

ADJOURNMENT

The Speaker (Hon. Lusaka): Hon. Senators, it is now time to adjourn the Senate. The Senate stands adjourned up to Tuesday, 7th July, 2020 at 2.30 pm.

The Senate rose at 5.12 pm