

**EVIDENCE TAKEN BEFORE THE SENATE SPECIAL COMMITTEE
INVESTIGATING THE PROPOSED REMOVAL FROM OFFICE BY
IMPEACHMENT OF THE GOVERNOR OF KERICHO COUNTY HELD ON
THURSDAY, 29TH MAY, 2014 AT THE VIP LOUNGE, KENYATTA
INTERNATIONAL CONFERENCE CENTRE AT 10.10 A.M.**

[The Chairperson - Sen. Christopher Obure]

SENATORS PRESENT

Sen. Kiraitu Murungi	-	Vice Chairperson
Sen. Dan Mwazo Mwakulegwa		Sen. Mutula Kilonzo Jnr.
Sen. Fatuma Adan Dullo		Sen. Stephen Sang'
Sen. Beatrice Elachi		Sen. Catherine Mukiite Nabwala
Sen. Daniel Karaba		

SECRETARIAT

Ms. Eunice Gichangi	-	Director, Legal Services, Senate
Mr. Anthony Njoroge	-	Director, Litigation & Compliance

IN ATTENDANCE

GOVERNOR'S TEAM

Prof. Paul Kiprono Chepkwony	-	Governor
Mr. Peter Wanyama	-	Advocate
Mr. Kimutai Bosek	-	Advocate
Mr. Onesmus Lagat	-	Legal Advisor
Mrs. Eunice Mwanza	-	Legal Assistant

COUNTY ASSEMBLY TEAM

Mr. Japheth Mutahi	-	Speaker
Mr. Charles Njenga	-	Advocate
Mr. George Ng'ang'a Mbugua	-	Advocate
Mrs. Sharon Mibei	-	Legal Officer

**PUBLIC PRIVATE PARTNERSHIP UNIT,
NATIONAL TREASURY**

Eng. Stanley Kinuthia Kamau	-	Director
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KIPSIGIS COUNCIL OF ELDERS

Bishop Paul Leleito	-	Kipsigis Elder
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(The Special Committee convened at 10.10 a.m.)

Prayers

The Chairperson (Sen. Obure): Hon. Senators, ladies and gentlemen, it is now time to start the business of the day, but before we do so, I will ask Sen. Mutula Kilonzo Jnr. to lead us in prayer.

I want to welcome everybody to the deliberations of this second day. As you observe from the programme, we are going to be receiving evidence from the Governor and his witnesses. He has indicated that he will be introducing three witnesses. I would like to know from the Governor's counsel how he intends to utilize the two hours because it is important to give us an indication on how long each of the witnesses will be taking so that we have a general view of what to expect. After that, we will go into cross-examination and thereafter a re-examination of the witnesses, if necessary.

I want to also say that if you look at the day's programme, between 4.00 p.m., and 5.00 p.m., we will be expecting the counsel for the two sides to make their closing statements. We are requesting – this is really optional – if you find it necessary, you may make written submissions through the Secretariat. This is purely optional. You can make written submissions capturing the main legal points which will have arisen throughout the proceedings and capturing your analysis of the evidence presented. This, of course, will be useful at the time when we will be considering compiling our report. As I emphasize, this is purely optional. It should capture the main features through written submissions to the Secretariat.

Now, I will ask the counsel for the Governor to give us an indication. But just before you move on, the Vice Chairperson could clarify this further.

The Vice Chairperson (Sen. Murungi): I just want to clarify what the Chairman has just said regarding the option of putting in some written submissions from counsel both of the Assembly and the counsel for the Governor. It is in addition to the whole presentation that you will make to us. So, you may consider putting written submissions capturing the salient aspects of the law and analysis of evidence with the Secretariat by the end of the day today as you conclude your submissions, in addition to your talking to them. So, it is not replacing your opportunity to make oral submissions before the Committee.

The Chairperson (Sen. Obure): Thank you, Sen. Murungi. I think that makes it even clearer. Proceed, counsel for the Governor.

Mr. Kimutai Bosek: Mr. Chairman, Sir, we have three witnesses. They were actually four but in view of your ruling that we will have three, one will be the Governor himself, the second who is very crucial is the Finance Director of Bluetechs, a British national who is here with us today. We prepared them to testify and even procured the Holy book of his religion, Hindu, so that he can take an oath with it. We will also be having an elder from the Miot Council of Elders who was involved in one way or another in trying to

bring about a peaceful and an amicable settlement between the issues that the Kericho County Assembly had with the County Executive.

We also would have wished to utilize some of our time in making some oral submissions so that we can set pace for our witnesses to come in. In adducing evidence, we will also be relying on some video tape recording which is both visual and audio so that we can give this Committee a feel of the evidence that we want to have on record.

There is also a new twist and subject to leave from the Chair, having been served with some documents yesterday and more so minutes of the House Business Committee that is alleged to have been held on 9th May, 2014, it has generated a number of questions and very critical issues that - I do not want to sound alarmist – could actually probably result in us requesting that criminal investigations be conducted in the sense that there are people who are said to have been in that meeting who were not even in Kericho on that day. Secondly, it is said that previously a minute of all the Members of the House Business Committee had been prepared to indicate that all of them attended, but we summoned, it appears that the people who are said to have attended was reduced to six and those are the ones who voted for the impeachment of the Governor but the others are said to have received salaries that show receipt of the allowances for attending that meeting. Obviously this is not something we are taking very lightly. It is a criminal offence under the Kenyan law to make a false document and to utter it before a Committee of the Senate. We invite the Vice Chairperson of the House Business Committee to shade more light on this and subject to your direction, we might actually probably want to involve the Criminal Investigation Department pursuant to the provisions of Article 125 of the Constitution of the Republic of Kenya that gives this honourable Committee a lot of powers.

The Chairman (Sen. Obure): Is the Vice Chairperson of the House Business Committee one of the three witnesses you have indicated?

Mr. Kimutai Bosek: Mr. Chairman, Sir, he was not supposed to be one of them but we now want him to be one of them. I am told he is one of them. He is Charles Ng'etich.

The Chairman (Sen. Obure): Is the Vice Chairperson one of the three witnesses?

Mr. Kimutai Bosek: Yes, Mr. Chairman, Sir.

The Vice Chairperson (Sen. Murungi): Mr. Chairman, Sir, we have noted what the counsel for the Governor has said, but we want to clarify our mandate as a Committee. This is not a judicial committee but a *quasi* judicial political committee of the Senate. We do not have any mandate at all to deal with criminal issues. What we do here does not in any way affect the rights of any person to pursue criminal or civil remedies in the ordinary courts. Ours is merely to deal with the issues before us. Our mandate under the Standing Orders is:-

1. To investigate the charges that were brought against the Governor and to find out whether they are substantiated or not and to report that to the Senate. So, any evidence which goes beyond that; evidence that you might want the Committee to get into for the purposes of establishing criminality cannot be brought to this Committee. But you are free to pursue that as your constitutional rights in other fora.

Mr. Kmiutai Bosek: Mr. Chairman, Sir, I am guided by Sen. Murungi. Probably it is because of my interpretation of Article 125 of the Constitution that gives this Committee the powers of the High Court. My understanding is that those powers apply in terms of summoning witnesses but not prescribing other directive measures that the Special Committee can do.

The Vice Chairperson (Sen. Murungi): You are absolutely right. The powers of the High Court that the Committee has are the powers for summoning witnesses and for production of documents. But it is not to exercise other jurisdiction of the High Court.

The Chairperson (Sen. Obure): Counsel for the Governor, it is clear that all that will be done within the two hours allocated to you. I would like to tell you that we will not allow you an extra minute after the two hours. So, it is up to you to plan your witnesses in a manner that they will all be accommodated within the two hours set.

Mr. Charles Njenga: Mr. Chairman, Sir, for your guidance if you may indulge me, in the rules you had required of the parties if they intend to call witnesses, to submit witness statements of those witnesses for disclosure to the other parties so that they can adequately prepare for cross-examination. One of the witnesses proposed to be called by the Governor is somebody from Bluetechs. I have the list of witnesses and witness statements that were served upon us and that witness has not submitted a witness statement and is not even disclosed. So, I think it will be very unfair to the Assembly to now introduce him at this point without disclosing initially at the outset as we were starting that that witness was proposed to be called in support of the Governor's case. We are ready to proceed with the witnesses who were disclosed and the statements which were given to us; in all fairness, Mr. Chairman, Sir.

*(The Chairman consulted with the
Secretariat and other Committee Members)*

The Chairperson (Sen. Obure): Sorry, we had to do some consultations among ourselves. Two issues have arisen here. First is the issue of whether or not the witness from Bluetechs should be allowed to participate in these proceedings as a witness.

According to the notices filed here, counsel for the Governor has not indicated that, that was one of the people who would have given evidence here today. In line with our rules of procedure, we cannot, therefore, allow him unless this Special Committee takes another view on dealing with our proceedings. Therefore, as at now, we will find some difficulty in allowing him to give evidence at this sitting.

The second issue which has arisen relates to Mr. Charles Ng'etich. We have learned that Mr. Ng'etich is a Member of County Assembly (MCA) of Kericho County, and we are also aware of provisions which state that he will have first to obtain permission from the Assembly in Kericho before he presents his evidence here. This is part of Section 19(a) of the Powers and Privileges Act. So, as it stands now, Mr. Charles Ng'etich cannot be allowed to give evidence at this sitting.

With regard to the question of the technical director from Bluetechs, we will have to reserve that decision maybe for further consideration by the Committee to determine whether or not he is allowed to give that evidence here.

(The Chairman consulted the Clerk-at-the-Table)

The Vice Chairperson (Sen. Murungi): Mr. Chairman, Sir, the letter from Bluetechs was read here yesterday as part of the documents that we have. Two, if you look at Rule No.20 of our rules of procedure, it reads that:-

“In presenting its evidence, the Assembly shall not introduce any new evidence that was not part of the allegations against the Governor by the County Assembly as forwarded by the Speaker of the County Assembly to the Speaker of the Senate.”

So, the Assembly is not supposed to introduce any new evidence before this Special Committee. Similarly, we think that in all fairness, the Governor should also not introduce any new evidence. So, I think it will be unfair for us to allow the witness if he is coming to introduce new evidence which was not adduced before the Assembly.

The Chairperson (Sen. Obure): Shall we, therefore, proceed now with the examination of the witness on the Governor's side?

Mr. Peter Wanyama: Mr. Chairman, Sir, how we propose to proceed is that we will take a few minutes to lay the basis of our case, then the Governor and the other witnesses will come in to proceed. That is how we propose to proceed due to time limitations.

The Chairperson (Sen. Obure): Fine; your time starts now.

Mr. Peter Wanyama: Good morning, hon. Senators. The document which I am going to use to lay the basis of our testimony this morning before this Special Committee is this huge bundle. It principally summarizes the Governor's entire case. Everything which we would have said, including the submissions and the prayers are contained in this bundle. The extra documentation, which has all been submitted, is contained in the other bundle. And then we have produced 12 copies of the six video recordings as well, which are all on record. So, that is principally the documentation which we will be relying on.

So, Mr. Chairman, Sir, I begin, first of all, by explaining that from our perspective and from how the presentation is crafted, the Governor's response has a constitutional

foundation. From page 5 of the document, you can see the fundamental constitutional issues, the basis upon which the Governor's response is based on. These are the provisions of the Constitution which are reflective of our position. For the sake of time, I will not go to all the provisions because they are documented; but I will only highlight the most important one. The most important one is the provision in page 6 of that document at number nine, where we are saying that Article 38 paragraph 3(c) of the Constitution provides the right of a person who has been elected to hold political office. It is a fundamental right; it is one of the rights in the Bill of Rights. One of the provisions or rules on interpreting the Constitution is that you interpret it conjunctively; you look at all the relevant provisions. So that if you are looking at the question of the removal of a Governor from office, Article 38 paragraph 3(c) of the Constitution shall be read together with Article 181 of the Constitution so that it has a bearing. Someone who has a right to hold political office, then the threshold for removal of that person must be strictly in accordance with the Constitution. That is the provision of Article 181, which in our case says:-

“A county governor may be removed from office on any of the following grounds—

(a) gross violation of this Constitution or any other law;”

And not any other instance. So, the purpose of our presentation is to highlight and say that the allegations which are before this Committee do not meet the threshold to warrant the exception; the taking away of the rights of someone who has been elected to hold political office. It is a right which is in the Bill of Rights; and a right which cannot be subject to limitations outside the provisions of the Constitution.

The other relevant provision in the Constitution is contained in page 8 of that printed document. Like I said earlier, I will not highlight everything. It is on page 8 of paragraph 14. This is the genesis of the impeachment proceedings in this Committee. This is the genesis of where things are coming from. Article 185(3) of the Constitution lists the fundamental powers of a county assembly. From that document, we have listed the functions there. This section of the Constitution grants a county assembly powers to oversight the county executive. But the same Constitution says that the county assembly shall exercise oversight in a manner which respects the principle of separation of powers. That is where the problem is between the county executive of Kericho and the County Assembly.

There is a constitutional petition which forms the first annexure after the printed document; the printed document ends at page 36. The first annexure is the Republic of Kenya constitutional petition No.4 of 2014 in our documents. This annexure provides the basis upon which the County Assembly set to impeach the Governor. This annexure contains a constitutional petition which the Governor, after certain challenges were experienced as between the county executive and the county assembly, the Governor convened the County Executive Committee (CEC) and they all decided that, perhaps the issues which they are experiencing require a court interpretation. What is the limit of the exercise of powers by the County Assembly under Article 185(3) of the Constitution?

What are the limits? What is the scope of their powers to do oversight? The Constitution says that they should respect the principle of separation of powers. So, the county Governor and the CEC were complaining that most of the Motions which we have annexed in this constitutional petition were beyond the exercise of oversight by a legislative arm of government, and they wanted the court to determine that issue for clarity so that the functioning of the county is in a harmonious and based on the true interpretation of the Constitution. Just to highlight this, because the Special Committee will look at these documents in your free time, I just want to highlight one of the annexures. In that petition, there is the affidavit by Prof. Paul Kiprono Chepkwony dated 22nd April, 2014 in support of the constitutional petition. In that affidavit at page 21 – the one indicated at the top of the document in the bundle – there is an annexure which I want to make reference to; the affidavit by Prof. Paul Kiprono Chepkwony dated 22nd April.

Sen. Billow: Under which folder?

Mr. Peter Wanyama: In this folder under the Governor's response, where there is an affidavit by Prof. Paul Kiprono Chepkwony, which is in support of a notice of motion application. This is the affidavit itself. Have you seen it, hon. Senator? It is affidavit No.7 at the top. It is the first document.

The Chairperson (Sen. Obure): Just hold where you are.

Sen. Mutula Kilonzo Jnr.: Counsel, it is fair that you tell the Committee – so that we do not breach rules – the status of this case. We do not want to be accused of breaching the rule of *sub judice*. So, it is fair that you tell the Committee the status of these proceedings before you get into the details of the matter before the court.

Mr. Peter Wanyama: Yes; that is an important intervention. The status is that the constitutional petition was withdrawn; it is not in court. I was counsel in the matter and, therefore, we filed a notice to withdraw the petition. It is not in court any more.

Sen. Mutula Kilonzo Jnr.: It was withdrawn at the instance of the Governor?

Mr. Peter Wanyama: Yes, at the instance of the Governor as part of the negotiations with the Assembly to settle the issue at home.

Sen. Mutula Kilonzo Jnr.: It was withdrawn by consent?

Mr. Peter Wanyama: Not by consent; I did a notice to withdraw the petition. The council of elders had intervened in the dispute and said "Governor, you must withdraw that case because it has apparently created an impression that you are fighting the County Assembly."

The affidavit, hon. Senators, contains certain annexures; for instance, annexure No.1 is from the County Assembly of Kericho; the letter addressed to the clerk of the county

assembly to the Chairperson of the County Public Service Board dated 20th February, 2014. This is what it says:-

“This is to inform you that a Motion was moved, discussed and passed in the Assembly on the above matter. The matter in question relates to the recruitment of ward administrators. Please, find the attached Motion for your necessary action.”

The Motion itself, the way it reads in the next page, it says that it was introduced by Charles Ng’etich and it says:-

“Aware that the County Public Service Board is mandated by law to recruit persons to the position of ward administrators; noting that the said County Public Service Board have shortlisted candidates for the said position; concerned that some applicants who qualified for the position might have been left out and denied their legitimate expectation to employment; this House urges the County Public Service to stop the recruitment of ward administrators until they avail to the Assembly the criteria or grounds used in short listing candidates among all the applicants for the position of ward administrators.”

So, the position of the CEC of Kericho was that this Motion, to some extent, they have a right to ask the “why” questions. But to some extent, it breaches the provisions of Article 185(3) of the Constitution, and we wanted the High Court to interpret whether that is the case.

The other Motion is on the Early Childhood Development (ECD) teachers on the next page. Again, the Clerk addresses the Chairperson of the County Public Service Board and says:-

“This is to inform you that a Motion was moved, discussed and passed in the County Assembly on the above matter. Enclosed here, find the said Motion for your necessary action.”

The substantive Motion says in the last paragraph:-

“THAT, aware that the Kericho County Public Service Board is going on in the process of employing ECD teachers; further aware that the number of ECD teachers to be employed is 750; as a matter of concern, I urge this honorable House to vote for the equal distribution.”

Our contention is that it is an executive function to determine how to distribute teachers based on certain needs and assessment, which is purely a matter which is within the scope of the executive to deal with among the 30 wards. So, they are proposing how the distribution should be done. Again, here, the CEC felt that the provisions of Article 185(3) of the Constitution has been breached. So, they were seeking an interpretation of this Motion. There are many other Motions here, which I will not go through because I believe the honorable Committee will look at all the details.

So, principally, if you look at the constitutional petition itself, because this is where the--- From the video recordings which we have already presented before the Committee, Members of the County Assembly were informed by the Speaker, because the Speaker is seen speaking in the video. I am saying this because I was there in court; the Speaker attended the court proceedings personally to represent the County Assembly, and I was there as the counsel for the county executive. The Speaker was telling them that "*Gavana wetu anataka kututoa kwa ofisi. Gavana wetu anataka kutufunga.*" That was the impression which was created, yet we felt ourselves that this was a constitutional petition which we had completely moderated. In fact, if you look at the petition which appears just after the annexures, you can see the prayers which the Governor was seeking in the petition itself. It appears after the annexures which we have referred to. So, the petition is from page 32 of that document. In the petition, the Governor and his team are complaining that we have received Motions where we cannot work; like the issue of the ward administrators, to date, the county executive of Kericho does not have ward administrators. Why? Because the County Assembly has passed a Motion to stop the recruitment. So, it creates a paralysis in governance. Under the County Government Act, for the Governor to function, he is supposed to get those structures of decentralization up to the lower level. So, the county does not have ward administrators because of that Motion.

One of the issues which we will be concerned about is what options the governor has. The county assembly is saying "stop the recruitment of the ward administrators" but what options does he have? The letter says until the House has looked at the issue but the House has not gone ahead to summon the County Public Service Board (CPSB) and deal with the issue finally. They may have engaged the CPSB but that issue has not been dealt with finally to allow the recruitment of ward administrators because most of the counties in Kenya have recruited ward administrators but it is only Kericho with no ward administrators. We are saying this is not very good for governance. So, the petition itself provides a glimpse of the issues.

The constitutional petition which from page 21 to 39, I want to highlight only two issues here. At page 36 at the bottom, you will see issues framed for the court's determination. I want to emphasize here that whenever there is an issue with respect to the interpretation of the Constitution, Article 165 says that it is the High Court of Kenya which will determine the issue. If you have a problem with the interpretation of the Constitution, then you have to go to the High Court. The High Court has invested with jurisdiction to interpret the balance of power; how do you balance between the two levels of government and between the county assembly and the county executive? The High Court gives that interpretation which is an express jurisdiction conferred by Article 165 of the Constitution of Kenya. When the Senate had problems with the National Assembly, you had to go to the Supreme Court because you wanted to seek an advisory opinion on that particular issue. That is how the county executive moved to court.

So, at page 36, there are issues which were framed for determination, for instance, the governor is asking the court to interpret the meaning of separation of powers. I can tell

you for a fact that separation of powers is a topic which is so huge in constitutional law and theory. It is very difficult to determine the limits of separation of powers and we wanted the High Court to give us a view on whether those Motions which were passed breach the principle of separation of powers or whether they were within the county assemblies powers to do oversight. Once the High Court has clarified, then you move ahead and respect the ruling. If the High Court had said that the Assembly was within its powers to issue a Motion to stop the recruitment of ward administrators, we could have respected the High Court ruling and we move on.

Mr. Chairman, Sir, the other issues which we have sought for determination are principally issues which are not very harmless. Then most of the prayers are declaratory in nature. Prayer No.(a), (b), (c), (d), (e), (f), (g) and (h) are declaratory in nature. Those are many declarations. The High Court simply declared the scope of the powers between the two levels. From our position as lawyers, we felt that once the High Court has now declared that the Motion contravenes the Constitution, then it can perhaps go ahead and quash, but again it is within the jurisdiction of the High Court to determine whether to quash that Motion or not. When there is a breach of the Constitution, that is why our petition is based on the fact that Article 2(2) of the Constitution says that we all have an obligation to obey the Constitution. So, if we are told that the Motion contravenes the Constitution, then that Motion would have no legs to stand. It would have definitely been quashed. We did not seek to imprison the Speaker and the Members of the County Assembly (MCAs). In fact, if you look at the order which we read, it says: "There be no order as to cost"

So, this was not a matter where we are saying that we are suing them to pay cost. It is a simple petition and if there is a basis for our case, so be it. If at all we would have lost, we would have still complied with the court ruling. This case was filed in court on 22nd April, 2014. It came for hearing inter-parties. The High Court which looked at this case did not give interim orders. It said that this is an issue which they wanted to hear the Assembly also.

The Vice Chairperson (Sen. Murungi): Counsel, this case as you had informed, was withdrawn by yourselves?

Mr. Peter Wanyama: Yes, by myself.

The Vice Chairperson (Sen. Murungi): So, why are you taking us through in such great detail?

Mr. Peter Wanyama: Because now it forms the basis of my next point which is now why we are here.

After this case was filed, it came for hearing in Kericho on 30th April, 2014, inter-parties. You will realize that that is the date the notice to impeach the Governor was moved. I attended court that day, the Speaker representing the county assembly also attended the court. We appeared before the deputy registrar, then the deputy registrar said that the

County Assembly should file their response within seven days. We were supposed then to appear before the judge to take directions. On that day, that is, 30th April, 2014, all the MCAs attended court where video recordings which we have submitted to the Committee were taken. After that, they held a huge demonstration in Kericho town. Again, we have video recordings which have submitted to the Committee. When they were holding the press conference and the demonstration, they told the members of the public that “the Governor has taken us to court and he wants to imprison us.” That was clearly not true. In fact, if you watch the video recording, this Motion was given to the Speaker when he was issuing the press conference, you can clearly see it. Of course, that is something that you will require a very huge screen to see. That Motion was given to the Speaker as can be seen from the recording. On the same day, the Speaker indicated, in the second bundle---

The Chairperson (Sen. Obure): Which page are you reading from?

Mr. Peter Wanyama: The last document. That is the valid Motion which was approved by the Speaker. As I said, there was a huge demonstration against the Governor. They said that “the Governor must Go”, “the Governor must Go”, “Whatever happened in Embu, will also happen to this Governor because he has taken us to court and we represent the people, how can he take us to court?” That is the summary of the video recording which we submitted to the Committee. I want to urge the Committee that the video recording, if time allows we will show it and it requires some interpretation. There some Kalenjin words used and we would like to get an interpreter.

So, we have two video recordings; the video recording of the press conference and the video recording of the demonstration which was led by none other than the Speaker to demonstrate against the Governor. That was the same day they introduced this notice of Motion to allegedly impeach the Governor. The basis of our case is that you can see malice even at the outset. We are saying that if at all there is any malicious intent on the part of the County Assembly to bring these impeachment proceedings and we are going to demonstrate that all the facts lead to that thinking, then we would urge this Committee to dismiss or find these allegations not to have been substantiated because they are extremely malicious.

The Motion was filed in that environment of pent up feelings and hatred. They were really enthusiastic. They demonstrated some vengefulness to impeach and you can see it from the video recordings “this Governor must go!”

Mr. Chairman, Sir, the Governor will explain that. When that issue took that public dimension, the council of elders for Kericho and the church were involved. There is evidence to that effect in our list of authorities which eventually culminated to the withdrawal--- The elders were saying that the Governor has filed a case where he wants to imprison the MCAs. They wanted him to withdraw the case so that they can sit down and negotiate. That was the issue. So the council of elders looked at the issue thoroughly and formed their own opinion. One of the conditions which they gave to the Governor is to withdraw the constitutional petition. So, that day of withdrawal, I had lost my mother

in Kitale but I remember I sent a notice which was filed by the Governor's legal counsel in court. So, as we speak, the petition is not in any court of law and we are only introducing here for purpose of demonstrating that malicious intent by the County Assembly to impeach the Governor in any event, notwithstanding the allegations. That is really very problematic.

Mr. Chairman, Sir, my colleague will touch the other bit but there are some other aspect that I wanted to highlight because it goes again to the real issues. Yesterday in our opening remarks, we said that these impeachment proceedings are fatally defective. This is the reason why:-

Article 195 of the Constitution provides that a county assembly or any of its committee has powers to summon any person to appear before it for purposes of giving evidence or information. That article of the Constitution is not capable of any other interpretation. The county assembly has full legal powers, power which the Senate and the National Assembly also enjoy. County governors are subject to this power. A county governor is any other person and the High Court said that a county assembly has powers to summon a governor. So, on this particular issue, before taking the precipitate state to impeach the Governor, the provisions of Article 195 of the Constitution were not activated. Was the Governor summoned by the Committee on Health to explain this back and forth with assembly? The answer is, no. Was the Governor summoned by the Committee on Energy? Here, we are only caught by that legal in the law, which the hon. Senators pointed out, otherwise the chairman of the Committee on Energy is here, we could have asked him to testify but given that legal hitch, we would not go there. When the Committee on Energy was seized of this matter, did it summon the Governor and his team to explain the nature, effect and issues in this Bluetechs contract? They did not do that yet the powers which they have here are similar to the powers of the High Court. Article 195(2) says that a county assembly has powers which are similar to the High Court. Yesterday, I made an important remark that this impeachment proceeding was a knee jerk reaction. This is how the explanation comes in. instead of summoning the Governor and his team to explain, and I am happy that some counties upon advice are doing so, for example, the County Assembly of Lamu have formed a committee to look at those allegations before they take action of impeaching the governor. First of all, you must have a basis. You may even engage instigating agencies to forward the matter so that they can look at it and see if there is a basis for these allegations. If there is, then you can make the recommendation to impeach. You can make the recommendation that certain action be taken based on the committee's own discretion and powers given to it. So, Article 195 of the Constitution was not activated in any of the three instances.

Mr. Chairman, Sir, Article 196(2) is coached in mandatory terms. It is express and crystal clear that the County Assembly shall facilitate public participation and involvement in the legislative and other business of the assembly and this Committee. This was not done. If the county assembly had bothered to do public participation on this particular issue, even on those allegations, they could have really got the mood from the ground. The mood from the ground is that this is not an issue for impeaching the Governor. They feel that the Governor should be given a chance to run the county. As we speak, more than 30,000

residents of Kericho are seeking to petition this Committee because they were not involved in this particular decision. So, when that petition is received, we will urge the Committee to look at it in the perspective of Article 196 of the Constitution. Article 196 of the Constitution says that one shall conduct public participation. As an issue which requires constitutional compliance, there are no two options about it. It does not say “may”, it says “shall” conduct public participation in its activities. That is really important.

Mr. Chairman, Sir, the other main issue before I hang my boots is that the county assembly conducted impeachment proceedings which are fatally defective. This Special Committee of the Senate has powers, when determining that the matter is not substantiated, the scope of that power entails looking at the substantive procedure. The procedure is the hand maiden of justice. So, you must look at the substantive procedure when it was not met, you definitely must make a finding in favour of the Governor.

On 30th April, 2014 when this Motion was approved, the county assembly, in accordance with the provisions of its own Standing Orders which govern how it conducts its business. Standing Order No.59 provides for the removal of governor on grounds of incapacity, we are not concerned with that. We are concerned with Standing Order No.60. It provides that before giving notice of Motion under Section 33 of the County Governments Act, the Member shall deliver to the clerk, and not to the Speaker, a copy of the proposed Motion in writing, stating the grounds and particulars. Our submission here is that, first of all, the governor is entitled to receive those particulars in any event.

Secondly, these particulars must form part and parcel of the Motion. The particulars in question are not the particulars which are contained in the Motion dated 30th April, 2014. This gives a summary of the particulars. Our submission is that on 30th April, 2014, we have evidence on record that when this Motion was given to the Speaker for approval, the detailed particulars as contained in the document which was forwarded to us by the Senate to the Clerk, the details and particulars of the County Assembly were not there. We are concerned that the approval of that Motion should have been only possible while the Speaker has looked at the particulars in detail. The Speaker has an important role. He can dismiss the Motion because he may think it does not conform to the provisions of the Constitution. The Speaker cannot approve the Motion without these detailed particulars.

So, there is no evidence from the County Assembly that when this Motion was introduced and approved by the Speaker, the detailed particulars were ready. That is a very fundamental point. They were not ready. The Speaker proceeded to approve this Motion only out of pent up feelings, the anger and the street demonstrations where he himself was uttering the words:”The Governor must go.” That is the only basis for his approval of this Motion. There were no sufficient particulars to warrant the Speaker to approve this Motion. I need to emphasise this that it is only yesterday when the Committee admitted the document. To date, the Governor has not been given a list of the persons who signed the Motion because a third of the Members must sign the Motion. Until yesterday, the Governor had not been given a list. Even when the County Assembly Speaker was notifying the Governor through a letter which I will make reference to next,

that the County Assembly had passed a resolution, asking him to appear before the Assembly to answer to the allegations. The documentation received from the County Assembly did not include that list of the persons who supported the Motion.

In law, we usually say that for a defendant to be able to prepare his position and he must know his accusers. So that list which is required by the provisions of Standing Order No.60 and Section 33 of the County Governments Act was not given to the Governor. He only got it yesterday when the Chairman of this Special Committee directed that it be served to us notwithstanding the fact that we had raised some objections.

We believe that it is a fundamental breach of Section 33 of the County Government Act for the Speaker of the County Assembly to keep that document as some sort of a secret weapon. Why he could he not submit it to the Governor so that he knows whether they have complied with the legislative provisions? If need be, raise the issues. Standing Order No.60 is very crystal clear. It is not capable of any other interpretation.

The most serious issue which we believe on that ground alone you should find these impeachment proceedings gone as unsubstantiated is this: There is this bundle of documents which I wanted to make reference to. This is the first annexure on Prof. Kiprono Chepkowny bundle of documents. The first annexure is the County Assembly letter where the Governor is informed of the allegations against him for the first time. The Motion was introduced on 30th April, 2014. The letter is dated 9th May, 2014. This is the first time the Speaker of the County Assembly writes to the Governor. I emphasise 9th May, 2014 because that date is so significant.

The letter states:-

“Removal of Governor from office.

Kindly note that on Wednesday, 30th April, 2014 , I approved the notice of Motion prepared by hon. Albert Kipkoech who is a Nominated Member of the County Assembly. The Motion has been slated by the House Business Committee to appear in the Order Paper on Wednesday, 14th May, 2014 at 2.30 p.m.

Please, take note this is one week earlier. Also underline the word Nominated Member of the County Assembly. He is not elected because the issue has political undertones and we do not want to go into that unless we have evidence here. But this is to emphasise for the evidence of this Committee that hon. Albert Koech is a Nominated Member

It further states:-

“Pursuant to Order No.63 of the Standing Orders – This is when we see a Speaker who flatly breaches and disregards the provisions of the Standing Orders. He presides over a Motion to impeach the Governor in that framework he is emotionally charged. We do not expect him to make a fair decision at all given the recordings which we have shown. He is making reference to Standing Order No.63. It is crystal. He says:-

“You are required to appear in person but you are, of course, entitled to legal counsel.”

This statement is so fundamental to this matter because if you go to Standing Order No.63, which the Speaker is making reference to in his own letter to the Governor, provides for the provisions of the right to be heard. It says:-

“Whenever the Constitution, any written law or the Standing Orders require the County Assembly to consider a petition or a proposal for the removal of a person from office, the person shall be entitled to appear before the relevant committee of the County Assembly.”

Note, “the relevant committee of the County Assembly.” First of all, there is no other provision with respect to the removal of a governor where the right to be heard is provided for. So, the only implication is that Article 63 is the provision which governs the removal of a governor and it provides for the right of a governor to be heard. The same provision which the Speaker has made reference to in his reference to the governor. But if you go to that provision, it says the governor has a right to appear before the relevant committee, not the plenary. So you can see that there is a serious breach of the Standing Orders here because the Speaker asked the Governor to appear before the plenary, the County Assembly, yet the Standing Orders provide that he is supposed to appear before the relevant committee. The logical implication of this is that the Standing Orders of Kericho County Assembly contemplate that before you remove a person from office, whether a governor or any other public officer, the matter in question must have been subjected to a discussion by a select committee. I will not go into the other provisions of the Standing Orders because they are explanatory.

The Standing Orders provide for the constitution of a special committee to investigate these allegations. That committee is then supposed to make a report. It is this committee which the governor is supposed to appear. This committee is also supposed to come up with a report because Standing Order No.63(2) says:-

“The persons being removed from office shall be availed with a report of the select committee together with any other evidence adduced and such note or papers presented to the committee at least three days before the date of the Motion.”

So the select committee must be constituted as a matter of compliance with the Standing Orders. We are emphasizing that point because on that ground alone, you can dismiss these impeachment proceedings. It is not a technical issue which can be disregarded. It is a technical issue which goes to the substantive procedure where we are saying that if procedure is the maiden of justice, then what happened before the County Assembly is an example of how not to conduct impeachment proceedings. So, we submit that provision.

To date, the Governor has not been summoned by any of the select committee to appear before it. Instead, this letter which we received, the Governor acted on this letter in respect to the legislative of government. I was the counsel who appeared for the Governor before the Assembly. When we appeared before the Assembly, there is a video recording of the Assembly. We have also seen HANSARD proceedings which were given to us only yesterday. We have accepted them. It clearly shows that the Governor

appeared before the full House of the Assembly. In that full House the HANSARD proceedings show that there were 32 Members. The House was duly constituted.

It is also important to emphasise that, and we have given you the video recordings, that the Governor was given a chance to answer to the allegations after the Mover of the Motion had moved the Motion. I was also given a chance to make remarks on the allegations. What happened is that during my explanation, I told the House that there was a serious breach of the Standing Orders. But the Speaker, from the recordings, overruled me. We raised it at the tail end of the process because we did not want it to interfere with the substantive work because we believed these are the issues we have raised here. At the tail end of my presentation, I said that perhaps the County Assembly should have conducted these proceedings in a better way and in compliance with their Standing Orders. I said that Standing Order No.63 which the Speaker was making reference to had not been complied with. The Speaker's response was that the removal of a Governor has its own Standing Orders. Clearly, Members of the County Assembly were misled. I urge this Committee to look at the video recordings clearly to see how the issues were addressed. We want the Special Committee to look at this issue. We did not want to raise this issue at the County Assembly in a manner that you raise the issue and walk away and say that we cannot stand here because we have not adhered to the Standing Orders. We did not want to adopt that path. Our path was to respect the House and get that issue on record. So, we believe the issue is on record for this Special Committee to consider. As I have demonstrated, it is a serious breach of the Standing Orders.

Whatever I have said is summarized in the response by the Governor. That is in the printed document. Before I invite my colleague, yesterday the Committee requested that Dr. Gullet submits a letter. In response, I want to tell the Committee that we have the letter. The Chairman also emphasized that we need to produce the memorandum of understanding which was made reference to. We now have the memorandum. With your permission, we can hand over the said documentation. We have made 11 copies of the document as requested.

The Chairperson (Sen. Obure): Could you, please hand over the memorandum of understanding to the clerks. However, I would also like you to read out the letter from E-Plus for purposes of the record.

Mr. Peter Wanyama: Mr. Chairman, Sir, the Red Cross letter is dated 28th May, 2014. It is signed by Dr. Abbas Gullet, Secretary General. It is addressed to the Governor. It states:-

“RE: Ambulance Service

We refer to our response dated 19th February, 2014 in which we erroneously referred to your letter dated 15th February, 2014 instead of 14th February, 2014. Thank you for bringing this to our attention. We did not realise that it is a typing error which we regret.

We do hereby confirm that we were acknowledging receipt of your letter dated 14th February, 2014 informing us that the agreement dated 7th January, 2014 is not capable of enforcement until the matter has been placed before the County Assembly for requisite approval. The inconvenience caused is regretted.”

Yours sincerely,

Dr. Abbas Gullet.”

Mr. Chairman, Sir, the memorandum of understanding is also here. This one is too detailed and because of time, I will leave the Members to read it on their own.

I will now invite my colleague, if we still have time, to now lay the basis.

The Chairperson (Sen. Obure): Hold on for a moment. There are one or two clarifications.

Proceed, Vice Chair.

The Vice Chairperson (Sen. Murungi): Mr. Wanyama, if I understood you correctly, your argument is that the impeachment process was fundamentally flawed because it violated Standing Order No.63 of the Standing Orders of Kericho County Assembly because there was no select committee set up for which the Governor could appear and instead it is the plenary which dealt with that issue. That is your argument, is it not?

Mr. Peter Wanyama: Mr. Chairman, Sir, that is our argument.

The Vice Chairperson (Sen. Murungi): You referred us to Standing Order No.63(3)(a). But I would like to refer you to Standing Order No.63(1)(b). The way the Standing Order is drafted, it says:-

“Whenever the Constitution, any written law or these Standing Orders-

After the dash, that sentence can be read to continue until the end of part of ‘a’ and it is a complete sentence. But you can again start from the dash and go to part “b”. It says that:-

“Whenever the Constitution, any written law or these Standing Orders-
Instead of saying “requires the County Assembly to consider the petition, you can go on to part “b” which says:-

Whenever the Standing Orders require the County Assembly to hear a person on grounds of removal from office.”

What we are saying is that you have the option either to go through the way of a committee of the County Assembly or through the plenary. In this event, they decided to go through the plenary.

If you look at Standing Order No.64, it says that:-

“The Motion for removal of a person from office under this part shall take precedence over all other business on the Order Paper for the day.”

I believe Standing Order No.64 is talking about the plenary. So, we wanted to clarify from you whether you are saying there is only one exclusive way through a special committee of the County Assembly. These two Standing Orders seem to suggest otherwise.

Mr. Peter Wanyama: Mr. Chairman, Sir, our response to that is grounded under Standing Order No.63(2). First of all, there appears to be a conflict on these Standing Orders. But any doubt as to whether the Governor is supposed to appear before a Special Committee is removed if you look at the provisions of Standing Order No.63(2) which says:-

“The person being removed from office shall be availed with the report of the select committee.”

So, Standing Order No.63(2) does not say that it applies to 63(1)(a) or 63(1)(b). Standing Order No.63(2) is on its own. This is consistent with modern parliamentary practice in the sense that the powers to hear such a matter is a *quasi judicial* power. In law, there is something which is called legitimate expectation. If you look at what happened, the Governor appeared before the County Assembly. There was no report which he was given. It is like you are making your submissions, then you expect them to make a finding.

Instead of making a finding, they went ahead to vote. Therefore, the Governor had a legitimate expectation to see the recommendations that the County Assembly had made. Ordinarily, that would have gone through a Special Committee to hear the matter. That is the modern practice. We are very clear, hon. Chair. I appreciate your dissection of that.

Sen. Mutula Kilonzo Jnr.: Counsel, your reading of Article 196(2) where it says;

“Any other business” after the word “legislative” suggesting that the impeachment of the Governor of Kericho should have been done in the presence of the public.

Mr. Peter Wanyama: Not necessarily. However, first of all, being a lawyer in law reform, I appreciate the fact that the Constitution has lifted public participation as one of the fundamental issues that we may consider. However, in Kenya, as we speak, there is no law that provides for the standard public participation. So, we have left that to the Executive arm and to the legislative arm to determine how public participation will be effected.

In our perspective, if a Select Committee investigated that matter, it would ably involve the public by either asking them to bring information or something like that. That is the

perspective we thought should be given. However, for now, we are in the period of transition where the legal framework is not clear. Still Article 196 is couched in mandatory terms. So, our response is that the County Assembly should have determined how better to handle that public participation in compliance with Article 196 paragraph 2 of the Constitution.

Sen. Mutula Kilonzo Jnr.: So, the question of interpretation in the words “any other business is where you bring in the impeachment?”

Mr. Peter Wanyama: Exactly, any other business of the Committee.

Sen. Mutula Kilonzo Jnr.: That is your interpretation?

Mr. Peter Wanyama: Yes, that is my interpretation. Thank you, hon. Senator.

The Chairperson (Sen. Obure): Thank you, indeed, counsel.

Sen. Billow: Mr. Chairman, counsel has referred to Article 185(3) of the Constitution on the need for the Assembly to respect the principle of separation of powers in exercising their oversight role. He also cited a number of Motions that have been brought before the House. I just want to get his view on the same Article 185(4), if you just go down, that requires county assemblies to receive and approve plans and policies of county governments including those that relate to infrastructure, general plans and policies.

In that respect, you will appreciate that the Constitution also requires that the Assembly be seized of those policies, plans and approve them when necessary.

Mr. Peter Wanyama: Hon. Senators, I appreciate your remarks but this is the other side of the coin.

Article 185(3) of the Constitution is a very clear provision that provides for separation of powers as interpreted in constitutional law, theory or in practice between legislative arms. With regard to the Committee or the relationships between the three arms of Government, it says; it may exercise oversight over the county executive. This power is limitless. We need to emphasise that the power to exercise this is limitless. The county assembly being the entity that is vested by the sovereign power under Article 1 of the Constitution, on behalf of the people, their power is limitless.

However, the same Constitution says, you can exercise oversight but we want you to respect the principle of separation of powers. That is the bottom line.

Number two, the same Constitution provides certain exceptions. Whereas policy implementation and execution is an exclusive function of the county executive as conferred by the provisions of Article 183(1) of the Constitution, this provides certain instances in Article 185(4). It is couched as follows: “The county assembly may receive and approve plans and policies.”

As I said, this is an issue which is the bone of contention between most of the counties in Kenya. It says; may receive and approve plans and policies for the management and exploitation of the county's natural resources and the development and management of its infrastructure and institutions. The scope of the policies which the county assemblies may receive--- My advice to most counties is that for any policy that deals with policy or plan that deals with exploitation and management of natural resources and development of infrastructure at the county level must be approved by the county assembly even though the Constitution says "may be approved."

The county assembly, if you look at the other powers, you will see that it is a very important organ. It represents the people. So, if you work in the county executive in isolation, then you will not be running a county properly if you do not subject most of the important policies to the county for approval.

Sen. Billow: I do not want to focus on the word "may" at Article 185(3) where it says that it may exercise oversight. That does not mean that since the Constitution says "may", the county assembly cannot exercise any oversight. The point I want to raise is that this is not limited to the management and exploitation of resources. The county resources are not limited in the sense that it can be given wide interpretation. This also includes development and management of institutions and infrastructure. Institutions, for instance, when it comes to recruitment, any of those Motions would be on building of institutions. Would you then say that the county assembly is at its discretion? The word "may" means, "not really." Does that mean that they should not really exercise that power?

The term resource has been defined by the Constitution. These are issues that are capable of two to three or four versions of interpretations. Our principal contention is that whereas as a lawyer, I can give an interpretation, as a legislator, you can give a different interpretation. However, ultimately, this is a section that must be interpreted in accordance with the provisions of the Constitution. Article 159 says---

We need to interpret Article 185 to give objective to the provisions of the Constitution. It is good governance. We also need to interpret that. My view is that we need to give it a broad interpretation. However, still, we cannot give a broad interpretation in a manner which deviates from the other express constitutional provisions.

I agree with you that these institutions of natural resources – this is not an issue in contention but I am just raising it. These provisions are capable of three, four to five interpretations. Any interpretation which gives the objective of the Constitution, for instance, the provision of Article 174 of the Constitution which provides for self-governance and the involvement of people in governance. My interpretation is that even though the word "may" has been used, the actual word should be "must." The word "may" is misleading to the county assembly and to the county executive.

The intention of the Constitution is that it must exercise oversight. It must receive policies and plans. That is why the county assembly is right to look at Blueprints but, of

course, within the confines of the separation of powers as provided for by the Constitution.

Sen. Billow: On the last one, you mentioned that the council of elders and other people who intervened for the County Government to withdraw the case in court.

Mr. Peter Wanyama: That was on 30th. After 30th, when the council of elders intervened with the knowledge of county assemblies, you gave an impression that you withdrew the case. On the same, 30th, the MCAs proceeded with the petition.

The Chairperson (Sen. Obure): The good thing is that you will be hearing about the council of elders in the next couple of minutes. That will become clear at that point.

Mr. Peter Wanyama: One last one is the definition of the Memorandum of Agreement as contrasted to a contract. The Blacks Law Dictionary defines a memorandum of agreement, also known as a memorandum of understanding as a formal business document used to outline an agreement made between two separate entities, groups or individuals.

A memorandum of agreement usually precedes a more detailed contract or agreement between the parties. This memorandum of agreement may be used to work corporately work together on an agreed purpose or meet an agreed objective and outline the discussed new terms of relationships.

The purpose of a Memorandum of Agreement (MoA) is to have a detailed understanding of the agreements between the parties. An MoA precedes a more detailed contract or argument after a process of negotiation and due diligence. This MoA provides a simple but effective format to enter into a general agreement prior to finalizing a more detailed contract or agreement within the parties. So, definition is consistent with our submission that the Bluetechs agreement which is properly styled as a MoA – I want this to go on record.

The Chairperson (Sen. Obure): What are you quoting now?

I am quoting the Black law Dictionary which the office of the Clerk can clarify.

The Chairperson (Sen. Obure): Did you file a copy of that with our secretariat?

Mr. Peter Wanyama: This is part of my oral submissions. I am making reference to a document which exists even in the Clerk's Office. This is the Ninth Edition of the Black Law Dictionary, West Publishing Company. That is clearly stipulated. Thank you, hon. Senators. I will now invite my colleague, Mr. Bosek.

The Chairperson (Sen. Obure): For purposes of your own planning, after seeking this clarification, you have so far spent 50 minutes. You have one hour 10 minutes.

Mr. Peter Wanyama: We will not go through all the evidence. Some of it you will watch at your own free time. So, we will just adopt them. That might ease our time.

Mr. Kimutai Bosek: Thank you very much, hon. Chairman and Senators. I will not take long. However, I wish to emphasise the fact that under the provisions of Article 47 of the Constitution of Kenya, 2010, everybody has been given the right to fair administration. Fair administration includes procedural fairness. It also includes, in my respective view, a situation whereby somebody can appear before a tribunal, a committee and any state organ because our Constitution has vertical and horizontal application.

My submission today is that the Governor of Kericho, one Prof. Chepkwony, was not accorded procedural fairness. I will not go into the Standing Orders that my colleague, Mr. Peter, has delved into. However, I wish to take this hon. Committee through some of the documents that are before you; one being the filing that was made by the County Assembly of Kericho upon an application that was made---

I wish to go through a number of Standing Orders. In doing so, I will try to establish that the Speaker of the County Assembly of Kericho had already made up his mind. He appears to have had the feeling that the Governor must be impeached. He had to be served and he no longer wanted to see him occupying the position of Governor.

Hon. Chair, you have been served with documents and I am referring, first, to page 6 of the County Assembly of Kericho documents. Page 6 is the minutes of the House Business Committee meeting on 30th April, 2014 at 12.00 p.m.

On that day, after the deliberations, if you were to look at the agenda Item No. 5 states; Rescheduling House Business Committee meeting beginning 12th May, 2014. In other words, the meeting should have been rescheduled to 12th May, 2014. When it comes to the resolution; resolution No.1 states; that, the following notices of Motion be scheduled to 30th April, 2014 in the afternoon. That was notice for impeachment of the Governor. That was on 30th and we have displayed ample evidence to show that the notice of evidence was given to the Speaker or, at least, he approved it on 30th. It was part of the agenda of 30th April. You will see agenda Item No.4 on the issue of impeachment. That afternoon, it was also stated that they would still be discussing the issue of impeachment.

We will play a video that suggests that on that day, 30th April, 2014, there was a demonstration in the streets of Kericho Town, led by the Speaker of Kericho County Assembly in the name of hon. Japheth Mutai. Hon. Senators, was it a coincidence that all these things were coming together on 30th April, 2014? How come that on that day the county assembly members, few of them, led by the Speaker appear to have been in a hurry and were doing things in a very haphazard manner to a point where at the end of the day one is left with no other conclusion that the Governor of Kericho could not get a fair hearing?

There is a document that we were served yesterday. No.5, this is a notice of Special Sitting to be held on Friday, 9th May, 2014. First of all, the Standing Order that the

Speaker quoted was an indication- I am happy that hon. Kiraitu Murungi took us through the provisions of Standing Order No.63 and Standing Order No.64.

Only Order No. 64 is, of course, on impeachment. But on 2nd May, 2014, the Speaker issued a notice of Special Sitting to be held on Friday, 9th May, 2014 quoting Order No. 64 and yet Order No.64 has nothing to do with what he was saying; that the Speaker summoned all the Members of the County Assembly for a Special Sitting to be held on 9th May, 2014 in the County Assembly Chamber starting from 10.00 a.m. One can only arrive at this conclusion; that already in his mind, the Speaker was fixated on having the Governor impeached. That is why he could not even quote the right Standing Orders.

I take honourable Senators to the very first remarks that were made by the Speaker on the day that the impeachment Motion was carried out. When the Speaker says as his first statement that:-

“I wish to notify the Members that before the Motion is moved, we must satisfy the requirements of the Constitution, the County Governments Act and Standing Orders for the Motion to pass”.

It was “for the Motion to pass”. It was not for us to have a quorum. Those are two different things depending on somebody’s mental attitude. If somebody says “for the Motion to pass”, that is clearly somebody who is interested in the results of the Motion. A neutral person; a neutral referee or umpire will actually say, “for us to have a quorum”. It would have been “for us to have a quorum”, but not “for the Motion to pass”. I am drawing the attention of the Senators to the HANSARD for Wednesday, May 14th. The Speaker had made himself an interested party to this. He called the ladies and gentlemen so that he could be able to impeach the Governor. I would request that the words “Motion to pass”, be underlined.

Before I play the video, I also want to refer Members of the Committee to the HANSARD which unfortunately is not paginated but it is on page 2. It should be paragraph No.4 where the Mover of the Motion, one Albert Kipkoech states:-

“Mr. Speaker, I have a document that has the allegation and the particulars and also all the contents on what Professor violated”.

That was a document which had been served on the Governor. It was not dated, it never indicated the source and yet here is somebody saying – as my colleagues mentioned – that this Notice when it was being filed, it never had the input of the Mover of the Motion. Then on the Floor of the House – that is after he has been given and yet it was supposed to be his document – that is when he says that he has the document. All these documents contain allegations on the impeachment of the Governor. This is a constitutional process and being a constitutional process, it must--- I must emphasize that whoever presides over such a function like the Speaker must ensure that the process is above board and that it meets the constitutional threshold and that if there was anything like this particular one that is said to have had allegations without the signature of the owner and without the indication of the source, I have always been one person watching

debates in Parliament and I believe a Speaker who is worth his salt would have said that that is a strange document in the House, whereas this document was allowed to come in.

Hon. Senators, you will look at the document and try to see who signed the document and when it was signed. That is one document that should be expunged. It should be treated with the contempt it deserves.

Let me play the video that shows whether the Speaker acted within his oath of office. When we see a Speaker leading a demonstration or going out of the precincts of the Assembly where he is not covered by the privileges, when you see a Speaker communicating to the crowd and becoming a Master of Ceremony (MC), we must ask ourselves a lot of questions. I pray that the video be played. It is very important to play from the first to the sixth minute. Hon. Senators, you will be left with no doubt that this particular Speaker, Japheth Mutahi, was not supposed to be the person to actually preside over the impeachment process. What he needed to have done was to excuse himself because he had already taken sides and he was biased.

The Vice Chairperson (Sen. Kiraitu Murungi): Before we see the video, we need some basis. We have three charges against the Governor. Which of the charges is the video going to address?

Mr. Kimutai Bosek: Mr. Chairman, Sir, he is accusing the Governor of misuse of public funds. The video invites any Tom, Dick and Harry who hated the Governor to say something about the Governor. It was a generalized allegation where they were saying that the Governor must go. When you hear the words “*Timbilwet* must go” *Timbilwet* is the political name that has been honourably given to the Governor of Kericho. *Timbilwet* is Prof. Chepkwony.

So, what I am saying is that the meaning of *Timbilwet* is that when the white people came, took away our land and planted the tea plantations in the whole of that area – and I am talking about Chemgondai, Chagaek and all the tea estates that you can mention which the European forgot to change their names. The whole of that area was called *Chimbilwet* or *Timbilwet* and a number of us have been concerned about the issue of historical injustices. The Governor here has actually been at the forefront, and that is why many Kipsigis people have associated him with that area; *Timbilwet*, because we have always been asking ourselves “how do we share the profits that the multinationals are getting?” So, *Timbilwet* actually stands for that.

Sen. Billow: Mr. Chairman, Sir, I appreciate. I am sure the counsel has the right to defend his client in whichever way, but the Vice Chairperson ruled or advised earlier on some issues – was it yesterday early in the morning – for example, the fact that a Motion on impeachment takes precedence. Therefore, like in the minutes you referred to, the House Business Committee could decide immediately that they proceed with that Motion on that day. But I am just wondering generally whether, because the purpose of this Committee really is to hear the charges and to hear the defense. I think if you spend a lot of your time on the proceedings of the assembly, I would have thought that the counsel

needed to be guided that before this Committee what is fundamental is to address the charges and defend them; then to procedures of the assembly, because the assembly really would go by its Standing Orders, and it is up to the counsel--- I think he needs to be guided, especially on the time he is going to take.

The Chairperson (Sen. Obure): Counsel, the County Assembly of Kericho is not actually on trial here; it is the Governor of Kericho County who is on trial. This Committee here is more interested in focusing on the three charges which were brought here. I will tell you that we, as Members of this Special Committee, are not interested in what the county assembly did at that point. Whatever they did, they did under their own Standing Orders, and we are not going to probe that; that is not part of our mandate. Our mandate is to investigate what has been brought here and to establish if they are properly substantiated. That is our entire mandate. I will, therefore, advise that you get more value by focusing on the three charges that are before us. Even the video you were just about to play, it was actually not played at the assembly in Kericho. Therefore, I am not very sure that there is relevance in showing it here.

Mr. Kimutai Bosek: I am guided, Mr. Chairman, Sir. As part of the defense that we are advancing, we are actually saying that there was no procedural fairness. Impeachment is a constitutional process and that the role of the Speaker is also an administrative one whereby he should have accorded fairness to the hon. Governor in all these processes. We are saying that the impeachment proceedings are actually something that is actually supposed not to have been in the first place if the Speaker had exercised his constitutional mandate; and, also, the calling of his office as a neutral person. That is why even the Speaker here appears to be doing something that is untoward. We are also raising the issue of bias and procedural unfairness; we are raising the issue of the Speaker having considered irrelevant matters, but I am guided. I can see that the Senator for Makueni appears, at least from his body language, like he is trying to ask a question.

Sen. Mutula Kilonzo Jnr.: I am concerned, counsel, because we have been told that our mandate is to investigate the charges. You are about to play a video about something that happened outside the assembly; something that is not in these proceedings, *et cetera*. You are, in fact, almost attempting even to prejudice our minds in advance as to the circumstances that led to the Motion itself, which is not something that would even be in our mandate. We are supposed to investigate whether your charges have been substantiated.

Mr. Kimutai Bosek: Mr. Chairman, Sir, in view of that---

The Chairperson (Sen. Obure): Restrict yourself to the charges as presented here yesterday.

Mr. Kimutai Bosek: Mr. Chairman, Sir, in view of the position that has been taken by the honorable Committee, I will abandon playing the video but you should look at the documents that we produced. You should also critically examine the fact that what the Governor was served with were three grounds; but what the mover of the Motion

presented before him were five grounds. There is nothing to show what really transpired between the time the Senate Speaker received this Motion and the time he served the Motion on the Governor. There is nothing to show that there were some proceedings or some debate on the Floor of the House, whereby a document that had been presented was reduced to three. So, we are trying to say that there was a lot of impropriety.

Having said that, I now want to, in view of time, invite the Governor to make an address in his defense. Unless, of course, the Chairperson has some questions.

The Chairperson (Sen. Obure): No, you got it right. I was just going to advise that you might spend your time more productively on the substance of the three charges.

Mr. Kimutai Bosek: Mr. Chairman, Sir, I can see Sen. Sang---

The Chairperson (Sen. Obure): Yes; sure.

Sen. Sang: Thank you, Mr. Chairman, Sir. I was struggling to catch your eye, not the counsel's eye.

(Laughter)

Mr. Chairman, Sir, I think I want to agree with the guidance that we have given to the counsel for the Governor. He has persistently raised the issue of procedural fairness. I think for you to establish procedural fairness, then you have to track the process. If you are talking about five charges and they were reduced to three, you need to track that, give us those documents and show us that this changed at this particular point; then you are able to establish your case. But then if you just raise the issue that we had a document of five allegations, then they were reduced to three and you are not able to track, because we are interested from the time of the notice of Motion. Maybe you have cited the minutes; can you take us through so that you can show us that there was some problem; that maybe the Governor was not served with procedural fairness. But if you take us outside the county assembly, really, we get lost.

Mr. Kimutai Bosek: Thank you so much. I think this is part of the documents that we have submitted, but I have no problem resubmitting it again.

The Chairperson (Sen. Obure): I think you had started on the right track by inviting the Governor. You have 53 minutes available to you from now on. It is 53 minutes with the remaining witnesses.

(Consultations)

The Governor will now be sworn in. He will take the oath at the podium.

(The Governor for Kericho (Prof. Chepkwony) took the oath)

Please proceed, Governor.

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Mr. Chairman, Sir, hon. Senators, my name is Paul Kiprono Chepkwony, Governor Kericho County. Let me begin by thanking the Senate and its Select Committee under your able chairmanship to accord me the opportunity to respond to the particulars of the grounds for the recommendation of my impeachment by the County Assembly of Kericho. It is my hope that I, together with my counsel will in the end be able to convince you to find that the recommendation for my impeachment by the County Assembly was not substantiated and reinstate me as the Governor of Kericho.

Indeed, I have never appeared before the County Assembly Health Committee contrary to the statement by the counsel to the County Assembly yesterday. This is the first time I am doing so and it is happening at Senate Special Committee. I premise my response in defence of the people of Kericho whose only voice is their vote which they chose to bestow upon me the significant honour of being their first governor. Their only hope is the Constitution which through devolution has placed the responsibility for good governance in their hands. I speak to the hon. Chairperson with conviction for I believe in the just, fair and objective application of minds within Senate and your commitment to advance the rule of law and to protect our very fragile democracy. Kenya was recently reminded of severe consequences of undermining the will of the people.

Mr. Chairman, Sir, I have not betrayed the mandate of my people. I have not even once been investigated by the anti-corruption agency nor have I received any findings by the Auditor-General. Our county is, in fact, exemplary when it comes to compliance with the administrative regulations of our country. As you may be aware, when governors were being summoned by the Senate, I was not one of them. The Auditor-General's report has never implicated the Governor of Kericho County in anything that is improper. Furthermore, I have worked harder to fulfill the promises I made during my election campaign. To that effect, I together with my team have achieved the following in one year:-

- (i) We have done about 15 kilometres per ward of road in all our 30 wards and this will be approximately 450 kilometres of new roads.
- (ii) We built 70 health centres and dispensaries and they are at different stages. Some are complete and some are almost.
- (iii) We have also built 150 Early Childhood Development (ECD) classrooms using the equitable share of our funds.
- (iv) We have set aside Kshs69 million worth of bursary fund for the poor and needy children from Kericho County.
- (v) We have also set aside Kshs50 million worth of youth fund which will go into poverty eradication and empower the youth of Kericho County.
- (vi) Water projects are ongoing in each ward.
- (vii) We are in the process of finalizing construction of the state of the art Information Communication Technology (ICT) where the youth of Kericho will access free internet. We have revived over 80 per cent of the cattle dips and provided them with acaricides.

- (viii) Currently, we are providing Artificial Insemination (AI) and ECA vaccinations. They are ongoing and we are targeting 300,000 heads of cattle. This is part of our value chain addition in the dairy sector.

Mr. Chairman, Sir, as the Governor, I have made deliberate efforts to go out of the country to attract investors. This is also being done by other officers elsewhere. Revenue collection has increased by over 40 per cent and many more projects are ongoing.

Mr. Chairman, Sir, I wish to state here, and this is applying to all counties, that we are still in the transition period and therefore we have many challenges. That is true. As I speak to this Senate Select Committee, we have not employed ward administrators yet. This was mentioned by my counsel. We are still building capacity for different departments. I would like to bring to the attention of this Committee that in July, 2013, I was almost impeached when I was only four months in office on the grounds that I had employed a legal advisor, and please allow me to mention his name if I am allowed, Laubuta Mugambi from the Meru community instead of employing a local person. That would have been the first ground of impeachment. Fortunately, the council of elders intervened to avert the impeachment. I thought that was the main reason. However, it turned out later that the real reason for impeachment was due to failure by the county finance officer on 1st July, 2013 to facilitate MCAs educational tour to Kampala to a tune of Kshs9,787,984 citing lack of foreign travel budget on the side of the Assembly. I have a letter to that effect.

I am saying this because there would normally be reasons advanced to impeach governors which I would consider as smoke screen when the real reasons are never given. This is the second impeachment in a year. Like the first impeachment, the Kipsigis Council of Elders, church leaders as well as the Senator and all Members of Parliament intervened because it was felt that this was manageable, that there was nothing gross about the five allegations initially, which later on were distilled to three. I am yet to get the reasons why.

Mr. Chairman, Sir, I have mentioned these people because I said through my counsel that following challenges where Motions were coming through from the County Assembly, the Executive side was grinding to a halt. We did seek a non-adversarial legal interpretation especially on Motions. But the Assembly side interpreted this to mean the Executive side had taken them to court and that is the impression created before the citizens. So, this group asked us, as the Executive side, because it is not the governor. We did it as the Executive that included the County Public Service Board, which has been affected the most. They asked us to withdraw the case in which the Executive had gone to court to seek a non-adversarial legal interpretation of Motions which were coming through from the County Assembly and which were seriously affecting the execution of functions by the County Public Service Board and the Executive arm of the county government.

As the Executive, we complied and withdrew the case. It was obvious that the MCAs had been annoyed by the court case. This was going to be demonstrated very clearly by the video which the counsel was going to play. That is the main reason. The aforementioned groups brought us together with MCAs to discuss the issues. Unfortunately, it never worked out.

I wish to further state that on the morning of 30th April, 2014 is when the Kericho County Bursaries Bill, 2014, which I had declined to sign reached the Assembly. The County Assembly Members had inserted a clause knowingly, Clause 6(1)(d), which included Members of the County Assembly in the composition of the Bursaries Management Board contrary to Article 185(3) of the Constitution, as it would be in conflict of roles.

On the same day, 30th April, 2014, the Speaker gladly approved deletion of the said Clause 6(1)(d) as proposed by myself and the reply is right here and immediately sent it for my assent, which I have. Immediately thereafter, the same afternoon, a notice of Motion for my impeachment was moved. The time was about 6.00 p.m. This has been the most challenging emotional aspect in my life because when the notice was passed by the Assembly, it was quickly passed to some civilian who posted it on twitter, therefore, damaging my reputation. It is only a week later that I received the allegations which had been scaled down to three.

Mr. Chairman, Sir, you may have seen press reports attributed to me to the effect that a nominated female MCA came to negotiate for payment as a way of saving me from the impeachment. I wish to say that this is true. On the night of 9th May, 2014, one of my senior officers called me and told me that the said female MCA by name, I do not know whether I am allowed to mention names---

The Chairperson (Sen. Obure): You may not.

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): I will not. So I am seeking the indulgence of the Chair. She had wanted to talk to me. This conversation is contained in Safaricom recordings of conversations within the times, which, with your permission I can submit the time logs for this conversation.

I want to summarize what the demands were. That, Kshs1.5 million was to be given to one of the key MCAs; Kshs1.2 million to the next key MCA; Kshs1 million to the third key MCA and that Kshs3 million be set aside for what she called gender money, to be given to the women MCAs, 17 of them nominated plus two elected making 19 of them. All the other MCAs were to be given Kshs500,000. Additionally, she wanted that all MCAs be given plots at Chelimo. We have an open area we call Chelimo which is still not developed. The seventh, and which is very serious, was the request that I kill one project and I asked the value. She said: Worth Kshs30 million, and that this money be diverted to MCAs to save me from impeachment and that other governors who have been boxed to a corner have done this before. I am going to mention the counties she mentioned. When I asked how the money will be accounted for, she said that we keep lying to the citizens that the money has delayed until ultimately it is overtaken by events.

Mr. Chairman, Sir, on Sunday, 11th at 10.00 a.m., she came for a final word where upon she met me with one CEC Member whose docket I am not going to mention, but in vain. I am saying in vain because we were not going to give anything. This is the same day we were going to meet with the Council of Elders. This was the last meeting with them. Earlier, the same said female MCA had met other CECs Members with the same message to be delivered to me.

Hon. Chairman, Sir, I wish to share with you how I work as Governor so that you understand my work. Twice a week, I do official work in the office. Every Thursdays, I see members of the public. Twice a week I visit wards. In each ward visit, we inform in writing both elected and nominated MCAs, area MP, County MP and Senator through a drawn up programme for the entire visits to the 30 wards. I have visited all 30 wards and it took four months to complete.

Mr. Chairman, Sir, what I have is modified. I will give you the modified version of my presentation.

The Vice Chairperson (Sen. Murungi): Governor, you do not have the whole day. The Committee is just listening. Regarding any evidence or any statements you may make which will assist the Committee in its mandate of substantiating the three charges made against you. The Committee does not have the mandate to listen to all the great things that you are doing in Kericho County for which the people of Kericho will appreciate. The Committee is just focusing on the three charges against you.

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): I am guided, hon. Chairperson. I will now go to specific allegations raised against me.

Allegation No.1 – Irregular agreement between the County Government of Kericho and Bluetechs UK, Group Limited.

Hon. Chairperson, sometime last year, following my election as the first Governor of Kericho, our sons and daughters of our county living in the United Kingdom under the auspices of an organization called tecta which means, build your community, invited me to visit them with a view to meeting potential investors. I must emphasise that the trip was partially financed by the association.

During the visit, I met investors who were interested in investing in our county. Among them was a company known as Bluetechs UK Group Limited which was interested in generation of power and electricity. Another potential investor group is called SACOMA which markets fresh produce. It is very important that I mention this because I ended up signing MoUs with them as well.

Consequently, I signed memorandum with both investors, the first with the SACOMA Group, the people of a ward called Kaplagate(*) can now export sweet potatoes directly

to New Hospital Field markets in London. This is one of the largest fresh produce market in Europe.

I also signed another memorandum with New Ulm University of Applied Sciences in Germany aimed at promoting academic operational and exchange of teaching and research between New Ulm University of Applied Sciences and the University of Kabianga. I find it interesting that this other memoranda were not included in the recommendations for my impeachment.

In signing all these memoranda, I acted in good faith as the CEO of Kericho County. Where a PPP would be involved, as it is the case with Bluetechs, I was aware that the PPP act must be complied with. During the visit to the UK, I managed to source quite a bit of support for Kericho which I will not go into.

Hon. Chairperson, having established contact with Bluetechs Group Limited, the next step was to sign a memorandum of agreement. To the executive side of Kericho County, this was going to be the flagship of energy generating project in Kericho County. Bluetechs promised a state of the art power generation using green energy. As earlier stated during my visit to Europe, we met with investors and quite a number of representatives whom I will not mention here. I would like to inform the people of Kericho and the Senate Select Committee that what I signed was a non-binding MoA. I had been advised that an MoA or corporate document is a document written between parties to cooperate together in a project and that precedes a more detailed contract. I, therefore, understood that what I was signing was not a contract.

The signing ceremony was done in the open in the presence of MCAs who made speeches in support of the project. The constraints of this agreement were to be included in comprehensive benefits sharing agreements BSA whose draft is before the County Assembly. The implementation of the project is subject to both parties meeting all other requirements in the country.

I would like to bring to the attention of this Senate Select Committee that the BSA has been lying in the Assembly since 28th March, 2014 contrary to pronouncement by the Assembly counsel that the BSA has not been submitted. The Chairman, Committee on Energy of the County Assembly is here. He can confirm that if he so wishes but that is subject to your permission.

The MoA is about a future PPP between Kericho County and Bluetechs to produce 100 megawatts of power from solar energy. Should it go through – the Assembly also have the power to say yes or no. That is why we have the BSA. The project will be located in Soin where we have 100 acres of land available contrary to what you have heard that there is 500 acres. The rest will be located in Londiani where we have more land. The bulk of the power will be sold to the national grid. This is very important to emphasise. The counsel for the Assembly was asking what Kericho County would do with all that power. Our project was not just to satisfy our needs but also to be part of providing power to the national grid so that the national Government can provide electricity to Kenyans.

It is estimated that the county will earn about Kshs153 million per year and employ, at least, 500 youths from Kericho County. The investor is to part with Kshs17 billion while Kericho County will contribute land and develop the necessary infrastructure.

The people of Soin Ward where one of the projects was to be done would be involved. I wish to reiterate here that during the signing of the MoA, which was done in public, Members of the County Assembly were invited. In fact, there was a programme that shows who spoke at what time. Therefore, we have a video recording of what each person said. Generally, they were all in support as well as the executive arm of the County Government.

Allegation No.2 – Irregularities between E-Plus Medical Services and Kericho County Government.

Hon. Chairperson, it is true that an agreement was entered between Kericho County Government and E-Plus which was to provide comprehensive emergency services which include the seven ambulances, paramedics and ambulance operators to Kericho County at a cost of Kshs600,000 per unit. I am aware that other counties have gone this route and this includes Kakamega, Kisii and Bomet. This seems to be the general rule being taken by the national Government - hiring of certain specialized services.

In the 2013/2014 County Supplementary Budget, we had provided Kshs42 million for the purchase of ambulances. After attaining professional advice, we settled for hire of seven ambulances at a cost of Kshs600,000 and we financed Kshs21 million. We purchased two state of the art type of ambulances with the balance. I summoned the County Executive Committee on Health to meet the Committee on Health of the Assembly to explain our position which was positive. Unfortunately, the entire budget line was deleted by the full House and relocated elsewhere. To be honest, I did not expect that this would happen without our input as the Executive.

However, upon rejection of the budget item by the County Assembly, the contract was cancelled and E-Plus did not have any problem as per the response that you received earlier and which corrections were done earlier today on the dates.

The County Government therefore did not lose any money and this is something I need to emphasize.

On public participation, if you refer to Chapter 7 of the CIDP, it clearly indicates that the people of Kericho County wanted ambulances.

Thirdly, with regard to gross violation of the County Governments Act, I would like to take this opportunity to respond to the effect that I unlawfully recruited personnel and created offices in the county contrary to the provisions of sections 59, 60 and 62 of the County Governments Act. I would like to state the following: No office or offices have been created under sections 59, 60 and 62 of the County Governments Act. Therefore,

any positions so far filled in the Governor's office have been on contract and that the said powers emanate from the Transitional Authority (TA) guidelines. The establishment of any office in the County Government must go through the County Assembly. That is a fact that I understand and this is according to Section 62. A more relevant accusation would have been the Governor violating the TA guidelines. Such a charge as above does not amount to gross violation of the Act and is not one of the grounds for any impeachment. Even if that were to be the case, TA guidelines are just guidelines, they are not law.

Some sections of the existing TA guidelines have already been overtaken by other guidelines from other organs. For example, TA guidelines on salaries and other remunerations have been reviewed and differ from county to county. While TA guidelines state that a ward administrator should be a degree holder, the Act states that he should be a professional. A number of counties through the advertisements have indicated a diploma as acceptable while others still insist on a degree. As pertains to TA guidelines on governors concerning personal staff, they are not explicit on whether the number indicated may or may not be exceeded on the basis of the unique needs of each county.

It was widely reported in the media after the establishment of the county governments that some governors had established other offices outside the guidelines. The guidelines are open and do not indicate the boundaries in recruitment of personal staff.

On the argument that TA guidelines used to operate upon inauguration of the County Public Service Board, the same is not mentioned in the TA guidelines. Nowhere is it stated or even implied that the guidelines will cease to operate once a board is in place. The appointment of required personal staff by the Governor essentially had no timelines on the basis of TA guidelines.

County Coordinators from TA have been on the ground all this time and on a number of issues, I have advised county governments to write to the TA headquarters for guidance. It was on the strength of this advice that the board wrote to TA in February and April 2014 on this subject. The board started seeking guidance from TA since last year through questions raised in many forums. The standard responses were that an advisory would be used and in the absence of an advisory, Kericho County Public Service Board in consultation with my office wrote to TA in February 2014 and another reminder was sent in April 2014. I have not engaged anyone since the release of the advisory.

Noting that we are still in transition, it is my considered opinion that people should not be punished retrospectively for actions taken before explicit advisories were issued. The advisory which came out clearly on the issue of the Governor's staff is that of 23rd April, 2014. If it were my intention to abuse office, I would not have asked the board to seek an advisory and I would have the lacuna to recruit even more staff.

Mr. Chairman, Sir, let me inform this Senate Committee that Kericho County is finalizing the organizational structure. This will eventually lead to establishment of various offices

as specified in Section 59, 60 and 62 of the Act where the County Assembly will be involved.

Thank you and God bless you.

The Chairperson (Sen. Obure): Thank you very much Governor.

Mr. Peter Wanyama: Mr. Chairman, Sir, just a minor clarification. With your permission, we understand that we submitted a version of the statement of the Governor by email to the office of the Clerk but now most of the issues have been explained further in his new statement and with your permission, we are requesting if he can submit the appended statement. We have no problem in giving the County Assembly a copy of it.

The Chairperson (Sen. Obure): The new statement will be based on what he has said.

Mr. Peter Wanyama: Exactly; on what he has said.

The Chairperson (Sen. Obure): I think that would be accepted.

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Mr. Chairman, Sir, I just wanted to mention that there is communication from the Kericho County Public Service Board and TA on this matter and I have the responses here.

The Chairperson (Sen. Obure): Is that part of the bundle you submitted?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): It is just part of my oral submission.

Mr. Peter Wanyama: Mr. Chairman, Sir, it is part of the bundle.

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Counsel for the Governor, you have 15 minutes left. We would like you to proceed to cross-examination and we will reserve 15 minutes for your next witness. Counsel for the Assembly, you may now proceed to cross-examine the Governor. You should remember that you have one hour to cross-examine all the witnesses.

Mr. Charles Njenga: Mr. Chairman, Sir, because we only have one witness who has testified, maybe it would be better for guidance on our time management, how much time do we have for each witness for cross-examination so that we know how to split it up.

The Chairperson (Sen. Obure): That will really be up to you to determine. You know the number of witnesses available and it is up to you to determine how much time you want to spend on each one of those witnesses but you have one hour to do that.

Maybe then it will be better for guidance then to know, in view of the time allocation that you had given to the Governor for their evidence, whether we shall admit any other

witnesses so that we know that our one hour shall be split up. Because if I were to remember your guidance on the time, the witnesses were to take the time allocated, but I think it is exhausted now. So, can we use the one hour that we have for this witness? Or shall you extend the time?

The Chairperson (Sen. Obure): Okay; let us go with it this way. Let us ask the Governor's side to introduce their next witness, and I believe he will also be the last witness. Then when we come back, you will have the opportunity to cross examine all of them at once. Would that be better? If we can now ask the counsel for the Governor to introduce their last witness – and they have only 15 minutes to go through that – after that, we break for lunch and when we come back, we start with the cross-examination by the counsel for the Assembly.

Mr. Charles Njenga: Well, if they have 15 minutes, that is okay. They can take the other witness so that when we resume, we use our one hour for cross-examination of all the witnesses.

The Chairperson (Sen. Obure): So, counsel for the Governor, introduce your next witness.

Mr. Peter Wanyama: The next witness, Mr. Chairman, Sir, is Bishop Paul Leleito.

The Chairperson (Sen. Obure): Is he available here?

Mr. Peter Wanyama: He is the one who has just stood up.

The Chairperson (Sen. Obure): All right.

Mr. Kimutai Bosek: Mr. Chairman, Sir, I just want to indicate that we have just withdrawn Charles Ng'etich as a witness, a Member of the County Assembly. We have formally withdrawn the statement of Charles Ng'etich, who we had indicated is a witness---

The Chairperson (Sen. Obure): So, that should go on record. Governor, you may resume your seat at the back. Could the elder take an oath?

(Bishop Paul Leleito took the oath)

Bishop Paul Leleito: Mr. Chairman, Sir, Vice Chairman, hon. Members of the Senate, I greet you; good afternoon.

Mr. Chairman, Sir, I have come here on behalf of Kipsigis Council of Elders and on behalf of the Chairman, who is not feeling well. As the spiritual advisor of the Kipsigis Council of Elders, I speak on their behalf. During the second meeting of the Kipsigis Council of Elders which was held on the 3rd of May, 2014- this was our normal, usual council meeting – it cropped up that there were issues happening within our county. In

reaction to that, the Council of Elders discussed widely and felt that as the protector whose main objective is to promote the unity and cohesiveness of the community by facilitating mutual dialogue, the Council selected 12 members to look into this issue that they had. So, the 12 members met on the 9th and tried to find out how they could help. The 12 members met the Speaker of the County Assembly and the Deputy Majority Leader. They met, discussed and aired their views. We said that we were going to see the Governor and, so, on Saturday, the 10th, we saw the Governor. Prior to that, the Council of Elders, on that day of 3rd, advised and called for a ceasefire between the Governor and the MCAs. They called the Governor and asked him to withdraw that court case; and also called for the MCAs to withdraw that notice of Motion so as to allow dialogue and reconciliation because as the Council of Elders, these are all our children. We are non-partisan and we want both of them to work together. So, on the 9th, we, as the committee selected by the Council of Elders, met the Speaker and the Deputy Majority Leader and they gave us their views on why they wanted to impeach the Governor. We met the Governor on Saturday and also heard his views. After hearing those views---

The Chairperson (Sen. Obure): Bishop, did the Speaker tell you why they wanted to impeach the Governor?

Bishop Paul Leleito: Mr. Chairman, Sir, they cited the three things; that is why I did not want to mention them because they are there. They were five, but when it came to the notice of Motion, they reduced to three.

So, having heard the Speaker's side and the Governor's side, as the elders we felt that there was room for reconciliation; that the issues that were raised by the County Assembly could be rectified. So, we wanted, first of all, to put off the fire and then give room for dialogue and reconciliation.

On the 10th, we decided as a council that the Speaker of the County Assembly and the Governor should meet the Council of Elders and the religious leaders. So, we met on Sunday, 11th. Many of us did not go to Church; we made that day a church service. So, we met the Council of Elders with almost 100 per cent attendance from the MCAs of the County Assembly and the Governor. We discussed and I preached on forgiveness and reconciliation. At the end of the meeting, quite a number of MCAs said that they wanted to forgive each other. The Majority Leader and the Speaker told us to give them time to discuss before they could give us the outcome on Tuesday. So, we told them "go and meet on Monday; these are your elders and clergy; meet on Monday and we are going to come close by to see white smoke coming up indicating that you have agreed and you have put your house in order because the issues we had raised are salvageable. But, please, go through your process of legalities and withdraw that Motion."

The Governor withdrew the court case as per the advice that we – the religious leaders and council of elders – gave. We asked the MCAs to withdraw the notice of Motion because Kericho County is the home of Kipsigis.

That is our birth place, home for the Kipsigis community. So we did not want to desecrate the home of all the Kipsigis wherever they are. There are those in America and so on but Kericho is our home and we do not want to desecrate it. That is what the Council of Elders and the clergy wanted. On that Monday, we met and waited to see the white smoke coming but we did not see it. So, we wondered what happened and called the Assembly. A few Members of the County Assembly (MCAs) came to meet us at around 6.30 p.m. They came and said that they had not met. The following day on 12th May, 2014, we met the Speaker and the Majority Leader in one of the boardrooms in the County Assembly and implored on them to withdraw the notice of Motion. We told them that since the elders had told them to withdraw the Notice of Motion, they should obey. We told them that these charges are salvageable and nothing is lost. We told them to spare the community the embarrassment. The elders have a stake that one day when they come to tell you something, you do not pass or ignore it. The mothers have a belt that when they remove it and say “we are putting this belt before you, do not move anywhere”, we do not pass.

So, we asked them to withdraw that Notice of Motion. In the evening, they told us that they will go ahead and we told them that it is very unfortunate for us. Both of them are our children; that is, the governor and the MCAs. This baby called devolution has just been born and we are struggling together to nurture it. So, let us not spoil it. The elders had decided to sort it out.

On 14th, we still went, as the Council of Elders and the clergy, to meet the Speaker and some MCAs. We met them and implored upon them to withdraw that notice of Motion. One of the elders who had come the previous day was a founding member. He was the first Chairman of Kipsigis Council. He is 106 years old. He is called Bishop Tumor. He stayed in town to make sure that there was a truce, peace and reconciliation. On Wednesday morning, we implored them to go far. Unfortunately, in the afternoon, we heard that the Motion had been passed to impeach the Governor of Kericho.

Mr. Chairman, Sir, that was the saddest day for the Kipsigis Council of Elders and all of us as the clergy. They did not heed our plea not to go on with the impeachment. On 20th, the Council of Elders met and resolved to ask this honourable Committee that we are still waiting for our children to come home and we shall sort out those problems ourselves because we think they are salvageable and we pray that this will come home. We want our children to come home and reconcile. We want to bless them for the sake of development and unity of our county. The elders want development and unity in Kericho. Thank you.

The Chairperson (Sen. Obure): Thank you, Bishop, for appearing before us and making that statement.

Ladies and Gentlemen, perhaps this is---

Mr. Kimutai Bosek: Mr. Chairman, Sir, I wanted to point out that we have already submitted the statement and it is part of the record. This is together with the minutes of the Council of Elders as exhibit.

The Chairperson (Sen. Obure): That statement by Bishop Leleito is on record. This is the appropriate moment to break for lunch and when we come back at 2.15 p.m., we will start the process of cross-examination by the counsel to the Assembly.

Let me ask the Vice-Chair to make one more announcement.

The Vice-Chairperson (Sen. Murungi): I just want to remind the counsel on both sides that the option for written submissions as we close the day is there and could assist in the process of report writing.

The Chairperson (Sen. Obure): Thank you.

This sitting is now adjourned until 2.15 p.m.

(The Committee temporarily adjourned at 1.10 p.m.)

(The Committee resumed at 2.20 p.m.)

The Chairperson (Sen. Obure): Hon. Senators, ladies and gentlemen, I welcome you back to this afternoon's session. As you will see from the programme, we are about to start on cross examination of the witnesses. I want to know from the counsel from the Kericho County Assembly of the witnesses that gave evidence here, who are you starting with?

Mr. George Ng'ang'a Mbugua: Mr. Chairman, Sir, we shall start with the Governor.

The Chairperson (Sen. Obure): So, Governor, can you, please, take your seat up front.

(The Governor took his seat)

Counsel, remember we have agreed on one hour on this particular assignment.

Mr. George Ng'ang'a Mbugua: Yes, we will share it with my colleague.

The Chairperson (Sen. Obure): Okay.

Mr. George Ng'ang'a Mbugua: Governor, I have a few, direct questions for you. Please confirm to this Special Committee whether you appeared before the plenary at the Kericho County Assembly to defend yourself against the allegations that formed the basis of these impeachment proceedings?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): The answer is yes.

Mr. George Ng'ang'a Mbugua: Please, also confirm to this Special Committee whether before you appeared at plenary that you had been served with particulars and documentation in support of the allegations that you were to defend yourself against before the County Assembly.

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): I would like to say that allegations were sent to me but there was no report that was sent to me.

Mr. George Ng'ang'a Mbugua: Were there documents in support of those allegations that were forwarded to you before you appeared before the Plenary at the County Assembly of Kericho?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Counsel, to be specific, would you like to mention what kind of documents you are referring to?

Mr. George Ng'ang'a Mbugua: When you received the allegations, were there any supporting documents? These are documents in the nature of the agreement, for instance, with E-plus, Bluetechs and so on. Those are the documents I am referring to. Were such documents ever forwarded to you before you appeared at plenary?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Mr. Chairman, Sir, I would like to request that, that information be handled by my counsel.

The Chairperson (Sen. Obure): Sorry, Governor, you have to respond directly as asked by the counsel.

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Mr. Chairman, Sir, I am not getting specifically the kind of documents that he is referring to. If you could, please, go through them, that would help me.

Mr. George Ng'ang'a Mbugua: I have given an example of the documents. There is the Bluetechs contract. There is also the E-Plus contract. Those are the key documents that form the basis of the impeachment proceedings. My question is: When the particulars were forwarded to you to enable you prepare and appear at Plenary, were those documents part of what was forwarded to you?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Again, hon. counsel, yes those documents were forwarded to me.

Mr. George Ng'ang'a Mbugua: Thank you.

Now, you referred to the Auditor-General and the Ethics and Anti- Corruption Commission (EACC). Please enlighten us. Are you aware of any requirement that before

impeachment proceedings are conducted, that the County Assembly was under an obligation to refer the matter first to the EACC or the Office of the Auditor-General? Are you aware of any such requirement that mandated the County Assembly to report to those offices before considering a Motion for proposed removal?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Mr. Chairman, Sir, this recommendation for impeachment is the second in the country.

Mr. George Ng'ang'a Mbugua: Hang on, Governor. We need to move a bit fast.

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Yes, I am answering the question.

Mr. George Ng'ang'a Mbugua: Please listen to my question. I am asking you: Are you aware of any legal provision or requirement in law that requires the County Assembly before initiating a Motion for removal to report the matter to the EACC or the office of the Auditor-General? That is my question. Say "yes" or "no", then we move on.

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Mr. Chairman, Sir, please protect me. I was laying a ground for my answer that following even the first impeachment of the Governor of Embu County there is a new development--

Mr. George Ng'ang'a Mbugua: Excuse me, Governor. I have to make an intervention because my question is very direct.

The Chairperson (Sen. Obure): Can the Vice Chairperson, please, intervene on this?

The Vice Chairperson (Sen. Murungi): The question is very simple. The question is: Are you aware of any law which requires the County Assembly to refer the matters to the EACC or any other authority before they can impeach you?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Yes.

Mr. George Ng'ang'a Mbugua: You are aware?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Yes.

Mr. George Ng'ang'a Mbugua: Please tell us which law that is, and the section.

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Unfortunately, Mr. Chairman, Sir, I am not able to go to those legalistics.

Mr. George Ng'ang'a Mbugua: Very well. We take that as your answer. Let us move on.

You made reference to the office of the Auditor-General and you said that it has not implicated you on any wrong doing. My question is: Has there been an audit report prepared by the office of the Auditor-General with respect to the County Government of Kericho?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Yes, there is.

Mr. George Ng'ang'a Mbugua: Do you have it with you?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): No, I do not.

Mr. George Ng'ang'a Mbugua: At this point in time, as the Special Committee is investigating this matter, we cannot speculate about the content of a report that you did not find it necessary to submit before this Committee. Is this correct?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): We did not find it necessary for that report to be submitted to this Committee.

Mr. George Ng'ang'a Mbugua: You made reference to that report and said it did not implicate you in any wrong doing. Without that report, do you agree with me that we cannot speculate about its content? This is as to what it contains, who it implicates, *et cetera*.

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): What I simply said is that as far as the report by the Auditor-General is concerned, there has not been anything adverse mentioned against the Governor of Kericho County.

Mr. George Ng'ang'a Mbugua: But we do not have the report?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): We do not have the report, but it can be availed.

Mr. George Ng'ang'a Mbugua: Let us go to the question of the appointment of the ward administrators. You challenged the decision of the County Assembly passing a Motion that was stopping the process of recruitment of ward administrators. There are certain prayers that you requested the High Court to do. Please, confirm to this Committee was one of those prayers was a prayer to quash the decision of the County Assembly?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Yes, that was one of the prayers.

Mr. George Ng'ang'a Mbugua: Before the recruitment or the appointment or shortlisting of the administrators, had the County Assembly been afforded an opportunity to consider the persons that were to be recruited to fill those offices?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): I am aware that there has been back and forth in the intentions of the County Public Service Board.

Mr. George Ng'ang'a Mbugua: Was the County Assembly formally notified that there was an intention to recruit the potential names of the recruits, their qualifications, etc, for consideration? Was that done before the County Government proceeded with the process of recruitment of ward administrators?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Those details are a subject of the County Public Service Board.

Mr. George Ng'ang'a Mbugua: So, you do not know?

The Chairperson (Sen. Obure): Please, repeat your question to the Governor.

Mr. George Ng'ang'a Mbugua: Before the county executive proceeded with the process of recruitment of ward administrators, was the County Assembly notified formally that there were some appointments to be made and approved?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): That is an executive function.

Mr. George Ng'ang'a Mbugua: Are you aware of the requirement to vet appointments into county public service offices by the county assembly under Section 8 of the County Public Service Act?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Yes, I know that some positions like the CEC officers but not ward administrators.

Mr. George Ng'ang'a Mbugua: So, as far as the county executive is concerned, there is absolutely no requirement to vet the approval of ward administrators by the County Assembly in filling those positions? Is that the position of the county executive?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): The Assembly would have a problem with that.

Mr. George Ng'ang'a Mbugua: The County Assembly, in its Motion was saying that it would like the county executive to supply us with the qualifications. What particular problem would the county executive have in sharing information regarding the qualifications of personnel to fill offices within the county? What particular problem would you, as an executive, have with a Motion that requires that you share information with the qualifications of those recruits?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): There would be no problem.

Mr. George Ng'ang'a Mbugua: But you confirm that the motion was merely limited to, stopping the recruitment until you have shared with the County assembly the qualifications and considerations that the county executive took into consideration before shortlisting the candidates?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): This is where the problem is. When the Motion from the Assembly came, the board had no option but to stop.

Mr. George Ng'ang'a Mbugua: Thank you. The board had no option but to stop it! What then informed the decision of the county executive to go to court to quash a Motion that according to the county executive they acted upon to stop the process of recruitment?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): That is because there were two things. One, if the board forced its way and continued with recruitment, there would be consequences. If they complied, services would suffer. So, we really wanted legal interpretation so that we know exactly---

Mr. George Ng'ang'a Mbugua: Let us go on. We will take that as your answer. You referred to some unknown extortionists who approached you to get money from you. Did you ever make a report to the police with regard to that attempt to your office?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Not so far.

Mr. George Ng'ang'a Mbugua: So, you did not make a report with the police. Thank you. Let us now go to the E-Plus contract. Hon. Senators, I will be making reference to the Governor's response as I deal with the cross-examination. I will refer you to the agreement that we will find in the Governor's bundle at page 98. Before that, Senators, I want to start my cross-examination on page 24 of the Governor's bundle.

May be, Governor, you can ask your counsel to assist you with your bundle. I will be making some references as we move along. Senators, if we are there, at page 24, we are referring to your response.

I want you to confirm whether the following matters are correct as far as your response is concerned. Hon. Senators, I am at page 24 of the Governor's bundle, page 24 at the bottom, the one that is printed.

Governor, confirm that you have referred to a memorandum of understanding while addressing the issue of E-Plus agreement. Does your response confirm that a memorandum of understanding was signed on 7th January?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Hon. Chairperson, my counsel confirms that this was a contract and not a memorandum of understanding. That was corrected yesterday.

Mr. George Ng'ang'a Mbugua: So, you have corrected that? It was, indeed, a contract? This is on page 98.

If you are there, Governor, please, confirm that the contract sum of that agreement that you entered into is for a monthly sum of Kshs4.2 million which translates to Kshs50,400,000 per year. Confirm that is the amount of the value of the contract that you were committing the county government to in the contract. Is it Kshs50.4 million per annum? Is that the contract sum according to that document at paragraph one and two?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): That is correct, but as I said earlier, that we will---

Mr. George Ng'ang'a Mbugua: Also confirm that at paragraph 3 of the same document, the term of that contract was one year from 20th February, 2014.

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): That is correct.

Mr. George Ng'ang'a Mbugua: Thank you. Before you entered into this contract, Governor, confirm to this Committee whether you sought the approval of the Tender Committee of the Kericho County Government.

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): I did not. I signed it as the CEO of Kericho County.

Mr. George Ng'ang'a Mbugua: You did not seek the approval of the tender committee? Please, also confirm that before you entered into this contract, there was no competitive tendering for the services you committed your county government to. Confirm that there was no competitive tendering.

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): That is true.

Mr. George Ng'ang'a Mbugua: Governor, before signing this contract, did you satisfy yourself that the requirement as to open tendering had been satisfied under the Public Procurement and Disposal Act? Did you satisfy yourself that those requirements had been met?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): I was satisfied that the Kenya Red Cross is a statutory body.

Mr. George Ng'ang'a Mbugua: We will get there.

So your answer is that the procurement of the ambulance service in the manner in which you procured it on behalf of the county government satisfied the requirement of the Public Procurement and Disposal Act?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Yes.

Mr. George Ng'ang'a Mbugua: Notwithstanding that there was the open tendering?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Yes.

Mr. George Ng'ang'a Mbugua: Is the County Government of Kericho a public body?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Yes, it is.

Mr. George Ng'ang'a Mbugua: Is it bound by the provisions of the Public Procurement and Disposal Act?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Yes, it is.

Mr. George Ng'ang'a Mbugua: As you were responding to this issue, you made reference at page 24 of the same document where you say:-

“The commencement date was 20th February, 2014”.

Hon. Senators, this is the commencement date of the E-plus contract. This was budgeted for in the Supplementary Budget which had already been submitted to the County Assembly and the Supplementary Budget was anticipated to be approved before 20th February.

First, confirm that by the time the contract was to take off on the 20th February, 2014, the Supplementary Budget for Kericho County Government had not been approved by the County Assembly.

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): That is true.

Mr. George Ng'ang'a Mbugua: Confirm that the Supplementary Budget that you make reference to did not have an expenditure item with respect to ambulance hire. Is that true?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): The truth is that it was there initially and I did not expect that the Assembly will delete it from the budget line.

Mr. George Ng'ang'a Mbugua: Governor, I will ask that question again. In the Supplementary Budget that you allude to was there an expenditure item proposed by the County Government for hire of ambulances?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): No.

Mr. George Ng'ang'a Mbugua: So that when you make the statement, you made on that last paragraph, it is a misleading statement because you say that it had been budgeted for in the Supplementary Budget? That is a deliberately misleading statement.

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Counsel, that is not the position.

Mr. George Ng'ang'a Mbugua: We will make our own conclusions.

Mr. Kimutai Bosek: Objection! Hon. Chairman, Sir, I think the Counsel here is not giving time to the witness to explain.

Mr. George Ng'ang'a Mbugua: The clarification, hon. Chairman with due respect will be done.

Mr. Kimutai Bosek: The Governor sought to explain the fact that in the initial Supplementary Budget, that item is there but counsel is trying to run away from that.

Mr. George Ng'ang'a Mbugua: Mr. Chairman, Sir, the answer came from the witness; that there was no agenda item for hire of ambulances and I have referred him to his response and I am asking him whether according to his response and given the answer he has given, that the statement in the response is deliberately misleading. If counsel wants to conduct cross-examination on my behalf, I would gladly do that. He will have his chance to re-examine with due respect.

Mr. Chairman, Sir, they are eating into my time. Can we carry on?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Mr. Chairman, Sir, this is something that requires an explanation.

Mr. George Ng'ang'a Mbugua: You will clarify and that is why there is a re-examination session.

The Vice Chairperson (Sen. Murungi): Sorry, we said that this is not a judicial process. We want to know the truth and so we are not strictly caught by the rules of cross-examination and all that. Can you clarify what you want to say?

The Governor for Kericho (Prof. Paul Kiprono Chepkwony): Mr. Chairman, Sir, in the budget for Kericho County, we had indicated that we were going to buy ambulances, but

upon advice by professionals including the Health CEC, we felt that it would be more efficient to hire. So the money which we were going to use to buy was to be divided into hire for five months and then the rest would be used to buy two state of the art ambulances. We sent a team to the County Assembly to negotiate and the Health Committee was positive on this. It is only on the last stage during the full House that the entire budget both for hire and purchase was deleted. That is why you cannot see it in the supplementary budget. On our part, we did expect that the County Assembly would delete the budget line from the executive side.

Mr. George Ng'ang'a Mbugua: You knew that on 7th February when you were signing the contract which was to commence on 20th February, the approval of the County Assembly had not been obtained?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Yes, I knew.

Mr. George Ng'ang'a Mbugua: What would have been so difficult in waiting for the approval of the County Assembly before you signed the contract?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): It was because we did not expect the County Assembly to delete a budget which had been proposed by the executive. I was surprised.

Mr. George Ng'ang'a Mbugua: So, anything that comes from the County Executive by way of a budget should be rubberstamped by the County Assembly?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): I do not mean that.

Mr. George Ng'ang'a Mbugua: So, that I wind up on this, by the time the contract was being signed, you confirm that there was no budgetary approval or any budget that would meet that expenditure?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): That is not true.

Mr. George Ng'ang'a Mbugua: Let us go on as you continue to prevaricate. Now the issue of the cancellation and I am referring you to the letter that you alluded to. Perhaps maybe before I get there, let me ask my last two questions so that I pave way for my learned friend. I want to refer the Governor to the agreement at page 103, this is the E-plus contract. It is the pagination at the bottom of your document on the right hand side of your document.

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Let me seek the assistance of my counsel, please.

Mr. George Ng'ang'a Mbugua: At the top there, what that contract says there is the mode of termination and you confirm at the top that either party may terminate that agreement by giving not less than 60 days prior notice. Is that what the agreement says?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Yes.

Mr. George Ng'ang'a Mbugua: I want you to look at the letter that you alluded to which you wrote to E-plus at page 107. It is the 14th February letter. If you look at that letter, does it allude to a 60 days notice that is already covenanted in the agreement?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): No.

Mr. George Ng'ang'a Mbugua: Thank you. Let us go to the next document. Hon. Senators, I am referring to page 108; the letter from the Kenya Red Cross dated 19th February that is allegedly signed by one Dr. Abbas Gullet.

Now, I want you to look at that *vis-à-vis* the letter that we were given this morning.

Hon. Senators, I am referring to this letter that you allowed the Governor to produce today to confirm that, indeed, the contract has been mutually cancelled.

Maybe, Governor, you can have a copy of that letter from your bundle---

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): I do not have a copy.

Mr. George Ng'ang'a Mbugua: Your counsel can provide you with a copy.

Hon. Senators, if we are all there, I want the Governor to compare those two letters. Hon. Senators, as you also look at that, I want you to juxtapose the letter that was submitted this morning and the letter that is on page 108 of the Governor's documents. I am sorry, it is on page 107. If you are all there—

It is page 108? Okay; I think I am referring to page 108, but the letter is the one earlier submitted for 19th of February and the one submitted this morning for 28th of May.

Governor, I want you to look at the signatures of those two letters.

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Yes, I have seen.

Mr. George Ng'ang'a Mbugua: According to you, are those two signatures the same?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): They are different.

Mr. George Ng'ang'a Mbugua: Thank you. That would be all for the Governor.

Mr. Charles Njenga: Mr. Governor, because of our time, I wish to refer you to the agreement between the County of Kericho and Bluetechs. It is in our documents, the County Assembly of Kericho's documents at bottom page 9 going through to 16. I do not know what your pagination is, but it is the memorandum of agreement.

Mr. Governor, I just wish to refer you to the first page where you say: "And whereas Bluetechs has declared it has resources and expertise---;" that is at page 9 of the bundle. Do you see that?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Yes.

Mr. Charles Njenga: That is the second paragraph of the first page. Now, my question is very simple; do you have a profile of Bluetechs here with you that which you have submitted to the Select Committee?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): The investor is here; we did not provide---

Mr. Charles Njenga: I am asking about a profile; do you have a profile of this company that you have submitted to the Select Committee?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): No.

Mr. Charles Njenga: You do not have. If you go to Clause 1g of that agreement where you allude to a benefit sharing agreement in the ratio of 30 per cent to 70 per cent, can you confirm that under that clause, the County of Kericho was to contribute 10 per cent of the capital investment?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Yes, I do.

Mr. Charles Njenga: You confirm.

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Yes.

Mr. Charles Njenga: It was in your testimony that this project was for a total sum of Kshs17 billion.

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Yes.

Mr. Charles Njenga: So, simple mathematics, as a professor, shows that 10 per cent of Kshs17 billion is Kshs1.7 billion which the County of Kericho was to contribute. Am I right?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): I agree; but in what form? It is not said here in what form.

Mr. Charles Njenga: Capital investment into the project. Is that right?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): It did not have to necessarily be money to contribute directly. We would as well have forgone our payments for three years to recoup the money which the investor put for us as start up.

Mr. Charles Njenga: But the agreement says “will contribute 10 per cent of the capital investment and land. Is that right? That is a plain reading of the agreement.

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): But, again, Mr. Chairman, Sir, I said this is a memorandum of agreement; this is not a contract.

Mr. Charles Njenga: Whatever you call it, Governor, I am just asking you to confirm---

The Chairperson (Sen. Obure): Please, deal with the questions being raised?

Mr. Charles Njenga: Very well, Mr. Governor. In your evidence, you said that this Benefit Sharing Agreement (BSA) has been submitted to the assembly. Is that right?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): The BSA had been submitted to the Assembly on the 28th March.

Mr. Charles Njenga: Are you the one who submitted it?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): It was submitted by the CEC Energy.

Mr. Charles Njenga: Do you have a copy of any correspondence forwarding that BSA to the County Assembly through the office of the Clerk or through the office of the Speaker?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): This is something that I can confirm---

Mr. Charles Njenga: That is something you can confirm?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Yes.

Mr. Charles Njenga: But as you stand there, you do not have it; is that right?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): I do not have it.

Mr. Charles Njenga: Now, if we go to Clause 3a on the general provisions, Governor, it talks about amendments or modifications; is that right? Are we together, Governor?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): May I just correct something, Mr. Chairman, Sir? Yes, a letter has been availed for me by the CEC Energy, and this confirms that the letter was sent to the County Assembly. If you wish you can have it; it is right here.

The Chairperson (Sen. Obure): That agrees with the BSA. He may continue.

Mr. Charles Njenga: Now, let me continue, because this is our time for cross-examination and we are very limited in our time.

On the amendment clause, 3a—

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Which page?

Mr. Charles Njenga: In Clause 3a, you confirm that under this agreement, any amendments or modification would only be valid if in writing and signed by all the parties; is that true?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): That is agreed.

Mr. Charles Njenga: That is true. Now, do you have before this Select Committee a memorandum, a document or even a memo signed by both parties – Bluetechs and County of Kericho – amending or modifying this agreement?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): At this point, we have not cancelled the agreement. The only thing is that the investors stated the position that it was non-binding. But what I said this morning is that I expected that the Public Private Partnership Act is fully complied with; all the 21 steps to be complied with before ultimately the contract is signed.

Mr. Charles Njenga: So, it is your evidence that this agreement is in force?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Subject to the confirmation by the investor that it is non-binding and this is something that you can see from the letter which was sent by the investor but we have not cancelled.

Mr. Charles Njenga: But your evidence is that this is still in force?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): This is still in force and this is a very important project for us and that is why we want it to go through.

Mr. Charles Njenga: Now confirm to this Select Committee that in this agreement that you are saying is still in force, whether you obtained the approval of the Cabinet of Kenya as required by the Public Private Partnerships Act.

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): This is work that has just begun. Yesterday---

Mr. Charles Njenga: Do you have or do you not have the approval?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): No.

Mr. Charles Njenga: You do not have.

Mr. Kimutai Boseck: Again, Mr. Chairman, Sir---

Mr. Charles Njenga: It is a simple direct question and I do not know what counsel wants to say.

Mr. Kimutai Boseck: The Governor has explained that it is work in progress but counsel is trying to run away from that.

Mr. Charles Njenga: All I want to go on record and it has, is that there was no approval obtained prior to signing this agreement.

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Mr. Chairman, Sir, I would not like to be put in a situation where the answers are just yes or no because some answers require some bit of explanation.

Mr. Charles Njenga: You will explain. You will have time by your counsel to re-examine, there is no problem, do not worry. Relax.

Now, when you say that there is a BSA that sets out the details of the sharing of the benefits, why would it have been so difficult or why did you not deem it necessary to share with this Committee a copy of that BSA in your documents that you submitted to the Select Committee?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): There is nothing difficult, it can still be done.

Mr. Charles Njenga: But it was not submitted. Do you confirm that?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): The counsel needs to confirm to me whether that is one of the documents---

Mr. Charles Njenga: Well, I can confirm to you because I have your documents. It was not submitted.

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): If not, it can be submitted because it is there. It is a draft because it has not been signed.

Mr. Charles Njenga: There is a memorandum of understanding, I am referring to the documents submitted today by the Governor and I just wish to refer you to the terms – it is a document that was availed today.

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): I do not have it, Mr. Chairman, Sir.

Mr. Charles Njenga: Your advocate is going to give you a copy.

(Consultations)

I have a copy. Now confirm whether that is the memorandum of understanding that had been signed prior to the entering of this agreement. Just look at the signatures on the last page. You signed it?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Yes.

Mr. Charles Njenga: On 21st December, 2013?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): That is correct.

Mr. Charles Njenga: Before you signed this memorandum of understanding, did you submit it to the Attorney-General of the Republic of Kenya for legal advice as required by the Act?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): No, I did not.

Mr. Charles Njenga: Just look at the terms---

Mr. Kimutai Boseck: Mr. Chairman, Sir, we would want the counsel to go into the Act he mentioning.

Mr. Charles Njenga: We shall submit. This is cross-examination. We want to take our time on the facts. We shall submit on the law.

Mr. Kimutai Boseck: But you are duty bound to tell us which Act you are referring to.

Mr. Charles Njenga: It is Triple P Act and we shall submit on that.

Look at the terms, Mr. Governor. I just want you to read for us that one paragraph that contains the terms.

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): It is envisioned that the parties will mutually work together to develop the mechanisms that will facilitate the construction and operation of the said plans under terms mutually agreed upon by the two parties and incorporated in the final binding memorandum of agreement.

Mr. Charles Njenga: A final binding memorandum of agreement.

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): That is true.

Mr. Charles Njenga: This final binding memorandum of agreement that you refer to in the memorandum of understanding---

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): It is not the one you are referring to.

Mr. Charles Njenga: That can only be the memorandum of agreement that you signed subsequently.

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): That is not true. I have said that the final contract will be subject to full compliance with the 21 steps required by Public Procurement and Disposal Act. This is a memorandum of understanding and I hope that the understanding is not that you consider this is a contract because my position is that this is a memorandum of understanding.

Mr. Charles Njenga: Mr. Governor, on 21st December, you entered into an understanding that will subsequently lead into an agreement. When you look at Clause 4(a) of the main agreement, you specifically refer to the memorandum of understanding and you say that this agreement now supersedes the memorandum of understanding. Is that true? Just confirm to the Committee.

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Mr. Chairman, Sir, my understanding is that having been explained to thoroughly by the investor that this is non-binding until all other steps have been complied with, I thought the matter has been settled.

Mr. Charles Njenga: Just confirm for the record, and I will not refer to that anymore, that Clause 4(a) of your agreement. Just read that for us.

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): It reads: -
"An understanding between the parties with respect to the subject matter hereof and

supersedes the earlier memorandum of understanding which shall cease to have any further force or effect.

Mr. Charles Njenga: Mr. Governor, in your evidence, you referred to other memorandum of understanding that you have signed with other companies. These are in volume one of your documents.

Mr. Chairman, Sir, I am referring to volume one documents at page 42 going through to page 60. It is written Prof. Paul Kiprono Chepkwony's bundle of documents Vo.1 – Memorandums of agreement signed with other entities.

Mr. Governor, you have a memorandum of understanding with SACOMA, Kenya-UK Savings and Co-operatives.

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): That is true.

Mr. Charles Njenga: You have the one with New Ulm University of Applied Sciences in Germany.

Confirm to this Senate Committee the fact that in all these MOUs that you refer to in these documents, none of them contain any obligations in terms of commitment of resources or any expenditure on the part of the County of Kericho.

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): That is correct.

The Chairperson (Sen. Obure): You said that they do not have any obligations?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Yes. These are simply MOUs that would bring both sides to start working together.

Mr. Charles Njenga: These are simple MOUs that do not require the County to give 2 per cent, 10 per cent or 5 per cent of anything?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): But the other one was going to be a Public Private Partnership (PPP).

Mr. Charles Njenga: That is okay. These are MOUs that do not require the County Government of Kericho to spend a single cent. Is that right?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): That is true.

Mr. Charles Njenga: So you will agree with me that they are different from the agreement that you entered into with Bluetechs UK Ltd in the regard that the agreement

requires and commits the County to an expenditure of a capital nature and to allocation of land to a private entity?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Even the Bluetechs one does not. From the clarification, it does. I have said until we go through all the requirements, only then will I sign the contract. So, as it is now, it is non-binding and there is no danger of losing any money.

Mr. Charles Njenga: But for the record, do you confirm that they do not have a similar clause as the one in the agreement that commits the County to some commitment of a capital and resource nature?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Counsel, if it is about format, would you---

Mr. Charles Njenga: It is not about format, just the content.

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Yes, counsel. You would also see that looking at the three that are here, they are also different in nature. They do not look the same.

Mr. Charles Njenga: Okay, I am not referring to the format. I was looking more to the text, substance and the content.

As I close, because of time, you have said and insisted that the Motion for your removal is malicious on the part of the Assembly. Is that right?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Did I use those words?

Mr. Charles Njenga: You have said that it is because you brought a case against the Assembly and that is why MCAs---

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): I have not said that.

Mr. Charles Njenga: Is it your position that any action on the part of the Assembly questioning the Executive can only be of a malicious intention?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): No.

Mr. Charles Njenga: In your affidavits in the suit that you filed in the High Court,-- and I am referring to the supporting affidavit in the filing- you accused the Assembly at paragraph 21, if I may read:-

“ The said Motions were issued without following best practices and they were issued in an arbitrary, malicious, unreasonable, capricious and haphazard manner.”

Those are your words. You believed that whenever the Assembly questions your actions, it can only be malice. That is why you went to court.

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): We were not suing the Assembly. We simply were seeking legal interpretation of certain aspects.

Mr. Charles Njenga: But you alleged malice on the part of the Assembly, right?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): That cannot be true.

Mr. Charles Njenga: It is your affidavit, Mr. Governor. It is on record and I will not highlight on that because of my time.

Can you confirm that this suit came well and way before the proposal to remove you by way of an impeachment?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): True, the notice of Motion came the same day with my impeachment.

Mr. Charles Njenga: In fact, you swore the affidavit on 22nd April, 2014.

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): That is correct.

Mr. Charles Njenga: So that even before the proposal and the resolution to impeach you, you were still alleging malice on the part of the Assembly? Is this right? Malice has always been your consistent defense.

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): That has not come from our mouth.

Mr. Charles Njenga: Before you moved to court on this matter, did you engage these other forums that you are now saying you engaged? Did you, for example, talk to the elders? Why did you deem it fit to just rush to court immediately that after a seeming disagreement arose?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): It is because I understood that it is only courts of law that have the mandate to interpret constitutional matters, not the Council of Elders.

Mr. Charles Njenga: So, you did not engage with the Assembly in any other manner apart from the courts interventions sought?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): To be very clear, the Assembly was not sued.

Mr. Charles Njenga: Finally, I wish to refer you to a letter. I am referring the witness to page 111 of his documents. That will be my last line of my cross-examination. This is an internal memo signed by Mr. Charles Kirui to the Governor.

The Chairperson (Sen. Obure): Which documents are you referring to?

Mr. Charles Njenga: It is an internal memo in the main bundle of the responses by the Governor. Just confirm that by way of this letter, your chief of staff is asking you to appoint certain persons to certain positions.

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): That is correct.

Mr. Charles Njenga: Now, had these positions been created by the County Public Service Board?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): No. That is why I sought---

Mr. Charles Njenga: The question is: Why were you requesting for positions which had not been created by the County Public Service Board? At this time, the Board was in place. Why could you not propose to the Board to create certain positions with the approval of the County Assembly and then request that those positions be filled competitively?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Counsel, we were under pressure from work and service is needed to be delivered.

Mr. Charles Njenga: So pressure from work made you not comply with the applicable rules and regulations?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Even as at now, not a single position has been approved by the County Assembly of Kericho.

Mr. Charles Njenga: Finally, I wish to refer to my documents. That is the County Assembly of Kericho's documents at pages 58, 59 and 60. I will ask you to go through these pages keenly when you retire. At page 60---

The Chairperson (Sen. Obure): Counsel, you should be heading towards winding up your cross-examination. You have four minutes.

Mr. Charles Njenga: Indeed. I will just refer the Governor to the letter by the Chairman of the Transition Authority. For the record, I will read one paragraph that states:-

“It is our considered view --- Mr. Governor, please read for us.

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): It reads:-

“The Governor has no mandate to establish or create offices of any kind. The discretion to fix salaries and entry points in public service remains the discretion of the Salaries and Remuneration Commission. The Board is not competent to regularize annuity.”

Mr. Charles Njenga: We also confirm that there was a report by the Board of persons it deemed not to have been regularized in terms of staff. Right?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Yes.

Mr. Charles Njenga: That is the document at page 58.

The last question, Mr. Governor is: Have you taken any action to either remove from the service of your office or to dismiss from office staff found by the Board to have been irregular or otherwise still in employment and drawing salaries from the official payroll of the county?

The Governor of Kericho (Hon. (Prof) Paul Kiprono Chepkwony): If you look at the Transition Authority (TA) Guide Advisory read together with the section that I have read, Paragraph 3 read;

“then the officers may be deployed to the office of the governor to perform identified functions.”

They should have clear job descriptions. If there are any persons performing such jobs on temporary or on *ad hoc* contracts, they should be given an opportunity to participate in a competitive interview to fill the vacant offices. That is our position

Mr. Charles Njenga: Do you have before you a contract of any of these employees that you say were employed on contract? Did you submit any to the Select Committee of this honourable Senate?

The Governor of Kericho (Hon. (Prof) Paul Kiprono Chepkwony): Well, I need to confirm though but we have them.

Mr. Charles Njenga: You did not?

The Governor of Kericho (Hon. (Prof) Paul Kiprono Chepkwony): I need to confirm. I cannot remember.

Mr. Charles Njenga: You cannot remember? That is your response.

The Chairperson (Sen. Obure): Is that what you are saying? You cannot remember?

The Governor of Kericho (Hon. (Prof) Paul Kiprono Chepkwony): I cannot remember whether that was submitted to this Committee. But whether they are there or not, I am sure they are there. The letters of the contracts are there.

The Chairperson (Sen. Obure): What was your question initially?

Mr. Charles Njenga: He was saying that the irregular staffs were employed on contracts. I was asking him to confirm whether he has submitted to this Committee, for the benefit of this Committee, one of those contracts for its evaluation.

The Chairperson (Sen. Obure): What is your response to that?

The Governor of Kericho (Hon. (Prof) Paul Kiprono Chepkwony): We can send to this Select Committee all those possible contracts that we have for the people that are involved.

The Chairperson (Sen. Obure): So you are saying that they are there?

The Governor of Kericho (Hon. (Prof) Paul Kiprono Chepkwony): Yes, they are there.

Mr. Charles Njenga: But the above present had not been sent?

The Chairperson (Sen. Obure): Yes, they had not been sent.

Mr. Charles Njenga: Mr. Chairman, I do not know how much time we have.

The Chairperson (Sen. Obure): You have one minute.

Mr. Charles Njenga: I just wish to ask one question to the other witness. My colleague will ask him two questions and then we end.

The Chairperson (Sen. Obure): Within that one minute?

Mr. Charles Njenga: He should shoot up within one minute. The witness is eating into our time. I think you should stop the watch.

Mr. George Ng'ang'a: Thank you, Bishop. I have two questions. One, are you the official spokesman of the "Miot", Kipsigis Council of Elders?

Bishop Paul Leleito: I am standing in for the Chairman. So, I am.

Mr. George Ng'ang'a Mbugua: So, do you have a letter of authority from the Chairman of that "Miot" giving you authority to appear here on his behalf?

Bishop Paul Leleito: The authority was given by word of mouth.

Mr. George Ng'ang'a Mbugua Word of mouth?

Bishop Paul Leleito: Yes.

Mr. George Ng'ang'a Mbugua Have you ever served in any capacity within Kericho County, appointed by the Governor, to head a certain task force?

Bishop Paul Leleito: Yes.

Mr. George Ng'ang'a Mbugua Which task force is it that you were appointed to head by the Governor?

Bishop Paul Leleito: It was a water project.

Mr. George Ng'ang'a Mbugua So you were drawing allowances to serve in that taskforce?

Bishop Paul Leleito: Yes.

Mr. George Ng'ang'a Mbugua: Paid by the County Government of Kericho?

Bishop Paul Leleito: Yes.

Mr. George Ng'ang'a Mbugua Thank you.

Bishop Paul Leleito: Chair!

The Chairperson (Sen. Obure): Yes!

Bishop Paul Leleito: What is the relevance of that?

The Chairperson (Sen. Obure): No.

(Laughter)

The Chairperson (Sen. Obure): Bishop, take your seat.

Bishop Paul Leleito: Thank you.

The Chairperson (Sen. Obure): It is all over for you now.

(Laughter)

The Chairperson (Sen. Obure): Ladies and gentlemen, we will now proceed to the re-examination of the witnesses. We will be spending the next one hour doing the re-examination. So, counsel, for the Governor, please, start.

Mr. Kimutai Bosek: I would like to re-examine the Bishop first.

The Chairperson (Sen. Obure): Bishop, get back to your seat. You may understand the relevance of that now.

Mr. Kimutai Bosek: Bishop, I am going to ask you only one question in re-examination. You have been asked whether you have ever served in any taskforce within Kericho County Government. My question is, have you ever served in any other taskforce within the Kenyan Government?

Bishop Paul Leleito: Yes I have.

Mr. Kimutai Bosek: Which one?

Bishop Paul Leleito: The Mau Taskforce.

Mr. Kimutai Bosek: Is there any other or that one only?

Bishop Paul Leleito: Many years ago, there was a programme for education in Kenya and I served in it as well.

Mr. Kimutai Bosek: What was the name of that taskforce on education?

Bishop Paul Leleito: It was a project on curriculum development.

Mr. Kimutai Bosek: Other than being a Bishop, did you have any formal employment?

Bishop Paul Leleito: I was working in the church, I have also worked in the tea industry and I have taught.

Mr. Kimutai Bosek: Where were you teaching?

Bishop Paul Leleito: I taught at the Kenya Highlands University.

Mr. Kimutai Bosek: When you were in the other taskforce, were you also drawing allowances?

Bishop Paul Leleito: Yes, I was.

Mr. Kimutai Bosek: That is all for you.

(Laughter)

Bishop Paul Leleito: Mr. Chairman, I do not know what these people are after.

Mr. Kimutai Bosek: I now invite the Governor for a few questions in view of examination.

Governor, you were asked about the contract which aborted between The Kenya Red Cross Society and The Kericho County Government. When was this agreement supposed to commence?

The Governor of Kericho (Hon. (Prof) Paul Kiprono Chepkwony): Counsel, I think you have all the information on the record.

Mr. Kimutai Bosek: Yes, it is true that the contract was supposed to commence on the 20th February?

The Governor of Kericho (Hon. (Prof) Paul Kiprono Chepkwony): Yes, that is true.

Mr. Kimutai Bosek: Should it not have commenced? Is it not true also that for you to come out of it, you were required to give sixty days notice?

The Governor of Kericho (Hon. (Prof) Paul Kiprono Chepkwony): That is true.

Mr. Kimutai Bosek: Did you terminate this contract before or after it came into effect?

The Governor of Kericho (Hon. (Prof) Paul Kiprono Chepkwony): Before it came into effect.

Mr. Kimutai Bosek: So, are you telling the honourable Select Senate Committee that the contract was actually for the future but before the 20th February, that contract was no longer there?

The Governor of Kericho (Hon. (Prof) Paul Kiprono Chepkwony): Yes.

Mr. Kimutai Bosek: When did you write that letter? Could you confirm that you wrote the letter on the 15th February?

The Governor of Kericho (Hon. (Prof) Paul Kiprono Chepkwony): No, that was on 14th February.

Mr. Kimutai Bosek: Sorry, it was on 14th February.

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): It was on 14th.

Mr. Kimutai Bosek: You were asked about the signature of somebody by the name of Abbas Gullet. Are you a document examiner?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): No, but I am also aware that somebody can “BP” for someone else.

The Chairperson (Sen. Obure): What is to “BP”?

Mr. Kimutai Bosek: To be signed for.

Mr. George Ng’ang’a Mbugua: Mr. Chairman, Sir, I do not like interjecting. The answer that we got from the Hon. Governor is that those signatures are different. Re-examination cannot be intended to change the answer or the evidence given in cross-examination. So, the question as to whether he is a document examiner would really be out of place in re-examination.

Mr. Kimutai Bosek: Thank you very much, but these are issues that are arising from cross-examination and I am entitled to have them clarified. Is it not true that the letter from Kenya Red Cross dated 19th is actually being signed for the person who is named?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Yes, I can confirm that Abbas was out of the country.

Mr. Kimutai Bosek: When you look at the letter, is it not that it was signed for Abbas?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Yes.

Mr. George Ng’ang’a Mbugua: Sorry. Again I am having a problem unless we looking at different documents. The letter we have is not written for or on behalf of anybody. It is written Dr. Abbas Gullet and on top of the line there is a signature. Unless, we do not have the same letter.

Mr. Kimutai Bosek: We are referring to the earlier letter. My learned friend here is becoming jittery because the truth is now emerging. He should relax. Hon. Chairman, Sir, it was signed by Dr. Abbas Gullet, but the previous one was signed on his behalf. The one that was signed yesterday was signed by the person named.

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Mr. Chairman, Sir, is this something that we can confirm from the Red Cross?

Mr. Kimutai Bosek: If I might also say, Sen. Billow, that because this one dated 28th May has been confirmed by Dr. Abbas Gullet, it means that he had given somebody else that authority to sign on his behalf.

In this Committee this morning, you mentioned about an MCA whom my learned colleagues here referred to as an extortionist. Is it not true that you could not name that person because of guidance from the Chair?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): It is true.

Mr. Kimutai Bosek: But that is a person who exists in real life?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): It is true.

Mr. Kimutai Bosek: Going back to your engagement with the Red Cross, what do you know about the Red Cross Society?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): The Red Cross Society is a statutory body in Kenya.

Mr. Kimutai Bosek: Meaning that it is established by an Act of Parliament?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Yes.

Mr. Kimutai Bosek: When it comes to issues of procurement, what do you know about such issues *vis-à-vis* statutory bodies?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): It is possible to do single sourcing from such bodies.

Mr. Kimutai Bosek: It is your evidence that it is possible to do single sourcing from a statutory body. Is that not so?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Yes.

Mr. Kimutai Bosek: That sometimes you do not need to go through the tendering process?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): That is true.

Mr. Kimutai Bosek: The whole of yesterday, there was a very negative picture painted about Kericho and one would get the impression that it is not a good place for investment. Are there other foreign investors who have invested in Kericho?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): There are many. We have the Uniliver, James Finlays, Kaisugu, Williamson and many other companies. So, Kericho is the best destination for investment. These are companies that have been there for nearly 100 years.

Mr. Kimutai Bosek: So, you are confirming to this Senate Committee that there are so many other investors that are in Kericho?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Yes and the development of discussing one investor can negatively affect Kericho County.

Mr. Kimutai Bosek: Was Bluetechs coming in pursuant to procurement of their goods and or services or as an investor?

The Governor for Kericho County (Hon. Prof. Paul Kiprono Chepkwony): As an investor.

Mr. Kimutai Bosek: Was it coming in as a service provider by any way?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): No.

Mr. Kimutai Bosek: It was also alleged that you do not need 100 megawatts of power in Kericho. What do you have to say?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Yes, it is true. In fact, we need about 2 megawatts for the whole county but the 98 megawatts was going to be sold to the national grid to be used by the rest of the Kenyans.

Mr. Kimutai Bosek: I take you to the issue of investment. A picture has been painted very negatively about the MOU and MOA. Who in your knowledge drafted the MOA?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): It was the legal officer within the Kericho County.

Mr. Kimutai Bosek: Mr. Chairman, Sir, I think we will allow him to mention his name.

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): His name is Onesmus Langat.

Mr. Kimutai Bosek: Is he present before this honourable Select Committee?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Yes.

Mr. Kimutai Bosek: Before you signed it, did you ask him to give you the legal opinion on it?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Yes, many times.

Mr. Kimutai Bosek: It has been alleged that that MOU was going to really push the county on its knees. What do you have to say about that?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): That is not true.

Mr. Kimutai Bosek: It has also been said that the MOU was legally binding. What do you have to say?

The Governor for Kericho County (Hon. Prof. Paul Kiprono Chepkwony): That is not true.

The Governor for Kericho County (Hon. Prof. Paul Kiprono Chepkwony): As far as you are concerned, does the MOA bear an embossment from the collector of stamp duty?

The Governor for Kericho County (Hon. Prof. Paul Kiprono Chepkwony): No.

Mr. Kimutai Bosek: The MOA and BSA, confirm to this Select Committee of the Senate that you sent the BSA for purposes of being interrogated by the County Assembly.

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): That is correct.

Mr. Kimutai Bosek: And that in doing so, you wanted the input from the said Assembly?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): That is true.

Mr. Kimutai Bosek: Do you have in your cabinet or within your staff people who are conversant with investment either at the county level, national level or international level?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): My Deputy Governor, Susan Kikwai, is the former Managing Director, KenInvest and she is a guru in investment matters.

Mr. Kimutai Bosek: Would such a project really have taken place, even with your giving it an okay, before the investor seeks licenses and approvals from the relevant statutory bodies or government bodies?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): We were ready to go through all the processes and, in fact, the Deputy Governor has been very instrumental in guiding investors; advising them that they need to register with Kenya Investments Authority (KenInvest) and so many other steps, including complying with the requirements of the Public Private Partnership Act; the 21 steps that are required. So, we do not go wrong in Kericho.

Mr. Kimutai Bosek: Confirm to this tribunal that at the moment, you do not have the officers that you have called – are they ward co-ordinators?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Ward Administrators.

Mr. Kimutai Bosek: Ward Administrators?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): That is correct.

Mr. Kimutai Bosek: From your general knowledge of other counties in Kenya, do they have them?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Yes, quite a number.

Mr. Kimutai Bosek: What is this that has made Kericho not to have them?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Well, there has been a bit of a tug of war between the County Public Service Board and the Assembly; and, at some point, a Motion came through saying that we should stop the process of recruitment until certain things are done. That is why employment has not taken place up to now.

Mr. Kimutai Bosek: You were asked about Bluetechs; as to whether you know about their profile; what do you have to say?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Yes, I do. But it was not presented here. That was the question; as to whether the profile was presented here.

Mr. Kimutai Bosek: You are telling this honorable Select Committee of the Senate that if you had been given a chance, it would have been presented. Is that what you are saying?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Yes; they even had a PowerPoint presentation which they would have done to this Select Committee.

Mr. Kimutai Bosek: Do you know of any other place where this company of UK has invested in?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): India is one of the countries where they say they are operating in matters of coal.

Mr. Kimutai Bosek: Yes.

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Yes, India. I hope Kumar could be allowed to say some of the other places – I do not know whether that would be in order. The investor is here; he could---

The Chairperson (Sen. Obure): You cannot be allowed to do that now.

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): I comply.

Mr. Kimutai Bosek: Okay. When you were served with the summons dated 9th, did the summons refer to the provisions of Standing Order No.63 of the Kericho County Assembly?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Maybe you should tell me what it states.

Mr. Kimutai Bosek: Standing Order No.63 is about being represented by counsel and being given a report of the Select Committee; and, also evidence of the Select Committee.

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Counsel, yes; but I did not get the report.

Mr. Kimutai Bosek: Were you given anything from the Select Committee?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): There was no Select Committee.

Mr. Kimutai Bosek: Have you ever appeared before any Select Committee that the Speaker referred to?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): No; I went directly to the Floor of the House, and that was it.

Mr. Kimutai Bosek: What of the allegations that you said you were given; what was the nature? Did it show where it was coming from, who signed it and other stuff like that?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Counsel, it is as it appears on the documents from the Speaker.

Mr. Kimutai Bosek: Yes; no signatures and no source---?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Well, those are issues that you already raised which I would not like to repeat.

The Chairperson (Sen. Obure): Answer directly, Governor.

Mr. Kimutai Bosek: There were no signatures and there were was no source?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): If you could just get me to the documents, it is easier for me to---

Mr. Kimutai Bosek: Confirm that those were the particulars that you were served.

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Yes, these are the ones. Now that I have them, those are the ones that were served.

Mr. Kimutai Bosek: Does it indicate the source?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): No.

Mr. Kimutai Bosek: Does it show the signature of the person who prepared it?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): No.

Mr. Kimutai Bosek: I have no further question, Mr. Chairperson, Sir.

The Chairperson (Sen. Obure): Thank you very much indeed.

I will give the Members of the Special Committee an opportunity to seek clarifications, ask questions, make interjections and say whatever they want to say on this in as short a period of time as possible.

Sen. Billow: Governor, the Auditor-General's report which you referred to earlier is the audit report for the period ending which financial year?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): 2012/2013.

Sen. Billow: 30th June, 2013?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Yes.

Sen. Billow: Okay. With regard to the contract, you are saying that it is still in force; that as far as your are concerned, that project is still in force and it has not been cancelled. This Benefit Sharing Agreement (BSA) which you submitted to the County Assembly in March, how did you do this BSA before the feasibility study had been done? You have said that the feasibility study has not been done, is it not?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): That is a very important question. Yes, we sought further advice just after the Memorandum of

Agreement (MoA) and the BSA left for the Assembly. The correct procedure was to begin with the Public Private Partnership (PPP) note. So, this is a project which is basically at the initial stage.

Sen. Billow: So, a feasibility study was not done?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): The investor had indicated that it needs to start, but what we said is that we will make sure that we go through all the requirements as a county.

Sen. Billow: Yes, but regarding the feasibility study, no feasibility study has been done?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): There is a pilot feasibility study that has been done, especially on the intensity of sunlight; whether it is viable for the investor to even put solar panels where there is very little light.

Sen. Billow: I am just curious to know where the figures came from – the cost of the project of Kshs17 billion and the profit of Kshs153 million which you will get – where are these figures coming from if the feasibility study had not been done?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): The Kshs17 billion just came from the investor; it is what the investor was willing to invest from the onset but it had nothing to do with mathematics or on what the county will contribute---

Sen. Billow: Okay; my last question on that is, is this project included in the County Integrated Development Programme for the five years for the county?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Yes.

Sen. Billow: It had been included?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Yes.

Sen. Billow: When was that development plan done? When was it concluded; was it in April or---? When was the County Integrated Development Plan (CIDP) completed?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): The CIDP was completed in April.

Sen. Billow: In April?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Yes.

Sen. Billow: So, this project was part of the developments that were included in there?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Yes.

Sen. Billow: Okay.

The Chairperson (Sen. Obure): Yes, Sen. Nobwola?

Sen. Nobwola: I just have one question; whether you have a PPP note established for any other projects which are likely to take place in the county or, up to this moment, that has not been given any attention.

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): No, this is the first major one which we are beginning with.

The Chairperson (Sen. Obure): Yes, Sen. Karaba?

Sen. Karaba: Governor, I would wish to find out whether you know some geography of Kericho.

(Laughter)

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Yes, I do. I come from Kericho and I know it very well.

Sen. Karaba: Do you know it?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Yes, I know Kericho.

Sen. Karaba: Are you aware that it straddles the Equator and that the Equator is not very far from there?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Yes, in fact, we are at the centre of the earth.

Sen. Karaba: You are at the centre?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): We are right at the centre.

Sen. Karaba: Meaning that it is hot and dry every other day of the month?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Yes.

Sen. Karaba: It is normally wet.

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Very; almost 300 days a year.

Sen. Karaba: Millimeters of rainfall?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Yes.

Sen. Karaba: With cloud cover?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): With cloud cover.

Sen. Karaba: Most of the times?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Most of the times.

Sen. Karaba: I rest my case there.

(Laughter)

Sen. Elachi: Mr. Chairman, Sir, the county assembly is raising a matter about competitive bidding. I am looking at the contract and wondering whether you were able to liaise with the Cabinet Secretary for Energy knowing very well that up to now, you still have to work closely with the national government. Did you get any advice to continue with the contract? I will give you an example of Nakuru County which has the same project but with a different company. At the moment, they have been told to wait.

The Governor of Kericho County (Hon. (Prof) Paul Kiprono Chepkwony): That is a very important question. Upon realization that this is a very important project for the county and for the county, we ensured that the necessary steps are followed. One of the issues that you have raised will be included in the entire preparation of the project. The Public Procurement and Disposal Act is the point at which we are now. Meanwhile we wanted to do preliminary work to make sure we interact with the investor before the memorandum of understanding is signed. All the other steps to step 21 will be followed.

Now, let me respond to Sen. Karaba's question; Kericho is a very hot area. The Soini area where the project will be situated is at the border with Kisumu County which is generally a very hot area. So, the investor using data from NASA has confirmed that it is viable to put up a solar project in that area.

Sen. Elachi: Did you meet the Energy Committee with your proposal or did you meet them after signing the memorandum of understanding?

The Governor of Kericho County (Hon. (Prof) Paul Kiprono Chepkwony): That is now the process which we began upon advice that we have to go through all those steps.

Sen. Karaba: Did you answer my question?

The Chairperson (Sen. Obure): He answered you and said that Soini is where the project is intended to be constructed and it is much closer to Kisumu border whose temperatures are much higher than the other areas of Kericho County. That is the way I understood it.

The Governor of Kericho County (Hon. (Prof) Paul Kiprono Chepkwony): I answered because I was expecting a question which did not come through but I have tried to answer all questions.

The Chairperson (Sen. Obure): Mr. Governor, in answering the question from your own counsel, he asked you if the memorandum of agreement was stamped and your answer is that it was not. What would be the effect of stamping a document?

The Governor of Kericho County (Hon. (Prof) Paul Kiprono Chepkwony): My understanding is that the counsel was alluding to the fact that the ultimate product that needs to be signed, and I think he was referring to a stamp duty, that is the point at which the contract becomes very serious.

The Vice Chairperson (Sen. Murungi): You are a professor of chemistry?

The Governor of Kericho County (Hon. (Prof) Paul Kiprono Chepkwony): Yes, specifically, pharmaceutical chemistry.

The Vice Chairperson (Sen. Murungi): So, would I be right to say that you are not very familiar with investment matters and the processes involved?

The Governor of Kericho County (Hon. (Prof) Paul Kiprono Chepkwony): You would be right.

The Vice Chairperson (Sen. Murungi): We are talking about Public Private Partnership Act. They say that the contracting authority, like the county governments, should establish a mode according to the guidelines issued by the Public Private Partnership Committee. You have said you are establishing the mode, have you received any guidelines from the Public Private Partnership?

The Governor of Kericho County (Hon. (Prof) Paul Kiprono Chepkwony): This is an aspect which we have advised our CEC Energy to begin processing. We have said that we are getting it right from the start.

The Vice-Chairperson (Sen. Murungi): As of now, the County Government of Kericho has not received any Public Private Partnership guidelines from the Committee?

The Governor of Kericho County (Hon. (Prof) Paul Kiprono Chepkwony): That is correct.

The Vice Chairperson (Sen. Murungi): Thank you very much.

Sen. Mutula Kilonzo Jnr.: Mr. Chairman, Sir, I have several questions for the Governor.

In the bundle, you have seen the advice of Transition Authority (TA) concerning your proposal to appoint several members of staff. Was this after or before you hired them?

The Governor of Kericho County (Hon. (Prof) Paul Kiprono Chepkwony): There are two sets of appointments. We have those that were provided for initially, then there are those that the chief of staff requested and I sought advice from the County Public Service Board to engage them. So, it was after.

Sen. Mutula Kilonzo Jnr.: The letter is dated 23rd April. I just wanted to confirm whether as of that date, the three persons you alleged in the county had been hired at this point.

The Governor of Kericho County (Hon. (Prof) Paul Kiprono Chepkwony): Yes, they had been hired.

Sen. Mutula Kilonzo Jnr.: Now at the time you sought the opinion on 17th, had they been hired?

The Governor of Kericho County (Hon. (Prof) Paul Kiprono Chepkwony): Yes, they had been hired.

Sen. Mutula Kilonzo Jnr.: The reason I asked that question is because, if you look at your legal opinion on the memorandum of agreement (MOA), it was also done after signing of the memorandum of understanding. The advice from your legal counsel on 10th January had been signed way after you had signed the memorandum of understanding.

The Governor of Kericho County (Hon. (Prof) Paul Kiprono Chepkwony): That is correct.

Sen. Mutula Kilonzo Jnr.: Confirm also that the MOA was forwarded on 28th March, 2014 to the Assembly.

The Governor of Kericho County (Hon. (Prof) Paul Kiprono Chepkwony): That was the BSA and not the MOA.

Sen. Mutula Kilonzo Jnr.: According to my record, maybe I was wrong. When was the MOA forwarded?

The Governor of Kericho County (Hon. (Prof) Paul Kiprono Chepkwony): The MOA was not forwarded to the Assembly.

Sen. Mutula Kilonzo Jnr.: According to the law, the question asked by Sen. Billow about the County Integrated Development Plan (CIDP) was supposed to have been passed by the County Assembly. Has the County Assembly of Kericho passed the CIDP?

The Governor of Kericho County (Hon. (Prof) Paul Kiprono Chepkwony): It has.

Sen. Mutula Kilonzo Jnr.: Was this proposed project in that CIPD?

The Governor of Kericho County (Hon. (Prof) Paul Kiprono Chepkwony): No. It is not true.

Sen. Mutula Kilonzo Jnr.: I can repeat the question. The CIPD is a collection of views by the members of your county to the projects they want you to undertake during the five years. The CIDP is supposed to be taken to the County Assembly for approval. When was it approved?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): It was approved in April.

Sen. Mutula Kilonzo Jnr: April of which year?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Of last year.

Sen. Mutula Kilonzo Jnr: It cannot be. The deadline was October.

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Sorry. It was October.

Sen. Mutula Kilonzo Jnr: October of which year?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): 2013.

Sen. Mutula Kilonzo Jnr: Now was this project part of the CIDP?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): The CIDP project mentions energy generally but not specifically.

Sen. Mutula Kilonzo Jnr.: The MOUs that you have signed together with the MOA were signed in advance and then sent to your County Assembly. Maybe you can tell us whether you understood that you could enter into this understandings or agreements and then forward them for ratification or whatever it is, to the County Assembly after the pact.

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): This was a standard report from the Executive having made a trip to the UK. So, we are simply giving a report on my visit and the investors that I met. It had nothing to do with forwarding to them for them to do anything. It was the entire report.

Sen. Mutula Kilonzo Jnr: On the question of a fair hearing, I have read the HANSARD of the proceedings at the County Assembly together with the defence given by your advocate. Is there something that you did not say or was omitted from that HANSARD?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): I have not seen the HANSARD.

Sen. Mutula Kilonzo Jnr: I am talking about the HANSARD of the County Assembly.

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Personally I have not read the HANSARD.

Sen. Mutula Kilonzo Jnr: Thank you.

Sen. Mwakulegwa: Mr. Governor, we all know that there is separation of power between the Executive and the Legislature. But the Executive in many cases can take the Bills or Motions to the House through a committee. Did you at any time, as the Executive, discuss with the Energy Committee so that they can discuss this project as a way of a Motion or a Bill in the Assembly? This is so that the entire Assembly was knowledgeable about this project. Did you ever discuss or have a Bill forwarded to the Energy Committee for them to facilitate any discussion in the House?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Not yet. The Bill has not been forwarded to the House.

Sen. Mwakulegwa: My second question is: The E-Plus contract that was signed in anticipation that there was a budget, had you also not briefed your Executive Committee member while meeting with the Committee that this was important and, therefore, influence them not to delete the budget?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): The Committee was convinced. In fact, at the time they came back, there seemed to be like there was a deal, that it would not be deleted but this was deleted at the full House. But at the Committee Stage, they seemed to have agreed that the way forward was to hire and then buy a few. That was the way.

Sen. Adan: Mr. Chairman, Sir, I have two questions. First, who owns the land that was supposed to be set aside for this particular project?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): It is the County Government of Kericho.

Sen. Adan: The second question is: You have said in your statement and also your lawyers have said that the memorandum of agreement was not a binding document.

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): That is correct.

Sen. Adan: And there is no liability so far incurred as a county government?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): That is correct.

Sen. Adan: In the event there is contestation from the County Assembly and also part of the people of Kericho in terms of this particular project, in the event that you are told to get out of this project, is it possible to get out without committing the county government?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): 100 per cent.

Sen. Sang: Governor, I want to take you to a question that was raised by Sen. Billow and Sen. Mutula Kilonzo Jnr with regard to the County Integrated Development Plan (CIDP). Whereas we do not expect that the CIDP would have specifics as to this kind of a project, but in talking about energy, did they zero in on solar energy as one of the options or they just thought of hydro energy and all the others?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Generally, energy, but, of course, the sub sets that are very obvious such as solar and hydro energy. Mainly hydro because we have many small waterfalls and then solar.

Sen. Sang: So, in your engagement as a County Government, you realized that the best option to start with would be solar. Is that so?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): By the way, we are already engaging investors also in many hydro projects. Very soon, there will be investors who will set up small hydro-power stations. So whoever comes whether it is on solar or hydro, we take them on board.

Sen. Sang: With regard to the figures, the Kshs17 billion project, who came up with those figures?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): It is the investor.

Sen. Sang: Was there any due diligence on the part of the county? How sure are you of those figures given by the investor? Did you engage any due diligence on your part as the County Government?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): There is a very detailed spreadsheet of things that would ultimately be availed. This is something that if the investor had been given time, he would have shed light on.

Sen. Sang: Finally, Governor, Kericho County is the only counties in this country that succeeded to have a Deputy Governor who was the immediate former Managing Director of KenInvest. This is the parastaal that helped this country in terms of investments. Somebody would expect that you are better placed or advised by the Deputy Governor in terms of your engagement with regard to investment. How closely do you work with your Deputy Governor and the CECs? Is this an agenda at one point in your small Cabinet?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): My Deputy Governor is so close to me. In fact, there is nothing that I do without consulting her especially on matters of investment.

Two, whenever I am away, she acts fully as Acting Governor.

Sen. Sang: So she definitely advised you with regard to this project?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Yes.

Sen. Billow: Mr. Chairman, Sir, to paraphrase that question because it is an important area, the Governor went to the UK and a few European countries in September. This is according to your notes. Governor, you were introduced to Bluetechs. Three months later, they came. You did an agreement in December and in January, you did a memorandum of agreement. Between the time when you signed in January, did you have a meeting of your County Executive where you tabled these projects, it was discussed, minuted and approved by your Cabinet before you signed that memorandum of agreement?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Every time we have an investor, we take it before Cabinet and we make sure that it is part of the agenda that gets mentioned that, for example, Investor "X" would like to come and invest in our county.

Sen. Billow: Was this particular one done?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Yes.

Sen. Billow: And your CECs approved it in the minutes?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Yes.

Sen. Billow: When was it approved?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): I do not remember, but we can avail the minutes.

Sen. Karaba: Governor, you have been a teacher?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): I am a teacher like you.

Sen. Karaba: You said you have visited the UK. How many times?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Once. This was the first time.

Sen. Karaba: Which month did you visit?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): I visited UK in August to early September.

Sen. Karaba: What weather did you experience?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): At that time? It was more like summer.

Sen. Karaba: But there are two main seasons?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Well I would say it was warm like Kericho.

Sen. Karaba: Very hot.

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Not so hot, just cool.

Sen. Karaba: But it can be very cold?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): I do not know I have not been there when it is cold.

(Laughter)

Sen. Karaba: But in winter, it is very cold?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): I have not gone to Europe in winter. So I do not know.

Sen. Karaba: When did you negotiate with that investor about project you intend to undertake, on this solar power? Is it the same time that you went there?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): At that time, they just declared an interest and we invited them to Kericho.

Sen. Karaba: And you saw it was fit for him to do it?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): By the way, to put the record straight, the investor had gone to the Kenyan High Commissioner in London seeking for possible areas to invest in the new counties. Actually it is the High Commissioner who directed him that the Governor for Kericho is around. I did not know them.

Sen. Karaba: But normally, you know the meaning of solar?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Solar means sun rays. Solar means the sun.

Sen. Karaba: Converted into ultraviolet rays?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): That is UVS. You are now in my Chemistry class.

Sen. Karaba: That is to get energy. You can only do it if there is direct insulation from the sun to the ground.

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): That is correct.

Sen. Karaba: Supposing there was a layer of cloud that might prevent the insulation, what happens to the ground?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Some UV can still penetrate the ground.

Sen. Karaba: Some?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Yes, quite a bit.

Sen. Karaba: But not direct?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Ultimately, it gets to the ground.

Sen. Karaba: Do you remember telling this august Senate that in Kericho, it is mainly cloudy all year round?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Yes, but there is good use that I want to share with you. Two days ago or so, Williamson has commissioned one megawatt of power generated from solar. That is a multinational company and yes, it is possible in Kericho. By the way, Kericho is better than the UK because we have at least, diffused light for 12 hours. In Europe, at times, it is three hours. We are better than Europe which is already going light scale in terms of solar.

Sen. Karaba: Europe can be very cold?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Yes.

Sen. Karaba: However, Kericho is cloudy?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): True.

Sen. Karaba: Thank you.

Sen. Elachi: Governor, I want us to go back to the issue of recruitment. I know when you were recruiting your service board, you nominate the Chair and then it goes through the county assembly for approval. I do not know why you thought that the other positions could be handled from an executive side. When you look at the County Governments Act, you will see that every appointment must go through the County Assembly after the nominations have been done so as to get an approval. I do not know whether in this case, it was the Chief of Staff who advised you that way. Looking at the law very clearly, it is important to advise us why you thought this was a matter of the executive.

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): The people who were vetted were chief officers and CECs. Others go through the interviews normally and may be appointed directly by the Governor like sub county administrators who do not go through vetting.

However, they have to go through interviews. So, we comply with the law. The individual sets we are talking about are people who have been helping on the interim period because of the slowness with which we have been taking people on board.

We wanted to make sure that the Assembly was involved in everything that we were doing. So, where they said that we should stop something, we stopped. Meanwhile, as we stopped, work had to go on. That is why we are saying that once we officially have those positions, they will go through the interviews like everybody else and nobody will be favoured.

Sen. Mutula Kilonzo Jnr.: Mine is a follow up question by Sen. Billow. The document on the opinion that you received was signed on 13th of January and yet your cabinet had already discussed and approved this. That leaves me a little worried. Would it not have been better for your legal opinion to go to your Cabinet as opposed to your Cabinet sitting and approving and you getting the opinion after the facts? I assume that the Cabinet meeting was held before 10th January.

The second question is on the issue of ambulances. Did your County Executive Committee (CEC) finance or inform the Committee of Health of the Assembly that you had already signed the contract? If that was the case, then this would not be a subject of an impeachment Motion. That appears unclear to me and even the memo that was addressed to you.

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Let me begin with the second one. Those were straight instructions that I gave to the team after I had already signed the contract. In fact, they were negotiating on the basis that there was a contract. We viewed the ambulance and it was a state of the art. It is on that basis that I was convinced that it was better to hire than to buy.

Sen. Mutula Kilonzo Jnr.: What about the question by Sen. Billow?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): The way we work in Kericho County and this is something that we will do, is that the legal officer has not been coming to our Cabinet meetings. We hear that in other places they do. However, this is something that we need to change so that every time we have CEC meetings they also come. The legal officer will advise me and I will give the report to the Cabinet.

The Vice Chairperson (Sen. Murungi): You are accused of gross violation of the County Governments Act, particulars being that you have recruited personnel and created offices in the county contrary to the County Governments Act. More particulars are that you appointed persons who failed to give adequate information and copies of CVs, academic and professional qualifications. Among those people that you are accused of not obtaining adequate information like their CVs and academic qualifications are a messenger, gardener and a tea person. What do you say to that?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): I have two things to say about that. This is something that goes through the Chief of Staff. We rarely get to meet. The things that happened in this particular case are that the County Assembly did not source the information that they have through official channels.

Pieces of paper were picked from here and there and compiled into an allegation. So, the allegation that we have has already been forwarded to the board because this is a matter that concerns the County Public Service Board in which the individuals were asked to submit their qualifications and CVs. Some said that they had some CVs which had been misplaced and those had been worked on.

The Vice Chairperson (Sen. Murungi): So, to your knowledge, there were no people who were recruited without qualifications?

The Governor of Kericho County (Hon. (Prof.) Paul Kiprono Chepkwony): Yes, everyone had met the qualifications.

The Chairperson (Sen. Obure): That brings us to the end of this session of cross-examination. We will move on to hear a witness from the Office of the Public Private Partnership (PPP) Unit at the Treasury.

This particular witness has been invited here on the initiative of this Special Committee. Governor, you can resume your seat. I will request this particular witness to come forward and take the seat just being vacated by the Governor. The gentleman is Eng. Stanley Kamau, he is the Director of the Public Private Partnership Unit at the National Treasury here in Nairobi. We need to swear him in.

(Eng. Stanley Kinuthia Kamau took the oath)

Thank you very much. You may take your seat, Eng. Kamau. This Special Committee is investigating the proposed removal from office of the Governor of Kericho County. One of the issues which has arisen here is the procedure for entering into a private public partnership under the Public Private Partnerships Act. The Committee has invited you to advise it on the procedure under the Act that the County Government needs to follow in order to enter into a private public partnership.

Secondly, you have been supplied with a copy of the Memorandum of Agreement between the County Government of Kericho and Bluetechs Group UK Ltd. This Special Committee would like you to explain to us whether your unit at Treasury has any information on this arrangement and what views the unit has on this particular arrangement. This is taking into account the provisions of Section 14 (2) (a) of the Act that provides that the Public Private Partnership shall serve as a resource centre on matters relating to public private partnerships. This is really the background against which you are invited to give us some insight on. We will ask the Vice Chairperson, Sen. Murungi, to elaborate this a little further.

The Vice Chairperson (Sen. Murungi): Mr. Chairman, Sir, in addition to the clarification on the matters which the Chairman has told you about, I just wanted to inform you that after you make your statement, for us to be fair to both sides, we shall request counsel for the Assembly and counsel for the Governor to ask you questions if any to clarify on your statement and then the Members of the Special Committee will also be free to seek any clarifications from you that they may deem necessary.

Thank you.

The Chairperson (Sen. Obure): You may now take the Floor.

Eng. Stanley Kinuthia Kamau: Thank you very much, Mr. Chairman, Sir. As you rightly said, my name is Eng. Stanley Kamau. I am the Director in charge of the PPP Unit. The PPP Unit was established under the Public Private Partnership Act of 2013 as a special purpose unit within the National Treasury to be a resource centre for public private partnerships and to advise the various contracting authorities undertaking public private partnerships.

I want to, first of all, start by perhaps drawing you to the attention of what is being defined as a public private partnership, because that is quite important as well. Under the Act, we have a definition of the public private partnership and this is important for us to know whether even the projects that are at question are supposed to fit in within that description and more specifically on the projects where the MOU and agreements were supplied to my office.

Under the definitions on page 313, it says that a public private partnership means an arrangement between a contracting authority and a private party under which a private party undertakes to perform a public function or provide a service on behalf of the contracting authority. As we look at the projects in the energy sector, is it a function of a county government? This is the question we should be asking ourselves. Can a county government enter into a contract to do a public private partnership on a function that possibly is not theirs? I am not saying whether this is their function or not, but we need perhaps to look at that. Then also the private party receives a benefit for performing a public function by way of possibly compensation from the Government charges or user charges or a combination of both. So, that is what defines a public private partnership and, of course, most of the risks are transferred to the private party. So, I think that definition is quite important as we look at this and see whether possibly the matter in question, some of these issues like in the energy sector would come to Government. Is it their function to do that? I think, of course, the Constitution would provide the answer as to the services that the county governments need to provide.

The other thing that I need to highlight before I come to the process is about every contracting authority doing a public private partnership is supposed to establish a node under the Act. A node is a unit within that contracting authority with specific competencies to be able to prepare help that contracting authority prepare the project, be the contact point for the PPP projects being undertaken and once the contract has been signed, these are the people who are going to monitor the performance of that particular project. So, that node needs to be in place. Now we did this February issue a kind of circular from the National Treasury providing guidelines as to how the PPP notes are supposed to be established. These were issued to all the contracting authorities including the county governments. So, we have issued some circulars how that needs to be composed.

From there, perhaps, I should talk about how a project is conceived, developed and how it is procured and signed for. If you want to undertake a PPP project even in the county governments, one of the things that one has to do is to conceptualize that project. You

need to identify, conceptualize and prioritize it because there could be many other projects within your county government that you want to undertake. Now, once you conceptualize that project and if it needs to fit in within your overall national plan, it needs to be part of the plans for the county government, for instance.

I think I heard of the Constitution Implementation Commission (CIC) or something that was being mentioned here. It used to be within that framework, because you cannot identify a project that is not helping the county to deliver a certain objective.

So, once that has been done, then these projects are supposed to be submitted to the Public Private Partnership (PPP) Committee established under the Act, which is supposed to be a kind of a clearing house which provides approval for projects. Every contracting authority is supposed to submit that proposal to the PPP Committee. Now, once that has happened, then they can now start developing that project further. They need to prepare a feasibility study because it is a requirement under the Act. You cannot do a project if you do not have a feasibility study. We have already indicated in the Act what kinds of outputs are expected from this feasibility study. We need to look at the technical issues; we need to look at the legal issues, we need to look at the financial and commercial issues; and you also need to look at the social and environmental issues. So, that must be in the feasibility study.

Then what you need to do after that is, you need to look at the risks on a project and look at the risk allocation matrix. How do you allocate the risks? What risks are going to be taken by the county government? What risks are going to be taken by the private party? Then, you need to submit that feasibility study for approval by the Committee. Once that has been approved, then you can now go ahead and do the tendering.

I want to say this at the beginning now; the Act provides two methods of engaging private parties, and there are no middle grounds. One of the preferred methods is where the contracting authority prepares the project, identifies that project, conceptualizes the project, prepares a feasibility study and then prepares a tender document and invites, through a competitive process, the private party. That is the preferred option of doing business. Of course, there is a process given, after you prepare your tender documents, you need to prequalify your investors; then you need to invite your investors to submit bids. Once they submit bids, you evaluate those bids. After evaluating the bids, you need to get back to the Committee for approval because there is that consultative process. The reason for doing this is to ensure that fiscal risks are properly managed; that the county government and the contracting authorities are advised on the appropriate mechanism for managing those fiscal risks. After bids are evaluated, then a contract can be signed. But there needs to be those approvals for contract signing and things like that.

Now, the other method of procurement is engaging the private party; we call it a privately initiated investment proposal and it is covered under Section 61 of the Act, starting from Section 61 of the PPP Act. But it is only applied where a private party can propose to do a certain project within a contracting authority and submit a proposal. But when they submit that proposal, there are exceptions under which it can be accepted. One of the

exceptions is that, possibly, you had an ongoing contract and you would want to continue with the same partner for the same project or for the same activities. So, you can cite; it is allowed.

The second thing is that the intellectual property rights involved in the development of that project by that private sector is enormous and, possibly, it is not something that you would want to procure as a government. So, perhaps, you can negotiate based on that.

The third thing is if you are the only person in the whole of this world who can do that project and nobody else. Of course, it also provides a leeway where the Cabinet Secretary (CS) at the national Treasury can also approve any other based on the justification that is provided. Now, for a project like that one, it must meet certain criteria during the evaluation. It must meet the criteria for affordability. What do I mean by affordability? It is the county government – that contracting authority – must be in a position to afford in terms of meeting the contingent risks and things like that; that they are going to be able to manage that and afford them over the life of the project, 20 years or whatever it is.

It also needs to create value for money. There is a mechanism under which the project is supposed to be evaluated; it is not just a statement. There is something we have included in the Act called “Public Sector Comparator.” So, that needs to be provided, and that is what will provide the value for money. Now, the Act does not have a provision where you engage a Memorandum of Understanding (MoU) and then you are also doing a feasibility study at the same time. It is either one of the two; it is either the private sector prepares the project, submit a full proposal to you, you look at it to find out whether it is making sense or meeting those criteria. You need to check whether it is meeting that criteria, and that is the only time now you can enter into the negotiations.

The other mechanism is where you have to prepare the project, and you have to go through a competitive process. Now, once that has been done, then you can sign that contract. Maybe the other area I may want to touch on very briefly is that the Act also calls for a fair and transparent process of procurement. That is the basic principle for the PPP Act. I think this is quite important in the way we need to do things. It also provides an area where we need to do what they call “a diagnostic study.” A diagnostic study is like a sector study; if you are doing a project within the health sector – if that is your sector – you need to look at various factors. For example, is this project addressing the problems and challenges that I have? So, that is quite important.

Having gone through that process – because I did not want to go into it in details; I wanted to just touch on the basic principles, because it is quite clear on how business is supposed to be done – I would want to look at the contract or the MoU that was submitted to the letter of invitation. Now, this MoU is actually not a MoU; it is written Memorandum of Agreement (MoA). This MoA is for the development of 100 megawatts (MW) of power to design, build, finance and operate a power plant of solar for 100 MW. Now, when I went through this MoA, in its content is actually an agreement; it is not a memorandum; the content is a memorandum. Although I am not a lawyer myself, I do know that when you are signing a MoU, the only thing that is binding is the confidential

clause; that anything that is going to be generated through that MoU, you cannot share with third parties. But anything else is not binding. But when I look at this MoU, everything else is binding. Of course, it talks---

(Someone spoke off record)

What? Sorry, it is a MoA, because it is written "Memorandum of Agreement." So, now because it is not a MoU, it is a Mou. I do not know whether there were two---

Sen. Billow: They were two; you did not get a copy of the first one?

Eng. Stanley Kinuthia Kamau: No, I got only one.

Sen. Billow: He has the MoA.

Eng. Stanley Kinuthia Kamau: Yes, I have only one.

Sen. Billow: But looking at this and the content, because it talks about even revenue sharing. it talks about the county government and the investor by the name Bluetechs UK Group Ltd sharing of revenue on a 30 per cent to 70 per cent basis. So, in the real sense, it is an agreement. It even talks about how much per unit cost of power it is going to be. So, what I am saying is; most of the items and issues that are included in this agreement, whether you call it MoA or MoU, they are contractual in nature, because it even has a termination clause. When I looked at the termination clause, I also noted that it does not talk about the effects of termination, because this is what people sometimes do not look at. Because you talk about termination, but what is the effect of that termination? It could be very expensive. It says that each party can terminate within six months; each party can give the other party six months. But imagine if this person actually came, invested and built a power plant of Kshs100 million, and you are telling him you can terminate that within six months, there must be some effects of termination. So, the agreement is not complete. The issues captured here are contractual in nature.

The other thing I want to say on this is that as far as we are concerned, this project has not been brought to our attention. The Public Private Partnership Committee has not looked at it. Ourselves we have not looked at it. It is only through this invitation that we noted that this project actually do exist. I also noted that in one of the paragraphs, it is indicated that a feasibility study will be conducted. I clearly mentioned that you do not bring in a private party and when he is on board, that is when you do a feasibility study. You should do it before you engage that person. The way it is framed here, it is like a condition precedent. The content of agreement is still in force. Before anything else happens, a feasibility study is going to be done.

I would say, for all practical purposes that this agreement does not comply with the Act because certain approvals that were required have not happened, the project development in terms of preparing a feasibility study and identifying the project properly in a

sequenced manner, we are not aware that such may have happened. Possibly, I may not want to continue from there and that is my submission.

The Chairperson (Sen. Obure): Thank you very much, Eng. Kamau. You will sit right where you are and we will invite counsel here starting with the one for the Assembly and then later the one for the Governor. If you want to examine Eng. Kamau, you may do so now for a period of ten minutes for each counsel.

Mr. Charles Njenga: Thank you, Mr. Chairman, Sir. Just a comment, on the first paragraph on the 25 year term of the agreement in terms of how it phases out through policy and the act. I also want to look at your comment on the exit clause to the extent that it provides that assets and liabilities will be apportioned on the basis of a certain ratio that is provided under clause 1(g). Finally, your comments within the framework of the law, an ideal Public Private Partnership Agreement who should sign it? Who signed the particular one that you have before you? You may wish to confirm that the one you have which is the subject of these proceedings has been signed by the Governor of Kericho County.

I would also like to hear your comment on a part from the consideration, that is, the costing structure, what other aspects of this agreement confirms to you that this is indeed a binding agreement between the parties? That is all. If we could do that, it would be most helpful to the County Assembly of Kericho.

Eng. Stanley Kinuthia Kamau: Mr. Chairman, Sir, I hope I go through all the questions quite clearly. The 25 year terms, first and foremost, the Act provides that the concession period for any Public Private Partnership is determined by the investment. What I can say is that the period given here is a very abstract figure and does not conform to the requirements of the Act. The Act would require that you are giving a term of 25 years based on the kind of tariffs you have and the recovery of that investment over a period of time. So, it is not something you would say it is an abstract. So, it needs to conform to that. The 25 year term does not conform to the requirements of the Act because it provides that the period for a Public Private Partnership need to be calculated based on certain parameters and that has not been done.

Regarding the issue of exit clause and asset apportionment, I think in my view, the way it is put in the agreement is very simplistic. In an agreement even if you want to terminate it, there is the party terminating it. If I terminate an agreement because of my default, then I need to pay for the cost. If you terminate the agreement because you are the one who is involved, then I need to pay your cost but you cannot have an agreement where people are saying that even if it is six months, then payment can be done. This is very simplistic and these are issues that can be quite complicated if people go to court.

The other thing I want to say is that, even if you look at the cost, most of the Public Private Partnership, it is not where the Government is putting money but it is where you concede your rights to somebody. You may not necessarily have to put a penny on it. You are conceding your right because it is your right to provide that service but you are

telling somebody to do something on your behalf. The cost to the Government is not necessarily the money that you put in, it is those risks that are associated with that agreement. You are telling somebody to put a power purchase agreement to supply power for 25 years. Suppose this contract is terminated and somebody has invested US\$300 or US\$500. Those are the fiscal cost and contingent liabilities that we need to be very careful while signing. It is not actually the money put in but the risks involved. If the risks are crystallized, then you will be in real trouble.

The other issue is about what makes this agreement binding. When you say that this agreement will remain in force from the date of signing until 13th January, 2014 till the date of expiry on 12th day of January, 2039, there is nothing in preparation of another agreement in-between. This agreement remains valid from the date of signing until 12th day of January, 2039.

. If I read some of these paragraphs, it says:-

“It is hereby understood and agreed as follows:-

“That, the parties hereto, purely on their own violation hereby mutually agree that Bluetechs will design, build, finance, operate and subsequently transfer to the county one hundred (100) megawatts solar power plant under the following conditions:-

The conditions are listed below. Part “c” of the conditions states as follows:-

“In the event the county is not in a position to secure the aforesaid 500 acres, the minimum threshold for the purpose of this agreement shall be 200 acres for 40 megawatts.

That is as a minimum. So it is binding in itself.

The condition listed as part “d” states as follows:-

“It is mutually agreed that Bluetechs will commence the aforesaid Phase I with 10 megawatts pilot plant to test the design subject to an audit and approval by an energy auditor licensed by the Government of Kenya and duly nominated by the County. Subsequently the rest of phase and or phases will ensue.”

It is not about a MoU. It is about doing this or that. So, most of the issues captured in the Act are not “understandings”, they are agreements that this or this is what I will do.

The condition listed at part “e” states:-

“The County shall grant Bluetechs a lease for the parcel or parcels of land it shall use to establish the solar power plants for such period of time to be mutually agreed by the parties herein. A separate lease agreement shall be executed in respect thereof.”

The key words here are “shall grant”. So, there is nothing like an understanding. With that all the issues, there is the use of “shall”. The word “shall” is not an understanding in itself.

The Chairperson (Sen. Obure): Thank you, Eng. Kamau. We will invite the counsel for the Governor.

Mr. Peter Wanyama: Thank you, Mr. Chairman, Sir---

Mr. Charles Njenga: Sorry, Mr. Chairman, Sir. I think there is one question that he overlooked. This is the one we asked on who should sign in terms of Section 22 of the Act.

Eng. Stanley Kinuthia Kamau: Sorry about that. The person who should sign the agreement is the Accounting Officer. The Act says that this agreement shall be signed by the Accounting Officer of that contracting authority.

I do not know if the Accounting Officer is the Governor. But I assume he is the Accounting Officer. Perhaps he is the person to sign.

The Chairperson (Sen. Obure): Counsel for the Governor.

Mr. Peter Wanyama: Thank you, Mr. Chairman, Sir.

Eng. Kamau, I am the one who requested that you come here because there are certain clarifications we wanted made by yourself being the Director of Public Private Partnership. I am a practitioner in that sector as well.

I want to start by asking: Do you have any legal qualifications as the Director of the Public Private Partnership? If you do not, just say “no”.

Eng. Stanley Kinuthia Kamau: I do not have. I am an engineer.

Mr. Peter Wanyama: Which field?

Eng. Stanley Kinuthia Kamau: Civil engineering.

Mr. Peter Wanyama: Before joining the unit, where did you work before?

Eng. Stanley Kinuthia Kamau: Before joining the unit, I have worked in the local government, Ministry of Roads---

Mr. Peter Wanyama: When did you join the unit?

Eng. Stanley Kinuthia Kamau: In January, 2010.

Mr. Peter Wanyama: When the Act was not in force, right?

Eng. Stanley Kinuthia Kamau: There was the PPP regulation of 2009. There was a unit that had been established.

Mr. Peter Wanyama: I understand that. What I am saying is that the Act was not in force.

Eng. Stanley Kinuthia Kamau: The Act was not in force.

Mr. Peter Wanyama: So you participated in the development of this legislation?

Mr. Stanley Kamau: Correct.

Mr. Peter Wanyama: Good. Have you received any concerns from county governments with respect to the legal regime governing the PPP framework in Kenya? Any form of proposals?

Eng. Stanley Kinuthia Kamau: I have not received.

Mr. Peter Wanyama: Have you attended a forum where county governments are saying that this legal regime requires a review?

Eng. Stanley Kinuthia Kamau: I have attended one meeting with the Council of Governors. I just wanted to sensitize them about---

Mr. Peter Wanyama: What was their reaction about the legal framework generally? We do not want to go to the details.

Eng. Stanley Kinuthia Kamau: The reaction from the county governments is that some of the sections of the Act possibly may need review.

Mr. Peter Wanyama: Exactly.

Eng. Stanley Kinuthia Kamau: But that has not taken place?

Mr. Peter Wanyama: So they are saying that the legal regime requires review? That is the reaction.

Eng. Stanley Kinuthia Kamau: But I have not received any written request.

Mr. Peter Wanyama: That is okay. I am not asking you in an adversarial manner, I am doing so in order that we may get information.

Eng. Stanley Kinuthia Kamau: That is why I am saying---

Mr. Peter Wanyama: Have you finished the process of employing the monitoring and evaluation expert in the PPP unit? Have you brought on board the consultant.

Eng. Stanley Kinuthia Kamau: There is no requirement in the Act to have a monitoring and evaluation consultant.

Mr. Peter Wanyama: There was an advertisement from your office---

Eng. Stanley Kinuthia Kamau: That is a different advertisement. It is not under the Act.

Mr. Peter Wanyama: I am just asking a simple question. There were certain specialists who were supposed to be recruited to help your office because it is a new office. One of the specialists is a monitoring and evaluation expert and a legal expert. Have you finalized the recruitment?

Eng. Stanley Kinuthia Kamau: The Monitoring and Evaluation Expert is not a requirement. We were not looking for----

Mr. Peter Wanyama: I am asking you as simple question. Have you brought them on board?

Eng. Stanley Kinuthia Kamau: The unit has got other experts. It has got a legal, financial and technical officers. The Monitoring and Evaluation expert is for a different project. You saw an advertisement for a monitoring and evaluation expert for a different project under my purview but not a requirement for this Act.

Mr. Peter Wanyama: So you confirm that the unit has a legal and technical experts and the Secretariat is fully set?

Eng. Stanley Kinuthia Kamau: It is fully set.

Mr. Peter Wanyama: Do you have an expert for county governments?

Eng. Stanley Kinuthia Kamau: There is no requirement for county governments.

Mr. Peter Wanyama: I am just asking, have you asked because under the Constitution, the national Government is supposed to undertake what is called capacity building and technical assistance to counties? In light of that function in the Constitution, have you thought of getting a specific expert for county governments or you are doing it generally as the unit?

Eng. Stanley Kinuthia Kamau: We are doing it generally as the unit.

Mr. Peter Wanyama: Thank you. Have you developed guidelines for counties to adopt for PPP contracting?

Eng. Stanley Kinuthia Kamau: Not yet.

Mr. Peter Wanyama: Have you developed any sample contracts?

Eng. Stanley Kinuthia Kamau: We have not developed yet.

Mr. Peter Wanyama: Have you developed regulations under the PPP Act to implement the Act?

Eng. Stanley Kinuthia Kamau: One of the things I want to say is that the PPP Act is effective and operational.

Mr. Peter Wanyama: No problem, I know that.

Eng. Stanley Kinuthia Kamau: The regulations are not to implement the Act. The regulations are to help get more details about it but the Act is effective.

Mr. Peter Wanyama: I am just asking a simple question in a friendly way.

Eng. Stanley Kinuthia Kamau: I also need to answer in a friendly way!

The Chairperson (Sen. Obure): Order. I do not like that exchange. We would be orderly and we answer one question at a time. All the time, please, address the Chair.

Mr. Peter Wanyama: Most obliged, Mr. Chairman, Sir.

Eng. Kamau, you have been quoted in the newspapers as saying that you are developing county government regulations to implement the PPP Act. Is that right?

Eng. Stanley Kinuthia Kamau: That is not correct.

Mr. Peter Wanyama: So as we speak, you do not have any regulations for county governments in draft form?

Eng. Stanley Kinuthia Kamau: Mr. Chairman, Sir, we have not yet finalized the regulations for county governments but that is not a reason for not following the law.

Mr. Peter Wanyama: I am just asking a question because you will soon see where I coming from. So, you are in the process of developing regulations?

Eng. Stanley Kinuthia Kamau: Yes.

Mr. Peter Wanyama: For county governments to give effect to the Act?

Eng. Stanley Kinuthia Kamau: Not necessarily, the Act is effective.

Mr. Peter Wanyama: That is okay. But you are developing regulations for counties?

Eng. Stanley Kinuthia Kamau: Correct.

Mr. Peter Wanyama: Have you subjected the regulations for public participation or not yet?

Eng. Stanley Kinuthia Kamau: Not yet.

Mr. Peter Wanyama: So it is work in progress?

Eng. Stanley Kinuthia Kamau: Yes, it is work in progress.

Mr. Peter Wanyama: That is very good initiative. In your position, are you able to know how many counties are currently implementing projects under the PPP Act? Can you tell us?

Eng. Stanley Kinuthia Kamau: I can only say the county governments that we have been working with. Let me not say the numbers, but we have been working with the county governments of Nakuru, Kisumu, Mombasa and Nairobi.

Mr. Peter Wanyama: So how many counties have projects which fully comply with the Act?

Eng. Stanley Kinuthia Kamau: None of the projects has been completed.

Mr. Peter Wanyama: In terms of compliance?

Eng. Stanley Kinuthia Kamau: None of them has been signed.

Mr. Peter Wanyama: Not signed, but fully compliant with the Act?

Eng. Stanley Kinuthia Kamau: They are in the process.

Mr. Peter Wanyama: Are you aware of the national priority list which was published by the Cabinet Secretary a couple of months ago?

Eng. Stanley Kinuthia Kamau: Yes, I am aware of that.

Mr. Peter Wanyama: How many counties are indicated as having the Cabinet approval for their projects?

Eng. Stanley Kinuthia Kamau: The projects that were published were 47.

Mr. Peter Wanyama: How many counties had projects which were in the national priority list?

Eng. Stanley Kinuthia Kamau: A few of them like Mombasa and Nairobi.

Mr. Peter Wanyama: To be precise, Mombasa had one and Nairobi had two. Is that correct?

Eng. Stanley Kinuthia Kamau: Yes.

Mr. Peter Wanyama: This is what I want you to explain - The Governor of Kericho is saying that we were discussing these issues that do not fully comply with the Act. The agreement does not fully comply with the Act. Do you fully agree with that position?

Eng. Stanley Kinuthia Kamau: Yes, I do.

Mr. Peter Wanyama: In your expert view, do you know the distinction between a memorandum of understanding and a contract? If you do, just say yes.

Eng. Stanley Kinuthia Kamau: I do.

Mr. Peter Wanyama: Could you explain briefly what an MoU is?

Eng. Stanley Kinuthia Kamau: I indicated here that I have seen many MoUs in my---

Mr. Peter Wanyama: This is generally. An MOU comes with an agreement.

Eng. Stanley Kinuthia Kamau: In an MoU, the only thing that is binding is the confidential clause, anything else is different.

Mr. Peter Wanyama: So, generally, what is the definition of an MoU in your understanding?

Eng. Stanley Kinuthia Kamau: I said that I am not a lawyer but if I was to read this document, I would look at an MoU and the only binding thing I would like to see is the confidential clause. This one shows that "we shall not disclose this information to third parties." The information is for our own content but the other content is non-binding.

Mr. Peter Wanyama: Do counties have powers to enter into PPPs?

Eng. Stanley Kinuthia Kamau: They have their powers.

Mr. Peter Wanyama: Under what legislation?

Eng. Stanley Kinuthia Kamau: The County Governments Act.

Mr. Peter Wanyama: But the PPP execution is subject to the PPP Act?

Eng. Stanley Kinuthia Kamau: The execution of those contracts is supposed to be done under that Act.

Mr. Peter Wanyama: In your own experience in the sector, have you done any projects in the energy sector?

Eng. Stanley Kinuthia Kamau: Yes, I have.

Mr. Peter Wanyama: Hon. Chair, I want to use the 15 minutes which were unutilized in the morning to complete my cross examinations. I will not go into that issue. There is only one aspect I want to confirm and we will leave it at that.

Have you done any PPP project in the energy sector?

Eng. Stanley Kinuthia Kamau: Yes, we have.

Mr. Peter Wanyama: How many agreements are contemplated in a PPP project in the energy sector?

Eng. Stanley Kinuthia Kamau: In one project?

Mr. Peter Wanyama: Yes, in one project.

Eng. Stanley Kinuthia Kamau: In one project, we have close to 14 agreements.

Mr. Peter Wanyama: So, in this particular case, if the Governor were to comply, he would have to make sure that 14 of them are countersigned?

Eng. Stanley Kinuthia Kamau: Not necessarily.

Mr. Peter Wanyama: But there are many agreements?

Eng. Stanley Kinuthia Kamau: It depends on where you are getting your insurances and other risk mitigation instruments.

Mr. Peter Wanyama: So, many contracts would have to be executed?

Eng. Stanley Kinuthia Kamau: Yes, many contracts.

Mr. Peter Wanyama: So, if the Governor is saying that this contract does not comply with the Act, what advice would you give to him to comply with the Act, generally?

Eng. Stanley Kinuthia Kamau: If he were to comply with the Act, one of the things that he would do would be first to terminate the process and start a fresh. That is what should happen.

Mr. Peter Wanyama: Lastly, you confirmed that you are not a lawyer and so, I will not go into the questions regarding the legal effects about the termination of the contract. I will not deal with that issue. Generally, what challenges do you experience with county governments while dealing with these issues of PPPs in your normal day to day experience in terms of level of compliance?

Eng. Stanley Kinuthia Kamau: The challenge we experience with the county governments is that that we have to create awareness so that we do things in a more structured way. We also have to make sure that they comply with the Act. We also try to identify the projects which have to be done through a PPP approach.

The Chairperson (Sen. Obure): Your time is up. You do not seem to be near completing the examination. Ask the last question.

Mr. Peter Wanyama: I asked for 15 minutes.

The Chairperson (Sen. Obure): And you want to use that time to examine the Director?

Mr. Peter Wanyama: Yes, that is correct, hon. Senator.

I want to show you a letter. After this agreement, both the Governor and the investor said that the letter is subject to regulatory panel. I just want one comment from you on this.

Eng. Stanley Kinuthia Kamau: Implementation of the project is also subject to us meeting all the regulatory requirements in the country. Therefore, we hereby, confirm that the Governor of the Kericho County and the representative of Bluetechs Limited have not shared the Benefits Sharing Agreement (BSA) and as such, the county has not incurred any liability.

Mr. Peter Wanyama: So, I will ask you the last question based on that explanation. If that evidence was given to you and this letter too was given to you, would you say that in the mind of this investor that is really an agreement?

Eng. Stanley Kinuthia Kamau: I would say it is an agreement. It is saying that the county has not incurred any liability. That liability cannot crystallize.

Mr. Peter Wanyama: The paragraph on top says that it is subject to meeting Kenya's regulatory requirements.

Eng. Stanley Kinuthia Kamau: Yes, but as I said earlier, we only have two levels of procurement. If you have already signed MoUs to sign this project, that does not meet the requirements of the project initiated. So, how are you meeting this requirement?

Mr. Peter Wanyama: The investor is saying – I want us to be very clear – I understand that the project needs to comply with the PPP Act. I will read that in extension. Is that statement correct? The statement says; this project must comply with the PPP Act.

Eng. Stanley Kinuthia Kamau: The only way it can comply with the PPP Act is to terminate the process first. These are conflicting statements. We have to terminate this process.

Mr. Peter Wanyama: Thank you very much. We have come to an end of that.

The Chairperson (Sen. Obure): Eng. Kamau, stay where you are. We will allow Members of this Special Committee to seek clarifications from you by way of information, clarifications and so on. Is there anyone who wants to raise an issue?

Now, Eng. Kamau we want some information from you because this project is in the energy sector. In terms of your understanding, is it a function that should be carried out by the county government or is it a function reserved for the National Government? Secondly, you mentioned that you had issued some guidelines in the month of February. What were these guidelines relating to and to whom were they issued?

Eng. Stanley Kinuthia Kamau: Thank you very much, Mr. Chairman, Sir. As to whether the generation of electricity is a function of the county government, I think the schedule for the allocation of responsibilities under the Constitution says that the county governments will be responsible for electricity and gas reticulation. It talks about reticulation. It is not clear about generation. I think that is an issue that perhaps we may need to look at whether it is in compliance. But even if you had to sign an agreement, you cannot commit yourself if the off taker – I am sure the County Government of Kericho would not be an off taker for this power, it would definitely have to be the Kenya Power and Lighting Company. You cannot sign this agreement unless the off taker has actually indicated that he can be able to take on this power. I think the first contact point is the energy sector; whether they are ready and willing to take that power. Then they can start from there. But you cannot start signing an agreement for generation of power and the person you are generating for has not told you that he needs that power.

The second one is about the circular. The circular that we issued was providing some guidelines as to the membership of the node who is supposed to be part of that member. We said that in every node created in the contracting authority, there must be a legal person, a procurement person, a finance person and somebody who understands the nature and business in which that project is being conceived. If you are talking possible solid waste management, there must be somebody who understands the business of solid waste management. If you are talking about water, there must be somebody who understands the business of water. We were trying to provide that guideline and tell them that it is a mandatory requirement to establish those nodes. We sent it to all the contracting authorities including the county government.

The Vice Chairperson (Sen. Murungi): I have two issues to raise but before I do so, I would like to just support you in what you are saying. Actually, a lot of county governments are entering into these similar MOUs for power generation, some for wind and solar without any reference to the Ministry of Energy and the answer that you gave,

that you cannot just generate power without knowing whether the power will be off taken by the Kenya Power Company is a very valid question. So, the first point of call is to start with the Ministry to assess the energy demand and see whether indeed a contract like that will generate power which will be consumed or not. So, there is a lot of ignorance in the MoUs for power generation and I think this applies to various counties including Kericho County.

Regarding the definition, that is in Section 2 of a public private partnership as an arrangement where the contracting authority; in this case the county government and a private party under which a private party undertakes to perform a public function. If it is the public entity itself which wants to perform a private function, then that is not captured under the definition of a PPP. For instance, if the County Government of Kericho wants to buy shares in Uniliver Tea Estate or it wants to buy shares in Kenya Breweries or in one of the banks, because it is a public entity participating in a private enterprise, that is not a PPP. Therefore, that does not attract the complicated processes that would be required by your unit. I think that should be made clear because there appears to be a general confusion about what requires the rigorous processes of the PPP Act. It is not every contractual activity by a county government which invites the PPP processes.

In this particular case, power generation can be done purely by a private entity. For instance, Uniliver is generating one megawatt of solar power without any reference to the PPP. We have the Orr Power IV generating 100 megawatts of electricity in Ol Karia purely as a private enterprise. The only arrangements they require would be the power purchase agreements through the Kenya Power Company. So, if Bluetechs wanted to generate 100 megawatts of power without any reference to the County Government of Kericho, they can do so purely as a private entity. Similarly, although the Kericho County does not have power under the Constitution, because they have contractual powers, there is nothing preventing them from investing because they are participating in a private investment. I would like to test your mind as to whether there are activities which a public entity can participate in without attracting the PPP, through the definition of Section 2.

Then my last question is on Section 14 2 (b) of the Act which recognizes that there is need for your entity to carry out civic education so that you can explain to the people, promote awareness and understanding of the PPP processes amongst the stakeholders. I think that is what one of the lawyers has been talking about but it has not been done. Therefore, you cannot expect the county governments and other stakeholders to understand this process unless you have carried out civic education, called them for meetings and taken them through the process. So, I think part of the confusion there is in the country is because this function has not been undertaken obviously because the Act is new. I would like to hear your comments on that.

Eng. Stanley Kinuthia Kamau: Mr. Chairman, Sir, I think you made a good observation about the generation of power and whether county governments can generate this power if the energy sector requires it. I think I was also looking at the Government's ambitious programme for generating 5,000 megawatts within the next 35 months or so.

If you look at that programme, these activities in some of these projects we are discussing about, they are not in that programme. So, they are not actually in that programme and, maybe, the Ministry of Energy has not taken cognizance that there are other people who are trying to do some business for them which they are not aware. I think that, perhaps, this is something that you may need to take up. I like your observation.

Now, let me come to the issue of whether county governments, because I think from what I got from you – and, of course, I mentioned here earlier that I am not a lawyer – is if, for instance, Bluetechs was to go as an independent company, generate power and sell that power to Kenya Power (KP); and the County Government of Kericho, for instance – because it is not their public function – they would want to invest in that private entity, they would want to invest into that private entity. At least that is the way I got it. Would that constitute a Public Private Partnership (PPP)?

Now, first, let me say that currently, the way we are working with the Ministry of Energy, all the power generation and the signing of the PPP agreement is basically a PPP. The independent power production is actually a PPP, and that has been agreed. All the generation of power currently is going through this process with most of the projects they have. So, in the first place, in the Ministry of Energy, we used to say, “look, we have this 5,000 MW; this is 100 MW that you want to generate” and, therefore, through this, they are going through a competitive process. Or, maybe, you go through the unsolicited process where you have this wind generation where somebody says “Okay, I have this wind and this is my farm; I want to generate this power. Can you consider this?” So, all the Independent Power Producers (IPP) are currently under the PPP programme. So, it has to fit under that programme.

The second thing is whether the county government can actually invest in that company. I think the investment or whether they can do business together, that is a kind of a joint venture arrangement. I think the joint venture is also covered under separate laws. But the county government may not necessarily possibly go through a PPP process to invest in those shares of that company.

The Vice Chairperson (Sen. Murungi): I think that is what the Auditor-General-- Let us not talk about the power; if they wanted to buy shares in Kenya Breweries so that they can get dividends, that is a very simple transaction.

Eng. Stanley Kinuthia Kamau: That is not a PPP.

The Vice Chairperson (Sen. Murungi): It does not require a PPP?

Eng. Stanley Kinuthia Kamau: No; it does not.

The Vice Chairperson (Sen. Murungi): Okay.

Eng. Stanley Kinuthia Kamau: It would not. Maybe let me address the last one of the civic education, because we have been conducting civic education and we have started with the county governments. We have done a number of them; one of them we organized for Nairobi County Government. We have gone to Nakuru, Mombasa and we have a programme for reaching out to all the county governments. But we also wanted to start with the Council of Governors (CoGs), because that is where it starts. I think this is why I had gone to sensitize them about this Act so that they can now disseminate that information. So, we have already started doing this and, of course, sending some circulars to them.

Sen. Mutula Kilonzo Jnr.: I have one question. This has come up during the questions and answers given, and you did not mention it as a condition precedent. Out of all these arrangements under PPP, whose obligation is it to confirm the capacity, competence or legal background of the persons who are entering into these PPPs? To make it clear because we do not have it here, for example – assuming that this is a valid PPP – would there be a person in your entity who would then check Bluetechs to evaluate whether or not they are capable of doing what they are saying they can?

Eng. Stanley Kinuthia Kamau: To answer that, what the PPP Act requires, especially when you are developing a feasibility study is that it can be developed in-house by a contracting authority if they have the capacity. If they do not have the capacity, then they need to look for external resources or capacity; they need to get somebody called transaction advisors. That is the way they have been referred to in the Act. So, these are the persons they need to hold their hand and tell them “now you are going in the wrong direction; I think this person you are also doing business with---” they need to help them do the legal due diligence, technical due diligence and financial due diligence. Those are the people to do all this. But, also, when all this has been done, it needs to be submitted to us so that we can help them to review this. So, we always tell them “look, I think from the documentation we have seen, there are some gaps in these areas which need to be addressed.” So, it is basically a consultative process.

Sen. Nobwola: Mine was on a small point. This is a private initiative; I say so because the Bluetechs are coming in with the money to finance this project, although the county is also supposed to contribute 10 per cent of the investment. And then there is this exit clause which is tying the county to the contract. We have been told that this is work in progress; the project has not started because there is no agreement or contract signed. Because as we are told, if they had entered into a PPP, then your office would have been informed. Could we be asking ourselves whether this contract should be terminated now so that the proper procedure or process can be started if the county is committed to having this plant in Kericho County? What is your advice or take on that?

Eng. Stanley Kinuthia Kamau: Thank you very much. I think I mentioned that this is a private initiative and, of course, it does not involve money of the county government, although there was a provision where they need to contribute 10 per cent. The issue about the PPPs is their role and the responsibility and what you take on board, because if you do not take some of those responsibilities and those risks crystalize, you end up paying a

lot of money. I mentioned that the generation of about 100 MWs of solar power will cost about US\$300 million to US\$400 million. If this investor decides to go ahead and invest this money and something happens – even a political issue or some riots and things like that – which prolongs for some time, then this contract will actually be terminated. Who would be liable for paying the US\$400 million? Something will have to happen. Of course, I am not saying that the county government will pay, but somebody will have to meet that cost. Now because we have not reached there, the investments have not been made. As I said earlier, the only way to do this business cleanly is to terminate this and start afresh. But with the termination, you need to know whether you can only give a notice of six months or whether there are any other consequences related to this, because there could be consequences. Most of the times when you terminate contracts which are contractual in nature, there are consequences, and those consequences will have to be sorted out.

Sen. Karaba: Considering the PPP is a very important institution in the development of our 47 counties, I would consider that the workload in that office is too much for you. You have to undergo very many problems if you are not careful in the way you execute your programmes and processes of attaining the fulfillment of an agreement. Are you contemplating working in stages such that a county works up to a first stage, and then you say “on that one, you have qualified;” then you go to the next one, the third one, the fourth one and the final one before you agree to sign the final MoU of MoA, the way you called it?

(Laughter)

Do you have that programme?

Eng. Stanley Kinuthia Kamau: Mr. Chairman, Sir, I quite agree. I think the work of dealing with the county governments and the project would be quite voluminous. What we are trying to do, through the regulations we are preparing and which will be ready in two months, we want to simplify some of those processes and put more responsibilities to the county governments as long as they adhere to their own processes. That would create a speedy way of doing that business. I mentioned that the memorandum of understanding (MoU) business in itself--- MoU are good when you want to do something together with somebody; if you want to work together or have a joint programme to do.

We have thought about this and realized that we need a team of experts who can help county governments develop some of these projects. It would mean that the approval would be in two stages. There is the feasibility study and the contract. MoUs are very difficult to define but those who have wanted to do this and whom we have worked together, have sought that advice and we gave it to them. So, they are succeeding and moving on positively.

The Vice Chairperson (Sen. Murungi): Engineer, Mwalimu has a valid point. Your office is very small in terms of establishment and yet you are dealing with 47 counties. There is a lot of demand from the counties for development and there is no much time.

That office could constitute a major bottleneck to development in this country. In as much as we want to bring in foreign investors, they might find major difficulties. I think our Committee in charge of Finance will have to take up the matter in another forum with you so that we can accelerate investment. In fact, there is a time the Senate was thinking about creating a County Investment Committee to facilitate counties which have programmes like this one but which are facing major hurdles. There are good intentions but there are major procedural nightmares. So, the issue needs to be relooked at.

Sen. Elachi: Mr. Chairman, Sir, I have two questions. I know it might be a bit off the cuff but I think it is one of the concerns that engineer's office should be thinking about. For example, there is this Red Cross project. I do not know whether you have sat down, since you are there to advice on any Public Private Partnership projects. The Kenya Red Cross is a statutory body formed by an Act of Parliament. It has signed many agreements with most counties on ambulances and so on. I do not know whether you have met any county and advised them as to whether they are on the right track.

You have been in Nakuru and there is a similar project there as the one in Kericho. When you went there, I wonder whether they asked you a few questions on their solar project where they are about to do 55 megawatts project? Through this, we can know whether they followed the process.

Eng. Stanley Kinuthia Kamau: Mr. Chairman, Sir, regarding the issue of the Kenya Red Cross which does a lot of charity work, I have not seen these contractual agreements but I would assume that some of the relationship between the county governments and the Red Cross could be collaborative in nature rather than contractual. A contract is where counsel has an obligation but a collaboration would be something like you can operate in this area but I do not have any obligation.

Sen. Elachi: The problem is that they are paying using public funds.

Eng. Stanley Kinuthia Kamau: I have not been consulted about it.

Regarding Nakuru, we have been discussing about the solid waste management. We have not discussed issues to do with the solar project. So, I am not conversant about it.

The Chairperson (Sen. Obure): You have confirmed that the Public Private Partnership Act is in place but you have also said that the regulations are not ready yet, therefore, they are not in place. How do you operationalize the Act without the regulations which give them effect?

Eng. Stanley Kinuthia Kamau: Mr. Chairman, Sir, I think the Act became effective on 8th February, 2013 through a gazette notice. So, the Act is actually effective. The regulations that we are providing is actually to help provide some details that are not within that framework. If you look at the Public Finance Management Act, it became effective in 2012 but the regulations are still work in progress.

The Chairperson (Sen. Obure): Thank you very much, Eng. Kamau. That brings us to the end of this particular session. I want to thank you particularly considering the fact that we invited you at very short notice. We appreciate the effort you made in coming on time and providing all these useful information to us. We thank you for the support and co-operation you have extended to this Committee.

Eng. Stanley Kinuthia Kamau: Thank you very much.

The Chairperson (Sen. Obure): We are now coming to the final session of our sittings and that is to do with closing statements from the counsel for the two parties.

In the light of the fact that we have provided you with an option to give us your written submissions by tomorrow, I would request that you try as much as possible to make your statements as brief as possible so that all of us can have the opportunity to leave earlier and prepare for the session tomorrow.

As we said, you have the option of giving us your written submissions by mid day. You could also send your submissions by advanced email to make work easier. In light of that, we will allow you to summarise your final statements. This will be ten minutes for each party.

We will start with the County Assembly.

Mr. George Ng'ang'a Mbugua: Mr. Chairman, Sir, I will take my five minutes. Two issues came out of the evidence that was adduced. The first issue is on whether the Governor was given a right to be heard. The law recognized the Governor's right to be heard at the County Assembly. The evidence that came out, and this was an admission made by the Governor, is that he appeared at plenary and was given an opportunity to make representations in his defense.

Another clear admission that was made is that he had been served with the particulars of the allegations and the charges he was to face at the County Assembly and the supporting documents. So, that rests that issue of right to be heard.

Perhaps before I leave there, I wish to make a comment on Standing Order No.63 and the right to appear before the relevant committee that seemed to be imputed by the Governor. I wish to say that, that is not a correct reading of that Standing Order. The right to appear before the relevant committee only becomes necessary when the County Assembly decides to take that route. That is, if they decide to constitute a select committee for purposes of hearing the charges that are facing the Governor before the County Assembly. That is when that requirement for the Governor to appear and to be served with a report emanating from that committee would become necessary.

With reference to the same Standing Order, the County Assembly constituted itself in plenary as happened. When that happens, the requirement under paragraph "a" becomes moot. At this point, I want to comment and say that the right to be heard is supposed to

address the mischief that the County Assembly does not pass or vote on that Motion before the Governor has been given the right to be heard.

What prejudice were you told was suffered by the Governor because the County Assembly elected to proceed by way of trying him at Plenary as opposed to by way of a select committee? There is no prejudice. Suffice to state that within the Standing Orders, the County Assembly was within its powers. In fact, I want to confirm here and now that it is the importance with which the County Assembly attached to the matter that was before it for consideration that it opted to hear the Governor at plenary. This is so that we do not have four or five MCAs who are Members of a select committee and then the next minute the Governor says:” They were nominated MCAs or they come from Buret, Ainamoi and so on, and so it was witchhunt.” This was very deliberate. You have the entire plenary. So there was no prejudice. So, that rests that issue.

Mr. Chairman, Sir, the second issue is on whether charge No.2 has been substantiated. The law is settled. What we needed to demonstrate is that the allegations or charges in relation to charge No.2 were substantial in nature. It has come out in evidence that this was a contract involving Kshs50,400,000. An admission was made that no approval from the tender committee was made. Further, no regard was made to the provisions of Article 227 of the Constitution, Section 2 of the Public Procurement and Disposal Act, Section 29(3)(a) as to direct procurement.

Eng. Kamau has alluded to the way he would understand the relationship between Red Cross and county governments; it would be collaborative in nature and were to offer charitable services. This contract had a monetary consideration. For all intents and purposes, what was being procured were services that had a price. The defense from the Governor is that according to him, when you are contracting for goods and services with a statutory body, then you need not comply with the law. We were not told which particular section of the law exempts the County Government of Kericho from complying. The position is this: In terms of charge No.2, there has not been any compliance. In fact, there has been a blatant contravention of Article 227 and the various provisions of the Public Procurement and Disposal Act.

That is a very substantial violation because we started in the opening remarks by saying that the whole purpose of county resources and especially the office of the Governor, he is the chief steward and the custodian. In the International Legal Consultants Group Case, Petition No.8 of 2014 where that entity had taken the Senate to court, you will have opportunity to read that, but the court restated that the governor as the chief executive officer of the county under Section 30(3)(f) is directly accountable for the way resources are managed and utilized. So, he cannot run away. The moment he does not comply with that, resources are bound to be lost.

One of the questions we need to ask ourselves is: This was a contract of Kshs50,400,000 a year, what made the Governor think that other bodies like St. John’s Ambulance would not provide the same service at a lesser amount? That is the whole purpose of competitive bidding. If there had been tenders, St. John’s Ambulance would probably have provided

the same ambulance at Kshs200,000 per month per each ambulance. But there was no opportunity to compare and yet funds were being committed. That is not a light violation. The signature of the Governor appears in the document. Again, that is a requirement in law that we need to establish as was decided in Petition No.3 in Kerugoya. So, it is a substantial violation.

Thirdly, the documents that we tabled before you particularize those contraventions. Those are the three requirements we need to satisfy yourselves with. At Article 181 of the Constitution, it is our very humble submission that we have been able to provide enough evidence that, in fact, that particular violation has been substantiated.

I need not go through the other issues, but suffice to state that if you look at the Motion that had been filed in court, this is in regard to what the County Assembly had done. The County Assembly was seeking to achieve transparency. You are saying: Stop the process of recruitment of these ward administrators and provide us with information of how you did the recruitment.

This is not the case of the County Assembly. We are not opposed to early childhood bursaries and recruitment of ward administrators. We appreciate that they are very important people. What the County Assembly is saying in its general oversight mandate is: "Stop this process, give us this information. Once we satisfy ourselves with that, go ahead." What particular problem would the Governor have? Why would he then go to court to try and stop that?

The information you are being told about the demonstration, the Speaker was a party sued in that matter. On 30th April, 2014, they were in court to appear in a matter that they had sued the County Assembly and the Speaker. The County Assembly and the courts in Kericho are a walking distance. So, these people were walking from court to the office. That is the demonstration you were being told to lay a basis for malice. They were coming from court in a matter the Governor had sued to stop them from asking what they should ask in their general oversight mandate.

Listening to the defense of the Governor, with due respect, our humble submission is that it is a very pedantic defense. You were told that there was no adherence with the procedure, we have shown there was. You have also been told about malice.

To wind up, because I see the Chairman is about to stop me---

The Chairperson (Sen. Obure): You have five minutes.

Mr. George Ng'ang'a Mbugua: Mr. Chairman, Sir, the charge has been substantiated. My learned friend can use that one minute to make a comment or two.

Thank you.

Mr. Charles Njenga: Mr. Chairman and hon. Senators, I will use my limited time to refer you to the Constitution. This House, this Committee and all of us including the County Assembly are structures within this Constitution. The County Governments Act sets out the functions of the Governor at Section 30. This one says: "These functions have to be exercised subject under subservient 2 in observance of this Constitution."

I would like to refer the Committee to Article 10(2)(a) that provides for national values and principles that bind all of us in terms of public functions.

One is the rule of law. The Constitution establishes as a standard to be followed by all of us. This is not about pressure that makes you disregard the County Governments Act and it is not your ambition to establish projects that justify your abandoning an entire statute. You have to abide by the rule of law. That provision resonates, clearly, with Article 181 under which you have now been constituted and under which the present Motion has been founded. Article 181(1)(a) on the grounds on which the Constitution anticipates that a County Governor can be removed include; gross violation of the Constitution and any other law.

The Constitution is emphatic that for us to proceed from where we were, we have to follow the law, regardless of the circumstances, our disagreements at times with what the law says. I am very glad to hear that in some counties, some Governors have been consulting.

Yes, there are bottlenecks in the law. However, they have been consulting slowly because all the bad things that have happened in this country were conceived under the guise of good intention. Goldenberg was a very well intended project and even the Anglo Leasing Project. However, this is a process that we have to ensure it abides by the law.

The law is the only standard that we can trust. That is what we determined as Kenyans. This Senate, created under the same Constitution, is mandated under the same Constitution to give effect to Article 181 has to rise to that challenge.

Let me rest. Thank you for your indulgence and the two minutes that you have given me.

Mr. Kimutai Bosek: I will take some minutes and my colleague will take the rest.

Mr. Chairman, the Senate Committee Members, we submit, indeed, that procedural fairness was grossly violated and the Governor was not accorded due hearing. The Governor is by law entitled to due processes of the law and that is a constitutional right. The County Assembly and particularly the Speaker cannot run away from the fact that he quoted the provisions of Standing Order No.33 which was not complied with. This Standing Order provides for the right to be heard. In the absence of that Standing Order, having been complied with, then all the processes become a nullity. It has also turned out that there has not been anybody who has come before the County Assembly or before this Committee to give evidence on what the Governor did.

We have only been hearing of submissions. At the County Assembly, it was a submission by the Mover, the person who seconded him and probably others who agreed with them. Before you, hon. Senators, all we have been treated to is hearing one side and those have been submissions.

We also question something that is immoral about a party that keeps on quoting contracts that are not in existence. When counsel and the County Assembly keep on talking about the Red Cross contract that did not take off, this shows some kind of desperation. This shows that they have nothing that is useful for purposes of impeaching the Governor.

Secondly, why are they purporting to be talking on behalf of Bluetechs? Bluetechs Technologies, UK, have not complained.

As a matter of fact, they have come here and they wanted to testify on behalf of the Governor. They have written a letter and they are saying as far as they are concerned, they were just waiting for all the other processes to be complied with. Why should the County Assembly act as though it is the one which is more aggrieved than the one they purport to be aggrieved?

In the Red Cross contract, the County Government was allowed to do some single sourcing. It has turned out that everything that the County Government did, the Governor acted in good faith. You can see a lot of good faith when he explains the many things that he has gone through even in a situation where he had to go to court so that the court could draw a clear line between the roles of the two institutions; that is the County Assembly and the County Executive. There is nothing wrong in a party seeking legal advice. Even the Holy Book, Bible, tells us that the Israelites who were with Moses would consult Moses who was their leader. There is nothing wrong in someone seeking legal advice.

Mr. Peter Wanyama: Thank you, hon. Senators. I want to wind up our submissions by saying that as we speak, we are witnessing the fact that Kenya is implementing a multi-level system of Government. This system is very complex. There are three factors which will make this system succeed. The most important factor we are seeing is the implementation part of it. For us to implement this framework of devolution and achieve the objectives which are in Article 174 of the Constitution, there are certain factors which must be put in place. These are six factors.

One, is capacity building, two skilled human resource, three, adequate funding and four, effective development funding. In these particular impeachment proceedings, there are principle challenges in the implementation process. This is nothing that meets the threshold contained in Article 181 of the Constitution. This has ably been demonstrated that in the Bluetechs contract, for instance, is a contract which is being executed in a legal framework where the legal regime governing the PPPs has very many challenges. This is an issue that is not a matter for impeaching a Governor. There is no gross violation of the Constitution and the Act. Instead, the Governor is saying that he wants to comply with the PPP legislation.

So, it is the Governor who acted in good faith and upon being advised, we can see the trajectory of good thinking and implementing the objectives of devolution in that project which would bring development to the people of Kericho.

The other project which has been cited as an example of a violation is one where the Governor has violated the provisions of law, the E-Plus contract. We have demonstrated ably that this contract has been terminated. The County Assembly said that the contract has not been terminated. This is a question of legal interpretation. So, issues of legal interpretation cannot be said to be matters where the Governor has breached the law and the Constitution.

On the last matter, the Governor has ably demonstrated that he was acting in good faith in recruiting those assistants under the Transition Authority (TA) guidelines. If at all, he has gone beyond the provisions of the TA guidelines, then he has breached the TA guidelines. He never sought to create a position under the County Governments Act. He was only implementing the TA guidelines and he sought directives from the TA.

In my humble and respective submission, the threshold for the impeachment of the Governor under Article 181 of the Constitution, unfortunately, in this matter has not been met. I will be urging you to find that the allegations have not been substantiated.

On behalf of our legal team and the Governor, we want to thank you for giving us a fair opportunity to appear and raise our concerns. We are grateful that we have been heard.

The Chairperson (Sen. Obure): Hon. Senators, ladies and gentlemen, we have now come to the end of our hearings by the Special Committee on the proposed removal from office by Impeachment of the Governor of Kericho County.

As you are all aware, a special committee is required, pursuant to section 33(4) of the County Governments Act and Standing Order 68(2) to investigate the matter and to report to the Senate within 10 days on whether it finds the particulars of the allegations against the Governor to have been substantiated. Having received and heard the evidence adduced by both parties, the Committee shall now retreat in order to prepare its report for the purpose of tabling the same before the Senate on 3rd June, 2014, which is next Tuesday. I would like to thank the parties in the proceedings; the County Assembly and its counsel, the Governor and his counsel for their eloquent submissions and cooperation in this matter.

I also would like to thank the Director of the Public Private Partnerships Unit, Eng. Stanley Kamau, who despite very short notice had to appear before the Committee to share his knowledge and experience on matters relating to law and procedure governing Public Private Partnerships (PPP).

I further wish to thank members of the public for their participation in this matter and members of the Press who have diligently been covering the proceedings. I also thank the

Vice Chair, hon. Murungi and all Members of the Senate who have served in this Committee.

In conclusion, I would like to assure the people of Kericho County and the country at large, as I did at the commencement of these proceedings that this Committee shall be fair and will be guided by the Constitution and the relevant laws in the discharge of its mandate. I, therefore, wish to appeal to members of the public for their patience. I urge them to remain calm as this Committee and, subsequently, the Senate proceeds to discharge its mandate as required under the Constitution.

Thank you. These proceedings have come to an end and the sitting is closed.

Members of the Special Committee should retreat to our room for consultations.

The Special Committee adjourned at 6.03 p.m.