Paper laid on the table of the Senate by Sen. (Dr) Boni Khalwale on 1st December 2016

REPUBLIC OF KENYA

ELEVENTH PARLIAMENT – FOURTH SESSION

THE SENATE

REPORT OF THE SENATE BUSINESS COMMITTEE ON ITS INQUIRY INTO A COMPLAINT MADE BY GOVERNOR (DR.) EVANS KIDERO REGARDING THE CONDUCT OF SENATOR MIKE GIDEON MBUVI KIOKO SONKO

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Hon. Speaker
You may approve for tabling.
30/11/16

The Senate Business Committee,
Parliament Buildings,
Nairobi.

November, 2016

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EXECUTIVE SUMMARY

Mr. Speaker Sir,

1. The Speaker of the Senate received a letter dated 17th June, 2016 from Governor (Dr.) Evans Kidero, the Governor of Nairobi City County, addressed to the Speaker with respect to a meeting of the County Public Accounts and Investments Committee (CPAIC) held on 15th June, 2016. The letter set out a complaint against Sen. Mike Gideon Mbuvi Kioko Sonko with respect to the Senator's conduct during a meeting of the CPAIC that took place on 15th June, 2016. In particular, Governor Kidero stated that Sen. Sonko had acted in an indecorous manner towards him and other officers of Nairobi City County who attended the meeting. The Governor therefore sought an assurance from the Speaker that public officers appearing before Senate Committees would be protected from physical and verbal abuse, and that a credible inquiry into the matter would be undertaken.

2. On the same day when the incident happened, that is on 15th June, 2016, the Chief Serjeant-at-Arms had filed with the Clerk of the Senate an Incident Report, bringing to the attention of the Clerk the events that took place during the said meeting of the CPAIC.

3. The Chairperson of the CPAIC, Sen. (Prof.) Anyang' Nyong'o, also brought the matter to the attention of the Senate during its Plenary Sitting on 16th June, 2016, by way of a Statement under Standing Order 45(2)(a). In the statement, the Chairperson informed the Senate that Sen. Sonko had been invited to attend a meeting of the CPAIC as a friend of the Committee, during its consideration of the Auditor-General's Report on the Audited Financial Statements of Nairobi County Executive for the Financial Year 2013/2014. The Chairperson noted that Sen. Sonko proceeded to level serious allegations against Governor Kidero, leading to a verbal exchange and disorderly conduct, that forced the adjournment of the sitting of the Committee. The Chairperson consequently sought guidance from the Speaker on the scope of participation for Senators who are non-members of committees, the psychological and physical security guarantees to Senators and witnesses appearing before the Committee, and admissibility of documents tabled before a Committee by a non-member.

4. By a letter dated 17th June, 2016, the Ethics and Anti-Corruption Commission (EACC) also wrote to the Speaker of the Senate, raising concerns regarding the conduct of Sen. Sonko and Governor Kidero during the said meeting. The Commission called for an investigation into the matter and for the appropriate action to be taken with respect to the officers involved.

5. By a letter dated 17th June, 2016, the Chairperson of the Council of Governors, Governor Peter Munya, wrote to the Speaker of the Senate raising concern regarding the treatment of County Governors appearing before the Senate and its Committees. The Chairperson further indicated that Governors would no longer be willing to respond to any Summons to appear before Senate Committee unless the "prevailing humiliating approach" was addressed.

6. By a letter dated 20th June, 2016 addressed to the Speaker of the Senate, Sen. Sonko responded to the complaint made by Governor Kidero and denied the allegations as contained in the said letter.

7. Subsequently, by a letter dated 27th June, 2016, the Speaker of the Senate referred the complaint by Governor Kidero to the Senate Business Committee for its consideration and appropriate action.

Mr. Speaker Sir,

8. The National Assembly (Powers and Privileges) Act (Cap. 6, Laws of Kenya), requires that any complaint received regarding the conduct of a Member who conducts himself or herself in a disorderly manner be referred to the Committee of Privileges. In particular, section 10(4) of the Act provides as follows –

> *(4) The Committee of Privileges shall, either of its own motion or as a result of a complaint made by any person, inquire into any alleged breach by any member of the Assembly of the Code of Conduct issued under section 9, or into any conduct of any member of the Assembly within the precincts of the Assembly (other than the Chamber) which is alleged to have been intended or likely to reflect adversely on the dignity or integrity of the Assembly or the member thereof, or to be contrary to the best interests of the Assembly or the members thereof.*

9. The National Assembly (Powers and Privileges) Act was enacted prior to the promulgation of the Constitution of Kenya, 2010, and does not take into account the bi-cameral nature of the Parliament of Kenya. The Committee of Privileges contemplated in the Act was the Committee of Privileges of the National Assembly. However, the Powers and Privileges law is in the process of being revised to take into account the bicameral Parliament and the provisions of the Constitution of Kenya, 2010.

10. In the meantime, Parliament and all public officers continue to be guided by section 7 of the Sixth Schedule to the Constitution which provides that *"all law in force immediately before the effective date [of the promulgation of the Constitution] continues in force and*

shall be construed with such alterations, adaptations, qualifications and exceptions necessary to bring it into conformity with this Constitution".

11. Given that there currently does not exist a Committee of Privileges by that name with respect to the Senate, it was necessary to determine the most appropriate Committee to sit as a committee of privileges and to consider and determine the matter pending the enactment of the Powers and Privileges law. It was therefore determined that the Senate Business Committee would be best placed to conduct the inquiry on behalf of the Senate in terms of section 10(4) of the Act.

12. The Committee is mandated, amongst other things, to –

    (1) monitor and oversee the implementation of the Senate business and programmes, including the legislative programmes;
    (2) implement the Standing Orders respecting the scheduling or programming of the business of the Senate and the functioning of its Committees; and
    (3) consider such matters as may from time to time arise in connection with the business of the Senate and shall have and perform such powers and functions as are conferred on and ascribed to it by the Senate Standing Orders or, from time to time, by the Senate.

Mr. Speaker Sir,

13. The Senate Business Committee is established pursuant to standing order 176(1) of the Senate Standing Orders. The membership of the Committee is as follows –

(1)	Sen. Ekwee Ethuro	- Speaker of the Senate/Chairperson
(2)	Sen. (Prof.) Kithure Kindiki	- Senate Majority Leader
(3)	Sen. Moses Wetangula	- Senate Minority Leader
(4)	Sen. Beatrice Elachi	- Senate Majority Whip
(5)	Sen. Johnson Muthama	- Senate Minority Whip
(6)	Sen. Kipchumba Murkomen	- Senate Deputy Majority Leader
(7)	Sen. Janet Ongera	- Senate Deputy Minority Whip
(8)	Sen. Beth Mugo	
(9)	Sen. Kiraitu Murungi	
(10)	Sen. James Orengo	
(11)	Sen. (Prof.) John Lonyangapuo	
(12)	Sen. (Dr.) Agnes Zani	

Mr. Speaker Sir,

14. In line with the provisions of the National Assembly (Powers and Privileges) Act, section 7 of the Sixth Schedule to the Constitution of Kenya and the Senate Standing Orders, the terms of reference of the Senate Business Committee with respect to the complaint submitted by Governor Kidero are to inquire into–

    (a) whether the allegations made by Governor Kidero against Sen. Sonko in relation to the meeting held on 15th June, 2016 are substantiated;
    (b) if the allegations are found to have been substantiated, whether the allegations constitute a breach of the Senate Standing Orders; and
    (c) the appropriate recommendations to make, including, if applicable, the disciplinary action to be taken.

15. The Committee, in the execution of its mandate, was guided by these provisions of the Act and the Standing Orders of the Senate.

Mr. Speaker Sir,

16. The Committee held a total of eight sittings; these being-

    (a) the pre-inquiry briefing on 6th July, 2016;
    (b) the hearing on 19th July, 2016 (evidence of Governor Kidero and his two witnesses, Mr. Martin Ogindo and Mr. Gregory Mwakonongo);
    (c) the sitting of 21st July, 2016 during which the Committee should have heard the evidence of Sen. Sonko but could not proceed with evidence following a request by the Senator for postponement of the hearing;
    (d) the hearing on 27th July, 2016 (evidence of Sen. Sonko);
    (e) the hearing on 6th September, 2016 (evidence of the County Public Accounts and Investments Committee – presented by the Chairperson of the Committee);
    (f) the meeting on 16th and 17th September, 2016, during which the Committee reviewed the evidence presented before the Committee, and the law applicable on consideration of the matter;
    (g) the sitting of 2nd November, 2016, to consider the draft report of the Committee; and
    (h) the sitting of 22nd November, 2016, to adopt the report of the Committee.

Mr. Speaker Sir,

17. In summary, the Committee heard the evidence of Governor Kidero, together with two witnesses who testified for the Governor. In his submission, Governor Kidero stated that on 15th June, 2016, he attended the meeting of the CPAIC, following an invitation by the

Committee to appear and respond to audit queries with respect to the accounts of Nairobi City County Executive.

18. Gov. Kidero stated that during the meeting, Sen. Sonko acted in an indecorous manner towards him and the officers from the Nairobi City County Government who had accompanied him. In particular, he stated that Sen. Sonko made specific allegations that were defamatory and touched on his integrity and his conduct as a public officer. He further stated that Sen. Sonko was calm when the meeting began but as it proceeded, he became uncontrollable and, despite attempts by the Chairperson and other Senators to calm him down, Sen. Sonko continued to disrupt the meeting.

19. Gov. Kidero observed that during the meeting, Sen. Sonko was drinking from a bottle which he brought into the meeting and which the Governor suspected to have been an alcoholic substance. He further stated that Sen. Sonko's behaviour during the meeting was consistent with that of a person who was intoxicated. The testimony of the Governor's two witnesses was largely similar to that of the Governor.

20. The Governor consequently requested for implementation of measures to address this issue including–

    (a) an assurance from the Speaker of their safety from physical harm, verbal abuse and threats from any Senator when attending a Committee of the Senate in honour of summons; and
    (b) an institution of a satisfactory and credible inquiry into the matter with a view to instituting acceptable and deterrent, restitutive or remedial measures and to protect him from future humiliation and embarrassment from any Senator.

21. The Committee also heard the evidence of Sen. Sonko who denied the allegations by Governor Kidero and urged the Committee to dismiss the complaint.

22. The Committee further heard from the Chairperson of the CPAIC, Sen. (Prof.) Nyong'o, who gave an account of the incident as it unfolded during the meeting of the CPAIC on 15th June, 2016. He noted that a scuffle did arise during the said meeting between the Senator and the Governor and that this subsequently compelled him to adjourn the meeting.

Mr. Speaker Sir,

23. Having heard the evidence of all the parties and witnesses involved during the said meeting, the Committee observed as follows –

(a) Evidence adduced by the parties

The Committee noted that the testimony by Gov. Kidero was consistent with his complaint as set out in the letter dated 17th June, 2016, and was collaborated by that of two witnesses who testified on behalf of the Governor. This evidence was also consistent with that adduced by the Chairperson of the CPAIC.

The Committee further noted that while Sen. Sonko denied the allegations made by Gov. Kidero regarding the physical and verbal confrontation, he did indeed confirm that he apologised to Sen. Mong'are with whom he had engaged in a verbal confrontation, but stated that he would not apologise to Governor Kidero over his remarks towards the Governor.

The Governor only alluded to physical confrontation in his complaint addressed to the Speaker of the Senate, and in his reply to the Statement by Sen. Sonko. The Chairperson of CPAIC was however categorical in his testimony with respect to the physical confrontation that took place during the meeting, and which necessitated intervention of the Serjeants-at-Arms who were present at the meeting. This testimony was also consistent with the testimony of the Governor's witnesses, as well as the Preliminary Incident Report filed by the Chief Serjeant-at-Arms regarding the said incident.

(b) Admissibility of evidence

Governor Kidero made various allegations against Sen. Sonko, including that he was intoxicated during the meeting. The evidence presented before the Committee was however not sufficient to arrive at a finding that the liquid consumed by Sen. Sonko during the said meeting was an alcoholic drink. This is also on the basis that the beverage was not subjected to a formal test to confirm that it was indeed an alcoholic drink.

Sen. Sonko also sought to adduce documents before the Committee to support his claim that the Governor engaged in land grabbing and was "a murderer and a thief". The Committee noted that its mandate was confined to issues of privilege and in particular, the complaint regarding the conduct Sen. Sonko during the meeting of CPAIC. Consequently, the said documents were not admitted in evidence.

(c) Expunging of false allegations made against the Governor from the record

In his complaint and testimony before the Committee, Governor Kidero noted that Sen. Sonko had made various serious allegations against him, including that he was '*a murderer and a thief*'. The Governor requested that these statements be expunged from Senate

records as they were unsubstantiated, were defamatory to him, and constituted an abuse of the parliamentary privilege conferred on the Senator.

The Committee noted that Parliamentary Privilege is a right or immunity that is accorded to Members of Parliament, principally to enable such members carry out their role and duties effectively including the carrying out of inquiries, the conduct of debates and the legislative role conferred on them. The Committee further noted that this privilege is not absolute, and may be waived or lifted where there is a finding that a Member of Parliament has abused it, to allow for an investigation by the House or by the Privileges Committee.

The Committee further noted that where a finding was made that there was indeed no basis for any allegations made by a Member of Parliament during a session of the House or Committee, the House will often take corrective steps which may include expunging from the records with respect to the proceedings, of the words uttered or allegations made by the concerned Member.

(d) Honouring of summons by the Governor

Governor Kidero, in his complaint to the Speaker of the Senate, stated that unless the issues raised in his complaint were addressed, he would not be in a position to honour summons issued by the Senate requiring his attendance before a Committee of the Senate.

The Committee noted that Article 125 of the Constitution as read with section 14 of the National Assembly (Powers and Privileges) Act conferred on Parliament the power to summon any person to appear before it and to give evidence or produce any record required for production. The Committee further noted that the requirement to appear before a Committee, when summoned to do so, was not optional. A Communication to this effect was also issued by the Speaker of the Senate before the House on 30th June, 2016, with regard to the letter received from the Chairperson of the Council of Governors. In the letter, the Chairperson stated that the Council had advised its members to "desist from appearing before the Senate" until the issues raised, which include the treatment of Governors and their security in meetings of the Senate, were addressed.

(e) Conduct of meetings of the Committees of the Senate

The Committee noted that there was need by chairpersons of Committees of the Senate to give full effect to the Senate Standing Orders particularly with respect to the conduct of meetings of the respective Committees.

The Committee observed that there was need to evaluate the manner in which Governors and other persons appearing before the Committees are treated, and to have in place

guidelines that would regulate such conduct. The Committee further noted that there was need to review the Speaker's Rules to set out rules to regulate specific conduct of Senators in the Senate and its Committees.

The Committee also noted that there is a need to have in place adequate security measures and guidelines on the security measures to be taken with respect to all persons attending Committee meetings of the Senate.

(f) Carrying on the business of a committee matters outside the committee while the committee is still considering the issue

The Committee noted that it was unprocedural for Senators to deliberate on or prosecute in other forums issues that were under consideration by the Senate or any of its Committees. The Committee further noted the need to sensitize Senators on the importance of this principle, given the impact its breach was likely to have on meetings of Committees in Parliament.

(g) Commendation of the Governor

The Committee noted with appreciation that the Governor continued to attend meetings of the CPAIC, despite the events that took place on 15th June, 2016. The Committee commends the Governor for his co-operation and for having faith in the internal mechanism in the Senate to resolve the issues at hand.

Mr. Speaker Sir,

24. From the fore-going, the Committee resolved and made the following recommendations with respect to the issues that arose for consideration by the Committee –

(a) whether the allegations made by Governor (Dr.) Kidero against Sen. Mike Gideon Sonko Mbuvi in relation to the meeting held on 15th June, 2016 are substantiated

Having considered the evidence presented before the Committee, the Committee found as follows with respect to each of the allegations made against Sen. Sonko –

(i) ***Verbal assault by Sen. Sonko against Governor Kidero***

The Committee found that this allegation was substantiated, in particular that Sen. Sonko referred to Governor Kidero as 'a murderer and a thief;' without substantiating the statements. The testimony of various witnesses who appeared before the

Committee, as well as the Hansard record of the CPAIC proceedings during the said meeting of 15th June, 2016, support this finding.

(ii) Consumption of alcohol and intoxication during a meeting of the Committee

The Committee found that this allegation was not substantiated, because no tests were conducted on the liquid to verify its alcoholic content or otherwise.

(b) Whether the allegations amounted to undignified treatment of the Governor and lowered the dignity of the Senate thereby constituting a breach of the Senate Standing Orders

The Committee found that Sen. Sonko's conduct during the said meeting constituted a breach of the Senate Standing Orders. More specifically, the Committee found that the conduct by Sen. Sonko -

1) breached Standing Order 90 (3), on use of offensive or insulting language, and;
2) constitutes gross disorder, as defined by the relevant Standing Order 110(1), paragraphs (a), (c), (d) and (i) which provide as follows -

'Conduct is grossly disorderly if the Senator concerned –

(a) creates actual disorder;

(c) uses or threatens violence against a Senator or other person;

(d) persists in making serious allegations without, in the Speaker's opinion, adequate substantiation; and

(i) acts in any other way to the serious detriment of the dignity or orderly procedure of the Senate.'

Mr. Speaker Sir,

25. Based on the above findings, and having reviewed the sanctions provided for in the National Assembly (Powers and Privileges) Act, the Senate Standing Orders, as well as practice in other Commonwealth jurisdictions, the Committee recommends that-

i) That disciplinary action be taken against Senator Mike Sonko by requiring him to apologise to the Senate at the Bar of the Senate; and

ii) That the offensive words uttered by Sen. Sonko with regard to Governor Kidero, more specifically the allegation that Governor Kidero was 'a thief and a murderer', be expunged from the Hansard record of the proceedings of the CPAIC sitting of 15th June, 2016.

26. Further and arising from the hearing on this matter, the Committee observed a number of matters, outside of the complaint raised by the Governor of Nairobi City County against the Senator, on which it made the following recommendations-

1) **Carrying on the business of a committee matters outside the committee while the committee is still considering the issue**

   Having noted that issues that were under consideration by various Committees were being discussed outside the Committees, the Committee recommends that Senators be sensitized on the need to abide by Standing Order 89, given the impact its breach was likely to have on meetings of Senate Committees.

2) **Role of a Senator who appears in a Committee of the Senate as a Friend of the Committee**

   The Committee recommends that the Senate Standing Orders be amended to provide clarification on the right of such a Senator to participate in proceedings of the Committee, and to speak with regard to the matters under consideration by the Committee.

3) **Legislation to provide for the establishment of a Committee of Privileges in the Senate to inquire into issues of privilege**

   The Committee recommends that amendment of the National Assembly (Powers and Privileges) Act, to reflect Kenya's bicameral legislature following promulgation of the new Constitution in 2010, be fast -tracked.

4) **The provision of adequate security in Committee meetings of the Senate**

   The Committee recommends that measures be put in place to reinforce and ensure the security of Members, staff, witnesses and visitors to Parliament.

   With specific reference to the Sessional Committee on County Public Accounts and Investments, the Committee recommends that the sittings of the Committee be manned by at least two uniformed Serjeants-at-Arms whenever the Committee is considering a sensitive matter such as in this case.

Mr. Speaker Sir,

27. The Committee wishes to thank the Offices of the Speaker of the Senate and the Clerk of the Senate for the support extended to the Committee in the execution of its mandate. The

Committee further extends its appreciation to the parties to the matter; namely, Governor Kidero and Sen. Sonko for their co-operation in the conduct of the inquiry. The Committee also extends its appreciation to Sen. (Prof.) Nyong'o, the chairperson of CPAIC for agreeing to appear before the Committee and shed light on what transpired.

28. I would, on your behalf, Mr. Speaker as the Chairperson of Senate Business Committee, also wish to commend and thank the Members of the Committee for their diligence and dedication to work which made the conduct of the inquiry and production of this report possible.

Mr. Speaker Sir,

29. It is now my pleasant duty and privilege, on behalf of the Chairperson of the Senate Business Committee, to present to the Senate, this Report of the Senate Business Committee on the Inquiry into the Complaint made by Gov. (Dr.) Evans Kidero on the conduct of Sen. Mike Sonko.

SIGNED: .....

SEN. (DR.) AGNES ZANI, MP
(ON BEHALF OF THE CHAIRPERSON)

DATE.....15/11/16.....

XXXXXXXXXX

CONSIDERATION AND ADOPTION OF THE REPORT BY THE COMMITTEE

WE, the undersigned Members of the Senate Rules and Business Committee, having considered this Report on the Inquiry into the alleged breach of privilege by Sen. Mike Gideon Mbuvi Kioko Sonko, do hereby confirm our agreement with the content of the Report and request Sen. Janet Ong'era, MP, to present the Report to the House-

(1) Sen. Ekwee Ethuro - Speaker of the Senate/Chairperson
(2) Sen. (Prof.) Kithure Kindiki
(3) Sen. Moses Wetangula
(4) Sen. Beatrice Elachi
(5) Sen. Johnson Muthama
(6) Sen. Kipchumba Murkomen
(7) Sen. Beth Mugo
(8) Sen. Kiraitu Murungi
(9) Sen. James Orengo
(10) Sen. (Prof.) John Lonyangapuo
(11) Sen. (Dr.) Agnes Zani
(12) Sen. Janet Ongera

1.0 INTRODUCTION

This Chapter sets out the background leading to the inquiry by the Senate Business Committee on the conduct of Sen. Sonko during a meeting of the CPAIC held on 15th June, 2016. It also sets out the manner in which matter was referred to the Senate Business Committee, the rules of procedure and the methodology employed by the Committee to conduct the inquiry.

1.1 BACKGROUND

The inquiry followed a complaint by Gov. (Dr.) Kidero addressed to the Speaker setting out the events that transpired during the meeting of CPAIC held on 15th June, 2016. Also received by the Speaker of the Senate was an incident report from the Chief Serjeant-at-Arms, a response to the complaint by Sen. Sonko as well as correspondence by the EACC and the Council of Governors regarding the said matter. Below is a summary of the issues raised therein.

Preliminary Incident Report by the Chief Serjeant-at-Arms, Senate

(1) On 15th June, 2016, the Chief Serjeant-at-Arms submitted to the Office of the Clerk, a preliminary incident report with respect to the meeting of the CPAIC held on 15th June, 2016 in Senate Committee Room No. 4, Main Parliament Buildings.

(2) In his report, the Chief Serjeant-At-Arms stated that Sen. Sonko, while attending the meeting of CPAIC, accused certain officials of the City County of Nairobi of misdeeds within the county and at the same time, engaged in a verbal exchange with Gov. (Dr.) Evans Kidero, who was in attendance. The Chief Serjeant-at-Arms further explained that the situation turned into a scuffle between the Senator and the Governor and the Serjeants-at-Arms had to intervene to avoid further confrontation.

(3) In his observation, the Chief Serjeant-at-Arms stated that the Senator had with him, a bottle of water which had liquid suspected to be an alcoholic drink. He further noted in the report that the altercation was triggered by Sen. Sonko, resulting in a commotion and subsequent adjournment of the meeting.

The Incident Report is annexed hereto as annex 7.

Complaint by Gov. (Dr.) Evans Kidero

(4) The Speaker of the Senate received a letter dated 17th June, 2016 from Governor (Dr.) Evans Kidero, the Governor of Nairobi City County, addressed to the Speaker with respect to a meeting of the County Public Accounts and Investments Committee held on 15th June, 2016. The letter sets out a complaint against Sen. Mike Gideon Mbuvi Kioko Sonko with respect to the Senator's conduct during the said meeting.

(5) In the said letter, the Governor stated that in the course of the said meeting, Senator Sonko, who was in attendance acted in an indecorous manner towards him and officers from the City County who had accompanied him to the meeting and in a manner that was inconsistent with the attributes of a State officer that are set out under the Sixth Schedule to the Constitution.

(6) In Particular, the Governor alleges that Sen. Sonko –

(a) verbally assaulted the Governor and made serious allegations touching on his integrity and his conduct as a public officer; and

(b) was intoxicated or under the influence of substance abuse.

(7) The Governor further stated that there was clearly a conflict of interest on the part of the Senator as he was a party to the matter which he sought to introduce and discuss during the meeting and which was presently before the Courts for determination.

(8) The Governor therefore requested that the following actions be taken by the Senate–

(a) an assurance from the Speaker of their safety from physical harm, verbal abuse and threats from any Senator when attending a Committee of the Senate in honour of summons;
(b) institution of a satisfactory and credible inquiry into the matter with a view to instituting acceptable and deterrent restitutive or remedial measures and to protect him from future humiliation and embarrassment from any Senator;
(c) the defamatory allegations made by the Senator against the Governor be expunged from the records of the Committee as they are defamatory and an abuse of parliamentary privilege; and
(d) the parliamentary privilege accorded to the Senator be lifted in order to enable the Governor seek appropriate redress as may be available in law.

(9) The Governor further stated that he would not be in a position to honour Senate Summons before the issues he had raised had been addressed and his security and dignity and that of officials of the county government was assured.

Response by Sen. Mike Gideon Mbuvi Kioko Sonko

(10) By a letter dated 20th June, 2016 addressed to the Speaker of the Senate, Senator Mike Sonko responded to the complaint made by Governor Evans Kidero. The Senator, in his response –

(a) denied the allegations as contained in the letter;
(b) states that the reaction by the Governor and the officers from Nairobi City County accompanying him was an attempt to avoid responding to an issue raised by the Senator with respect to the grabbing of specified land in Nairobi;
(c) indicates that as the Senator to Nairobi City County, he has a role to protect the interests of the residents of Nairobi and for that purpose, interrogate the audit accounts for the year 2013/2014 that were under consideration by the County Public Accounts and Investments Committee; and
(d) requests that the complaint be "treated with the utmost contempt it deserves".

(11) The Speaker of the Senate was also in receipt of correspondence from the Ethics and Anti-Corruption Commission and the Council of Governors which raised the following issues –

Letter by EACC

(12) The letter from the Ethics and Anti-Corruption Commission dated 17th June, 2016 and addressed to the Speaker of the Senate, raise concerns regarding the conduct of Senator Mike Sonko and Governor Kidero during the meeting of the County Public Accounts and Investments Committee. The Commission noted that the matter was actionable under the Standing Orders of Parliament and fell within the mandate of the Powers and Privileges Committee. The Commission advised that the Powers and Privileges Committee investigate the matter and take appropriate action.

Letter from the Council of Governors

(13) By a letter dated 17th June, 2016 from the Chairman of the Council of Governors, Honourable Peter Munya, in which the Chairman raises concerns about the alleged harassment of Governors appearing before the Senate and its Committees and in particular, the CPAIC. In the letter, the chairman states that –

(a) based on the alleged experience of Governor (Dr.) Kidero in his appearance before the Committee and the experiences of other Governors, it was apparent that the safety and security of Governors appearing before the Senate Committee was not guaranteed;

(b) there was a clear conflict of interest in which Senators sat over their own cause given the fact that most had declared that they would vie for the position of Governor during the next general election hence, the rules of natural justice had not been adhered to; and

(c) the Council of Governors had advised its members not to appear before the Senate Committee until the issues raised were satisfactorily addressed and that the Governors were no longer willing to respond to any summonses that are made by the Senate and any of its Committees until the Senate puts in place mechanisms to address the serious constitutional and statutory issues raised.

A copy of the letter from the Council of Governors is attached hereto as annex 8.

Report by the Chairperson of the Sessional Committee on County Public Accounts and Investments (CPAIC)

(14) Following a request from the Senate Business Committee, the Chairperson of the Sessional Committee on County Public Accounts and Investments filed a report on the events that took place during the sitting of the CPAIC held on Wednesday, 15th June, 2016, and which were subject of the inquiry by the Senate Business Committee.

(15) In the statement, the Chairperson stated that the CPAIC had invited the Governor of Nairobi City County to appear before the Committee on 15th June, 2016, to resume consideration of the Report of the Auditor General on the Financial Operations of the Nairobi City County Executive for the financial year 2013/2014. The Senator of Nairobi City County was also informed of the said sitting, as is the standard practice of the Committee, and consequently attended and participated in the sitting as a "Friend of the Committee".

(16) The Chairperson further stated that the CPAIC proceeded with consideration of the audit queries in the Report of the Auditor General, at Audit Query 1.2.1 on outstanding rates, wherefore the Governor presented his response through one of his officers.

(17) In the statement, the Chairperson further stated that the deliberations of the Committee proceeded, up to a point where the Senator for Nairobi City County, Sen. Mike Mbuvi Sonko, requested to speak on the matter. Thereupon, on being allowed to speak, Sen. Sonko had stated that Governor (Dr.) Kidero had presided over a systematic extortionist policy, whereby fake land rates claims are presented to owners of various properties in Nairobi, with an aim of forcibly acquiring the properties on default of the rates payments.

(18) The Chairperson further stated that Sen. Sonko accused the Governor, his wife, and a Mr. Waiganjo of murder with impunity. Subsequently, several Senators had interjected on points of order with an aim of returning the meeting to order, noting that the accusations being levelled by Sen. Sonko against Gov. (Dr.) Kidero were not relevant to the Audit Query under consideration.

(19) The Chairperson also stated that Sen. Sonko accused the Senator for Nyamira County of having been compromised by the Governor of Nairobi City County, and that, upon being directed by the Chairperson, had withdrawn the allegation and apologised to the said Senator.

(20) The Chairperson further stated that, in a bid to maintain order and remind all present of the obligations and decree guiding the work of the Committee, he had proceeded to read out the mandate of the Committee as captured by the standing orders. However, Sen. Sonko reiterated that he was ready to substantiate and swear an affidavit on the allegations, and further tabled some documents before the Committee to assist it in consideration of the Audit Queries.

(21) The Chairperson further observed that Sen. Sonko continued to level serious allegations against Gov. (Dr.) Kidero, as well as his family and close associates, and that details of these allegations were captured in the Hansard recording for the sitting. At that point, the Governor submitted that he felt the meeting could not proceed, and requested that it be adjourned. Consequently, the Chairperson adjourned the meeting indefinitely as he felt it could not proceed.

(22) The Chairperson also stated that, as the parties prepared to leave the meeting room following adjournment of the sitting, a scuffle ensued, with Sen. Sonko and a supporter of the Governor exchanging words and threats within the Committee room. The situation seemed to get out of control, whereby the Serjeants- at- Arms intervened to restore order and escort the Governor and the Senator out of the room.

(23) Noting that the incident was unfortunate, the Chairperson requested that, going forward; (a) sittings of the CPAIC be manned by at least two uniformed Serjeants-at-Arms; and (b) thorough screening and body searches be carried out of all persons accessing precincts of the Senate.

A copy of the report from the CPAIC is attached hereto as annex 9.

1.2 REFERRAL OF THE MATTER TO THE SENATE BUSINESS COMMITTEE

(24) The complaint was referred to the Senate Business Committee on 27th June, 2016 for consideration and inquiry into the matter and recommendation to the House on the appropriate action to be taken with respect to the complaint. The Senate Business Committee in this case sat as the Committee on Privileges to inquire into the complaint pursuant to section 7 of the Sixth Schedule to the Constitution as read together with the National Assembly (Powers and Privileges) Act, Cap. 6, Laws of Kenya.

(25) The Committee of Privileges thereafter conducted an inquiry into the allegations made and prepared this report on its findings and recommendations pursuant to section 10(5) and (6) of the National Assembly (Powers and Privileges) Act which provide as follows –

> *(5) The Committee of Privileges shall, after such inquiry as is referred to in subsection (4), report its findings to the Assembly together with such recommendations as it thinks appropriate.*
>
> *(6) The Assembly shall, in accordance with rules made by it (which rules need not be published in the Gazette), consider the report and the recommendations thereon and may take such disciplinary action against the member concerned as may be provided by those rules.*

1.3 METHOD OF WORK

(26) In the execution of its mandate, the Senate Business Committee held a meeting prior to the conduct of the inquiry in order to determine its terms of reference with respect to the complaint made by Gov. (Dr.) Evans Kidero, its plan of action and other activities required to be conducted by the Committee as set out herebelow.

1.4 TERMS OF REFERENCE

(27) The Senate Business Committee held its first meeting on the 6th July, 2016. During this meeting, the Committee considered its terms of reference, noting that it was to sit as the Committee of Privileges in the conduct of the inquiry into the complaint. The Committee was required, pursuant to section 10 of the National Assembly (Powers and Privileges) Act, Cap. 6, Laws of Kenya, to among other things –

(a) whether the allegations made by Governor (Dr.) Kidero against Sen. Mike Gideon Sonko Mbuvi in relation to the meeting held on 15th June, 2016 are substantiated;
(b) if the allegations are found to have been substantiated, whether the allegations constitute a breach of the Senate Standing Orders; and
(c) the appropriate recommendations to make, including, if applicable, the disciplinary action to be taken.

Annexed hereto as annex 10 is a copy of the terms of reference.

1.5 PLAN OF ACTION

(28) Upon approval of the Terms of Reference, the Committee then proceeded to consider and approve its plan of action which is attached as *Annex 11.* The Committee observed that it was required to conduct the inquiry and table its report before the House within a period of thirty days from 6th July, 2016. It was therefore agreed that the report would be tabled by the 28th July, 2016 for adoption by the House together with its recommendations on action, if any, which should be taken by the Senate with respect to the complaint.

1.6 SUMMONSES TO APPEAR

(29) The Committee noted that Article 125 of the Constitution, as read together with sections 14 and 15 of the National Assembly (Powers and Privileges) Act, empowered the Committee to order any person to appear before it and give evidence or produce documents before the Committee. The Committee therefore resolved to invite Governor (Dr.) Kidero and Sen. Mike Gideon Mbuvi Sonko to appear before the Committee for the hearing of evidence. Copies of the Summonses are annexed hereto as Annex 12.

(30) The parties were, pursuant to the summons required to file with the Committee documents they wished to rely on during the Committee hearing, and also set out –

(a) the names and addresses of the persons to be called as witnesses, if any, and witness statements containing a summary of the evidence to be presented by such witnesses before the Committee; and

(b) any other evidence to be relied on.

(31) In response to the Summons, Governor (Dr.) Kidero filed with the Committee, a notice setting out the names of the witnesses he intended to call during the inquiry and witness statements made by the said witnesses. These were -

(a) Dr. Robert Ayisi

(b) Mr. Martin Ogindo

(c) Mr. Gregory Mwakanongo

The witness statements are annexed hereto as Annex 13

(32) In addition to the names and statements of the witnesses he wished to rely on, Governor (Dr.) Kidero also filed additional documents, being photographs and various press reports on the incident subject of the inquiry.

(33) On his part, Sen. Mike Mbuvi Sonko filed with the Committee a statement in response to the Complaint by Gov. (Dr.) Evans Kidero, as well as additional documents he wished to rely on during the Inquiry.

The said statement and bundle of additional documents are attached hereto as Annex 14.

(34) The Committee also resolved to request from the County Public Accounts and Investments Committee (CPAIC) a report on the events that took place during the sitting of the CPAIC held on Wednesday, 15th June, 2016, and which were the subject of the inquiry.

(35) Consequently, the CPAIC submitted to the Committee a report on the said sitting, and annexed thereto the following documents –

(a) hansard of the CPAIC Sitting of 15th June, 2016;
(b) incident report by the Chief Serjeant-at-Arms dated 15th June, 2016; and
(c) Senators' Attendance List for the Sitting of 15th June, 2016.

Copies of the said report by the CPAIC is annexed hereto as Annex 15.

1.7 RULES OF PROCEDURE FOR THE CONDUCT OF THE INQUIRY

(36) Noting that this was the first time that the Senate was considering a complaint made on a matter involving powers and privilege, it was necessary for the Committee to formulate Rules of Procedure that would guide its work. The Committee noted that a set of rules had been developed by the National Assembly, but were yet to be adopted.

(37) The Committee therefore adopted the Rules of Procedure for the Conduct of Inquiry into the Complaint by Gov. (Dr.) Evans Kidero. The Rules, which are attached as Annex 16, regulated the procedure of the Committee on a number of critical matters in respect of which the National Assembly (Powers and Privileges) Act and the Senate Standing Orders.

2.0 COMPARATIVE STUDY ON PARLIAMENTARY PRIVILEGE

2.1 Introduction

(38) In modern parlance, the term "privilege" usually conveys the idea of a "privileged class", with a person or group granted special rights or immunities beyond the common advantages of others. This word, taken in its active sense, is a particular law, or a particular disposition of the law, which grants certain special prerogatives to some persons, contrary to common right.

(39) "Parliamentary privilege" refers more appropriately to the rights and immunities that are considered necessary for Parliament, as an institution, and its Members, as representatives of the electorate, to fulfill their functions. It also refers to the powers possessed by the House to protect itself, its Members, and its procedures from undue interference, so that it can effectively carry out its principal functions, which are to inquire, to debate, and to legislate.

(40) The classic definition of parliamentary privilege is found in Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament which defines parliamentary privilege as follows –

> *"Parliamentary privilege is the sum of the peculiar rights enjoyed by each House collectively... and by Members of each House individually, without which they could not discharge their functions, and which exceeds those possessed by other bodies or individuals. Thus privilege, though part of the law of the land, is to a certain extent an exemption from the general law."*

(41) These "peculiar rights" can be divided into two categories: those extended to Members individually, and those extended to the House collectively. The privilege of a Member individually may be categorized as; freedom of speech, freedom from arrest in civil action, exemption from attendance as a witness among others. The rights and powers of the House as a collectivity may be categorized as follows –

(a) the power to discipline, that is, the right to punish persons guilty of breach of privilege or contempt and the power to expel Members who are found to be guilty of disgraceful conduct;
(b) the regulation of its own internal affairs;
(c) the authority to maintain the attendance and service of its Members;
(d) the right to institute inquiries and to call witnesses and demand papers; and

(e) the right to administer oaths to witnesses.

(42) The rationale for the existence of parliamentary privilege is to "protect legislators in the discharge of their legislative and deliberative functions, and the legislative assembly's work in holding the government to account for the conduct of the country's business."

2.2 What does Parliamentary Privilege apply to?

(43) As highlighted above, parliamentary privilege applies to the house and to the members. The privilege as applies to Members of Parliament may be classified into freedom of speech and inviolability, as it applies to the house; as the right of the house to determine its procedure; and the power to discipline.

(a) Freedom of Speech

(44) It is also referred to as "non-liability", meaning immunity against any judicial proceedings for votes, opinions and remarks related to the exercise of parliamentary office, or in other words, a wider freedom of speech than for ordinary citizens. The application of parliamentary privilege in this case varies from country to country as follows –

(a) scope - in some countries it applies only to Member of Parliament in other it applies to member and well as participants in parliamentary proceedings;
(b) commencement of protection - in some countries, the protection take effect once a Member of Parliament is elected in others it commences once they take the oath of office.
(c) duration of protection - in some countries it covers members utterances at all times while in other they are only covered while undertaking their parliamentary duties.
(d) location - in some countries the privilege is only extended while in the precincts of their respective Parliaments while in others it covers them at all times.

(45) Generally, the protection applies first to Members of Parliament and to all who take part in proceedings of Parliament. In the United Kingdom and New Zealand freedom of speech applies to all who take part in parliamentary activities, thus both

to Members of Parliament and officials of Parliament, witnesses, lawyers and petitioners. In France, privilege in principle only covers members of parliament □

(46) In certain countries such as Belgium, Chile, Denmark and Egypt, Members of Parliament enjoy protection from the moment of their election, but on condition that the election is not subsequently declared invalid. In other countries such as Argentina, Bangladesh, Cyprus, Philippines, India, Malaysia, Mongolia, Mozambique and Namibia, it begins upon taking of the oath of office. In other countries, privilege only exists during sittings. As a result the Member of Parliament enjoys the protection of privilege from the first sitting. □

(47) The duration for protection also varies from country to country, In some countries such as Australia, Canada, Chile, Egypt, Mozambique, New Zealand, United Kingdom, the principle of freedom of speech is only observed during parliamentary sittings.□In others countries such as Denmark, Finland, Gabon, Italy, Kenya, Kuwait, Croatia, Mali, Mongolia, Norway, Austria, protection applies in all circumstances, whether or not Parliament is in session. Freedom of speech ends at the expiration of the mandate or at the dissolution of parliament but the privilege remains in force for what took place during the exercise of the mandate.

(48) In a large number of countries, freedom of speech is not limited to location and is accorded both outside as well as within the parliamentary estate. The privilege is in this case limited to the execution of the member's parliamentary mandate more than to the location where the contested words were spoken as seen in the case of Argentina, Australia, Belarus, Belgium, Burkina Faso, Colombia, Croatia, Denmark, Gabon, Greece, Italy and Kuwait. In certain countries freedom of speech applies only within the parliamentary buildings to the exclusion of all other places. This is the case in Germany, Austria, Bangladesh, Cyprus, Egypt, Estonia, Finland, India and Kenya. In France, privilege applies only in the parliament that is in the place where the parliamentary mandate is exercised. According to French jurisprudence, privilege does not cover either word of a Member of Parliament in a radio interview, nor the report drafted by Members of Parliament in the context of a mission undertaken for the government. □It remain a matter for debate whether a Member of Parliament can invoke privilege when he or she repeats, in the press or in writing, words he has spoken in the assembly. □In certain countries, the Member of Parliament cannot invoke privilege in this latter instance. This is the case in Australia, Belarus, Belgium, Canada, Egypt, Estonia, Gabon and India.

(49) In most countries, freedom of speech is subject to certain restrictions and certain declarations or behaviour are deemed inadmissible and are not covered by privilege. These restrictions are based on the rules of the respective Parliaments and aim to ensure the good order of meetings. □

(50) The degree of protection offered by freedom of speech against proceedings varies □significantly from one country to another. □In some countries privilege is absolute and all form of proceedings – criminal or civil for example Belgium, Canada, Denmark, Germany, Egypt, Hungary, France, Italy, Mongolia, Portugal, the United Kingdom and in Switzerland. □The President or Speaker or other bodies of the assembly can, however, apply disciplinary sanctions against any disorder. □In some countries proceedings for slander or libel and defamation remain possible for example, in Estonia, Greece, Hungary and Mozambique. □In some countries privilege only offers protection against civil proceedings but not criminal action as is the case in New Zealand and India. □In other countries, proceedings can only be entered upon after the preliminary authorization of the assembly. This is particularly the case in Finland where a majority of 5/6 of the assembly is required to authorize proceedings against a member. Freedom of speech does not apply, however, to civil proceedings. □

(b) Inviolability

(51) Inviolability in the strict sense means the special legal protection for Members of Parliament accused of breaking the law, typically against arrest, detention and prosecution, without the consent of the chamber to which they belong. Rules on inviolability may cover protection against –

(a) arrest and detention
(b) investigation and searches
(c) prosecution
(d) criminal sanctions
(e) civil proceedings
(f) administrative actions

□

(52) In the common law tradition there is often a long-standing rule that Members of Parliament are protected against arrest and detention on their way to and from Parliament or while attending Parliament. The idea is that the executive should not be in a position to stop Parliament from meeting by detaining the members.

However, this form of "immunity" is very limited in scope, and does not give protection against criminal investigations or prosecution or punishment. □

(53) In other countries, the rules on inviolability provide protection for Members of Parliament against arrest, detention, prosecution and sanctions. But it might still be possible for the authorities to investigate alleged offences, including house or office searches, and to gather evidence for later prosecution after the end of the period of immunity □

(54) In countries that have parliamentary inviolability as the main rule, there are often exemptions to this, stating that some acts are not covered. The three most common exemptions are:

(a) where the Member of Parliament is caught *in flagrante delicto*;

(b) where the alleged breach of law is of a certain gravity (serious crimes); and

(c) where the alleged breach of law is of a certain pettiness (minor offences).

(55) Another distinction as to the scope of inviolability that can be found in some countries is between -

(a) criminal offences related to the exercise of parliamentary functions; and

(b) "private" offences, that have no bearing on parliamentary functions. □

(56) In contrast to non-liability, rules on parliamentary inviolability are almost always of a temporal nature. The idea is that justice should be merely delayed, not denied, and that legal proceedings may be instituted once the period of immunity is ended. The extent of this period varies. In some countries it is the parliamentary session in which the alleged offence is discovered. In other countries it depends on the period of office of the parliamentarian concerned, and will last as long as he or she is re-elected.

(c) The right of every house to determine its own procedure

(57) Each House of Parliament enjoys an inherent and exclusive authority to conduct and regulate its proceedings in the manner it deems proper. This right is the natural corollary of the immunity from proceedings in a court of law in respect of anything said or done inside the House. This embodiment of the right is the ability of the

house to develop its own rules and to have exclusive management of its internal procedures.

(58) In so doing Parliaments world over enact rules of procedure. They are set rules and general norms that regulate proceedings, as well as other internal matters. In principle, the objects of the rules of procedure are to assist the smooth and orderly running of parliamentary proceedings. They regulate internal organization of the House including selecting Speaker of the House as well as the organization of various committees in Parliament. In addition, these rules regulate the parliamentary process and limits the flexibility of Parliament in exercise of legislative authority.

(d) The power to discipline

(59) Members of Parliamentary Assemblies are required, like their counterparts in other organised bodies, to comply with common rules of conduct and to establish an authority responsible for ensuring observance of the rules. In some countries, the Constitution explicitly authorises Assemblies to establish the rules of conduct and ensure their observance. In others, the right is a natural extension of the assembly's right to regulate its own functioning. Common rules of conduct are almost always written down, either in a specific act of parliament or in the assembly's standing orders.

(60) The rules prohibit the use of force of any kind including the carrying of arms, the use of threats, intimidation, provocation and insults are prohibited in almost every parliamentary assembly, prevent "unlawful" obstruction of the proceeding and seek to preserve the dignity of the assembly. The breach of these rules attracts sanctions. The procedure to be employed and organs of the assembly used to enforce the rules are also clearly set out. The discipline of the members is undertaken as an internal function of the privileges committees thereby protecting them from ordinary legal disciplinary measures.

2.3 Can Parliamentary Privilege be lifted?

(61) Parliamentary privilege does not offer an absolute protection, and certainly does not seek to afford Members of Parliament impunity. It entitles Parliament only to ensure that Members of Parliament can undertake their duties without undue interferences. If it can be satisfied that such is not the case, Parliaments lift

immunity. The relevant procedures are broadly similar and differ mainly in terms of the authority empowered to file a request for the lifting of immunity, the possibility of waiving one's immunity, and the possibility of filing an appeal against the decision to lift immunity.

(62) There are factors that must be considered before parliamentary privilege is lifted. It is mainly lifted as a result of improper conduct resulting in the lowering of the dignity of the house. In most jurisdictions only Parliament as a whole may make the decision to remove privilege from its member.

2.4 How is Parliamentary Privilege lifted?

(63) Generally speaking, a request to lift parliamentary privilege by either the police or offended party must be sent to the Presiding Officer. A parliamentary committee, either a standing committee on privileges or an ad hoc committee, is then entrusted with examining the request and making a recommendation to the plenary, which takes a vote. The composition of that committee may of course influence the outcome of deliberations, as may majority requirements for the vote in the plenary. These differ from country to country but generally a simple majority must be obtained (in Iraq an absolute majority is required). In some cases, for example Timor-Leste and the Republic of Moldova, the Rules of Procedure stipulate that the vote has to be secret.

(64) In very rare cases, the Presiding Officer may decide on such matters. For example, the Speaker of the Iraqi Council of Representatives may authorize the arrest of a member after the expiry of his or her term. In very rare cases and as notable exceptions to the separation of powers, it is not Parliament but the courts which lift parliamentary immunity. This is the case in Guatemala, for example, where the Supreme Court of Justice, after examining a report by a judge it appoints to this effect, decides whether or not proceedings shall be instituted against a member of the Congress of the Republic

(65) It is important to stress that procedures should be in place, which, as far as possible, prevent decisions on the lifting of parliamentary immunity from being taken along party lines. Parliamentarians should be aware that immunity issues are not partisan issues, but affect the institution of Parliament as such. The developments in the Philippines are noteworthy in this respect: On 25th February 2006, a reportedly unlawful attempt was made to arrest five opposition Members of Parliament. They

were able to enter the House of Representatives and remained there from 27th February until 8th May 2006. On 28th February, the House of Representatives unanimously adopted a resolution affirming the right of the persons concerned to due process and granting them "protective custody" in the absence of any judicially issued arrest warrant resulting from a preliminary investigation or indictment.

(66) Jurisprudence around parliamentary privilege continues to develop. It is a balancing act between safe-guarding the house and the need to enforce personal rights. There is a general consensus that Parliamentary privilege is meant for the facilitation of the efficient carrying out of Parliamentary business but not for abuse.

2.5 Conduct of members

(67) The issue of decorum on the part of State officers and in this case, Senators, is an issue that has received considerable attention given the representative role played by these officers. As set out under Chapter Six of the Constitution, the position conferred on State officers is a position of trust and the persons entrusted with the leadership role are required to uphold high standards in terms of ethics, integrity and in the general conduct of their affairs. The Secretary General to the Rajya Sabha (Upper House of India) stated as follows in his contribution to the Association of Secretaries General of Parliaments –

> *Ethical considerations are critical to build, maintain and uphold the public trust in so far as the democratic process and its functioning are concerned. In fact, the credibility of the parliamentary institutions largely depends on the ethical conduct and behaviour of its members. Standards of public behaviour set by members profoundly influence others who are engaged in different aspects of the governance. The issue of 'Conflict of Interests' of Members of Parliament has, therefore, been of much concern to the democracies in many parts of the world.*

(68) It is therefore imperative that all State officers, including Senators, carry themselves in a manner that is consistent with existing laws and regulations on the conduct of public officers.

2.6 Laws regulating the conduct of Senators

(69) A Senator is a State officer within the meaning of a State officer set out under Article 260 of the Constitution. The conduct of a Senator would therefore be guided principally by the Constitution, the Leadership and Integrity Act, the Public Officer Ethics Act and the Senate Standing Orders.

(a) The Constitution of Kenya, 2010

(70) Chapter Six of the Constitution sets standards on how a state officer should exercise his authority. Article 73(1) of the Constitution provides that —

(1) Authority assigned to a State officer—

(a) is a public trust to be exercised in a manner that—

(i) is consistent with the purposes and objects of this Constitution;
(ii) demonstrates respect for the people;
(iii) brings honour to the nation and dignity to the office; and
(iv) promotes public confidence in the integrity of the office.

(71) Article 75 of the Constitution further obliges such an officer to at all times behave in a manner that avoids demeaning the office that he holds. An officer who contravenes these provisions is to be subject to the applicable disciplinary procedure for the relevant office.

(b) The Public Officer Ethics Act, Chapter 183 of the Laws of Kenya

(72) A public officer is under section 9 of this Act expected to—

(a) carry out his duties in a way that maintains public confidence in the integrity of his office;
(b) treat the public and his fellow public officers with courtesy and respect; and
(c) to the extent appropriate to his office, seek to improve the standards of performance and level of professionalism in his organisation.

(73) The commission responsible for ethics in a particular institution in Section 3 of this Act is expected to enforce the code of ethics prepared by the institution under the

Act, and if none exists, the general code under the Act would apply. If the provisions of this Act are read, '*construed with such alterations, adaptations, qualifications and exceptions necessary to bring it into conformity with this Constitution*', in line with section 7 of the Sixth Schedule to the Constitution, then it is expected that the Senate will exercise its enforcement of the Act through a committee equivalent to that in the National Assembly.

(74) Section 35 and 36 of the Act give the responsible commission the mandate to investigate the impugned conduct and take appropriate disciplinary measures. Section 35 provides that —

> *(1) The responsible Commission for a public officer may investigate to determine whether the public officer has contravened the Code of Conduct and Ethics.*
>
> *(2) An investigation may be made on the Commission's own initiative or pursuant to a complaint by any person.*
>
> *(3) The Commission may refer a matter to another appropriate body for investigation and that body shall investigate the matter within a reasonable time and submit a report to the Commission on its findings.*
>
> *(4) An investigation may be conducted even if the subject of the investigation has ceased to be a public officer.*

Section 36 provides for disciplinary action as follows —

> *(1) If an investigation discloses that the public officer has contravened the Code of Conduct and Ethics, the responsible Commission shall, within the time period prescribed by subsection (2)-*
>
> *(a) take the appropriate disciplinary action; or*
>
> *(b) if the responsible Commission does not have the power to take the appropriate disciplinary action, refer the matter to a body or person who does have that power.*
>
> *(2) The time period referred to in subsection (1) is-*
>
> *(a) within thirty days after the completion of the investigation; or*
>
> *(b) if another body investigated the matter under section 35 (3), within thirty days after the responsible Commission receives the report of that body.*

(c) Leadership and Integrity Act

(75) Section 11 of the Leadership and Integrity Act provides that a State officer shall —

(a) carry out duties of the office in a manner that maintains public confidence in the integrity of the office;
(b) treat members of the public and other public officers with courtesy and respect;
(c) not discriminate against any person, except as is expressly provided by the law;
(d) to the extent appropriate to the office, maintain high standards of performance and level of professionalism within the organisation;

(76) Whereas each institution is required to have a specific leadership and integrity code, the general code under the Act would be applicable in the absence of a specific code by an institution. Section 42 empowers the particular institution to initiate investigations into an alleged breach of the code and mete out appropriate sanctions. The procedure adopted in conducting the investigations is expected to be procedurally fair and in tandem with Article 47 of the Constitution.

(d) The Speakers Rules

(77) The Speakers Rules sets out rules that regulate the conduct of Senators as well as members of the public in Parliament. The Rules were made pursuant to the National Assembly (Powers and Privileges) Act. These Rules provide guidelines over the general conduct of Senators within the precincts of Parliament and in particular –

(a) prohibit the carrying of any weapon into the buildings,
(b) regulate the dressing of Senators;
(c) require all Senators to clear their catering accounts; and
(d) regulate the accommodation of Senators in Parliament.

(78) They do not, however, make specific reference to the conduct of Senators while in the House or in a sitting of a Committee.

(e) <u>The Senate Standing Orders</u>

(79) Part XVI (Rules of Debate) and XVII (Order in the Senate and in the Committee of the Whole), particularly standing orders 90 (contents of speech), 91 (retraction and

apologies), 110 (disorderly conduct), provide for orderly conduct and define what conduct is not orderly.

(80) The Senate Standing Orders are designed to ensure that Senators exercise their privilege of free speech with good sense and good taste, maintaining courtesy of language towards other Senators and members of the public in debate. Personal references, unbecoming language and insults during the debate do not augur well for the House.

(81) Standing order 90 (3) of the Senate Standing Orders specifically prohibits the use of improper speech. It provides that-

It shall be out of order to use offensive or insulting language whether in respect of Senators or the public.

(82) Standing order 91 of the Senate Standing Orders further provides that-

A Senator who has used exceptionable words and declines to explain or retract the words or offer apologies for the use if the words to the satisfaction of the Speaker, shall be deemed to be disorderly and shall be dealt with in accordance with the rules pertaining to disorderly conduct.

(83) Standing Order 110 of the Senate Standing Orders defines "grossly disorderly conduct" as follows-

Conduct is grossly disorderly if "the Senator concerned-

(a) creates actual disorder;
(b) knowingly raises a false point of order;
(c) uses or threatens violence against a Senator or other person;
(d) persists in making serious allegations without, in the Speaker's opinion; adequate substantiation;
(e) otherwise abuses his or her privileges;
(f) deliberately gives false information to the Senate;
(g) votes more than once in breach of the Senate Standing Orders;
(h) commits any serious breach of the Senate Standing Orders;
(i) acts in any other way to the serious detriment of the dignity or orderly procedure of the Senate; or

(j) fails to disclose a pecuniary or proprietary interest in a matter.

(84) The Speaker or the Chairperson of Committees is expected to order any Senator whose conduct is grossly disorderly to withdraw immediately from the precincts of the Assembly on the first occasion, for the remainder of that day's sitting and on the second or subsequent occasion during the same session, for a maximum of three sitting days including the day of suspension.

(85) If the situation was to get worse and the Speaker or the Chairperson deems that his or her powers are inadequate, the Speaker or the Chairperson may name such Senator or Senators in accordance with standing order 111 resulting in a suspension in accordance with standing order 112.

(86) The Senate has an obligation to espouse decorum and good behavior which bespeak of Senators as honourable persons and which the Senate owes to the society.

2.7 Comparative jurisdictions on regulation of the conduct of members

(87) The Parliament of India has in place, a specific code of conduct consisting of practices, rulings of the Chair and unrecorded traditions of Parliament that have been consolidated into a code of parliamentary decorum and etiquette. This code sets out intricate details regarding the manner in which a Member of Parliament should behave and conduct himself or herself in Parliament and in the course of proceedings before a House. Issues covered include –

(a) the time and manner in which a person enters into chamber, the items such Member should carry for purposes of proceedings and the registration of one's presence;
(b) the manner in which a member speaks and addresses the House;
(c) issues of conflict of interest;
(d) the manner and position in which members sit in the House;
(e) parliamentary expressions that should not be used in the House;
(f) non-acceptance of gifts or remuneration in the carrying out of their duties;
(g) misuse of facilities and amenities available to the members.

(88) The publication of the code on parliamentary decorum and etiquette followed an All India Conference of Presiding Officers, Chief Ministers, Ministers of Parliamentary Affairs, Leaders and Whips of Parties on "Discipline and Decorum in Parliament

and Legislatures of States and Union Territories" held on 25th November, 2001 in New Delhi. The conference focused on the issues of conduct by Members of Parliament and in particular, the wave of unrest by political parties against the government of the day which included attempts at stalling House proceedings. The Conference identified major contributory factors behind the trend of disorderly conduct which included-

(a) non-availability of adequate time for members to raise matters pertaining to their grievances on the floor of the House;
(b) misgivings created at times by seemingly unresponsive attitude adopted by government and retaliatory posture by treasury benches;
(c) disinclination, at times, on the part of the leadership of legislature parties to adhere to parliamentary norms;
(d) absence of prompt and proper action against erring member under the Rules of Procedure; and
(e) lack of sufficient training and orientation especially of new members in parliamentary procedure and etiquette.

(89) It was the identification of these issues that led to the adoption of resolutions geared towards ensuring that decorum was maintained in the House of Parliament and to the adoption of rules of procedures that were aligned to addresses the factors identified above.

(90) In the case of Canada, the Speaker is charged with maintaining order in the Chamber by ensuring that the House's rules and practices are respected. These rules are found in the standing orders of the House and regulate most aspects of conduct by a member. These include proper attire, the quoting and tabling of the proper documents in debate, the application of the *sub judice* convention to debates and questioning in the House, and the civility of remarks directed towards both Houses, Members and Senators, representatives of the Crown, judges and courts, orderly conduct of debate and ensuring that the debate is focussed. The Speaker is charged with the responsibility of ensuring that such rules are adhered to and maintaining the dignity and decorum of the House, Members themselves are required to take responsibility for their behaviour and conduct their business in an appropriate fashion.

2.8 Role of non-members in committees

(91) The Constitution of Kenya, 2010, the Leadership and Integrity Act as well as the Public Officer Ethics Act provide the overall framework that regulates the conduct of public officers in the conduct of their affairs. In this regard, whether a Senator is a substantive member of a Committee or in attendance, his or a her conduct should, at all times, be in line with the provisions of the Constitution and any laws regulating the conduct of public officers.

(92) Standing order 199 of the Senate Standing Orders provides for the attendance, by Senators who are not members of a Committee, of the Committee as follows –

> *A Senator may attend and participate in a meeting of any Select Committee of the Senate of which he or she is not a member, but such Senator shall not be entitled to vote on any matter before the committee.*

(93) However, other than limiting the right to vote on any matter before the Committee, the Senator is entitled, by virtue of standing order 199 of the Senate Standing Orders to participate in a meeting of the Committee of which he is in attendance. This has, as a matter of practice, included the right to contribute to debates by the Committee, the right to make enquiries and ask questions directed at any witness in attendance before the Committee.

(94) The standing orders with respect to the conduct of a member in Parliament and in a committee would apply to such senator in attendance.

(95) It is also instructive to note that the Senate does recognize situations in which a party whip may appoint another Senator to act on behalf of a Senator who is unable to attend the meetings of a particular committee. In particular, standing order 196 of the Senate Standing Orders provides as follows –

> *Unless otherwise provided for in these Standing Orders, in the event that any member of a Committee is absent or otherwise unable to attend the sittings of the Committee, the party whip of that Senator's party may, with permission of the Speaker, appoint another Senator to act in that Senator's place during the period of such absence or inability.*

(96) A member in this case would have the rights of a full member including the right to participate in the proceedings of the committee and vote on any matter requiring a vote by the committee.

(97) Practice has developed over time in which non-members of a committee attend and participates in the committee proceedings as friends of the committee. While the Senate Standing Orders do not formally recognize such members, they have been equated to non-members in line with standing order 199 of the Senate Standing Orders in which they may attend and participate in proceedings of a committee but are not considered for the purpose of determining quorum and do not have a right to vote at a meeting of the committee.

(98) Various other jurisdictions have various forms of membership by members to committees. In the case of Australia, the Parliament of Australia has two forms of membership i.e. substitute and participating membership.

(99) Substitute members are members appointed to committees in substitution for other members in relation to particular inquiries in line with standing order 27(5) of the standing orders of the Parliament of Australia. Substitute membership was developed as a means of enabling senators with interest in specific policy areas to contribute to the work of the committees that were considering the issues and of which, they were not members. This mode of membership was particularly employed with respect to the estimates committee. In this case, a person is appointed as a substitute member to replace another member of a committee and with respect to matters for which the member was appointed. The member who is replaced ceases to be a member of the committee for those matters and it is not open to the other member then to participate in committee proceedings on those matters, unless he or she is appointed as a participating member.

(100) Substitute membership confers full membership rights on a senator for the purposes of the matter for which they were a member, including the right to attend private meetings, make contributions to reports and vote.

(101) Participating membership on the other hand is conferred on members who are specifically appointed as participating members by the House. This form of membership was initially conceived as a means of facilitating participation in selected inquiries by independents and members of minor parties. It was argued that the opportunities for government and opposition senators to make substitute arrangements were not available to the independents and minor parties.

(102) Participating members –

(a) have all the rights of members except the right to vote; and
(b) are counted for the purpose of forming a quorum if a majority of members of a committee is not present; and
(c) may question witnesses and participate in the deliberations of a meeting, but may not move motions at the meetings of the committee except in the case of attendance in the estimates committee where such members, though not having the right to vote, may move motions in the committees pursuant to standing order 25(7) of the standing orders of the Parliament.

(103) The House of Commons in Canada in its House of Commons Procedure and Practice provides for two forms of membership i.e. regular membership and associate membership.

(104) Regular membership grants such person full membership to a committee. This status allows such a member to fully participate in the proceedings of the respective committee, to move a motion, to vote and to be counted for the purposes of quorum.

(105) Associate members on the other hand may be appointed to subcommittees or act as substitutes for regular committee members who are unable to attend a committee meeting. While associate members are serving on subcommittees or as substitutes for regular members, they enjoy all the rights of regular member, they are counted for purposes of a quorum, they may participate in debate, and they may move motions and vote. The use of associate members on subcommittees helps to reduce the workload of regular members.

(106) The Standing Orders provide that any Member—whether affiliated with a political party or sitting as an independent—may participate in the public proceedings of any committee, of which he or she is not a member, unless the House or the committee in question orders otherwise. The Standing Orders specifically exclude a non-member from voting, moving motions or being counted for purposes of a quorum.

(107) Committees often adopt sessional orders that govern the granting of the right to speak in cases where witnesses are to be questioned. As a result, non-members rarely participate in such proceedings. They may however be occasionally granted

the right to speak. However, this right is only granted following a decision of the majority of the members of the committee to grant that right.

(108) In the case of the New Zealand Parliament, a member of the House who is not a member of the committee can attend the committee's proceedings but can participate in them only with the leave of the committee. This includes being given leave to vote if the committee is so inclined. However, in the case of the Privileges Committee, while other members may attend its proceedings generally, they may only attend while it is deliberating with the specific leave of the committee. If a member who is not a member of a committee attempts to participate in its proceedings without permission, the House could treat such a matter as a contempt and in this case, such person may be excluded from the meeting for being disorderly.

(109) However, the requirement for leave does not extend to a member who is in charge of a bill before a select committee and is not a member of such committee. Such member has the right to take part in any proceedings of the committee with respect to that Bill but has no right to vote on any question put to the committee.

(110) These rights to attend and, to a limited extent, participate in select committee meetings relate only to particular meetings. They do not extend ongoing membership rights, such as to receive committee documents and advices.

(111) Unlike other jurisdictions, the Parliament of Kenya does not provide for the distinct forms of membership to a committee. It can also be noted that while most jurisdictions do allow for the participation of non-members in various committees of the respective Parliaments, the right to participate does not include the right to vote and further, that restrictions may be imposed on the form of participation by a non-member in a committee including the questioning by such non-member of witnesses. In addition, the rules of conduct and etiquette apply to non-members during proceedings of the committee in which they participate in.

2.9 Procedures for disciplining Members of Parliament in comparative jurisdictions

(112) The *Rajya Sabha* (the Council of States) in India is entitled to discipline its members. The Committee of Privileges has authority to investigate the conduct of members that is contrary to the usage or derogatory to the dignity of the House, or in any way inconsistent with the standards which the House is entitled to expect

of its members. The Committee of Privileges in the Council of States is constituted under Rule 192 of the Rules of the Council of States which provides that —

(1) The Chairman shall, from time to time, nominate a Committee of Privileges consisting of ten members.

(2) The Committee nominated under sub-rule (1) shall hold office until a new Committee is nominated.

(3) Casual vacancies in the Committee shall be filled by the Chairman.

(113) Questions of privilege may be raised by a member of the Council pursuant to *Rule 187* which provides that —

Subject to the provisions of these rules, a member may, with the consent of the Chairman, raise a question involving a breach of privilege either of a member or of the Council or of a Committee thereof.

(114) A question of privilege may be also be referred to the Committee of privileges by the Chairman of the Council under Rule 203. Pursuant to *Rule 188* –

A member wishing to raise a question of privilege shall give notice in writing to the Secretary-General, before the commencement of the sifting on the day the question is proposed to be raised. If the question proposed to be raised is based on a document, the notice shall be accompanied by the document.

(115) Rule 189 goes on to provide for the conditions for admissibility of a question as follows –

The right to raise a question of privilege shall be governed by the following conditions, namely-

(i) the question shall be restricted to a specific matter of recent occurrence;

(ii) the matter requires the intervention of the Council.

(116) The procedure for raising a question of privilege once notice has been given is as follows:

(1) The Chairman, if he gives consent under rule 187 and holds that the matter proposed to be discussed is in order, shall, after the questions and before the list of business is entered upon, call the member concerned, who shall rise in his place and. while asking for leave to raise the question of privilege make a short statement relevant thereto:

Provided that where the Chairman has refused his consent under rule 187 or is of opinion that the matter proposed to be discussed is not in order, he may, if he thinks it necessary, read the notice of question of privilege and state that he refuses consent or holds that the notice of question of privilege is not in order:

Provided further that the Chairman may, if he is satisfied about the urgency of the matter, allow a question of privilege to be raised at any time during the course of a sitting after the disposal of questions,

(2) If objection to leave being granted is taken, the Chairman shall request those members, who are in favour of leave being granted to rise in their places and if not less than twenty-five members rise accordingly, the Chairman shall intimate that leave is granted. If less than twenty-five members rise the Chairman shall inform the member that he has not the leave of the Council.

(117) The matter may then be referred to the Committee of Privileges pursuant to rule 190 which provides as follows –

If leave under rule 190 is granted, the Council may consider the question and come to a decision or refer it to the Committee of Privileges on a motion made either by the member who has raised the question of privilege or by any other member.

(118) The committee is then expected to conduct investigations and make recommendations to the House, which are then debated upon and may be adopted by the House.

(119) The House of Commons in Canada has a right to discipline its own Members for misconduct and also the power to punish anyone for interfering with the conduct of parliamentary business (which it considers to amount to a breach of privilege or contempt). While Article 9 of the Bill of Rights gives both Members and "strangers" protection from outside interference when engaged in the business of the House, it also subjects them to the disciplinary power of the House for their conduct during proceedings. However under the House of Commons Standing Order 117, neither committees nor their Chairs have the authority to censure an act of disorder or misconduct. If a committee desires that some action be taken against those disrupting the proceedings, it must report the situation to the House. The House may then take such measures as it deems appropriate.

(120) Presentation of a report to the House is a prerequisite for any question of privilege arising from the proceedings of a committee. According to the Canadian *House of Commons Procedure and Practice (2nd Ed, 2009)* if an incident arises in connection with the committee's proceedings that may constitute a breach of privilege, committee may consider presenting a report on the question to the House. The report should clearly describe the situation, summarize the facts, provide the names of the people involved, if applicable, state that there may be a breach of privilege, and ask the House to take such measures as it deems appropriate.

(121) Alternatively, a member of the House can raise a question on alleged breach of privilege or contempt. A one hour notice to the Speaker is required for actions that occurred outside the House. The member should give a brief and concise explanation of the event that has given rise to the question of privilege and why its consideration should be given precedence over other House business; relevant references to the Standing Orders, other precedents and citations from procedural authorities; assurance that the matter is being brought to the House's attention at the earliest opportunity; and a statement of what corrective action is being sought and an indication that, should the Speaker rule the matter to be a prima facie question of privilege, the Member is prepared to move the appropriate motion. The speaker then rules on whether the matter raises a prima facie issue of privilege, and he may either rule immediately or take the matter under advisement in order to study it further and come back to the House with a decision or ruling.

(122) If the Speaker rules that there is a prima facie question of privilege, the member who raised the question then moves that the matter be referred to the Standing Committee on Procedure and House Affairs for further inquiry. If the motion is adopted by the House, the matter is referred to the committee. The Committee prepares and adopts a report of its findings and recommendations. This report is then presented to the House. A motion to concur in the report may subsequently be adopted by the House of Commons, thereby endorsing the Committee's conclusions and recommendations, which are then implemented.

(123) In the case of the United States of America, the House of Representatives may generally discipline its Members for violations of statutory law, including crimes; for violations of internal congressional rules; or for any conduct which the House finds has reflected discredit upon the institution. Each house of Congress has disciplined its own Members for conduct which has not necessarily violated any

specific rule or law, but which was found to breach its privileges, demonstrate contempt for the institution, or reflect discredit on the House or Senate. These powers can be attributed to Article I(5)(2) of the Constitution of the United States of America:

> *Each House may determine the Rules of its Proceedings, punish its Members for disorderly behaviour, and, with the concurrence of two thirds, expel a Member.*

(124) Pursuant to Rule 14 of the Committee of Ethics rules, Committee on Ethics may inquire into alleged conduct when –

> *(1) information offered as a complaint by a Member of the House of Representatives is transmitted directly to the Committee;*
>
> *(2) information offered as a complaint by an individual not a Member of the House is transmitted to the Committee, provided that a Member of the House certifies in writing that such Member believes the information is submitted in good faith and warrants the review and consideration of the Committee;*
>
> *(3) the Committee, on its own initiative, undertakes an investigation;*
>
> *(4) a Member, officer, or employee is convicted in a Federal, State, or local court of a felony;*
>
> *(5) the House of Representatives, by resolution, authorizes or directs the Committee to undertake an inquiry or investigation; or*
>
> *(6) a referral from the Board is transmitted to the Committee.*

(125) Rule 24 provides for the sanction hearing and consideration of sanctions or other recommendations as follows:

> *(a)If no count in a Statement of Alleged Violation is proved, the Committee shall prepare a report to the House of Representatives, based upon the report of the adjudicatory subcommittee.*
>
> *(b)If an adjudicatory subcommittee completes an adjudicatory hearing pursuant to Rule 23 and reports that any count of the Statement of Alleged Violation has been proved, a hearing before the Committee shall be held to receive oral and/or written submissions by counsel for the Committee and counsel for the respondent as to the sanction the Committee should recommend to the House of Representatives with respect to such violations. Testimony by witnesses shall not be heard except by written request and vote of a majority of the Committee.*

(c)Upon completion of any proceeding held pursuant to clause (b), the Committee shall consider and vote on a motion to recommend to the House of Representatives that the House take disciplinary action. If a majority of the Committee does not vote in favor of the recommendation that the House of Representatives take action, a motion to reconsider that vote may be made only by a member who voted against the recommendation. The Committee may also, by majority vote, adopt a motion to issue a Letter of Reproval or take other appropriate Committee action.

(d) If the Committee determines a Letter of Reproval constitutes sufficient action, the Committee shall include any such letter as a part of its report to the House of Representatives.

(e)With respect to any proved counts against a Member of the House of Representatives, the Committee may recommend to the House one or more of the following sanctions:

(1)Expulsion from the House of Representatives.

(2)Censure.

(3)Reprimand.

(4)Fine.

(5)Denial or limitation of any right, power, privilege, or immunity of the Member if under the Constitution the House of Representatives may impose such denial or limitation.

(6)Any other sanction determined by the Committee to be appropriate.

(f)...

(g)With respect to the sanctions that the Committee may recommend, reprimand is appropriate for serious violations, censure is appropriate for more serious violations, and expulsion of a Member or dismissal of an officer or employee is appropriate for the most serious violations. A recommendation of a fine is appropriate in a case in which it is likely that the violation was committed to secure a personal financial benefit; and a recommendation of a denial or limitation of a right, power, privilege, or immunity of a Member is appropriate when the violation bears upon the exercise or holding of such right, power, privilege, or immunity. This clause sets forth general guidelines and does not limit the authority of the Committee to recommend other sanctions.

2.10 Sanctions for contempt or breach of privilege

(126) Parliaments in various jurisdictions have imposed a wide range of sanctions on members who are deemed to have conducted themselves in a manner that brings into disrepute the dignity of Parliament. These have ranged from expulsion from the House to apologies. The sanction to be imposed is determined on a case to case to case basis and is more often than not influenced by how abhorrent the particular conduct of the member is deemed to be.

(127) One sanction or a combination of several sanctions may be meted out on the member. The table below shows different sanctions, among others, that may be imposed in other jurisdictions for breach of privilege or contempt of Parliament:

Canada	*USA*	*India*	*United Kingdom*
• Admonition • Reprimand • Censure • Imprisonment	• Censure • Reprimand • Suspension • Issuance of a letter of reproval by the committee on ethics • Expulsion	• Admonition • Reprimand • Censure • Suspension from the service of a House/Committee • Imprisonment • Expulsion	• Apology • Admonition • Reprimand • Suspension • Loss of pay for the duration of the suspension • Imprisonment • expulsion

2.11 Committee of Privileges

(128) The Committee of Privileges is established under the National Assembly (Powers and Privileges) Act, Chapter 6 of the Laws of Kenya. Section 10 (1) of that Act states thus:

> *There shall be established a committee, to be known as the Committee of Privileges, consisting of the Speaker and ten other members of the Assembly under the Chairmanship of the Speaker.*

(129) In order to comprehend better the history and *modus operandi* of the Committee of Privileges, it is important to consider the National Assembly (Powers and Privileges) Act briefly.

(130) The National Assembly (Powers and Privileges) Act, which was enacted in 1952, stems from the British parliamentary authority. The Act declares and defines certain powers, privileges and immunities of the National Assembly and of the Members of the National Assembly; it secures freedom of speech in the National Assembly; it makes provision regulating admittance to and conduct within the precincts of the National Assembly; and it gives protection to the persons employed in the publication of the reports and other papers of the National Assembly.

(131) Over time, it has become increasingly clear that for Parliament to execute its powers it is absolutely necessary that it enjoys certain privileges as of right. The Supreme Court of Canada pronounced itself on the issue of parliamentary privilege and stated that privilege in the parliamentary parlance denotes the legal exemption from some duty, burden, attendance or liability to which others are subject. It went on to state thus:

> *It has long been accepted that in order to perform their functions, legislative bodies require certain privileges relating to the conduct of their business. It has also long been accepted that these privileges must be held absolutely and constitutionally if they are to be effective; the legislative branch of our government must enjoy a certain autonomy which even the Crown and the courts cannot touch.*

(132) Even though our parliamentary history borrows heavily from the British Parliamentary, the parliamentary privileges entrenched in our laws are borne out of the principle of necessity and, therefore, may not be an exact replica of the powers and privileges of the British Parliament. It is important, however, to note that National Assembly (Powers and Privileges) Act is applied together with other statutes, the Standing Orders and the usages, conventions and practices of the United Kingdom House of Commons and some Commonwealth jurisdictions where applicable. Sessional Paper No.2 of 1966 sets out the rules that were submitted for approval of the House of Representatives pursuant to Section 7B of the National Assembly (Powers and Privileges) Act, Act No.14 of 1966, which rules were agreed by the Sessional Committee on 16th June, 1966. These rules were to guide the Committee of Privileges on how to conduct an inquiry into the conduct of a Member.

(133) In addition, the National Assembly (Powers and Privileges) Act is applied together with the Code of Conduct sanctioned under Section 9 of the same Act. The Speaker may, from time to time, issue directions in the form of a Code of Conduct in order to regulate the conduct of Members of the Assembly whilst within the precincts of the Assembly.

(134) The Act requires the Committee of Privileges, either on its own motion or as a result of a complaint made by any person, to inquire into any alleged breach by any Member of the Assembly of the Code of Conduct issued by the Speaker.

(135) The Committee of Privileges also has the powers to look into the conduct of any Member of the Assembly within the precincts of the Assembly which is alleged to have been intended or likely to reflect adversely on the dignity or integrity of the Assembly or the Member himself or herself or to be contrary to the best interests of the Assembly.

(136) After the Committee of Privileges has inquired into the breach by a Member it is supposed to report its findings to the Assembly together with recommendations that it thinks appropriate.

(137) The Assembly is mandated to use its own rules to consider the report and the recommendations thereon and mete out disciplinary action against the Member as stipulated in those rules. It is important to note that the rules need not be published in the Gazette.

(138) The National Assembly (Powers and Privileges) Act gives the Committee of Privileges the power to suspend the errant Member from service of the Assembly. The consequence of suspension of the Member is that he or she shall be deemed to be a stranger and shall not enter the precincts of the Assembly without the written consent of a Speaker.

3.0 THE INQUIRY

(139) Owing to the nature of the inquiry, the Senate Business Committee conducted this inquiry *in camera*.

(140) The Committee considered the information set out in the letter of complaint by Governor (Dr.) Kidero, as well as the witness statements filed by Mr. Martin Ogindo and Mr. Gregory Mwakanongo, all of whom appeared and testified before the Committee. With regard to the statement by Dr. Robert Ayisi, the Committee resolved not to admit the same in evidence, as the witness did not appear before the Committee to present his testimony, and for cross-examination.

3.1 Evidence

(141) The evidence in the letter by the Governor and in the witness statements, which is to a great extent similar, was also presented by way of oral evidence before the Committee by the following witnesses –

Testimony by Gov. (Dr.) Evans Kidero, Governor, Nairobi City County

(142) During the inquiry held on 19th July, 2016, Gov. (Dr.) Evans Kidero testified that while the County Public Accounts and Investments Committee, which was held on 15th June, 2016, was in session, Sen. Sonko demanded to be allowed to table documents which the Senator alleged implicated the Governor in illegal activities with respect to properties in Nairobi City County. The Governor further stated that despite being requested to observe decorum, the Senator reacted by engaging the Governor and the officers who had accompanied him to the meeting in a verbal exchange and physical confrontation and had to be restrained by the orderlies and Senators present at the meeting.

(143) The Governor further noted that the Senator was drinking from a bottle which he came with into the meeting from which he drank from. The Governor stated that he suspected this substance to be an alcoholic substance which caused the Senator to behave the way he did during the meeting.

(144) Gov. (Dr.) Evans Kidero stated that the claims and insults levied against him during the meeting imputed ill-motive and portrayed him in a negative light. He

further stated that given the fact that he was a public officer and a father, the statements made by Sen. Sonko would have a negative impact on his image and reputation.

(145) Governor (Dr.) Kidero further averred in his testimony that the conduct of Senator Sonko during the said meeting of the CPAIC was an affront to the dignity and stature of the institution of the Senate and of Parliament and that his complaint was not personal as against Senator Sonko, but rather was aimed at protecting the dignity of the institution of Parliament and its Committees.

Testimony by Mr. Martin Ogindo, Economic Planning, Finance and Strategy Advisor, Nairobi City County

(146) In his testimony, Mr. Martin Ogindo referred to the sitting of the CPAIC of 16th June, 2016 in which he attended in the company of Gov. (Dr.) Evans Kidero who had been invited by the Committee to respond to audit queries that had been raised by the Auditor General with respect to the Finances of the Nairobi City County.

(147) Mr. Ogindo stated that the meeting proceeded normally until Sen. Mike Mbuvi Sonko, who was attending the meeting in his capacity as Senator of Nairobi County cut short the Chair and demanded to table some documents before the Committee. He further averred that Sen. Sonko claimed the said documents implicated Governor (Dr.) Kidero and the Chief of Staff in illegal activities with respect to properties in Nairobi City County.

(148) Mr. Ogindo stated that Sen. Sonko became uncontrollable and that the Chair of the CPAIC, Sen. (Prof.) Nyong'o and other Senators had tried to calm down Senator Sonko but despite that, Sen. Sonko had continued to engage the Governor in a verbal exchange. He further stated that Senator Sonko also had a verbal exchange with the Senator for Nyamira County who then walked out of the meeting room.

(149) Mr. Ogindo testified that the Chair of the CPAIC asked Sen. Sonko to observe decorum and allow the meeting to proceed but that the Senator stopped briefly, then resumed to verbally assaulting the Governor and that despite further attempts to calm the Senator down, he became more abrasive and verbally assaulted the County Attorney who then also left the room.

(150) He then that Senator Sonko physically assaulted the Governor but was overwhelmed by other Senators and security officers present, at which point the delegation from the County Government was led out of the room.

(151) In his testimony, he stated that Senator Sonko had been calm when the meeting of the CPAIC started on the material date. He however noted that the Senator was drinking a liquid from a bottle that he came with to the meeting room, which they suspected to be an alcoholic beverage. Consequently, they averred that his conduct, as the meeting proceeded, was due to the effect that the beverage was having on him.

Testimony by Mr. Gregory Mwakonongo, County Executive Committee Member, Finance and Economic Planning, Nairobi City County

(152) Mr. Gregory Mwakonongo testified that he had accompanied Gov. (Dr.) Kidero to a meeting of the CPAIC held on 15th June, 2016 in Parliament which had been convened to consider audit queries that had been raised with respect to the accounts of the City County of Nairobi. He stated that in the course of the meeting, Sen. Sonko demanded to table documents which the Senator claimed implicated the Governor and other officials of the City County in land grabbing.

(153) He further stated that Sen. Sonko made defamatory remarks against the Governor and his officials and despite attempts by other Senators in the meeting to calm Sen. Sonko down, Sen. Sonko continued to hurl insults and engage in verbal exchange with one of the Senators in the meeting. Mr. Mwakanongo further informed the Committee that the Senator also issued threats to the County Attorney resulting in a melee which saw the County Attorney leave the Committee room.

(154) Mr. Mwakanongo further stated that Sen. Sonko had, during the meeting, been drinking from a bottle which he had brought with him into the room and further noted that the Senator had been fairly calm when he had entered the room and became uncontrollable or unruly about forty minutes into the meeting.

(155) He further informed the Committee that the Senator also threw a punch at the Governor but was overwhelmed by other Senators and security officers who were present and who led him out of the meeting room.

Testimony by Sen. Mike Gideon Mbuvi Kioko Sonko, Senator, Nairobi City County

(156) Sen. Sonko appeared before the Senate Business Committee on 27th July, 2016 and gave his account of the events that occurred during the meeting of the CPAIC on 15th June, 2016.

(157) Senator Sonko began his testimony by setting out the circumstances under which he was issued with summons to appear before the Senate Business Committee in order to respond to a complaint that had been submitted to the Speaker of the Senate by Gov. (Dr.) Evans Kidero with respect to the Senator's conduct during the meeting of the CPAIC on 15th June, 2016.

(158) Sen. Sonko gave a background of the issues that arose during the meeting of the CPAIC that subsequently resulted in this inquiry. He informed the Committee of the allegations he had made with regards to Nairobi City County particularly regarding the conduct of specific officers including the Governor whom he alleged carried out certain illegal activities with respect to specified properties within the county. The Senator further noted that contrary to the assertion by the Governor in his complaint, the Senator was allowed by the chairperson of the CPAIC to table documents allegedly implicating the Governor in various illegal activities. He referred the Committee to page 19 of the Hansard which he inferred recorded the Chairperson of CPAIC as having permitted the Senator to table documents in support of his allegation.

(159) The Senator further informed the Committee of the objections that had been raised by Sen. Okongo during the meeting with respect to the allegations raised during the said meeting that led to the verbal exchange between him and Sen. Okongo as recorded in the Hansard.

(160) Senator Sonko further stated that queries before CPAIC were not politically motivated against the Governor but were in pursuance of his role as the Senator of Nairobi. This was particularly so given the fact that none of the matters touched on him personally but were issues that had been forwarded to him by residents of Nairobi who had been negatively affected by the conduct of the Nairobi City County.

(161) The Senator further testified that he never threatened or insulted the Governor or his officers as alleged, and that if at all it happened, it would have been captured in the Hansard recording for the Sitting. He further denied having engaged in any verbal and abusive exchange with the Governor or any of his officers. Sen. Sonko further denied making any threats against anyone and stated that if indeed he did issue the said threats, they would also have been captured in the Hansard recording.

(162) The Senator also stated as untrue the allegation that Chairperson of the CPAIC had been unable to control the sitting of the Committee, and stated that it was Governor (Dr.) Kidero who had requested for the meeting to be adjourned. He stated that this request by the Governor for adjournment was captured in the Hansard. He further stated that whereas he had apologised to Sen. Mong'are for the verbal exchange that they had had during the meeting, he would never apologise to the Governor.

(163) With regard to the allegation that he was intoxicated during the said sitting of the CPAIC and thus unable to control his conduct, Sen. Sonko denied the allegation and stated that the drink he had been taking during the said sitting was indeed flavoured water which was available for purchase in any supermarket and was not an alcoholic beverage as alleged. He further stated that he comes with his own water and does not drink the water that is availed in meetings for his own security.

(164) The Senator further averred that the complaint by Governor (Dr.) Kidero constituted an attempt to stop the CPAIC from finalizing audit of the accounts of the Nairobi City County, and that the complaint should be dismissed 'with the contempt it deserves'.

(165) With regard to the statements filed by the witnesses on behalf of Governor (Dr.) Kidero, Sen. Sonko averred that the same were untrue, and should be disregarded by the Committee as; (a) the witnesses were employees of the Governor and therefore their testimony could not be independent; and (b) their testimony was a contradiction of what was contained in the Hansard recording of the sitting in question.

Testimony by the Chairperson of the Sessional Committee on County Public Accounts and Investments

(166) Sen. Anyang' Nyong'o, Chairperson of the CPAIC testified and his account of the events that took place during the meeting of the CPAIC on 15th June, 2015.

(167) Sen. Nyong'o informed the Committee that in the course of considering audit queries with respect to all the counties the CPAIC, as a matter of practice, extended an invitation to the Senators of the respective counties to attend the meeting and raise any issues that the Senator may have with respect to the audit queries under consideration. This, he stated, was premised on the basis that a Senator would be well versed with respect to the implementation of projects and carrying out of activities through the use of public funds in the respective county and which affected the residents of the respective county. He further informed the Committee that such Senators, who attend the meetings as "friends of the Committee" are usually informed of the agenda and the audit queries under consideration and any issues raised by the Senators are expected to fall within the ambit of the issues under consideration by the Committee.

(168) Sen. Nyong'o further informed the Committee that the meeting began well but in the course of the meeting, Sen. Sonko raised a preliminary objection and further proceeded to engage the Governor directly. Sen. Nyong'o stated that he did intervene and request the Senator to behave in an orderly manner something that Sen. Sonko did not adhere to. In addition, he stated that Sen. Sonko requested to table documents in support of his allegations against the Governor which he allowed the Senator to table. He however noted that these were not interrogated by the Committee at the time as they needed to be verified first.

(169) Sen. Nyong'o further stated that despite attempts to request Sen. Sonko to behave in an orderly manner, Sen. Sonko refused and at some point, stood up to confront the Governor and engaged him without seeking the permission of the chairperson. Senators who were present during the meeting tried to intervene and despite requesting the Senator to proceed with decorum, the Senator refused to abide.

(170) Sen. Nyong'o stated that the Governor subsequently requested that the meeting be adjourned, which the chairperson did. He further stated that after this, the Governor approached him (Sen. Nyong'o) in order to talk to him. As they were engaged in a discussion, Sen. Sonko approached the Governor and physically

assaulted the Governor upon which the serjeant-at-arms who were present moved to restrain him and pulled him off. He further stated that Sen. Khaniri took a bottle from which Sen. Sonko was drinking and handed it over to the serjeant-at-arms. He stated that Sen. Khaniri informed him that he smelled the contents and formed the opinion that the bottle contained alcohol.

(171) Sen. Nyong'o clarified that the verbal exchange continued after the meeting and that this, and the commotion that ensued, was not captured in the Hansard owing to the fact that it was off, given that the meeting had been adjourned.

(172) Sen. Nyong'o stated that in his view, the conduct by Sen. Sonko did not uphold the dignity of the House especially in view of the fact that he used profane and unparliamentary language, he addressed the Governor directly and stood to engage him without the permission of the chairperson and the fact that he carried, what the Senator believed was, an alcoholic beverage into the meeting.

(173) Sen. Nyong'o also made the following recommendations –

(a) that the CPAIC be manned by at least two uniformed serjeants-at-arms during all sittings; and
(b) that screening apparatus and thorough body searches be conducted for the safety and security of all who accessed the precincts of the Senate.

3.2 Response to statement by Sen. Sonko by Governor (Dr.) Kidero

(174) Gov. (Dr.) Kidero filed a statement on 10th August, 2016 in response to the statement by Sen. Sonko.

(175) In the statement, Gov. (Dr.) Kidero states that the disorderly conduct and violence exhibited by Sen. Sonko could not be captured by the Hansard as the same occurred when the microphones were off. He further noted that the Hansard does capture the disorderly conduct of the Senator (at pages 17 to 24) of the Hansard Report and the defamatory words uttered by the Senator with reference to the Governor.

(176) Gov. (Dr.) Kidero further states that Sen. Sonko has failed to explain his disruptive behaviour during the meeting which was well captured in the meeting

and has opted instead, "to dwell on irrelevant documents and allegations" which the Senator attempted to table during the inquiry.

(177) In addition, the Governor urged the Committee to find that the Senator was intoxicated during the meeting, used unparliamentary language, physically assaulted the Governor by punching him and that he insulted and portrayed him in negative light.

3.3 Further issues arising during the inquiry

(178) Sen. Sonko sought the permission of the Chairperson to table documents in support of his allegations during the inquiry. In particular, he sought to table documents evidencing communication between him and the City County of Nairobi and in support of the Senator's claim relating with respect to his allegations made against the City County of Nairobi with respect to the grabbing of land and collection and use of monies from land rates.

(179) In declining the request to table the documents, the chairperson of the Senate Business Committee made a ruling to the extent that the mandate of the Senate Business Committee was restricted to the conduct of the Senator during the meeting of the CPAIC and hence the documents sought to be tabled had no direct relationship with the matter under investigation or the mandate of the Committee.

4.0 ANALYSIS OF EVIDENCE

(180) The Committee noted that it was required to address itself to the specifics of the complaint and in particular, to determine –

(a) whether the allegations made by Gov. (Dr.) Evans Kidero against Sen. Mike Gideon Sonko Mbuvi in relation to the meeting held on 15th `, 2016 are substantiated;

(b) if the allegations are found to have been substantiated, whether the allegations constitute a breach of the Senate Standing Orders; and

(c) the appropriate recommendations to make, including, if applicable, the disciplinary action to be taken.

4.1 Whether the allegations made by Gov. (Dr.) Evans Kidero against Sen. Mike Gideon Sonko Mbuvi in relation to the meeting held on 15th June, 2016 are substantiated

(181) The allegations made by Gov. (Dr.) Evans Kidero are to the effect that Sen. Sonko acted in an indecorous manner during the meeting of the CPAIC held on 15th June, 2015. In his reply to the statement by Sen. Sonko, Gov. (Dr) Kidero urged the Committee to make a find with respect to the following specific acts which the Governor stated were committed by Sen. Sonko –

(a) was vulgar and used abusive and unparliamentary language;
(b) menaced, punched and assaulted the Governor while in the Committee room;
(c) called the Governor a murderer and a thief several times and refused to withdraw the statement;
(d) acted in a criminal manner during the proceedings; and
(e) was intoxicated and disorderly during the meeting of the CPAIC.

(a) Use of unparliamentary language and verbal assault

(182) Gov. (Dr.) Evans Kidero informed the Committee that Sen. Sonko engaged him during the meeting of the CPAIC and accused him of engaging in illegal activities with respect to properties in Nairobi City County including attempts to grab land by inflating the land rates and subsequently auctioning the affected properties. The Governor further stated that the Senator made remarks against him that were

defamatory and which would lower his dignity as a public officer and portray him in bad light. He noted that Sen. Sonko's behaviour during the meeting was an affront to the dignity and stature of the Senate.

(183) Senator Sonko denied the allegations and sought to justify some of the allegations made during the meeting of the CPAIC by tabling documents in support of his claims. He further indicated that none of the said exchange was recorded in the Hansard which had been produced by Gov. (Dr.) Evans Kidero.

Observations of the Committee

(184) Taking into account the testimony of the parties and the Hansard proceedings of the meeting of the CPAIC held on 15th June, 2016, the Committee makes the following observations –

(185) The Committee noted that while some countries allow for absolute freedom of speech and do not therefore recognise unparliamentary language, the Senate Standing Orders are clear with respect to the language that is to be used by Senators while addressing the House or any of its committees.

(186) In particular, standing order 90 of the Senate Standing Orders provides that–

(3) It shall be out of order to use offensive or insulting language whether in respect of Senators or other persons.

(4) No Senator shall impute improper motive to any other Senator or to a Member of the National Assembly except upon a specific substantive Motion of which at least three days' notice has been given, calling in question the conduct of that Senator or Member of the Assembly.

(187) Standing order 91 of the Senate Standing Orders goes on to provide that –

A Senator who has used exceptionable words and declines to explain or retract the words or to offer apologies for the use of the words to the satisfaction of the Speaker, shall be deemed to be disorderly and shall be dealt with in accordance with the rules pertaining to disorderly conduct.

(188) Standing order 110 of the Senate Standing Orders also defines the following to include disorderly conduct –

(a) creating actual disorder;
(b) using or threatening to use violence against a Senator or other person;
(c) persists in making serious allegations without, in the Speaker's opinion, adequate substantiation; and
(d) acts in any other way to the serious detriment of the dignity or orderly procedure of the Senate.

(189) The Senate Standing Orders do not provide for a definition of the term "unparliamentary language" or "exceptional words". However, standing order 91 provides a guide with respect to the words that amount to unparliamentary language i.e. words that are offensive or amount to an insult.

(190) In addition, while some Parliaments may have in place, a compilation of words that have been ruled or deemed to be unparliamentary, there does not exist a tabulation of words that can be classified as unparliamentary words and whether the words uttered by a Member of Parliament amount to unparliamentary language often depends on the context that the words are used. In this case, the Presiding Officer would then be required to take into account the circumstances and the actual statements that were uttered in determining whether the language used was unparliamentary, particularly where the words, when used in their ordinary meaning are not offensive.

(191) In this regard, reference may also be had to the ruling of the Speaker of the Northern Ireland Assembly, William Hay MLA, delivered on 24th November 2009 in which he stated as follows –

"Unparliamentary language" means different things in different places and to different Members at different times. In some places, the list of words and phrases deemed to be unparliamentary runs to several pages, but it would not be helpful for us to adopt such an approach here.
I know that it sometimes strikes Members as odd that some words and phrases are deemed unparliamentary while others are permitted as being part of the cut and thrust of debate. The context in which particular words are used can affect their meaning, making them more, or less, acceptable to those to whom they refer.

It is for those reasons that, from now on, I intend to take a different approach to the language that will or will not be permitted in the Chamber. Rather than making judgements on the basis of particular words or phrases that have been ruled to be unparliamentary here or elsewhere, I will judge Members' remarks against standards of courtesy, good temper and moderation. Those are what I consider to be the standards of parliamentary debate, and the Assembly and the people who elected it would be better served if its Members were to adhere to those high standards. In making my judgements, I will consider the nature of Members' remarks and the context in which they were made.

I have acknowledged that, at times, Members will wish to express their views forcefully and engage in robust debate. That is acceptable. However, what is not acceptable is where the tone or nature of remarks becomes so ill tempered and bad mannered that they are closer to discourtesy and disorder than to debate.

(192) Reference is may also be had to Erskine May's advice in 'Parliamentary Practice' in which he states that "good temper and moderation are the characteristics of parliamentary language". Further guidance on what amounts to unparliamentary language may be found in guidelines issued by Parliaments in various jurisdictions. For example, the Guidance Notes issued by the Speaker in the United Kingdom House of Commons on the Conventions and Courtesies of the House provide as follows –

> *18. Any abusive or insulting language used in debate will be required to be withdrawn immediately. Accusations of deliberate falsehood, if seriously alleged, would be a matter of privilege and may only be made on a substantive motion after writing privately to the Speaker to obtain permission to raise a matter of privilege. Any such accusation made in the course of other proceedings would be disorderly and must be withdrawn.*
>
> *19. The privilege of freedom of speech in debate, the protection against civil action or criminal sanction for what is said in proceedings of the House, allows us to conduct our debates without fear of outside interference. But it is a freedom which should be exercised responsibly, in the public interest and taking into account the interests of others outside this House. Members are encouraged to research carefully and take advice before exercising this freedom in sensitive or individual cases.*

(194) Expressions which have been found to be unparliamentary and which normally call for prompt intervention from the Chair in various jurisdictions include –

(a) the imputation of false or unavowed motives;
(b) the misrepresentation of the language of another and the accusation of misrepresentation;
(c) charges of uttering a deliberate falsehood;
(d) abusive and insulting language of a nature likely to create disorder;
(e) use of "colourful" language; and
(f) use of rude words.

(195) On the other hand, Gov. (Dr.) Kidero and the witnesses who testified stated that Sen. Sonko verbally assaulted them. Verbal assault usually involves threatening physical violence on someone. That act must create an apprehension in another of an imminent harmful or offensive contact. However, there have been instances where yelling or aggressively using words to offend or attack someone have been found to constitute verbal assault. The threats must be something the assailant is capable of carrying out, and which cause fear of imminent danger to the victim.

(196) From the evidence adduced during the inquiry, the Committee observed as follows –

(a) the testimony given by the Governor was consistent with that of Mr. Martin Ogindo, the Economic Planning, Finance and Strategy Advisor and Mr. Mwakonongo, the County Executive Committee Member, Finance and Economic Planning who testified that Sen. Sonko verbally assaulted the Governor and had a verbal engage with the Senators present in the meeting. This was further corroborated by Sen. Nyong'o, chairperson, CPAIC, who stated that not only did the Senator engage directly with, and stand to confront, the Governor, the Senator's disruptions and verbal exchange with the Governor and the Senators present forced him to adjourn the meeting;

(b) the altercation that arose between Sen. Sonko and Sen. Mong'are during the meeting is well captured in the Hansard recording of proceedings. In particular, pages 18 to 21 captures the verbal exchange that occurred between the Senators and from it, it is clear that unparliamentary language was uttered on the part of Sen. Sonko;

(c) the language uttered by Sen. Sonko and in particular, the threats of violence issued against the Governor and his officers was improper and clearly went against the code of conduct and the Senate Standing Orders which regulated the conduct of Senators;

(d) the Committee was persuaded by the testimony adduced by Sen. Nyong'o to effect that despite adjourning the meeting, Sen. Sonko continued to engage with the Governor and that this could not have been captured by the Hansard as the meeting had been adjourned and the Hansard switched off; and

(e) Sen. Sonko did admit to having engaged Sen. Mong'are and Gov. (Dr.) Kidero in a verbal exchange. He further admitted that he had apologised to Sen. Mong'are but stated that he would not apologise to Gov. (Dr.) Kidero.

(197) In view of the evidence adduced, the Committee found as follows –
That the allegation of verbal assault made by Governor Kidero against Senator Sonko was substantiated.

(b) Physical assault by Sen. Sonko

(198) Physical assault involves a threat or attempt to inflict offensive physical contact or bodily harm on a person that puts the person in immediate danger of or in apprehension of such harm or contact. It takes place when a person provokes and attacks a person physically, with or without the use of a weapon, or threatens to hurt that person.

(199) It was the Governor's testimony and that of his witnesses that Sen. Sonko engaged the officers accompanying the Governor to the meeting in a physical confrontation. This was corroborated by Sen. Nyong'o's who stated that Sen. Sonko approached the Governor while he was consulting with him after adjourning the meeting and physically assaulted the Governor in his presence.

(200) In addition, it was the evidence of the witnesses for the Governor that the Sen. Sonko issued threats of physical harm including engaging in a confrontation with the County Attorney who subsequently left the room.

(201) It was however noted that the Governor did not expressly state the nature of the physical harm visited upon him by the Senator and that this was only set out in his reply to the Statement by Sen. Sonko.

(202) The Committee noted that while Sen. Sonko denied physically assaulting the Governor or any of the officers accompanying him into the meeting, the fact that it necessitated the intervention of the Serjeants-at-Arms to separate the Senator from the Governor and other officers and escort him out of the meeting is telling of the fact that there was likely a physical confrontation. The Committee also noted that this was consistent with the evidence of the Governor, his witnesses and Sen. (Prof.) Nyong'o.

(203) The Committee also noted the report received from the Chief Serjeant-At-Arms in which the Chief Serjeant-At-Arms set out an account of the events as they occurred during the meeting of the CPAIC. These accounts tally with the account of the Sen. (Prof.) Nyong'o, the chairperson of CPAIC and that of the Governor and the county officials who testified during the inquiry. In particular, it was noted that the confrontation that occurred required the intervention of the Serjeants-at Arms who were present at the meeting and who were forced to step in and restrain the parties.

(204) Taking into account the evidence that was adduced by the parties, the Committee found as follows –

That there was indeed a scuffle between the Governor and the Senator butthe allegation of physical assault was not substantiated.

(c) Intoxication during a meeting of a Committee

(194) It was the evidence of the Governor that Sen. Sonko was consuming a substance from a bottle which he had brought with him into the committee room. In addition, the Governor and his witnesses stated that the Sen. Sonko was calm and orderly when the meeting began but as the meeting went on, he became uncontrollable and unruly.

(195) Sen. Nyong'o also stated that after the confrontation between Sen. Sonko and the Governor, Sen. Khaniri took the bottle and handed it over to the Serjeant-at-Arms. He further stated that Sen. Khaniri was of the view that the bottle contained an alcoholic substance, owing to the smell that emanated from the bottle. Sen. Sonko

however denied that the bottle contained an alcoholic substance and further stated that the bottle contained flavoured water.

(196) The Committee noted that the rules of evidence require a person who makes an allegation to prove the said allegation. The Committee observed that while Sen. Sonko may have been unruly or uncontrollable during the said meeting, there had to be a direct link between his conduct and the consumption of the drink during the meeting.

(197) In addition, no evidence was adduced by the parties with respect to the contents of the bottle, which the parties alleged that Sen. Sonko consumed during the meeting and in particular; not tets were undertaken to ascertain , that the contents were indeed alcoholic.

(198) Taking into account the evidence that was adduced by the parties, the Committee found as follows –

That the allegation that Senator Sonko was intoxicated during a sitting of the Committee was not substantiated.

COMMITTEE FINDINGS

4.1 Whether Whether the allegations made by Gov. (Dr.) Evans Kidero against Sen. Mike Gideon Sonko Mbuvi in relation to the meeting held on 15th June, 2016 are substantiated

(199) With respect as to whether the allegations made by Gov. (Dr.) Evans Kidero against Sen. Mike Gideon Sonko Mbuvi in relation to the meeting held on 15th June, 2016 are substantiated, the Committee found as follows –

(i) Verbal assault by Sen. Sonko against Governor Kidero

In specific, the Governor complains that the Senator referred to him as "a murderer and a thief". Based on the evidence received from various witnesses the Committee found that this allegation was substantiated.

(ii) Consumption of alcohol and intoxication during a meeting of the Committee

The Committee found that this allegation was not substantiated.

4.2 Whether the conduct by Sen. Mike Gideon Sonko Mbuvi constituted a breach of the Senate Standing Orders

(200) Standing order 90(3) of the Senate Standing Orders specifically prohibits the use of improper speech. It states that-

It shall be out of order to use offensive or insulting language whether in respect of Senators or the public.

(201) Standing Order 110 of the Senate Standing Orders defines "grossly disorderly conduct" as follows-

Conduct is grossly disorderly if "the Senator concerned-

(a) creates actual disorder;
(b) knowingly raises a false point of order;
(c) uses or threatens violence against a Senator or other person;
(d) persists in making serious allegations without, in the Speaker's opinion; adequate substantiation;
(e) otherwise abuses his or her privileges;
(f) deliberately gives false information to the Senate;
(g) votes more than once in breach of the Senate Standing Orders;
(h) commits any serious breach of the Senate Standing Orders;
(i) acts in any other way to the serious detriment of the dignity or orderly procedure of the Senate; or
(j) fails to disclose a pecuniary or proprietary interest in a matter.

(202) The Committee further noted that while Parliamentary Privilege does apply to utterances made by Members of Parliament while in the course of their duties, this privilege is only accorded to members to enable them carry out their Parliamentary business without unnecessary fetters. However, this right does not confer on members absolute protection and must be exercised in a manner that ensures the dignity of the House is upheld at all times.

(203) Taking into account its findings under paragraph 4.1 and the provisions of the Senate Standing Orders, the Committee found as follows –

That Senator Sonko's conduct during the said meeting constituted a breach of the Senate Standing Orders.

More specifically, the Committee found that the conduct by Sen. Sonko -

1) breached Standing Order 90 (3), on use of offensive or insulting language, and;
2) constitutes gross disorder, as defined at Standing Order 110(1), paragraphs (a), (c), (d) and (i) which provide as follows -

'Conduct is grossly disorderly if the Senator concerned –

(a) creates actual disorder;

(b) uses or threatens violence against a Senator or other person;

(c) persists in making serious allegations without, in the Speaker's opinion, adequate substantiation; and

(d) acts in any other way to the serious detriment of the dignity or orderly procedure of the Senate.'

4.3 The appropriate recommendations to make, including, if applicable, the disciplinary action to be taken

(204) The Committee noted that where it is established that a breach of privilege or the code of conduct the House is required to take action by imposing the appropriate sanctions with respect to the said breach. In particular, section 10 of the National Assembly Powers and Privileges Act, Cap. 6, requires the Committee is to report its findings to the Assembly together with such recommendations as it thinks appropriate upon the conclusion of an inquiry as follows –

(5) The Committee of Privileges shall, after such inquiry as is referred to in subsection (4), report its findings to the Assembly together with such recommendations as it thinks appropriate.

(6) The Assembly shall, in accordance with rules made by it (which rules need not be published in the Gazette), consider the report and the recommendations thereon and may take such disciplinary action against the member concerned as may be provided by those rules.

(205) The Committee noted that the National Assembly (Powers and Privileges) Act gives the Committee of Privileges the power to ma a recommendation for the suspension of an errant Member from service of the Assembly. The consequence

of suspension of the Member is that he or she shall be deemed to be a stranger and shall not enter the precincts of the Assembly without the written consent of a Speaker.

(206) The Committee made reference to the following documents and information in making its recommendations –

(a) practice in Commonwealth Jurisdictions; and
(b) the ruling of the High Court in JR Case No. 129 of 2015, Republic versus The National Assembly Committee of Privileges and 2 others Ex. P. Hon. Ababu Namwamba.

(207) The Committee, in considering comparative literature on the sanctions imposed by various Parliaments, noted that various jurisdictions have imposed varied sanctions, including a combination of sanctions, depending on the nature of the breach. In the case of the United States, Rule 44 of the Committee of Ethics rules in Congress in the United States of America provides as follows –

(e)With respect to any proved counts against a Member of the House of Representatives, the Committee may recommend to the House one or more of the following sanctions:

(1) Expulsion from the House of Representatives.
(2) Censure.
(3) Reprimand.
(4) Fine.
(5) Denial or limitation of any right, power, privilege, or immunity of the Member if under the Constitution the House of Representatives may impose such denial or limitation.
(6) Any other sanction determined by the Committee to be appropriate.

(f)...

(g)With respect to the sanctions that the Committee may recommend, reprimand is appropriate for serious violations, censure is appropriate for more serious violations, and expulsion of a Member or dismissal of an officer or employee is appropriate for the most serious violations. A recommendation of a fine is appropriate in a case in which it is likely that the violation was committed to secure a personal financial benefit; and a recommendation of a denial or limitation of a right, power, privilege, or immunity of a Member is appropriate when the violation bears upon the exercise or holding of such

right, power privilege, or immunity. This clause sets forth general guidelines and does not limit the authority of the Committee to recommend other sanctions.

(208) Other punishments imposed by various jurisdictions include suspension, where the breach is severe, admonition, imprisonment, loss of pay and expulsion from the House of Parliament.

(209) The Committee also considered the ruling of the High Court in JR Case No. 129 of 2015, **Republic versus The National Assembly Committee of Privileges and 2 others Ex. P. Hon. Ababu Namwamba**. In this case, the applicant sought, among other orders, an order of prohibition prohibiting and restraining the Clerk of the National Assembly from implementing the report of the Committee on Privileges of the National Assembly which had been adopted for implementation by the National Assembly. The argument argued that the manner in which the Committee on Privileges had arrived at its decision was unfair, discriminatory, arbitrary and malicious and further argued that the sanction imposed requiring the applicant to issue an apology at the bar was misguided as no such sanction exists in the National Assembly Standing Orders.

(210) The High Court, in dismissing the application, observed as follows –

The Committee [of Privileges] observed that Parliamentary practice in comparative jurisdictions in the Commonwealth such as New Zealand and Canada, sanctions for breach of privilege and/or the code of conduct include –

(a) demand for an apology to be issued at the Bar;
(b) censure or rebuke by the House;
(c) suspension or expulsion from Committees;
(d) suspension from the House;
(e) expulsion from the House;
(f) resolution for the prosecution at law of errant Members;
(g) impeachment (mostly for Speaker and Members who are also Cabinet Ministers);
(h) exclusion from the precincts of the House (mostly invoked on strangers or to members when the House and Committees are on recess);
(i) exclusion from the Parliamentary Press Gallery (invoked against offending media houses);

(j) order for recovery of expenses related to restoration of any damaged property of the House;

(k) imposition of a fine; and

(l) committal to imprisonment by order of the House.

The sanctions recommended by the Committee fell within the sanctions that are imposed by parliaments within the Commonwealth. The Committee did not opt for harsh sanctions. It imposed reasonable sanctions. The Applicant cannot be heard to complain for being sanctioned in accordance with Commonwealth parliamentary traditions as Section 10(6) of the National Assembly (Powers and Privileges) Act, Cap 6 allowed the Assembly to impose disciplinary action in accordance with its rules.

5.0 CONCLUSION

5.1 RECOMMENDATIONS OF THE COMMITTEE

(211) Based on the above findings, and having reviewed the sanctions provided for in the National Assembly (Powers and Privileges) Act, the Senate Standing Orders, as well as practice in other Commonwealth jurisdictions, the Committee recommends that-

i) **That disciplinary action be taken against Senator Mike Sonko by requiring him to apologise to the Senate at the Bar of the Senate;**

ii) **The Hansard record with respect to the proceedings of the Committee reflecting the altercation and containing the words uttered and allegations made by the concerned Senator against Gov. (Dr.) Evans Kidero be expunged from the records of the Committee.**

5.2 OTHER RECOMMENDATIONS OF THE COMMITTEE

(212) In the course of the hearing on this matter, the Committee observed a number of matters, outside of the complaint raised by the Governor of Nairobi City County against the Senator on which it made a number of recommendations.

1) **Carrying on the business of a committee matters outside the committee while the committee is still considering the issue**

Having noted that issues that were under consideration by various Committees were being discussed outside the Committees, the Committee recommends that Senators be sensitized on the need to abide by Standing Order 89, given the impact its breach was likely to have on meetings of Senate Committees.

2) **Role of a Senator who appears in a Committee of the Senate as a Friend of the Committee**

The Committee recommends that the Senate Standing Orders be amended to provide clarification on the right of such a Senator to participate in proceedings of the Committee, and to speak with regard to the matters under consideration by the Committee.

3) **Legislation to provide for the establishment of a Committee of Privileges in the Senate to inquire into issues of privilege**

The Committee recommends that amendment of the National Assembly (Powers and Privileges) Act, to reflect Kenya's bicameral legislature following promulgation of the new Constitution in 2010, be fast -tracked.

4) **The provision of adequate security in Committee meetings of the Senate**

The Committee recommends that measures be put in place to reinforce and ensure the security of Members, staff, witnesses and visitors to Parliament.

With specific reference to the Sessional Committee on County Public Accounts and Investments, the Committee recommends that the sittings of the Committee be manned by at least two uniformed Serjeants-at-Arms whenever the Committee is considering a sensitive matter such as in this case.

ANNEX I

MINUTES OF THE 1ST SITTING OF THE SENATE BUSINESS SUB-COMMITTEE HELD IN THE SPEAKER'S BOARDROOM, 1ST FLOOR, MAIN PARLIAMENT BUILDINGS ON WEDNESDAY, 6TH JULY, 2016 AT 11.20 A.M.

PRESENT

1. Sen. David Ekwee Ethuro	-	Speaker of the Senate (**Chairperson**)
2. Sen. Beatrice Elachi	-	Senate Majority Whip
3. Sen. (Dr.) Agnes Zani		

ABSENT WITH APOLOGY

1. Sen. Janet Ong'era
2. Sen. (Prof.) John Lonyangapuo

IN ATTENDANCE

1. Mr. Jeremiah Nyegenye	-	Clerk of the Senate
2. Ms. Eunice Gichangi	-	Director, Legal Services
3. Mrs. Serah Kioko	-	Director, Legislative & Procedural Services
4. Dr. Johnson Okello	-	Deputy Director, Legal Services
5. Ms. Elizabeth Muhia	-	Principal Legal Counsel
6. Mr. Charles Munyua	-	Clerk Assistant II

MIN.NO. 001/2016:PRAYER

The sitting commenced with a word of prayer said by the Speaker.

MIN. NO. 002/2016: ADOPTION OF THE AGENDA

The Senate Business Sub-Committee adopted the agenda of the sitting, having been proposed by Sen. Beatrice Elachi and seconded by Sen. (Dr.) Agnes Zani.

MIN. NO. 003/2016: REMARKS BY THE SPEAKER/ CHAIRPERSON

The Speaker congratulated the Members on their appointment to the Sub-Committee of the Senate Business Committee constituted to inquire into the Complaint made by Governor (Dr.) Evans Kidero against Sen. Mike Mbuvi Sonko.

The Speaker noted that this was the first time the Senate Business Committee was considering a disciplinary matter arising from a complaint made against a Senator, and urged the Sub-Committee to do its best in setting the standard for consideration of such matters.

MIN. NO. 004/2016: CONSIDERATION OF THE SUB-COMMITTEE'S TERMS OF REFERENCE AND PLAN OF ACTION

The Sub-Committee considered its Terms of Reference, and noted that -

a) The Senate Business Committee, in considering the complaint by Dr. Evans Kidero, drew its mandate from Section 10 of the National Assembly (Powers and Privileges) Act, Cap 6, as read together with Section 7 of the Sixth Schedule to the Constitution, and Senate Standing Order 176(5)(b), (c) and (g);
b) The Committee was required to inquire into the events that took place at the sitting of the County Public Accounts and Investments Committee held on Wednesday, 15th June, 2016, and to make appropriate recommendations thereon; and
c) The Committee was required to prepare and submit a Report to the Senate within thirty days.

Thereafter, the Sub-Committee considered and adopted the proposed Plan of Action.

The Sub-Committee resolved that:-

a) Invitations to Appear to Governor (Dr.) Evans Kidero and Sen. Mike Mbuvi Sonko be issued that day, being Wednesday, 6th July, 2016;
Action: Director, Legal Services

b) The Directorate of Legal Services prepare a brief for the Committee on comparative jurisprudence from the country and other Commonwealth jurisdictions on consideration of similar inquiries, to be considered at the next meeting;
Action: Director, Legal Services

c) The Chairperson of the County Public Accounts and Investments Committee (CPAIC), be requested to submit to the Senate Business Committee a report on the events that took place at the sitting of the CPAIC held on Wednesday, 15th June, 2016, and which were the subject of the present inquiry;
Action: Director, Legislative & Procedural Services

d) Documents filed by Governor (Dr.) Evans Kidero and Sen. Mike Mbuvi Sonko, as well as the report from the CPAIC, be shared with the Committee once received; and
Action: Director, Legislative & Procedural Services

e) In the event all documents in c) are received before Friday, 15th July, 2016, then the Committee may schedule a meeting earlier than the next proposed meeting date of Monday, 18th July, 2016.
Action: Director, Legislative & Procedural Services

MIN. NO. 005/2016: ANY OTHER BUSINESS

The Chairperson instructed the Office of the Clerk to ensure proper security and sitting arrangements for the inquiry, noting the sensitive nature of matter the Sub-Committee was inquiring into.

MIN. NO. 006/2016: ADJOURNMENT

There being no other business, the Chairperson adjourned the Sitting at five minutes past Twelve O'clock until Monday, 18th July, 2016 at 9.00am.

SIGNED: SEN. EKWEE ETHURO, EGH, MP
(CHAIRPERSON)

DATE: 19TH JULY, 2016

MINUTES OF THE 2ND SITTING OF THE SENATE BUSINESS SUB-COMMITTEE HELD IN COMMITTEE ROOM 4, 1ST FLOOR, MAIN PARLIAMENT BUILDINGS ON TUESDAY, 19TH JULY, 2016 AT 10.00 A.M.

PRESENT

1. Sen. David Ekwee Ethuro	-	Speaker of the Senate (**Chairperson**)
2. Sen. Beatrice Elachi	-	Senate Majority Whip
3. Sen. Janet Ong'era	-	Senate Deputy Minority Whip
4. Sen. (Prof.) John Lonyangapuo	-	Member

ABSENT WITH APOLOGY

1. Sen. (Dr.) Agnes Zani

IN ATTENDANCE

1. Sen. Martha Wangari	-	Friend of the Committee
2. Sen. Mike Mbuvi Sonko	-	Senator of Nairobi City County
3. Dr. Evans Kidero	-	Governor of Nairobi City County
4. Mr. Gregory Mwakanongo	-	CEC Member for Finance, NCG
5. Mr. Martin Ogindo	-	Special Advisor to the Governor
6. Mr. Gad Awuonda	-	Legal Advisor to the Governor

SECRETARIAT

1. Mr. M. A. Mohamed	-	Director, Speaker's Office
2. Mrs. Serah Kioko	-	Director, Legislative & Procedural Services
3. Dr. Johnson Okello	-	Deputy Director, Legal Services
4. Ms. Elizabeth Muhia	-	Principal Legal Counsel
5. Mr. Charles Munyua	-	Clerk Assistant II
6. Ms. Gloria Wawira	-	Clerk Assistant III
7. Ms. Fahriya Ibrahim	-	Senior Serjeant-at-Arms
8. Mr. Godana Mamo	-	Serjeant-at-Arms
9. Mr. John Ng'ang'a	-	Audio Recorder

MIN.NO. 007/2016: PRAYER

The sitting commenced with a word of prayer by the Speaker.

MIN. NO. 008/2016: ADOPTION OF THE AGENDA

The Senate Business Sub-Committee adopted the agenda of the sitting, having been proposed by Sen. Beatrice Elachi and seconded by Sen. Janet Ong'era.

MIN. NO. 009/2016: CONFIRMATION OF THE MINUTES OF THE PREVIOUS SITTING

The Minutes of the first sitting held on Wednesday 6th July, 2016 were confirmed as a true record of the deliberations by the Members present and signed by the Chairperson, having been proposed by Sen. Sen. Beatrice Elachi and seconded by the Speaker.

MIN. NO. 010/2016: MATTERS ARISING

a) **Under Min 004/2016 (a)**; the Sub-Committee was informed that Invitations to Appear had been issued and served on both Governor (Dr.) Evans Kidero and Sen. Mike Mbuvi Sonko. Governor (Dr.) Kidero had since submitted witness statements and other documents he wished to rely on during the inquiry, while Sen. Sonko had not submitted any witness statements or documents.

b) **Under Min 004/2016 (b)**; the Sub-Committee was informed that a brief had been prepared on the procedure and sanctions available to the SuB-Committee in considering the complaint against a Member of Parliament.

c) **Under Min 004/2016 (c)**; the Sub-Committee was informed that a letter had been sent to the Chairperson of the County Public Accounts and Investments Committee (CPAIC), to submit to the Committee a report on the events that took place at the sitting of the CPAIC held on Wednesday, 15th June, 2016. On the same, it was noted that the CPAIC had filed a report with the SBC, and annexed thereto copies of the Hansard for the said Sitting, as well as an Incident Report by the Chief Serjeant-at-Arms.

MIN. NO. 011/2016: BRIEFING ON DOCUMENTATION RECEIVED RELATING TO THE INQUIRY INTO THE COMPLAINT BY GOVERNOR (DR.) KIDERO

The Sub-Committee was taken through the documentation received from the Governor, the CPAIC, as well as the brief prepared by the Clerk's Office on the procedure and sanctions available to the Committee in considering the complaint against a Member of Parliament.

MIN. NO. 012/2016: INQUIRY INTO THE COMPLAINT BY GOVERNOR (DR.) KIDERO

Thereupon, the Sub-Committee proceeded to receive the testimony of Governor (Dr.) Kidero, as well as the following two witnesses called by the Governor-

i) Mr. Gregory Mwakanongo; and
ii) Mr. Martin Ogindo

The Sub-Committee was informed that Dr. Robert Ayisi, the third witness called by the Governor, was indisposed and therefore unable to presented his testimony before the Committee that day.

The Sub-Committee was informed that Sen. Mike Mbuvi Sonko was not ready to present his testimony before the Committee that day. At the Senator's request, the Committee **resolved**:-

a) That copies of the Witness Statements and other documents filed by Governor (Dr.) Kidero and the Hansard for the Sitting of the CPAIC held on Wednesday, 15th June, 2016 be furnished to Sen. Sonko; and
b) That a Sitting of the Senate Business Committee be held on Wednesday, 20th July, 2016 at 12.30pm to receive the testimony of Sen. Sonko.

MIN. NO. 013/2016: ANY OTHER BUSINESS

The Sub-Committee noted that only the official Parliamentary Audio Recorder was authorized to record the proceedings of the Committee, and **directed** that, in subsequent meetings, the Serjeant-at-Arms to ensure that this was strictly adhered to.

MIN. NO. 014/2016 ADJOURNMENT

There being no other business, the Chairperson adjourned the Sitting at five minutes past Twelve until Wednesday, 20th July, 2016 at 12.30pm.

SIGNED: SEN. EKWEE ETHURO, EGH, MP
(CHAIRPERSON)

DATE: 21ST JULY, 2016

MINUTES OF THE 3RD SITTING OF THE SENATE BUSINESS SUB-COMMITTEE HELD IN COMMITTEE ROOM 5, 1ST FLOOR, MAIN PARLIAMENT BUILDINGS ON THURSDAY, 21ST JULY, 2016 AT 1.30. P.M.

PRESENT

1. Sen. David Ekwee Ethuro	-	Speaker of the Senate (**Chairperson**)
2. Sen. Beatrice Elachi	-	Senate Majority Whip
3. Sen. Janet Ong'era	-	Senate Deputy Minority Whip
4. Sen. (Prof.) John Lonyangapuo	-	Member
5. Sen. (Dr.) Agnes Zani		

IN ATTENDANCE

1. Mr. M. A. Mohamed	-	Director, Speaker's Office
2. Mrs. Serah Kioko	-	Director, Legislative & Procedural Services
3. Dr. Johnson Okello	-	Deputy Director, Legal Services
4. Ms. Elizabeth Muhia	-	Principal Legal Counsel
5. Mr. Charles Munyua	-	Clerk Assistant II
6. Ms. Gloria Wawira	-	Clerk Assistant III
7. Ms. Fahriya Ibrahim	-	Senior Serjeant-at-Arms
8. Mr. Godana Mamo	-	Serjeant-at-Arms
9. Mr. John Nganga	-	Audio Recorder

MIN.NO. 015/2016: PRAYER

The sitting commenced with a word of prayer said by the Speaker.

MIN. NO. 016/2016: ADOPTION OF THE AGENDA

The Senate Business Sub-Committee adopted the agenda of the sitting, having been proposed by Sen. (Dr.) Agnes Zani and seconded by Sen. (Prof.) John Lonyangapuo.

MIN. NO. 017/2016: CONFIRMATION OF THE MINUTES OF THE PREVIOUS SITTING

The Minutes of the 2nd sitting held on Thursday, 21st July, 2016 were confirmed as a true record of the deliberations by the Members present and signed by the Chairperson, having been proposed by Sen. (Prof.) John Lonyangapuo and seconded by Sen. Beatrice Elachi.

MIN. NO. 018/2016: MATTERS ARISING

1) **Under Min 012/2016 on the witness statement of Dr. Robert Ayisi:** the Sub-Committee resolved not to admit the statement because Dr. Ayisi did not appear before the Committee in person for his identity to be confirmed, his testimony ascertained and for him to be cross-examined.

2) **Under Min 012/2016 on the appearance of Sen. Mike Mbuvi Sonko to give his testimony:** the Sub-Committee was informed that the Senator had requested for a postponement of the sitting of the Sub-Committee to receive his testimony because he needed more time to prepare and submit his documents. The Sub-Committee resolved to allow the Senator until Monday, 25th July, 2015 to submit any written

statements/documents. The Sub-Committee would then sit on Wednesday, 27th July, 2016 to hear the Senator.

3) **Under Min 013/2016 (1) on Hansard Recording:** the Sub-Committee resolved that audio record would not be released to other persons even on request and that only the transcribed Hansard copies would be released.

4) **Under Min 013/2016 (2) on Sub-Committee Documents:** the Sub-Committee noted that necessary Committee documents had been prepared. The Sub-Committee considered and adopted its draft Rules of Procedure with amendments. The amended Rules of Procedure would be availed to the Committee for consideration during the next sitting.

MIN. NO. 019/2016: ANY OTHER BUISNESS

1) Nature of Committee Sittings

The Sub-Committee resolved that as is the practice in all Commonwealth jurisdictions and as per the Committee Rules of Procedure, its sittings would be in camera. The Sub-Committee further resolved that only those witnesses listed by the parties would be allowed into the meeting room (as and when required to attend Committee sittings).

2) Leadership Retreat

The Speaker urged Members of the Sub-Committee to attend the leadership retreat scheduled for 22nd and 23rd July, 2015 at the Windsor Golf Hotel.

MIN. NO. 020/2016: ADJOURNMENT

There being no other business, the Chairperson adjourned the Sitting at seven minutes past Tw0 O'clock until Wednesday, 27th July, 2016 at 11.00am.

SIGNED: SEN. EKWEE ETHURO, EGH, MP
(CHAIRPERSON)

DATE: 27TH JULY, 2016

MINUTES OF THE 4TH SITTING OF THE SENATE BUSINESS SUB-COMMITTEE HELD IN COMMITTEE ROOM 5, 1ST FLOOR, MAIN PARLIAMENT BUILDINGS ON THURSDAY, 27TH JULY, 2016 AT 12.00 NOON.

PRESENT

1. Sen. David Ekwee Ethuro	-	Speaker of the Senate (**Chairperson**)
2. Sen. (Prof.) John Lonyangapuo	-	Member
3. Sen. (Dr.) Agnes Zani	-	Member

ABSENT WITH APOLOGY

1. Sen. Beatrice Elachi	-	Senate Majority Whip
2. Sen. Janet Ong'era	-	Senate Deputy Minority Whip

IN ATTENDANCE

1. Sen. Mike Mbuvi Sonko	-	Senator of Nairobi City County
2. Mr. Martin Ogindo	-	Special Advisor to Governor (Dr.) Evans Kidero

SECRETARIAT

1. Mr. M. A. Mohamed	-	Senior Deputy Clerk
2. Mrs. Serah Kioko	-	Director, Legislative & Procedural Services
3. Dr. Johnson Okello	-	Deputy Director, Legal Services
4. Ms. Elizabeth Muhia	-	Principal Legal Counsel
5. Mr. Charles Munyua	-	Clerk Assistant II
6. Ms. Gloria Wawira	-	Clerk Assistant III
7. Mr. Godana Mamo	-	Serjeant-at-Arms
8. Mr. Simon Muinde	-	Audio Recorder

MIN.NO. 021/2016: PRAYER

The sitting commenced with a word of prayer said by the Speaker.

MIN. NO. 022/2016: ADOPTION OF THE AGENDA

The Senate Business Sub-Committee adopted the agenda of the sitting, having been proposed by Sen. (Dr.) Agnes Zani and seconded by Sen. (Prof.) Lonyangapuo.

MIN. NO. 023/2016: CONFIRMATION OF THE MINUTES OF THE PREVIOUS SITTING

The Minutes of the 3rd Sitting which was held on Thursday, 21st July, 2016 were confirmed as a true record of the deliberations by the Members present and signed by the Chairperson, having been proposed by Sen. (Prof.) Lonyangapuo and seconded by Sen. (Dr.) Agnes Zani.

MIN. NO. 024/2016: MATTERS ARISING

a) **Under Min 018/2016(2) on the appearance of Sen. Mike Mbuvi Sonko to give his testimony:** the Sub-Committee was informed that the Senator had submitted his statement and supporting documents, and was scheduled to give his testimony that day.

b) **Under Min 018/2016(4) on Committee Documents:** the Sub-Committee noted that the Rules of Procedure had been revised as resolved during the previous Sitting, and were on file.

MIN. NO. 025/2016: INQUIRY INTO THE COMPLAINT BY GOVERNOR (DR.) KIDERO – TESTIMONY BY SEN. MIKE MBUVI SONKO

Thereupon, the Sub-Committee proceeded to receive the testimony of Senator Mike Mbuvi Sonko. In his testimony, Sen. Sonko –

a) denied each of the allegations levelled against him in the Complaint by Governor (Dr.) Kidero;
b) stated that he attended the meeting of the CPAIC at the invitation of the Committee, and only spoke when allowed to do so by the Chair;
c) denied using abusive language against, or threatening the Governor or any of the officers accompanying him;
d) denied having been intoxicated during the said sitting of the CPAIC, and stated that what he was taking during the meeting was orange juice; and
e) averred that the Complaint by Governor (Dr.) Kidero was an attempt to stop the CPAIC from finalizing its audit of the accounts of the Nairobi City County Executive, and requested that the complaint be dismissed.

MIN. NO. 026/2016: COMMITTEE DELIBERATIONS

Having concluded hearing of testimony by Governor (Dr.) Kidero, the witnesses called by the Governor, as well as Senator Mike Mbuvi Sonko, the Sub-Committee deliberated and **resolved** to proceed as follows –

a) to consider the statement and evidence presented by the County Public Accounts and Investments Committee (CPAIC); and

b) thereafter, to hold a retreat to consider and adopt its Report.

MIN. NO. 027/2016 ADJOURNMENT

There being no other business, the Chairperson adjourned the Sitting at five minutes past One O'clock to a date to be notified.

SIGNED: SEN. EKWEE ETHURO, EGH, MP
(CHAIRPERSON)

DATE: 6TH SEPTEMBER, 2016

MINUTES OF THE 5TH SITTING OF THE SENATE BUSINESS SUB-COMMITTEE HELD IN THE SPEAKER'S BOARDROOM, 1ST FLOOR, MAIN PARLIAMENT BUILDING ON TUESDAY, 6TH SEPTEMBER, 2016 AT 11:18 A.M.

PRESENT

1. Sen. David Ekwee Ethuro	-	Speaker of the Senate (**Chairperson**)
2. Sen. Janet Ong'era	-	Senate Deputy Minority Whip
3. Sen. (Prof.) John Lonyangapuo	-	Member
4. Sen. (Dr.) Agnes Zani	-	Member

ABSENT WITH APOLOGY

1. Sen. Beatrice Elachi	-	Senate Majority Whip

IN ATTENDANCE

1. Mrs. Serah Kioko	-	Director, Legislative & Procedural Services
2. Ms. Elizabeth Muhia	-	Principal Legal Counsel
3. Ms. Gloria Wawira	-	Clerk Assistant III
4. Ms. Mitchelle Osok	-	Clerk Assistant III

MIN. NO. 028/2016: PRAYER

The sitting commenced with a word of prayer said by the Speaker.

MIN. NO. 029/2016: ADOPTION OF THE AGENDA

The agenda of the sitting was adopted, having been proposed by Sen. (Dr.) Agnes Zani and seconded by Sen. Janet Ong'era.

MIN. NO. 030/2016: CONFIRMATION OF THE MINUTES

The Minutes of the 4th Sitting held on Thursday, 27th July 2016, were confirmed as a true record of the deliberations by the Members present and signed by the Chairperson, having been proposed by Sen. (Dr.) Zani and seconded by Sen. (Prof.) John Lonyangapuo.

MIN. NO. 031/2016: MATTERS ARISING

Under Min. No. 026/2016 on the retreat to consider and adopt its report: The Committee agreed on the dates of the retreat as 14th-17th September, 2016 in Mombasa County.

MIN. NO. 032/2016: INQUIRY INTO THE COMPLAINT BY GOVERNOR (DR.) EVANS KIDERO: CONSIDERATION OF EVIDENCE PRESENTED BY THE COUNTY PUBLIC ACCOUNTS AND INVESTMENTS COMMITTEE

The Committee considered the evidence presented by the County Public Accounts and Investments Committee which was presented by the Chairperson of the Committee, Sen. (Prof.) Anyang' Nyong'o. In his testimony, the Chairperson stated that-

a) Sen. Mike Mbuvi Sonko engaged in a direct verbal exchange with Governor (Dr.) Evans Kidero using unparliamentary language and further engaged in a physical brawl with the Governor.

b) Sen. Sonko conducted himself in a disorderly manner by addressing the Governor directly and not though the Chair, and speaking and standing without permission from the Chair during the meeting.

c) Sen. Sonko was consuming an unknown drink during the meeting which was later possessed by Sen. Khaniri and handed over to the Serjeant-at-Arms.

d) There is need to review rules of adminission of persons invited to committees in order to ensure adequate security and guard against security lapses given the nature of proceedings of oversight and investigatory committees. The CPAIC Chairperson also recommended additional security measures including-

    i) Sound screening apparatus and thorough body searches before admission into committee rooms;
    ii) Restricitng food and water in committee rooms to what is supplied by Parliament and
    iii)The CPAIC, being an investigatory committee, to be manned by at least two uniformed Sertjeant-at-Arms at any given time during sittings.

MIN. NO. 033/2016: COMMITTEE DELIBERATIONS

The Committee deliberated and resolved to proceed as follows-

a) To invite the Serjeant-at-Arms to give their testimony including an account of the contents of the drink that was handed over to them; and

a) Thereafter, to hold a retreat to consider and adopt its Report.

MIN. NO. 034/2016 ADJOURNMENT

There being no other business, the Chairperson adjourned the Sitting at seventeen minutes past Twelve O'clock to a date to be notified.

SIGNED: SEN. EKWEE ETHURO, EGH, MP
(CHAIRPERSON)

DATE: 2ND NOVEMBER, 2016

MINUTES OF THE 6TH SITTING OF THE SENATE BUSINESS SUB-COMMITTEE HELD IN AMBOSELI BOARDROOM AT LAKE NAIVASHA SIMBA LODGE, NAKURU COUNTY, ON FRIDAY, 16TH SEPTEMBER, 2016 AT 4.20 P.M.

PRESENT

1.	Sen. David Ekwee Ethuro	-	Speaker of the Senate (**Chairperson**)
2.	Sen. Janet Ong'era	-	Senate Deputy Minority Whip
3.	Sen. (Dr.) Agnes Zani	-	Member

ABSENT WITH APOLOGY

1.	Sen. Beatrice Elachi	-	Senate Majority Whip
2.	Sen. (Prof.) John Lonyangapuo	-	Member

IN ATTENDANCE

1.	Mrs. Serah Kioko	-	Director, L & P Services
2.	Dr. Johnson Okello	-	Deputy Director, Legal Services
3.	Ms. Elizabeth Muhia	-	Principal Legal Counsel
4.	Maj. (Rtd.) Wilson Bosmet	-	Principal Serjeant-at-Arms
5.	Ms. Susan Odhiambo	-	Public Communications Officer
6.	Mr. Charles Munyua	-	Clerk Assistant II
7.	Ms. Gloria Wawira	-	Clerk Assistant III
8.	Mr. Godana Mamo	-	Assistant Serjeant-at-Arms
9.	Ms. Lydia Nyagol	-	Secretary
10.	Ms. Caroline Ng'ong'a	-	Secretary

MIN. NO. 035/2016: PRAYER

The sitting commenced with a word of prayer said by the Speaker.

MIN. NO. 036/2016: REMARKS BY THE CHAIRPERSON

The Chairperson welcomed Members to the meeting, and thanked them for availing themselves for the important retreat. The Chairperson noted that the Committee was expected to conclude its inquiry into the Compaint submitted by Governor (Dr.) Evans Kidero, and adopt its report thereon, for presentation to the Senate Business Committee and subsequently for tabling before the Senate.

MIN. NO. 037/2016: CONSIDERATION OF THE DRAFT REPORT ON THE INQUIRY INTO THE COMPLAINT BY GOVERNOR (DR.) EVANS KIDERO RELATING TO THE CONDUCT OF SENATOR MIKE MBUVI KIOKO

The Committee was taken through and proceeded to consider –

i) the legal framework for investigation and determination of a Complaint under the National Assembly Powers and Privileges Act, and the Senate Standing Orders;

ii) the evidence and submissions received from Governor (Dr.) Evans Kidero, Governor of Nairobi City County and his witnesses;

iii) the evidence and submissions received from Senator Mike Gideon Mbuvi Sonko Kioko, Senator of Nairobi City County; and

iv) the evidence and submissions received from the County Public Accounts and Investments Committee.

Subsequently, the Committee was taken through and proceeded to deliberate on the contents of the draft Report. The Committee **observed** –

a) that it was important to clarify on the question of whether Sen. Mike Sonko physically assaulted Governor (Dr.) Kidero. This was because the Governor and his witnesses, in their witness statements and oral testimony, referred to verbal assault, and did not make reference to physical assault by the Senator on the Governor. This testimony was provided by the Chairperson of the CPAIC before the Committee, and also by Governor (Dr.) Kidero in a supplementary statement filed with the Committee;

b) that the additional issues raised by Sen. Sonko as against Governor (Dr.) Kidero, relating to alleged unlawful disposal of private properties in Nairobi City County, needed to be investigated by the Sessonal Commitee on County Public Accounts and Investments (CPAIC;

c) that Sen. Sonko be required to apologise to Sen. Mong'are for making comments imputing improper motive by Sen. Mong'are, and for not substantiating the same as required under Standing Order 90;

d) that an assuarnce needed to be given to Governors appearing before the Senate and its Committees that they would be treated with dignity, as expected of the institution of the Senate and of Parliament. On the same, the Committee noted the need to make regulations on how Governors are received and treated within the precincts of Parliament, including on security and protocol arrangements;

e) that the report of the Committee, once adopted by the Senate Business Committee, should be tabled in the Senate for noting, but not for debate.

The Committee was also taken through a comparative study of disciplinary action and sanctions applied in various jurisdictions for breach of house procedures and rules of privilege. These included expulsion from the house, censure/rebuke or reprimand,

demanding an apology at the Bar, suspension from the house for a defined period, resolution for the prosecution of the errant member, exclusion from the precincts of Parliament, order for recovery of expenses, imposition of a fine, and committal to imprisonment by order of the house.

It was noted that some of these options were not available to the Committee as they were not anchored in the Kenyan legal framework.

The Committee thereupon resolved to proceed as follows –

a) that Members of the Committee transmit their comments and observations on the draft Report to the Secretariat, on or before 17th September, 2016; and

b) that, once the Secretariat finalised on the Report, incorporating the comments and observations received from Members, the Committee would hold a sitting to adopt the Report for transmission to the Senate Business Committee.

MIN. NO. 039/2016 ANY OTHER BUSINESS

The Chairperson and Members commended the Secretariat for the work done in ensuring the success of the Inquiry, and in drafting of the Report.

MIN. NO. 040/2016 ADJOURNMENT

There being no other business, the Chairperson adjourned the Sitting at thirty minutes past Six O'clock to a date to be notified.

SIGNED: SEN. EKWEE ETHURO, EGH, MP
(CHAIRPERSON)

DATE: 2ND NOVEMBER, 2016, 2016

MINUTES OF THE 7TH SITTING OF THE SENATE BUSINESS SUB-COMMITTEE HELD IN THE SPEAKER'S BOARDROOM, 1ST FLOOR, MAIN PARLIAMENT BUILDINGS, ON WEDNESDAY, 2ND NOVEMBER, 2016 AT 5.45 P.M.

PRESENT

1. Sen. David Ekwee Ethuro	-	Speaker of the Senate (**Chairperson**)
2. Sen. Janet Ong'era	-	Senate Deputy Minority Whip
3. Sen. (Dr.) Agnes Zani	-	Member

ABSENT WITH APOLOGY

1. Sen. Beatrice Elachi	-	Senate Majority Whip
2. Sen. (Prof.) John Lonyangapuo	-	Member

SECRETARIAT

1. Mr. M. A Mohamed	-	Senior Deputy Clerk
2. Mrs. Serah Kioko	-	Director, L & P Services
3. Ms. Elizabeth Muhia	-	Principal Legal Counsel
4. Mr. Charles Munyua	-	Clerk Assistant II
5. Ms. Gloria Wawira	-	Clerk Assistant III

MIN. NO. 041/2016: PRAYER

The sitting commenced with a word of prayer said by Sen. (Dr.) Agnes Zani.

MIN. NO. 042/2016: ADOPTION OF THE AGENDA

The Senate Business Sub-Committee adopted the agenda of the sitting, having been proposed by Sen. (Dr.) Agnes Zani and seconded by Sen. Janet Ong'era.

MIN. NO. 043/2016: CONFIRMATION OF THE MINUTES OF THE PREVIOUS SITTINGS

1) The Minutes of the 5th Sitting which was held on Tuesday, 6th September, 2016 were confirmed as a true record of the deliberations by the Members present and signed by the Chairperson, having been proposed by Sen. Janet Ong'era and seconded by Sen. (Dr.) Agnes Zani.

2) The Minutes of the 6th Sitting which was held on Friday, 16th September, 2016 were confirmed as a true record of the deliberations by the Members present and signed by the Chairperson, having been proposed by Sen. (Dr.) Agnes Zani and seconded by Sen. Janet Ong'era.

MIN. NO. 044/2016: MATTERS ARISING

Under Min 037/2016 on consideration of the draft Report; the Sub-Committee was informed that the observations, findings and recommendations made during the 6th Sitting

of the Sub-Committee, had since been incorporated in the revised draft Report due for review by the Committee that day.

MIN. NO. 045/2016: CONSIDERATION OF THE REVISED DRAFT REPORT ON THE INQUIRY INTO THE COMPLAINT BY GOVERNOR (DR.) EVANS KIDERO RELATING TO THE CONDUCT OF SENATOR MIKE MBUVI KIOKO

The Sub-Committee was taken through and proceeded to consider the revised draft Report on the inquiry into the complaint by Governor (Dr.) Evans Kidero relating to the conduct of Senator Mike Mbuvi Kioko.

The Sub- Committee made the following observations regarding the draft Report –

i) that the allegations contained in the initial complaint by Governor (Dr.) Kidero, which were set out in the body of the Report, needed to be reflected in the Executive Summary, as well as in the Chapter containing the Findings and Recomemndations of the Committee on each charge;

ii) that the recommendations should clearly specify which Standing Order(s) ahd been violated;

iii) that the recommendations relating to other matters that arose during the subject Inquiry, and which were contained at the final Chapter of the Report, needed to also be set out in the Executive Summary; and

iv) that an additional recommendation be included in the Report, to expunge from the CPAIC Hansard record the allegations made by Sen. Sonko against Governor (Dr.) Kidero, because they were unsubstantiated and the language used by the Senator was unparliamentary.

The Committee resolved to hold an additional sitting to review and adopt the draft Report, following which it would be submitted to the full Senate Business Committee for consideration and adoption.

MIN. NO. 046/2016 ADJOURNMENT

There being no other business, the Chairperson adjourned the Sitting at Seven O'clock to a date to be notified.

SIGNED: SEN. EKWEE ETHURO, EGH, MP
(CHAIRPERSON)

DATE: 15TH NOVEMBER, 2016

MINUTES OF THE 8TH SITTING OF THE SENATE BUSINESS SUB-COMMITTEE HELD IN THE SPEAKER'S BOARDROOM, 1ST FLOOR, MAIN PARLIAMENT BUILDINGS, ON TUESDAY, 15TH NOVEMBER, 2016 AT 12 NOON.

PRESENT

1.	Sen. David Ekwee Ethuro	-	Speaker of the Senate (**Chairperson**)
2.	Sen. Beatrice Elachi	-	Senate Majority Whip
3.	Sen. (Dr.) Agnes Zani	-	Member

ABSENT WITH APOLOGY

1.	Sen. Janet Ong'era	-	Senate Deputy Minority Whip
2.	Sen. (Prof.) John Lonyangapuo	-	Member

SECRETARIAT

1.	Mrs. Serah Kioko	-	Director, Legislative and Procedural Services
2.	Ms. Elizabeth Muhia	-	Principal Legal Counsel
3.	Mr. Charles Munyua	-	Clerk Assistant II

MIN. NO. 047/2016: PRAYER

The sitting commenced with a word of prayer said by Sen. (Dr.) Agnes Zani.

MIN. NO. 048/2016: ADOPTION OF THE AGENDA

The Senate Business Sub-Committee adopted the agenda of the sitting, having been proposed by Sen. (Dr.) Agnes Zani and seconded by Sen. Beatrice Elachi.

MIN. NO. 049/2016: CONFIRMATION OF THE MINUTES OF THE PREVIOUS SITTINGS

The Minutes of the 7th Sitting held on Wednesday, 2nd November, 2016 were confirmed as a true record of the deliberations by the Members present and signed by the Chairperson, having been proposed by Sen. Beatrice Elachi and seconded by Sen. (Dr.) Agnes Zani.

MIN. NO. 050/2016: MATTERS ARISING

Under Min 045/2016 on consideration of the revised draft Report: The Sub-Committee was informed that the observations, findings and recommendations made during the 7th Sitting of the Committee, had since been incorporated in the revised draft Report, due for adoption by the Sub-Committee that day.

MIN. NO. 051/2016: ADOPTION OF THE REPORT ON THE INQUIRY INTO THE COMPLAINT BY GOVERNOR (DR.) EVANS KIDERO RELATING TO THE CONDUCT OF SENATOR MIKE MBUVI KIOKO

Having considered the draft Report as revised, the Sub-Committee proceeded to **adopt** the Report on

the Inquiry into the Complaint by Governor (Dr.) Evans Kidero relating to the conduct of Senator Mike Mbuvi Kioko.

The Sub-Committee further **resolved** that the Report be submitted to the full Senate Business Committee for consideration and adoption.

MIN. NO. 052/2016 ADJOURNMENT

There being no other business, the Chairperson adjourned the Sitting at Thirty minutes past Twelve O'clock.

SIGNED: SEN. EKWEE ETHURO, EGH, MP
(CHAIRPERSON)

DATE: 22ND NOVEMBER, 2016

MINUTES OF THE TWENTY-SIXTH SITTING OF THE SENATE BUSINESS COMMITTEE HELD IN COMMITTEE ROOM NO. 4, FIRST FLOOR, MAIN PARLIAMENT BUILDINGS ON TUESDAY, 22ND NOVEMBER, 2016 AT 2:00 P.M.

PRESENT

1. Sen. Ekwee Ethuro - **Speaker of the Senate (Chairperson)**
2. Sen. (Prof.) Kithure Kindiki - Senate Majority Leader
3. Sen. Moses Wetang'ula - Senate Minority Leader
4. Sen. Beatrice Elachi - Senate Majority Whip
5. Sen. (Dr.) Agnes Zani
6. Sen. James Orengo

ABSENT WITH APOLOGIES

1. Sen. Johnson Muthama - Senate Minority Whip
2. Sen. Kipchumba Murkomen
3. Sen. Kiraitu Murungi
4. Sen. Beth Mugo
5. Sen. Janet Ong'era
6. Sen. (Prof.) John Lonyangapuo

IN ATTENDANCE

1. Mr. Mohamed Ali - Senior Deputy Clerk
2. Mrs. Serah Kioko - Director, Legislative and Procedural Services
3. Mr. Njenga Ruge - Deputy Director, LPS
4. Ms. Mary Chesire - Deputy Director, Committee Services
5. Mr. Zakayo Mogere - Principal Clerk Assistant I
6. Mrs. Elizabeth Muhia - Principal Legal Counsel
7. Ms. Caroline Kinyua - Clerk Assistant I
8. Mr. Innocent Mbaya - Clerk Assistant II

MIN. NO.223/2016 PRAYER

The sitting commenced with a prayer said by the Speaker.

MIN. NO.224/2016 ADOPTION OF THE AGENDA

The Committee adopted the agenda of the Sitting, having been proposed by Sen. (Dr.) Agnes Zani and seconded by Sen. James Orengo.

MIN. NO.225/2016 CONFIRMATION OF MINUTES OF PREVIOUS SITTING

The Minutes of the Twenty-fifth Sitting held on Tuesday, 1st November, 2016, were confirmed as a true record of the deliberations by the Members present and signed by the Chairperson, having been proposed by Sen. Moses Wetang'ula and seconded by Sen. (Dr.) Agnes Zani.

MIN. NO.226/2016 MATTERS ARISING

1) **Under MIN. No. 217 (1) regarding the Reports of the County Public Accounts and Investments Committee:** The Committee was informed that the County Public Accounts

and Investments Committee would table four reports on Thursday, 24th November, 2016.

2) **Under MIN. No. 221/2016 (a) regarding Senate Monitoring and Evaluation Regulations:** The Committee noted with concern that the National Assembly annulled the Senate Monitoring and Evaluation regulations following a report by the Assembly's Sessional Committee on Delegated Legislation.

   It was resolved that a communication from the Chair be issued informing Senators of the development and appointing Senators to a Joint Committee to deal with the matter. It was further resolved that Sen. Kiraitu Murungi, Sen. (Dr.) Agnes Zani and Sen. Muriuki Karue be appointed to the Committee.

MIN. NO.227/2016 ORDER PAPER FOR TUESDAY, 22ND NOVEMBER, 2016

The Committee approved the Order Paper for Tuesday, 22nd November, 2016.

MIN. NO.228/2016 WEEKLY PROGRAMME FOR THE WEEK COMMENCING TUESDAY, 22ND NOVEMBER, 2016

The Committee approved the Weekly Programme for the week commencing Tuesday, 22nd November, 2016.

MIN. NO.229/2016 CONSIDERATION OF THE REPORT ON THE INQUIRY INTO A COMPLAINT BY GOVERNOR (DR.) EVANS KIDERO REGARDING THE CONDUCT OF SEN. MIKE GIDEON MBUVI SONKO

The Committee considered and adopted the report on the inquiry into a complaint by Governor (Dr.) Evans Kidero regarding the conduct of Sen. Mike Gideon Mbuvi Sonko.

MIN. NO.230/2016 LEGISLATIVE BUSINESS

The Committee noted the schedule of legislative business.

MIN. NO.231/2016 ADJOURNMENT

There being no other business, the Chairperson adjourned the meeting at twenty five minutes past Two O'clock until Tuesday, 29th November, 2016.

SIGNED: SEN. EKWEE ETHURO, EGH, MP
(CHAIRPERSON)

DATE: 29TH NOVEMBER, 2016

ANNEX 2

INQUIRY INTO THE COMPLAINT MADE BY GOV. (DR.) EVANS KIDERO AGAINST SEN. MIKE GIDEON MBUVI KIOKO SONKO BY THE RULES AND BUSINESS COMMITTEE

TERMS OF REFERENCE

1. Section 10 of the National Assembly (Powers and Priviledges) Act, provides for the establishmet of a Committee of Priviledges and provides for its function as follows –

> *(4) The Committee of Privileges shall, either of its own motion or as a result of a complaint made by any person, inquire into any alleged breach by any member of the Assembly of the Code of Conduct issued under section 9, or into any conduct of any member of the Assembly within the precincts of the Assembly (other than the Chamber) which is alleged to have been intended or likely to reflect adversely on the dignity or integrity of the Assembly or the member thereof, or to be contrary to the best interests of the Assembly or the members thereof.*
>
> *(5) The Committee of Privileges shall, after such inquiry as is referred to in subsection (4), report its findings to the Assembly together with such recommendations as it thinks appropriate.*
>
> *(6) The Assembly shall, in accordance with rules made by it (which rules need not be published in the Gazette), consider the report and the recommendations thereon and may take such disciplinary action against the member concerned as may be provided by those rules.*
>
> *(7) Any disciplinary action such as is referred to in subsection (6) may include suspension from the service of the Assembly.*

2. Pursuant to Section 7 of the Sixth schedule to the Constitution and standing order 175 (5) (b), (c), (g) of the Senate Standing Orders the Senate Rule and Business Committee is required to Conduct an inquiry into the events that took place at the sitting of the County Public Accounts and Investments Committee held on Wednesday, 15th June, 2016 and determine -

    (a) whether the allegations made by Governor (Dr.) Kidero against Sen. Mike Gideon Sonko Mbuvi in relation to the meeting held on 15th March, 2016 are substantiated;

(b) if the allegations are found to have been substantiated, whether the allegations constitute a breach of the Senate Standing Orders; and

(c) the appropriate recommendations to make, including, if applicable, the disciplinary action to be taken.

3. In the discharge of its functions, the Committee shall-

(a) prepare and submit a Report to the Senate within thirty days.

(b) exercise all the power conferred upon it by law for the proper execution of its mandate.

ANNEX 3

THE RULES OF PROCEDURE FOR THE CONDUCT OF AN INQUIRY BY THE SENATE BUSINESS COMMITTEE

1. The Senate Business Committee may of its own motion, or as a result of a complaint made by any person, inquire into the conduct of a Member whose conduct is alleged to constitute a breach of privilege.

2. A complaint may be made orally or in writing, but if made orally, shall be reduced to writing by the Clerk, and in either case shall be signed by the Complainant.

3. The Speaker, upon receiving a complaint, shall refer the matter to the Senate Business Committee for inquiry and determination on the action to be taken with respect to the complaint.

4. The Senate Business Committee shall conduct the inquiry and table its report before the House for adoption, within a period of thirty days from the date on which the complaint is referred to the Senate Business Committee.

5. The Senate Business Committee shall, upon receipt of the complaint-

   (a) appoint a date for the commencement of the inquiry into the complaint submitted to the Committee;

   (b) summon the complainant to appear before the Committee together with any witnesses proposed to be called by the complainant;

   (c) summon the respondent against whom the complaint is made to appear before the Committee together with any witnesses proposed to be called by the respondent;

   (d) summon such other person that the Committee considers necessary for the purpose of adducing evidence or submitting information which the Committee may consider necessary for the determination of the inquiry.

6. An invitation under rule 4 may be effected by personal service or by notice in at least one newspaper in national circulation.

7. The parties to the inquiry shall be required, within seven days of service of the summons to appear before the Committee, on the date specified by the Committee, to lodge, in the Office of the Clerk of the Senate, the documents and any evidence with they intend to produce before the Committee including -

(a) the names and addresses of the persons to be called as witnesses, if any, and a statement by each such witness; and

(b) any other evidence to be relied on.

8. The Clerk of the Senate shall furnish each party with the documentation filed by the other party under rule 6.

9. The Committee may, at the request of any of the parties, invite or summon any person to appear and give evidence before the Committee.

10. Where any party fails to appear before the Committee, that fact shall be recorded by the Committee and the Committee shall proceed with the inquiry without further reference to the said party, but the Committee may, for exceptional reasons to be recorded, permit a later appearance before the Committee by such party.

11. The inquiry, once it commences, shall proceed and continue on until the Committee concludes the hearing of the matter.

12. The Committee shall, before the commencement of the hearing of the evidence, allocate time for the hearing of the case by the complainant, the case by the respondent and any other person who may be summoned to appear and give evidence before the Committee.

13. The Clerk may administer the oath or affirmation in the prescribed form, to every person who appears to give evidence before the Committee before such person gives such evidence.

14. The proceedings of the Committee for the hearing of evidence shall be held in camera.

15. The quorum for the proceedings of the Committee shall be five of its members.

16. Except as otherwise provided in these Rules, the Standing Orders shall apply.

17. Where on a particular question or matter, including but not limited to questions of evidence, materiality, relevancy, competency or admissibility of evidence and any questions consequential or incidental thereto, no provision has been made in the Standing Orders or in these Rules, the chairperson of the Committee shall rule on the question or matter and the ruling of the chairperson shall be final.

18. An inquiry into a matter shall not preclude criminal investigation or criminal proceedings against a Member in connection with the matter concerned.

19. Every Report by the Committee concerning any inquiry into the conduct of a Member shall, as soon as possible after it has been completed, be laid by a Member of that Committee on the Table of the House.

20. If such Report does not recommend any disciplinary action there shall be no further proceedings whatsoever in respect thereof, other than (where necessary) further inquiry and Report by the Committee.

21. If such Report recommends any disciplinary action, the Chairperson of the Committee or a member of the Committee designated by the Committee for that purpose shall, upon submitting the report, give a three days' notice of a Motion that, **"The Senate notesthe Report of the Committee of Privileges dated the...and laid on the Table of the Senate on...regarding...."** and the motion shall be detabed in the usual manner of debating motions.

22. No amendment may be moved, other than an amendment of the disciplinary action recommended by the Report, or an amendment to the effect that the Report be referred back to the Committee for further inquiry.

23. Disciplinary action recommended by any such Report may include –

(a) a formal reprimand at the Bar of the House with or without exclusion, for a period not exceeding one month, from specified facilities of Parliament Buildings;

(b) suspension from the service of the House for a period not exceeding four months, whether or not sitting days, and whether or not during the same session;

(c) suspension or expulsion from a Committee;

(d) recommendation for action by such other agency as the Committee may consider relevant.

24. In the event of the House adopting any recommendation of any such Report for disciplinary action, with or without amendment, the Speaker shall forthwith take action accordingly.

ANNEX 4

NAIROBI CITY COUNTY

Governor's Office

Telephone: +254 20 344 194
Email: governor@nairobi.go.ke
Facebook: Nairobi City County
Twitter@county_nairobi

City Hall,
P. O. Box 30075-0010,
Nairobi,
KENYA.

VERY URGENT

NCC/GOV/ADM/8

17th June, 2016

THE SENATE
RECEIVED
17 JUN 2016
SPEAKER'S OFFICE

Hon. Ekwe Ethuro
Speaker
The Senate
Parliament Buildings
P. O. Box 41842 - 00100
NAIROBI

Hon Speaker Ekwe Ethuro

RE: COMPLAINT AGAINST UNDIGNIFIED TREATMENT DURING THE SENATE PUBLIC ACCOUNTS AND INVESTMENT COMMITTEE PRESENTATION BY NAIROBI CITY COUNTY GOVERNMENT

On Wednesday, 15th March, 2016 I honoured a Senate Committee invitation to conclude discussions on our audit report. I was accompanied by my team of Nairobi City County officials. The meeting started off well with the County Government diligently responding to the queries as raised by the Auditor General and the Hon. Senators.

Not long into the meeting, Nairobi County Senator Mike Mbuvi Sonko shot up and demanded to be allowed to table a bundle of documents he claimed implicated me in "murders and theft" in unspecified circumstances/instances. When his interjection was rejected by the Chairman, Prof. Anyang' Nyong'o and the other members, he hysterically, abrasively and noisily started an abusive tirade against my person and that of officers who accompanied me to the meeting. We did not have the privilege to respond to Senator Mike Sonko's innuendos slander and threats which lasted for well over thirty minutes. All this while I was expected to address my mind to the discussion with the Committee as Senator Sonko continued insulting, ridiculing and threatening me and the county officials accompanying me.

The orders of the Chairman for Senator Sonko to observe decorum and let the meeting proceed were ignored by the Senator who continued making violent, threatening and abusive gestures at us and loudly telling those seated close to him that he would kill all of us since he has several AK 47's and machine guns in his vehicles.

When it became unbearable and the proceedings were completely disoriented and therefore we were unable to concentrate on the proceedings, I requested the Chairman to briefly adjourn the meeting so that we could consult on how to manage the proceedings as the Chairman was unable to have Senator Sonko desist or cease his strange behaviour.

It was at this point that the Senator got hysterical and agitated and engaged one of my officers in a verbal abusive exchange. When my officer left the room Senator Sonko turned on me with more insults and violent gestures as well as threats to harm me. He had to be restrained by the orderlies and his fellow Senators. All the while I never reacted.

Mr. Speaker, the questions that this incident brings forth are extremely critical.

The most fundamental is the question of how public officers are expected to assist Senate in its functions if individual senators are allowed to visit any manner of criminal act against these officials who have no recourse to law or personal protection while within the precincts of the Senate.

Secondly, what should Public Officers, who are summoned before the Senate Committees do when faced with a clearly conflicted Senator who has either ulterior motive but which he proceeds to prosecute under the guise of oversight? In this instance, Senator Sonko, in his shouts alluded to a case involving a person known as Hawa. It is instructive that the case relating to this name is currently in the High Court as Petition 775 of 2015 (Mohidin s/o ARM Hawa & others Vs Chief Land Registrar, Nairobi City County Government and others). Senator Sonko is a party in the case and his theatrics, clearly, are informed by an intention to politicize an otherwise pure case of county government collection of revenue being challenged. We have always assumed that the court is properly handling this matter. Senator Sonko's papers in court do not contain the wild allegations he made under parliamentary protection on that Wednesday.

With impunity, he alleged that the said Mrs Hawa was murdered during the pendency of the case. Records filed in court show the lady (God rest her soul in peace) passed on on 5th December, 2010.

Thirdly, we ask, what happens in situations where a senator is clearly under the influence of substances of abuse and/or alcohol or is otherwise intoxicated such as to be uncontrolled and menacing and untoward in behavior? (Please see the footage of showing a bottle the Hon. Senator Sonko was drinking from and which he disguised as juice).

This state of inebriation is clearly a danger to individuals present in the precincts of the Senate especially in the absence of control by the Chair presiding at meetings and reluctant orderlies. Clearly, Senator Sonko had an unfettered opportunity to commit harm against me or any of my officers, all in the name of advantage of Parliamentary privilege.

I wish to point out that the treatment I received from Senator Sonko was most undeserved. His conduct was certainly way below the Constitution of Kenya threshold in set out in Chapter 6 of the Constitution and common decency.

I wish, therefore, to request that you assure myself, my officers and indeed the entire public service fraternity in the counties and even at national government that our dignity shall always be respected and that we shall not in any way be put in fear of physical harm, verbal abuse and threats from any Hon. Senator when we answer to Senate summons. We simply do not have powers or privilege to protect ourselves in the face of a runaway senator who, in our case, was not in control of himself due to what we highly suspect was advanced stage of intoxication.

In the present circumstances it is certainly irresponsible exposure to danger of physical harm or even death to me or any other Governor and other county officials to visit or honour summons from Senate.

I further request that you cause, within the applicable protocols of Parliament, a satisfactory and credible inquiry into what transpired on the morning in question with a view to instituting acceptable and deterrent restitutive/remedial measures and to protect me from future humiliation and embarrassment from Senator Mike Sonko or any other individual,.

I request also that the wild and defamatory allegations made by Senator Sonko against me be expunged from the records as they are extremely defamatory and total abuse of the hallowed parliamentary privilege accorded to him. They were made without any substantiation whatsoever.

Further, where applicable, I am requesting that the parliamentary privilege insulating the senator in this instance, be lifted in order to enable me seek appropriate redress as may be available in law.

I may consider seeking Supreme Court interpretation on this matter should I be dissatisfied with the action taken pursuant to my request in this letter. In the meantime, I am afraid, I will not be in a position to honour Senate summons before the issues I have raised are addressed and the security and dignity of myself and the other county officials is assured.

Mr. Speaker, I am sure that wisdom shall prevail as you address this most unfortunate incident so as to assure Kenyans that impunity has no place in modern Kenya.

Kind regards

DR. EVANS KIDERO,MBS
GOVERNOR

CC Hon Justin N N Muturi, CBS
The Speaker
National Assembly
NAIROBI

Hon. Kithure Kindiki
Majority Leader
Kenya Senate
P.O. Box 41842 - 00100
NAIROBI

Hon. Moses Wetangula
Minority Leader
Kenya Senate
P.O. Box 41842- 00100
NAIROBI

The Attorney General
Office of the AG & Dept. of Justice
Sheria House – Harambee Avenue
P.O. Box 40112 00100
NAIROBI

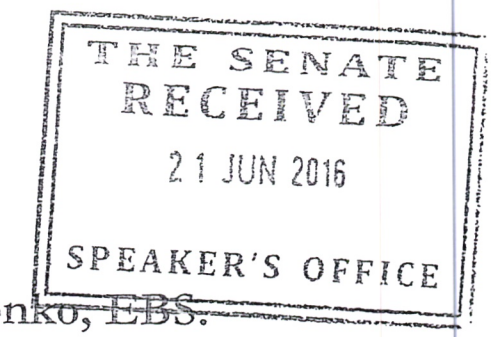
Hon. Governor Peter Munya
Chairman,
Council of Governors
NAIROBI

Hon. Prof. Anyang Nyong'o
Chairman the Public Accounts and Investments
Committee
Senate
NAIROBI

ANNEX 5



REPUBLIC OF KENYA
THE SENATE



Sen. Mike Gideon Mbuvi Kioko Sonko, ~~EBS.~~

Nairobi County
Deputy Chief Whip - Senate
Member, Committee on National Security and Foreign Relations
Member, Committee on Roads and Transport
Member, National Cohesion and Equal Opportunity Committee

Parliament Buildings
Tel: +254 20 2221 291/+254 20 317246
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Nairobi, Kenya

K.I.C.C 25th Floor
Mobile: +254 722 886 600
+254 727 447 777
Email: mikemsonko@yahoo.com

20/6/2016

Hon. Ekwe Ethuro
Speaker of the Senate
Parliament Buildings
P.O Box 41842-00100
NAIROBI

Dear Sir,

RE: RESPONSE ON THE COMPLAINT BY HON EVANS KIDERO-GOVERNOR NAIROBI CITY COUNTY

The above matter refers and in reference to the letter dated 17th June 2016 by the Governor Nairobi City County.

I was made aware of the said letter in the social media where my name has been mentioned adversely without the letter being copied to me. I take great exception that the Hon. Governor seeks to evade public accountability by using my Senatorial office as a scapegoat. The lamentations listed in the complaint arise from several enquiries i have made to his office which he has rubbished and fronted as political propaganda. The alleged "undignified treatment" at the House Committee was aired live and well captured in the proceedings where none of the alleged insults and abusive language was recorded as having been uttered by myself rather i responded to his threats of a beating with a warning that i would not take it lying down like the Nairobi women representative.

On the material day, I happen to have attended the House Committee as the City County Senator whose oversight role is clearly spelt out. The issue of finances came up where i introduced a case where an Asian family land has been illegally grabbed when the City County introduced fake rates and proceeded to auction it and sell to persons closely connected to the Governor. These cases are several and the office of the Governor seems connected to all the grabbing of land round the county. I have evidence of all of them which i was ready to table to the House Committee for further scrutiny. From the time, i mentioned the same, the officers accompanying the Governor started shouting and a brief exchange ensued which seems to have been orchestrated to disrupt my tabling of the reports.

This seems to have been the excuse the Governor wanted to escape from the room in the name of seeking a brief adjournment. On his way out he approached my seat and sensing ill motive, I stood up to face him and clearly being aware of his previous physical conducts was ready to defend myself. I believe also the act of approaching me was to snatch and disorganize my paperwork as i had arranged on the table.

Thus the contents of his letter containing falsehoods cannot form the basis of a complaint as his office is neither private nor his birth right. The fact that the case is in court does not stop the legislative arm of Government from interrogating the conduct of his office. The allegations that i was under the influence of substances of abuse/alcohol is hog wash. Clearly i was seated with other senators who would have questioned the same rather than the Governor seated on the opposite table and waiting for an excuse not to be questioned by the House Committee.

The Governor going by his past conduct cannot cry holiness and be the judge of conduct that meets the threshold of Chapter 6 of the Constitution. The House Committee did not finalize its audit of the City County Accounts and he should not create stories and make unnecessary demands to the House of Senate. Rather he should come to the reality that i being a duly elected Senator of Nairobi County will not be gagged and intimidated to go slow in protecting the interest of the people of Nairobi.

I wish to affirm to the people of Nairobi my commitment to interrogate the 2013/2014 audit report by the Auditor General and to ensure audit queries raised are addressed. Claims that Senators and specifically that I was drunk during the session are not only laughable but a cheap propaganda meant to divert the public attention from the real issues. I invite him to pursue legal action instead where I can cross-examine him publicly on the documents in my possession which I seem to be barred from doing in the House Committee as well as in the media.

Mr. Speaker, my policy is well known as my commitment is to fight corruption and use my office to protect the vulnerable members of our Society. I seek that the said letter be treated with the utmost contempt it deserves.

Yours faithfully,

Hon: Mike Mbuvi Sonko

C.c. : **The Speaker, Parliament**

ANNEX 6

ETHICS AND ANTI-CORRUPTION COMMISSION
INTEGRITY CENTRE (Valley Rd./Jakaya Kikwete Rd. Junction) P.O. Box 61130 – 00200, NAIROBI, Kenya
TEL.: 254 (020) 2717318 / 2720722, MOBILE: 0729 888831/2/3
Fax: 254 (020) 2717473 Email: eacc@integrity.go.ke Website: www.eacc.go.ke

THE SENATE
RECEIVED
21 JUN 2016
SPEAKER'S OFFICE

When replying please quote:

URGENT

OUR REF: EACC.7/10/1 VOL.III(141) **17th June 2016**

Hon. Ekwe Ethuro, EGH, MP
Speaker of the Senate
Main Parliament Building
NAIROBI

Dear Hon. Speaker,

RE: CONDUCT OF HON. SENATOR MIKE MBUVI AND GOVERNOR DR.EVANS KIDERO DURING THE PROCCEDINGS OF THE PUBLIC INVESTMENTS COMMITTEE ON OR ABOUT 15TH JUNE,2016 AT PARLIAMENT BUILDING

The Commission's attention has been drawn to the incident and conduct of Hon. Mike Mbuvi - Senator Nairobi City County and Hon. Dr. Evans Kidero Governor Nairobi City County which happened on or about 15th June, 2016 during a session of Public Investments Committee chaired by Hon. Senator Prof. Nyongo at parliament.

It is reported that the two State Officers were engaged in name calling, insults and physical confrontations which actions led to disruption and adjournment of the proceedings of the said committee.

The Commission notes that whereas Honourable members may have differences and divergent views, the views should be expressed in a courteous and responsible manner so as to promote and uphold the dignity of the offices they hold and parliament.

The Commission notes that the conducts of the two State officers were inconsistent with the responsibilities of leadership as spelt out under Chapter Six of the Constitution and the Leadership and Integrity Act, 2012.

The Commission wishes to bring to your attention the provisions of Article 73 and Article 75 of the Constitution.

Article 73(1)(a) of the Constitution requires *State Officers to conduct themselves in a manner that shows respect for the people, promotes public confidence and brings honor to the Nation and dignity to the office.*

Under Article 75(1(c), a State officer is required; *to behave, whether in public and official life, in private life, or in association with other persons, in a manner that avoids demeaning the office the officer holds.* Similar provisions are also provided for in Section 11(a) and section 32 of the Leadership and Integrity Act, 2012

The Commission notes that the conducts took place within the precincts of Parliament during a parliamentary session and is therefore actionable under Parliamentary Standing Orders, and the Powers and Privileges Committee.

The Commission pursuant to its oversight mandate as provided in section 4(2) and Section 4(4) of the Leadership and Integrity Act, advises that the Powers and Privileges Committee being the responsible body should investigate the matter and take appropriate action against those found to be culpable.

The Commission further advises that you share with us your findings and action taken.

Yours Sincerely

HALAKHE D. WAQO, ACIArb
SECRETARY/CHIEF EXECUTIVE OFFICER

ANNEX 7

THE SENATE
OFFICE OF THE SERJEANT AT ARMS
MEMO

THE SENATE CLERK'S OFFICE
RECEIVED
15 JUN 2016
P.O. Box 41842 - 00100, NAIROBI

TO : **CLERK OF THE SENATE**

FROM : **CHIEF SERJEANT-AT-ARMS**

DATE : 15 JUNE 2016 **Ref.** : SEN/SAA/OPS/16

SUBJECT: PRELIMINARY INCIDENT REPORT

INCIDENT DESCRIPTION: CONFRONTATION BETWEEN SENATOR MIKE MBUVI SONKO AND GOVERNOR EVANS KIDERO OF NAIROBI CITY COUNTY

DATE AND TIME: 15 JUNE 2016 at about 10 a.m

LOCATION: Senate Committee Room 4, Main Building

DETAILS OF INCIDENT:

The County Public Accounts Committee Meeting in Senate Committee Room 4, Main Building was disrupted at about 10 a.m, when Sen. Mike Mbuvi Sonko accessed the committee room and started engaging the committee with tabling of documents without giving any member of the committee an opportunity to respond. While doing so, he was accusing an officer from Nairobi City County by name Mr Wainaina of misdeeds in the county. At the same time he turned onto Governor Kidero and started engaging verbally over the same issues. The situation turned into a scuffle between the Senator and Governor but they were restrained by SAA staff and Senators present. After a short while the Governors team was requested to leave the committee room. Thereafter the Governor followed and left the Parliamentary grounds.

OBSERVATION:

Initial investigation revealed that the Senator had some liquid in as water bottle labelled ORANGE WATER about half full. The liquid is suspected to be an alcoholic drink. The altercation was initiated by the Senator which triggered commotion in the committee and caused termination of proceedings.

RECOMMENDATION

It is recommended that the parties involved to be sensitized on the importance of restorative engagement to permit progress of committee business.

MAJ SAMSON SOROBIT (RTD)

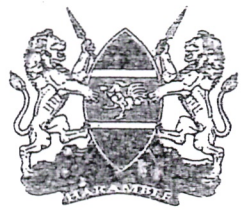
Rt Hon. Speaker

VERY URGENT

For your very urgent attention.

15/06/16

ANNEX 8



THE SENATE
RECEIVED
24 JUN 2016
SPEAKER'S OFFICE

COUNCIL OF GOVERNORS

Westlands Delta House 2nd Floor, Waiyaki Way.
P.O. BOX 40401-00100,
Nairobi.

Tel :(020) 2403314,2403313
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Our Ref: COG/6/10 Vol.3 (65)

17th June 2016

HON. EKWE ETHURO
THE SPEAKER,
THE SENATE OF THE REPUBLIC KENYA,
P.O. BOX 41842-00100,
NAIROBI, KENYA.

THE COUNCIL OF COUNTY GOVERNORS' CONCERNS ON HARASSMENT OF GOVERNORS APPEARING BEFORE THE SENATE AND ITS COMMITTEES

I make reference to the above matter.

Excellency Governors appearing before the PAC committee have complained about the manner in which they have been treated in total disregard of the Standing Orders and the Constitution. The latest case is the mistreatment of HE Dr. Evans Kidero who appeared before the Senate Committee on 15th June 2016. I am in receipt of a letter (copy attached) from H.E. Dr. Evans Kidero written to you relation to the above matter which is very grave. The relationship between the Senate and the County Governments is supposed to be guided by Article 189 of the Constitution. It espouses the need for mutual respect and obligates the government at either level to perform its functions and exercise its powers in a manner that respects the functional and institutional integrity of government at the other level.

Based on several other experiences of Governors appearing before the Senate Committee and now the issues raised in the letter from HE Dr. Kidero it is apparent that the safety and security of Governors appearing before the Senate Committee is not guaranteed. The latest incident where a Governor was attacked in full glare of cameras and in a Committee hearing yet the Chairman seemed helpless clearly illustrates this apparent insecurity and threat to the lives of Governors. Whereas the Senators under the Standing Orders and Privileges and Immunities Act enjoy immunity to prosecution for actions in the precincts of parliament Governors do not and this exposes them to harm with no recourse to justice.

Further, there is a clear case of conflict of interest where the Senators sit over their own cause since they have declared openly that they will be vying for the positions of Governors at the next general elections. The Parliamentary Standing Orders and natural justice rules require that any interested parties need to declare their interest and not preside in a matter where

there are indications that there will be or there is a conflict of interest. This contradiction and conflict was pointed out to none other than the chairman of the PAC committee who nonetheless presided over a matter that clearly pities him against the Governor for Kisumu. The Senator has openly declared that he will be vying for the Kisumu governor's seat in the next general elections.

Whereas Governors are not opposed to being held accountable, this must be done in clear respect and adherence to the law. These probes (on the integrity, accountability etc.) must be done with the provisions of Article 189 of the Constitution in mind. The practice that has emerged however is that the persons and office of the Governors is, demeaned and disrespected and now the Governors safety and security is not guaranteed.

We note also that the High Court did pronounce itself on this matter and clearly stated that Governors are the last persons to be summoned on matters of accountability. Therefore it is in order and in line with the law for Governors to send the County Executives to appear before the Senate. Even then the decorum of conducting the oversight role with the County Executives must also be observed and their security and safety guaranteed.

We demand that the approach of resorting to abusive language, wild and unsubstantiated allegations some of which are hell-bent on besmirching the reputation of sitting governors for their own (senators) political interests in county elective seats has to stop. What has often transpired in the audit sessions can only be interpreted as both direct and constructive harassment of Governors before TV cameras with the sole intention of making the Governors unpopular before both the eyes of the nation as well as their electorate.

Due to the manner in which the Governors have been mishandled as they appeared before the Senate Committee purporting to provide oversight, the Council of Governors has henceforth considered and advised its members to desist from appearing before the Senate until the issues raised are satisfactorily addressed. Further the glaring conflict of interest that has emerged where Senators have openly declared that they will vie for the respective gubernatorial seats and now they want to preside over their own cause in the guise of accountability must also be addressed henceforth. If the harassment continues even the Executive Committee members will also be advised not to appear before the Senate Committee.

The Council of Governors reiterates that the Governors are no longer willing to respond to any summonses that are made by the Senate and any of its committees given the prevailing humiliating approach and the conflict of interest that is now very obvious and in the public

domain. The Council notes that the summons lately issued by committees of the Senate and the audit sessions in the Senate have become a sham.

The Council of Governors will revisit this position only after the Senate will have put in place mechanisms to address the serious constitutional and statutory issues raised.

H. E. Peter Gatirau Munya
Chairman, Council of County Governors

Copy: All Excellency Governors

ANNEX 9

THE SENATE CLERK'S OFFICE
RECEIVED
18 JUL 2016
P.O. BOX 41842 - 00100, NAIROBI

REPORT ON THE EVENTS THAT TOOK PLACE AT THE SITTING OF THE SESSIONAL COMMITTEE ON PUBLIC ACCOUNTS AND INVESTMENTS HELD ON WEDNESDAY 15TH JUNE, 2016.

The sessional Committee on Public Accounts and Investments invited the Governor of Nairobi to appear before it on Wednesday 15th June, 2016 vide letter ref: SEN/CPA&IC/GEN-CORR/VOL.1/047/2016 dated 20th May, 2016. The purpose of the committee meeting was to resume the consideration of the Report of the Auditor General on Financial Operations of the Nairobi County Executive for the financial year 2013/14.

The Senator from Nairobi (Host Senator) was informed of the intended appearance of the Governor as is the practice of the Committee. Sen. Mike Sonko attended and participated the said meeting as a friend to the Committee Pursuant to Senate standing order 199.

The Senators present during the Meeting were:

1. Sen. (Prof.) Anyang' Nyong'o - Chairperson
2. Sen. (Prof.) John Lonyangapuo - Vice Chairperson
3. Sen. Amos Sitswila Wako
4. Sen. (Dr.) Boni Khalwale
5. Sen. George Khaniri
6. Sen. (Eng.) Muriuki Karue
7. Sen. Stephen Kanyinke Ntutu
8. Sen. Kennedy Mong'are Okong'o
9. Sen. Hassan Omar Hassan
10. Sen. Paul Kimani Wamatangi
11. Sen. Mike Sonko *(in attendance as a friend to the Committee)*

Members of the County Executive in atter dance were:

1. Dr. Evans Kidero	-	Gov·ernor
2. Mr. Gregory Mwakanongo-Planning	-	CEC Finance & Economic
3. Dr. Robert Ayisi	-	Cou·nty Secretary
4. Mr. Luke Gatimo	-	Acti·g Chief Finance Officer
5. Mr. George Wainaina	-	Chie·f of Staff
6. Mr. M.O. O. Okeri	-	Acti·g Head of Treasury
7. Mr. Martin Ogindo	-	NCCG
8. Mr. Edward Gichana	-	Hea·d of Audit
9. Mr. Steven Mwangi	-	Chie·f Officer, Lands

Others in attendance during the mee·ing were the Committee secretariat, including:

Mr. Peter Muchira	– Clerk Assistar t
Mr. Joseph Tiyan	– Research Off cer
Mr. Eugine Luteshi	– Hansard Aud o Officer
Mr. Washington Otiato	- Media relatio ı officer
Mr. Abdalla Bore	- Serjent- at- Ar·ms

Representatives of the Office of the Audit·r General:

Mr. Joshua Oyugi	- Audit manage·r & Liaison officer
Mr. Justus Wafula	- Deputy Direct ɔr
Mr. Dennis Kariuki	- Director of Au dit
Ms. Sharon Wangari	- Audit Manage·r
Mr. Morris Oyoo	- Audit Manage·r
Mr. Henry Menegene	- Audit Manage·r

After the preliminaries, the Committee began consideration of the audit queries in the report and began at Audit Query 1.2.1 on outstanding rates. The Governor presented his response through one of his officers.

Deliberations ensued and at one point the Senator for Nairobi requested to speak on the matter.

Senator Sonko stated before the Committee that The Governor of Nairobi had presided over a systematic extortionist policy whereby fake land rates claims are presented to owners of various properties in Nairobi with an aim of forcibly acquiring the properties on default of the same.

He accused the Governor, his wife and a Mr. Waiganjo of murder with impunity.

Several Senators, on points of order, interjected as the Senator was making his presentation with an aim of returning the meeting to order noting that the accusations being leveled by the Senator for Nairobi were not relevant to the Audit Query under consideration.

Senator Mike Sonko accused Senator Okongo Mongare of having been compromised by the Governor of Nairobi, (an accusation that he withdrew and apologized for after direction by the Chairperson)

The allegations that had been raised against the Governor of Nairobi by Senator Sonko were serious, and having been apprised of standing order 94 requiring a Senator to substantiate any allegation present as the truth, the Chairperson, on consultation with the clerk to the Committee, declined to give Senator Sonko an opportunity to substantiate his allegations, as the matters raised were not before the Committee.

Indeed the Chairperson read out the mandate of the Committee as captured by the standing orders in a bid to maintain order and

remind all present of the obligations and decree guiding the work of the Committee.

The Senator for Nairobi reiterated that he was ready to substantiate and swear an affidavit on the allegations, and he tabled some documents before the Committee to assist it in consideration of the Auditor General's Report on the financial operations of Nairobi Executive. (***Annex 1***)

The documents tabled by Senator Sonko included:

1. Copies of court pleadings;
2. Copy of Letter of complaint by an aggrieved Kenyan, Mr. Mohedin A.R. Hama and supporting documents;
3. A copy of a transfer of land document of a property transferred to the Governor and his Wife; and,
4. Copy of a newspaper advertisement of Daily Nation Tuesday June 10, 2015,

The Senator from Nairobi continued to level serious allegations against the Governor of Nairobi, his Family and close associates details of which have been captured on Hansard. ***(Copy of The Hansard of the proceedings is Annex 2)***

At this point, the Governor submitted to the chairman that he felt the meeting could not proceed and requested for adjournment. The Chairman adjourned the meeting indefinitely as he felt the meeting could not proceed.

As the parties prepared to leave a scuffle ensued with the Senator and a supporter of the Governor exchanging words and threats within the Committee room. The situation seemed to get out of control whereby the Serjent- at- arms intervened at restoring order and escorted the Governor and the Senator out of the room. ***(Serjent-at-Arms report is attached at Annex 3)***

The incident while unfortunate, presented an opportunity for making observations on Committee management and the Committee would recommend the following:

1. That the County Public Accounts and Investment Committee be manned by at least 2 uniformed serjent-at-arms officers during all sittings;
2. That screening apparatus and thorough body searches be mounted for the safety and security of all who access the precincts of the Senate

Signed: _____ Date: July 14, 2016

Hon. Sen. (Prof.) Peter Anyang' Nyong'o
Chairman, County Public Accounts and Investments Committee

ANNEX 2

TRANSCRIPT OF THE HANSARD OF PROCEEDINGS OF THE SITTING OF 15TH JUNE, 2016

RECORD OF EVIDENCE TAKEN BEFORE THE SENATE SESSIONAL COMMITTEE ON COUNTY PUBLIC ACCOUNTS AND INVESTMENTS HELD ON WEDNESDAY, 15th JUNE, 2016, IN THE SENATE COMMITTEE ROOM 4, FIRST FLOOR, MAIN PARLIAMENT BUILDINGS

[The Chairperson (Sen. (Prof.) Anyang'-Nyong'o)]

SENATORS PRESENT

Sen. (Prof.) Lonyangapuo
Sen. Okong'o
Sen. (Eng.) Muriuki
Sen. Mbuvi (Friend of the Committee)
Sen. Khaniri
Sen. Wamatangi
Sen. (Dr.) Khalwale
Sen. Wako

IN ATTENDANCE

NAIROBI COUNTY

Dr. Evans Kidero	-	Governor
Mr. Gregory Mwakanongo	-	CEC, Finance and Economic Planning
Dr. Robert K Ayisi	-	County Secretary
Mr. Luke Gatimo	-	Acting Chief Finance Officer
Mr. George Wainaina	-	Chief of Staff
Mr. M.O.O Okeri	-	Acting Head of Treasury
Mr. Martin Ogindo	-	NCCG
Mr. Edward Gichana	-	Head of Audit
Mr. Steven Mwangi	-	Chief Officer, Lands

OFFFICE OF THE AUDITOR-GENERAL

Mr. Josiah Oyugi	-	Audit Manager
Mr. Justus Wafula	-	Deputy Director
Ms. Sharon Wangari	-	Audit Manager
Mr. Dennis Kariuki	-	Director of Audit
Mr. Morris Oyoo	-	Audit Manager
Mr. Henry Menegene	-	Audit Manager

SECRETARIAT

Mr. Peter Muchira	-	Clerk Assistant
Mr. Joseph Tiyan	-	Research Officer
Mr. Eugine Luteshi	-	Audio Officer

(The Committee convened at 8.20 a.m.)

PRAYERS

(The Chairperson (Sen. (Prof.) Anyang'- Nyong'o) introduced himself and other Members of the Committee)

The Chairperson (Sen. (Prof.) Anyang'- Nyong'o): Good morning ladies and gentlemen. We are happy to welcome the Nairobi County Executive led by the Governor, Dr. Evans Kidero. We also have guests from Kakamega County. They were with us yesterday and they will continue to be here. It is a practice for county governments and their clerks to visit the Senate to see how work is done. Today, we have a team from Kakamega County. Could you introduce yourself?

(The Officers from Nairobi County Assembly introduced themselves)

Members, we have an agenda for today. I request someone to move that we adopt the agenda.

Sen. (Eng.) Muriuki: Mr. Chairman, Sir, I propose.

Sen. (Prof.) Lonyangapuo: Mr. Chairman, Sir, I second.

The Chairperson (Sen. (Prof.) Anyang'-Nyong'o): Let us proceed with the audited accounts of Nairobi County. Governor, you will remember that the last time we met, we went up to Audit Query No.8.3. Before we start with Audit Query 8.4, there were outstanding issues that we raised from Audit Query Nos.1.0 to 8.3. The Clerk of the Senate, Mr. Nyegenye, wrote to you on 11th May, detailing the outstanding issues and what was required to be done; the letter was comprehensive. We will first of all dispose of these outstanding issues. I would like the auditors to guide us. If there is any issue that you sorted out with the County Government of Nairobi, please, let us know, so that we can then proceed to deal with the pending audit queries.

Auditors, please proceed.

Mr. Kariuki: Mr. Chairman, Sir, I will start with Query 1. The Committee directed that documentation evidence, evidencing closure of accounts and transfers of funds to the county revenue account---

The Chairperson (Sen. (Prof.) Anyang'-Nyong'o): Could you be clearer, because I have difficulties in following.

Mr. Kariuki: Sorry, Mr. Chairman, Sir. I will be loud. The Committee directed that documentation evidencing closure of accounts and transfer of funds to the county revenue

account for the respective accounts be availed to the Committee. We can confirm that indeed these accounts were closed.

The Chairperson (Sen. (Prof.) Anyang'-Nyong'o): We need those things to be availed to us.

The Governor of Nairobi County (Gov. (Dr.) Kidero): Mr. Chairman, Sir, when I consulted with the ULA Vitalium, I requested that we start from Item 2 because some copies were taken, but they will be here in ten minutes.

The Chairperson (Sen. (Prof.) Anyang'-Nyong'o): The governor informed me that the documents to be availed to us are on their way coming. So, we can go to Audit Query No.2.

The Governor of Nairobi County (Gov. (Dr.) Kidero): Mr. Chairman, Sir, having said that, they have already seen them. Probably, as a matter of procedure, to a larger extent the Committee depends on the verification by the auditors. Are the auditors confirmations supposed to be audited again?

The Chairperson (Sen. (Prof.) Anyang'-Nyong'o): No! When they are availed, we ask the auditor whether they have verified them and that is the end of it. But they have to be availed.

Sen. (Eng.) Muriuki: Mr. Chairman, Sir, regarding the issue of documents being availed, it is the discretion of the Committee whether or not to look at them. Most of the time, it is the auditor who has to check them and tell us if he is satisfied. But when you are required to submit documents, we may want to see them. Let us follow the procedure.

Sen. Okong'o: Mr. Chairman, Sir, that is exactly what I wanted to say. When matters come to this Committee, it is on our discretion, if we are not sufficiently advised by them, to interrogate matters.

The Chairperson (Sen. (Prof.) Anyang'-Nyong'o): We will wait until they come; it is not a big issue. Let us go to the second one.

1.12: Revenue Collection, Banking and Maintenance of Records

Mr. Kariuki: Mr. Chairman, Sir, the Committee directed that the county government provides comprehensive evidence of the recipients of the IOUs, the recovery process, how much was recovered and the whereabouts of the money after the recovery. Further, the Committee directed that the county government provides evidence of disciplinary action.

The Chairperson (Sen. (Prof.) Anyang'-Nyong'o): Governor, before you proceed, can I request the Senator for Nairobi, who comes in as a friend of the Committee to introduce himself, so that he is on record?

Sen. Mbuvi: Mr. Chairman, Sir, my name is Sen. Mike Sonko, the Senator for Nairobi.

The Chairperson (Sen. (Prof.) Anyang'-Nyong'o): I also request the Senator for Kiambu to introduce himself.

Sen. Wamatangi: Mr. Chairman, Sir, my name is Sen. Kimani Wamatangi, the Senator for Kiambu County and Member of this Committee.

The Governor of Nairobi County (Gov. (Dr.) Kidero): Mr. Chairman, Sir, we have the documentation here for the second one and they are in three volumes.

Mr. Kariuki: Mr. Chairman, Sir, We have already checked and confirmed that some work has been done on these IOUs. We have already received the IOUs, which were the Imprest that had been pre-signed by all the signatories and subsequently the process has been exhausted. It has moved from IOU to Imprest and surrender.

1.12: Revenue Collection, Banking Amendments to Records

The Chairperson (Sen. (Prof.) Anyang'-Nyong'o): Governor, do have your written response? It is important that it is read so that it goes into the HANSARD, and then submit it. Let us go back to the issue 1.12 which is: Revenue Collection, Banking Amendments of Records. Can we go to that one? We are on the details on page 14.

Mr. Kariuki: Mr. Chairman, Sir, the Committee directed that the County Government provide comprehensive evidence of the recipients of the IOUs, the recovery process, how much was recovered and the whereabouts of the money after the recovery. Further, the Committee directed that the County Government provide evidence of disciplinary action.

The Chairperson (Sen. (Pro) Anyang'-Nyong'o): Yes, Governor, give us your response.

The Governor of Nairobi County (Gov. (Dr.) Kidero): Mr. Chairman, Sir, let me ask my County Executive Member (CEC) in charge of finance to respond, but we have responded according to the Senate's letter according to the audit report, because the audit report had been discussed exhaustively. There were specific responses from the report---

The Chairperson (Sen. (Prof.) Anyang'-Nyong'o): Just go ahead. Where is it in your response?

Mr. Mwakanongo: Mr. Chairman, Sir, it is 1.32 on page 2: Encashment in Cash Office. The cash was used to encash staff cheques that were later on banked as both credit and debit to reconcile the revenue and expenditure thereof. Currently, revenues are banked

intact and payments are made from the bank. We have enhanced the payment cashier's float to cater for urgent operational needs as they arise. The discrepancies from the cess was occasioned from timings of the presentation on the banking slip to the cash office for receipting and life forms because the collection at the division level collects and banks all monies to the county bank accounts, and later presents the slip to the cash office for receipting using life forms. This may not have been done the same day, hence the discrepancy. Reconciliations have been done on life forms and division records showing the total collection for the period. We have attached evidence of recoveries of the IOU reconciliation files. That is what we have in these appendices.

The Chairperson (Sen. (Prof.) Anyang'-Nyong'o): Can we have a response from the auditors?

Mr. Wafula: Mr. Chairman, Sir, we went through the documents as provided by party concerned and we were satisfied that everything was done as per the audit report initially. Therefore the issue can be disposed off.

The Chairperson (Sen. (Prof.) Anyang'-Nyong'o): Members?

Sen. (Prof.) Lonyangapuo: Mr. Chairman, Sir, where are these appendices L, M and N?

The Governor of Nairobi County (Gov. (Dr.) Kidero): Mr. Chairman, Sir, we have got some samples here such as1.2. It should be understood that the appendices that were attached to the main audit report are different from the ones answering the queries that were raised during the last sitting. So there are appendices 1.2 and 1.21 and 1.22 which the auditors have. You can pass this to the Chairperson.

Sen. (Prof.) Lonyangapuo: Mr. Chairman, Sir, so, this one indicated as 1.12 is the one where we should be looking at IOUs and reconciliation?

The Governor of Nairobi County (Gov. (Dr.) Kidero): Yes and the IOUs and the actions taken are 1.22: The Recoveries.

The Chairperson (Sen. (Prof.) Anyang'-Nyong'o): This is 1.12, direct banking and IOUs table of contents. Vice chairman, this is a more detailed document that you should look at.

Sen. Okong'o: Mr. Chairman, Sir, as you look at that, I want this confirmation from the Auditor General that upon looking at these documents and the reconciliations done, is there any regularity done especially from the initial stages? What is your position on that? At the time of the audit, the documents were never filed. Now we have been given documents which you are telling us you went through and certified. Are you telling us that there is no irregularity done in between?

Mr. Kariuki: Mr. Chairman, Sir, we picked the sample of the banking slips that were given to us and traced against the receipts on a sample basis. Our sample did not reveal any irregularity that we could have reported on. If there was any irregularity, we would have told the Committee that the issue has not been resolved.

Sen. Okong'o: On the sampling you did, I can see that the amount given here is over Kshs71million. What is the percentage of the sampling you did on this?

Ms. Wangari: Mr. Chairman, Sir, for the encashment, we did 100 per cent and we did a reconciliation between the revenue and bankings. We had a schedule, I do not know why they are not giving you. For IOUs, we did close to 50 per cent of the sample. The samples with the IPPDS for the recoveries attached, and the letters for the surcharges are here.

Sen. Wamatangi: Mr. Chairman, Sir, it is alright for the Auditor General office to be satisfied, but for housekeeping, the documents that you have seen to satisfy you must be here. We must look at them. It is all right when your office says it is satisfied, but we must see the papers for proper recording keeping of the Committee.

The Chairperson (Sen. (Prof.) Anyang'-Nyong'o): When the answers do not correspond to the audit queries, it is difficult. The officer who read the answer from the county, actually, the answer that you have given is more relevant to the encashment of cheques in the cash office than the previous query on the Revenue Collection, Banking Amendments of Records. I am confused and trying to reconcile that. You said that the audit query we are dealing now is Revenue Collection, Banking Amendments of Records. Which one is it in your response?

Mr. Mwakanongo: Mr. Chairman, Sir, that is correct. What I have read is an enhanced response to the audit report that we have.

The Chairperson (Sen. (Prof.) Anyang'- Nyong'o)**:** I am asking you a very simple question. The letter that was sent to you was following on the audit queries. Audit No. (ii) deals with audit query 1.12 on revenue collection, banking and maintenance of records. We just want your response on that so that we are systematic.

The Committee directed that the county government provides comprehensive risk evidence of the IOUs, how much was recovered and the whereabouts of the money after recovery. Those are very specific things and that is what we want. Where is it in this response?

The Governor of Nairobi County (Gov. (Dr.) Kidero): Mr. Chairman, Sir, on Paragraph 1.12, there is a Schedule on direct banking showing three tables of contents, evidence of recoverable; letters of banking and reconciliation are in this file.

The Chairperson (Sen. (Prof.) Anyang'- Nyong'o)**:** That is what we wanted.

Sen. Okong'o: Mr. Chairman, Sir, as a matter of procedure, can we be given all the copies for us to peruse and be in line with what we are dealing with?

The Chairperson (Sen. (Prof.) Anyang'- Nyong'o)**:** If the auditors have gone through it and are satisfied, Members can just go through it because we rely on the auditors for satisfaction.

Sen. Mbuvi: Mr. Chairman, Sir, with regard to Paragraph 1.12, the last time I appeared before this Committee as the Senator for Nairobi County, there are some documents that I tabled. There are some correspondences that I made to the Transition Authority (TA) and there were some circulars that I tabled which instructed the county government to close all the existing accounts and operate under one account. I want to be furnished with those documents so that I ask some questions based on them. There are some circulars which were issued to the governor instructing him to close all the existing accounts and operate under one account which was controlled by the Central Bank of Kenya.

The Governor of Nairobi County (Gov. (Dr.) Kidero): Mr. Chairman, Sir, you will recall that at the beginning, we discussed and what the good Senator for Nairobi County is asking is contained in the request we made that there are documents for paragraph 1.11 that are yet to come. When they come, we will present them.

The Chairperson (Sen. (Prof.) Anyang'- Nyong'o)**:** You are right Governor. We are still waiting for those documents.

Sen. Mbuvi: Mr. Chairman, Sir, there are documents that I tabled last time. The Clerk Assistant to this Committee took them and was supposed to make copies and return the original copies to me but he did not do that. The Members who were present at that time can confirm.

The Chairperson (Sen. (Prof.) Anyang'- Nyong'o)**:** If those documents relate to paragraph 1.11, we are still waiting for them. They have not arrived.

The Governor of Nairobi County (Gov. (Dr.) Kidero): Mr. Chairman, Sir, for the sake of clarity, the county government does not have copies of the document that he presented.

Sen. Mbuvi: Governor, you requested for those documents and I presented them for your perusal.

The Governor of Nairobi County (Gov. (Dr.) Kidero): Mr. Chairman, Sir, can you protect me?

Sen. Mbuvi: You do not need protection in here!

The Chairperson (Sen. (Prof.) Anyang'- Nyong'o)**:** It is the Chairperson who gives permission to speak. Senator, kindly switch off your microphone.

I think that the Senator is interested in the closure of accounts. Paragraph 1.11 says that the Committee directed that documentation evidence in closure of accounts and transfer of funds to the county revenue accounts for the respective accounts be availed to the Committee. Those are the documents that we are waiting for. The evidence of closure is coming.

Sen. Okong'o: Mr. Chairman, Sir, the Senator is asking for his original documents which he tabled before our Committee to make copies for the Governor. I think that the former Clerk Assistant can check on those documents.

The Chairperson (Sen. (Prof.) Anyang'- Nyong'o)**:** The Clerk Assistant is checking for those documents. That is not a problem.

Sen. Wamatangi: Mr. Chairman, Sir, I would like to direct my question to the finance person. In the response that you are reading, relevant to what you have said in paragraph 1.12, looking at paragraph 1.13 where you have responded to the issue of encashment of cash in the office. As far as the issues that were supposed to be undertaken by yourself on paragraph 1.12, you need to be on record with a written response because the issues raised are not here. The documents will come as you have said, but---

The Chairperson (Sen. (Prof.) Anyang'- Nyong'o)**:** The documents that are coming relate to paragraph 1.11. The response on paragraph 1.12 is in the file that is circulating.

Sen. Wamatangi: Mr. Chairman, Sir, if you look at their response on page No.2, the documents notwithstanding, read the response because there are specific questions there.

The Chairperson (Sen. (Prof.) Anyang'- Nyong'o)**:** The itemization is not in line with paragraph 2.13; is it your response that this relates to item No.2? I asked you to clarify but you have not.

Sen. Wamatangi: Mr. Chairman, Sir, if you read what you have read right now, the question that pertains to paragraph 1.12, the response itself in writing needs to capture those issues. You should answer the questions as asked. What you have said in paragraph 1.12 is a repeat of what the auditor has said. You have not answered the questions. You need to respond to that.

The Chairperson (Sen. (Prof.) Anyang'- Nyong'o)**:** Chief, can you help us because according to paragraph 1.12, the Committee directed the county government to provide comprehensive evidence of the receipt of the IOUs, the recovery process, how much was recovered and after the recovery, where the money is. Where is that in this response?

The Governor of Nairobi County (Gov. (Dr.) Kidero): Mr. Chairman, Sir, the IOUs recovered are on pages No. 1 and 2 of the file.

Sen. Wamatangi: Mr. Chairman, Sir, the issues could be there in the file. However, my point is, if those issues have been responded to in this file, put it in writing that this is the evidence in this file such that if you look at this file you can refer to it and say that a certain annex or page is the answer to a specific question. That will make the report neat and proper for the Committee's records.

The Chairperson (Sen. (Prof.) Anyang'- Nyong'o)**:** Sen. Wamatangi is right. We should skip paragraph 1.12 so that you can give an answer. The file is simply a further explanatory document to your answer. However, at the moment, we have no written answer to paragraph 1.12 as was requested on this letter.
Let us move to paragraph 1.13.

Sen. Mbuvi: Mr. Chairman, Sir, when they bring their answer, I would like some further clarification that I would like them to shed light on since we are covering the audit report of 2013/2014.

I have some statements on June 2014 which is not covered in the report. In June 2013, the county government spent almost Kshs1 billion to pay law firms in bogus claims and deals.

I would like to table a list of the beneficiaries or law firms that benefitted from this money. We want to know why the Auditor-General did not raise this issue yet the payments were done in June 2014. The Auditor-General's report is covering the period between 1st July, 2013 to 30th June, 2014 and these payments were made on 30th June, 2014. I will table this payment schedules for---

The Chairperson (Sen. (Prof.) Anyang'-Nyong'o)**:** We are coming to that Sen. Mbuvi. It is another audit query. We have to cover audit queries systematically; otherwise we will not make any progress.

Sen. Mbuvi: Much obliged, Mr. Chairman, Sir.

The Chairperson (Sen. (Prof.) Anyang'-Nyong'o)**:** Hold your horses, you can raise it at an appropriate moment.

Could we go to paragraph 1.13: encashment of cheques in the cash office?

1.13: Encashment for Cheques In The Cash Office

Mr. Kariuki: Mr. Chairman, Sir, paragraph 1.13 (iii) is on encashment of cheques in the cash office. The Committee had directed that the query be addressed together with the one above with comprehensive responses and supporting evidence.

The Chairperson (Sen. (Prof.) Anyang'-Nyong'o)**:** Read the response.

Mr. Mwakanongo: Mr. Chairman, Sir, the response that I read combines 1.13 and 1.12. The cash was used to encash staff cheques that were later on banked as both credit and debit to recognise the revenue and expenditure thereof. Currently revenues are banked intact and payments are made thereof. We have enhanced the payment cashiers float to cater for urgent operation needs as they arise. The discrepancy was occasioned by the timing of the presentation of the banking slip to the cash office for receipting in live forms. This is because the collectors at the division level collect and bank all monies directly to the county's bank account and later present the slip to the cash office for receipting using laicom. This may not be done the same day hence the discrepancy. Reconciliation was done between the laicom and divisional records showing the total collection for the period. I attach file 1.13 which shows the encashed cheques. We therefore have evidence of the IOU recovery, reconciliations and the banking slips.

The Chairperson (Sen. (Prof.) Anyang'-Nyong'o)**:** Could we hear from the Auditor.

Ms. Wangari: Mr. Chairman, Sir, we went through the documents and they are in agreement. We are, therefore, satisfied.

The Chairperson (Sen. (Prof.) Anyang'-Nyong'o)**:** Could we hear from the Members?

Sen. Mbuvi: Mr. Chairman, Sir, we need a further elaboration on that. You are saying, you are in agreement, could they explain how they are in agreement with the county? Could they table documents?

The Chairperson (Sen. (Prof.) Anyang'-Nyong'o)**:** That is what has been tabled and Members are looking at it.

Sen. Mbuvi: Mr. Chairman, Sir, I have not been furnished with a copy of that.

The Chairperson (Sen. (Prof.) Anyang'-Nyong'o)**:** Do not worry, it will come to you.

Ms. Wangari: Mr. Chairman, Sir, if you look at paragraph 1.122 there is a list of encashments. It is the list of the encashment and we have gone through all the payment vouchers for the encashed cheques.

Sen. (Prof) Lonyangapuo: Mr. Chairman, Sir, Sen. Mbuvi is right. We cannot have one copy yet we are many Members. If the Nairobi County people came prepared, they should have come with more than one copy.

Sen. Mbuvi: Mr. Chairman, Sir, the reason as to why am asking these queries is because they are always telling us that they are in agreement. We are not in agreement. We want to understand this agreement. We need to be furnished with the relevant copies to understand which agreement this is. They are in agreement with the Governor but we are not in agreement with what they are telling us.

The Chairperson (Sen. (Prof.) Anyang'-Nyong'o)**:** Do not worry, they are bringing you copies.

Sen. Okong'o: Mr. Chairman, Sir, I need a further clarification. The Auditor-General indicated that the examination of the encashment shows that the County Government employees were encashing cheques at the revenue cash office. This is contrary to Section 109 of the Public Finance Management Act. Auditor, has this offence been cured by virtue of the fact that you have looked at the documents? Did you realise that the law was being broken when you looked at the documents? What action has been taken even if the irregularity has been cured? The response should come from the Auditor-General.

Mr. Kariuki: Mr. Chairman, Sir, that is true. It is one of the reasons why we raised this issue; there were some irregularities. Our concern is money and not the illegal issues. If the money is returned, we definitely confirm that the money has been recovered. It should not happen---

Sen. Mbuvi: Okay, but what measures or what action did you put in place to ensure that such anomaly---

The Chairperson (Sen. (Prof.) Anyang'-Nyong'o)**:** Sen. Mbuvi, you have to seek permission from the Chair.

Sen. Mbuvi: Much obliged, Mr. Chairman, Sir.

Mr. Kariuki: Mr. Chairman, Sir, when the money is recovered, it cures the financial aspect but it may not cure the legal aspect. We have evidence that this money was recovered from these people. The other things are disciplinary issues and they have been indicated in some instances. There are people who have been penalised by recovering the money from their payroll, there are surcharges and some of them have been warned.

Sen. Okong'o: Mr. Chairman, Sir, I am satisfied to that extent. This Committee should then make recommendations on the legal aspect. We will be in order to do that.

The Chairperson (Sen. (Prof.) Anyang'-Nyong'o)**:** We will be in order to do that when we are writing our report.

Sen. Wamatangi: Mr. Chairman, Sir, with your permission. Auditor, you need to separate the two issues. This is because you have tackled a different issue from what she tackled. The issue she was addressing was on the compliance and confirmation about the encashments, which she has tabled. This evidence is here on perusal of vouchers. Perusal of vouchers about the encashment is a different issue from monies which have been recovered which were lost.

Your issue is on why you are saying that you have seen evidence that there were recoveries that were made because monies had been lost or misappropriated. That is how

you recover. The issue here is on the encashment that she is dealing with. The evidence provided here in this list which is correct is on confirmation of those particular vouchers. What you need to do is to separate the two.

If there are recoveries which have been done, then we should see a recovery schedule and the amounts that have been recovered, from which individuals it is being recovered and the time the recoveries will be finalized. We should then have a confirmation separately, that this other money which were a difference, which you have termed here as about Kshs75 million that you have now then again confirmed in this schedule here in this list, that indeed you saw the vouchers because you are the one who raised the issue and those monies were spent procedurally. The Committee will have no issue looking at this. Otherwise the question of recoveries cannot be explained by this.

Mr. Kariuki: Mr. Chairman, Sir, I totally agree with the hon. Senator. In fact, trying to solve this retrospectively will not cure some of those problems. What we had checked from the samples we had taken and the ones we presented in this report, we went over them, for our objective was to confirm that indeed if it was somebody who had encashed a cheque and if it had been recovered from him. This is because we will not say that these things have been resolved if these cheques were not resolved from them.....

Sen. Wamatangi: Mr. Chairman, Sir; with your permission. I think I am very clear in what I am saying if you listened to me, Auditor. We have no dispute with what you are saying. What we are saying is very simple. Individuals who are not the governor but workers in the County Government had taken funds elsewhere where they are not supposed to go to and necessitated that those monies be recovered from those individuals. We need to see a schedule that says Mr. X or Mr. B had taken so much which totalled to Kshs15 million, Kshs20 or Kshs30 million. Mr. B has already paid Kshs50 million and Kshs70 million is still accruing or pending and it is being recovered this way. If Mr. B paid fully, you show us the evidence telling us that this is the schedule that shows that all the payments have been done in full on all the recoveries. I have no issue on the question of encashment. It is just a matter or looking at the vouchers and seeing that the voucher is existent or spent and you put it in the schedule and stamp. We do not have an issue with that.

The Chairperson (Sen. (Prof.) Anyang'-Nyong'o): Let me make something clear. Sen. Wamatangi is right. That is why (ii) and (iii) in the letter to you was very clear; and you said you are handling them together. No.(ii) is very clear as Sen. Wamatangi says: The recovery process, how much was recovered and the whereabouts of the money after recovery. By saying that money has been recovered, you have answered the last question on the whereabouts of the money. However, Sen. Wamatangi is saying that we need to see the list of people from whom the money was recovered; the schedule.

The Governor of Nairobi County (Gov. (Dr.) Kidero): Mr. Chairman, Sir, on this yellow file; direct banking under *(inaudible),* there are two items as I mentioned; one, two and three. That is 1.12 and 1.22. Here you have a sample where the IPPD payroll

recoveries shows what is outstanding and how much is recovered; of course, subject to one third rule in terms of earnings. This is ongoing.

The Chairperson (Sen. (Prof.) Anyang'-Nyong'o): Is it an ongoing process?

The Governor of Nairobi County (Gov. (Dr.) Kidero): Mr. Chairman, Sir, yes.

The Chairperson (Sen. (Prof.) Anyang'-Nyong'o): Can you provide that file to Sen. Wamatangi please. Where is it? Sen. Wamatangi have you seen it?

Sen. Wamatangi: Mr. Chairman, Sir, I have not seen it. However, I will do that. As we do that; for purposes of proper housekeeping – also the finance person, those explanations made by the Auditor-General must appear because this is the document you will own. When you leave this Committee, this will go into the record of this Committee; that it is what you told this Committee when we let you go. So, that story as told by the auditor must be here. You will sign this document. We will file it. If any queries would arise later, we will hold you to account that you said this and that. Therefore, that story about recoveries and who paid must be here but it is not.

In your response, 1.1.3 speaks nothing about recoveries. It is in bold but not in an annexure. You have explained other issues here. Say that there is a schedule of recoveries; they have been made amounting to so much. It has to be in the report.

Sen. Mbuvi: Mr. Chairman, Sir, even before recovering money spent, did you comply with the law; the Public Finance Management (PFM) Act? The problem of our county is that we collect revenue at source. We do not follow the law. We do not remit what we have collected to the Controller of Budget for re-budgeting or guidance. Before we go to the recoveries; did the country comply with the law? After collecting the revenue, did they remit what they collected to the Controller of Budget so that they are guided on how to spend the money?

Sen. Wamatangi: Mr. Chairman, Sir, I would like to assist the Senator for Nairobi on that one. The question was answered by the auditor in the sense that – that now remains as the onus of the Committee because that is one of the queries here. If you look at the audit query as answered, the legal aspect is the decision of the Committee. Now that an anomaly was already visited upon that procedure, then what penalty will the Committee recommend for the people who are guilty of it? That remains with the Committee. The auditor cannot cure it.

The Governor of Nairobi County (Gov. (Dr.) Kidero): Mr. Chairman, Sir, it is a correct observation. During the audit, it was observed that the PFM Act was violated, recoveries were not done properly and there were other issues as well. As we sit today, actions have been taken. The employment of the Chief Finance of Treasury and Director of Finance were terminated. This arose out of the audit report.

The Chairperson (Sen. (Prof.) Anyang'-Nyong'o): I direct that you update your answers to be comprehensive along the lines that Sen. Wamatangi has been trying to canvass, then send the updated responses with a letter to the Clerk of the Senate. It is important that the answers be as comprehensive as possible because the HANSARD may not necessarily have your annexes. The annexes are pretty baked but we need to have the story told fully in your answers. You are economical with your answers which is very difficult for the Committee. It is a problem that your people with the help of the auditors should begin to get you to.

Sen. Wamatangi: Mr. Chairman, Sir, if you may allow, for the purposes of understanding; it is incumbent upon us to also inform especially the officers who are making these responses; the finance person and the rest of the team. It is important for this Committee to alert the Nairobi County Government that these gentlemen sitting here from the auditor's office have presented to the Committee the new act from the Auditor-General which with effect from this June will be the penalizing tool. Finance person, as you respond you need to understand that document – it would have been good for it to be read to this team to understand that it is very specific that if under your department it falls that this Committee finds you at fault; it is express. It is not a matter of waiting. It is provided for in that Act that you are either jailed or fined.

It is express on what penalties are incumbent on audit queries which have been confirmed. It is very important for you to know that after we sit with you and you go away, you may think that you have just answered the questions and gone. However, you will be subject to that Act when we are making our decisions. You might see a letter saying that you are supposed to go to court. It is important for you to understand that.

The Chairperson (Sen. (Prof.) Anyang'-Nyong'o): Maybe I should be reading out this Act at the beginning. This is the Public Audit Act, 2015; a kind of threatening Act. It states:-

(1)A person shall not –
(a) Without reasonable cause or lawful excuse obstruct or hinder, assault or threaten a member of staff of the Office of the Auditor-General for professional acting under this Act;
(b)Without justification, fail to provide information required under this Act;
(c)Without justification, fail to provide information within reasonable time that is required under this Act or submit false or misleading information;
(e)Misrepresent to or knowingly mislead a member of staff of the Office of the Auditor-General for professional acting under this Act or
(f) Interfere with or exert undue influence on any staff of the office of the Auditor-General or on any person authorised by the Auditor-General to perform functions under this Act.

(2) A person who contravenes Sub section (1) commits an offence and is liable on conviction to a fine not exceeding Kshs5 million or to imprisonment for a term not exceeding three years or to both.

That is why we are very particular about getting information in the HANSARD which will answer the question which will also cover you that you did the appropriate thing.

Let us go to item No.1.2.1: Outstanding rates. Read your response.

1.2.1: Outstanding Rates

Mr. Kariuki: Mr. Chairman, Sir, the Committee requested evidence of new valuation rules and internal audit mechanism as well as evidence of efforts to collect the outstanding rates due.

The Governor of Nairobi County (Gov. (Dr.) Kidero): Mr. Chairman, Sir, the rates reflected as outstanding from live forms as at 30th June, 2013 and 30th June, 2014 respectively was Kshs62 billion to Kshs96 billion but the actual answer is on the next page; page 3, the new valuation and rating bill of May, 2015 is still pending at the county assembly and it is in this file; it is the third set of documents which is Nairobi City County valuation and rating bill 2015 which is comprised of a total of eight chapters.

The Chairperson (Sen. (Prof.) Anyang'- Nyong'o: Proceed, Governor.

The Governor of Nairobi County (Gov. (Dr.) Kidero): Mr. Chairman, Sir, this Bill having been drafted with technical assistance of the World Bank could lead to preparation of a new valuation roll. The new valuation roll is, therefore, awaiting passage of the County Valuation and Rating Bill in our Assembly. The internal audit visits the rating office to confirm the procedures. The risk registers are being followed and adhered to. The internal audit also follows up the trail of documents from the Chief Valuer to the implementation stage. Internal control at the Valuation Department is the custodian of the rating files. Any amendments to the assets can only be endorsed by the Director of Valuation. The Chief Accountant in charge of rates manages the rates account and has no mandate to change any values to the properties.

As the finance sector has, we have decentralized the rate demands by producing and distributing demand notices at sub-counties. We also have clamping exercises. We also go to court and recover rates through the court process. In this file, we have samples of copies of letters that we have written to people who owe us money. In this file, there are samples of caveats that we have placed on properties that owe us money. We have written to the Commissioner-General and the Speaker because even in this building where we are sitting, we are just about to clamp it. We have also written to the Principal Secretary (PS), Ministry of Defence and many people.We have shown pictures of buildings that we have clamped as we are trying to collect rates. All these are in this file.

The Chairperson (Sen. (Prof.) Anyang'-Nyong'o): Governor, continue reading your rating responses.We need to have it on record.

The Governor of Nairobi County (Gov. (Dr.) Kidero): Mr. Chairman, Sir, a continuous exercise of advertising defaulters in the newspapers has been and continues to name and shame defaulters. We do reminders of demands and legal notices. As I said earlier on, it is a huge document because we have a total of more than 300,000 rate payers in Nairobi County which we were unable to publish and bring. However, since we were supposed to give evidence, we would like to ---

The Chairperson (Sen. (Prof.) Anyang'- Nyong'o): Give it to the auditors.

(Gov. Kidero handed the document to the auditors)

You have not finished reading page 4.

The Governor of Nairobi County (Gov. (Dr.) Kidero): Mr. Chairman, Sir, I have.

The Chairperson (Sen. (Prof.) Anyang'- Nyong'o): No. It is on decentralization of DCU, reminder of demands and all that. Just read because we need it on record. We have received it, but we want that read on record.

The Governor of Nairobi County (Gov. (Dr.) Kidero): Mr. Chairman, Sir, the Chief Valuer has agreed with the Chief Land Registrar to forward rates demand notes for its follow-ups with the National Treasury as rates have not been paid for a long time. The last payment of Kshs90 million was received in 2009. The Nairobi County Government has made numerous follow-ups with the national Government and its agencies on the matter. However, the matter is yet to be addressed.

I would just like to add although it is not written here that we have presented a petition to the Senate on non-payment of rates and other dues to the county by the central Government.

Mr. Kariuki: Mr. Chairman, Sir, the outstanding rates are a big figure in the books of the county government.

Sen. Okong'o: Mr. Chairman, Sir, my concern is on this Bill that is pending in the County Assembly. Governor, what efforts have you made? This is a very crucial issue. If you want to be capacitated by an Act of the County Assembly other than just tabling it there, what other efforts have been made so that it can be fast-tracked to assist your government?

The Governor of Nairobi County (Gov. (Dr.) Kidero): Mr. Chairman, Sir, we have had various discussions with the planning committees of the County. We did not just stop at that. We have tried to engage the Senate – being the protector of devolution – to help us

in ensuring that rather than being the slayers of the counties, it also helps us in fulfilling their role of ensuring that counties are successful by assisting to collect some of these outstanding rates, especially from the Government.

Sen. Okong'o: Mr. Chairman, Sir, I am specifically talking about the Bill pending in the Assembly. What efforts have you made so that the Bill can be fast-tracked to become a law?

Sen. Mbuvi: On a point of order, Mr. Chairman, Sir. Let me respond to the query that he has raised, that the Senate is not assisting in doing a follow-up and rates payments. We cannot help a county that is corrupt. I am saying this because one of the finance officers of this great county of ours was recently arrested. In his account, I think the Ethics and Anti-Corruption Commission (EACC) officers found over Kshs800 million. That officer was sacked alongside other county officers. Ms. Nancy Kirui after being sacked is still doing business with the county. She is still getting tenders and Mr. Mwakanongo is paying her.

However, let me come to the question which has just been raised on the rates. The county is doing a good job in recovering the monies in terms of rates, but corruption is rampant. For instance, let me raise two issues under the same query which has been raised. There is a Plot No.209/403/3 Ndemi Lane, Kilimani. The owner of this property was supposed to pay---

Sen. Okong'o: On a point of order, Mr. Chairman, Sir. This Committee is a Committee of procedures. My colleague, Sen. Mbuvi, should not come with very extraneous issues which we are not ---

Sen. Mbuvi: I have not finished raising my point. Why do you not listen to my point and then counter it?

Sen. Okong'o: That is why I raised a point of order because you are not procedural.

Sen. Mbuvi: Mr. Chairman, I am procedural because I am raising a query with regard to rates. I do not know why you are intervening because I have not finished raising my point. What is wrong with you, Senator?

The Chairperson (Sen. (Prof.) Anyang'-Nyong'o): Sen. Mbuvi, let me help. We still have other audit queries under which the issues you are raising can come.

Sen. Mbuvi: Mr. Chairman, Sir, my query is under rates.

The Chairperson (Sen. (Prof.) Anyang'-Nyong'o): The issues under rates that the governor is responding to relate to the audit query. The committee requested evidence under 1.21 on new valuation rules and internal audit mechanisms as well as efforts to collect outstanding rates. Let us deal with those management issues.

Sen. Mbuvi: Mr. Chairman, Sir, I am on those issues. I am about to table documents in regard to what has just been raised. I had not completed my point and then Sen. Okong'o just counters it. I do not understand what is happening in this Committee.

The Chairperson (Sen. (Prof.) Anyang'-Nyong'o): Sen. Mbuvi, could you proceed to table relevant document?

Sen. Mbuvi: Mr. Chairman, Sir, I want to table the relevant documents under the same query on the recovery of outstanding rates. Let me give one good example on a property which is Ndemi Lane in Kilimani. A fake rates claim of Kshs4 million was raised by the county. I have a copy with me which I want to table---

Sen. Okong'o: On a point of order, Mr. Chairman, Sir.

The Chairperson (Sen. (Prof.) Anyang'-Nyong'o): Let him finish.

Sen. Mbuvi: Sen. Okong'o, what is wrong with you? I have not completed raising my point and Sen. Okong'o is just countering it.

The Chairperson (Sen. (Prof.) Anyang'- Nyong'o): Please, table those documents so that we can proceed.

Sen. Mbuvi: I think, *hata wewe tutakupeleka kwa ile* tribunal *ya* Justice Tunoi. My case is very simple.

Sen. Okong'o: Mr. Chairman, Sir, we cannot be held hostage here by insinuations which have far reaching implications. This is a judicial---

Sen. Mbuvi: Let me finish raising my point.

Sen. Okong'o: I am raising a point of order.

Sen. Mbuvi: I am the Senator for Nairobi County. This is not Nyamira County, but I am raising a matter ---

Sen. Okong'o: Mr. Chairman, Sir, I am raising a point of order. If he knows procedures of Parliament, points of order are allowed and then he can continue with what he is saying.

The Chairperson (Sen. (Prof.) Anyang'-Nyong'o): Sen. Mbuvi, points of order are allowed.

Sen. Mbuvi: Mr. Chairman, Sir, much obliged.

Sen. Okong'o:Mr. Chairman, Sir, we will not be held hostage here by insinuations and utterances which are not within the procedures. Where it deals with the matters raised by the Auditor-General, we need to be dealing with them specifically within those timelines. Extraneous evidence can be adduced at other venues, but not here.

The Chairperson (Sen. (Prof.) Anyang'-Nyong'o): If you have a document related to this particular audit query, just table it and then we can proceed, please.

Sen. Mbuvi: Mr. Chairman, Sir, so I just table?

The Chairperson (Sen. (Prof.) Anyang'-Nyong'o): Yes, please.

Sen. Mbuvi: Mr. Chairman, Sir, I wish to table a letter of complaint from a property owner in Nairobi, a Mr. Muheedin Hawa, owner of Plot No. 209/403/3 Ndemi Lane. The letter is self-explanatory.

The plot has outstanding rates arrears amounting to Kshs4million. His property was auctioned by the County. It was sold to the Governor's proxies, a Mr. Rajiv Sanghani, and one of the Governor's cousins, a Mr. Okello.

I did a search to confirm my allegations. The property was transferred t... *(inaudible)* advisory and I wrote to the registrar of companies who furnished me with comprehensive search documents. The director of this company was Immanuel Okello who is a close relative to the Governor and Amit Mogdhani who is a cousin to Rajiv Sanghani.

I wish to table these documents, a letter of complaint and a fake rates claim that was raised by the County. Because of time constraints, I can table the entire file.

The Chairperson (Sen. (Prof.) Anyang'-Nyong'o): Put all those documents, including the loose ones in one file, give it to us and we will deal with it. Serjeant at arms, can you get hold of the file.

(Sen. Mbuvi laid the documents on the Table)

Sen. Mbuvi: Mr. Chairman, Sir, I wish to table another document regarding LR No. 209/5917, a property belonging to Mr. Pherozee Mistri through the same fictitious and fake rate claims. The property was transferred to Gem apartments, a company owned by Mr. Kidero and his wife. I table documents and transfer copies confirming that the property was transferred to Kidero. His wife's photograph is here, and he is the current land lord of this property.

I have a copy of the title deed and a message from the property's owners, which I will forward. They were threatened by the Governor through his proxies, who raised a fake warrant of arrest which was published in the *Nation Daily* Newspaper, that the person is

not supposed to come back to the County, to claim for the property which was taken by the Governor. I table a copy of this newspaper.

(Sen. Mbuvi laid the documents on the Table)

There are so many properties. They steal property from innocent Nairobians, they kill them---

The Chairperson (Sen. (Prof.) Anyang'-Nyong'o): Senator Sonko. Just hold on.

Sen. Mbuvi: We have got over five files. These guys are even murdering innocent people. Yet, Sen. Okong'o wants to politicize this matter because he has been "seen" by the Governor.

The Chairperson (Sen. (Prof.) Anyang'-Nyong'o): Sen. Sonko---

Sen. Mbuvi: I am even ready to swear an affidavit.

Sen. Okong'o: Mr. Chairman Sir, can i---

Sen. Mbuvi: Wewe wacha maneno yako. Kama "umeonwa", wacha kuleta mambo yako kwa Senate.

Sen. Okong'o: We cannot be taken in a circus.

The Chairperson (Sen. (Prof.) Anyang'-Nyong'o): Can I help this.

Sen. Okong'o: Mr. Chairman Sir, Sonko cannot threaten anybody in this Committee.

Sen. Mbuvi: This is not Nyamira county---

The Chairperson (Sen. (Prof.) Anyang'-Nyong'o): No, no. Sen. Sonko.

Sen. Mbuvi: I have the rights. I am interested in representing my constituents.

The Chairperson (Sen. (Prof.) Anyang'-Nyong'o): Sen. Sonko.

Sen. Okong'o: So am I. Acha upuzi. Mimi hutaniletea upuzi wako.

Sen. Mbuvi: Usinitukane. Watu wanauawa kwa hii Kaunti, and I am their Senator. Kwani utanifanya nini? Kama "umeaonwa", kwenda na upuzi wako. Wewe ni mbuzi. Kwani utanipeleka wapi? This is my county.

Sen. Okong'o: Wacha upuuzi wako. Kwani utanifanya nini?

The Chairperson (Sen. (Prof.) Anyang'-Nyong'o): Sen. Sonko.

Sen. Mbuvi: Mimi sijachaguliwa Nyamira. Nimechaguliwa Nairobi, na watu wanauawa na huyu Gavana na Wainaina. They are killing people every day, and you do not want me to raise this issue. I am the Senator of these people. Usiniletee upuzi wako. Kwani utanifanya nini?

Sen. Okong'o: Wacha upuuzi Wako.

The Chairperson (Sen. (Prof.) Anyang'-Nyong'o): Sen. Sonko---

Sen. Mbuvi: Kama umehongwa, peleka corruption yako kwako. Peleka corruption yako huko kwenu.

The Chairperson (Sen. (Prof.) Anyang'-Nyong'o): Sen. Sonko---

Sen. Mbuvi: Mr. Chairman Sir, I will raise this issue about Gov. Kidero and Mr. Wainaina. They are murderers.

The Chairperson (Sen. (Prof.) Anyang'-Nyong'o): Okay, Sen. Sonko. The Director of Criminal Investigations can deal with that. I am helpless---

Sen. Mbuvi: Very useless people. Mimi hamuwezi kuniletea.

The Chairperson (Sen. (Prof.) Anyang'-Nyong'o): okay. *Sawa sawa.*

Sen. Mbuvi: Mr. Chairman, Sir, let us proceed. I am not going.

The Chairperson (Sen. (Prof.) Anyang'-Nyong'o): Sen. Sonko. I would plead with you that this Committee has to function. Unfortunately we have an order of procedure where we address one audit query after the other. When I give you the opportunity to lay documents relevant to an audit query, please do so. You have brought documents that should be handed over to the Director of Criminal Investigations---

Sen. Mbuvi: Mr. Chairman, Sir, the Senator of Nyamira has provoked me when I was just about lay my documents, as if he met the Governor before coming to this Committee.

The Chairperson (Sen. (Prof.) Anyang'-Nyong'o): It is very unfair on me and on the Committee. Let us proceed because we need to finish this thing in time.

Sen. Mbuvi: Mr. Chairman, Sir, I am much obliged.

The Chairperson (Sen. (Prof.) Anyang'-Nyong'o): Yes, Sen. Wamatangi. We will come to you, Boni.

Sen. Wamatangi: Mr. Chairman Sir, with due respect to the Senator for Nairobi and other Senators. I believe that this Committee is in a position to deal with all the issues that have been raised here by Sen. Mike Mbuvi. We would implore you to table your evidence, and raise the issues but, please, do so with the decorum, respect and dignity to the Committee, and the Committee will deal with the issues. We are ready.

I also kindly request you to withdraw the claim that a Senator has been seen by the Governor because this Committee operates under absolute integrity and is fully above reproach. We are Senators of full integrity and ready to dispense truthfulness, justice and fairness to all Kenyans, irrespective of their status. It would be not only of good course and deed for you to withdraw that remark because that will give the Committee the goodwill needed to deal with all the issues.

I assure you, as a Member of the Committee, that any issue that you raise will be dealt with the way we deal with all other issues. Please give the Committee respect.

The Chairperson (Sen. (Prof.) Anyang'-Nyong'o): I give Sen. Khaniri and Sen.(Dr.) Khalwale to introduce themselves. Sen. Wako. let us begin with you. I thought you had been here. Please, introduce yourself.

Sen. Wako: Mr. Chairman, Sir, my name is Sen. Amos Wako of Busia County and a Member of this Committee.

Sen. Khaniri: Mr. Chairman, Sir, my apologies for coming in late. I am Sen. Khaniri George, Vihiga County and a Member of this Committee.

Sen.(Dr.) Khalwale: Mr. Chairman, Sir, sorry for coming late. My name is Khalwale, Kakamega. It is because I was looking for my friend, who was arraigned in court yesterday, and I do not know where he is. I have been hoping from one police station to the other. Can I contribute at this stage? First, on the point of order raised by Sen. Okong'o, you must take charge of the meeting.

You should have made a determination on whether Sen. Okong'o was right that Sen. Mike Mbuvi could not make the submission that he was making. In my view, although Sen. Mike Mbuvi has used very unpalatable and unparliamentary language, we are on the issue of rates.

If Sen. Mike Mbuvi has got information on rates, our Committee is going to be better off if we listened to him and he gave us documents so that we can make proper decisions. I therefore, urge that you find Sen. Okong'o completely out of order for blocking a friend of the Committee who wants to give us more information that will help us to interrogate Gov. (Dr.) Kidero.

On my contribution, Governor, in your response you have indicated that you have made efforts to recover this money and your answer is quite attractive. May be for purposes of

us believing you even more, might you have evidence to show what success you have had by way of collecting rates? Have you collected 20 or 50 per cent in view of the fact that this is an audit that was done almost one-and-a-half years ago? Show us a bit of success. We do not want to condemn you in the words of Sen. Mike Mbuvi although the evidence seems to be very loud and clear.

The Chairperson (Sen. (Prof.) Anyang'-Nyong'o): Before the Governor responds, let me just clarify one thing, Sen. (Dr.) Khalwale. I had drawn the attention of Sen. Mike Mbuvi to the need to respond to the audit query and hr had said that he was going to lay documents relevant to collection of land rates.

It is unfortunate that he veered to other issues which I think that he should apologize to the Committee because Standing Order No.94, states that:-
"A Senator shall be responsible for the accuracy of any facts that the Senator alleges to be true and may be required to substantiate any such facts instantly."

However, we do not want to do that because this Committee does not do criminal investigation. Criminal investigations belong to the Criminal Investigations Directorate (CID). I have a feeling that the issues that the Senator raised about all these allegations were strange to this Committee. We just deal with audit queries. We do not have the capacity to investigate.

Sen. Mbuvi: Mr. Chairman, Sir, on point of order---

The Chairperson (Sen. (Prof.) Anyang'- Nyong'o)**:** Sen. Sonko, let me finish. We do not want to have an exchange. I am just giving direction so that we stick to the work of the Committee. I know that there are certain issues which are very important to you but I plead with you to raise those issues which we have jurisdiction to deal with. However, once you lay the documents before the Committee, give the Committee time to look at the documents and deal with them accordingly. We cannot prejudge the contents of those documents until we read and discuss them.

Sen. Mbuvi: Mr. Chairman, Sir, in response to your remarks, this Committee has powers equivalent to the High Court. We are entitled by the Constitution to investigate any matter. I do not think that I have defied any of the Standing Orders. We are on the issue of rates, and I have tabled documents pertaining to the issues that have been raised. I have tabled documents showing how the Governor and his proxies recover the money meant for rates. In the process of recovering that money, they end up defying the law and obtaining properties from the land owners in Nairobi illegally. I have tabled a file which has over ten properties which were illegally acquired by the Governor's proxies. That file is self explanatory, and I am willing to table document by document.

The Chairperson (Sen. (Prof.) Anyang'- Nyong'o)**:** We agreed and accepted the documents that you tabled. However, once you have tabled documents, you should leave

them with the Committee because at the moment, we have to finish the audit queries before us. We shall then come to the documents that you have tabled.

Sen. Mbuvi: Mr. Chairman, Sir, I am obliged.

Sen. (Dr.) Khalwale: On a point of order, Mr. Chairman, Sir. If upon receiving the tabled documents, you are convinced that the documents are admissible, then the Committee must make a decision on them. You have to either mark to the auditors for further scrutiny or ask the Governor to respond because they have been tabled. If we just stop at that, it is tantamount to muzzling.

The Chairperson (Sen. (Prof.) Anyang'- Nyong'o)**:** Boni, we are not stopping at that. I have said that we shall look at the documents as a Committee. This is not the last sitting of the Committee. We can even recall the Governor back to appear before this Committee. However, at the moment, we have audit queries which are outstanding and we must finish today because we have a lot of work to do. We shall come to Sen. Sonko's documents when we sit as a Committee so that we look at them properly because they are not things that we can look at in one minute. Please bear with us.

Sen. (Prof.) Lonyangapuo: Mr. Chairman, Sir, Sen. Sonko is a friend of the Committee. He represents the people of Nairobi whose Governor is before this Committee. The allegations that he made verbally need to be withdrawn. Sen. Mongare also raised a point of order but we did not allow him to complete. Now that Sen. Sonko has tabled the documents, he should withdraw his remarks then we can proceed from there. The Chairperson will then guide the meeting from there. The evidence he has brought is very good.

Sen. Khaniri: On a point of order, Mr. Chairman, Sir. I appreciate that the Senator for Nairobi is a friend of this Committee. We will appreciate any evidence that he will table before this Committee to help us in making determination. However, this is a House of record and this meeting is on HANSARD. Therefore, I support the sentiments of Sen. (Prof.) Lonyangapuo because I heard with my own ears and I think that it is on HANSARD that the Senator said the Governor for Nairobi County is a murderer.

(Sen. Mbuvi interjected)

Mr. Chairman, Sir, you know the rules of the House. Please, protect me from Sen. Sonko. The Senator has to fully substantiate his serious allegation of murder. The Attorney-General *Emeritus* is here and he will tell you that is a very serious and grave allegation. The Senator should substantiate or withdraw because they will stick on our HANSARD. This is a House of records.

The Chairperson (Sen. (Prof.) Anyang'- Nyong'o)**: P**lease, proceed Sen. Sonko.

Sen. Mbuvi: Mr. Chairman, Sir, I will only withdraw my remarks against Sen. Mongare that he was "seen" by Gov. Kidero because I do not have evidence. However, I have evidence to prove that Gov. Kidero and his Chief of Staff, Mr.Wainaina are murderers. I have tabled documents in the case of the Ndemi Road property. The wife of the property owner whose name was appearing on the title deed was killed the day they were evicted from that property. The auctioneers killed the wife and they had instructions from the county government. Therefore, I will not withdraw those remarks because I am ready to prove and swear an affidavit and write to the Director of Public Prosecution (DPP). I am even ready to file a criminal private proceeding against the Governor and his Chief of Staff. They are murderers and killers! I will not withdraw those remarks.

Sen. (Dr.) Khalwale: On a point of order, Mr. Chairman, Sir. Our colleague and friend is not substantiating any of the things he is saying. He is merely repeating the allegation. He should support his allegation by bringing evidence that the Governor is a murderer. Otherwise, by repeating the allegations, we are just going to be a part of it.

(Sen. (Dr.) Khalwale and Sen. Mbuvi consulted loudly)

The Chairperson (Sen. (Prof.) Anyang'- Nyong'o)**:** Boni, can we have one meeting please.

Sen. (Dr.) Khalwale: Mr. Chairman, Sir, I am asking him to calm down.

(Loud consultations)

The Chairperson (Sen. (Prof.) Anyang'- Nyong'o)**:** Boni, please put off your microphone. Let us be orderly.

(Sen. Mbuvi consulted loudly)

Sen. Sonko, if you are a friend of the Committee, please be a friend of the Committee. We are now losing time on theatrics.

The mandate of this Committee is very clear and I want us to be level headed about this. There shall be a Sessional Committee to be known as the County Public Accounts and Investments Committee (CPAIC). The CPAIC shall consist of a Chairperson who shall be a Member of the second largest party or coalition of parties in the Senate and not more than 11 other Senators. The function of the CPAIC according to Standing Order No.212 (3) shall be:-

(a) pursuant to Article 96(3) of the Constitution, to exercises oversight over national revenue allocated to the county governments;

(b) pursuant to Article 228 (6) of the Constitution, to examine the report of the Controller of Budget on the implementation of the budget of county governments;

(c) pursuant to Article 229(7) and (8), to examine the reports of the Auditor - General on the annual accounts of the county governments;

(d) to examine special reports, if any, of the Auditor-General on county government funds;

(e) to examine the reports, if any, of the Auditor-General on the county public investments; and

(f) to exercise oversight over county public accounts and investments.

We have absolutely no responsibility to oversight criminal matters. Please, Sen. Sonko, with all due respect and as a friend of the Committee, I do not think that you will be able to substantiate the matter that you have alleged before this Committee because this Committee is not even competent to handle that issue. According to Parliamentary procedure, and if you are a friend to the Committee, just apologise and withdraw and take the issue to the relevant authorities. That will help us a great deal. We do not want to waste time on this. Think about that while I ask Sen. Wako to contribute.

Sen. Wako: Thank you, Mr. Chairman, Sir, for clearly setting out the mandate of this Committee. The Committee is now in the process of discharging that mandate and the issue of outstanding rates has arisen. The Senator of Nairobi has laid papers to indicate that the collections of those outstanding rates are being done in a manner which is not lawful. He is within his right as far as that goes. He has said that he is going to report to the police and undertake a private prosecution. If he has already reported and is contemplating a private prosecution, that is where the matter should be, it should not be here. This is because the only institution that can say that you are a murderer and you are convicted is a court. He is not a court to say that one is a murderer. Therefore, to the extent that you are not a court, the allegation is not within the jurisdiction of this Committee, we would kindly request you, as a Senator, to bring us within our mandate and withdraw those remarks about "he is a murderer".

Sen. Wamatangi: Mr. Chairman, Sir, could I have my say on the issue as you deal with it. We must bring sobriety to these proceedings. You have enough powers and you do not have to revert or to refer or to rule the discussion out of order. It is out of order. Otherwise if we continue with the foray here and there, it will never end. The issue and matter is simply out of order; end of story.

The Chairperson (Sen. (Prof.) Anyang'-Nyong'o)**:** I agree with Sen. Wamatangi. The matter that Sen. Sonko has raised before us is out of order; it is raised in the wrong forum. We shall proceed.

The Governor of Nairobi County (Gov. (Dr.) Kidero): Mr. Chairman, Sir, could I be heard?

The Chairperson (Sen. (Prof.) Anyang'-Nyong'o)**:** I have ruled that the issue is out of order. Mr. Governor, could you just respond to the question that Sen. (Dr.) Khalwale raised?

The Governor of Nairobi County (Gov. (Dr.) Kidero): Mr. Chairman, Sir, we have presented evidence on the efforts by way of demand notes, clamping, legal processes for rates recovery and even by way of presenting a petition to the Senate to discharge its mandate in terms of assisting the counties to thrive. Our petition to the Senate has been presented to the Chair of the Committee on Legal Affairs and Human Rights, to the County Public Accounts and Investments Committee and to the Speaker.

The Chairperson (Sen. (Prof.) Anyang'-Nyong'o)**:** We have an appendix here given by the County Government of Nairobi which shows efforts they have made to collect rates. Indeed, there is evidence here where they have written to several Government agencies including Parliament that owes them Kshs11 million. They have presented a petition to the Senate and a law before the county assembly. As Senators and this Committee in particular, we will do our best to ensure and follow up on these entreaties to the Government to pay rates to the county government.

The Government and all other agencies cannot expect service from the County Government of Nairobi if rates are not paid. This is very important and when we are writing our report, we shall take this issue as a special issue. They should pay rates not only to the County Government of Nairobi, but to other municipalities such as Mombasa, Kakamega Kisumu and so on. I have realised that all these municipalities and urban areas are suffering from non-payment of rates. That is a matter that we will take up when we write our report and back you fully.

The Governor of Nairobi County (Gov. (Dr.) Kidero): Mr. Chairman, Sir, probably just to add one thing. You did not pronounce yourself on the withdrawal. Sen. Khaniri said that this is an institution of records. I have just been called a murderer.

The Chairperson (Sen. (Prof.) Anyang'-Nyong'o)**:** I said that the matter is completely out of order and I do not want to pursue it any further than that because it is out of order.

Could we go to the next audit query?

Sen. (Dr.) Khalwale: Mr. Chairman, Sir, I just want a slightly more qualitative answer. You are speaking of the steps, but I want to know, out of this Kshs96.1 billion that was recorded at 30th June, 2014, how many billions have you recovered in the intervening period?

The Governor of Nairobi County (Gov. (Dr.) Kidero): Mr. Chairman, Sir, the indication is the increase in our rates collection. Over the last three years, we have doubled the rate of our rates collection.

The Chairperson (Sen. (Prof.) Anyang'-Nyong'o)**:** The Auditors, could we go to the next audit query.

Sen. Wamatangi: Mr. Chairman, Sir, as you go to next audit query, it would have been in order to also remind the Governor, I do not know where you were with your assets and liabilities especially assets that are registered. If you remember Mr. Chairman, when we were dealing with the other Committees…

(Sen. Sonko consulted loudly)

The Chairperson (Sen. (Prof.) Anyang'-Nyong'o)**:** The assets register, yes. Sen. Sonko, please, could we have some order in this Committee?

Sen. Wamatangi: Absolutely.

The Chairperson (Sen. (Prof.) Anyang'-Nyong'o)**:** You came here as a friend and you are now turning into an enemy.

Sen. Mbuvi: I apologise, Mr. Chairman, Sir.

Sen. Wamatangi: Mr. Chairman, Sir, I was on the matter of the assets register of the County Government of Nairobi. We had the same problem yesterday as we were dealing with the County Government of Busia who were not able to deal with the question of their rates because they do not have an assets register. I do not know whether the Governor would have wanted to pronounce himself on that particular issue so that we are sure. When you have your register, then you also know from whom to collect rates. Yesterday we saw something very strange from the County Government of Busia where rates were being remitted to the national Government for quite a while. We would want to confirm if that is also the case with County Government of Nairobi or are the rates paid to the County Government of Nairobi?

(Loud consultations)

The Governor of Nairobi County (Gov. (Dr.) Kidero): Mr. Chairman, Sir, could we have some protection. You could probably adjourn and call us when there is order and we can present ourselves properly.

The Chairperson (Sen. (Prof.) Anyang'-Nyong'o)**:** I think am really getting… Please, let us have an orderly meeting. We cannot do this. You are a Senator.

Sen. Mbuvi: From the last point you raised, we have been silent. Mr. Chairman, Sir.

The Chairperson (Sen. (Prof.) Anyang'-Nyong'o)**:** Sen. Sonko, do not point at people. All of us are sitting very politely and listening to each other. That is what a meeting is about. You sit and listen.

Sen. Mbuvi: Much obliged, Mr. Chairman, Sir.

The Governor of Nairobi County (Gov. (Dr.) Kidero): Mr. Chairman, Sir, could I ask for time to consult so that we can request for an adjournment.

The Chairperson (Sen. (Prof.) Anyang'-Nyong'o)**:** Okay let us adjourn for only five minutes please.

(Loud consultations)

Can we please---- No! No! Order! Order!

I have adjourned this meeting.

(The Committee adjourned at 10.10 a.m.)

ANNEX 3

SERJEANT AT ARMS REPORT

THE SENATE
OFFICE OF THE SERJEANT AT ARMS
MEMO

THE SENATE CLERK'S OFFICE
RECEIVED
15 JUN 2016
P.O. Box 41842 - 00100, NAIROBI

TO : **CLERK OF THE SENATE**

FROM : **CHIEF SERJEANT-AT-ARMS**

DATE : 15 JUNE 2016 **Ref.** : SEN/SAA/OPS/16

SUBJECT: PRELIMINARY INCIDENT REPORT

INCIDENT DESCRIPTION: CONFRONTATION BETWEEN SENATOR MIKE MBUVI SONKO AND GOVERNOR EVANS KIDERO OF NAIROBI CITY COUNTY

DATE AND TIME: 15 JUNE 2016 at about 10 a.m

LOCATION: Senate Committee Room 4, Main Building

DETAILS OF INCIDENT:

The County Public Accounts Committee Meeting in Senate Committee Room 4, Main Building was disrupted at about 10 a.m, when Sen. Mike Mbuvi Sonko accessed the committee room and started engaging the committee with tabling of documents without giving any member of the committee an opportunity to respond. While doing so, he was accusing an officer from Nairobi City County by name Mr Wainaina of misdeeds in the county. At the same time he turned onto Governor Kidero and started engaging verbally over the same issues. The situation turned into a scuffle between the Senator and Governor but they were restrained by SAA staff and Senators present. After a short while the Governors team was requested to leave the committee room. Thereafter the Governor followed and left the Parliamentary grounds.

OBSERVATION:

Initial investigation revealed that the Senator had some liquid in as water bottle labelled ORANGE WATER about half full. The liquid is suspected to be an alcoholic drink. The altercation was initiated by the Senator which triggered commotion in the committee and caused termination of proceedings.

RECOMMENDATION

It is recommended that the parties involved to be sensitized on the importance of restorative engagement to permit progress of committee business.

MAJ SAMSON SOROBIT (RTD)

Rt Hon Speaker
VERY URGENT
For your very urgent attention.
15/06/16

ANNEX 4

SENATORS ATTENDANCE REGISTER WEDNESDAY 15TH JUNE 2016

THE SENATE

SESSIONAL COMMITTEE ON COUNTY PUBLIC ACCOUNTS AND INVESTMENTS

ATTENDANCE REGISTER

DATE: 15/JUNE/2016 **SITTING NO** .....

TIME: 8:00 am

VENUE: NAIROBI CITY EXECUTIVE

COMMITTEE MEMBERS

NAME	DESIGNATION	SIGNATURE
Sen. (Prof.) Anyang' Nyong'o, MP	Chairperson	
Sen. (Prof.) John Lonyangapuo, MP	Vice Chairperson	
Sen. Amos Wako, MP	Member	
Sen. (Dr.) Boni Khalwale, MP	Member	
Sen. George Khaniri, MP, MP	Member	
Sen. (Eng.) Muriuki Karue, MP	Member	
Sen. Stephen Ole Ntutu, MP	Member	
Sen. Kennedy Mongare, MP	Member	
Sen. Hassan Omar, MP	Member	
Sen. Henry Ole Ndiema, MP	Member	
Sen. Kimani Wamatangi, MP	Member	
Sen. Martha Wangari, MP	Member	

Committee Secretariat: Peter Muchiri

Signature: .....

ANNEX 10

INQUIRY INTO THE COMPLAINT MADE BY GOV. (DR.) EVANS KIDERO AGAINST SEN. MIKE GIDEON MBUVI KIOKO SONKO BY THE RULES AND BUSINESS COMMITTEE

PLAN OF ACTION

1	DATE	ACTIVITY	ACTION
2	6th July, 2016	First meeting of the Rules and Business Committee for the purpose of – (a) considering the plan of action; (b) considering the TORs; (c) determine the issues for inquiry; and (d) appointing a date on which it shall commence the inquiry.	The Rules and Business Committee
3	8th July, 2016	Issuance and service of Invitation to Appear to Governor (Dr.) Kidero requiring him also to – (a) provide names and addresses of witnesses to be called, if any; and (b) evidence to be relied on.	The Secretariat
4	8th July, 2016	Issuance and service of Invitations to Appear to Sen. Mike Gideon Mbuvi Sonko requiring him also to – (a) respond to the complaint by Gov. (Dr.) Evans Kidero; (b) names and addresses of witnesses to be called, if any; and (c) evidence to be relied on.	The Secretariat
5	18th July, 2016	Pre-Inquiry meeting by the Rules and Business Committee to consider the	The Rules and Business Committee

1	DATE	ACTIVITY	ACTION
		evidence submitted by the parties and list of witnesses to be called by the respective parties.	
6	19th July, 2016	Consideration of evidence: Governor (Dr.) Evans Kidero	The Rules and Business Committee
7	19th July, 2016	Consideration of evidence: Witnesses called to testify by Gov. (Dr.) Evans Kidero	The Rules and Business Committee
8	20th July, 2016	Consideration of evidence: Reply to complaint - Senator Mike Gideon Mbuvi Sonko	The Rules and Busines Committee
9	20th July, 2016	Consideration of evidence: Witnesses called to testify by Senator Mike Gideon Mbuvi Sonko	The Rules and Business Committee
10	21st July, 2016	Consideration of evidence: Reply by Governor (Dr.) Evans Kidero	The Rules and Business Committee
11	22nd to 25th July, 2016	Writing of Report of the Committee.	The Secretariat
12	26th to 27th July, 2016	Consideration and adoption of report by the Committee.	The Rules and Business Committee and Secretariat
13	28th July, 2016	Tabling of Report in the Senate.	The Committee.

ANNEX 1)

REPUBLIC OF KENYA

THE SENATE BUSINESS COMMITTEE

INQUIRY INTO THE COMPLAINT MADE BY GOV. (DR.) EVANS KIDERO ON THE CONDUCT OF SEN. MIKE GIDEON MBUVI KIOKO SONKO

SUMMONS

TO: Dr. Evans Kidero, Governor, Nairobi City County.

WHEREAS the Speaker of the Senate is in receipt of your letter dated 17th June, 2016 setting out a complaint in respect of the conduct of Sen. Mike Gideon Mbuvi Kioko Sonko during the meeting of the County Public Accounts and Investments Committee held on 15th June, 2016 in Parliament;

AND WHEREAS, pursuant to section 10 of the National Assembly (Powers and Privileges) Act, Cap. 6, as read together with section 7 of the Sixth Schedule to the Constitution, and standing order 176(5)(b), (c) and (g) of the Senate Standing Orders, the Honourable Speaker of the Senate referred the complaint to the Senate Business Committee of the Senate for its appropriate action;

AND FURTHER WHEREAS, the Senate Business Committee is required, pursuant to section 10(4) and (5) of the National Assembly (Powers and Privileges) Act, to conduct an inquiry into the complaint and report its findings to the Senate together with such recommendations as it thinks appropriate;

AND WHEREAS, Article 125 of the Constitution, as read together with sections 14 and 15 of the National Assembly (Powers and Privileges) Act, empower the Senate and any of its Committees to order any person to appear before it and give evidence or produce documents before the Committee;

NOW THEREFORE, the Senate Business Committee hereby summons you to appear, in person, before the Committee inquiring into the complaint on **Tuesday, 19th July, 2016 at 10:00 a.m. in Committee Room 4, 1st Floor, Main Parliament Buildings, Parliament Road, Nairobi.** The Committee further requires that you file, with the **Office of the Clerk of the Senate, 1st Floor, Main Parliament Buildings, Parliament Road, Nairobi, by 4:00 p.m. on Friday, 15th July, 2016, TEN (10) hard copies** of documents you wish to rely on and also set out -

(a) the names and addresses of the persons to be called as witnesses, if any, and witness statements containing a summary of the evidence to be presented by such witnesses before the Committee; and

(b) any other evidence to be relied on.

A soft copy should also be sent to csenate@parliament.go.ke.

TAKE NOTE that you may collect a copy of any further documentation filed by Sen. Mike Gideon Mbuvi Kioko Sonko from the Office of the Clerk of the Senate on **Friday, 15th July, 2016 at 4:30 p.m.**

TAKE NOTE that should you fail to attend before the Committee on the date and time specified in this Witness Summons or to produce the documentation required by the Committee, you shall be guilty of an offence in terms of section 23(a) of the National Assembly (Powers and Privileges) Act (Cap 6), as read together with section 7 of the Sixth Schedule to the Constitution, for which you shall be liable, on conviction, to a fine not exceeding two thousand shillings or to imprisonment for a term not exceeding twelve months, or to both such fine and imprisonment.

GIVEN under my hand, for and on behalf of the Senate Business Committee, this 8th day of July, 2016.

J. M. NYEGENYE, CBS,
CLERK OF THE SENATE.

J. M. NYEGENYE, CBS,
CLERK OF SENATE/SECRETARY
PARLIAMENTARY SERVICE COMMISSION

Please acknowledge receipt of this Summons as follows-

NAME: .....

SIGNATURE: .....

DATE OF SERVICE: .....

TIME OF SERVICE: .....

PLACE OF SERVICE: .....

REPUBLIC OF KENYA

THE SENATE BUSINESS COMMITTEE

INQUIRY INTO THE COMPLAINT MADE BY GOV. (DR.) EVANS KIDERO AGAINST SEN. MIKE GIDEON MBUVI KIOKO SONKO

SUMMONS

TO: Sen. Mike Gideon Mbuvi Kioko Sonko, Senator, Nairobi City County

WHEREAS the Speaker of the Senate is in receipt of a letter dated 17th June, 2016 by Gov. (Dr.) Evans Kidero, Governor of Nairobi City County, a copy of which is attached, setting out a complaint in respect of the conduct of Sen. Mike Gideon Mbuvi Kioko Sonko during the meeting of the County Public Accounts and Investments Committee held on 15th June, 2016 in Parliament;

AND WHEREAS, pursuant to section 10 of the National Assembly (Powers and Privileges) Act, Cap. 6, as read together with section 7 of the Sixth Schedule to the Constitution, and standing order 176(5)(b), (c) and (g) of the Senate Standing Orders, the Honourable Speaker of the Senate referred the complaint by Gov. (Dr) Evans Kidero to the Senate Business Committee of the Senate for its appropriate action;

AND FURTHER WHEREAS, the Senate Business Committee is required, pursuant to section 10(4) and (5) of the National Assembly (Powers and Privileges) Act, to conduct an inquiry into the complaint and report its findings to the Senate together with such recommendations as it thinks appropriate;

AND WHEREAS, Article 125 of the Constitution, as read together with sections 14 and 15 of the National Assembly (Powers and Privileges) Act, empower the Senate and any of its Committees to order any person to appear before it and give evidence or produce documents before the Committee;

NOW THEREFORE, the Senate Business Committee hereby summons you to appear, in person, before the Committee inquiring into the complaint made by Gov. (Dr.) Evans Kidero on **Tuesday, 19th July, 2016 at 10:00 a.m. in Committee Room 4, 1st Floor, Main Parliament Buildings, Parliament Road, Nairobi.** The Committee further requires that you file, with the **Office of the Clerk of the Senate, 1st Floor, Main Parliament Buildings, Parliament Road, Nairobi, by 4:00 p.m. on Friday, 15th July, 2016, TEN (10) hard copies** of documents you wish to rely on, setting out-

(a) a written statement of your account with respect to the issues raised in the complaint;

(b) the names and addresses of the persons to be called as witnesses, if any, and witness statements containing a summary of the evidence to be presented by such witnesses before the Committee; and

(c) any other evidence to be relied on.

A soft copy should also be sent to csenate@parliament.go.ke.

TAKE NOTE that you may collect a copy of any further documentation filed by Gov. (Dr.) Evans Kidero from the Office of the Clerk of the Senate on **Friday, 15th July, 2016 at 4:30 p.m.**

TAKE NOTE that should you fail to attend before the Committee on the date and time specified in this Witness Summons or to produce the documentation required by the Committee, you shall be guilty of an offence in terms of section 23(a) of the National Assembly (Powers and Privileges) Act (Cap 6), as read together with section 7 of the Sixth Schedule to the Constitution, for which you shall be liable, on conviction, to a fine not exceeding two thousand shillings or to imprisonment for a term not exceeding twelve months, or to both such fine and imprisonment.

GIVEN under my hand, for and on behalf of the Senate Business Committee, this 8th day of July, 2016.

J. M. NYEGENYE, CBS,
CLERK OF THE SENATE.

J. M. NYEGENYE, CBS,
CLERK OF SENATE/SECRETARY
PARLIAMENTARY SERVICE COMMISSION

Please acknowledge receipt of this Summons as follows-

NAME: .....

SIGNATURE: .....

DATE OF SERVICE: .....

TIME OF SERVICE: .....

PLACE OF SERVICE: .....

ANNEX 12

INQUIRY INTO THE COMPLAINT MADE BY GOV.(DR.) EVANS KIDERO ON THE CONDUCT OF SEN. MIKE GIDEON MBUVI KIOKO SONKO

Gregory S Mwakanongo
County Executive Committee Member
Finance & Economic Planning
Nairobi City County
P O Box 30075-00100
NAIROBI

STATEMENT

1) I am **Gregory S. Mwakanongo** in the employment of the Nairobi City County as the County Executive Committee Member of Finance and Economic Planning and wish to state as follows:-

2) **THAT** on the 15th June, 2016. I among other County officers accompanied H E Dr. Evans Kidero the Governor of Nairobi City County to the Senate where we had been invited for a discussion on some audit queries raised by the office of the Auditor General against the County Government.

3) **THAT** I entered the room and sat next to the Governor in readiness for the proceedings.

4) **THAT** the meeting was called to order by the chairman Hon. Prof. Anyang Nyongo who introduced himself and allowed the other members of the Committee to do likewise before us. The Hon. Mike Mbuvi Sonko was introduced by the Chairman as a friend of the Committee and the Senator of Nairobi. The proceedings started off well with the Governor and officers responding to the queries as raised by the auditors.

5) **THAT** after quite a while, the Hon. Mike Mbuvi Sonko, Senator of Nairobi County who had all along been sipping some liquid from a small bottle cut short the chair and demanded to table documents which he claimed implicated the Governor and the Chief of Staff, Mr. George Wainaina as grabbers of peoples land in Nairobi. He further demanded that the Governor had ordered the eviction of a lady on a property along Ngong Road leading to her death in the process. At this juncture he shouted that the Governor and the Chief of Staff, Mr. George Wainaina were murderers and were killing people in Nairobi.

6) **THAT** the Chairman and other Hon. Members tried to calm the senator down but he continued with his abusive insults leading to a verbal exchange with the Hon. Senator for Nyamira who walked out.

7) **THAT** the chairman the Hon. Nyongo asked the Hon. Sonko to observe decorum and allow the meeting to proceed.

8) **THAT** the Hon. Sonko briefly stopped and turned to whisper something to the Hon. Senator Bonny Khalwale but then shouted again that the Governor was a murderer and a thief.

9) That the Governor calmly requested the chairman for a brief adjournment of the meeting so as he allows the Senator to cool his tempers but the Senator continued with his incessant insults to the Governor.

10) **THAT** as other Senators tried to calm him the Senator got hysterical and more abrasive and turned to engage our County Attorney Mr. Gad Awuonda in a verbal abusive exchange and daring him for a fight shouting he had several guns in his car he could use to kill him.

11) **THAT** some officers tried to intervene and in the ensuing melee and the County Attorney left the room.

12) That I observed that the Senator was drinking from a bottle he had carried into the room. I also noted that he was fairly calm when he entered the meeting room but he slowly became uncontrollable / unruly about 40-minutes into the meeting.

13) **THAT** as the County Attorney was leaving the room, the Senator once again turned to the Governor with more insults and threatening him with a fight.

14) The senator threw a punch at the Governor but was overwhelmed by the other senators and security officers and all the officers of the County at this juncture were led out by the security officers present.

SIGNED BY: .....G Mwakanongo.....

DATED .....15th..... **DAY OF** .....July.....**2016**

INQUIRY INTO THE COMPLAINT MADE BY GOV.(DR.) EVANS KIDERO ON THE CONDUCT OF SEN. MIKE GIDEON MBUVI KIOKO SONKO

Martin Ogindo
Economic Planning, Finance &
Strategy Advisor,
Office of H.E. the Governor
Nairobi City County
P O Box 30075-00100
NAIROBI

STATEMENT

1) I am **Martin Ogindo** in the employment of the Nairobi City County as the Economic Planning, Finance and Strategy Advisor, Office of H.E. the Governor and wish to state as follows:-

2) **THAT** on the 15th June, 2016. I among other County officers accompanied H E Dr. Evans Kidero the Governor of Nairobi City County to the Senate where we had been invited for a discussion on some audit queries raised by the office of the Auditor General against the County Government.

3) **THAT** I entered the room and sat next to the Governor in readiness for the proceedings.

4) **THAT** the meeting was called to order by the chairman Hon. Prof. Anyang Nyongo who introduced himself and allowed the other members of the Committee to do likewise before us. The Hon. Mike Mbuvi Sonko was introduced by the Chairman as a friend of the Committee and the Senator of Nairobi. The proceedings started off well with the Governor and officers responding to the queries as raised by the auditors.

5) **THAT** after quite a while, the Hon. Mike Mbuvi Sonko, Senator of Nairobi County who had all along been sipping some liquid from a small bottle cut short the chair and demanded to table documents which he claimed implicated the Governor and the Chief of Staff, Mr. George Wainaina as grabbers of peoples land in Nairobi. He further demanded that the Governor had ordered the eviction of a lady on a property along Ngong Road leading to her death in the process. At this juncture he shouted that the Governor and the Chief of Staff, Mr. George Wainaina were murderers and were killing people in Nairobi.

6) **THAT** the Chairman and other Hon. Members tried to calm the senator down but he continued with his abusive insults leading to a verbal exchange with the Hon. Senator for Nyamira who walked out.

7) **THAT** the chairman the Hon. Nyongo asked the Hon. Sonko to observe decorum and allow the meeting to proceed.

8) **THAT** the Hon. Sonko briefly stopped and turned to whisper something to the Hon. Senator Bonny Khalwale but then shouted again that the Governor was a murderer and a thief.

9) That the Governor calmly requested the chairman for a brief adjournment of the meeting so as he allows the Senator to cool his tempers but the Senator continued with his incessant insults to the Governor.

10) **THAT** as other Senators tried to calm him the Senator got hysterical and more abrasive and turned to engage our County Attorney Mr. Gad Awuonda in a verbal abusive exchange and daring him for a fight shouting he had several guns in his car he could use to kill him.

11) **THAT** some officers tried to intervene and in the ensuing melee and the County Attorney left the room.

12) **That** I observed that the Senator was drinking from a bottle he had carried into the room. I also noted that he was fairly calm when he entered the meeting room but he slowly became uncontrollable / unruly about 40-minutes into the meeting.

13) **THAT** as the County Attorney was leaving the room, the Senator once again turned to the Governor with more insults and threatening him with a fight.

14) The senator threw a punch at the Governor but was overwhelmed by the other senators and security officers and all the officers of the County at this juncture were led out by the security officers present.

SIGNED BY: .....

DATED ..... 15TH ..... **DAY OF** ..... JULY **2016**

ANNEX 13

REPUBLIC OF KENYA
THE SENATE

Sen. Mike Gideon Mbuvi Kioko Sonko, EBS.

Nairobi County
Deputy Chief Whip - Senate
Member, Committee on National Security and Foreign Relations
Member, Committee on Roads and Transport
Member, National Cohesion and Equal Opportunity Committee

Parliament Buildings
Tel: +254 20 2221 291/+254 20 317246
P. O. Box 41842 00100
Nairobi, Kenya

K.I.C.C 25th Floor
Mobile: +254 722 886 600
+254 727 447 777
Email: mikemsonko@yahoo.com

THE SENATE CLERK'S OFFICE
RECEIVED
25 JUL 2016
BOX 41842 00100, NAIROBI

21th July 2016

The Clerk of the Senate
Parliament Building
P.O.Box 41842 – 00100
NAIROBI.

DLPS
You are dealing.
26/07/16

Dear Sir,

RE: SUMMONS TO APPEAR BEFORE THE SENATE BUSINESS COMMITTEE.

I refer to the above matter and in reference to the summons dated 12thjuly 2016.

As requested I forward herewith 10 copies of the following:

(i) My statement
(ii) List of my supporting documents

Kindly acknowledge receipt thereof.

Yours sincerely,

HON. SEN. GIDEON MBUVI KIOKO SONKO.

THE SENATE
RECEIVED
25 JUL 2016
DIRECTOR LEGISLATIVE AND PROCEDURAL SERVICES

RESPONSE INTO THE COMPLAINT MADE BY GOVERNOR (DR) EVANS KIDERO

STATEMENT.

I' **HON. SEN. MIKE GIDEON MBUVI KIOKO SONKO** of Post Office Box Number 4182-00100 Nairobi do hereby state as follows.

1. **THAT** I am the duly elected Senator of Nairobi City County.

2. **THAT** on the 15th June 2016 I was invited by the Senate Sessional Committee on County Public Accounts and investments in my capacity as the Senator of Nairobi City County and as a friend of the said committee.

3. **THAT** I attended the sitting of the said Committee where Governor Evans Kidero had been summoned to respond to audit queries raised by the Office of the Auditor General against the County Government and the sitting proceeded as per the attached Hansard (**Annexture No. 1** on my list of documents)

4. **THAT** on the 12th July 2016 I was served with summons by the Clerk of the Senate which summons had a complaint letter attached therein addressed to the Speaker of the Senate by Governor Evans Kidero. The same required that I appear before the Senate Business Committee on the 19th July 2016 at 10am which summons I obliged.

5. **THAT** on the 19th July 2016 I appeared before the said Committee and I was supplied with three witness statements of the Governor's witnesses namely **DR. ROBERT AYISI, Mr. MARTIN OGINDO** and **Mr. GREGORY MWAKANONGO** and equally attached social media extracts in support of his complaint. I sought time to respond to the allegations contained therein.

6. **THAT** in response to the complaint by the Governor Nairobi City County I wish to state as follows:

(i) **That** contrary to paragraph 2 of the said complaint where the Governor states that I demanded to be allowed to table documents implicating him to claims of murder and theft and my interjection was rejected by the Chairman Hon. Prof. Anyang' Nyong'o, I wish to state that same is untrue and that the Chairman indeed allowed me to table my documents which documents were accepted by the Committee as per page 19 of the Hansard.

(ii) **That** I was never hysterical or abusive to the person of the Governor or the officers accompanying him as alleged. The only brief exchange was between myself and my colleague Senator Okong'o at page 20 and 21 of the Hansard which does not form part of the complaint and which unfortunate incidence I apologize.

(iii) Further I never threatened or insulted the Governor or his officers as alleged and if that at all happened it should have been captured in the Hansard

(iv) **That** the allegation by the governor that I loudly told those seated close to me that I would kill all of them since I had several AK 47's and machine guns in my vehicles is ridiculous, absurd, total falsehood and reflect insincerity by the Governor. The said allegation was equally not captured in the Hansard and is a serious defamation of my character.

(v) **That** it's equally untrue that the Chairman was unable to control the committee sitting. Contrary to the Governors allegation it is infact himself who requested for the meeting to be adjourned as confirmed in the Hansard.

(vi) **That** I categorically deny having engaged in any verbal and abusive exchange with the Governor and/or his officers.

7. **That** in response to the questions raised by the Governor in his complaint, I wish to state as follows:

(a) **That** I never acted in any criminal manner during the proceedings and/or during the duration I was within the precincts of the Senate.

(b) **That** the Governor also alluded that I had ulterior motives in the case of HAWA (High Court Petition No. 775 of 2015). The facts of the case are that the case number is ELC. MISC. 144 of 2014 and not the aforementioned case number. The same concerns a parcel of land known as L,R NO 209/403/3 situated along Ngong Road whose registered owner were 4 members of the HAWA family. In 2014, the County Government imposed fictitious rates on the said property. They alleged to have sent demand letters to the registered owner (HAWA who had died 3years before) and thereafter in a conspiracy with fraudulent county officers proceeded to file a suit and auctioned the property without notice to the registered owners in total disregard of the law. Surprisingly the property was purchased by ATTAIN ADVISORY CONSULTANTS LIMITED whose shareholders are EMMANUEL OKELO (a close relative of the Governor) and AMIT MAMDANI.(See **Annexture No 2** on the list of documents).

The HAWA case isn't the only one that raises rate's queries. There are other cases involving irregular rates dealings associated with Governor Evans Kidero

(i) An issue involving property **No. L.R. No. 29399 (Originally 12672/154)** owned by **ITE FARMERS CO-OPERATIVE SOCIETY LIMITED (See document listed as Number 3 on my list of documents**) and L.R. No. 209/9779 belonging to one FREDRICK CLARENCE KITTANY **(See document listed as Number 4 on my list of documents)** These properties were similarly targeted by the County Government for alleged default of rates payments. The County Government filed dubious lawsuits where they proceeded to auction the properties without notice to the registered owners. The common factor in both is that the properties were allegedly sold to

EASTSIDE DEVELOPMENT COMPANY LIMITED (a company belonging to the Governor's cousin/relative **EMMANUEL OKELLO** and his lawyer **TOM ODHIAMBO ONYANGO** the governor's lawyer). The Governor is presumed to be aware of these illegal activities since he has remained silent and has covered up the cartel in the County Government which is involved in the misappropriation of County Revenue collection through alleged Rates collection by unlawful auction of private properties. There's no evidence that the purported revenue/proceeds of the said auction was ever remitted to the County Government if at all it was a genuine auction to recover rates.

(ii) The illegal activities of the Nairobi Governor has also been captured in a communication from an affected owner whose properties were irregularly acquired and transferred in the names of a company associated with him. By an SMS sent on the 28th January 2016, it has been brought to my knowledge that two properties namely L.R NO. 209/4350/6 and L.R No. 209/5917 belonged to PHEROZEE MISTRI and the same was in mysterious circumstances sold to **GEM APARTMENTS LIMITED** whose shareholders and directors are Governor **EVANS KIDERO**, the Governor himself and his Wife (See **Annexture No. 5** on my list of documents)

(c) The connection in all this unlawful acquisitions of private property by the County Government in the names of rates collection is the lawyer and law firm involved. All the dealings and companies involved have all been carried out by Lawyer Tom Onyango (Governor Evans Kidero advocate) whose law firm is also the registered offices of all these companies at **ACK GARDENS HOUSE 5th FLOOR, 1ST NGONG AVENUE, NAIROBI.**

(d) The allegation that I was intoxicated is a falsehood and malicious. I personally take offence to the same and seek an apology from the Governor over the said remark. I take my responsibility to serve the people of Nairobi County seriously and can never attend the Senate to articulate serious issues under the influence of alcohol or any other alcoholic substance. I invite the

Committee to take notice of the bottle referred to and infer its contents. The said bottle is one of juices sold in almost every supermarket.

8. The allegations that I was in a state of inebriation and that the Chair was not in control of the meeting are clearly false and malicious. The Hansard says otherwise since the session proceeded until the Governor sought an adjournment. The said allegation only reflects disrespect to the chair, the committee and orderlies.

9. That going by the Governor's past conduct, he lacks the moral authority to lecture anyone on the threshold of Chapter Six of the Constitution as he clearly leads in it's violation.

10. That this complaint can only be summarized as an attempt to stop the House Committee from finalizing its audit of the City County Accounts and it should be dismissed with the contempt it deserves.

RESPONSE TO THE WITNESS STATEMENTS

11. That in regard to the statements by the three witnesses, the same are a duplication of each other and are completely untrue in terms of their contents. The same should be disregarded on the following grounds;

    (i) That they cannot be independent witnesses as they are employees of the Governor and/or the County Government, thus it's therefore obvious that their allegiance is to the complainant/Governor.

    (ii) Their testimony is a total contradiction of the proceedings of the committee as captured in the Hansard.

12. **THAT** I wish to reiterate the statement of my colleague Hon. Sen. (Dr.) Khalwale at page 24 of the Hansard, in that these documents be admitted and the Committee do make the appropriate recommendations as to their investigations.

13. Finally my quest for accountability by the Nairobi County Government started way back immediately after my appointment in office. I have written several letters to the county Government which have gone unanswered and those answered were arrogantly responded to.

14. **THAT** however after receiving arrogant responses and none responses to other letters I decided to write to other relevant authorities namely the Controller of Budget, Ethics and Anti corruption commission, The Auditor General, The Principal Secretary Ministry of Devolution and Planning and the Director of Public Prosecutions (**The annextures are marked No. 6 on my list**). This is to reflect that my queries and questions before the Senate Committee were not politically motivated against the Governor as alleged but in pursuance of my role as the Senator of Nairobi.

That's all I have to state.

DATED AT NAIROBI THIS DAY OF 2016.

HON. SEN. MIKE GIDEON MBUVI KIOKO SONKO

LIST OF SUPPORTING DOCUMENTS

1. COPY OF THE HANSARD FOR THE 15TH JUNE 2016.

2. PLEADINGS IN ELC .MISC NO. 144 OF 2014 HAWA'S CASE IN REGARD TO UNLAWFUL ACQUISITION OF L.R NO.209/403/3 NAIROBI.

3. COPIES OF DOCUMENTS IN RESPECT OF THE UNLAWFUL ACQUISITION OF L.R NO 27399 BY EASTSIDE DEVELOPMENT LIMITED THROUGH ALLEGED DEFAULT OF UNPAID RATES BY THE REGISTERED OWNER ITE FARMERS CO-OPERATIVE SOCIETY LIMITED.

4. COPIES OF DOCUMENTS IN RESPECT OF UNLAWFUL ACQUISITION OF L.R NO.209/ 9779 BY EASTSIDE DEVELOPMENT LIMITED THROUGH ALLEGED DEFAULT OF PAYMENTS OF RATES BY FREDRICK CHRISTOPER KARUMBA WAIGANJO YET THE PROPERTY NEVER BELONGED TO HIM BUT TO FREDRICK CLEARENCE KITTANY.

5. COPIES OF DOCUMENTS IN SUPPORT OF UNLAWFUL & IRREGULAR ACQUISITION OF PROPERTIES NO. L.R NO. 209/5917 & 209/4350/6 BY GEM APARTMENTS LIMITED.

6. COPIES OF CORRESPONDENCES AS LISTED BELOW:

   (i) LETTER DATED 27TH JUNE 2013 BY KAMUKUNJI SECONDARY SCHOOL PRINCIPAL

   (ii) LETTER DATED 18TH JULY 2013 TO PROF. JACOB KAIMENYI FROM THE SENATOR ON ILLEGAL LEASE OF SCHOOL LAND

   (iii) LETTER DATED 18TH JULY 2013 TO THE GOVERNOR OVER KAMUKUNJI SECONDARY SCHOOL.

   (iv) LETTER DATED 25TH JULY 2013 BY ETHICS AND ANTI CORRUPTION COMMISSION TO SENATOR GIDEON MBUVI KIOKO SONKO OVER THE KAMUKUNJI SECONDARY SCHOOL

   (v) LETTER DATED 11TH MARCH 2014 TO HON. EVANS KIDERO

   (vi) LETTER DATED 17TH MARCH 2014 TO SEN.MIKE MBUVI KIOKO SONKO

   (vii) LETTER DATED 28TH MARCH 2014 REQUESTING FOR INVESTIGATION INTO THE CORRUPT PRACTICES IN NAIROBI CITY COUNTY GOVERNMENT

   (viii) LETTER DATED 24TH MARCH 2014 FROM HON. SENATOR TO THE GOVERNOR

(ix) LETTER DATED 26TH MARCH 2014 FROM THE HON. SENATOR MIKE MBUVI SONKO TO THE PRINCIPAL SECRETARY MINISTRY OF DEVOLUTION AND PLANNING

(x) LETTER DATED 28TH MARCH 2014 FROM THE HON SENATOR MIKE MBUVI SONKO TO THE DIRECTOR GENERAL ETHICS AND ANTI CORRUPTION COMMISSION

(xi) LETTER DATED 2ND APRIL 2014 FROM THE HON SENATOR MIKE MBUVI SONKO TO THE DIRECTOR GENERAL ETHICS AND ANTI CORRUPTION COMMISSION

(xii) LETTER DATED 8TH APRIL 2014 FROM THE HON SENATOR MIKE MBUVI SONKO TO THE CONTROLLER OF BUDGET.

(xiii) LETTER DATED 8TH APRIL 2014 FROM THE HON SENATOR MIKE MBUVI SONKO TO THE AUDITOR GENERAL.

(xiv) LETTER BY THE DIRECTOR OF PUBLIC PROSECUTIONS TO ETHICS AND ANTI-CORRUPTION COMMISSION

DATED AT NAIROBI THIS DAY OF 2016

HON. SEN. MIKE GIDEON MBUVI KIOKO SONKO
SENATOR NAIROBI CITY COUNTY