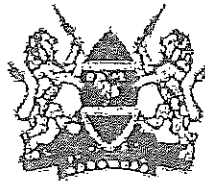
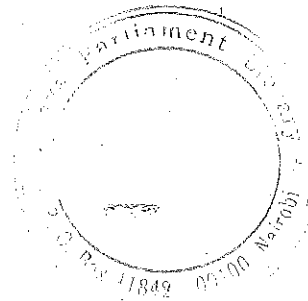


REPUBLIC OF KENYA



THE SENATE

ELEVENTH PARLIAMENT



*paper laid by
Chairperson
of Committee
on 6th Nov. 2015*
[Signature]

THE REPORT OF THE SPECIAL COMMITTEE ON THE PROPOSED
REMOVAL FROM OFFICE, BY IMPEACHMENT, OF HONOURABLE
MWANGI WA IRIA, THE GOVERNOR OF MURANG'A COUNTY

6TH NOVEMBER, 2015

PREFACE

Mr. Speaker Sir,

Honourable Senators will recall that at the special sitting of the Senate held on Wednesday, 28th October, 2015, the Honourable Speaker of the Senate, by way of a Communication from the Chair, informed the Senate that he had received correspondence from the Speaker of the County Assembly of Murang'a communicating the approval of a Motion by the County Assembly of Murang'a to remove from office, by impeachment, the Governor of Murang'a County.

Mr. Speaker Sir,

On Wednesday 28th October, 2015, the Senate Majority Leader gave Notice of the following Motion-

THAT, WHEREAS, pursuant to Article 181 of the Constitution and section 33 of the County Governments Act, 2012, on 21st October, 2015 the County Assembly of Murang'a approved a Motion "to remove from office, by impeachment," the County Governor of Murang'a County;

AND FURTHER, WHEREAS by a letter dated 21st October, 2015 (Ref: MCA/SPK/08/CON/3) and received in the Office of the Speaker of the Senate on 22nd October, 2015, the Speaker of the County Assembly of Murang'a informed the Speaker of the Senate of the approval of the Motion by the County Assembly and further forwarded to the Speaker of the Senate documents in evidence of the proceedings of the Assembly;

1. *Senator David Musila;*
2. *Senator Billow Kerrow;*
3. *Senator Stephen Sang;*
4. *Senator Abu Chiaba;*
5. *Senator Fatuma Dullo;*
6. *Senator Muriuki Karue;*
7. *Senator (Prof.)Lonyangapuo;*
8. *Senator Stewart Madzayo;*
9. *Senator Janet On'gera;*
10. *Senator Catherine Mukite; and*
11. *Senator Moses Kajwang'.*

to investigate the proposed removal from office of the Governor of Murang'a County and to report to the Senate within ten (10) days of its appointment on whether it finds the Particulars of the Allegations to have been substantiated.

Mr. Speaker Sir,

Section 33(4) of the County Governments Act, 2012 and standing order 68(2) of the
Senate Standing Orders mandate the Special Committee to-

- (a) *investigate the matter; and*
- (b) *report to the Senate within ten days on whether it finds the Particulars of the Allegations against the Governor to have been substantiated.*

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

AND WHEREAS, pursuant to section 33(3)(b) of the County Governments Act, 2012 and standing order 68(1)(b), the Senate, by resolution, may appoint a special committee comprising eleven of its Members to investigate the matter;

NOW THEREFORE, pursuant to section 33(3)(b) of the County Governments Act, 2012 and standing order 68(1)(b), the Senate resolves to establish a special committee comprising the following Senators –

- 1. Senator David Musila;*
- 2. Senator Billow Kerrow;*
- 3. Senator Stephen Sang;*
- 4. Senator Abu Chiaba;*
- 5. Senator Fatuma Dullo;*
- 6. Senator Muriuki Karue;*
- 7. Senator (Prof.) Lonyangapuo;*
- 8. Senator Stewart Madzayo;*
- 9. Senator Janet On'gera;*
- 10. Senator Catherine Mukite; and*
- 11. Senator Moses Kajwang'.*

to investigate the proposed removal from office of the Governor of Murang'a County and to report to the Senate within ten (10) days of its appointment on whether it finds the Particulars of the Allegations to have been substantiated.

Mr. Speaker Sir,

The Senate Majority Leader moved the Motion on Wednesday 28th October, 2015. Following deliberations on the Motion, the Senate resolved to establish a Special Committee comprising the following Senators –

Mr. Speaker Sir,

Following its establishment, the Special Committee held its first meeting on the afternoon of Wednesday 28th October, 2015. Pursuant to standing order 183 the Committee conducted the election for the position of Chairperson and Vice-Chairperson. Senator David Musila and Senator Fatuma Dullo were elected unopposed to the positions of Chairperson and Vice-Chairperson of the Committee, respectively.

Mr. Speaker Sir,

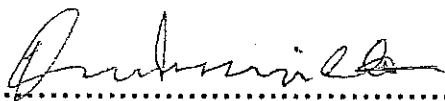
Section 33 and standing order 68(3) of the Senate Standing Orders provide that the Governor shall have the right to appear and be represented before the Special Committee during its investigations. Pursuant to these provisions of the law, the Committee invited both the Governor and the County Assembly to appear and be represented before the Committee. Both parties were represented by Counsel in the proceedings.

Mr. Speaker Sir,

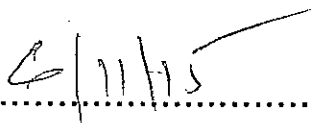
The Committee wishes to thank the Offices of the Speaker of the Senate and the Clerk of the Senate for the support extended to the Committee in the execution of its mandate. The Committee further extends its appreciation to the parties to the matter; namely, the County Assembly of Murang'a County and its Advocates and the Advocates for the Governor of Murang'a County for their well-researched and eloquent submissions in this matter. The Committee also appreciates the media for the coverage of its proceedings during the course of the investigations. Further, the Committee acknowledges the members of the public who expressed great interest in the proceedings as evidenced by their presence through the hearings as they keenly followed the matter.

Mr. Speaker Sir,

It is now my pleasant duty and privilege, on behalf of the Special Committee, to present to the Senate this Report of the Special Committee on the Proposed Removal from Office of Hon. Mwangi wa Iria, the Governor of Murang'a County.

SIGNED: 

SEN. DAVID MUSILA, M.G.H. M.P.
(CHAIRMAN)

DATE 

1.0 INTRODUCTION

1. Pursuant to Article 181 of the Constitution and section 33 of the County Governments Act, No. 17 of 2012, on 21st October, 2015, the County Assembly of Murang'a approved a Motion "to remove from office, by impeachment," the Governor of Murang'a County.

2. Article 181 of the Constitution provides as follows-

Removal of a county governor

(1) *A county governor may be removed from office on any of the following grounds—*

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

(b) where there are serious reasons for believing that the county governor has committed a crime under national or international law;

(c) abuse of office or gross misconduct; or

(d) physical or mental incapacity to perform the functions of office of county governor.

(2) *Parliament shall enact legislation providing for the procedure of removal of a county governor on any of the grounds specified in clause (1).*

3. Section 33 of the County Governments Act provides as follows-

Removal of a governor

(1) *A member of the county assembly may by notice to the speaker, supported by at least a third of all the members, move a motion for the removal of the governor under Article 181 of the Constitution.*

(2) *If a motion under subsection (1) is supported by at least two-thirds of all the members of the county assembly—*

(a) the speaker of the county assembly shall inform the Speaker of the

- Senate of that resolution within two days; and*
- (b) *the governor shall continue to perform the functions of the office pending the outcome of the proceedings required by this section.*
- (3) *Within seven days after receiving notice of a resolution from the speaker of the county assembly—*
- (a) *the Speaker of the Senate shall convene a meeting of the Senate to hear charges against the governor; and*
- (b) *the Senate, by resolution, may appoint a special committee comprising eleven of its members to investigate the matter.*
- (4) *A special committee appointed under subsection (3)(b) shall—*
- (a) *investigate the matter; and*
- (b) *report to the Senate within ten days on whether it finds the particulars of the allegations against the governor to have been substantiated.*
- (5) *The governor shall have the right to appear and be represented before the special committee during its investigations.*
- (6) *If the special committee reports that the particulars of any allegation against the governor —*
- (a) *have not been substantiated, further proceedings shall not be taken under this section in respect of that allegation; or*
- (b) *have been substantiated, the Senate shall, after according the governor an opportunity to be heard, vote on the impeachment charges.*
- (7) *If a majority of all the members of the Senate vote to uphold any impeachment charge, the governor shall cease to hold office.*
- (8) *If a vote in the Senate fails to result in the removal of the governor, the Speaker of the Senate shall notify the speaker of the concerned county*

assembly accordingly and the motion by the assembly for the removal of the governor on the same charges may only be re-introduced to the Senate on the expiry of three months from the date of such vote.

(9) The procedure for the removal of the President on grounds of incapacity under Article 144 of the Constitution shall apply, with necessary modifications, to the removal of a governor.

(10) A vacancy in the office of the governor or deputy governor arising under this section shall be filled in the manner provided for by Article 182 of the Constitution.

4. By a letter dated 21st October, 2015 (Ref: MCA/SPK/08/CON/3) which was received in the Office of the Speaker of the Senate on 22nd October, 2015, the Speaker of the County Assembly of Murang'a informed the Speaker of the Senate of the approval of the Motion for the removal from office of the Governor of Murang'a County by the County Assembly of Murang'a and further forwarded to the Speaker of the Senate various supporting documents which are attached as *Annex I*.

5. In terms of section 33(3)(a) of the County Governments Act and standing order 68(1)(a) of the Senate Standing Orders, the Speaker of the Senate is required, *within seven days after receiving notice of a resolution from the Speaker of a County Assembly, to convene a meeting of the Senate to hear charges against the governor.*

6. In accordance with these provisions of law, at a sitting of the Senate held on 28th October, 2015, the Speaker of the Senate, by way of a Communication from the Chair, informed the Senators that he had received communication from the Speaker of the County Assembly of Murang'a relating to the approval of the

Motion by the County Assembly of Murang'a for the removal from office of the Governor of Murang'a County. The Order Paper of that sitting and the Communication made by the Speaker of the Senate on that day are attached as *Annex 2 and Annex 3*, respectively.

7. Thereafter, the Senate Majority Leader gave Notice of the following Motion-

THAT, WHEREAS, pursuant to Article 181 of the Constitution and section 33 of the County Governments Act, 2012, on 21st October, 2015 the County Assembly of Murang'a approved a Motion "to remove from office, by impeachment," the Governor of Murang'a County;

AND FURTHER, WHEREAS by a letter dated 21st October, 2015 (Ref: MCA/SPK/08/CON/3) and received in the Office of the Speaker of the Senate on 22nd October, 2015, the Speaker of the County Assembly of Murang'a informed the Speaker of the Senate of the approval of the Motion by the County Assembly and further forwarded to the Speaker of the Senate documents in evidence of the proceedings of the Assembly;

AND WHEREAS, pursuant to section 33(3)(b) of the County Governments Act, 2012 and standing order 68(1)(b) the Senate, by resolution, may appoint a special committee comprising eleven of its Members to investigate the matter;

NOW THEREFORE, pursuant to section 33(3)(b) of the County Governments Act, 2012 and standing order 68(1)(b), the Senate resolves to establish a Special Committee comprising the following Senators –

I. *Senator David Musila;*

2. *Senator Billow Kerrow;*
3. *Senator Stephen Sang;*
4. *Senator Abu Chiaba;*
5. *Senator Fatuma Dullo;*
6. *Senator Muriuki Karue;*
7. *Senator (Prof.)Lonyangapuo;*
8. *Senator Stewart Madzayo;*
9. *Senator Janet On'gera;*
10. *Senator Catherine Mukite; and*
11. *Senator Moses Kajwang'*

to investigate the proposed removal from office of the Governor of Murang'a County and to report to the Senate within ten (10) days of its appointment on whether it finds the particulars of the allegations to have been substantiated.

12. The Senate Majority Leader moved the Motion on Wednesday 28th October, 2015. Following deliberations on the Motion, the Senate resolved to establish a Special Committee comprising the following Senators –

1. *Senator David Musila;*
2. *Senator Billow Kerrow;*
3. *Senator Stephen Sang;*
4. *Senator Abu Chiaba;*
5. *Senator Fatuma Dullo;*
6. *Senator Muriuki Karue;*
7. *Senator (Prof.)Lonyangapuo;*
8. *Senator Stewart Madzayo;*
9. *Senator Janet On'gera;*
10. *Senator Catherine Mukite; and*

11. *Senator Moses Kajwang'*

to investigate the proposed removal from office of the Governor of Murang'a County and to report to the Senate within ten (10) days of its appointment on whether it finds the Particulars of the Allegations to have been substantiated.

2.0 METHOD OF WORK

13. In the execution of its mandate, the Committee conducted a number of activities which are set out below.

2.1. Meetings of the Special Committee

14. Following its establishment on Wednesday, 28th October, 2015, the Special Committee held its first meeting on Wednesday, 28th October, 2015. Pursuant to standing order 183, at that meeting, the Clerk of the Senate conducted the election of the Chairperson and Vice-Chairperson of the Committee. Senator David Musila was elected, unopposed, as the Chairperson of the Committee while Senator Fatuma Dullo was similarly elected unopposed as the Vice-Chairperson of the Committee.

2.2. Indicative Programme of Events

15. Following the conduct of the election at the first meeting of the Committee, the Committee adopted an Indicative Programme of Events which is attached as *Annex 4*. The Committee observed that in terms of section 33(4)(b) of the County Governments Act, 2012 and standing order 68(2)(b) of the Senate Standing Orders, the Committee had only ten days within which to investigate into the matter in respect of the Governor and thereafter to report to the Senate on whether or not it found the Particulars of the Allegations against the Governor to had been substantiated.

16. It was evident to the Committee, at that early stage, that bearing in mind the nature of the proceedings anticipated in the hearing for the removal from office of the Governor, the Committee had the onerous task of ensuring that the statutory timelines were adhered to.

2.3. Invitations to Appear

17. The Committee observed that section 33(5) of the County Governments Act, 2012 and standing order 68(3) of the Senate Standing Orders provided that "*the governor shall have the right to appear and be represented before the special committee during its investigations*".

18. The Committee further observed that the County Assembly, as the originator of the Resolution for the removal of the Governor, had by the letter to the Speaker of the Senate dated 21st October, 2015 filed, together with the Resolution of the County Assembly, a number of documents in respect of the Resolution. The Assembly therefore had the option not to appear before the Committee and to rely entirely on the written documentation filed with the Office of the Speaker. However, the Committee observed that in the interests of justice, it would also be necessary to invite the Assembly to appear before the Committee, if it so desired, and to produce further evidence, if any, be it oral or written evidence.

19. Having made these observations, and taking into account the limited time available, at its first meeting held on 6th August, 2014, the Committee resolved to invite the Assembly and the Governor to appear before the Committee for the hearing of the evidence. Copies of the Invitations to Appear are attached as *Annex 5*.

20. The parties were represented at the hearing as follows-

(a) Mr. Mbuti Gathenji of the firm of Mbuti Gathenji & Company Advocates appeared on behalf of the County Assembly alongside Peter N. Kimani of Kimani, Kiarier and Associates; and

(b) Mr. Browne Nathans appeared as the lead attorney of the Advocates of Murang'a County appeared on behalf of the Governor alongside Mr. George Ng'ang'a of Mbugua Ng'ang'a Advocates, Peter Wanyama of Manyonge Wanyama & Associates and Mr. Charles Njenga of Muchoki, Kangata, Njenga & Co. Advocates.

21. The Invitation to Appear served on the County Assembly required the Assembly, where it chose to appear before the Committee to file with the Office of the Clerk of the Senate by 2nd November, 2015 documentation-

(a) designating the Members, if any, who would attend and represent the Assembly in the proceedings before the Special Committee;

(b) indicating the mode of appearance by the Members before the Special Committee; whether in person, by Advocate, or in person and by Advocate;

~~(c) indicating 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

(d) specifying any other evidence to be relied on.

22. In the Invitation to Appear, the Governor was requested to indicate whether he would exercise his right to appear before the Committee. If he chose to exercise that right, the Governor was informed that he would be required, by 2nd November, 2015, to file an answer to the charges with the Office of the Clerk of the Senate in which the Governor would set out-

- (a) the Governor's response to the Particulars of the Allegations;
- (b) how the Governor proposed to appear before the Special Committee; whether in person, by Advocate, or in person and by Advocate;
- (c) 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
- (d) any other evidence to be relied on.

23. The Invitations to appear were also published in the Daily Nation and the Standard Newspapers on Wednesday, 4th November, 2015 for the information of the general public and are annexed as *Annex 6*.

24. Following the service of the Invitations to Appear, the County Assembly further filed a Response to the Invitation to Appear on 3rd November, 2015 to which was attached various annexures and which is marked as *Annex 7*.

25. On 3rd November, 2015, Counsel for the Governor filed with the Office of the Clerk of the Senate a document titled the response of the Governor which is marked as *Annex 7*.

2.4. Rules of Procedure for the Investigation into the Proposed Removal from Office of a Governor

26. It was noted that Article 181 of the Constitution, section 33 of the County Governments Act, 2012 and standing order 68 of the Senate Standing Orders did not provide sufficient detail on the procedure to be followed by the Special Committee in the conduct of its investigation. It was further noted that previous Special Committees of the Senate that had carried out similar mandates had

adopted Rules of Procedure for the Investigation into the Proposed Removal from Office of a Governor.

27. The Committee therefore adopted the Rules of Procedure for the Investigation into the Proposed Removal from Office of a Governor on 28th October, 2015, which are annexed as *Annex 9*.

2.5. Working Retreats

28. The Committee held one Working Retreat on the conclusion of the hearing of the matter between 5th and 6th November, 2015 at which the Committee considered the documentation served by both parties. The Committee considered the submissions of the parties and drafted, considered and approved its Report.

3.0 THE CONFERENCE OF PARTIES

29. The Committee convened a Conference of the Parties on 3rd November, 2015 at 4:00 p.m. This provided the opportunity for the formal introduction of the Counsel for both parties to the Special Committee. At that meeting the Programme for the Hearing, which is attached as *Annex 10*, was adopted.

30. During the Conference of Parties, the parties were informed of the following:
- (1) the establishment and mandate of the Special Committee;
 - (2) the Hearing Programme;
 - (3) the Rules of Procedure for the Investigation Into the Proposed Removal of a Governor; and
 - (4) the Indicative Programme of Events.

4.0 READING OF THE CHARGES

31. Pursuant to rule 16 of the Rules of Procedure for the Investigation into the Proposed Removal from Office of a Governor, the hearing before the Committee

commenced with the reading out, verbatim, of the Particulars of the Allegations against the Governor. The Charges are at Folio 3 of *Annex I*.

5.0 THE CHARGES AGAINST THE GOVERNOR OF MURANG'A COUNTY, HON. MWANGI WA IRIA

5.1 CHARGE 1: GROSS VIOLATION OF THE CONSTITUTION OF KENYA, 2010, THE COUNTY GOVERNMENTS ACT 2012, THE PUBLIC FINANCE MANAGEMENT ACT, 2012 AND THE PUBLIC PROCUREMENT AND DISPOSAL ACT, 2005.

32. The Particulars of this Charge are as follows-

(1) **Allegation 1: Lack of accountability for the management and use of County resources by incurring unsustainable debts to the tune of Kshs. 2.5 billion which were not disclosed in the Debt Management Paper, 2015 and the County Fiscal Strategy Paper, 2015 thus violating Article 201(e) of the Constitution, 2010, section 123 and section 107(2)(e) of the Public Finance Management Act, 2012.**

33. The County Assembly indicated in the Particulars of Allegations that further scrutiny of the debt report submitted by the County Executive Committee Member for Finance, I.T and Planning as at 14th August, 2015 indicated violation of Article 226(5) of the Constitution of Kenya since some programs in the report already had an appropriation in the Budget for the Financial Year 2014/2015 only to re-appear in the said debts.

34. The County Assembly further stated that this was a clear indication of misappropriation of funds for the projects citing the example of Gakoigo Stadium

under the Department of Youth and Sports which they stated had been allocated Kshs. 30 Million in the Financial Year 2014/2015, yet, it had incurred a total debt of Kshs. 59 Million and no monies had been paid. This, they claimed, positioned the County in a very precarious situation which could lead to auctioning of County assets.

35. Mr. James Benson Kagoni, a Member of the County Assembly of Murang'a who was the first witness of the County Assembly, indicated in his evidence before the Committee that, owing to concern about the large commitment of funds by the Governor, he had raised the matter of public debt with the Chairman of the Finance and Planning Committee, seeking to know the extent of pending bills since the establishment of the County Government. He further stated that on examining the Debt Management Strategy Paper, he had discovered that the County Treasury had disclosed a debt amounting to Kshs. 1.19 billion.
36. Mr. Kagoni further stated that in a meeting between the County Assembly's Finance and Economic Planning Committee and the County Executive Committee Member for Finance and Economic Planning held in April, 2015, the County Executive Committee Member for Finance stated that the debts disclosed in the County Debt Strategy Paper were not accurate and as such, he had requested for time to reconcile the contracts, Local Purchase Orders and invoices in order to establish the actual amount of debt owing so that this would be factored in the Budget Estimates for the Financial Year 2015/2016.
37. Mr. Kagoni asserted that the Governor, as the person in charge of ensuring that documents are submitted to the County Assembly, had failed to ensure that the Budget Estimates for the Financial Year 2015/2016 included the debts owing by the County Government of Murang'a. He further stated that owing to the delay in submission of the report on the status of the debts owing by the County

Government, the County Assembly wrote to the County Executive Committee Member for Finance and Planning requesting for the report on pending bills. In response, the County Executive Committee Member for Finance and Planning, vide a letter dated 14th August, 2015 submitted a report of the total of debt outstanding as at 30th June, 2015 that stood at 2.5 billion. This letter is attached at *page 105 Annex 7*.

38. Mr. Kagoni indicated that following the tabling in the County Assembly of a report setting out the total debts, the County Assembly Members and the general public raised concern on the extent of the debt. Concerns were raised that the debt could cripple the economy of the County and lead to wastage.
39. Mr. Kagoni further made reference to a letter dated 7th September, 2015 by the County Secretary in which the County Secretary disowned the debt owing report which had been submitted earlier and stated that the debt stood at an estimated Kshs. 1 billion. Mr. Kagoni stated that no schedule had been attached to show how the Kshs. 1 billion was broken down. He therefore took the view that the County Governor was seeking to conceal the debt, contrary to the Public Finance Management Act.
40. It was the County Assembly's case that the debt stood at about Kshs. 2.5 billion, computed from the figures appearing in the attachments to the letter of County Executive Committee Member for Finance dated 14th August, 2015 attached at *Annex 7, pages 105 to 141*. The figures relied on by the County Assembly were as follows-

(1) Pending Invoices	-	Kshs. 1,654,500,148.00
(2) Summary of LPOs	-	Kshs. 612,171,230.00
Total Amount	-	Kshs. 2,226,671,378.00

41. In response to this matter of the debt owing, the Governor stated that-

- (1) a review of the Particulars of Allegations set out in the Notice of Motion revealed that there did not exist any link between the allegations and the Governor and there was no evidence of brazen or wilful gross violation of the Constitution or other written law;
- (2) the source of that information had not been disclosed and that the figure was at best speculative;
- (3) the outstanding debt was estimated to be around Kshs. 1 billion according to the Report of the Controller of Budget's Report as at 30th June, 2015 titled "Annual County Governments Budget Implementation Review Report FY 2014/2015" *attached at page 66 of Annex 8*, specifically pages 067 and 074 of the Annex;
- (4) the Financial Statements and Annual Financial Report for the FY 2014/2015 which were submitted to the County Assembly on 30th September 2015 showed debts of Kshs 1 billion. This was the correct position and was subject to Audit by the Kenya National Audit Office office which would give a final report once the audit was concluded. The Report is attached at *Annex 8 pages 63 to 64*;
- (5) this position was clarified to the Assembly by a letter from the County Executive dated 7th September, 2015 and attached at *Annex 8 at page 6*;
- (6) it is instructive to note that a similar estimate of debt had been made in the Debt Strategy Paper that was forwarded to the Assembly by 28th February, 2015 as required by law;
- (7) it is worth noting that the County Government accrues debts as works and services are continuous and extend beyond one financial year. These programs were well captured in the County Budget Estimates forwarded to

the County Assembly by 30th April 2015 as per the provisions of the Public Finance Management Act, 2012;

- (8) the remission of funds from National Treasury always comes in arrears with a two-months lead-time and local revenue estimates are not always met. Inevitably, the County falls into a debt situation, which is not by design and cannot be attributed to the Governor. Indeed this situation is not unique to Murang'a County but obtains across the entire forty-seven Counties;
- (9) debt owed by the County is not a violation of Article 201 (e) of the Constitution and it has not been shown that the said debts amounted to a gross violation of any known section of law and that the Governor is personally liable for it; and
- (10) it is not enough for the Assembly to make a general statement of law without showing a link or personal liability on the part of the Governor.

42. The Governor's case was therefore that this allegation was unsubstantiated.

43. The Committee benefited from the evidence of the Controller of Budget who in her evidence explained that pending bills are expenses incurred that have been factored in the budget and that are yet to be paid. She further stated that a bill is considered to be pending only after it has been invoiced. She distinguished between a pending bill and a Local Purchase Order (LPO) by stating that if services have been rendered or goods delivered pursuant to an LPO, the service provider would then be required to issue an invoice. At that point this would constitute a pending bill if unpaid. An LPO, she therefore stated, would not constitute a pending bill.

44. The Controller Budget further stated that in respect of Murang'a County, the Office of the Controller of Budget had written to the County Executive Committee

Member for Finance requesting for the figure on pending bills. The County Executive Committee Member replied indicating that the as at 30th June, 2015, pending bills of the Murang'a County Government stood at Kshs. 1,094,315,526/- as indicated on page 067 of Annex 8. She further indicated that as at 30th June, 2015, Kshs. 841,168,000/- had not yet been remitted by the National Treasury. This amount is indicated in attachment 6 to the letter of the Controller of Budget addressed to the Clerk of the Senate dated 5th November, 2015 which is attached as *Annex 11*.

45. In response to a question posed as to where the Office of the Controller of Budget obtains information on pending bills, the Controller of Budget indicated that the Office relies on the information relayed by the respective County Executive Committee Members.
46. In cross-examination by Counsel for the Governor, the Controller of Budget indicated that in light of the total budget and the materiality of the pending bills, these could not be considered to be unsustainable and that these could be cleared from the revenue of the county.

Observations of the Committee

47. The Committee having taken into account the evidence of all parties, on the status of pending bills vis-à-vis LPOs, and having considered all documentation submitted on pending debts by the parties, observed that the figure in contention was the amount of Kshs. 612,171,230/- ascribed to LPOs as set out in the schedule annexed to the letter of the County Executive Committee Member for Finance dated 14th August, 2015 addressed to the Clerk of the County Assembly of Murang'a appearing on *page 126 of Annex 7*.

48. The Committee further took note of the distinction given by the Controller of Budget in her evidence as to the status of LPOs and whether they should be taken into account in computing pending Bills. The Controller of Budget had clearly indicated that LPOs, unless invoiced had been raised for the same, would not constitute pending bills.

49. In the circumstances, the Committee therefore found that the allegation relating to lack of accountability for the management and use of County resources by incurring unsustainable debts to the tune of Kshs. 2.5 billion was not substantiated.

(2) **Allegation 2: Violation of Article 201(a) and (d) of the Constitution, 2010 that stipulates principles of public finance and section 5 and 130(1)(b)(i) of the Public Finance Management Act 2012**

50. The County Assembly's case was to the effect that the County Governor allowed misappropriation of County funds by spending public funds in private commercial entities. The Assembly indicated that the report of the Auditor General on the financial operations of Murang'a County Executive for the period 1st July, 2013 to 30th June, 2014 revealed that the County Executive contributed a total of Kshs.28,489,800.00/- to Murang'a Investment Co-operative Society, dubbed *Shilingi-Kwa-Shilingi*. The Assembly stated that the expenditure was incurred in respect of advertisements to promote the cooperative society and invite the general public to purchase shares in the Co-operative.

51. The County Assembly made reference to the report of the County Assembly on the Murang'a Investment Co-operative Society (*Shilingi-Kwa-Shilingi*) and indicated that the society is registered under section 6(3) of the Co-operative Societies Act, Cap. 490. The Assembly stated that the Society is an autonomous body independent of the County Executive and that according to the Auditor

General's report, it was not clear therefore the circumstances under which the County Executive was funding it. This was in contravention of section 5(1) of the Public Finance Management Act as the society was not a declared county corporation.

52. In her evidence in support of the County Assembly's case, Hon. Mary Waitera Njoroge, a Member of the Murang'a County Assembly and the mover of the Motion at the County Assembly for the impeachment of the Governor, stated that on 16th January, 2014, the Murang'a County Assembly established a fourteen-member Commission of Inquiry into the Murang'a Investment Cooperative to make recommendations to the County Government, including the Assembly. The Honourable Member indicated that she was a member of the Commission.
53. The Report of the Commission, dated 8th February, 2014, was produced at *page 22 of Annex 1*. The findings of the Commission were as follows-
- (1) the Murang'a Investments Cooperative Society Ltd was a private venture registered on 1st October, 2013 under the Cooperatives Act, Cap. 490;
 - (2) the County Government had at that date spent approximately Kshs. 23 million in promoting and marketing Murang'a Investments Cooperative Society Ltd;
 - (3) the basis for the County Government having expended such significant public resources on the Cooperative was upon request for support by the said Society and the perceived massive impact that the Cooperative would achieve if it was able to mobilize the targeted membership of one hundred thousand members with annual member funds of up to Kshs. 3 billion;
 - (4) the continued support of the Cooperative in a privileged manner above other Cooperatives within the County coupled with the strict requirements of the Public Finance Management Act, among other laws makes the disbursement of any further County Government funds on the Cooperative

untenable. This was particularly because the Cooperative was a private entity while the County Government administered public funds. Further the County Government had no stake in the Cooperative; and
(5) in terms of operational and governance structures, the Cooperative would require to review its set-up in order to achieve its stated objectives.

54. The Commission therefore recommended that-

- (1) a thorough audit be conducted on all monies spent on the Cooperative and the Report be tabled before the Assembly;
- (2) the Executive was not to spend any more money on the Cooperative without approval by the Assembly; and
- (3) the Governor should evaluate the procurement procedures followed in the expenditure for the Cooperative and take relevant action.

55. The County Assembly further produced as its evidence a Video Clip in which the Governor is heard urging residents of Murang'a County to join the Murang'a Investments Cooperative Society. In the clip, prospective members are invited to subscribe to the Cooperative by visiting Murang'a County Offices. The transcript of the video is attached at *page 15 of Annex 7*.

56. The County Assembly, in seeking to demonstrate the Governor's involvement in the Cooperative Society, further made reference to minutes of a meeting of the Murang'a Investment Cooperative County Steering Committee held on 14th December, 2013, which is annexed to the Report of the Commission of Inquiry and which appears as page 264 of *Annex 7*. The Assembly observed that in the minutes, the Governor was in attendance together with the County Executive Committee Members for Finance and Planning and Education and ICT.

57. The County Assembly also stated that from the minutes, a Ms. Jane Mbutia of Top Image Media was also listed as having been in attendance at the meeting. In her evidence before the Committee, Hon. Mary Njoroge, took issue with the presence of the Governor and the Ms. Mbutia at the Steering Committee Meeting of the Cooperative where it was resolved to procure a marketing and publicity tender which tender, she indicated, was eventually awarded to Top Image Media.
58. The Auditor General's evidence before the Committee was that the main query in respect Murang'a Investment Cooperative Society was that money from public resources had been utilized to advertise a private entity. Further, the Auditor General observed, in the Management Letter dated 29th October, 2014 in respect of the matter which is attached as *Annex 12*, "*that the County Government accorded the Society unlawful preferential treatment since no other Cooperative Society resident in Murang'a County was allocated such sums of public funds during the year under review contrary to section 227 of the Constitution*".
59. The Auditor General further indicated that in the Management Letter that "*payment vouchers made available for audit revealed that the County Government spent a total sum of Kshs. 26,072,200/- for Murang'a Investment Cooperative Society-being payment to Top Media Consultancy Limited, Riara Road, P.O. Box 3397-056, Nairobi, being costs of adverts to promote the Society and invite the general public to purchase shares in the Cooperative Society through print media, radio, TV, billboards, website and short code for bulk SMS*".
60. The Auditor General indicated that they had sought a response from the Murang'a County Executive on this matter but that none was forthcoming.
61. The Governor's response to this matter was to the effect that the Murang'a Investment Cooperative Society (Shilingi – Kwa - Shilingi) was a creature of

Murang'a residents with the aim of mobilization of resources from the local residents and those in the diaspora to save and invest in projects that were cited as economic drivers for the County. The Governor further stated that it was based on the strong co-operative movement that Murang'a County is well known for. He indicated that as it stood then, there were over five hundred thousand members in different cooperatives. The Governor further argued that the co-operative movement is a devolved function and the County is obligated to nurture and support various cooperative societies as a means of spurring socio-economic development through savings and investments.

62. Regarding the Commission of Inquiry, the Governor stated that in the Report the County Assembly had "*[appreciated] the nobility of the idea and vision behind the formation of the MIC, and its possible huge impact to the economic ... [on]... Murang'a County. It therefore recommends that the County Government considers forming a County Corporation pursuant to section 182 of the Public Finance Management Act, 2012. Such a corporation will provide a legal and solid platform to accommodate entities such as MIC and facilitate public-private partnerships on various economic and development projects between the County Governments and private entities*".
63. The Governor stated that the recommendations of the Commission had been implemented by the Executive. In support of this, the Governor attached an Advertisers Announcement, which is attached at *page 71 of Annex 8*, which indicated that pursuant to the recommendations of the County Assembly, the Murang'a Investment Cooperative had restructured such that Shilingi kwa Shilingi had become "an apex Cooperative" under which the Murang'a Investment Cooperative Society and other Cooperatives in Murang'a would fall. The Governor further argued that the report on the said Co-operative did not make any adverse findings on the Governor and it was therefore strange that the report

which was almost two years old and had been in the custody of the Assembly was being cited as a basis for alleged impeachment of the Governor.

Observations of the Committee

64. The Committee studied the documents relating to the registration of the Murang'a Investments Cooperative Society Ltd. and made the following observations-

- (1) the Cooperative was, pursuant to section 6(3) of the Cooperative Societies Act, registered on 1st October, 2013 as Murang'a Investments Cooperative Society Ltd;
- (2) in accordance with section 12 of the Cooperative Societies Act, the effect of the registration was that the Cooperative became a body corporate; a distinct and separate legal entity, as such the Society could not be described as a "county corporation" within the meaning of section 2 of the Public Finance Management Act. Section 2 defines a "county corporation" as "a public corporation within a county established by an Act of Parliament or county legislation";
- (3) the Cooperative had not been declared as a county corporation in terms of section 5(1) of the Public Finance Management Act which requires that "*a County Executive Committee member for finance may, with the approval of the county executive committee and county assembly, by order in the Gazette, declare a county corporation, an authority or any other body whose functions fall under that county government to be a county government entity for the purposes of this Act.*

65. The Committee observed that Article 10 of the Constitution requires State organs and State officers when making or implementing public policy decisions to observe the national values and principles of governance which include good governance, transparency and accountability. Article 201(a) of the Constitution further provides that "*there shall be openness and accountability, including public*

participation in financial matters". Article 201(d) further provides that *"public money shall be used in a prudent and responsible way"*. In addition, Article 201(e) provides that *"financial management shall be responsible, and fiscal reporting shall be clear."*

66. Taking into account these provisions of the law, the Committee found that the Governor had indeed committed an amount of Kshs. 26,072,000/- as indicated in the Auditor General's Report of the County Government's funds to a private commercial entity: the Murang'a Investments Cooperative Society. This, the Committee found, was in violation of Articles 10, 201(a) and (d) of the Constitution that stipulates principles of public finance and section 5 and 130(1)(b)(i) of the Public Finance Management Act.
 67. The Committee considered whether this violation amounted to a gross violation necessitating removal of the Governor from office and found that the required threshold for removal had not meet reached.
 68. The Committee noted that the Governor and his County Executive had noble intentions with regard to the Murang'a Investments Cooperative Society. However, in light of the fact that the Society was a private entity, it was necessary that the County funds that had been expended in the Society be recovered from the Society.
- (3) **Allegation 3: Violation of the Constitution of Kenya, 2010, Articles 201(a), (d), (e) on principles of public finance and Article 226(5) on audit of public entities, Article 227(1) on procurement of goods and services, and the Public Procurement and Disposal Act, 2005, by failing to adhere to the principles of public finance management and procurement of public goods and services**

69. In the Financial Year 2014/2015, as stated in the County Governments Budget Implementation Review Reports of the Controller of Budget, the County Executive under the stewardship of the County Governor incurred advertisement expenditure amounting to Kshs. 247 Million against an approved budget of Kshs. 7 Million as at 31st March 2015 *i.e. Kshs.114 Million and 133 Million in the Half year and third quarter report respectively*; thus further undermining the principles of fiscal prudence as stipulated in Article 201(d) of the Constitution and section 107(2) of the Public Finance Management Act.
70. In support of this allegation, the County Assembly relied on the County Governments Budget Implementation Review Reports of the Controller of Budget, for the Financial Year 2014/2015, attached as *Annex 8*.
71. In response to this charge the Governor averred that the amounts used in advertising were part of the fulfilment of the constitutional duty under Article 35(3) that obliged the County to establish and facilitate public communication and access to information in the form of media with the widest public outreach. In furtherance to this statutory duty, the Governor stated that the County Government educates and informs residents on on-going and future projects for the public good. ~~No evidence, he stated, had been tendered to show any breach of the procurement law and the allegations were spurious and unsubstantiated.~~
72. The Governor, in his response, further stated that this allegation by the County Assembly was deceitful. The Governor cited the Annual County Government Budget Implementation Review Report for the FY 2014/2015 at page 77, which is annexed at *page 183 of Annex 8* and which shows an item referred to as printing, advertising and communication amounting to Kshs.181.75 million. The alleged figure of 247 million, they averred, was therefore fallacious and a product of double counting of respective Quarterly Reports.

73. In her evidence, the Controller of Budget indicated that the amount of Kshs. 181.75 million indicated in the Report of the Controller of Budget comprised printing, advertising and communication. She further elaborated that the advertising component for that year was Kshs. 19,256,970/-, of which Kshs. 4,795,545/- was expended by the County Assembly while Kshs. 14,461,416/- was the County Executives expenditure. This is also set out in the letter by the Controller of Budget to the Clerk of the Senate dated 5th November, 2015, which is attached as *Annex 11*.

Observations of the Committee

74. The Committee, having assessed the evidence placed before it found that the Assembly had not substantiated the allegation that the County Executive, under the stewardship of the Governor had incurred advertisement expenditure amounting to Kshs. 247 million against an approved budget of Kshs. 7 million.

(4) **Allegation 4: Violation of Article 183(2), (3) of the Constitution of Kenya 2010 and Section 30(3) (b) of the County Governments Act 2012, through failure to provide leadership to the County Executive Committee on the generation of county policies, plans, legislation and full and regular reports regarding key programs such as the Nappier Grass, A.I. Crushes, among others.**

75. On this allegation, Hon. Joseph Kimani Gitau, a Member of the County Assembly of Murang'a and the Chairperson, IT and Planning Committee indicated in his Statement that most of the programs implemented by the County Governor had been undertaken without approved policies and plans by the County Assembly. He cited the example of Mariira Farm under the One Youth One Cow Program. He was of the view that where the Executive has come up with a proposed

development programme, the onus lay on the Executive to develop the necessary policy and legislation for the programmes.

76. He further stated that under the A.I Crushes programme, about 600 crushes were built across the County which cost Kshs. 61.69 million according to the Controller of Budget's Third Quarter Report. In his view, this was a waste of resources as Murang'a livestock farmers largely practiced zero grazing. This wastage of public funds could have been avoided if the necessary policy on the program was prepared before it had started. He regretted that most of this crushes were not being utilised.

77. He further stated that the County Governor had spent money without a policy on nappier grass and sweet potato veins. Most of it had been delivered to various chief offices during the dry period. Eventually it was a big waste of resources by the County Government.

78. However, Hon. Gitau admitted in his evidence that the programmes had been beneficial to the County, citing the AI Crushes which he stated had saved residents of Murang'a monies they would otherwise have paid for the AI services.

79. In response to this charge the Governor stated that-

- (1) It was not necessary that the County Executive legislates on all the programs. Section 8(2) of the County Government Act provides for application of corresponding national legislation;
- (2) Whereas the County Executive can initiate County legislation, that is not its core mandate. The County Assembly under Article 185 of the Constitution has legislation as its core mandate;

- (3) It had not been disclosed why the Assembly failed to initiate legislation on Napier Grass, A.I crushes which was being blamed on the Governor;
- (4) The A.I Crushes program was in order because agriculture is a fully devolved function;
- (5) The AI Crushes under Livestock Development Program were procured procedurally; and
- (6) Full and regular reports regarding programs such as Napier grass are in place. The Committee for Agriculture had been furnished with the Napier grass concept paper and regular reports.

Observations of the Committee

80. The Committee made reference to the provisions of law cited by the County Assembly on this allegation. Article 183(2) and (3) of the Constitution provides that *"a county executive committee may prepare proposed legislation for consideration by the county assembly"* and *"the county executive committee shall provide the county assembly with full and regular reports on matters relating to the county."*
81. Section 30(3)(b) of the County Governments Act, 2012 provides that—
In performing the functions under subsection (2), the governor shall—
(b) provide leadership to the county executive committee and administration based on the county policies and plans."
82. The Committee observed that the allegation was broad and seemed to relate to virtually all programmes in the County. The Committee was therefore of the view that it was not possible for the Committee to arrive at a conclusion as broad as captured in the allegation which was that: the Governor had failed to provide leadership to the County Executive Committee on the generation of county

policies, plans, legislation and full and regular reports regarding key programs. However, with regard to the Napier Grass and A.I. Crushes, the Committee observed that no policy framework in support of these programs had been provided by the County Executive.

83. The Committee observed that this allegation was substantiated. However, the failure to develop policy frameworks in support of County Government programmes was not a breach of the law that rose to the standard of gross violation. The Committee recommended that the County Government develops the necessary policy frameworks as soon as possible.

(5) **Allegation 5: Failure to establish the County Budget and Economic Forum as stipulated under section 137 of the Public Finance Management Act 2012.**

84. The County Assembly's case was that as a result of the failure of the County Governor to establish the County Budget and Economic Forum, the County Governor had failed to consult with the public over the preparation of county plans, budgets and general matters of financial management at the county. This was a violation of the provisions of sections 87, 91 and 115 of the County Governments Act, 2012 and more importantly Article 10 and 201 (a) of the Constitution that require public participation in decision making.

85. The County Governor in his response to this allegation stated that the Office of the Economic Forum had already been agreed upon as reflected in the proposed structure, attached at *page 79 of Annex 8*. The County Secretary who acted as the link between the Executive Committee and the Governor had a role in the day-to-day reports of the Office of the Economic Forum. This was the reason the office was domiciled in the office of the County Secretary. In the submissions by the

Counsel of the Governor, it was argued that there were no timelines attached to the establishment of the County Budget Economic Forum.

Observations of the Committee

86. The Committee took note of section 137 of the Public Finance Management Act which provides that *"as soon as practicable after the commencement of the Act, a county government shall establish a forum to be known as the (Name of the County) County Budget and Economic Forum"*.
87. The Committee observed that Counsel for the Governor had indicated that there were plans to establish the Office of Economic Forum reporting to the Secretary. There was however no evidence provided that this proposed office was the same as the County Budget and Economic Forum required under section 137 of the Public Finance Management Act.
88. The Committee further observed that by the use of the words *"as soon as practicable"*, the statute implied some urgency in establishing this forum since it is meant to actualize public participation in financial matters as enshrined under Article 201 of the Constitution. The delay in the establishment of the forum in Murang'a County, since 2013, was therefore unwarranted.
89. The Committee noted that though the Governor had failed to set up the County Budget and Economic Forum, the delay in establishment of the Forum did not rise to the level of gross violation. The Committee recommends that the Governor sets up the County Budget and Economic Forum as required under section 137 of the Public Finance Management Act within 90 days.
- (6) Allegation 6: Violation of Articles 176 (1) and 185 of the Constitution of Kenya 2010 by disregarding the County Assembly as an arm of the County

Government and undermining the County Assembly's legislative authority, through requisition of monies and not remitting the same, hence crippling the operations of the Assembly and undermining the independence of the latter.

90. The County Assembly argued that this, by extension, violated Article 6 and Article 10 of the Constitution that underpins the spirit of mutual respect, cooperation and consultation on all governance structures. This is evident from requisitions made in the following periods that were never remitted;

- (a) Kshs 44,347,764 in FY 2013/2014 (annexed);
- (b) Kshs 28,779,000 in FY 2014/2015 (annexed); and
- (c) Kshs. 51,843,000 in FY 2015/2016 (annexed).

91. The County Assembly argued that this misappropriation and misdirecting of funds indicated lack of good intentions towards the Assembly and created a monarchy system, an endeavour to curtail the oversight role of the Assembly thus violating Article 73 (b) of the Constitution of Kenya 2010 which requires a State officer to serve the people and not power to rule over them. This further, violated Article 174 of the Constitution which required the County Government to promote democratic and accountable exercise of power.

92. In his evidence, Hon. Joseph Kimani Gitau indicated that in every financial year and after the approval of the Budget, the Assembly prepares cash flow statements and submits to the County Executive for requisitions which are usually made on a monthly basis from the National Treasury. However, the County Governor did not release to the County Assembly the whole amount requisitioned. He stated that the County Governor diverted Assembly monies to other uses. This had led to halting of County Assembly operations.

93. In support of this allegation, the County Assembly produced a number of letters addressed to the County Executive Committee Member for Finance and Planning expressing concern that funds due to the Assembly had not been remitted and urging the County Executive to release the funds to the Assembly. The letters from the County Assembly are dated 22nd August, 2013, 20th November, 2013, 11th March, 2014, 29th June, 2015, 30th July, 2015, 21st September, 2015 and are attached at *pages 428 to 466 of Annex 8.*
94. The County Governor in his response to this allegation stated that from the letter relied on by the Assembly allegedly in support of this allegation which was dated 1st July 2015, Kshs. 28,779,000/- was outstanding at closure of the year and the process of release of the money was explained in the said letter. The letter is attached at *page 466 of Annex 7.*
95. The Governor explained that requisition of funds was subject to receipt of funds from the National Treasury, which was normally delayed by more than two months. It was also subject to realization of budgeted local revenue and whenever it was not realized the County Government could not implement the budget as envisaged.
96. The Governor further stated that Kshs.28,779,000/- was part of what was sent back to Treasury at the closure of the year as no transfers could be effected, as the IFMIS system which is used to effect the transfers was not operational. The situation has since been rectified.
97. The Governor further argued that it was instructive that the Executive had been paying salaries and some other operational expenses (allowances) directly to the beneficiaries and the Clerk of the Assembly as the accounting officer should take this into account when working out the amounts allegedly owed.

Observations of the Committee

98. It was apparent to the Committee that the delays in the disbursement of funds by the County Executive to the County Assemblies was a frequent occurrence. Further the letter dated 21st September, 2015 from the Clerk of the County Assembly (*page 471 of Annex 8*) showed that the office of the Controller of Budget had released funds for the months of August and September, 2015 which amounts were yet to be remitted to the County Assembly.

99. The Committee observed that failure to remit these funds in a timely manner to the County Assembly affects the operations and functioning of the County Assembly.

100. The Committee observed that this issue was not unique to Murang'a County. There were delays in many other Counties by County Governments in releasing funds to the County Assemblies. The Committee recommended that the County Executives in the short run should ensure that they promptly release funds due to the County Assemblies.

101. The Committee took note of the fact that a legal framework was under development that would give County Assemblies financial autonomy. The Committee urged that these legal interventions be fast-tracked by the Senate.

vii. **Allegation 7: Violation of Section 4 of the County Governments Act, 2012,** that requires the County Executive Committee to develop legislation on County Symbols, for example the Murang'a County Symbols Act; after the Murang'a County Symbols Bill was passed in the Assembly and consequently gazetted into an Act, the County Executive so far have failed to implement the approved symbols in all their communication artefacts.

102. In the evidence of Hon. Mary Njoroge, a Member of the County Assembly, the County Assembly stated that section 4 of the County Governments Act requires the County Executive Committee to develop legislation on county symbols. She stated that the County Assembly passed the Murang'a County Symbols Act but the Executive, led by the Governor ignored the use of the said symbols in violation of the County Government Acts and the Muranga County Symbols Act.
103. The Governor, in response to this allegation, stated that the County Symbols Bill was submitted to the County Assembly in 2014 but that the County Assembly had taken longer than stipulated to approve the Logo, Seal and Flag. At the expiry of twenty-one days the Bill was deemed as approved. The County Executive went ahead and used the submitted symbols in all communication artefacts. By the time the belated approved symbols were gazetted, the County had incurred huge printing costs on various documents and prudent use of County resources required the material to be exhausted first before placing a new order under the Gazetted symbols. The Governor therefore argued that the allegation was unsubstantiated.

Observations of the Committee

104. The Committee observed that section 4 of the County Governments Act provides—

“(1) Every county shall enact legislation prescribing the following county symbols—

- (a) the county flag;*
- (b) county coat of arms; and*
- (c) the county public seal.*

(2) The County Executive shall develop the symbols of the county through a consultative process for approval by the county assembly by legislation.

(3) The county legislation enacted under subsection (1) shall provide for the use of the county symbols in the same manner as provided for in the National Flag, Emblems and Names Act (Cap. 99).

(4) A county symbol shall not be the same as, or bear a likeness or similarity to a national symbol.”

105. The Committee observed that the County Governments Act specifically required that legislation be enacted to provide for county symbols that would serve to provide the unique and distinct identity of the County and to unify the residents of the County. It was not in contention that the Murang'a County Symbols Act, No. 2 of 2015 had been enacted and was published as an Act on 29th June, 2015. What was in contention was the implementation, by the County Executive of the symbols. The County Executive pleaded that prior to the enactment of the Act, the County Executive had already printed various documents worth large sums of money bearing symbols other than the approved symbols. The County Executive proposed to exhaust before printing material bearing the approved symbols.

106. The Committee observed that this appeared reasonable especially because the Act had only been in force for slightly over three months before the tabling of the Motion in the County Assembly.

viii. Allegation 8: Violation of Article 227 (1) of the Constitution of Kenya 2010 on procurement of goods and services by state organs and public entities and Section 135 (1) of the Public Finance Management Act 2012, by disregarding cost effectiveness and overspending in the departments of Finance, IT and Economic Planning, Transport, Energy and Infrastructure, Public Service and Administration among others as indicated in the Third Quarter Budget Review Implementation report for the FY 2014/15 from the Office of the

Controller of Budget. Such expenditure should have been ratified through a Supplementary Budget or justified by the respective departments.

107. In his evidence, on this matter, Hon. Joseph Kimani Gitau stated that as the head of the County Executive, the County Governor had failed to submit to the County Assembly the supplementary budget for approval of the over expenditure on the above Departments.
108. In response to this Allegation, the Governor stated that reliance on the 3rd Quarter report was misleading as the same did not represent activities and operations of the whole financial year which was what was budgeted for in the annual budget. The Governor further stated that a review of the full year report indicated that the situation had corrected itself at the end of the financial year. And further that the Supplementary Budget was prepared at the beginning of the new financial year after getting the full reality of the actuals of the past financial year. This also takes into account money rolled over from previous into the new financial year.

Observations of the Committee

109. The Committee observed that in order to get a full picture of the expenditures incurred by the various County Departments, a whole financial year report was needed.
110. A scrutiny of the full year report by the Controller of Budget for the Financial Year 2014/2015 submitted by the Governor at *page 100 of Annex 9* indicated that there were no over expenditure.
- ix. **Allegation 9: Violation of Article 186 (1), Article 189 (2) and 226 (5) of the Constitution of Kenya by approving/directing /diverting public funds to non-devolved functions contrary to schedule four part two of the Constitution of Kenya 2010 for example Construction works at Kahuhia Girls that were split**

9 times amounting to Kshs. 31 million, conversion of public primary schools into boarding schools among others.

111. This was further averred in the evidence of Hon. Mary Njoroge.

112. The Governor, in response to this indicated that there was nothing illegal in the County Government undertaking what seemingly appeared like a National Government function and vice – versa. The Governor urged the Committee to take judicial notice of the fact that the National Government procured medical equipment for use by county hospitals yet the health function is devolved to counties. They further stated that the County Government had convened stake - holders meetings within and outside the County where people were invited to give their views on how to improve the declining standard of education in Murang'a County. The stake holders had mandated the County Government to collaborate with National Government and more specifically the Ministry of Education, to come up with interventions in the education sector. These interventions were included in the 5 years strategic plan and included-

- Renovation and improvement of the dilapidated infrastructures that were in sorry state.
- Conversion of two primary schools from every sub county into boarding schools.

Observations of the Committee

113. The Committee took note of the evidence of the Controller of Budget on this matter. The Controller of Budget in a letter dated 5th November, 2015 to the Clerk of the Senate attached a letter from the Transition Authority to the Controller of Budget dated 9th December, 2013 on the establishment of County Education Bursary Funds and Infrastructure in schools. The letter specifically stated that in order to promote education in the Counties, it was the Transition

Authority's considered view that the Counties could budget and/or establish the bursary fund without breaking any law so long as the County budget could accommodate the fund without compromising other County functions. The Transition Authority also stated that the view was also held by the Commission on Revenue Allocation and other organs. The County Government was guided by provisions of section 31 (7) of the Public Procurement and Disposal Act 2005 and the Treasury Circular No. 14/ 2013 (copy attached) item 5 which permits unbundling procurements in procurement process and project implementation.

114. The Committee therefore observed that the County Executive in utilising County funds for construction works in Kahuhia High School had relied on the cited authority by the Transition Authority.

i.

x. **Allegation 10: Violation of Article 227 (1) of the Constitution of Kenya 2010 and Section 30 of the Public Procurement and Disposal Act, 2005, through splitting of tenders with different LPO numbers for the same contractor, for instance proposed opening of Kahuruko-Ngatho Junction, under the department of Transport and Infrastructure, was split 11 times with different LPO numbers according to the debt owing report from the CEC Finance, IT and Planning as at 14th August, 2015.**

115. The Hon. Mary Njoroge in her evidence on this matter stated that the works on the Kahuruko-Ngatho road had been split as follows-

NO	DATE	SUPPLIER/	LPO NO	DESCRIPTION	TOTAL
9	17/12/2014	Benisa Ltd	2801/2012	Opening of Kahuruko - Ngatho junction	3,941,680
10	17/12/2014	Benisa Ltd	2839/2014	Opening of Kahuruko - Ngatho junction	3,970,448

14	19/01/2015	Benisa Ltd	2835/2014	Opening of Kahuruko - Ngatho junction	3,970,448
15	19/01/2015	Benisa Ltd	2724-2725	Opening of Kahuruko - Ngatho junction	3,999,390
31	1/1/2015	Benoni Trading Agencies	2955/2956	Opening of Kahuruko - Ngatho junction	3,960,008
32	19/01/2015	Benoni Trading Agencies	2955/2956	Opening of Kahuruko - Ngatho junction	3,993,358
49	19/01/2015	Dutco Agencies	2722-2723	Opening of Kahuruko - Ngatho junction	3,999,100
73	19/01/2015	Kangema Roads & Water Co Ltd	2812-2813	Opening of Kahuruko - Ngatho junction	3,942,002
77	19/01/2015	Kangema Roads & Water Co Ltd	2818/2015	Opening of Kahuruko - Ngatho junction	3,876,372
TOTAL					35,652,806

116. The County Assembly cited section 30 of the Public Procurement and Disposal Act which stipulates that-

(1) No procuring entity may structure procurement as two or more procurements for the purpose of avoiding the use of a procurement procedure.

(2) Any person who contravenes the provisions of this section shall be guilty of an offence.

(3) Standard goods, services and works with known market prices shall be procured at the prevailing real market price.

(4) Public officials involved in transactions in which standard goods, services and works are procured at unreasonably inflated prices shall, in addition to any other sanctions prescribed in this Act or the regulations, be required to pay the procuring entity for the loss resulting from their actions."

117. It was the County Assembly's case that the splitting of the works was intended for the sole purpose of avoiding procurement processes.
118. The Governor stated that the Kahuruko-Ngatho road was prioritized in the County Integrated Development Plan. The Governor further stated through Counsel that the works had not been "split" as alleged by the County Assembly but rather that they had been "unbundled" in accordance with Treasury Circular No. 14 of 2013 which allowed a procuring entity to unbundle procurements. The Circular is attached at *page 110 of Annex 8*.
119. In response to this, the County Assembly stated that the Circular referred to related to targeted groups; youth, women and persons with disabilities, and that it was therefore not relevant to the works in question. In addition, the Committee observed that there was no evidence that the said "unbundling" was for the purpose of catering for youth, women and persons with disability.

Observations of the Committee

120. It was evident to the Committee that the cited Treasury Circular did not apply to the works as its application extended to procurement allocation to youth, women and persons with disabilities. There was therefore no evidence availed to counter the allegation by the County Assembly that the works on the Kahuruko-Ngatho road had been split.
121. The Committee observed that this allegation did not rise to the level of gross violation. The Committee however observed that it was critically important for the County of Murang'a, as with all other Counties, to strictly comply with and adhere to the procurement laws.

xi. Allegation 11: Violation of Articles 10, 183 and 201 of the Constitution of Kenya 2010 on priorities through public participation, legislative framework and fiscal prudence and accountability respectively and section 29 of the Public Procurement and Disposal Act 2005, through evading of open tender method by purchasing, of Land along Kenoi-Kabati Road, worth Kshs. 340 Million through request for quotations, without stipulated reasons for using alternative procurement procedure in writing by the tender Committee. Fraudulent procurement procedures of the AI crushes under the livestock development program amounting to Kshs. 61.69 million, among other goods and services.

122. This allegation was canvassed by Hon. Mary Njoroge in her evidence before the Committee.

123. The Governor explained that the purchase of Land at Kenoi – Kabati road worth Kshs 340 Million was through open tender and not quotations as alleged. He further stated that there was an open advertisement for Request for Expression of Interest in the Daily Nation on Monday 8th July 2013 and in the Standard Newspaper on Tuesday, 9th July 2013.

124. The Governor further stated that all necessary procurement procedures were followed to the letter.

Observations of the Committee

125. Both parties took the Committee through the process leading to the purchase of the land in question by the County Executive. The Committee made the following observations-

(1) on 8th and 9th July, 2013, the County Government of Murang'a published in two daily newspapers a Request for Expression of Interest for an agro-marketing and value addition centre;

(2) minutes of the Tender Opening Meeting held on 23rd July, 2013 indicated that two firms had expressed interest at the close of the tenders; Kenjap Company Ltd. and M/s Elnocam Building Contractors. The minutes further observed that of the two tenders only one, M/s Kenjap Company Ltd. met the requirements;

(3) minutes of the Tender Committee Meeting held on 27th November, 2013 set out the Evaluation Report on the Expression of Interest as presented to the Tender Committee. Three firms are indicated in the minutes as having expressed interest; Kenjap Company Ltd., M/s Elnocam Building Construction and Nalpas Quality Consult.

(4) it was noted that Nalpas Quality Consult did not appear in the minutes of the Tender Opening held on 23rd July, 2013. When clarification was sought as to why Nalpas Quality Consult was included in the minutes of the Tender Committee, Counsel for the Governor indicated that the expression of interest by Nalpas Quality Consult had been sent by post and had therefore arrived later but could not be disqualified;

(5) the Committee observed that the minutes of the Tender Committee did not make any comment on the inclusion of Nalpas Quality Consult;

(6) the Committee further observed that from the minutes of the Tender Committee it appeared that M/s Elnocam Building Construction had not been taken through the evaluation process as there were no comments made on the row on the evaluation matrix to indicate whether they were responsive on the criteria for evaluation;

(7) the Committee also observed that the Stephen M. Warutere, who was in attendance at the Tender Committee Meeting of 27th November, 2013 at which it was recommended that the tender be awarded to Kenjap Ltd. was

subsequently invited by the County Government to conduct a valuation on the same land.

126. The evidence of the Auditor General as appears in the Report of the Auditor-General on Financial Operations of Murang'a County Executive for the period 1st July, 2013 to 30th June 2014 was to the effect that the request for proposals method of procurement could only be applied where the circumstances under section 76(1) of the Public Procurement and Disposal Act were satisfied. The Act required that a procuring entity may use a request for proposal for a procurement if-

- (a) The procurement is of services or a combination of goods and services; and
- (b) The services to be procured are advisory or otherwise of a predominantly intellectual nature.

127. It was the conclusion of the Auditor General that the procurement ought to have been undertaken by way of open tender method of procurement in accordance with section 29(1) of the Public Procurement and Disposal Act.

128. The Committee observed that there appeared to be serious flaws in the procurement process in respect of the Kenol-Kabati land. The Committee therefore recommended that investigations be conducted into this matter by the relevant investigatory agencies.

129. Due to the complex nature of this land purchase transaction, the Committee recommends that the Public Procurement Oversight Authority and the Ethics and Anti-Corruption Commission investigates this matter and reports to the Senate the outcome of the investigations.

xii. Allegation 12: Contravention of Article 201 (a) and (e), of the Constitution of Kenya, 2010 on principles of public finance in regard to accountability, responsible finance management and clear fiscal reporting and Section 155 (5) of the Public Finance Management Act, 2013, by failing to ensure that an internal Audit Committee is established. This has exposed the County Executive operations to lack of checks and balances in financial controls especially in the County Treasury, and lack of decentralized payment systems particularly at the departmental level. This is evidenced by irregular practices such as opening of un authorized bank accounts contrary to the guidelines of the Transition Authority, lack of maintaining of cash books for some accounts, un-surrendered imprests, lack of adherence to the budget implementation, among other irregularities also highlighted in the report of the Auditor General 2013/2014 and the Controller of Budget Third Quarter Report 2013/2014. This heightened impunity on the part of the County Governor has resulted to continued loss of Public Funds.

130. The Governor contested that the Regulations required to give effect to section 155(5) of the Public Finance and Management Act of 2012 were yet to be gazetted.

Observations of the Committee

131. Section 155(5) of the Public Finance Management Act, 2013 provides "*a county government entity shall establish an internal auditing committee whose composition and functions are to be prescribed by the regulations.*"

132. The Committee observed that the Regulations were indeed yet to be gazetted. Nevertheless, in light of Article 10 and 201(e) of the Constitution, the Committee observed that the County Government ought to have established an Audit Committee as required by the Act even as the Regulations were awaited.

133. *Article 10 provides for national values and principles of governance which include good governance, transparency and accountability. Article 201(e) requires financial management to be responsible, and fiscal reporting to be clear.*

134. In addition, the Committee observed that section 155(3) of the Public Finance Management Act provided a comprehensive framework with regard to putting in place the necessary arrangements for conducting internal audit functions. To this end, even in the absence of Regulations, the Public Finance Management Act fully provides the necessary mechanism for internal audit processes.

135. The Committee found that failure to the establish the Internal Audit Committee during this transitional period did not rise to the threshold of gross violation of the law. The Committee however recommends, that owing the importance of the Internal Audit Committee, the Governor sets up the Committee within thirty days.

5.2 CHARGE 2: CRIMES UNDER NATIONAL LAW

~~i. Allegation 1: Violation of Article 212 of the Constitution of Kenya 2010, and section 58 of the Public Finance Management Act, 2012 by borrowing a loan of Kshs. 200 Million from Kenya Commercial Bank without guarantee by the National Treasury; the said loan was not factored in the Debt Strategy Paper of the County Government of Murang'a over the medium term expenditure framework, contrary to section 140 (1) (d) of the Public Finance Management Act.~~

136. In response to the allegation, the Governor stated that the Kshs 200 million was not meant to be a loan but a temporary financing arrangement which did not

require a guarantee from the National Treasury. This short - term borrowing was allowed by section 142 of the Public Finance Management Act. Further, that the loan was disclosed in the Debt Management Paper.

Observations of the Committee

137. The Committee observed that the Governor, at *page 190 of Annex 8*, had produced a letter dated 26th November, 2015 from the Clerk of the County Assembly addressed to the County Executive Committee Member Finance and Planning which stated that the County Assembly had authorised the County Treasury to borrow on short term basis funds not exceeding five-per cent of the most recent audited revenue pursuant to section 142 of the Public Finance Management Act.
138. The Controller of Budget in her letter to the Clerk of the Senate dated 5th November, 2015, which is attached as *Annex 11*, indicated that in the Third Quarter County Government Budget Implementation Review Report for the Financial Year 2014/2015, the Controller of Budget reported that Murang'a County had procured a Kshs. 200 million overdraft facility irregularly. The overdraft was flagged as irregular because at the time of the preparation of the report the Controller of Budget was not in possession of documentation showing County Assembly approval. The Office of Controller of Budget indicated that it had subsequently established that there was indeed County Assembly approval for procuring in line with section 142 of the Public Finance Management Act.
139. Further the Controller of Budget had since established that for short-term borrowing for the purpose of cash management, the national Government guarantee was not required. The Controller of Budget concluded by stating that the procurement of the short-term loan was in accordance with section 142(1) of the Public Finance Management Act.

140. In view of these clarifications by the Controller of Budget, the Committee did not find any irregularity in the procurement of the short-term loan.

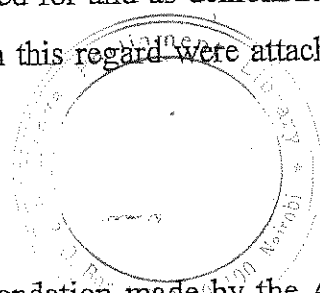
ii. **Allegation 2: Contrary to Article 201(d) of the Constitution of Kenya 2010** that requires public money to be used in a prudent and responsible way, the County Executive irregularly purchased Hay for cows at the controversial Mariira Farm, further investigations reveals that there was no documented evidence for release and delivery of the 20,000 bales of Hay, resulting to loss public funds amounting Kshs.4 million. This criminal undertaking is clearly substantiated in the Auditor General Report for the period 1 July 2013 to 30 June 2014.

141. In support of this Charge, the County Assembly referred to the Auditor General's Report for the period 1st July 2013 to 30th June 2014 where the Auditor General observed, at *page 355 of Annex 7*, the following anomalies with regard to procurement of hay bales for Mariira Farm. That "there was no proof of acknowledgement of receipt of goods in form of delivery notes or S13s as they were not availed for audit"; "there was no evidence of issuance to the end user unit through S11 vouchers as they were not availed for audit verification"; "in contravention of the Procurement Act, provision of goods and services amounting to Kshs. 4,995,000/- were not advertised nationally"; and "hay bales worth Kshs. 4,995,000/- had not been delivered".

142. The Governor contended that the procurement of hay grass was as per the procurement law. He stated that Mariira Farm is an old government institution for farmers training purposes dating back in the 1960's. At inception of County Governments and subsequent transfer of the facility to the County Government of Murang'a by the Transition Authority, the County government decided to make a

strong Farmers' Training Centre and a dairy-breeding centre. This was intended to improve the Dairy value chain through supply of pedigree or breeding stock. The County Government procured high quality cattle from around the Country. This brought about the need for hay as feeds for the cattle

143. It was the Governor's case that the Auditor General's report alludes to lack of proof of acknowledgement of goods or S13 as they were allegedly not availed for audit. These documents were never requested for and as demonstrated above they were available. A number of documents in this regard were attached from *pages 201 to 249 of Annex 8.*



Observations of the Committee

144. The Committee observed that the recommendation made by the Auditor General on the matter of the supply of hay to Mariira Farm was that investigations into the procurement ought to be instituted to establish whether all the hay paid for was delivered.

145. The Committee agrees with the Auditor General that there would be need for further investigations to be carried out by the relevant Committee of the County Assembly. The County Assembly is requested to share its findings on this matter with the Senate within 90 days.

- iii. **Allegation 3: Contravention of Articles 201(d) and 227(1) of the Constitution of Kenya 2010 that require a state organ or any other public entity to contract goods or services in accordance with a system that is fair, equitable and cost effective and violation of Section 29 of the Public Procurement and Disposal Act, 2005, by incurring exorbitant costs of advertisement amounting to Kshs. 247 Million, glaringly inclined to one Company in the name of 'Top Image Media' according to the Controller of Budget report for FY 2014/2015. This**

spells gross irregularity in operations of the County Executive, in procurement of media services, intentionally skewed towards one particular company. Further scrutiny by the County Assembly reveals that the County Executive has continuously evaded the use of open tendering in procurement of goods and services.

146. The matter of the quantum utilized in the expenditure on advertising has already been dealt with. However, the allegation cited of the inclination to awarding one company, Top Image Media remains outstanding.

147. It was the Governor's case that the procurement of Media buyers was through a pre-qualification process, advertised in the local media. Successful firms were shortlisted and appointed media buyers. Various firms had been invited to do different activities on budget lines. Their role was to negotiate purchase and monitor advert space on behalf of the County government. All advertisements on print, electronic or outdoor were guided by the rate cards which had been provided by all the media houses.

Observations of the Committee

~~148. On this matter, no further information was availed by the County Assembly to prove the allegations relating to improper procurement of Top Image and further the County Assembly did not rebut the assertions of the Governor on the matter. In the circumstances the Committee is inclined to find that with the evidence on record the allegation had not been substantiated.~~

iv. Allegation 4: Violation of Article 41 (1) of the Constitution of Kenya 2010 that stipulates the rights of every person to fair labour practises and Section 19 of the Employment Act, 2012, through failure to remit statutory deductions of

the defunct local authorities, which have continued to attract interest and penalties to a tune of Kshs. 131,615,210.00.

149. The Auditor General in his Report, *appearing at page 359 of Annex 7*, noted that Kshs. 131,615,210/- in statutory deductions of the defunct Local Authority remained unpaid as at 30th June, 2014 and continued to attract interest.

Observations of the Committee

150. The Committee observed that the Auditor General had recommended that the process of settling the statutory deductions needed to be verified and necessary arrangements made to officially take over the confirmed liabilities. The Committee agreed with the recommendation of the Auditor General and further recommends that the verification and settling of the liabilities be completed within the financial year.

5.3 CHARGE 3: ABUSE OF OFFICE/ GROSS MISCONDUCT

- i. Allegation 1: Violation of Article 75 (1) of the Constitution of Kenya 2010 on conduct of state officers and Section 13 of the Leadership and Integrity Act using public funds to brand his name that is evident in the numerous advertisements in a vernacular radio station and bill boards erected along the roads and at Ihura Stadium gate; the Governor has continued to misappropriate public funds for personal branding in every advertisement made by the County. For instance, the front page of the printed examinations cited 'Murang'a County Post Mock Examinations' for the year 2014 and 2015 bear the name of the Governor insinuating that, he is the sole sponsor of the program and not the County Government.

151. Article 75(1) of the Constitution provides-

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

- (a) any conflict between personal interests and public or official duties;*
- (b) compromising any public or official interest in favour of a personal interest; or*
- (c) demeaning the office the officer holds.”*

152. Section 13 of the Leadership provides—

“(1) For the purposes of Articles 99(1)(b) and 193(1)(b) of the Constitution, a person shall observe and maintain the following ethical and moral requirements—

- (a) demonstrate honesty in the conduct of public affairs subject to the Public Officer Ethics Act (No. 4 of 2003);*
- (b) not to engage in activities that amount to abuse of office;*
- (c) accurately and honestly represent information to the public;*
- (d) not engage in wrongful conduct in furtherance of personal benefit;*
- (e) not misuse public resources;*
- (f) not discriminate against any person, except as expressly provided for under the law;*
- (g) not falsify any records;*
- (h) not engage in actions which would lead to the State officer’s removal from the membership of a professional body in accordance with the law; and*
- (i) not commit offences and in particular, any of the offences under Parts XV and XVI of the Penal Code (Cap. 63), the Sexual Offences Act (No.3 of 2006), the Counter-Trafficking in Persons Act (No. 8 of 2010), and the Children Act (Cap. 141).*

(2) A person who wishes to be elected to a State office shall, for the purposes of this section, submit to the Independent Electoral and Boundaries Commission a Self-declaration in the form set out in the First Schedule.

153. To support this allegation, the County Assembly produced a copy of the Murang'a County Post Mock Examination and a photograph of a project signboard at Ihura Stadium.
154. It was the statement of Hon. James Kagoni that the County Governor exhibited abuse of office/gross misconduct by affixing his personal portraits in major County Government funded projects contrary to Articles 73 (1) (a) (i) (iv) and 75 (1) of the Constitution of Kenya 2010 and Section 13 of the Leadership and Integrity Act. The County Governor directed/allowed his portrait to be erected in the project sign board that has been erected at proposed fencing of Ihura Stadium in Murang'a town in a project sign board on street lighting among others. The photographic evidence depicting the Governors portrait in a signboard of a County Government funded project has been produced before the Senate.
155. To counter the allegation, the Governor stated that the Governor is the chief representative of the County Government. He is the face of the County Government. The Murang'a County Post Mock Examinations were a County initiative funded by the County Government. This explains why the letterhead for the County Government is prominently displayed on the examination papers. The statement on the examination papers by the Governor was a personal statement to the candidates to encourage and motivate them to perform better as a good role model to Murang'a children. This was one of the objectives of 'MURANG'A CHILD CAN' initiative. 'Murang'a Child Can' signifies the potential the child has towards better performance.

156. Article 73 (1)(a)(i)- iv of the Constitution states as follows:

Responsibilities of leadership

73. (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;

157. Article 75(1) of the Constitution provides as follows:

Conduct of State Officer

75(1) *A State Officer shall behave, whether in public or and official life, in private life, or in association with other persons, in a manner that avoids—*

(a) any conflict between personal interests and public or official duties;

(b) compromising any public or official interest in favour of a personal interest; or

(c) demeaning the office the officer holds.

158. Section 13 of the Leadership and Integrity Act states as follows:

Conduct of State officers.

75. (1) *A State officer shall behave, whether in public and official life, in private life, or in association with other persons, in a manner that avoids—*

(a) any conflict between personal interests and public or official duties;

(b) compromising any public or official interest in favour of a personal interest; or

(c) demeaning the office the officer holds.

(b) not to engage in activities that amount to abuse of office;

(c) accurately and honestly represent information to the public;

(d) not engage in wrongful conduct in furtherance of personal benefit;

(e) not misuse public resources;

(f) not discriminate against any person, except as expressly provided for under the law;

(g) not falsify any records;

(h) not engage in actions which would lead to the State officer's removal from the membership of a professional body in accordance with the law; and

(i) not commit offences and in particular, any of the offences under Parts XV and XVI of the Penal Code (Cap. 63), the Sexual Offences Act (No. 3 of 2006), the Counter-Trafficking in Persons Act (No. 8 of 2010), and the Children Act (Cap. 141).

(2) A person who wishes to be elected to a State office shall, for the purposes of this section, submit to the Independent Electoral and Boundaries Commission a self-declaration in the form set out in the First Schedule.

159. The Governor in response to this allegation stated that the personal portraits were meant for identification to avoid confusion with other projects by other agencies like CDF and besides it is not a violation of any law.

160. The Special Committee notes that Article 231(4) of the Constitution provides as follows:

"Notes and coins issued by the Central Bank of Kenya may bear images that depict or symbolize Kenya or an aspect of Kenya but shall not bear the portrait of any individual"

161. The Special Committee notes that the constitutional principle behind Article 231(4) is that no individual should symbolize our country of Kenya and by extension the image of the country should not be synonymous with the portrait of an individual. Similarly, the Governor is under an obligation to build the brand of

Muranga County without making it synonymous with his image. The Governor's use of his personal name and image on bill boards and other advertisements as well as on the mock examination paper smirks of personal branding and political aggrandizement. This is the use of public resources to advance personal political goals. This is contrary to the provisions of Articles 73 and 75 of the Constitution.

162. The Committee stated that this violation did not rise to the level of gross violation of the law. However, the Committee recommended that all bill-boards and other advertisements bearing the image of the Governor be removed and that in future no bill-board or other advertisement concerning County Government-funded projects should bear the image of the Governor.

163. The Committee observed that the trend of personal branding by Governors on County Government-funded projects advertisements and bill-boards was rampant in the country. The Committee therefore recommended that this practice should halt in all Counties with immediate effect. In future, any Governor who contravenes these provisions of the law should be surcharged for the cost of the advertisement.

~~ii. **Allegation 2: Pretentious realignment of Departments and programs within departments, that had not exhausted their budgets hence disregarding avenues that have been provided for by law, as manifested during supplementary budget for FY 2014/15 , thus causing confusion and hindering effective budget implementation of programs particularly in the departments of Trade, Industry, Commerce, Agro Marketing, Cooperatives, Agriculture and Livestock.**~~

164. The statement of Hon. Joseph Kimani Gitau set out that in the FY 2014/2015, the County Governor as the head of the County executive pretentiously realigned County Departments and programs within departments,

that had not exhausted their budgets hence disregarding avenues that have been provided for by law, as manifested during supplementary budget for FY 2014/15 thus causing confusion and hindering effective budget implementation of programs particularly in the departments of Trade, Industry, Commerce, Agro Marketing, Cooperatives, Agriculture and Livestock.

165. Further that as a result of this realignment of the Departments, the County Governor caused confusion as some Departments had already spent their budgetary allocations while others had not exhausted their budgetary allocations as explained in the recommendations of the Budget and Appropriation committee report on the approved 2014/2015 supplementary budget. It was therefore impossible to fully implement the budget which in essence contributed to non-delivery of services to the people of Murang'a.

166. The Governor's response to this allegation was that during the re-alignment of the programs, the programs always move with the budget allocations.

167. The Special Committee noted that the County Assembly did not establish what provision of the law has been breached by the Governor re-aligning programs. The Committee further observed that an accounting officer of a county government entity may re-allocate funds between sub-votes in the budget provided the request is approved by the County Treasury.

iii. **Allegation 3:** Appointment of Mr. Christopher Ngera, as the Chief Officer for Education and Technical Training department, who had been rejected by the County Assembly contrary to Article 185 of the Constitution of Kenya 2010 and Section 45 (1)(b) of County Governments Act 2012; thus defrauding

public funds through payment of allowances/salaries to the said Chief Officer, for the period he was illegally in office

168. Section 45(1)(b) of the County Governments Act, 2012 provides that-

- (1) *The governor shall—*
- (a) *nominate qualified and experienced county chief officers from among persons competitively sourced and recommended by the County Public Service Board; and*
- (b) *with the approval of the county assembly, appoint county chief officers*

169. The County Assembly presented as evidence the Report of the Education Committee rejecting Mr. Christopher Waweru Ngera as Chief Officer, Education Department, dated 3rd September, 2015 and the letter of appointment of the said officer.

170. Hon. Mary Wambere Njoroge further testified that the Governor nominated Mr. Christopher Ngera for appointment as the Chief Officer for Education and Technical Training Department. The said Mr Ngera was vetted by the County Assembly and the nomination rejected. The County Assembly complained that despite the rejection, the Governor went ahead and appointed Mr. Ngera as the Chief Officer, Education.

171. Further, that Section 45 (1) (b) of County Governments Act 2012, bestows the power to approve appointment of Chief Officers in the County Assembly, however, the Governor in complete disregard of Section 45 (1) (b) of the County Governments Act, 2012, appointed the said Chief Officer as the Chief Officer Education and Technical Training, despite the appointment of the said officer having been rejected by the County Assembly. This resulted in

defrauding public funds though payment of allowances/salaries paid to the said officer for the period that he was illegally in office.

172. It was the Governor's defence to this allegation that the County Public Service Board following a competitive process recommended to the Governor the name of Christopher Ngera for the position of Chief Officer - Education & Technical Training. The Governor then forwarded the nominee for vetting and approval on 4th August 2014 of the Assembly, with an acknowledgement of receipt letter done on 7th August 2014, but the Assembly did not approve or reject the nomination within 14 days provided for under Section 8 of the County Government Act 2012, Public Appointments (Parliamentary Approval) Act Cap 136, which by virtue of Section 8(2) of the County Government Act 2012 applies in vetting nominees for appointment to County Public Offices. The Appointment was therefore done under Section 9 of the said Act on 9th September 2014, well after the fourteen (14) day deadline had lapsed. The County Assembly purported to disapprove the appointment on 4th September 2014. Besides, the said Mr Ngera did not take up the appointment and hence no funds were spent. It is important to note that the role of the Assembly under Section 8 of the County Government Act is to the vet, approve or reject the nominee and not to carry out a comparative analysis of the interviewed candidates as that is the role the County Public Service Board.

173. Section 8 of the County Governments Act, 2012 provides as follows:

“(1) The county assembly shall—

(a) vet and approve nominees for appointment to county public offices as may be provided for in this Act or any other law;

(b) perform the roles set out under Article 185 of the Constitution;

(c) approve the budget and expenditure of the county government in accordance with Article 207 of the Constitution, and the legislation

contemplated in Article 220(2) of the Constitution, guided by Articles 201 and 203 of the Constitution;

(d) approve the borrowing by the county government in accordance with Article 212 of the Constitution;

(e) approve county development planning; and

(f) perform any other role as may be set out under the Constitution or legislation.

(2) If a county assembly fails to enact any particular legislation required to give further effect to any provision of this Act, a corresponding national legislation, if any, shall with necessary modifications apply to the matter in question until the county assembly enacts the required legislation."

174. Sections 8 and 9 of the Public Appointments (Parliamentary Approval) Act provide as follows-

8. *Period for consideration and report*

(1) Unless otherwise provided in any law, a Committee shall consider a nomination and table its report in the relevant House for debate and decision within fourteen days from the date on which the notification of nomination was given in accordance with section 5.

(2) At the conclusion of an approval hearing, the Committee shall prepare its report on the suitability of the candidate to be appointed to the office to which the candidate has been nominated, and shall include in the report, such recommendations as the Committee may consider necessary.

9. *Failure of Parliament to act on nomination*

If, after expiry of the period for consideration specified in section 8, Parliament has neither approved nor rejected a nomination of a candidate, the candidate shall be deemed to have been approved.

175. The Special Committee notes that the law applicable to approval of appointments by the County Assembly is the Public Appointments (Parliamentary Approval) Act. The

County Assembly did not disapprove the appointment of Mr. Christopher Ngera as the Chief Officer, Education and Training within the stipulated fourteen (14) day deadline. The disapproval of 4th September 2015 therefore came too late in the day as the nomination of Mr. Ngera had already been approved by operation of the law on 21st August, 2014.

- iv. **Allegation 4: Use of personal portraits in County funded projects contrary to Article 73 (1) (a) (i) and (iv) on public trust, Article 75 (1) of the Constitution of Kenya 2010 and section 13 of the Leadership and Integrity Act.**

176. Article 73(1)(a)(i) and (iv) provides as follows-

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; and

(iv) promotes public confidence in the integrity of the office.

177. This allegation was supported by a photograph of a project sign board at Ihura Stadium.

178. Hon. Mary Waithera Njoroge testified in support of this allegation and set out the following evidence in her statement:-

- a. That the County Governor acted in violation of Article 75 (1) of The Constitution of Kenya 2010 on Conduct of state officers and Section 13 of the Leadership and Integrity Act by using public funds to brand his name as was evidenced in the numerous advertisements in a vernacular radio station and bill boards erected along the roads and at Ihura Stadium gate; the Governor has continued to misappropriate public funds for personal branding in every advertisement made by the County. For instance, the front page of the

printed examinations cited 'Murang'a County Post Mock Examinations' for the year 2014 and 2015 bearing the name of the Governor insinuating that, he is the sole sponsor of the program and not the County Government.

179. That Article 75 (1) of The Constitution of Kenya 2010 provides that:-

"A state officer shall behave whether in public and official life, in private life or in association with other persons in a manner that avoids any conflict between personal interest and public or official duties, compromising any public or official interest in favour of a personal interest"

180. The Governor in response to this allegation stated that the personal portraits were meant for identification to avoid confusion with other projects by other agencies like CDF and besides it is not a violation of any law.

181. The Special Committee notes that this allegation is similar to or a repeat of allegation 1 above. The Committee has already noted that the use of personal portraits on official County Government funded projects is an abuse of office for personal political advancement.

v. **Allegation 5: Loss of public funds, through payment of 80 ghost workers, and lack of a precise inventory of the staff establishment, as indicated in the Report of the Auditor General 2013-2014 contrary to Article 226 (5) of the Constitution of Kenya 2010.**

182. Article 226(5) of the Constitution provides that "*if the holder of a public office, including a political office, directs or approves the use of public funds contrary to law or instructions, the person is liable for any loss arising from that use and shall make good the loss, whether the person remains the holder of the office or not.*"

183. Hon. Joseph Kimani Gitau made a statement that the County Governor caused loss of public funds through payment of 80 ghost workers, and lacked a precise inventory of the staff establishment, as indicated in the Report of the Auditor General 2013-2014 contrary to Article 226 (5) of the Constitution of Kenya 2010. The Governor being a state officer and head of the County Executive approved the payment of the above workers contrary to the law and is therefore liable for the loss of public funds as indicated in the Report of the Auditor General for 2013-2014.

184. The Governor's case was that the County establishment listing that was provided for auditing was based on the IPPD Establishment as at June, 2014 which reflected staff strength of 2,366 officers compared to 2,287 paid in February, with the Eighty (80) Officers difference arising out of the mobility of staff payroll data from the Counties were erroneously devolved to in January, 2014 by the various devolved function ministries. Though some officers were physically on the ground, their payroll data was erroneously sent to other counties during devolution of payrolls to counties in January hence the number in the payroll system could not tally with the physical number on the ground. The County has started in-depth HR Audit by JKUATES and the County is also a beneficiary of the HR audit that is being spearheaded by the Ministry of Devolution and Ernst & Young. Some officers though working in and for the County were not in the county IPPD as their Payroll Data was erroneously sent to other counties in January by the National Government Ministries hence the 328 Officers not appearing in our Compliment. One of the Six (6) Officers appearing in the payroll though said not to be working in the county were confirmed to be in the county, Two (2) others were confirmed to have resigned and salaries stopped, while the rest three (3) were confirmed to be physically working in other counties. The Ministry of Devolution further had requested that counties continue paying the officers whose Payrolls

were erroneously devolved to other counties, as mechanisms to transfer them to their correct counties are finalized.

185. The Special Committee noted that the report of the Auditor General was not categorical and stated that "...the County Executive could be paying ghost workers who draw salary but do not participate in the provision of public services." The Committee further noted that the matters complained of arose during the transition period from the local authorities under the former Constitution to the County Governments under the new Constitution. Such discrepancies during the transition period, though not desirable, are not unexpected. They do not disclose the commission of an intention to defraud the County Government by the Governor.

vi. **Allegation 6: Failure to appoint a substantive Chairperson of County Public Service Board and allowing the Vice chairperson to occupy the said office for undefined period contrary to Section 64 (2) of the County Governments Act, 2012.**

186. Section 64(2) of the County Governments Act, 2012 provides that "*acting appointments shall be made only by the lawful appointing authority and for a specified period.*"

187. Hon. Mary Waithira Njoroge gave evidence in her statement that after the former Chairperson of the County Public Service Board relinquished his position through a resignation letter in November 2014, the Governor consequently appointed an acting Chairperson to the position. Section 64 (2) of the County Governments Act 2012, provides that acting appointments shall be made only by the lawful appointing authority and for a specified period. Hon. Njoroge stated that while she appreciated that the time in question hasn't been specified, it's

worth noting that reasonable time ought to have taken course. It was therefore in her view that the County Governor has failed to appoint a substantive Chairperson to the position of the County Public Service Board. The Vice Chair has acted in the substantive position for a whole year.

188. The Governor's response was that Section 64 of the County Government Act allows for appointment in an acting capacity. The Acting Chair and Vice Chair of the County Public Service Board have the requisite qualifications set out under Section 58. Section 64 of the County Government Act does not stipulate the period within which the acting appointment should be restricted. Besides, the appointment of substantive Chair is in progress.

189. The Special Committee noted the provisions of Section 64 of the County Governments Act which states as follows;-

64. No unqualified person may be appointed in acting capacity

(1) A person shall not be appointed to hold a public office in an acting capacity unless the person satisfies all the prescribed qualifications for holding that public office.

(2) Acting appointments shall be made only by the lawful appointing authority and for a specified period.

(3) Nothing in this section shall prevent a public officer from—

(a) delegating a duty for which the law does not prohibit delegation; or

(b) deploying another officer to perform duties vested in another office during a temporary absence.

(4) Any delegation or deployment under subsection (3) shall—

(a) be made by an officer who is qualified and competent to perform the duty; and

(b) not undermine the expeditious appointment or deployment of a

competent person to the public office concerned.

(5) If it comes to the attention of the County Public Service Board that a public officer has purportedly made an acting appointment, delegation or deployment as the case may be, contrary to the provisions of this section, the County Public Service Board shall take the necessary corrective action.

190. The Interpretations and General Provisions Act, Cap 2 of the Laws of Kenya provide as follows where no time is prescribed for the doing of any act:

58. Provisions where no time prescribed

Where no time is prescribed or allowed within which anything shall be done, such thing shall be done without unreasonable delay, and as often as due occasion arises.

191. Section 58(1)(a) provides that:

The County Public Service Board shall comprise-

(a) A chairperson nominated and appointed by the County Governor with the approval of the County Assembly;

192. The Special Committee noted that the position of Chairperson of the County Public Service Board is an important position in the County Government set up. The Chairperson is expected to guide the recruitment and manage the staff of the County Government. It was the personal responsibility of the Governor to nominate a person for the position of Chairperson of the County Public Service Board without unreasonable delay as soon as the previous Chairperson of the County Public Service Board tendered their resignation. The delay in doing so by over one year is unacceptable. This is a violation of sections 58(1)(a) and section 64(2) of the County Government Act.

193. The Committee observed that this violation did not rise to the level of gross violation. However, the Committee recommended that the Governor, in accordance with the relevant laws and procedures, undertakes the recruitment process for the Chairperson of the County Public Service Board and nominates the successful candidate within a period of 60 days.

vii. **Allegation 7:** The Governor failed in his duty to Gazette all the County Executive Members whom he appointed on different dates in accordance with Section 30(2) (i) of the County Governments Act, 2012.

194. Section 30(2)(i) of the County Governments Act, 2012 provides that the Governor shall *"by a decision notified in the county Gazette, assign to every member of the county executive committee, responsibility to ensure the discharge of any function within the county and the provision of related services to the people."*

195. Hon. James Kagoni in his statement that was submitted in evidence said that from the time the County Governor appointed the members of the County Executive Committee and the Chief Officers, he was either unwilling or failed or neglected to Gazette all the said Executive Committee Members whom he appointed on various dates in accordance with Section 30 (2) (i) of the County Governments Act, 2012.

196. The Governor contended that all the County Executive Committee Members are gazetted within the stipulated time frame and it has not been disclosed that there are those who have not been gazetted. He did not provide any proof of this by way of annexing copies of such gazette notices to his defence.

197. The Special Committee noted that though the Governor stated that he gazetted all County Executive Committee Members within the stipulated time frame he did not

provide any proof of this by way of annexing copies of gazette notices in the defence he submitted to the Special Committee. The Governor therefore failed to comply with the requirement set out under section 30(2)(i) of the County Governments Act.

198. The Committee observed that the allegation did not rise to the level of gross violation. The Committee however recommended that the Governor either provides proof of gazette of the County Executive Committee Members or, if they have not been gazetted, proceeds to gazette the Members immediately.
199. The Committee further recommends that in the future the Committee should gazette any person appointed as a County Executive Committee Member in accordance with the law.
200. The Committee observed that the Senate was in the process of considering national legislation to enable County Governments to establish County Printers and urged that the enactment of this critical legislation be fast-tracked.

viii. **Allegation 8:** **Contrary to the provisions of section 30(2)(j) of the County Governments Act, 2012, the County Governor, since inception of the County Government has never submitted to the Murang'a County Assembly any implementation status report of county policies and plans;**

201. Section 30(2)(j) of the County Governments Act, 2012 provides "*the governor shall submit to the county assembly an annual report on the implementation status of the county policies and plans*".
202. Hon. James Kagoni stated to the Special Committee in his statement submitted in evidence that contrary to section 30 (2) (j) of the County Governments Act, 2012,

the County Governor, since inception of the County Government has never submitted to the Murang'a County Assembly any implementation status report of county policies and plans;

203. The Governor's response to this allegation was that the status report on the implementation of projects, legislations and county policies are submitted to the Implementation Committee of the County Assembly on regular basis.

204. The Special Committee noted that though the Governor stated that he submitted the status reports on implementation of project, legislations and county policies to the Implementation Committee of the County Assembly on a regular basis, he did not provide any proof of this by way of annexing copies of such status reports to his defence. The Governor therefore failed to comply with the requirement set out under section 30(2)(j) of the County Governments Act.

205. The Committee observed that the contravention did not rise to the level of gross violation of the law. The Committee however recommends that the Governor complies with section 30(2)(j) of the County Governments Act and provides quarterly reports to the Murang'a County Assembly on the status of the implementation of the County policies and plans.

ix. **Allegation 9:** The County Governor has continuously displayed negligence on his duties, by failing to issue Gazette notices of all important formal decisions made by him and/or the County Executive Committee, pursuant to section 30(2)(l) of the County Governments Act, 2012.

206. Section 30(l) of the County Governments Act, 2012 provides "*the governor shall sign and cause to be published in the county Gazette, notice of all important formal decisions made by the governor or by the county executive committee.*".

207. It was the evidence of Hon. James Kagoni that the County Governor has continuously displayed negligence in his duties, by failing to issue Gazette notices of all important formal decisions made by him and/or the County Executive Committee, pursuant to section 30 (1) of the County Governments Act, 2012. This has kept the public in the dark on the decisions made by the County Executive Committee which further contravenes Article 35 of the Constitution of Kenya 2010 on right to access information and Article 174 on the objects of devolution.

208. The Governor's response was that he is a stranger to this requirement.

209. The Special Committee noted that section 30(2)(1) of the County Governments Act is quite explicit on the requirement for the Governor to gazette all important formal decisions made by the Governor or by the county executive committee. It is therefore surprising that the Governor has denied knowledge of this requirement. However, the County Assembly has not specified which important formal decision or decisions were made by the Governor and which formal decisions were not gazetted. It was the County Assembly's burden to prove this allegation by setting out the specific formal decision(s) made by the Governor and which formal decision(s) were not gazetted.

9.0 MOTIVE

210. The Governor complained that the members of the County Assembly of Murang'a had an ulterior motive in passing the impeachment motion against him. In his statement of defence the Governor postulated that his Government's refusal to implement the Ward Development Fund was the motive for the County Assembly seeking to remove him from office. The Special Committee noted that it was the

Controller of Budget and not the County Government who had declined to approve any expenditure with regard to the Ward Development Fund.

211. A further perusal of the Hansard for the County Assembly of 21st October, 2015 when the Assembly passed the Motion for the removal of the Governor of Murang'a County did not have any reference to the Ward Development Fund by Members of the County Assembly which would betray ill-motive on the part of the County Assembly in passing the Motion.

6.0 FAIR TRIAL BEFORE THE COUNTY ASSEMBLY OF MURANG'A

212. When the Governor of Murang'a County appeared, by Advocate, before the special committee he raised a preliminary issue pursuant to Rule 14 of the Rules of Procedure for investigation into the proposed removal from office of a Governor on the Constitutionality of the resolution forwarded by the County Assembly of Murang'a to the Senate. The Governor submitted that the County Assembly of Murang'a purported to pass a resolution to approve a motion seeking impeachment of the Governor without according him the right to be heard. The Governor argued that the County Assembly had acted unconstitutionally and urged the Special Committee to first establish at the outset whether the action of the Assembly adhered to the requirements of due process and fair hearing set out under the Constitution as well as the Murang'a County Assembly Standing Order 67.

213. The Senate has traditionally avoided going behind the veil of a resolution of a County Assembly to interrogate if a County Assembly followed its own rules of procedure and therefore determine if the resolution was arrived at in a proper manner. In so doing the Senate has followed the prerogative of every legislature as stated by Seerval, H. M. in his treatise where he observes that the declaration in

Article 9 of the Bill of Rights (1688) involved the right of each House to be the sole judge of the lawfulness of its own proceedings even where the procedure of a House, or the right of its members to take part in its proceedings was dependent on statute. For such purposes, the House can as stated by May in his treatise, 'practically change or practically supersede the law'. It is important to note that this refers to instances where a House of Parliament resolves to follow a procedure notwithstanding the provisions of its own Standing Orders.

214. The special committee is however conscious of the provisions of Article 3(1) of the Constitution which states that **"Every person has an obligation to respect, uphold and defend this Constitution."** Neither the national Legislature nor a County Assembly can by resolution override the express provisions of the Constitution. Thus, so long as there is no clear violation of the Constitution by the County Assembly of Muranga, the Special Committee cannot question the lawfulness of the proceedings before the County Assembly vis-à-vis its Standing Orders and rules of procedure. However, it is incumbent upon the special committee to determine if there was any violation of the Constitution once such an allegation is brought before it.

215. ~~The special committee notes that the Governor of Muranga had earlier raised the~~ same complaint of denial of a fair hearing at the County Assembly before the High Court at Nairobi in High Court Constitutional Petition no. 458 of 2015 **Mwangi wa Iria & others -v- Speaker of Muranga County Assembly & others**. In his ruling on the Governor's application for conservatory orders to restrain the Senate from proceedings with the impeachment of the Governor, Justice J. L. Onguto ruled as follows:

"I take cognizance of the fact that the Senate is truly, what I may call, the Impeachment Court. The Senate is expected to not only investigate the nexus of

the allegations to the 1st Petitioner (the Governor). The Senate must also interrogate the entire process as it scurried through the County assembly. I have seen no law that restrains the Senate from returning a verdict that the process was not conducted as detailed under the Constitution or any law for that matter. Pray, the Senate rises to the occasion and is practical and realistic in its investigations.”

216. The special committee has therefore taken the decision to interrogate whether the County Assembly of Muranga breached the Constitution of Kenya in impeaching the Governor. The special committee is cognizant that its mandate is limited only to interrogating the constitutionality of the Assembly's actions and does not extend to interrogating the debates of the Assembly and other inner workings of that devolved legislature.

217. The Governor produced evidence and later made submissions before the special committee on the issue of denial of a fair hearing before the County Assembly of Muranga. The County Assembly on the other hand denied having violated the Governor's right to a fair hearing. From the documents provided and submissions made, the special committee has gleaned the following facts:-

(a) The County Assembly of Muranga on 13th October 2013 wrote a letter conveying to the Governor a proposed Motion for his removal from office. The letter set out the grounds on which the motion was based and attached a copy of the motion together with a file with evidence adduced for the Governor's perusal and information. The letter gave the Governor seven (7) days within which to provide any information to exonerate himself from the charges leveled against him. The Governor was also informed of his right to be heard;

(b) The letter was delivered to the Governor's office on 15th October 2013;

- (c) The Governor, through Mbugua Nganga & Co. Advocates, wrote a letter dated 16th October 2015, where he protested the motion proposing his removal from office and indicated that *“From the material supplied, we have been unable to discern any document that shows any nexus to the person of the Governor and the alleged violations.”* The Governor Advocates sought from the County Assembly for more documents/materials to enable them weight the alleged violations against the applicable constitutional threshold and respond appropriately.
- (d) The Governor’s Advocates letter dated 16th October 2015 was received by the Office of the County Assembly Speaker on 19th October 2015. The County Assembly of Muranga did not respond to the Governor’s Advocates letter dated 16th October 2015.
- (e) On 21st October 2015, in the absence of the Governor, the County Assembly proceeded to debate and adopt the motion proposing the removal from office of the Governor of Muranga County.
218. The Governor further complained that 20th October 2015 was a public holiday and that taking into account all circumstances of the facts surrounding the happenings at the County Assembly, he was not given adequate time to prepare his defence as the hearing of the motion was expedited so much as to deny him the time as well as opportunity to defend himself.
219. The Governor also complained that he was not given any notice of the date, place and time when the motion was to be debated to enable him avail himself and present his defence before the County Assembly of Muranga. The Governor argues that the County Assembly failed to respond to his Advocate’s letter and further failed to set up a Select Committee or invite him to appear and defend himself. He only learnt of his impeachment from the media and he argues that the resolution for his impeachment was adopted by the Assembly even before the seven days the Assembly had given him to respond had lapsed. This was therefore

in violation of his right to be heard and of a fair trial before the County Assembly. In response to this the County Assembly stated that the removal proceedings were announced in its Order Paper for 21st October 2015.

220. It was further submitted to the special committee that Article 25(c) of the Constitution guarantees the right to a fair trial to all persons. Article 47 of the Constitution further guarantees persons the right to administrative action that is lawful, reasonable and procedurally fair. In Petition No. 3 of 2014, Hon Martin Nyagah Wambora & County Assembly of Embu & Another, the High Court of Kenya held as follows—

“ ... the right to a hearing must be accorded to a Governor at any time that the motion proposing removal from office is being debated before it is approved and rejected.”

221. The Court of Appeal in Onyango Oloo -v- Attorney General (1986-1989) EA 456 stated as follows with regard to the principle of natural justice:

“The principle of natural justice applies where ordinary people would reasonably expect those making decisions which will affect others to act fairly and they cannot act fairly and be seen to have acted fairly without giving an opportunity to be heard ... There is a presumption in the interpretation of statutes that rules of natural justice will apply and therefore the authority is required to act fairly and so to apply the principle of natural justice...To “consider” is to look at attentively or carefully, to think or deliberate on, to take into account, to attend to, to regard, to think, hold the opinion... “Consider” implies looking at the whole matter before reaching a conclusion...A decision in breach of the rules of natural justice is not cured by holding that the decision would otherwise have been right since if the

principle of natural justice is violated, it matters not that the same decision would have been arrived at...It is improper and not fair that an executive authority who is by law required to consider, to think of all the events before making a decision which immediately results in substantial loss of liberty leaves the appellant and others guessing about what matters could have persuaded him to decide the manner he decided.”

222. In its determining whether the Governor was granted a fair hearing at the County Assembly, the special committee notes the findings of the High Court in Constitutional Petition no. 458 of 2015 Mwangi wa Iria & others -v- Speaker of Muranga County Assembly & others where the court held as follows:

“84. With regard to the right to be heard, my judgment does not favour the Petitioners’ (Governor) approach.

85. The 1st Petitioner, at one remove states and raises the fact that there was no fairing; and at another remove engages and admits that the 1st Petitioner was invited to state his case but opted to give a written response. Again, at one remove the 1st Petitioner complains and states that he was unable to attend as he was not afforded the opportunity; and at another remove the 1st Petitioner states that he asked for more time and to supplied with documents to help prepare his defence which time was allegedly declined.

86. In my judgment and without making a final finding, it is apparent that there was an invite to the 1st Petitioner to state his side of the story. It was for the 1st Petitioner to attend. It was his call. He opted not to attend. The 1st and 2nd Respondents appeared to be very cautious and even informed the 1st Petitioner that he was entitled to a fair hearing. He was also assure of fair administrative action. Whether this happened cannot be ascertained with finality at this stage.

87. It may be necessary to interrogate further whether the time afforded to the 1st Petitioner would adequately satisfy the requirement that opportunity be afforded to an accused person to prepare his defence. It may also be necessary to

interrogate whether the time was generally adequate. I however take cognizance of the fact that the time set for the process, even at the Senate level, appears to heap pressure on the parties. For the 2nd Respondent to have given the Petitioner seven days to prepare his defence, would in the circumstances of the case and in view of the statutory provisions not be too enormous or unconstitutional.”

223. The Committee considered the provisions of standing order 67 of the County Assembly of Murang'a as adopted on 2nd October, 2014 which states as follows-

224. The Committee considered the opposing submissions by the Governor and the County Assembly on whether the Governor received a fair hearing. The Committee deeply agonized over the matter but was unable to reach a unanimous decision on the same.

7.0 IMPEACHMENT GENERALLY

225. The Special Committee is cognizant of the role of the Senate as set out in Article 96(1) of the Constitution which provides that the *“the Senate represents the counties and serves to protect the interests of the counties and their governments”* Impeachment is one of the mechanisms by which the Senate exercises its role of protection of the Counties and their Governments.

226. In order to assist the Special Committee make an informed decision on the proposed impeachment, it is important that the Committee look at the origin and history of impeachment of public officials.

227. In England impeachment originated in the 14th century, when it became a means of initiating criminal proceedings based on clamour, or outcry. Among the first recognized cases of impeachment was that of William, 4th Baron Latimer, who had been closely associated with the government of King Edward III. The charges against Latimer were oppression in Brittany; that he had sold the castle of Saint-Sauveur to the enemy, and impeded the relief of Bécherel, a British garrison under siege, in 1375; that he had taken bribes for the release of captured ships, and retained fines paid to the king, and the city of Bristol; and finally, that in association with Robert Lyons, he had obtained money from the crown by the repayment of fictitious loans. Baron Latimer was subsequently impeached by Parliament.
228. Subsequent subjects of impeachment were often political figures, usually royal ministers. Latimer's case also marks the point at which impeachment became not merely a means of initiating criminal proceedings but also a method of trial.
229. After the mid-15th century, impeachment fell out of use until the 17th century, when it was revived as a means by which Parliament could get rid of unpopular ministers. The use of impeachment gradually waned as the 18th century progressed, mainly because it proved to be a political instrument by which to attack the king's ministers.
230. In the early 19th century the acceptance of the principle that cabinet ministers are responsible to Parliament, rather than to the sovereign, made impeachment unnecessary, and the procedure fell into disuse after the unsuccessful trial of Lord Melville in 1806.
231. In the United States, Alexander Hamilton, the Chief of Staff for George Washington and one of the interpreters and promoters of the US Constitution,

wrote that impeachment is "*a method of national inquest into the conduct of public men.*"

232. Senator William Blount of the United States was in 1797-1799 impeached by the House of Representatives for the alleged incitement of two Indian tribes to mount a military expedition against neighboring Spanish territories for purposes of capturing the same for Great Britain. The Senator was however removed by the Senate using its own internal procedures before he could be tried in the Senate.
233. Sometimes impeachment is not based on criminal activity but rather morality and professional conduct. Most recently (in July 2014), a member of the Missouri House of Representatives filed articles of impeachment against Governor Jay Nixon (D) for ordering Missouri's Department of Revenue to accept joint tax returns filed by same-sex couples who have been legally married in other states. The Missouri Constitution prohibits the state from recognizing same-sex marriages.
234. In 1929, the Oklahoma legislature impeached Henry Johnston, seventh governor of Oklahoma, after convicting him of general incompetency.
235. In Nigeria, several Governors have been impeached on the basis of corrupt practices. After setting up the anti-graft agency, the Economic and Financial Crimes Commission (EFCC), the Nigerian Government started targeting corrupt officials such as Governor Ayodele Fayose and his deputy from Ekiti State who were both impeached for corruption. The Governor of Bayelsa State, Diepreye Alamiyeseigha was also impeached for corruption and money laundering.
236. Abdulkadir Musa, the first Nigerian State Governor to ever be impeached met his fate because he was unable to form a cabinet. He had been elected on a platform

of the People's Redemption Party (PRP) when the dominant party in the House was the National Party of Nigeria, whose members he refused to nominate.

237. In Nigeria, incompetence is not a crime yet, for non-delivery and as a betrayal of public trust, it is an impeachable offense. Inability to govern is also not a crime yet it is grounds for impeachment.

238. During the Senate's consideration of the report of the special committee investigating the proposed removal from office of the Governor of Kericho County, the Senate adopted with approval the exposition of Senator Miriam Defensor Santiago of the Senate of the Philippines who in a keynote address at a workshop said that, "an impeachment trial is a unique process, because it is a hybrid. Impeachment is both quasi-judicial and quasi-political. It is neither a civil case nor a criminal case. A criminal case is designed to punish an offender and to seek retribution. In contrast, impeachment is the first step in a process that tries to remedy a wrong in governance. It has been said that the purpose of impeachment is not personal punishment, but rather to maintain constitutional government, through the removal of an unfit official from a position of public trust."

239. The Court of Appeal of Kenya in Civil Appeal No. 21 of 2014 Hon. Martin Nyaga Wambora & others -v- The Speaker of the Senate & others stated as follows concerning impeachment of Governors in Kenya:

"Our reading and interpretation of Article 181 of the Constitution as read with section 33 of the County Governments Act shows that removal of a Governor is a constitutional and political process; it is a *sui generis* process that is quasi-judicial in nature and the rules of natural justice and fair administrative action must be observed. The impeachment architecture in Article 181 of the Constitution reveals that removal of a Governor is not

about criminality or culpability but is about accountability, political governance as well as policy and political responsibility. Section 33 of the County Governments Act provides for the procedure of removal of an erring Governor. The organ vested with the mandate at first instance to move a motion for the removal of a County Governor is the County Assembly. Neither the Courts nor the Senate have the constitutional mandate to move a motion for the removal of a County Governor. The Senate's constitutional mandate to hear the charges against the Governor and may appoint a Special Committee to investigate the matter. It is our considered view that the jurisdiction and process of removal of a Governor from office is hierarchical and sequential in nature. There are three sequential steps to be followed; first is intuition of a motion to remove the Governor by a member of the County Assembly; second there is consideration of the motion and a resolution by two thirds of all members of the County Assembly and third, the Speaker of the County Assembly is to forward the County Assembly's resolution to the Senate for hearing of the charges against the Governor... The Constitutional and statutory mandate to initiate and consider a motion to remove a County Governor is vested in the County Assembly and the Senate."

240. It is therefore clear that the purpose of impeachment is not to apportion culpability, criminal or otherwise as that is for the courts. The purpose of impeachment is to ensure that the people of a county are governed in a manner consistent with the Constitution and laws of Kenya. Impeachment is all about accountability, political governance as well as policy and political responsibility.
241. The Senate therefore has the responsibility to set and maintain the standard for impeachment that bears the proper hallmarks of impeachment: due process, fairness and justice. This the Senate has endeavoured to do in the previous

impeachments that that it has undertaken as evidenced by the reports of its special committees in:-

- (a) The 1st impeachment of the Governor of Embu County - the report is dated 14th February 2014;
- (b) The 2nd impeachment of the Governor of Embu County - the report is dated 13th May 2014;
- (c) The impeachment of the Governor of Kericho County - the report is dated 3rd June 2014;
- (d) The impeachment of the Deputy Governor of Machakos County - the report is dated 15th August 2014.

242. It is noteworthy, for record purposes, that so far the Senate has found the charges in support of removal from office of a Governor substantiated in only one case, namely that of the Governor of Embu County. The Senate found the charges unsubstantiated in the case of the Governor of Kericho County as well as the case of the Deputy Governor of Machakos County.

243. The Governor of Embu County was impeached for grossly violating the provisions of the Public Procurement and Disposal Act, the Public Finance and Management Act as well as the Constitution of Kenya.

8.0 PUBLIC PARTICIPATION BEFORE THE COUNTY ASSEMBLY

244. The Governor also raised as a preliminary issue with regard to the provisions of Article 196(1) of the Constitution of Kenya which provides that "A county assembly shall-

- (a) **Conduct its business in an open manner, and hold its sittings and those of its committees, in public; and**

(b) Facilitate public participation and involvement in the legislative and other business of the assembly and its committees.”

245. The Governor postulated that the process of his impeachment was NOT conducted in a manner that allowed for adequate public participation. The Governor, through his Advocates, submitted that the level of participation of the public in his impeachment was a mere formality and not a real process that could be quantitatively gauged as adequate.

246. The Governor referred the special committee to High Court Petition No. 7 & 8 of 2014 Martin Nyaga Wambora & 30 Others versus the County Assembly of Embu & 4 Others (2015) where the Court held as follows”

“In our view the question is not whether the public ought to participate in the process of the removal of a governor but to what extent should that participation go. In our view, some level of public participation must be injected into the process in order to appreciate the fact that a governor is elected by the County, and in order to avoid situations where an otherwise popular governor is removed from office due to malice, ill will and vendetta on the part of the Members of the County Assemblies.”

247. To further illustrate his complaint, the Governor noted that the County Assembly of Muranga had only published a notice of the intention to remove the Governor under Article 181 of the Constitution in the Standard Newspaper. This notice, the Governor submitted, was not sufficient to facilitate public participation for reasons that;

(a) The notice did not set out the allegations made out against the Governor.

(b) The notice did not indicate the date and time when the motion to remove the Governor would be moved.

(c) Chapter VIII of the County Governments Act, 2012, sets out in material detail, the mode and form of citizens participation that should be undertaken at the Counties and which includes use of local infrastructure such as Ward Offices, notices to local churches, mosques and other forums.

(d) The notice was otherwise inadequate and unreasonable in the circumstances.

248. The Governor then relied on the South African case of Poverty Alleviation Network & Others -v- President of the Republic of South Africa & 19 others, CCT86/08 [2010] ZACC 5 where the essence of public participation was set out in the following terms:

“engagement with the public is essential. Public participation informs the public of what is to be expected. It allows for the community to express concerns, fears and even to make demands. In any democratic state, participation is integral to its legitimacy. When a decision is made without consulting the public the result can never be an informed decision. As this Court observed in *Doctors for Life*, both the duty to facilitate public involvement and the positive right to political participation “seek to ensure that citizens have the necessary information and the effective opportunity to exercise the right to political participation.” This can be achieved not only through elected representatives, but also by enabling citizens to participate directly in public affairs, “through public debate and dialogue with elected representatives, referendums and popular initiatives or through self-organization.”

249. The special committee notes that the South African case of Poverty Alleviation Network & Others -v- President of the Republic of South Africa & 19 others relied on by the Governor dealt with public participation in the context of law-making. The court expounded on its judgment as follows:

“The phrase “facilitate public involvement” is a broad concept, which relates to the duty to ensure public participation in the law-making process. The key words in this phrase are “facilitate” and “involvement”. To “facilitate” means to “make easy or easier”, “promote” or “help forward”. The phrase “public involvement” is commonly used to describe the process of allowing the public to participate in the decision-making process.”

250. In High Court Constitutional Petition No. 454 of 2012, Commission for Implementation of the Constitution versus Parliament, the question arose in the context of public participation on the Leadership and Integrity Act, No. 19 of 2012. The Court held that *“the National Assembly has a broad measure of discretion in how it achieves the object of public participation. How this is affected will vary from case to case but it must be clear that a reasonable level of participation has been afforded to the public.”*

251. The special committee pondered on the extent and nature of public participation required in impeachment proceedings. In High Court Petition No. 7 & 8 of 2014 Martin Nyaga Wambora & 30 Others versus the County Assembly of Embu & 4 Others Justices Mwongo, Korir J. and Odunga J. in their judgment issued on 12th February 2015 held as follows:

“In making a determination whether the County Assembly complied with its duty to facilitate public participation, the Court will consider what the County Assembly has done and in this case the question will be whether what the County Assembly has done is reasonable in all the circumstances. The factors that would determine reasonableness would include the nature of the business conducted by the County Assembly and whether there are timelines to be met as set by the law. This will be the ultimate determination on the method of facilitating public participation.”

252. Impeachment proceedings are quasi-judicial in nature and the procedure is similar to the procedure in criminal trials as the following elements are present:
- i.) charges are framed and put to the Governor;
 - ii.) the Governor pleads to the charges;
 - iii.) evidence is adduced against the Governor;
 - iv.) the Governor defends himself against the charges; and
 - v.) the Senate decides whether to pass a resolution to remove the Governor or not.
253. In determining whether or not there has been a gross violation of the Constitution, a quasi-judicial body need not take views from the public on whether or not there has been a gross violation of the Constitution as the same is a matter of fact and law.
254. While **Articles 118(1)(b)** and **196(1)(b)** provide that Parliament and County Assemblies should "*facilitate public participation and involvement in the legislative and other business of the*" Houses "*and its committees*" this must be read together with **Article 259** which requires that the "Constitution be interpreted in a manner that contributes to good governance."
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255. Proceedings for the removal of a Governor are different from recall proceedings as set out under **Article 104** of the Constitution where the electorate has a right to recall a Member of Parliament before the end of their term of Parliament. This power is to be exercised by the electorate directly and there is no involvement of elected representatives.
256. Article 1(2) of the Constitution provides that "*the people may exercise their sovereign power either directly or through their democratically elected representatives.*" Some functions are performed on behalf of the people by their

elected representatives and in this case, the impeachment was carried out by the members of the County Assembly of Muranga and the Senate pursuant to their role under Article 1 (2) of the Constitution. The Constitution and the County Governments Act have deliberately assigned the quasi-judicial role of impeachment to special state organs, that is, the county assembly and the Senate.

257. The Supreme Court of Nigeria in the case of **Inakoju & 17 Others v Adeleke & 3ors (2007) 4 NWLR (PT1025) 423 S.C** upheld the decision in *Akintola v. Aderemi (1962) All NLR 442 a 443, (1962) 2 SCNLR 139*, where it was held that *"The Governor is elected by the people - the electorate. The procedure and the proceedings leading to his removal should be available to any willing eyes. And this, the public will see watching from the gallery. It should not be a hidden affair in a hotel room. A Legislature is not a secret organisation or a secret cult or fraternity where things are done in utmost secrecy in the recess of a hotel. On the contrary, a Legislature is a public institution, built mostly on public property to the glare and visibility of the public. As a democratic institution, operating in a democracy, the actions and inactions of a House of Assembly are subject to public judgment and public opinion. The public nature and content of the Legislature is emphasized by the gallery where members of the public sit to watch the proceedings. Although I concede the point that a Legislature has the right to clear the gallery in certain deliberations for security reasons. I do not think proceedings for the removal of a Governor should be hidden from the public."*

258. In his book, "A citizen's guide to impeachment" Alan Hirsch Esq. lays down the procedure of impeachment in the United States- "*The Senate Rules on Impeachment stipulate that "at all times while the Senate is sitting upon the trial of an impeachment the doors of the Senate shall be kept open, unless the Senate shall direct the doors to be closed while deliberating upon its decisions." He goes on to say that "secrecy in deliberations is probably constitutionally safe. By analogy,*

jury deliberations have always been held in secret -- indeed, their secrecy is zealously guarded by the courts. Although there is a public interest in seeing such deliberations, it is outweighed by concern that fully candid discussions would be compromised if deliberations were public. "

259. The special committee finds that that the interpretation of Article 196 of the Constitution in a manner that promotes the purpose of the Constitution and contributes to good governance is that the public participation envisaged in proceedings for the removal of a Governor, is having the proceedings open to the public so that they are aware of the charges against the Governor and the Governor's response to such charges. Thus, advertisement of the proceedings for removal of the Governor and referring the public to the County Assembly's website for more details was sufficient to enable those members of the public interested in the proceedings to follow the proceedings against their Governor.

9.0 THRESHOLD FOR IMPEACHMENT

260. The Special Committee shall, after hearing all the evidence tendered before it and taking all matters into consideration, need to decide whether it is Constitutional, lawful, pragmatic and in the interests of the County of Murang'a for the Governor ~~to be removed from office.~~

261. On the threshold or standard of proof for impeachment, Yale Law professor Charles Black Jr. in "Impeachment: A Handbook" states as follows:

"Weighing the factors, I would be sure that one ought not to be satisfied, or anything near satisfied, with the mere 'preponderance' of an ordinary civil trial, but perhaps must be satisfied with something less than the 'beyond a reasonable doubt' standard of the ordinary criminal trial, in the full literal meaning of that

standard. 'Overwhelming preponderance of the evidence' comes perhaps as close as can to denoting the desired standard."

262. Micheal J. Gerhardt, visiting Professor of Law, Duke University, in "The Special Constitutional Structure of the Federal Impeachment Process", while reviewing the impeachment trial of then US President Bill Clinton states as follows on the issue of threshold-

The first such feature of the constitutional allocation of power for impeachment and removal is that it facilitates and rewards a pragmatic or flexible analysis and impedes a formalistic analysis of the fundamental questions at the core of President Clinton's impeachment proceedings- whether his misconduct constituted a "high crime or misdemeanor". A pragmatic analysis of this issue entails balancing various practical considerations or factors, including the magnitude of harm that an impeachable official's misconduct has caused society or the constitutional order, the nexus between the official's duties and his misconduct, public opinion, and other possible avenues of redress, such as electoral process or legal proceedings. In contrast, a formalist analysis employs rigid criteria for, or extremely well-defined elements of impeachable offences, such as treating every violation of the federal criminal law or every breach of the public trust as justifying removal. By vesting the impeachable authority in the politically accountable authorities of the House and the Senate, the framers of the Constitution deliberately chose to leave the difficult questions of impeachment and removal in the hands of officials well versed in pragmatic decision making. Members of Congress are pragmatists who can be expected to decide or resolve issues, including the appropriate tests, by recourse to practical rather than formalist, calculations. In fact, members of

Congress decide almost everything pragmatically, and decisions about impeachment and removal are not exception. The vesting of impeachment authority in political branches necessarily implies the discretion to take various factors, including possible consequences, into consideration in the course of exercising such authority....

Moreover, if formalist reasoning were the norm in impeachment proceedings, many questions posed by the President's misconduct would not have been nearly as heart-wrenching or politically divisive as they were. Removal would have been extremely easy and straightforward. In addition, the American people flatly rejected the strict liability notion of impeachment; most Americans acknowledged that the President had broken the law, but still did not regard his misconduct as constituting an impeachable offence or as justifying his removal. Most Americans favoured a less rigid approach that balanced the harm and wrongfulness of the President's misconduct against the public interest or welfare.

263. In the Supreme Court of Nigeria case of Hon. Muyiwa Inakoju & others -v- Hon. Abraham Adeolu Addeke S.C. 272 of 2006 it was held as follows:

"A Governor as a human being cannot always be right and he cannot claim to be always right. That explains why section 188 talks about gross violations. Accordingly, where a misconduct is not gross, then section 188 weapon of removal is not available to the House of Assembly."

264. It is useful to note the various meanings of the word "gross" in relation to violation. Gross violation is a flagrant violation, a glaring error, nasty, unpleasant, vulgar or crass. It must be a severe transgression of the Constitution or a law.

265. In Kenya it is useful to note the provision of Article 73 of the Constitution which deals with the responsibilities of leadership:

Responsibilities of leadership

73. (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; and*

(b) *vests in the State officer the responsibility to serve the people, rather than the power to rule them.*

(2) *The guiding principles of leadership and integrity include—*

(a) *selection on the basis of personal integrity, competence and suitability, or election in free and fair elections;*

(b) *objectivity and impartiality in decision making, and in ensuring that decisions are not influenced by nepotism, favouritism, other improper motives or corrupt practices;*

(c) *selfless service based solely on the public interest, demonstrated by—*

(i) *honesty in the execution of public duties; and*

(ii) *the declaration of any personal interest that may conflict with public duties;*

(d) *accountability to the public for decisions and actions; and*

(e) *discipline and commitment in service to the people.*

266. In High Court being Petition No. 3 of 2014 Hon. Martin Nyagah Wambora & 4 others -v- The Speaker of the Senate and 5 others the High Court held as follows:

“To our minds therefore, whether a conduct is gross or not will depend on the facts of each case having regard to the Article of the Constitution or any written law alleged to have been violated. We find that it is not every violation of the Constitution or written law that can lead to the removal of Governor, it has to be a gross violation.

The question therefore is how to measure what constitutes gross violation. We are of the view that the standard to be used does not require a mathematical formula, but it must take into account the intendment of Article 181(1) of the Constitution. In our view therefore whatever is alleged against a Governor must;

(a) be serious, substantial and weighty.

(b) there must be a nexus between the Governor and the alleged gross violations of the Constitution or any other written law.

The charges as framed must state with a degree of precision the Article(s) or even Sub-Articles(s) of the Constitution or the provisions of any other written law that have been alleged to be grossly violated.”

~~267. The issue of the threshold for impeachment is complex and does not contain a simple mathematical formula. During the Senate’s consideration of the report of the Special Committee investigating the removal of the Governor of Kericho on 3rd June 2014 the Senate adopted the Committee’s recommendation that the threshold for impeachment should take into account the following considerations-~~

- (i) The allegations must be serious, substantial and weighty;*
- (ii) The violation must be a flagrant and glaring violation;*
- (iii) There must be a nexus between the violation and the Governor;*
- (iv) The violation must have led to harm, loss or damage to society;*

- (v) *The violation must have led to a loss of dignity in the office held and loss of confidence or trust in the person holding office to carry out the functions of that office with integrity and accountability.*

268. This special committee adopts the above threshold for removal of a Governor as adopted by the Senate on 3rd June 2014.

11.0 OTHER RECOMMENDATIONS OF THE SPECIAL COMMITTEE

188. In the course of the hearing of the matter, the Special Committee observed a number of issues which are outside of the specific charges against the Governor of Murang'a County on which the Committee made recommendations.

11.1 RECONCILIATION OF THE COUNTY EXECUTIVE AND THE COUNTY ASSEMBLY OF MURANG'A

189. The Committee noted that there were strained relations between the County Executive and the County Assembly of Murang'a. In order for the County of Murang'a to realize its full potential, the Committee observed that it was necessary for the County Executive and the County Assembly to pull in the same direction when it comes to development. The relations between the County Assembly and the County Executive must be repaired.

190. The Committee now recommends that the Senator of Murang'a County spearheads and leads the reconciliation of the County Executive and the County Assembly of Murang'a. The Senator of Murang'a should thereafter appraise the Senate of progress in the reconciliation.

11.2 THE ROLE OF THE SENATE VIS-À-VIS THE HIGH COURT IN IMPEACHMENT

191. The Court of Appeal of Kenya in Civil Appeal No. 21 of 2014 Hon. Martin Nyaga Wambora & others –v- The Speaker of the Senate & others held as follows with regard to the role of the Senate vis-à-vis the High Court:

“We find that the learned Judges did not err in law in holding that the County Assembly and the Senate were best placed to determine whether a motion for the removal of a Governor was in accordance with the Constitution. However, this is subject to the supervisory and interpretation jurisdiction of the High Court under Article 165 of the Constitution.

192. This state of affairs places the Senate, in effect, in a subordinate position to the High Court, the Court of Appeal and the Supreme Court when it comes to impeachments. This is not a satisfactory state of affairs as the Senate forms part of one of the three arms of government of which the Judiciary is one.

193. In the United States of America the Constitution provides that the sole power of impeachment lies with the Senate. The courts in the United States have no role whatsoever in impeachment proceedings. The Chief Justice presides over the impeachment of the President of the United States.

194. ~~The final report of the Committee of Experts on Constitutional Review at page 115 discussed the role of the Courts in the impeachment process of the President of the Republic and stated as follows:~~

“The CoE also removed Article 127(8) of the PSC Draft which provided that the Chief Justice would preside over impeachment proceedings on the basis that it is important for the Judiciary to remain outside the impeachment process because it may be required subsequently as an avenue of appeal.”

195. The drafters of the Constitution therefore expected the impeachment process to proceed without interruption in the Legislature with the Judiciary as the avenue of appeal.

138. The Special Committee has however noted from the impeachment of the Governor of Embu County that a Governor once impeached may obtain conservatory orders from the courts to remain in office while the case meanders slowly from the High Court to the Court of Appeal and finally the Supreme Court. Such a situation creates uncertainty in the governance of a County Government and is contrary to the principles of impeachment which endeavour to provide a swift avenue to ensure that the people of a county are governed in a manner consistent with the Constitution and the laws of Kenya. Impeachment is all about accountability, political governance as well as policy and political responsibility. A Governor found by the Senate to have grossly contravened the Constitution and the law has no business remaining in office indefinitely on the basis of a court order.

196. The Special Committee notes that the process of impeachment of County Governors is being frustrated by endless conservatory orders that keep an impeached Governor in office despite a finding that the Governor has grossly violated the Constitution. The Special Committee therefore recommends that the legislation enacted under Article 181(2) of the Constitution to provide for the procedure of removal of a county governor be amended to provide for the process for determination of any questions as to the validity of the removal of a governor within set timelines.

11.2 UNIFORM LAW ON IMPEACHMENT PROCEEDINGS IN COUNTY ASSEMBLIES

197. The Special Committee observed that in virtually all impeachment proceedings before the Senate, including the present matter of the Governor of Murang'a County,

preliminary questions had been raised on the procedures that were followed by the respective County Assemblies in handling impeachment at the County level.

198. The Special Committee observed that section 33(1) and (2) of the County Governments Act provide for the procedure at the county level as follows-

1. *A member of the county assembly may by notice to the speaker, supported by at least a third of all the members, move a motion for the removal of the governor under Article 181 of the Constitution.*
2. *If a motion under subsection (1) is supported by at least two-thirds of all the members of the county assembly—*
 - a. *the speaker of the county assembly shall inform the Speaker of the Senate of that resolution within two days; and*
 - b. *the governor shall continue to perform the functions of the office pending the outcome of the proceedings required by this section.*

199. The Special Committee further observed that each county had adopted its own standing orders which, in addition to the provisions of section 33(1) and (2) of the County Governments Act, made provisions on the procedure to be followed in the Assemblies. The Special Committee further observed that each Assembly, as a Legislature, was free to adopt such procedures as it considered appropriate for the consideration of Motions for impeachment.

200. That notwithstanding, this being a crucial matter which has continued to raise questions both in the Senate and in the Courts, the Special Committee proposes, for greater certainty in the processes of impeachment, the development of a uniform legislation that would guide all counties on the processes for the consideration and disposal of a Motion for Impeachment of a Governor or Deputy Governor. The legislation would address critical questions that have often been raised such as-

- (a) in what manner should the Governor and Deputy Governor be accorded a hearing;
- (b) should the County Assembly establish a Special Committee to consider the matter or consider it in Plenary?;
- (c) timelines for invitation of a Governor or Deputy Governor before the County Assembly; and
- (d) what constitutes a "fair hearing" in terms of Article 50 of the Constitution the County Assembly.

11.3 INTRA-COUNTY DISPUTE RESOLUTION MECHANISM

201. The Special Committee observed that since the constitution of the forty-seven County Governments, in the short span of just about two and a half years, the Senate had so far, including the present matter, considered four proposals for the removal of a Governor and two proposals for the removal of a Deputy Governor.

202. This, the Special Committee observed, was a considerably high number of impeachment matters compared with the experiences of other jurisdictions, particularly the United States and the Philippines.

203. The Special Committee therefore observed that there was need for intra-County dispute resolution mechanisms that would assist in the resolution of disputes within the Counties at the early stages. In this regard, the Special Committee noted that while Article 189(3) and (4) of the Constitution provides for resolution of disputes between Governments, there is no similar provision in the Constitution of resolution of disputes within the Counties. Article 189 (3) and (4) of the Constitution provides as follows-

- (3) *In any dispute between governments, the governments shall make every reasonable effort to settle the dispute, including by means of procedures provided under national legislation.*
- (4) *National legislation shall provide procedures for settling inter-governmental disputes by alternative dispute resolution mechanisms, including negotiation, mediation and arbitration.*

204. Further, the Intergovernmental Relations Act, which was enacted pursuant to Article 189 of the Constitution provides, particularly at Part 4 of the Act, for dispute resolution mechanisms for disputes arising between, rather than within, the County Governments. Section 30 restricts the application of the Part to disputes arising-

“between the national Government and a County Government; or amongst County Governments.”

205. There is no mention of the resolution of disputes within County Governments. The Special Committee therefore recommends that legislation be developed and enacted to provide for and guide dispute resolution processes within the Counties.

206. These are issues that the relevant committees of the Senate and other relevant institutions and agencies of Government can deal with.

FINDINGS OF THE SPECIAL COMMITTEE

207. Having considered all these matters, it then fell to the Special Committee to discharge its mandate under section 33 of the County Governments Act and standing order 68 of the Senate Standing Orders. Section 33(4) of the County

Governments Act and standing order 68(2) of the Senate Standing Orders mandates the Special Committee to-

- (1) investigate the matter; and
- (2) report to the Senate within ten days on whether it finds the Particulars of the Allegations against the Governor to have been substantiated.

208. The Committee found as follows on each of the Charges.

10 THE CHARGES

209. **Charge 1: Gross Violation of the Constitution of Kenya, 2010, the County Governments Act 2012, the Public Finance Management Act, 2012 and the Public Procurement and Disposal Act, 2005;**

- (1) **Allegation 1:** Lack of accountability for the management and use of the County resources by incurring unsustainable debts to the tune of Kshs. 2.5 Billion which were not disclosed in the Debt Management Paper 2015 and the County Fiscal Strategy Paper 2015 thus violating Articles 201(e), of the Constitution 2010, Section 123 and Section 107 (2) (e) of the Public Finance Management Act, 2012. Further scrutiny of the debt owing report submitted by the County Executive Committee Member for Finance, I.T and Planning as at 14th August, 2015 indicated violation of Article 226 (5) of the Constitution of Kenya 2010, since some programs in the debt report already had an appropriation in the Budget for the FY 2014/2015 only to reappear in the said debts, a clear indication of misappropriation of funds for the projects, for instance, Gakoigo stadium under the department of Youth and Sports, was allocated Kshs.30 Million in the FY 2014/2015, yet, it had incurred a total debt of Kshs.59 Million and no monies had been paid. This positions the County at a very precarious situation which may lead to auctioning of County Assets.

210. **The Committee unanimously found that the allegation was not proved and was not substantiated.**

- (2) **Allegation 2:** Violation of Article 201 (a) and (d) of the Constitution 2010 that stipulates principles of public finance and Section 5 and 130 (1) (b) (i) of the Public Finance Management Act 2012: The County Governor allowed misappropriation of County Funds by spending public funds in private commercial entities. The report of the Auditor General on the financial operations of Murang'a county executive for the period 1st July 2013 to 30 June 2014 (page 5), shows that the County Executive contributed a total of Kshs.28,489,800.00 to Murang'a Investment Co-operative Society (Shilingi-Kwa-Shilingi). The expenditure was incurred in respect of advertisements to promote the cooperative society and invite the general public to purchase shares in the Co-operative. Further details of the same are contained in the report of the County Assembly on the Murang'a Investment Co-operative Society (Shilingi-Kwa-Shilingi). The society is registered under the Co-operative Societies Act [Cap 490 Section 6(3)] of the Laws of Kenya. The Society is an autonomous body independent of the County Executive and according to the Auditor General's report; it was not clear therefore the circumstances under which the county Executive was funding it. This was in contravention of Section 5 (1) of the Public Finance Management Act, 2012 as the society was not a declared county corporation;

211. **The Committee unanimously found that although there was violation of the law, the violation did not rise to the level of gross violation and was therefore not substantiated.**

- (3) **Allegation 3:** Violation of the Constitution of Kenya 2010 Articles 201(a), (d), (e) on principles of public finance and Article 226 (5) on audit of public entities, Article 227(1) on procurement of goods and services, and the Public Procurement and Disposal Act, 2005, by failing to adhere to the principles of public finance management and procurement of public goods and services. In the FY 2014/2015, as stated in the County Governments Budget implementation review reports of the Controller of Budget, the County Executive under the stewardship of the County Governor incurred advertisement expenditure amounting to Kshs. 247 Million against an approved budget of Kshs. 7 Million as at 31st March 2015 (*third quarter*

report page 191) i.e. Kshs.114 Million and 133 Million in the Half year (page 171) and third quarter report (page 191) respectively; thus further undermining the Principles of Fiscal Prudence as stipulated in Article 201 (d) of the Constitution Of Kenya 2010 and section 107 (2) of the Public Finance Management Act of 2012.

212. **The Committee unanimously found that the allegation was not proved and was therefore not substantiated.**

- (4) **Allegation 4:** Violation of Article 183 (2), (3) of the Constitution of Kenya 2010 and Section 30 (3) (b) of the County Governments Act 2012, through failure to provide leadership to the County Executive Committee on the generation of County policies, plans, legislations and full and regular reports, regarding key programs such as the, the Nappier Grass, A.I Crushes, among others.

213. **The Committee unanimously found that although there was violation of the law, the violation did not rise to the level of gross violation and was therefore not substantiated.**

- (5) **Allegation 5:** Failure to establish the County Budget and Economic Forum as stipulated under Section 137 of the Public Finance Management Act 2012; as a result the County Governor has failed to consult with the public over the preparation of County plans, budgets, economy and financial Management at the County Level thereby violating the provisions of sections 87, 91 and 115 of the County Governments Act, 2012 and more importantly Article 10 and 201 (a) of the Constitution that require public participation in decision making.

214. **The Committee unanimously found that although there was violation of the law, the violation did not rise to the level of gross violation and was therefore not substantiated. The Committee recommends that the Governor sets up the County Budget and Economic Forum as required under section 137 of the Public Finance Management Act within 90 days.**

(6) **Allegation 6:** Violation of Articles 176 (1) and 185 of the Constitution of Kenya 2010 by disregarding the County Assembly as an arm of the County Government and undermining its legislative authority, through requisition of monies and not remitting the same, hence crippling the operations of the Assembly and undermining the independence of the latter. This by extension violates Article 6 and Article 10 of the Constitution of Kenya 2010 that underpins the spirit of mutual respect, cooperation and consultation on all governance structures. This is evident from requisitions made in the following periods and were never remitted;

- a) Kshs 44,347,764 in FY 2013/2014 (annexed)
- b) Kshs 28,779,000 in FY 2014/2015 (annexed)
- c) Kshs. 51,843,000 in FY 2015/2016 (annexed)

This misappropriation and misdirecting of funds indicates lack of good intentions towards the Assembly and creating a monarchy system, an endeavor to curtail the oversight role of the Assembly violating Article 73 (b) of the Constitution of Kenya 2010 which requires a state officer to serve the people and not power to rule over them. This further, violates Article 174 of the Constitution of Kenya 2010, which requires County Government to promote democratic and accountable exercise of power.

215. **The Committee unanimously found that although there was violation of the law, the violation did not rise to the level of gross violation and was therefore not substantiated. The Committee recommended that the County Executives in the short-run should ensure that they promptly release funds due to the County Assemblies. The Committee urged that these legal interventions be fast-tracked by the Senate.**

(7) **Allegation 7:** Violation of Section 4 of the County Governments Act, 2012, that requires the County Executive Committee to develop legislation on County Symbols, for example the Murang'a County Symbols Act; after the Murang'a County Symbols Bill was passed in the Assembly and consequently gazetted into an Act, the County Executive so far have failed to implement the approved symbols in all their communication artefacts.

216. **The Committee unanimously found that the allegation was not proved and not substantiated.**

- (8) **Allegation 8:** Violation of Article 227 (1) of the Constitution of Kenya 2010 on procurement of goods and services by state organs and public entities and Section 135 (1) of the Public Finance Management Act 2012, by disregarding cost effectiveness and overspending in the departments of Finance, IT and Economic Planning, Transport, Energy and Infrastructure, Public Service and Administration among others as indicated in the Third Quarter Budget Review Implementation report for the FY 2014/15 from the Office of the Controller of Budget. Such expenditure should have been ratified through a Supplementary Budget or justified by the respective departments. (Page 190 of the County Budget Implementation Review Report, 3rd Quarter FY 2014/2015, highlighted in red).

217. **The Committee unanimously found that the allegation was not proved and not substantiated.**

- (9) **Allegation 9:** Violation of Article 186 (1), Article 189 (2) and 226 (5) of the Constitution of Kenya 2010, by approving/directing /diverting public funds to non-devolved functions contrary to schedule four part two of the Constitution of Kenya 2010 e.g. Construction works at Kahuhia Girls that were split 9 times amounting to Kshs. 31 million, conversion of Public primary schools into boarding schools among others.

218. **The Committee unanimously found that the allegation was not proved and not substantiated.**

- (10) **Allegation 10:** Violation of Article 227 (1) of the Constitution of Kenya 2010 and Section 30 of the Public Procurement and Disposal Act, 2005, through splitting of tenders with different LPO numbers for the same contractor, for instance proposed opening of Kahuruko –Ngatho Junction, under the department of Transport and Infrastructure, was split 11 times with different LPO numbers according to the debt owing report from the CEC Finance, IT and Planning as at 14th August, 2015.

219. The Committee unanimously found that although there was violation of the law, the violation did not rise to the level of gross violation and was therefore not substantiated. The Committee observed that it was critically important for the County of Murang'a, as with all other Counties, to strictly comply with and adhere to the procurement laws.

- (11) **Allegation 11:** Violation of Articles 10, 183 and 201 of the Constitution of Kenya 2010 on priorities through public participation, legislative framework and fiscal prudence and accountability respectively and section 29 of the Public Procurement and Disposal Act 2005, through evading of open tender method by purchasing, of Land along Kenol- Kabati Road, worth Kshs. 340 Million through request for quotations, without stipulated reasons for using alternative procurement procedure in writing by the tender Committee. Fraudulent procurement procedures of the AI crushes under the livestock development program amounting to Kshs. 61.69 million, among other goods and services.

220. The Committee unanimously found that although there was violation of the law, the violation did not rise to the level of gross violation and was therefore not substantiated. Due to the complex nature of this land purchase transaction, the Committee recommends that the Public Procurement Oversight Authority and the Ethics and Anti-Corruption Commission investigate this matter and reports to the Senate the outcome of the investigations.

- (12) **Allegation 12:** Contravention of Article 201 (a) (e), of the Constitution of Kenya, 2010 on principles of public finance in regard to accountability , responsible finance management and clear fiscal reporting and Section 155 (5) of the Public Finance Management Act, 2013, by failing to ensure that an internal Audit Committee is established. This has exposed the County Executive operations to lack of checks and balances in financial controls especially in the County Treasury, and lack of decentralized payment systems particularly at the departmental level. This is evidenced by Irregular

practices such as opening of un authorized bank accounts contrary to the guidelines of the Transition Authority, lack of maintaining of cash books for some accounts, un surrendered imprests, lack of adherence to the budget implementation, among other irregularities also highlighted in the report of the Auditor General 2013/2014 and the Controller of Budget Third Quarter Report 2013/2014. This heightened impunity on the part of the County Governor has resulted to continued loss of Public Funds.

221. **The Committee unanimously found that although there was violation of the law, the violation did not rise to the level of gross violation and was therefore not substantiated. The Committee recommends, that owing to the importance of the Internal Audit Committee, the Governor sets up the Committee within thirty days.**

Charge 2: Crimes under National Law

222. The County Governor committed serious crimes under National Law in the following ways-

- (1) **Allegation 1:** Violation of Article 212 of the Constitution of Kenya 2010, and section 58 of the Public Finance Management Act, 2012 by borrowing a loan of Kshs. 200 Million from Kenya Commercial Bank without guarantee by the National Treasury; the said loan was not factored in the Debt Strategy Paper of the County Government of Murang'a over the medium term expenditure framework, contrary to section 140 (1) (d) of the Public Finance Management Act.

223. **The Committee unanimously found that the allegation was not proved and not substantiated.**

- (2) **Allegation 2:** Contrary to Article 201(d) of the Constitution of Kenya 2010 that requires public money to be used in a prudent and responsible way, the County Executive irregularly purchased Hay for cows at the controversial Mariira Farm, further investigations reveals that there was no documented evidence for release and delivery of the 20,000 bales of Hay, resulting to loss public funds amounting Kshs.4 million. This criminal undertaking is clearly substantiated in the Auditor General Report for the period 1 July 2013 to 30 June 2014.

224. **The Committee unanimously found that the allegation was not proved and not substantiated. The relevant of the County Assembly should investigate the matter and share the findings with the Senate within ninety days.**

- (3) Contravention of Articles 201 (d), 227 (1) of the Constitution of Kenya 2010 that requires a state organ or any other public entity to contract goods or services in accordance with a system that is fair, equitable and cost effective and violation of Section 29 of the Public Procurement and Disposal Act 2005 by incurring exorbitant costs of advertisement amounting to Kshs. 247 Million, glaringly inclined to one Company in the name of 'Top Image Media' according to the Controller of Budget report for FY 2014/2015. This spells gross irregularity in operations of the County Executive, in procurement of media services, intentionally skewed towards one particular company. Further scrutiny by the County Assembly reveals that the County Executive has continuously evaded the use of open tendering in procurement of goods and services.

225. **The Committee unanimously found that the allegation was not proved and not substantiated.**

- (4) **Allegation 4:** Violation of Article 41 (1) of the Constitution of Kenya 2010 that stipulates the rights of every person to fair labour practises and Section 19 of the Employment Act, 2012, through failure to remit statutory

deductions of the defunct local authorities, which have continued to attract interest and penalties to a tune of Kshs. 131,615,210.00.

226. The Committee unanimously found that the allegation was not proved and not substantiated. The Committee however recommends that the statutory deductions be verified and the necessary arrangements be made to officially take over the confirmed liabilities within this financial year.

Charge 3: Abuse of Office/Gross Misconduct

The County Governor of Murang'a exhibited gross misconduct/abused his Office in the following ways:-

- (1) **Allegation 1:** Violation of Article 75 (1) of the Constitution of Kenya 2010 on conduct of state officers and Section 13 of the Leadership and Integrity Act using public funds to brand his name that is evident in the enormous advertisements in a vernacular radio station and bill boards erected along the roads and at Ihura Stadium gate; the Governor has continued to misappropriate public funds for personal branding in every advertisement made by the County. For instance, the front page of the printed examinations cited 'Murang'a County Post Mock Examinations' for the year 2014 and 2015 bearing the name of the Governor insinuating that, he is the sole sponsor of the program and not the County Government.

227. The Committee unanimously found that although there was violation of the law, the violation did not rise to the level of gross violation and was therefore not substantiated. However, the Committee recommended that all bill-boards and other advertisements bearing the image of the Governor be removed and that in future no bill-board or other advertisement concerning County Government-funded projects should bear the image of the Governor.

228. The Committee further recommended that this practice should halt in all Counties with immediate effect. In future, any Governor who contravenes

these provisions of the law should be surcharged for the cost of the advertisement.

- (2) **Allegation 2:** Pretentious realignment of Departments and programs within departments, that had not exhausted their budgets hence disregarding avenues that have been provided for by law, as manifested during supplementary budget for FY 2014/15 , thus causing confusion and hindering effective budget implementation of programs particularly in the departments of Trade, Industry, Commerce, Agro Marketing, Cooperatives, Agriculture and Livestock.

229. **The Committee unanimously found that the allegation was not proved and not substantiated.**

- (3) **Allegation 3:** Appointment of Mr. Christopher Ngera, as the Chief Officer for Education and Technical Training department, who had been rejected by the County Assembly contrary to Article 185 of the Constitution of Kenya 2010 and Section 45 (1) (b) of County Governments Act 2012; thus defrauding public funds through payment of allowances/salaries to the said Chief Officer, for the period he was illegally in office.

230. **The Committee unanimously found that the allegation was not proved and not substantiated.**

- (4) **Allegation 4:** Use of personal portraits in County funded projects contrary to Article 73 (1) (a) (i) (iv) on public trust, Article 75 (1) of the Constitution of Kenya 2010 and section 13 of the Leadership and Integrity Act.

231. **The Committee unanimously found that although there was violation of the law, the violation did not rise to the level of gross violation and was therefore not substantiated. However, the Committee recommended that all bill-boards and other advertisements bearing the image of the Governor be removed and that in future no bill-board or other advertisement concerning County Government-funded projects should bear the image of the Governor.**

232. The Committee further recommended that this practice should halt in all Counties with immediate effect. In future, any Governor who contravenes these provisions of the law should be surcharged for the cost of the advertisement.

- (5) Allegation 5: Loss of public funds, through payment of 80 ghost workers, and lack of a precise inventory of the staff establishment, as indicated in the Report of the Auditor General 2013-2014 contrary to Article 226 (5) of the Constitution of Kenya 2010 .

233. The Committee unanimously found that the allegation was not proved and not substantiated.

- (6) Allegation 6: Failure to appoint a substantive Chairperson of County Public Service Board and allowing the Vice chairperson to occupy the said office for undefined period contrary to Section 64 (2) of the County Governments Act 2012.

234. The Committee unanimously found that although there was violation of the law, the violation did not rise to the level of gross violation and was therefore not substantiated. The Committee however recommended that the Governor undertakes the recruitment process in accordance with the law and nominates the successful within sixty days.

- (7) Allegation 7: The Governor failed in his duty to Gazette all the County Executive Members whom he appointed on different dates in accordance with Section 30 (2) (i) of the County Governments Act, 2012.

269. The Committee unanimously found that although there was violation of the law, the violation did not rise to the level of gross violation and was therefore not substantiated. The Committee recommended that the Governor either provides proof of gazettelement of the County Executive Committee Members

or, if they have not been gazetted, proceeds to gazette the Members immediately.

270. The Committee further recommended that in the future the Governor should gazette any person appointed as a County Executive Committee Member in accordance with the law.

271. The Committee observed that the Senate was in the process of considering national legislation to enable County Governments to establish County Printers and urged that the enactment of this critical legislation be fast-tracked.

(8) Allegation 8: Contrary to the provisions of section 30 (2) (j) of the County Governments Act, 2012, the County Governor, since inception of the County Government has never submitted to the Murang'a County Assembly any implementation status report of county policies and plans;

272. The Committee unanimously found that although there was violation of the law, the violation did not rise to the level of gross violation and was therefore not substantiated. The Committee however recommends that the Governor complies with section 30(2)(j) of the County Governments Act and provides quarterly reports to the Murang'a County Assembly on the status of the implementation of the County policies and plans.

(9) Allegation 9: The County Governor has continuously displayed negligence on his duties, by failing to issue Gazette notices of all important formal decisions made by him and/or the County Executive Committee, pursuant to section 30 (1) of the County Governments Act, 2012.

273. The Committee unanimously found that the allegation was not proved and not substantiated.

FINDINGS OF THE COMMITTEE

274. The Committee having investigated the matter in accordance with its mandate under section 33(4) of the County Governments Act and standing order 68(2) of the Senate Standing Orders reports to the Senate that it finds that, although the Governor breached some provisions of the Constitution and the law, the Particulars of the Allegations against the Governor were, in terms of Standing Order 68(2) (b) found to not have been substantiated.
275. The Committee therefore did not recommend the impeachment of the Governor of Muranga County.

ANNEXURES

1. The first part of the document discusses the importance of maintaining accurate records of all transactions and activities. It emphasizes the need for transparency and accountability in financial reporting.

2. The second part of the document outlines the various methods and techniques used to collect and analyze data. It includes a detailed description of the experimental procedures and the statistical analysis performed.

3. The third part of the document presents the results of the study, including a comparison of the different methods and techniques used. It discusses the strengths and weaknesses of each method and provides a summary of the findings.

4. The fourth part of the document discusses the implications of the study and provides recommendations for future research. It highlights the need for further investigation into the effectiveness of the different methods and techniques used.

FINDINGS OF THE COMMITTEE

274. The Committee having investigated the matter in accordance with its mandate under section 33(4) of the County Governments Act and standing order 68(2) of the Senate Standing Orders reports to the Senate that it finds that, although the Governor breached some provisions of the Constitution and the law, the Particulars of the Allegations against the Governor were, in terms of Standing Order 68(2) (b) found to not have been substantiated.
275. The Committee therefore did not recommend the impeachment of the Governor of Muranga County.

ANNEXURES

