

RECORD OF EVIDENCE TAKEN BEFORE THE SENATE SPECIAL COMMITTEE INVESTIGATING THE PROPOSED REMOVAL FROM OFFICE BY IMPEACHMENT, OF THE GOVERNOR OF KIRINYAGA COUNTY, HELD ON MONDAY, 22ND JUNE, 2020, IN THE COUNTY HALL MINI CHAMBER

SENATORS PRESENT

[The Chairperson (Sen. Malalah) – Presiding]

Sen. Abshiro Halake – Vice-Chairperson

Sen. (Dr.) Michael Mbiti, MP
 Sen. Paul Githiomi, MP
 Sen. Beth Mugo, MP
 Sen. Anwar Loiptip, MP
 Sen. Beatrice Kwamboka, MP

Sen. Stewart Madzayo, MP
 Sen. Judith Pareno, MP
 Sen. Moses Kajwang', MP
 Sen. Philip Mpaayei, MP

SECRETARIAT

Mr. Njenga Njuguna	-	Director Committee Services
Dr. Johnson Okello	-	Director, Legal Services
Mr. Tom Ongalo	-	Senior Assistant Hansard Editor
Mr. Peter Adika	-	Research Officer
Mr. Mwanate Shaban	-	Clerk Assistant
Mr. Humphrey Ringera	-	Research Officer
Mr. Moses Kenyanchui	-	Legal Counsel
Mr. Mitchel Otoro	-	Legal Counsel
Mr. Simon Muinde	-	Audio Supervisor
Mr. Richard Njoroge	-	Electronics Officer
Mr. Ian Otieno	-	Audio Officer
Ms. Farhiya Ali	-	Serjeant-at-Arms
Ms. Lucy Mwaniki	-	Serjeant-at-Arms
Ms. Sarah Rukwaro	-	Serjeant-at-Arms
Mr. John Pere	-	Serjeant-at-Arms

(The Committee convened at 10.40 a.m.)

PRAYER

The Chairperson (Sen. Malalah): Hon. Members, I welcome you to our second meeting. This is basically a preparatory meeting. We shall get briefs from our Secretariat. The submissions were done over the weekend. We had loads of trucks delivering submissions. So, we have a very tedious work ahead of us. I believe that the Secretariat has condensed those submissions into a document that we can interrogate in a simple way.

I will go to agenda number two which is adoption of the agenda itself. I need a proposer and a seconder.

Sen. Mpayeei: I propose.

Sen. Mwangi: I second.

The Chairperson (Sen. Malalah): The agenda has been adopted. We go to agenda number three. Sen. Prengei proposed.

Sen. Mpayeei: There is no Sen. Prengei here. It is Sen. Mpayeei.

The Chairperson (Sen. Malalah): Sorry, you know you are conjoined twins. Sen. Mpayeei proposed and Sen. Mwangi seconded. Let us now do confirmation of minutes of the first sitting of the Committee.

The Director, Committee Services (Mr. Njuguna): Mr. Chairman, Sir, and Hon. Members, this is Mr. Njuguna, Director, Committee Services. Now that we are in masks, sometimes it is difficult to know who is who. I will take you through the minutes of the first meeting of the special Committee investigating the proposed removal from the Office of the Governor, Kirinyaga County, held on Wednesday 17th June, 2020, in the Senate wing extended sitting area. Hon. Members listed were present with one apology from Sen. Halake. The Secretariat is listed as shown.

Mr. Chairman, Sir, minutes one and two are on the election; nothing arising in minutes one and two. Minute three, it is on the procedure, election of the Chairperson. Sen. Malalah was proposed by Sen. Pareno and seconded by Sen. Kwamboka. There being no other candidate, Sen. Malalah was elected unanimously as the Chairperson of the select Committee.

Minute four is on election of the Vice Chairperson. The presiding officer invited nomination of Members. Sen. Mwangi was proposed for the position of Vice Chairperson by Sen. Loiptip and seconded by Sen. Mpayeei. Sen. Halake was proposed for the position of Vice Chairperson by Sen. M. Kajwang' and seconded by Sen. (Dr.) Mbito.

Having more than two candidates, the election of the Vice Chairperson was done by secret ballot. It was clarified that only Members who were physically present could vote in accordance with the Standing Order as they do not provide for virtual voting. After the process, Sen. Halake was duly elected the Vice Chairperson of the special Committee in absentia.

On Minute Five, the Chairperson thanked the Members for the confidence and honour in electing him and called upon Members to conduct business of the Committee in such a way that it will reflect the image of the Senate as an impartial and reliable protector of counties and the Constitution of Kenya. He also assured the public and the interested parties of a fair and just hearing.

On minute six, remarks by the Vice Chairperson will be done today and it is on the agenda.

On minute seven, the Committee went through under the guidance of Dr. Okello Director, Legal Services, the matrix of the hearing activities and hearing programme,

which was considered and adopted after proposal by Sen. Kwamboka and seconded by Sen. Pareno. The Committee decided a preparatory meeting today to scrutinize the documentation. That is why we are here today.

Under Any Other Business, Members were notified of the speaker's guidelines on physical meetings so that restricts the numbers here. This room can only accommodate 28 Members. The Committee directed the media to observe social distancing.

Mr. Chairman, Sir, those are the minutes. If Hon. Members are in concurrence, then you can get a proposer and a seconder for the purpose of adopting them.

Sen. Pareno: Mr. Chairman, Sir, I propose that it is the correct version of our minutes.

The Chairperson (Sen. Malalah): Yes. The minutes have been proposed by Sen. Pareno and seconded by Sen. (Dr.) Mbito. Thank you.

We also want to acknowledge the presence of Sen. Mugo who is joining us virtually. *Mheshimiwa*, can you hear us? The technical team should be working on that link as we proceed.

Hon. Members, any matters arising from the minutes? If none, I would like to invite my able Vice Chairperson; Sen. Halake, who was elected in absentia to make her acceptance remarks.

The Vice-Chairperson (Sen. Halake): Thank you very much, Mr. Chairman, Sir and colleagues. I rise to thank you all for your vote of confidence in me. I was not there because I was not feeling too well that day, but I am pleased and happy that you voted me as your Vice Chairperson. I will make sure that we uphold the rule of law and keep this Committee above board. Together, we will definitely serve justice.

Hon. Members, I know that this case has already been tried in the public opinion court. However, nobody should persist staying in an office if they have done whatever they are being accused of. There is need for fair administrative action as contained in our Constitution. That will be our guide. Therefore, I look forward to working with you and thank you profusely and sincerely for entrusting me with the vice chairmanship. I will definitely make sure that I do you proud as your Vice Chairperson.

I thank you.

The Chairperson (Sen. Malalah): Thank you, Sen. Halake. Once again, congratulations.

Hon. Members, we will go to agenda number six, briefing on the documentation received. As I had noted earlier, we received a lot of documentation from both parties. It is upon us to condense the documentation into something that can be adjudicated before us. Our able Secretariat has already done so and we already have files to that effect. I will be calling upon Dr. Okello to give us a brief on the same.

The Director, Legal Services (Dr. Okello): Thank you, Mr. Chairman, Sir. Hon. Members, you must have seen the huge documents that we received. In total, we have over 40 documents from the Governor's side. Before we proceed, I want to direct us---

Sen. Mugo: Excuse me, Mr. Chairman, Sir.

The Chairperson (Sen. Malalah): Yes, Hon. Beth.

Sen. Mugo: Good morning, Mr. Chairman, Sir and Hon. Members. I am sorry I still have the same problem we were having last time we met. It is something that can be corrected to hear everybody properly so I can follow what is going on. Since we were having the Health Committee meetings for the Bills over the weekend and the sound was clear. I could follow everything and I do not understand why I cannot do so in this room. I cannot follow the proceedings.

The Chairperson (Sen. Malalah): We are now getting you.

Sen. Mugo: At the end of the day, I will not make the right decision.

The Chairperson (Sen. Malalah): Hon. Senator, we can now get you. Can you hear us?

Sen. Mugo: Yes, but you then get lost. I am not hearing you throughout. You are getting lost somewhere. There was somebody else who was talking who I cannot hear at all.

The Chairperson (Sen. Malalah): Hon. Senator, the technical team is working on the same. We will get a clear link once they rectify the mistake.

Sen. Mugo: Okay, but at least make it quick.

The Chairperson (Sen. Malalah): I will also advise Members to speak on the microphone so that she can get it clearly.

Dr. Okello, proceed.

The Director, Legal Services (Dr. Okello): Thank you, Mr. Chairman, Sir. I would like to invite Members to look at this folder. The Committee issued invitations for both parties to appear.

The deadline was on Saturday, 20th June, 2020. By the time the deadline time was arrived at, we received the following documents: -

One, from the Governor's side, we received a letter of appearance, which is attached as folder JK in your folders. We have the letter. We received the letter of appearance - I do not know whether yours is JK, mine is L - where the Governor entered appearance. She will be appearing in person with three lawyers. The names are given there.

Mr. Chairman, Sir, on the same letter, attached are the documents that we received from the Governor. Hon. Members, I do not know whether you are seeing it. Under that, we have overall response documents. We have 40 files, 20 copies of responses and 20 copies of case digests. These will be provided to us. They are neatly bound, but we also managed to send it to all Members via email. I hope you have checked your Emails.

Two, we have the annual state of the county address attached there. We have 20 files, which is volume one. We have submission of county plans, policy and annual reports to the county assembly, these are also 20 files.

Sen. Pareno: Mr. Chairman, Sir.

The Chairperson (Sen. Malalah): Yes, Sen. Pareno.

Sen. Pareno: I think Dr. Okello should go slowly; he has told us the appearance by the Governor is in file JK, but it is not there. What I have is the appearance by the county assembly. Then, when you said the appearance by the Governor indicated as L in your files, when I checked L---

The Director, Legal Services (Dr. Okello): It is M.

Sen. Pareno: Is it L or M?

The Director, Legal Services (Dr. Okello): Actually, mine is L.

Sen. Pareno: When I checked L on my file, it is still the county assembly appearance and not the Governor's.

The Director, Legal Services (Dr. Okello): I think that one we will have to change. Sorry about that.

Sen. Pareno: So, where is the appearance by the Governor?

The Chairperson (Sen. Malalah): Sen. Madzayo, kindly, proceed.

Sen. Madzayo: I am at a loss as to whether we are referring to this.

The Chairperson (Sen. Malalah): The box file.

Sen. Madzayo: It is not there. How did the Clerk do it because it is missing in my file?

The Director, Legal Services (Dr. Okello): Let me take you slowly as the Senator has said.

Mr. Chairman, Sir, with your kind permission, the first document in that file is the hearing programme. Do we have the hearing programme?

Hon. Senators: Yes.

The Director, Legal Services (Dr. Okello): I think if we go that way, it will be easy. The hearing programme is the first document.

The second document in that folder, is the Communication---

Sen. Madzayo: Mr. Chairman, Sir, with tremendous respect to Dr. Okello, I would prefer that we go by the folio numbers. For instance, he is now on Folio B, that is where the hearing programme is. Instead of telling us document numbers, refer to the folio that is on the file. That will be much better.

The Chairperson (Sen. Malalah): So, we use the alphabetical coding?

The Director, Legal Services (Dr. Okello): Mr. Chairman, Sir, we are using the folio, but unfortunately, the table of contents given is wrongly marked. That is why the confusion came. That is why I thought we start by looking at the file as arranged.

If you look at B, the first document under B is the hearing programme.

The Chairperson (Sen. Malalah): We have nothing on the same.

The Director, Legal Services (Dr. Okello): Is that okay?

The Chairperson (Sen. Malalah): No, do you have the document?

Hon. Senators: Yes.

The Director, Legal Services (Dr. Okello): All of us have it. Then, the second one, Folio C, we have the Communication by the Speaker of the Senate.

Sen. Pareno: Communication from the Chair on approval by the Kirinyaga County Assembly is what we have.

The Director, Legal Services (Dr. Okello): Yes. The reason why we put it there is because it summarizes the charges. If you look at page two of that Communication, we have the charges and particulars as summarized.

After that, we have the recital of the charges against Hon. Anne Mumbi Waiguru, the Governor of Kirinyaga County.

Hon. Members, these charges shall be read to the Governor tomorrow as they appear here, because this is how the county assembly presented them.

Mr. Chairman, Sir, the next document is the brief on charges. I do not know whether we have that.

The Chairperson (Sen. Malalah): Yes.

The Director, Legal Services (Dr. Okello): This one is for the Committee Members, just to familiarize themselves. The legal team looked at the charges and the allegations and picked out the relevant provisions of the law. The brief of charges is meant to assist Members to prepare for tomorrow's hearing. What we have given there is the charge, the allegation and the provisions of the law.

Hon. Members, as we continue, by the time we go for the report writing retreat on Wednesday, the legal team will have developed this document further, by identifying from the bundles given, the evidence that supports each charge as submitted. It will also help you to make a decision at the time you will be writing the report.

The next document on the same page is a brief to the Special Committee on the impeachment of hon. Anne Mumbi Waiguru. This brief is normally standard. It discusses the general issue of threshold. Maybe, we should have indicated it as: "Threshold on Charges".

The Chairperson (Sen. Malalah): After page 16, it starts from there.

The Director, Legal Services (Dr. Okello): It is on the same Folio FG; after the Brief on Charges, immediately, the next one is Brief to the Special Committee. Have you seen that? That is just a write up to the Committee Members to read during your free time on the threshold on impeachment. It gives general history; it is just to help you prepare. The practice is that at some point, this will be part of a chapter in your report.

It is for our own reading. It contains the previous decisions, what courts have said about thresholds, what courts have said in previous impeachments that the Senate has undertaken, and also comparative study. It is just for Members to prepare themselves in terms of threshold.

The next document is Folio HI.

Hon. Members, the next document is a letter from the County Assembly to the Committee, through the Clerk. This one is on the appearance by the County Assembly. They are saying they will be represented by the three Members of County Assembly (MCAs) who are listed there.

On Page 2 of the letter, they have indicated the law firm. So, they will be appearing by advocate and themselves. They have also given the number of witnesses they will invite and their names.

I hope we are together.

The next document, 'JK', according to my folder, is a letter by the County Assembly to the Clerk. It is to the Committee through the Clerk, requesting the Committee to issue witness summons to three officers.

Hon. Members, are we together?

Hon. Senators: Yes.

The Director, Legal Services (Dr. Okello): There is the Chief Officer for Finance and Economic Planning, the Chairperson of the County Public Service Board (CPSB) and the Director, Supply Chain.

From that letter, their reason is that these officers refused to give their statements. So, we need to issue witness summons. Members, the Committee has powers to issue witness summons. If this is approved, the Clerk should be able to sign the summons now and our Serjeant-at-Arms will go and serve it today. Hon. Members, you may want to comment on that.

The Chairperson (Sen. Malalah): I think it is a matter that we need to determine right away, if at all we shall approve these summons to be issued to the three officers. Any observations by hon. Members? Yes, Sen. Madzayo.

Sen. Madzayo: Mr. Chairman, Sir, I think it is quite in order in accordance with the provisions of our Standing Orders and the Constitution as well, to issue these summons and bind these officers to come to state the position which has been requested by the other party.

The Chairperson (Sen. Malalah): Okay. Yes, Sen. Mwangi.

Sen. Mwangi: Mr. Chairman, Sir, it is important that we issue these summons because the Committee needs all the evidence to be adduced before it. This will enable us to make the decisions as to whether Gov. Ann Waiguru should go or remain.

The Chairperson (Sen. Malalah): Okay. Sen. Pareno, proceed.

Sen. Pareno: Mr. Chairman, Sir, while it would be important to issue summons, I think this is an item that we need to consider separately. We go through it and consider it as an item that we need to discuss to see the pros and cons of why we would issue these witness summons or not.

I do not think it would just be easy to say we issue the summons without us first sitting as a Committee to check why they are requesting and why we should issue. It is an item we can exhaustively handle even today, just after we finish with this presentation and then we agree.

The Chairperson (Sen. Malalah): Yes, Sen. (Dr.) Mbito.

Sen. (Dr.) Mbito: Mr. Chairman, Sir, I concur with Sen. Pareno. It looks like the County Assembly decided to go ahead with an impeachment even before talking to these very crucial witnesses. Are they trying to get our Committee to help them do an investigation?

The Chairperson (Sen. Malalah): Yes, Sen. M. Kajwang’.

Sen. M. Kajwang’: Mr. Chairman, Sir, if you look at the second report, Wambora II, the Committee – which was the pioneering Committee in these matters – addresses itself to the issue of whether the Standing Orders requires us to summon or invite.

What was adopted by the House is the definition of ‘invitation’ and not ‘summon.’ You cannot force the Governor or the County Assembly to appear before us. They might choose to appear through counsel or written responses. That was established and maybe, Director, Legal Services, you could advise us on that. Unless we find it is extremely important to get information from a party, but as far as the governor and the county assembly are concerned, the word in the Standing Orders is “invitation”.

In the past, we have invited experts. I think in the case of Murang’a County, we invited the Controller of Budget (CoB) and the Auditor-General to provide evidence. To those parties, you can summon, but to the governor and county assembly, you can invite. They can choose to appear or not. I do not know whether that is correct.

The Chairperson (Sen. Malalah): In this case, they are inviting the Chief Officer for Finance and Economic Planning, the chairperson of the CPSB and the Director, Supply Chain Management. Where do they fall?

Sen. M. Kajwang': Sorry, Mr. Chairman, Sir. Which party is proposing to invite them?

The Chairperson (Sen. Malalah): The county assembly.

Sen. M. Kajwang': Mr. Chairman, Sir, are they coming as witnesses on their part?

The Chairperson (Sen. Malalah): Yes.

Sen. M. Kajwang': Mr. Chairman, Sir, they can only invite them. They cannot cause the Senate to summon them.

The Chairperson (Sen. Malalah): Who is supposed to invite them?

Sen. M. Kajwang': Mr. Chairman, Sir, the county assembly should produce the list of witnesses it will rely on in this case. It is not for the county assembly to tell the Senate: "Please, summon so and so to help our case."

The Chairperson (Sen. Malalah): Again, just before Sen. Pareno contributes, you also must remain alert to the fact that the same people are cited as witnesses in the Gov. Waiguru defence. So, I do not know if they will be coming as witnesses for both parties.

Yes, Sen. Madzayo and then Sen. Pareno.

Sen. Madzayo: Mr. Chairman, Sir, in my experience in legal practice, we sometimes have hostile witnesses. In this case – with a lot of respect to the respective persons who have been summoned – it is only fair and just that if a person has been invited by the Senate, but refuses to come and we are sitting as a *quasi-judicial* body, that invitation is as good as a summon in itself. This is because if you fail, we can go further and issue an arrest on you. Bear in mind that what is at stake is that we can have hostile witnesses and each party must be heard.

At this particular time, instead of being selective as to who wants or does not want to come before us and one party is complaining here, we can see that the persons who have been summoned are the ones who are working.

If you look at the charges on procurement, they relate to the Chief Officer in charge of Finance and Economic Planning. The County Assembly is demanding that we have previously tried to invite certain persons to come and explain and they have refused. They are now saying that these persons will refuse to come and material facts will not be produced to arrive at a fair judgment.

It is my humble prayer that if we invite them – whichever direction we go – or if we issue those summons, then legally, we shall not be going wrong. They can come and be hostile and we will declare them so. They can come and give proper evidence and we shall take it into consideration.

The Chairperson (Sen. Malalah): Just before we go back to Dr. Okello. I will allow Sen. Pareno and Sen. Halake to say something. However, Sen. Madzayo, the point of conflict is that Sen. M. Kajwang’ was asking whose responsibility it is to bring or summon witnesses. Is it the people who are alleging, the court or defence side to compel witnesses to come before it? We should establish that fact so that we know, by inviting these witnesses, whether we will be assisting their county assembly prosecute its own case.

Sen. Pareno, proceed.

Sen. Pareno: Mr. Chairman, Sir, I have two comments; the first one is on a point of order. Can we go through all the documents? We were just crosschecking in our files to find out whether every item is there and mark out the ones that we need further discussion on.

This is one document that we need to discuss exhaustively because, as you asked, each side is supposed to bring in any witnesses. We are not supposed to help any side to bring their witnesses. We are considering a case; both for the Governor’s side and the Assembly’s side. Therefore, we cannot help either of the two to bring their own evidence.

We want to discuss in depth as to whether giving witness summons to these particular people will be assisting the Assembly to bring in their witnesses. Secondly, maybe it is introducing new evidence. Did they consider it in the first case or not? As such, we need to look at the pros and cons, then we can make a sound decision.

The Chairman (Sen. Malalah): You are suggesting that we go through the documentation then we come back---

Sen. Pareno: Then have a discussion on items that we need to discuss and then make resolutions.

The Chairman (Sen. Malalah): Sen. Halake, are you in concurrence?

The Vice-Chairperson (Sen. Halake): I concur and, therefore, I will make my comments at that time.

The Chairman (Sen. Malalah): Dr. Okello?

The Director, Legal Services (Dr. Okello): As we consider all that and to respond to Sen. Kajwang’s issue; our rules of procedure are very clear. Rule 9 reads:

“The Senate may at the request of the county assembly or the governor, invite or summon any person to appear and give evidence before the Senate”.

Those are our rules of procedure in relation to impeachment. We will be looking at them. That is expressly provided.

The Chairman (Sen. Malalah): And the key word is “may”.

The Director, Legal Services (Dr. Okello): Yes.

The Chairman (Sen. Malalah): Good, we hold it as for now and then we shall come back to the same later.

Sen. Madzayo: Mr. Chairman, Sir, can I also reinforce on the same issue? I want to reinforce with the Constitution.

The Chairman (Sen. Malalah): We have agreed, Sen. Madzayo.

Sen. Madzayo: I would like to invite Members to look at the Constitution, Article 125.

The Chairman (Sen. Malalah): We shall deal with the matter once we come back to the same. You will make that presentation. Just hold it.

Sen. Mugo: Mr. Chairman, Sir, I want to complain that I am only hearing bits and pieces and I think that it is an issue to do with the microphones. When one speaks through the microphone, I can hear. Even you, Mr. Chairman, Sir, at times you are getting lost.

I think that we should find a solution to this because if I sit here and hear one bit and I do not hear the other, it is not going to help at all. Unless we agree that whoever is making the presentation will fully brief me. If it is one person speaking it is clearer. However, find a solution for tomorrow’s and Wednesday’s presentation because if it goes on like this, it means that I am wasting time here.

How are you going to help me?

The Chairman (Sen. Malalah): It is well noted, Senator. Generally, I think that we have a weak Internet at Parliament and we shall be working on it. The technical team has been advised accordingly and we believe that we shall have a stable connection with you tomorrow.

Otherwise, we appreciate your presence. Continue being with us and I believe that we shall move on together.

Thank you.

Sen. Mugo: Thank you, Mr. Chairman, Sir, could the person who is making a presentation now take time to brief me after this meeting?

The Chairman (Sen. Malalah): The Secretariat will do so.

Sen. Mugo: All right.

The Chairman (Sen. Malalah): Thank you.

The Director, Legal Services (Dr. Okello): Mr. Chairman, Sir, just to clear with the documentation. You have that letter, which will be discussed later then, under 'L of *'lala'*'; we have the appearance by the County Governor where they have stated their documents. I hope that we are together. They have given the names of the lawyers and the names of their witnesses.

On the next page of the same letter, there is an attachment where the Governor states all the documents that the Governor's defense submitted. Yes, we have all these 20 copies of responses and 20 copies of case digests. I hope that you are there. This we sent to you via soft copy and have hard copies that should be availed. We could not put them in this folder.

We have the constitutional issues and again, we have those files in Committee Room 5; one set of eight quarterly reports and two annual financial statements are available.

Again, just to inform Members, many of those boxes that we saw are actually the tender documents relating to each of these tenders because these are the allegations by the County Assembly. I think that the Governor has attached all the tender documents in those boxes. Unfortunately, they are not available in soft copy; they are just available in hard copies.

If you turn to the next page, it is the entire tender and then there is tender to procure the Governor's vehicle.

If you look at page 2, we have 14 travel documents. Again, we have 20 files containing the papers; the documentation for purposes of travel because one of the allegations is that the Governor was paid money and imprest and they did not travel.

Number 15, again 20 files; we have Kirinyaga Investment Authority, the issue of paying these Board members without approval.

The last is the issue of violation of the rights to health of the people of Kirinyaga. We have 20 files on the evidence relating to that matter.

Mr. Chairman, Sir, these are all in hard copy and so, ideally, we should be able to give each Member their own box or documents to go with. If you go that route, each of you will have a box to go and read.

The next is the rules of procedure that is under 'M' that we will be discussing shortly.

Sen. Madzayo: Before we can proceed further---

The Chairman (Sen. Malalah): Speak to the microphone.

Sen. Madzayo: Folio L. I am referring to page 2 of that document. Is No.4 and 5 the same? I can see an identical---

The Director, Legal Services (Dr. Okello): They appear to be the same.

Sen. Madzayo: So, which one should we retain?

The Director, Legal Services (Dr. Okello): If they are the same, you remove one without choosing.

Sen. Madzayo: Then, their numbers will change according to the HANSARD; numbers 6, 7, 8---

The Director, Legal Services (Dr. Okello): Mr. Chairman, Sir, this attachment is their document; their list. Ours is just to confirm that these boxes are there and it refers to the same thing. It could be a typo. I do not see any harm in cleaning it up but we have all these documents in Committee Room 5.

The Vice-Chairperson (Sen. Halake): Mr. Chairman, Sir, maybe we leave it the way it is just in case it is a cross-reference that covers these two things that she has provided separately.

Sen. Pareno: Mr. Chairman, Sir, I was just going to say what Sen. Halake has said that we leave it as it is but we also cross-check with the boxes to see whether there are different items in the boxes but wrongly listed.

The Chairman (Sen. Malalah): I think that is the direction that we should take. Proceed.

The Director, Legal Services (Dr. Okello): Thank you, Mr. Chairman, Sir; we were at 'M' where we are looking at procedure. This is the 5th Schedule to our Standing Order. We just picked it out. So, these are the procedures that we use. However, in particular, look at page 2 of that document; the 5th Schedule.

Of that document, The Fifth Schedule - Those are the rules we are going to rely on. They are attached here for Members' familiarization.

NQ is the HANSARD of the County Assembly of Kirinyaga. This is again for Members to familiarize themselves and prepare for the hearing. I think I emailed this to all Members, so you already have the soft copy.

If you look at PQ, it is invitation to appear which, of course, has been responded to. This is to the County Assembly. Just to note that, yes, the County Assembly of course, filed their additional documentation as required. We shared those soft copies and you all have them as you are also serving the other parties.

If you look at RS, it is invitation to the Governor to appear. It has been responded to. We have already dealt with that. I think the most important point to note here is that at least for this particular impeachment proceedings, both parties are appearing. So, we are not going to have a case where as in the Taita Taveta one, the Governor did not appear. On this one, the parties are ready for the war. So we will sit back and watch.

No. TU, this is the Motion. Of course, it contains the charges. It is the Motion by the County Assembly. It contains the charges word by word as we shall be reading this to the Governor tomorrow.

The Vice-Chairperson (Sen. Halake): My folder does not have anything in TU. This Motion by Mr. Kinyua?

The Director, Legal Services (Dr. Okello): Yes. You note that it is the one that is duly signed at the back so we had to put the original document. That is why it is there for Members' use.

I emailed all these to Members. You have them in your inboxes. Those are the documentations that we have.

I needed to make one clarification, that for the County Assembly; they brought the 20 copies of their documents. It is a huge one. This morning, we had to call them back to come and tag them for ease of reference by Members. As we speak, I think they are seated with the Secretariat. They are tagging those documents. They are not taking them back but just tagging the pages so that you are able to know.

The Chairperson (Sen. Malalah): We shall be briefed on the documentation from the County Assembly.

The Director, Legal Services (Dr. Okello): When the County Assembly were filing their appearance which we have looked at, they also had their documentations. The only thing is that they did not do is the tagging as done by the County Governor but their documentation is basically the same as they had sent earlier to the Speaker.

They have only added the authorities which is shared as a soft copy and a few other documentations. The big document that they are tagging now contains all that evidence and they are tagging it for ease of reference.

Tomorrow, when they are presenting their case, as they adduce, they refer to a document, they will be telling us the tag to look at.

The Chairperson (Sen. Malalah): We should now go back to the consideration of that letter to invite witnesses. I will now allow Sen. Halake to proceed.

The Vice-Chairperson (Sen. Halake): Is the County Assembly aware that these officers have been listed as the Governor's witnesses because they will have an opportunity to cross examine them and have them here? Maybe we need to establish if they are aware. It appears they are not aware.

The Chairperson (Sen. Malalah): I think their main concern is that they want the Senate to compel the witnesses to provide this Sitting with the documentation. Yes, they might be witnesses lined up by Governor Waiguru but they will not come with the evidence needed by the County Assembly. This is because this is a County Assembly case and they need to prove it. So it is upon them.

The Vice-Chairperson (Sen. Halake): My considered opinion is that, so that we appear to be fair to everybody; if it is not extraneous or something that would take us out of our way because they are here anyway, we could do the invitation. It does not compel them

but on our part, we will not have been seen to have not helped in any way to make sure the case is established beyond doubt.

Sen. Pareno: I would first want to know how we know that they are Governor Waiguru's witnesses. Where are they listed that they are the Governor's witnesses?

The Chairperson (Sen. Malalah): They are listed in the letter of appearance.

Sen. Pareno: From there, we can make a decision, because if they are witnesses anyway, then we might not have to summon them.

The Chairperson (Sen. Malalah): In JL, it states:

That the following witness will appear to give evidence on matters under inquiry: Calirus Otieno Joseph. What is the County Assembly asking for?

The Director, Legal Services (Dr. Okello): The County Assembly is asking for three but Carilus Otieno is one of them.

The Chairperson (Sen. Malalah): Hon. Members, to appear to look fair it is important for us to accept and consider the request by the County Assembly so that we invite the remaining two.

Sen. Kwamboka: Has the County Assembly tried to invite them before we do that? Have they refused? Can we have at least something to show that they have tried to invite them? They cannot tell us to invite them yet they have not tried to.

The Director, Legal Services (Dr. Okello): The County Assembly's letter JK, says that:

“The said persons have refused, neglected and have otherwise been unable to give their statements and produce documents requested by the County Assembly”

Sen. Kwamboka: Yes, they have indicated that, but do they have the evidence to prove to us that they have tried? They cannot just indicate. Let us have some evidence.

The Chairperson (Sen. Malalah): At the bottom of that letter, they say that the County Assembly has asked for relevant information from the said persons in the following correspondences from 4-14. Do we have copies of those correspondences? Are they attached?

The Director, Legal Services (Dr. Okello): Yes, they are attached in their documents that they are tagging.

The Chairperson (Sen. Malalah): It is important for us to summon them and ask.

Sen. Kwamboka: It is invite, not “summon”.

The Chairperson (Sen. Malalah): The procedure and our rules say we may invite or summon witnesses.

Sen. Mwangi: Mr. Chairman, Sir, we are dealing with an important issue that affects many people in this country, particularly in Kirinyaga County. Any evidence given to us is important. It will be upon us to evaluate whether the evidence is useful or not. We have only two days to deal with this matter. The more we prolong this issue, the less time we shall have to get to the depth of this matter.

Now that we have indication that these people have some evidence which they have not given to the county assembly, it is important for us to invite them and hear whether they have relevant evidence or not. We cannot dismiss evidence on a matter like this where a Governor can lose her seat or continue to serve. It is important for us to call these people to produce evidence before this Committee.

The Chairperson (Sen. Malalah): Sen. Mwangi, you are right. However, I wonder why the county assembly used such grounds to impeach Gov. Waiguru yet they did not have evidence at the time. The County Assembly of Kirinyaga wants us to help them prosecute or advance their case and that is the concern of other Members.

Sen. Mwangi: Mr. Chairman, Sir, it is important to note that we have the final say on this impeachment and that is why this matter has been referred to us by the County Assembly. However, now that we have a hint that the people they invited did not appear before the county assembly, it is upon us to determine whether this impeachment will go through or not. It is important for us to have all information.

The Chairperson (Sen. Malalah): Before I allow Sen. Kwamboka to speak, I would like to remind this Committee to be careful so as not to set a precedence where people will be alleging things and coming to us to look for documentation for them. Before an allegation is made, there must be clear documentation and proof of the same.

Kindly proceed, Sen. Kwamboka. Sen. Pareno will speak thereafter, followed by Sen. Madzayo.

Sen. Kwamboka: Mr. Chairman, Sir, I agreed with you. It is clear that the county assembly did not have evidence when they impeached Gov. Waiguru. It is not upon us to seek those documents. If we do that, we will set a precedence for other county assemblies to impeach their governors without evidence. Let us think before we make such a move.

The Chairperson (Sen. Malalah): Hon. Members, let us also consider that the county assembly tried using the provisions provided in the Constitution. They summoned the relevant officers to appear before the county assembly but they refused. Considering that, we can make a determination as the Senate on whether it is important to summon the relevant officers before this Committee.

Sen. Pareno: Mr. Chairman, Sir, I would like to know whether the people who will be summoned by the Senate will amount to new evidence being brought in at the stage where the Senate is supposed to be considering what the County Assembly of Kirinyaga did and not fishing for new evidence. If summoning the said individuals will amount to new evidence, we should not invite them. However, if the people to be summoned will not bring in new evidence, we should invite them.

We should be careful not to appear as though we are fishing for evidence. We should only consider the evidence brought before us by the county assembly. The people who the Senate is supposed to summon should not amount to new evidence being brought in at the stage where the Senate should be considering what the county assembly did and not go out to fish for other evidence.

If inviting the said persons will amount to new evidence, we should not invite them. We should be careful not to appear fishing for evidence. We should only consider the evidence that was brought before us by the county assembly.

The Chairperson (Sen. Malalah): What Sen. Pareno means is that if the people we are supposed to invite bring in new evidence, it will have been filed out of time.

Sen. Pareno: Mr. Chairman, Sir, the evidence will have not only been filed out of time, it will be introducing new evidence. The case was considered at the county assembly level. The Senate is an appeal court, sort of. We are not doing a fresh case here. The County Assembly of Kirinyaga impeached on certain grounds. Our work should be to consider whether the assembly had good grounds for impeachment or not.

The Chairperson (Sen. Malalah): Kindly proceed, Sen. Madzayo.

Sen. Madzayo: Mr. Chairman, Sir, there is need for this Committee to be seen to be conducting the business bestowed upon us by Kenyans in accordance with the Constitution.

I would like to refer us to Article 125(1) of the Constitution which gives us the power to call for evidence:

‘Either House of Parliament, and any of its committees, has power to summon any person to appear before it for the purpose of giving evidence or providing information.’

As I said earlier, my background in law speaks volume. If you are working as an accountant and refuse to give certain evidence, this Committee has the power to call for evidence. It is in this regard that justice must not only be done, but be seen to be done. This Committee is *quasi-judicial*. We have the powers of the High Court.

At the same time, it is provided for that if any party feels uncomfortable with the appearance of a certain person or the Committee as a whole, they can ask the Committee to disqualify itself from hearing the matter. It is in this regard that I insist that this Committee has the power to even dismiss the witnesses and declare them hostile. The moment this Committee declares you a hostile witness, then all the evidence you will give does not count on record.

This is not the first time we are hearing that parties have refused to appear before committees of the House. The Constitution states that if either of the disputing parties requests us to summon certain persons, then that person has no option but to appear before the Committee of the House to be questioned.

The summoned persons will be questioned on documents pertaining to their offices. We cannot shut the door to either parties. That will mean suffocating ourselves from receiving material facts, which can be very fatal to the Committee's decision at the end.

Mr. Chairman, Sir, that is my humble advice. I thank you.

The Chairperson (Sen. Malalah): Proceed, Sen. M. Kajwang'.

Sen. M. Kajwang': Mr. Chairman, Sir, even though we are spending time on this, I think it is extremely important. Many of us recall what happened at the Supreme Court when it was ordered that the Independent Electoral and Boundaries Commission (IEBC) produces server logs. That became a very important part of that case. In fact, it led to the nullification of the presidential election results.

What the Assembly is requesting, and I have now had an opportunity to read this letter from them, which says that certain officers have refused to provide certain documents--- One might argue that the Assembly had all the powers to summon those officers because the powers available to the Senate are also available to the Assembly. They ought to have exercised those powers.

Mr. Chairman, Sir, be that as it may, I do not think the Assembly is making an unreasonable request. The only thing is that we have interpreted this letter to mean that the Assembly is asking those people to appear before us. My reading of this, and we could meet the Assembly halfway, would be for this Committee to direct the officers mentioned to provide the records indicated there. The Assembly has been very specific on what Mr. Ndathi and Mr. Otieno should produce, and it has listed them.

We could direct that those officers provide those documents to the Assembly. Once the Assembly is seized of those documents, if they appear before us and try to bring in new evidence, it shall be ruled to be out of order, the way Sen. Pareno has raised it. This is because we cannot allow fresh evidence.

Mr. Chairman, Sir, at this point, we are not compelling the witnesses to appear before us. The Assembly requires those documents maybe to build its case. It is only if those officers refuse to provide those documents to the Assembly that we can then summon them. I think there, justice will have been seen to be done.

The Chairperson (Sen. Malalah): Considering the timelines we have, I think we should just summon them. We are starting hearings tomorrow and we do not have the luxury of time to invite, refuse then summon.

Sen. M. Kajwang': Mr. Chairman, Sir, if we summon them, what are we summoning them here for? Is it to cross-examine them or we are summoning them so that they can come with those documents for us to scrutinize? It is not our business to scrutinize these documents. It is for the Assembly to look at them and build their case on it. If we summon them and they come with all these documents, another pickup load of documents, of what value will it be to the Committee?

The Chairperson (Sen. Malalah): Sen. M. Kajwang', I want to remind you of the contents of rights and fundamental freedoms; Article 35 of the Constitution on access to information. It says that-

- “(1) every citizen has the right of access to-
- (a) Information held by the State; and
 - (b) Information held by another person and required for the exercise or protection of any right or fundamental freedom.”

With all fairness, I beseech Members to allow the Clerk to summon the officers. The documentation that the County Assembly is requesting will determine the direction of this case. It is very important for us to consider being fair and allowing the Clerk to invite the witnesses.

Sen. M. Kajwang' is asking: We are inviting those people as whom and to do what? Are we inviting them on behalf of the County Assembly to help them advance their case or as a court for us to cross-examine them and dig more information from them?

Proceed, Dr. Okello.

The Director, Legal Services (Dr. Okello): Thank you, Mr. Chairman, Sir. Just to clarify one or two things. First, when the Committee is summoning the witnesses, we are doing so at the request of the County Assembly. It is the County Assembly that will stand them here as their witnesses and ask them to produce those documents.

Secondly, there is something that Sen. Pareno asked. This is not new evidence. This information is already available in the County Assembly's documents and even the letters. What they are saying is that they went to these fellows to record statements--- Remember when the Committee is inviting the County Assembly, it says, “your witnesses and their statements.” When they went to have these fellows record their statements so that they attach, these officers refused. It is not new evidence. We already have some of these in the documentation.

Mr. Chairman, Sir, if in any event they come and produce anything that appears new, there will be two things. First, the governor's lawyers who have already been served with the documents by the Assembly will be able to raise objection. Secondly, the Committee when retiring will be able to make a determination that this is new evidence, and we cannot rely on it. It is not new evidence. If they purport to bring new evidence at that time, it will be dealt with.

Lastly, I hear Sen. M. Kajwang' and the concerns of inviting or summoning. When you look at the Constitution and Parliamentary Powers and Privileges Act, the law is very clear. There are rules that say we can either summon or invite. Witness summon is a long practice. As a result of the time that this Committee has and the fact that impeachment has a prescribed time limit, the only option that would work is a summon.

The Chairperson (Sen. Malalah): Proceed, Sen. (Dr.) Mbito then Sen. Halake.

Sen. (Dr.) Mbito: Mr. Chairman, Sir, I just want a clarification on this. It is very clear that they are requesting for summons to be made to these people to appear before this Committee. However, on the documents, as Sen. M. Kajwang' said, do we also ask them to bring us the documents or avail them to the County Assembly? That is the main question.

This is because, had the County Assembly wanted us to receive these documents, it would have been initially when the impeachment came. They would have also made this request then, so that we would have compelled them to deliver these documents by the time of the deadline on Saturday. Are they requesting that these people come here before us, but the documents be availed to the Assembly?

The Chairperson (Sen. Malalah): I think that is where the quagmire comes in. If the documents are availed to the County Assembly, will they be admissible before us considering the timelines?

Sen. (Dr.) Mbito: Mr. Chairman, Sir, they can be admissible if it is something already in this list. However, if it is new evidence, it will not be accepted.

The Chairperson (Sen. Malalah): Yes, Sen. Halake.

The Vice-Chairperson (Sen. Halake): Mr. Chairman, Sir, thank you. As we know, impeachment is not just a court process, but also a political process. For that reason, my humble submission is that we summon and do what we have been requested. Remember, this case is also being tried in the public opinion court. This Committee has already been tried and literally judged.

I would think that we summon, do what we have been asked to do and we reject any new evidence that comes and move on. We would have done what was asked of us. This is how we must proceed so that we are not seen to play into the narrative. This is definitely a political process and we must treat it as such.

The Chairperson (Sen. Malalah): The proposal is that --- Proceed, Sen. Pareno before I continue.

Sen. Pareno: Mr. Chairman, Sir, sorry for interrupting. We decided that we go into this separately because it is a very important issue. I stand guided because I am not the only learned lawyer here. This is my opinion. On what we are doing right now, if we summon them, then we will be asking them to come and give their statements and produce the documents on behalf of the County Assembly. That is in effect.

They are unable to get their witnesses and so, they are using this Committee to get for them the witnesses to come, make statements and produce documents. We will have to cross-examine them and take that evidence. Is it our business to help a party bring their

witnesses and statements at this point in time? If we agree to that, because the rule says that we can invite and summon, so be it. However, that is in effect what we will be doing.

Mr. Chairman, Sir, look at what they have said. They are saying that the said persons have refused, neglected or otherwise been unable to give their statements and produce documents requested by the County Assembly. They are now asking us to call for them witnesses who will come and record their statements with them and produce the documents before us.

I appreciate that we have been guided by the Director, Legal Services, who has said that we already have the documents. Therefore, it is not new evidence. However, what we are doing is helping them to bring witnesses to come and prosecute their case.

Are we doing justice to both sides? I leave it to you.

The Chairperson (Sen. Malalah): Sen. Mugo has a contribution. Let us listen to her.

Sen. Mugo: Thank you, Mr. Chairman, Sir. I have the disadvantage of not hearing everybody and everything. However, it has improved in the last part. I am able to follow most discussions now. I support---

Sen. Madzayo: We are lost. I hope this does not happen during the hearing of the Committee proceedings. It is so dangerous to the public.

The Vice-Chairperson (Sen. Halake): It could be her network.

The Chairperson (Sen. Malalah): We shall proceed then come back to her.

Hon. Members, we shall proceed. We have to make a determination on this matter.

I would not want us to start voting on such issues. I would want us to develop a culture of having consensus as we move on. What I think is the right way and in the rule of fairness is that we allow the summons, then it will be upon this Committee to decide whether the evidence will be admissible or not. I think that is the way we should go.

Hon. Members, is that agreeable?

Sen. (Dr.) Mbito: Are they trying to get more witnesses through the backdoor?

The Chairperson (Sen. Malalah): It does not matter. We will now make a determination of what you are raising at that point.

Sen. M. Kajwang': Mr. Chairman, Sir, just for clarity. The County Assembly is asking for certain records. We are directing that those records be provided to the County Assembly and not to the Senate at this point.

We are directing that those records be availed to the County Assembly.

Secondly, are we directing that those officers appear for cross-examination? What exactly are we directing? This is because this letter is asking for specific documents, which in my

view, is reasonable for us to agree with the County Assembly. However, what are we asking of this officers? Do we want them to appear?

The Chairperson (Sen. Malalah): I think we cannot compel the Members to appear as witnesses for the County Assembly, but we can compel them to give information to the County Assembly, so that the County Assembly can use the documents to prosecute its case.

Sen. M. Kajwang': Mr. Chairman, Sir, failure to which, then the Committee might summon them then. I think that is a good build up for expectations, so that we direct---

The Chairperson (Sen. Malalah): Considering the timelines?

Sen. M. Kajwang': Considering the timelines, we have tomorrow, Tuesday, for the County Assembly to tell us whether our instructions were complied with.

If the instructions are not complied with, and the County Assembly still thinks it is important, then we can summon these persons to appear on Wednesday so that we split the two; we allow the County Assembly to get access to the documents in line with the constitutional provision that you have read.

If the County Assembly feels that they need these people to appear before us for cross-examination, we can further grant that.

The Chairperson (Sen. Malalah): The procedures that Dr. Okello read to us give the Senate the mandate to summon or invite. They do not give us the mandate to order a certain party to issue documents to a certain party.

Sen. M. Kajwang': No. The final part of that provision is to provide evidence. The Senate or Parliament has the powers to compel any person to provide evidence.

These records form part of that evidence. We have that power to order them to provide records to the County Assembly. I cannot argue on that. I can accept and agree.

The only clarity was: Are we compelling them to appear before us?

Sen. Pareno: Mr. Chairman, Sir, we are going to put ourselves into a lot of trouble with this. The County Assembly says and I quote:

“The said persons have refused, neglected or have otherwise been unable to give their statements and produce documents.”

If they give their statements, and you allow what the County Assembly wants, then it is for them to state their statements and come to produce documents. Production of documents is by somebody coming here to produce those documents.

So, they are asking us not only to allow them to make their statements with the County Assembly, but also to come and produce those documents, either before the County Assembly or the Senate. It is before the Senate now.

In effect, you will be telling them to come and give evidence before you and produce documents.

The Chairperson (Sen. Malalah): For purposes of this argument---

Sen. Pareno: Let us be very clear. Either we summon them to come and produce documents on behalf of the County Assembly or tell them to go and give the statements to the County Assembly and produce before them, which is too late. They cannot produce before the County Assembly.

The Chairperson (Sen. Malalah): Hon. Members, I think we have a legal basis under Article 125; powers to call for evidence which states that;

“Either House of Parliament, and any of its committees, has power to summon any person to appear before it for the purpose of giving evidence or providing information.”

Specifically, Article 125(2) (a) says:

“to enforce the attendance of witnesses and examine them on oath, affirmation or otherwise;

(b) to compel the production of documents; and

(c) to issue a commission or request to examine witnesses on board.

I think we will still invite them to come before this Committee and compel them to give the documents to the County Assembly. I do not think we will be going outside these provisions.

The Vice-Chairperson (Sen. Halake): Mr. Chairman, Sir, I agree with you 100 per cent. This is when it is us wanting this documentation, but not when directed by others to do so. I stand corrected.

I am for the idea because of the political considerations to do so for this halfway House, where we could ask them to provide whoever has been denied the right to information. We will be enforcing Article 35, in this case, summoning them is a different matter altogether.

The reason I would be thinking we should do this is because, as you know, these are political processes and sometimes justice must be seen to be done.

That said, this Article is when it is us. If it is originating from the Senate, we need to do these things, but not being directed from another place or people.

The Chairperson (Sen. Malalah): Sen. Mugo, are you now on?

Sen. Mugo: Yes. I agree with that last statement. That is what I wanted to say.

First, we would be opening a Pandora's Box because if the side says that they want this to be done, then I do not know where you will close the door. This is because when you open for one party, then you open for the other party as well.

We are setting a precedent which could cause a lot of headache for other parties because there will be more impeachments coming. However, what I wanted to say is that if the Committee feels that we need certain evidence, then it is emanating from us; the Committee.

I believe that meant that we can summon any witness or ask for evidence. I do not believe that it is when one of the parties is requesting to do their work. They are the ones to ask because they have the power and act. I do not understand when they said that they asked and they did not get them.

I am sure there is something they can do to revert that issue. I do not believe we should do their work for them. It should be when the Committee needs that evidence. We need that evidence right now. It is something that we are anticipating.

The Chairperson (Malalah): I think Sen. Mugo is trying to say that the County Assembly has got powers to request for the same documents. Therefore, they would still use those powers at their level to request for the same documents. Since we are acting as a court, it is not upon us to request on their behalf. I think that is the argument that she is trying to advance.

Maybe we close this by listening to Sen. Madzayo and Sen. Mwangi, and then we make a determination.

Sen. Madzayo.

Sen. Madzayo: Mr. Chairman, Sir I am already witnessing a very dangerous phenomenon.

Sen. Mugo: Please, speak on the microphone. I cannot hear you.

Sen. Madzayo: I am Sorry. Maybe I am talking a little bit softly. My observation is that we should respect professional opinion. I believe that ours is also an input to assist our professional parliamentary team led by Dr. Okello. Dr. Okello has given his comments. It is up to us to either accept what Dr. Okello has said or ignore it, and pursue our own direction. However, my humble view is that it is important to respect professional opinion.

Thank you.

The Chairperson (Sen. Malalah): Sen. Mwangi.

Sen. Mwangi: Thank you, Mr. Chairman, Sir. The process that we are on now is not only legal, but also political. We have heard that there is some evidence that has not been adduced to the Assembly for some reasons. We are now sitting here to determine this very serious matter. Why can we not go for this evidence directly, even if the Assembly never did it? We are not sitting here as the High Court or as lawyers. We are sitting here

as Senators, and that is to say that we do not only have to look at what courts do. We also have to look at the politics of this particular matter.

Mr. Chairman, Sir, I think that it is imperative that we listen to all evidence that can be adduced to this Committee, so that by the time we determine this matter, we will not be seen to be biased. We have already been judged by the electorate. The people of Kirinyaga have already voiced their opinion about this Committee. It is for us to sit here when we are sober and determine the matter. However, we cannot determine this matter without that evidence that we have heard has not been adduced.

Thank you.

The Chairperson (Sen. Malalah): Hon. Members, we need to make a determination. We have two options here. I think we have only two ways to go about it.

(The Chairperson consulted the Committee Clerk)

Our clerk is just appraising us with the correspondence by the County Assembly, which has been making several requests to the executive to request for that information, and it is dated from February 25th. Therefore, I think that the County Assembly has tried getting information from the county executive. It is, therefore, within our powers to determine whether we should accept the Clerk to issue summons and/or invitations to the said officers to appear before us.

Hon. Members, I as your Chair, I would not want us to start voting on these issues. Can we unanimously agree that we follow the professional guidance by our Secretariat and allow the invitation?

An hon. Senator: Yes, let us build consensus on it, Mr. Chairman, Sir.

The Chairperson (Sen. Malalah): Any contrary opinion?

That is okay. I think that we have agreed. We shall issue summons to ask the officers to appear before this Committee and also give out information as requested by the County Assembly.

Thank you, Hon. Members. We move to the next agenda. Do you still have anything on the briefing of the documentation received?

The Director, Legal Services (Dr. Okello): Mr. Chairman, Sir, we are done with admission. Just to confirm to Members that this is the county assembly's bundle.

The Chairperson (Sen. Malalah): So, we shall also get that?

The Director, Legal Services (Dr. Okello): Yes, you will get it. That is what they are tagging for ease of reference.

The Chairperson (Sen. Malalah): Let us now go to Agenda No.7; Briefing on the Hearing of the Proposed Removal from Office of the Governor of Kirinyaga.

We had issues that had raised concern. First, we had issues on how we are going to conduct these proceedings. Since it is going to be a public hearing, are we going to sit in, just like a court to listen and note down issues and maybe raise questions for clarifications, or are we going to start cross-examining people and ask them certain questions? We need to agree on that modality, so that we move forward. I think that the technical team will advise us on how well we should go about it, so that we do not look as if we are advocates of one party.

Dr. Okello, you can come in.

The Director, Legal Services (Dr. Okello): Thank you, Mr. Chairman, Sir. Just to wrap up everything, with your kind permission, I invite Members first to look at the programme. Let us start from there, so that we wrap up everything.

The Chairperson (Sen. Malalah): Where is the programme? Is it in the small folder?

The Director, Legal Services (Dr. Okello): No, the hearing programme, which is 'B.'

The Chairperson (Sen. Malalah): The first document?

The Director, Legal Services (Dr. Okello): Yes, I just want Members to note that if you look at the programme, tomorrow we are starting with a conference of parties.

The Chairperson (Sen. Malalah): I do not have the programme. Can I get a copy?

The Director, Legal Services (Dr. Okello): If you look at Page 2 of the programme, we begin with the conference of parties. Allow me to stand just to explain. As we do conference of parties, Members will be seated on that side, the way we are seated now. The Chair will be seated there, then the Legal Counsel will be seated here. This part will be for the County Assembly, and we are giving them space for five. They have three lawyers and two others. The Governor's team will be seated here.

The Chairperson (Malalah): In their letter they have said that they will have three Members of the County Assembly (MCAs) appearing on their behalf?

The Director, Legal Services (Dr. Okello): We have already communicated to them that we are only going to accommodate five people inside here because of the COVID-19 Regulations.

The Chairperson (Malalah): So, they will prioritize?

The Director, Legal Services (Dr. Okello): Yes, they are the ones to prioritize. The Governor's team will be sitting here. The two teams will have holding rooms. Each holding room will carry nine people. So, in addition to the five here, the Governor's team will have nine others in the holding room, which I think will be the Commission room. The County Assembly will also have their five members in here and nine in the other holding room, and they will be able to follow the proceedings from those rooms.

The conference of parties will only have the Members, the Secretariat and the five from each side. During that time, the Chairman will give the usual introductions, then there

will be a small brief in terms of what you will read out; the mandate of the Committee. Then, the Governor will introduce her team; you recite the mandate then agree on the programme.

Members, if you look at that programme, you can see that we have allocated timelines. We will start with the reading of charges. The Clerk will read charges verbatim, which we already have there. After that, if any party raises any preliminary matters, they will be considered.

Mr. Chairman, Sir, at this point, we note that in the event that we have any preliminary objections raised, then the Committee will retire to make a determination on the preliminary objections.

If there are preliminary objections, the parties will be allowed to prosecute the objections, then we will send them out. This is our permanent working place as the Committee. You will then agree and write the decision that will be read out.

The Chairperson (Sen. Malalah): When retiring, will we still be live?

The Director, Legal Services (Dr. Okello): No, Mr. Chairman, Sir. You will send everybody out at that point.

We will have three cameras because it will be a live proceeding. The witness will sit here and we will have one witness at a time.

If you look at the program, you will notice that the County Assembly and the Governor have each got 40 minutes for the opening statements. These timelines are provided for in the Rules of Procedure. We will have to be strict though there is nothing wrong with them saving time. However, we must not allow them extra time.

We will start with the County Assembly's case. The County Assembly will present their case; they will call their witnesses---

The Chairperson (Sen. Malalah): Just before we go there. What content are we allowing in the opening statements on behalf of the County Assembly?

The Director, Legal Services (Dr. Okello): Mr. Chairman, Sir, in the opening statements, the parties will give us a brief overview of their case and what they are setting out to establish. There is nothing to allow or not to allow. It is their statement on what they are setting out to establish and how they are to establish it.

The Chairperson (Sen. Malalah): As you brief us, please note that we are all learned but not learned friends.

The Director, Legal Services (Dr. Okello): Sorry, Mr. Chairman, Sir. That is noted. In the opening statements, the parties will tell us their case and how they set out to establish it. They have 40 minutes to do that.

The County Assembly will be the first one to give their evidence. They will call their witnesses, if any, who will be cross-examined by the Governor's lawyers. The Governor and the County Assembly have each got three lawyers. There will be re-examination if something comes up and the County Assembly wants to clarify with their witnesses. The whole process should take three-and-a-half hours.

For the Committee not to appear to interfere so much with the proceedings, the Committee has to agree on how the Members will seek for clarifications. I propose that Members write down their questions on issues that are not clear and forward them to the Chairman who will then allow them to seek clarification at the right time. That will help bring order and avoid interference to the proceedings.

As they adduce their evidence, cross-examination and re-examination, a Member who feels that something is not clear can write it down and forward it to the Chairman.

Sen. Mugo: Mr. Chairman, Sir, how do I get to send you my question?

The Chairperson (Sen. Malalah): We do have a chat option on zoom. Just send me a message?

Sen. Mugo: Mr. Chairman, Sir, where is it?

The Chairperson (Sen. Malalah): The technical team will advise you on how to go about it.

Sen. Madzayo: Mr. Chairman, Sir, procedurally and to avoid looking cumbersome---

Sen. Mugo: Mr. Chairman, Sir, can he kindly use the microphone?

Sen. Madzayo: Mr. Chairman, Sir, I hope that my big sister, Sen. Mugo, can now hear me.

Sen. Mugo: Yes, Mr. Chairman, Sir. I can hear him.

Sen. Madzayo: Mr. Chairman, Sir, we should avoid being cumbersome. Some of our written questions might be too long thus cumbersome. I request that we write down the clarifications. In any case, we will not be asking questions but we will rather be seeking clarifications because this is not our case. It is actually a case between the two parties before us.

Towards the tail end, the Chairperson will ask the Members to seek clarification once the parties are through with the witness. It will be the right time for us to come in. I could be having ten questions and another Member might be having six questions. Does that mean that I will have to approach the Chairperson ten times? If we are to all give you our questions, there will be a long queue because you will have to read through the sentences

and approve or not approve them yet you are not the one to tell a Member what to seek clarification on and what not to seek clarification on.

Sen. Pareno: Mr. Chairman, Sir, we can seek for clarification at the tail end after the witnesses have given evidence and they have been cross-examined. We can then spare a few minutes for the Members to seek clarification at that point. The re-examination might actually clarify a lot of things. We will seek for clarification after every witness though it will come in after re-examination.

The Chairperson (Sen. Malalah): Sen. Pareno, are you suggesting that we listen in silence during the submission, cross-examination and re-examination, then we allocate a certain time for Members at the tail end? Will we give them another time to respond to our questions? Will that time be within the three-and-a-half hours of their submissions?

Sen. M. Kajwang': Mr. Chairman, Sir, in the Rules of Procedure, No. 22 comes after No. 21 and there is some logical flow to that which confirms what Sen. Pareno has said. Rule No. 22 states that: -

"A Member of the Committee may put a question to any of the witnesses before the Committee"

This Committee is different from the other committees. It is not like the County Public Accounts and Investments Committee where one can harass a witness. In this Committee, we are required to listen. In fact, we are actually observers. The game is between the Governor and the County Assembly.

In some committees, I have seen domineering Members ask like 20 questions as other Members remain quiet. If we agree that the clarification time will be within the timeline put here, I will beg that we copy something from the United States Congress. At the United States Congress, a Member is given a definite time to ask their question and it can be three or four minutes.

You ask your question and cross-examine the witnesses within those three minutes and that is the end of the story and we move to the next person. This is because sometimes we see these things playing out where one Member wants to hog the limelight knowing that it is live. At the end of the day, we are jurors in this matter. It is for us to listen to the case between the two parties.

The Chairperson (Sen. Malalah): So, your suggestion is that we allocate specific time for the questions raised by Members?

Sen. M. Kajwang: Yes.

The Chairperson (Sen. Malalah): Even if we allocate three minutes, that will be 33 minutes. Are the 33 minutes included in the three-and-a-half hours, so that we inform those who will make submission to do so in three hours?

The Vice-Chairperson (Sen. Halake): Mr. Chairman, Sir, to be fair to them, because it is their show, let us not eat into their time. Let us find ourselves a bit more time to do it but I do not know how.

The Chairperson (Sen. Malalah): Is that provided for in the procedures?

The Director, Legal Services (Dr. Okello): Mr. Chairman, Sir, for us to have orderly proceedings, there are two things we should do. First, depending on the number of witnesses that we will have, we pray that we will not have many clarifications to seek per witnesses. It will be important that a clarification is sought after examination and re-examination of a witness. If you leave it to happen at the tail end, maybe they will finish their case at 5.00 p.m. and the first witness could have already left.

I propose the following. Regarding clarification in relation to a particular witness, once re-examination is done, the Committee can set aside maybe 10 minutes and seek clarification from Members in relation to that witness. We should make it brief and to the point. Members can also take it upon themselves to make sure that they do not story-tell. They should just seek clarifications straight and to the point at least after each witness.

You can set time as a Committee. It should not be three minutes per Member, but maybe 10 minutes collectively as a Committee, then you see how to manage it. After that, once everything is done and the County Assembly has closed its case, you can give the Committee maybe 10 or 15 minutes to seek any other clarification that may have arisen, before the Chair gives concluding remarks for the day and way forward.

The Chairperson (Sen. Malalah): I propose we give ourselves 15 minutes. Just in case you are not given an opportunity within the 15 minutes, you will have it in the next 15 minutes. If Sen. M. Kajwang' has spoken the first 15 minutes and he has supplementary questions in the next, he should donate those questions to, for example, Sen. Mwangi to ask on his behalf, so that we balance out. Is that the position? If Sen. Kwamboka uses five minutes in the first instance, should we again give her a chance in the second round? We should be balanced.

Yes, Sen. Mwangi.

Sen. Mwangi: Mr. Chairman, Sir, I am of the idea that was given by Sen. M. Kajwang', that we set aside about 30 minutes and allocate time to each and every Senator here. We have witnessed from the plenary sittings that sometimes you want to speak but you can even go for two weeks without speaking. We have a very short period; just about two days.

If we do the way Sen. M. Kajwang' said, I think that will be much better, like it is done in the Congress or the House of Commons in England. That will be better because 30 or a maximum of three minutes is not much time because we are 11.

The Chairperson (Sen. Malalah): We also need to remain alive to the fact that we might have procedural interjections. Maybe the people who will submit may not abide by the rules of procedures. How do we go about such interjections?

Sen. Pareno: Mr. Chairman, Sir, we can marry what you are saying and what he said; that we just give an allocation of even 20 minutes and not necessarily 33, because all of us will not speak about the same thing. I might have a question on one witness but nothing on the next. We can just set aside for example 20 minutes. Those who will raise up their hands should be allowed to cross-examine and you try to limit the time. I might have a question at one moment but nothing in the next one probably because I have understood everything. I think that will work well. You may give two or three minutes each and within the next 20 minutes we are done.

The Director, Legal Services (Dr. Okello): Just to agree with Senators, what Sen. Mwangi and Sen. M. Kajwang' raised is that the 20 or 30 minutes can be allocated at the final end. In between, when you seek clarification from a witness before they leave, I propose that the Committee can be given 10 minutes if there is any question. If there is none, we proceed to the next one.

The Chairperson (Sen. Malalah): So that we do not just sit for three hours---

The Director, Legal Services (Dr. Okello): Yes, but we have the ultimate 20 or 30 minutes at the closing, so that once every witness has been called, then people can be given a chance to say something. If they do not have anything, we proceed.

The Chairperson (Sen. Malalah): But we also take caution not to be judgmental in our statements.

Sen. Pareno: That means that we have agreed that we will let a witness speak without interruptions. Once they have finished, we can seek clarifications and then wrap up later.

The Director, Legal Services (Dr. Okello): Mr. Chairman, Sir, for the benefit of Members, from the programme, we have a one-hour lunch break. Since we do not know how much time we will use, lunch will be provided, so that we go for a quick lunch and come back. Serjeant-at-Arms, where will lunch be served? Will it be in the Commission Boardroom?

The Principal Serjeant-at-Arms (Ms. Farhiya): It will be takeaway lunch.

The Director, Legal Services (Dr. Okello): It is important to know such small logistics. It will be takeaway so that people eat and then utensils are collected. It will be packed lunch which you could have as you stretch around. The essence is so that we manage time. That is the whole idea. Will tea also be available?

The Principal Serjeant-at-Arms (Ms. Farhiya): Yes, Sir.

The Director, Legal Services (Dr. Okello): Tea will also be available.

The Chairperson (Sen. Malalah): Is it possible for hon. Members to go to that Commission Boardroom?

The Director, Legal Services (Dr. Okello): It will be a holding room.

The Principal Serjeant-at-Arms (Ms. Farhiya): It will be a holding room for the Governor.

The Chairperson (Sen. Malalah): We can negotiate with our Commissioners to give us their offices because walking around with food is not honourable.

The Director, Legal Services (Dr. Okello): We will see what can be done and revert before the session begins tomorrow.

Sen. Mugo: What time will be the lunch break?

The Director, Legal Services (Dr. Okello): Hon. Senator, according to the programme, lunch break will be between 1.00 - 2.00 p.m.

The Chairperson (Sen. Malalah): Will you join us for lunch?

Sen. Mugo: No, I will be in my house. That is okay but I miss you.

The Chairperson (Sen. Malalah): We miss you too.

Sen. Mugo: I can do nothing about it because of COVID-19.

The Chairperson (Sen. Malalah): Hoping to see you soon.

The Director, Legal Services (Dr. Okello): Mr. Chairman, Sir, we hope that tomorrow being the first day, the session will end at around 5.30 or latest 6.00 p.m.

The Chairperson (Sen. Malalah): Sen. Mugo, do you have something to say?

Sen. Mugo: Yes, Mr. Chairman, Sir. The Parliamentary Service Commission (PSC) conducted some interviews. Some people were there while I was following from home. I could not hear what the third person to be interviewed was saying. I could only hear the Chair and some Commissioners but not the person who was being interviewed. What is the setup?

I do not know whether Mr. Ringera could get information from the PSC Secretariat on how they corrected it, so that we do not have the same problem tomorrow; that I will not be able to hear the presentations of the witnesses? Can we try it before the meeting starts? We can even try it today.

We can try before the meeting starts.

The Chairperson (Sen. Malalah): Senator, allow us to finish the presentation by Dr. Okello, then we will address those technical issues later. What you are raising is fundamental and we shall have a dry run test before we commence our sitting tomorrow, so that we are sure that we have the right connectivity for you.

Proceed, Dr. Okello.

The Director, Legal Services (Dr. Okello): Thank you, Mr. Chairman, Sir. Hon. Members, on Wednesday we will not sit here, but in the Senate Chamber. We will have the benefit of also using the extended Chamber. Tomorrow, we will use this hall because there is a sitting the whole day. On Wednesday, we will move across. We have already made arrangements on how it will be.

Wednesday is the Governor's case. She will start her case at 9.00 a.m. She has three-and-a-half hours, up to 12.30 p.m. Again, it will be the same process; examination, re-examination and cross-examination. The Governor has already given the list of witnesses. She has three and herself.

After lunch, we will resume for the Governor to give her closing statement and concluding remarks. We hope that on Wednesday, we should be done by 3.00 p.m. We will take some time and then retire to start work on the Committee report. We hope that the Senators will check in at a venue to be alerted, after 5.00 p.m.

The Chairperson (Sen. Malalah): Dr. Okello, the stakes in this matter are very high. I have been receiving funny phone calls from the citizens trying to advise me on how we should go about this thing. Some have been threatening me, while others were trying to pray for me. Allowing these Hon. Members to go back to their houses from tomorrow might be a challenge because you never know who is following them. Is it possible to have a place where we can be retreating every evening, so that we compare notes, fellowship and agree? From tomorrow, and it should be optional, just provide for the Members the hotel we shall retreat to do the report. We can start camping there from tomorrow. You can stay with us till late.

Sen. M. Kajwang': Mr. Chairman, Sir, you must be considerate that this is Nairobi winter and some of us have young wives.

(Laughter)

The Chairperson (Sen. Malalah): Nothing stops you from inviting them to your respective rooms.

The Director, Legal Services (Dr. Okello): The Director, Committee Services should be able to deal with that.

Sen. Kwamboka: Mr. Chairman, Sir, that is a wise decision.

The Chairperson (Sen. Malalah): The key word is wise. Proceed.

Sen. Kwamboka: I agree with you; let it be voluntary.

The Chairperson (Sen. Malalah): Sen. M. Kajwang', I want you to be on record.

Sen. M. Kajwang': Mr. Chairman, Sir, I have no objection. It is a reasonable arrangement. Those of us who miss our beds can still go back home.

The Director, Committee Services (Mr. Njuguna): Mr. Chairman, Sir, that is okay. We will propose and consider at least three possible venues. Members should indicate, so that the procurement department can consider. The first hotel is Radisson Blu. The others are Hemingways Hotel and Hilton Garden Hotel. These are the hotels that the procurement department will pursue, depending on availability. Some hotels are not open.

The Vice-Chairperson (Sen. Halake): Is Hemingways the one in Karen?

Sen. M. Kajwang: I have some information that they shut down because of COVID-19, but they can reopen.

The Chairperson (Sen. Malalah): It is operating at 10 per cent.

Sen. M. Kajwang': You can consider Radisson Blu.

Sen. Mwangi: How about security, because that will be important? We are putting up there because we fear that bad things can happen to us. We will need some security.

The Chairperson (Sen. Malalah): Yes, Sen. Madzayo, be on record.

(Sen. Madzayo spoke off record)

The procurement team will advise us.

The Director, Legal Services (Dr. Okello): Mr. Chairman, Sir, you will have Wednesday evening and the whole of Thursday to go through the report, make appropriate recommendations and adopt it.

On Friday, the Committee will table its report. It will be a Special Sitting and so, I will have to forward the Gazette Notice for approvals today. It will be on Friday at 2.30 p.m.

The Chairperson (Sen. Malalah): No! We consulted with the technical team and agreed, so that we have enough time and no pressure. We need to put our things in order and prepare adequately.

Sen. M. Kajwang’: In the event that the Governor is required to defend herself, will 2.30 p.m. work?

The Chairperson (Sen. Malalah): Either way, the Governor will be present on that day and will be given an opportunity. She will not defend herself, but make remarks.

The Director, Legal Services (Dr. Okello): What they used to call *malilio*.

Sen. M. Kajwang: We do not know what the outcome will be. We have several charges. If we find all the charges to be substantiated, then the House will have to vote on all the charges. So, I am urging caution. It is the reason that last time, I proposed that we should start the retreat for report writing on Wednesday. Traditionally, we have done it on Thursdays. This is so that the report will be ready by the end of Thursday. Assuming that this Committee finds all charges substantiated, will we run it from 2.30 p.m. or we can argue that we can seek extension of time?

The Chairperson (Sen. Malalah): Not necessarily. The Special Sitting gazette notice is very clear. It always provides that we shall sit until completion of business for the day.

Sen. (Dr.) Mbito: Mr. Chairman, Sir, I wanted a clarification from the Director, Legal Services. I am looking at the letter from the Governor, Folio LI am seeing her lawyers--- Is it procedural for a person to be represented by a spouse? One of her lawyers is her spouse.

The Chairperson (Sen. Malalah): I think it is their choice. She is also cutting costs, or she will be paid in kind.

The Director, Legal Services (Dr. Okello): Mr. Chairman, Sir, it is the governor’s choice of lawyers. She has a team of three, and it is her choice. There is nothing that stop them.

Sen. Pareno: Mr. Chairman, Sir, I hope that they have a Lead Counsel so that one of them just does the job and a little clarification for each of the sets, so that they do not take the whole day.

The Director, Legal Services (Dr. Okello): Actually, Mr. Chairman, Sir, during introductions, they will tell us who the Lead Counsel is, but both parties definitely have a Lead Counsel. Like in the case of the Governor, they already intimated when they brought the documents that the Lead Counsel is the one appearing as number one on their list. The same applies to the County Assembly.

Whatever happens, they have three and a half hours. How they are going to divide the time among themselves is their own problem. The Committee will stick to the timelines.

Mr. Chairman, Sir, just to wind up, as we are looking at the programme, we have also touched on issues of procedure. If we can look at the Rules of Procedure, please note that

the programme as presented has followed the processes in the Rules of Procedure, where we are starting.

This is under item “M” on the Rules of Procedure. We have already discussed most of the things in the Rules. We have assigned the timelines as per the Rules. The three hours thirty minutes are assigned as per the Rules. Members will just need to familiarize themselves with these Rules. They are in our Standing Orders, Fifth Schedule. We really have nothing much.

Just to draw the attention of Members to page six, Rule No.9 which is on the issue of summons or invitations. You have already alluded to this.

I also draw the attention of Members to Rule No.17 about Opening Statements. The time allocated is 40 minutes. Remember, and note the rider, unless the Committee otherwise resolves. The Committee might decide to give them 20 minutes. It is all up to the Committee.

The Chairperson (Sen. Malalah): On that, since we were straining to get time for Members to raise concerns and questions, I would request or rather propose to the Committee that we reduce the time for opening remarks to say, 20 minutes and then we save 40 minutes for the purpose of Members raising their questions or asking for clarifications from witnesses.

Sen. M. Kajwang’: Mr. Chairman, Sir, I propose that you leave it as it is. We give them the maximum time allowed, so that they do not feel that we have been too mean, but if they are efficient, they can use less time. We trust in you as a Chair to be able to manage them accordingly.

The Chairperson (Sen. Malalah): So, if they save on time, we can use the surplus.

The Director, Legal Services (Dr. Okello): Mr. Chairman, Sir, since we have sent them the programme with those indications, as Sen. M. Kajwang’ says, you can just urge them that they have their time, but if they can summarize in 20 minutes, so that they can deal the issues substantively, well and good. We just urge them.

Members, I also draw your attention to Rule No.19, which is very important.

The Rule states-

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

That is why we already prepared for the Committee a brief on the allegations, so that we will not have any new allegations being introduced. You need to prepare on that.

Our backroom team is also combing through the evidence as submitted. Hopefully, we will be able to give you an updated document showing the allegations and the documents as produced by the County Assembly and the Governor. That will help us to be sure that nothing new is introduced.

Remember we are hawk-eyed. The County Assembly will be producing these documents tomorrow as they present their case. We have to be hawk-eyed to make sure that nothing new is brought on board.

Sen. Pareno: Mr. Chairman, Sir, when are we getting that bundle by the County Assembly?

The Director, Legal Services (Dr. Okello): We already sent it to you on soft copy. However, if want a hard copy---

Mr. Chairman, Sir, we summoned the Assembly back to tag them. This is because they had just brought the documents without the tagging. We summoned them back to tag them for ease of reference. I am told they will be done by 4.00 p.m. I think Members can get these documents after 4.00 p.m. We can arrange.

The Vice-Chairperson (Sen. Halake): Through the Chair, Dr. Okello, if one detects that maybe new evidence is being produced or new allegations are being introduced, at what point do we then raise that or is that part of what we will wait to clarify later on?

The Director, Legal Services (Dr. Okello): Two things; one, we will have to wait and seek clarification after. This is because the Governor's side may raise it in cross-examination or objection. When that comes, well and good. If they do not, then we can seek clarification at the time when you are---

Mr. Chairman, Sir, the other important one is Rule No.23 about who can be called to give evidence.

Rule No.23 states-

“No person, other than-

- (a) the Governor;
- (b) a person who has been called as a witness by the County Assembly or by the Governor; or
- (c) a person who is invited or summoned to appear and give evidence; shall give evidence before the Senate.”

We have the letters there and the person they have summoned. They cannot bring new people tomorrow.

Rule No. 24 is important. It states-

“After the parties have presented their evidence, the Speaker of the Senate shall allow a closing statement to be made on behalf of the County Assembly and

thereafter on behalf of the Governor.”

You will also look at Rule No.25. It states-

“A closing statement made under rule 24 shall not be more than sixty minutes.”

Rule No.29 is also important.

I hope Hon. Members will not give the Chair a challenge under Rule 29. The quorum is seven Members, but we will implore Members that they be seated early. Maybe Chair, if you allow, you can agree with your team to meet 15 minutes earlier just to prepare yourselves.

Actually, people should be seated by 8:45 a.m.; the parties should be seated so that you start the preliminaries of prayers and all that. If Members can agree that if you have anything to discuss, you meet at 8. 30 a.m., then you can caucus before you start. This is purely on you, but the programme starts at 10.00 a.m. tomorrow.

Wednesday is the most challenging one because the session starts at 9.00 a.m. So, we can meet early maybe around 8.45 a.m. May be the Committee can meet tomorrow at 9.30 p.m. If you will have been done with the brief in terms of evidence, we can share with you and you can bring any new development to the attention of the Committee before you come in for the hearing.

Sen. (Dr.) Mbito: Will we meet here?

The Director, Legal Services (Dr. Okello): Yes, we will meet here tomorrow.

Mr. Chairman, Sir, Rule No.28 is also important; of course, subject to COVID-19 Regulations. Deliberations of the Committee shall be held in camera. That is also important. So, if you have anything to deliberate, everybody else will have to be sent out and then you proceed.

Mr. Chairman, Sir, I think that is it about the hearing and the procedure. Thank you.

The Chairperson (Sen. Malalah): Thank you, Dr. Okello. For purposes of emphasis, we should try and keep time because all eyes are on us. Also on the quorum issue, is it seven seated or seven present? If somebody walks out, do we still have quorum?

The Director, Legal Services (Dr. Okello): Mr. Chairman, Sir, it is seven at any given time.

The Chairperson (Sen. Malalah): Or the Chairman will remain blind until such a matter is raised by any aggrieved party? Can it be used against the Committee?

The Director, Legal Services (Dr. Okello): Mr. Chairman, Sir, I am sure Members will not allow that to happen.

The Chairperson (Sen. Malalah): Hon. Members, you are kindly encouraged to commit yourselves to this cause and be available for the same.

Now, we are done with that. Let us move to Agenda No.8; Any Other Business (AOB). Sen. Mwangi, do you have any?

Sen. Mwangi: No, Mr. Chairman, Sir.

The Chairperson (Sen. Malalah): Sen. Pareno, AOB?

Sen. Pareno: Mr. Chairman, Sir, no, AOB.

The Chairperson (Sen. Malalah): We have Sen. (Dr.) Mbito. What about Sen. Kwamboka?

Sen. Kwamboka: Mr. Chairman, Sir, no, AOB.

The Chairperson (Sen. Malalah): Thank you. Sen. Mpaayei, what about you?

Sen. Mpaayei: No, Mr. Chairman, Sir.

The Chairperson (Sen. Malalah): What about Sen. Loitiptip?

Sen. Loitiptip: No, Mr. Chairman, Sir.

The Chairperson (Sen. Malalah): Sen. (Dr.) Mbito?

Sen. (Dr.) Mbito: No, Mr. Chairman, Sir.

The Chairperson (Sen. Malalah): Sen. M. Kajwang'?

Sen. M. Kajwang': Mr. Chairman, Sir, just to clarify from the Clerks; are we getting a box of documentation? There is what you sent on e-mail and I suspected there would be additional records or evidence in hard copies. Should we expect that we are getting a box for reference purposes? This is because we definitely have to refer to all the documentation that has been submitted tomorrow. It will be good for us to look at them well in advance.

The Director, Legal Services (Dr. Okello): Mr. Chairman, Sir, the biggest challenge is the Governor's case because you saw the documentation. We have enough copies for each Member of the Committee. It is now up to you to tell us that you want your copies and the Serjeant-at-Arms can arrange to deliver it in your car.

Sen. Pareno: How big is the box?

The Director, Legal Services (Dr. Okello): Mr. Chairman, Sir, I think each of you will take one box and then you have to carry it around with you. We are available.

Sen. Kwamboka: Mr. Chairman, Sir, we want to carry the boxes around because of the tenders.

The Director, Legal Services (Dr. Okello): Mr. Chairman, Sir, I am told that for the Governor's side, each Member will have 15 box files with documents inside. They are available. So, we just need to know how to get to you and the Serjeant-at-Arms will arrange to deliver.

Sen. Mugo: Mr. Chairman, Sir, the Serjeant-at-Arms can arrange to deliver to me. That is too much.

The Vice-Chairperson (Sen. Halake): Mr. Chairman, Sir, is it practical for us to carry the boxes and read them? We could refer to them as they are being presented and, therefore, be fresher in the mind. Otherwise, for me, I think it will all go. I will be so confused. To be honest, I do not wish to carry the boxes.

The Chairperson (Sen. Malalah): Dr. Okello, Sen. Halake is attesting that she is not used to carrying heavy things.

(Laughter)

If you can avail the boxes---

The Director, Legal Services (Dr. Okello): Mr. Chairman, Sir, I think the Senator is just being realistic. Since most of these boxes relate to the Governor's case which is on Wednesday and the boxes are in Committee Room five, if a Member really wants theirs, we can give them. However, we are hoping to keep them there. On Wednesday when the Governor will be presenting her case, once we have known where Members will sit, we can place your box there. When they make reference to a document, you pick it and look at it. That is what we were thinking, but we stand guided.

The Chairperson (Sen. Malalah): We are well guided with your suggestion.

The Vice-Chairperson (Sen. Halake): You thought very well.

Sen. Mugo: Mr. Chairman, Sir, I think I will pick my box. Can it be delivered or you will talk to me later after this?

The Chairperson (Sen. Malalah): Yes, he will talk to you later.

Do you have AOB, Sen. Mugo?

Sen. Mugo: No, Mr. Chairman, Sir. Only to make sure that I will be hearing everything tomorrow.

The Chairperson (Sen. Malalah): Okay, we shall ensure that the technical team provides for the same.

Sen. Madzayo, do you have AOB?

Sen. Madzayo: No, Mr. Chairman, Sir.

The Chairperson (Sen. Malalah): What about my able Vice-Chairperson?

The Vice-Chairperson (Sen. Halake): No, Mr. Chairman, Sir.

The Chairperson (Sen. Malalah): Okay. For purposes of communication, our technical team and the Serjeant-at-Arms have provided both the ground floor room and the Parliamentary Service Commission (PSC) Room as Senators' holding room and so we can use both. Red Cross first floor is the Governor's holding room and the ground floor for the County Assembly.

There being no AOB, our next meeting is tomorrow at 9.00 a.m. The meeting stands adjourned. Thank you.

The Committee adjourned at 1.00 p.m.