

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Thursday, 2nd August, 2018

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

[The Deputy Speaker (Sen. (Prof.) Kindiki) in the Chair]

PRAYER

COMMUNICATIONS FROM THE CHAIR

The Deputy Speaker (Sen. (Prof.) Kindiki): Hon Senators, I have two communications to make. The first one relates to visiting members and staff from the County Assembly of Murang'a.

VISITING DELEGATION FROM MURANG'A COUNTY ASSEMBLY

I wish to acknowledge the presence, in the Speaker's Gallery this afternoon, of visiting Members and staff from the County Assembly of Murang'a. I request each Member of the delegation to stand when called out, so that they may be acknowledged in the Senate tradition.

They are-

1. Hon. Lilian Kabaya, Chairperson, Committee on Delegated Legislation;
2. Hon. Dancun Muturi, Member;
3. Hon. Pelagia Maina, Member;
4. Hon. Sospeter Nyoko, Member;
5. Hon. Peter Mweri, Member;
6. Hon. Joel Muhuha, Member;
7. Hon. Ann Kigo, Member;
8. Hon. John Wangeci, Member;
9. Hon. Flacia Chege, Member.

They are also accompanied by-

10. Ms. Ruth Kibithe, Legal Officer;
11. Mr. Joel Ngugi, Assistant Hansard Editor;
12. Mr. Francis Kimemia, Clerk Assistant; and,
13. Mr. Joseph Kiragu, Serjeant-at-Arms.

In our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them. On behalf of the Senate and my own behalf, I wish them a fruitful visit.

I thank you.

(Applause)

VISITING DELEGATION FROM MASUBETI
PRIMARY SCHOOL, KERICHO COUNTY

Hon. Senators, I would also like to acknowledge the presence, in the Speakers Gallery this afternoon, of students and teachers of Masubeti Primary School in Kericho County. In our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them. On behalf of the Senate and my own behalf, I wish them a fruitful visit.

I thank you.

(Applause)

PAPER LAID

The Deputy Speaker (Sen. (Prof.) Kindiki): Hon. Senators, we have one paper to be laid this afternoon by Sen. Outa.

REPORT ON ROLE OF PARLIAMENTARIANS IN
POPULATION AND THE 2030 AGENDA FOR
SUSTAINABLE DEVELOPMENT

Sen. Outa: Mr. Deputy Speaker, Sir, I beg to lay the following Paper on the Table of the Senate today, Thursday, 2nd August, 2018;

Report of the Senate Delegation to the Conference on Enhancing the Role of Parliamentarians in the Interlinkage between Population Issues and the 2030 Agenda for Sustainable Development held in New Delhi, India, from 13th to 15th September, 2017.

(Sen. Outa laid the document on the Table)

The Deputy Speaker (Sen. (Prof.) Kindiki): Very well.
Next order.

(Sen. Outa stood in his place)

Order Senator!

Proceed now, Sen. Outa.

Sen. Outa: Thank you, Mr. Deputy Speaker, Sir. I am anxious over what is coming in the House today. Therefore, if you see me---

(Laughter)

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Senator! Why are you anxious?

Sen. Outa: Mr. Deputy Speaker, I will be praying for you to have some Solomonic wisdom this afternoon.

(Laughter)

The Deputy Speaker (Sen. (Prof.) Kindiki): Your prayers are welcome. Proceed!

NOTICE OF MOTION

NOTING OF REPORT ON ROLE OF PARLIAMENTARIANS IN POPULATION AND THE 2030 AGENDA FOR SUSTAINABLE DEVELOPMENT

Sen. Outa: Mr. Deputy Speaker, Sir, I beg to give notice of the following Motion- THAT, this House notes the Report of the Senate Delegation to the Conference on Enhancing the Role of Parliamentarians in the Interlinkage between Population Issues and the 2030 Agenda for Sustainable Development, held in New Delhi, India, from 13th to 15th September, 2017, laid on the Table of the House on Thursday, 2nd August, 2018.

The Deputy Speaker (Sen. (Prof.) Kindiki): Next Order!

Hon. Senators, we are still under Notices of Motion. The next two notices are by Sen. (Prof.) Margaret Kamar, but I cannot see her in the Chamber.

That is it; next order!

STATEMENTS

The Deputy Speaker (Sen. (Prof.) Kindiki): Hon Senators, I had given direction yesterday that we will stand down statements until I give my ruling on the point of order raised by the Senator for Baringo County, Sen. Moi. However, I will revise that direction; we can proceed on Statements. The ruling will be ready any time from now, but in good time.

(Laughter)

Order, Sen. Olekina! You do not have to frown. We are conscious of the urgency and importance of today's ruling and the business that could not proceed yesterday. However, we are winding up on that and it should be delivered in the next few minutes.

Very well. Let us proceed with Statements. We have Sen. (Dr.) Musuruve.

STATE OF MATERNAL HEALTHCARE IN THE COUNTRY

Hon Senators, I cannot see Sen. (Dr.) Musuruve. I had already given directions on the consequences of not showing up when you have a statement appearing on the Order Paper and you have not explained your absence. For that reason, that statement is dropped.

(Statement dropped)

The next statement is by the Senate Majority Leader on the Business of the Senate for the coming week.

BUSINESS FOR THE WEEK COMMENCING
TUESDAY, 7TH AUGUST, 2018

Sen. Dullo: Thank you, Mr. Deputy Speaker, Sir, I wish to read the Statement for the week.

On Tuesday, 7th August, 2018, the Senate Business Committee (SBC) will meet to schedule the business of the Senate for the week subject to further direction by the SBC.

The Senate will on Tuesday, 7th August, 2018, continue with consideration of business that will not be concluded in today's Order Paper and any other business scheduled by the SBC.

On Wednesday, 8th August and Thursday 9th August, 2018, the Senate will consider business that will not be concluded on Tuesday and any other business scheduled by the SBC.

The following Bills are at the Second Reading Stage:

- 1) The Local Content Bill (Senate Bills No.10 of 2018)
- 2) The Physical Planning Bill (National Assembly Bills No.34 of 2017)
- 3) The Irrigation Bill (National Assembly Bills No.46 of 2017)
- 4) The Kenya Roads Bill (National Assembly Bills No.47 of 2017)
- 5) The County Governments (Amendment) Bill (Senate Bills No.13 of 2018)

Additionally, the following Bills are due for consideration at the Committee of the Whole:

- 1) The Food Security Bill (Senate Bills No. 12 of 2017)
- 2) The County Boundaries Bill (Senate Bills No.6 of 2017)
- 3) The County Government Retirement Scheme Bill (Senate Bills No.6 of 2018)
- 4) The Office of the County Printer Bill (Senate Bills No.7 of 2018)
- 5) The Office of the County-Attorney Bill, Senate Bill No.3 of 2018
- 6) The Public Participation Bill (Senate Bills No.4 of 2018)
- 7) The Disaster Risk Management Bill, (Senate Bills No.8 of 2018)
- 8) The Retirement Benefits Deputy President and Designated State Officers (Amendment) Bill (Senate Bills No.2 of 2018)
- 9) The County Statistics Bill (Senate Bills No.9 of 2018)
- 10) The Salaries Remuneration Commission (Amendment) Bill (Senate Bills No.12 of 2018)

Hon. Senators, we finalized the Second Reading of several Bills and passed five Motions; three of them by the County Public Accounts and Investments Committee Report. This is commendable. However, we need to expedite the consideration of the 10 Bills due to the Committee of the Whole in order to proceed to Third Reading and passage of the Bills. I, therefore, once again, urge you to avail yourselves next week for this purpose.

Mr. Deputy Speaker, Sir, I hereby lay the Statement on the Table of the House.

(Sen. Dullo laid the document on the Table)

The Deputy Speaker (Sen. (Prof.) Kindiki): Thank you, Sen. Dullo. That brings us to the end of Order No.7.

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM ST. THERESA'S TATAR HIGH SCHOOL, WEST POKOT COUNTY

Hon. Senators, I would like to acknowledge the presence, in the Public Gallery this afternoon, of visiting students and teachers from St. Theresa's Tatar High School, West Pokot County.

In our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them. On behalf of the Senate and on my own behalf, I wish them a fruitful visit.

Thank you.

MOTIONS

ADOPTION OF REPORT OF THE SELECT COMMITTEE ON THE SOLAI DAM TRAGEDY

Hon. Senators, we will stand down Order No.8 until the ruling is ready. It should be ready any time from now and then we dispose off a very quick procedural item which is in Order No.9. After consultation with the Mover, the item appearing at Order No.14 is also deferred.

PAYMENT OF HONORARIUM AND PENSION TO FORMER COUNCILORS

THAT, AWARE that National Forum of Former Councilors petitioned the Senate regarding the need for legislative interventions to address the plight and welfare of former Councilors;

FURTHER AWARE that the Senate Standing Committee on Labour and Social Welfare considered the Petition and tabled its report on Tuesday, 16th February, 2016;

ACKNOWLEDGING that the Committee's report on the Petition made five recommendations among them that-

(1) one-off honorarium of Kshs1.5 Million be paid to former councilors who served a minimum of one term since independence; and

(2) monthly pension of at least Kshs30,000 be paid to former councilors.

APPRECIATING that the recommendations were based on the fact that former Councilors did not receive fixed emoluments and experienced disparities with regard to access to pension services and terms and conditions of pension schemes over the years, which made it difficult to fairly and equitably determine each councilor's rightful benefits retrospectively;

CONCERNED that the State Department for Social Services and Security, State Department for Devolution and the National Treasury have to date not implemented the Committee's recommendations on the Petition;

NOW THEREFORE, the Senate calls upon the Principal Secretaries to the said State Departments and the National Treasury to take necessary steps to implement the recommendations contained in the Report.

(Motion deferred)

Next Order.

APPROVAL OF SENATOR TO SERVE IN DEVOLUTION AND
INTERGOVERNMENTAL SELECT COMMITTEE

Sen. Dullo: Mr. Deputy Speaker, Sir, I beg to move the following Motion-

THAT, pursuant to Standing Orders 183, 212 and 213, the Senate approves the nomination of Sen. Rose Nyamunga, MP to serve in the Standing Committee on Devolution and Intergovernmental Relations in place of Sen. James Orengo, EGH, SC, MP.

Mr. Deputy Speaker, Sir, this is a fairly straightforward matter because it is a request by our brothers and sisters on the other side. I believe---

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Sen. Dullo! Who are your brothers and sisters from the other side? Which side is this?

(Laughter)

Sen. Dullo: Mr. Deputy Speaker, Sir, it is the Opposition side.

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Sen. Dullo! In this House, we have the Majority side and the Minority side.

Sen. Dullo: Mr. Deputy Speaker, Sir, if they are not in the Opposition, it is the Minority side.

Mr. Deputy Speaker, Sir, this is a fairly straightforward matter because I believe Sen. Rose Nyamunga will serve in the said Committee and she is up to the task. I believe the Committee is really in need of the quorum because the Senate Minority Leader is overwhelmed in terms of responsibilities of the House. Therefore, we should allow Sen.

Rose Nyamunga to move to the Devolution and Intergovernmental Committee so that she can provide useful input in that particular Committee.

I request Sen. Olekina to second.

Sen. Olekina: Thank you, Mr. Deputy Speaker, Sir. I rise to---

The Deputy Speaker Sen. (Prof.) Kindiki: Order, Senator!

Sen. Olekina, now you can second. You do not give yourself the Floor.

Sen. Olekina: Mr. Deputy Speaker, Sir, I rise to second the Motion of the change. I speak highly of Sen. Rose Nyamunga. She is a very competent Senator. I am sure that Committee will do very well with her presence.

(Question proposed)

(Interruption of Debate on Motion)

COMMUNICATION FROM THE CHAIR

THE SIXTH EDITION OF THE KICOSCA AND CASA GAMES

The Deputy Speaker (Sen. (Prof.) Kindiki): Hon. Senators, I have a communication to make on the Sixth Edition of the Kenya Inter-counties Sports and Cultural Association (KICOSCA) County Assemblies Sports Association (CASA) games.

The Inter-counties Sports and Cultural Association (KICOSCA) and County Assemblies Sports Association (CASA) were established in 2013. These games are a key event in the aspect of building relations among the county assemblies and between the county assemblies and the Senate.

The first KICOSCA/CASA games were held in Nairobi City County where the Senate and several counties participated. The second Edition of the games was held in 2014; the third one in 2015; the fourth in 2016 and the fifth in 2017. They were held in Nakuru, Uasin Gishu, Kiambu and Machakos counties, respectively.

The Sixth KICOSCA/CASA Games will be held in Kisii County from 12th to 19th August, 2018. Arrangements are at an advanced stage for the participation of the Senate in the games. Team captains have compiled lists of participants for the various sports disciplines and further communication in this regard will be given in due course.

Sen. (Prof.) Ongeri: Mr. Deputy Speaker, Sir, let me take this opportunity in addition to your Communication from the Chair to request the distinguished Senators to avail their presence in Kisii County. I can assure you of the availability of all the facilities that we have laid down for you and all the *Matokes* in Kisii and the beautiful air of the high altitude of Kisii. You will not lack anything. We assure you that you will be able to--

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Hon. Senators: What about 24/7 economy?

Sen. (Prof.) Ongeri: I am not sure about the 24/7 economy, but I am sure of the hospitality of Kisii Community that we will be able to help you run around----

(Loud consultations)

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, hon. Senators. Give Sen. (Prof.) Ongeru time to make his remarks.

Sen. (Prof.) Ongeru: Thank you, Mr. Deputy Speaker, Sir. One of the uniqueness of Kisii County is that in the 1964 Vancouver Games, one of our legends, Nyantika Maiyoro, was able to get a bronze medal in the Commonwealth Games. Thereafter, opening the door for the likes of Naftali Temu, Robert Ouko, Hezekiah Nyamao and many other sportsmen and women. In the area of soccer, there were many other young people who came through including the national goalkeeper and also Henry Motego who were in the national team.

We will have an opportunity to witness on first hand basis the beauty of Kisii land, the hills of Kisii land and the wonderful stadium built by the Executive. As the Senator from that area and for Nyamira, I welcome you and, please, do not disappoint us.

The Deputy Speaker Sen. (Prof.) Kindiki: So, you have also spoken on behalf of your neighbour, the Senator for Nyamira County. You need to clarify that.

Sen. (Prof.) Ongeru: Yes, Mr. Deputy Speaker, Sir. I also, by extension, invite Nyamira County. We are actually one; the Gusii Community.

The Deputy Speaker Sen. (Prof.) Kindiki: Very well.

What is it, Sen. Kinyua?

Sen. Kinyua: Mr. Deputy Speaker, Sir, I want to talk as the Chairman of the Committee on Devolution and Intergovernmental Relations.

Since this is about devolution, I want to encourage my colleagues to attend the games so that at least we can improve the economy. However, I am concerned about what the---

The Deputy Speaker Sen. (Prof.) Kindiki: Hon. Senator, there is nothing economic about it; it is about games.

Sen. Kinyua: No. When we go there at least, we will spend money and there will be some economic activity.

I am concerned about what the Senator talked about. In every county and the Government, we want to have a 24-hour economy. So, I am worried when he says that he does not want to talk about it. I did not get what he meant. What we are doing like any developing country, we are looking forward for our country as well as our counties to have a 24-hour economy.

(Resumption of debate on Motion)

The Deputy Speaker Sen. (Prof.) Kindiki: Very well. That is the end of that matter. I see no interest in the debate on the Procedural Motion. So, I will ask the Mover to reply.

Sen. Dullo: Mr. Deputy Speaker, Sir, I wish to reply.

I hope the Committee will have requisite quorum now to run its business.

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Senators. This Motion does not concern counties; therefore, voting will be by acclamation.

(Question put and agreed to)

Order, Senators. I further direct that we re-organise the Order Paper and go to Order No.16.

Next Order!

The Clerk-at-the-Table: Order No. 16: Motion.

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

The Deputy Speaker (Sen. (Prof.) Kindiki): What is your point of order, Sen. Malalah?

Sen. Malalah: Thank you, Mr. Deputy Speaker, Sir. The country is waiting for this House to debate the Motion about Solai Dam Tragedy---

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Sen. Malalah! What is out of order?

Sen. Malalah: Mr. Deputy Speaker, Sir, I was waiting for Order No.8.

(Laughter)

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Sen. Malalah. You are out of order.

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

The Deputy Speaker (Sen. (Prof.) Kindiki): What is your point of order, Sen. Sakaja?

Sen. Sakaja: Mr. Deputy Speaker, Sir, we are at a loss. Yesterday, you indicated that you will make a ruling on the tabling of the Report on the Solai Dam Tragedy as the first item after 2.30 p.m. and before order No. 8 on the Order Paper. We notice you are here. Who is doing the ruling?

(Laughter)

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Sen. Sakaja. What did you just say?

Sen. Sakaja: Mr. Deputy Speaker, Sir, I am saying that we can see that you are here. When you say that the ruling is being done, who is preparing the ruling? If you are to do a ruling and you are here---

(Laughter)

The Deputy Speaker (Sen. (Prof.) Kindiki): Watch your words, Sen. Sakaja.

Sen. Sakaja: Mr. Deputy Speaker, Sir, I am asking for guidance.

The Deputy Speaker (Sen. (Prof.) Kindiki): Resume your seat, Sen. Sakaja. You are out of order.

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

The Deputy Speaker (Sen. (Prof.) Kindiki): What is your point of order, Sen. Cherargei?

Sen. Cherargei: Mr. Deputy Speaker, Sir, in the interest of the country and with a lot of humility, in your guidance, you can give a ruling on the issue of tabling the Report of the Solai Dam Tragedy so that the country can be at peace and listen to what great Senators of this Republic have to say.

With your indulgence, we urge that you expeditiously release the ruling so that we can proceed with debate on this important matter and Kenyans do not suspect that there is mischief that is being perpetuated by this House. As a professor of law, you understand what all this entails.

Thank you.

(Applause)

The Deputy Speaker (Sen. (Prof.) Kindiki): Order Senators. Well spoken, Sen. Cherargei. I encourage the Senator for Nairobi City County to take tutelage from the Senator for Nandi County.

(Laughter)

The Speaker does not preside over a Kangaroo forum. The point made by Sen. Sakaja is the same point made by, Sen. Cherargei but differently.

Sen. Sakaja, I will not allow you to perpetuate what you are perpetuating. If you have a point of order, you will be heard.

The ruling will be delivered shortly; it is the ruling of the Speaker of the Senate. It is ready. I have read it and made corrections that are being typed. That is my ruling. So, Sen Sakaja you cannot come here - in the full glare of the media - and start saying that you are wondering who is writing the ruling because the Speaker is in the House and he is not writing the ruling.

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

The Deputy Speaker (Sen. (Prof.) Kindiki): What is your point of order, Sen. Sakaja?

Sen. Sakaja: Mr. Deputy Speaker, Sir, it will be beneficial to this House and the Chairperson when a Senator contributes, you listen to the end of what they are saying. If you had allowed me to finish what I was asking. I wanted you to confirm what Sen. Malalah had already asked about the ruling; whether it was a typing issue or you had already done it and it was being put together.

The insinuation that somebody is making the ruling for you is not, at all, what I meant.

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Senator. Let that matter rest.

Sen. Mutula Kilonzo Jnr.: Mr. Deputy Speaker, Sir, we have been waiting anxiously. However, the point by Sen. Sakaja, if I understand it correctly, is that your ruling will have to, again, be read and signed by you. We do not anticipate that we will adjourn, so that you go and sign it. A timeline is important so that we can determine how we will conduct our business. For instance, we need to know whether the next Order will take an hour. Otherwise, the confusion, anticipation and the anxiety in the House is because you told us to come at 2.30 p.m. to give us your ruling. It is important that, that direction is given and we know it correctly.

Thank you.

The Deputy Speaker (Sen. (Prof.) Kindiki): Very well. Sen. Mutula Kilonzo Jnr., it is very easy because the Speaker does not have to physically sit here throughout. That is why we have Members of the Chairperson's Panel.

The ruling was expected to be given a little earlier. However, it is not ready by now because it is a bit lengthy and I have had to do quite a bit of homework, so that we dispose of this matter. We are conscious that it is now 3.00 p.m. and it was supposed to be delivered at this time. However, you can be sure that it will be delivered in good time.

So, the issue of how we go about it is easy because I will still have to assure myself that the final version is my version and sign it myself. That is why we have facilities, like the Speaker's consultation room and the Speaker's Panel, for people who can relieve the Chairperson at any given time for consultations, which include proofreading anything and signing it ahead of reading. I want to assure the House that we shall endeavour to give this ruling before 3.30 p.m.

The other procedural issue that I want us to deal with is that, again, in the same vein, we proceed to Order No.16.

(Sen. Olekina spoke off record)

What is it, Sen. Olekina?

Sen. Olekina: Mr. Deputy Speaker, Sir, I do not wish to have an argument for you to vary your ruling. However, I am concerned because the people of Nakuru County who were affected by the tragedy in Solai Farm will only get an opportunity to watch this on national television between 2.30 p.m. and 4.30 p.m. My worry is that if your ruling will be lengthy, maybe it will take about an hour. Does that mean that the people will not really get to understand, depending on which way your ruling goes? That is the anxiety that is building among the representatives.

Thank you, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): What is it, Sen. Haji?

Sen. Haji: Mr. Deputy Speaker, Sir, I sense that we are becoming very hyper for reasons which I do not know. You have made a ruling and it is only fair that we give you that time for you to make a good ruling that will satisfy Kenyans.

The Deputy Speaker (Sen. (Prof.) Kindiki): Thank you, Sen. Haji. I think that is the spirit, Sen. Malalah, Sen. Sakaja and Sen. Olekina. We are all interested in this. The same reason I was not able to give a ruling on the spot yesterday is because I wanted us to achieve two things. One, this matter of *sub judice* is something that we have had to deal with and it does not seem to be going away. So, we need to do it in such a way that, going forward, it will be settled. The Speaker does not need to do a protracted ruling.

The second issue is that the Speaker appreciated that this is an important matter and that is why we could not proceed yesterday. Having said that, I do not think there is any cause for alarm. You do not want the Speaker to give a half ruling or one with errors and typos. In a few minutes time, we should be ready.

We will proceed with Order No. 16, but with a caveat that, perhaps, the Senators who have not spoken, according to our Standing Orders, will assist us in terms of requesting for adjournment of debate, so that we dispense with Order No.10 first, in case we will not have finished debate on Order No.16 by the time the ruling is ready in the next few minutes.

So, on that understanding, Senators, I direct that we go to Order No.16, pending the preparation of the ruling.

Clerk, call out the Order or was it called out?

An hon. Member: Yes, it was.

The Deputy Speaker (Sen. (Prof.) Kindiki): I see two requests for debate. Proceed, Sen. Mwaura.

Sen. Mwaura: Mr. Deputy Speaker, Sir, I was anticipating debate on the Solai Dam Tragedy.

Thank you.

*(The Deputy Speaker (Sen. (Prof.) Kindiki)
consulted with the Clerk-at-the-Table)*

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. Kasanga, had you moved that Motion?

Sen. Kasanga: It had been moved, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): Was it seconded?

Sen. Kasanga: I am Sorry, Mr. Deputy Speaker, Sir. It was not moved; I just gave notice of the Motion. So, I need to move it.

The Deputy Speaker (Sen. (Prof.) Kindiki): In that case, we might want to deal with a Motion which is halfway because once you start moving the Motion, it has to be seconded, and we do not have that time.

Sen. Kasanga: Okay, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Senators! Give us one or two minutes. We need to get a win-win situation out of this.

*(The Deputy Speaker (Sen. (Prof.) Kindiki)
consulted with the Clerk-at-the-Table)*

Yes, Sen. Malalah.

Sen. Malalah: Mr. Deputy Speaker, Sir, last year, the Supreme Court issued a summarised judgement. Now that you have already done the judgement, I wish you could give us the conclusion and give us the details later for our perusal. We can then go on with this matter. We want to know whether or not we will debate the Solai Dam Tragedy issue now.

This House and the country are eager to listen to the debate on the Solai Dam Tragedy. I would ask one of the Senators to even move a Motion to adjourn this House, so that you can go and bring the ruling, and then we can resume. We shall not transact anything until we debate the Motion on the Solai Dam Tragedy.

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Senator! You cannot make that declaration, Sen. Malalah.

Sen. Malalah: Mr. Deputy Speaker, Sir, I can do so because I am the Senate Minority Leader and I am speaking for my coalition.

Thank you.

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Senator! Do not veer from the straight and narrow. It is not in your interest.

We shall proceed as follows: The ruling of the Speaker on the Solai Dam tragedy issue will be delivered at 3.30 p.m. In the meantime, we shall proceed with debate or the

moving of the Motion in Order No.16 and interrupt or suspend that debate at 3.30 p.m. for that ruling. It is so ordered.

Sen. Kasanga, you have the Floor.

MOTION

ENFORCEMENT OF NATIONAL TRANSPORT AND SAFETY AUTHORITY (OPERATION OF MOTORCYCLES)

Sen. Kasanga: Mr. Deputy Speaker, Sir, I beg to move the following Motion-

AWARE that the National Transport and Safety Authority (NTSA) is mandated to plan, manage and regulate the road transport system, while ensuring the provision of safe, reliable and efficient road transport services;

FURTHER AWARE that motorcycle transport services have been rapidly embraced throughout the country, leading to several challenges including: rise in road accidents involving motorcycle riders, unlawfulness, insecurity and road congestion;

COGNIZANT that the National Transport and Safety Authority (Operation of Motorcycles) Regulations that came into force on 1st January, 2016 have not adequately addressed the challenges associated with the high numbers of motorcycles as a mode of transport;

NOW THEREFORE, the Senate resolves that the Ministry of Transport, Infrastructure, Housing and Urban Development; identifies strategies to enforce the National Transport and Safety Authority (Operation of Motorcycles) Regulations; in collaboration with County Governments, develop programs to sensitize and educate members of *boda boda* associations and the public on the laws regulating motorcycle operations; submits a report to the Senate within ninety(90) days outlining the short and long term strategies and preventative measures that are being put in place to halt the rising cases of road carnage involving motorcycle riders.

The reason I brought this Motion is that I believe it is something that we all encounter. I am sure as everyone drives, they wonder what is wrong with motorcycles. They are all over the place and do not seem to have any laws or regulations and yet, our country has embraced them. They have opened up our rural areas and we even use them in urban centres. They are the mode of transport and business. We have seen how creative Kenyans can be when it comes to motorcycles; they transform them into carriers for people and goods.

Let me highlight some statistics when it comes to accidents involving *boda boda* motorcycles. There are 39 per cent fatalities with regard to accidents caused by *boda bodas* when pedestrians are crossing roads, whether in designated or undesignated areas. With regard to passengers, who are carried by *boda bodas*, we have 12 per cent fatalities. These accidents tend to be serious because of speeding collisions. In fact, many times when you are driving, you would see a *boda boda* rider going to the wrong side of the road. They end up ramming on vehicles that slow down, causing their passengers to fall

off. Let us not mention that their passengers are never adorned in the correct gear. The riders do not follow traffic laws. Some of them never wear helmets and most drivers ignore them while on the road. We do not see them because they always come out from where you do not expect them.

[The Deputy Speaker (Sen. (Prof.) Kindiki) left the Chair]

[The Temporary Speaker (Sen. Pareno) in the Chair]

The fatalities on pillion passengers – refer to passengers who are usually riding on the second seat. In fact, in the *Business Daily* yesterday, there was a picture of a *boda boda* rider carrying four people. How they even fit is very interesting. The four passengers had not taken any safety measures. The rider had a helmet and the rest did not. I am sure that back at home in the villages, you have seen how *boda bodas* carry even a whole family. You would see a baby in front of the rider, another one being carried by the mother and two others in between; all without any safety measure.

When I started doing a bit of investigations and met with the Chief Executive Officer (CEO) of NTSA, I found out that there are very good regulations. In fact, I wish it was possible to share copies, but they are in the internet. The 2015 regulations are there and they came into effect in 2016. However, you would think that these people are not regulated at all. The Chief Executive Officer of NTSA will tell you that most of them do not have licenses or insurance that would cover injuries.

My Motion is fairly straightforward in the sense that the regulations are there, but there seems to be a lapse in how they can be operationalised. There is need to help the people who are mandated to regularise them. That includes the traffic police as well as the NTSA. They need help to get this thing under control. County governments have to come in and educate these people and sensitize the public on the importance of being safe on *boda bodas*, as much as we love them---

The Temporary Speaker (Sen. Pareno): Order, Senator! You may resume your seat for a few minutes.

(Sen. Kasanga resumed her seat)

(Interruption of debate on Motion)

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM ST. ELIZABETH
ERUSUI PRIMARY SCHOOL, VIHIGA COUNTY

The Temporary Speaker (Sen. Pareno): Hon. Senators, I have a Communication to make. I would like to acknowledge the presence, in the Public Gallery this afternoon, of visiting students and teachers from St. Elizabeth Erusui Primary School, Vihiga County.

In our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them. On behalf of the Senate, and my own behalf, I wish them a fruitful visit.

Thank you.

(Applause)

Sen. Khaniri: Thank you, Madam Temporary Speaker. Allow me to join you in welcoming the young girls from St. Elizabeth Erusui Primary School together with their teachers. The school is not only in Vihiga County, but in Hamisi Constituency which I represented in the National Assembly for four terms. The school is just about three kilometres from my residence. It is one of the best, if not the best boarding primary schools in the entire county as evidenced by the results that they post in the Kenya Certificate of Primary School (KCPE) examinations. Last year, they had a mean score of 291 out of 500. It is a school that I associate with closely. When I was the Member of Parliament, I built them a modern library and renovated some of their classrooms.

I wish them a fruitful stay and all the best in their academics.

Welcome to Nairobi.

The Temporary Speaker (Sen. Pareno): Sen. Kasanga, you may proceed.

(Resumption of debate on Motion)

Sen. Kasanga: Thank you, Madam Temporary Speaker. Let me also take this opportunity to welcome the students. We are looking forward to having young leaders in the Senate. Please, learn, dream big and follow your dreams. Let nothing stop you from following your dreams.

On the issue of *boda bodas*, we ask counties to also step in and help the riders. The most interesting thing that I once read in a newspaper – I do not remember the specific county where this was happening – about *boda boda* riders who had been organised into a Savings and Credit Co-operative Organization (SACCO). They have managed to save a little money and even build their own homes. This is just to show that if they are well guided, Kenyans can be extremely organised. There is no reason we should see *boda bodas* running amok, as if there is no method of regularizing them.

As I wind up, I call upon the Senate to pass this Motion, so that we can bring order and sanity into the *boda boda* sector. I know that it is possible. We also want counties to come in strongly to help in this quest. This will ensure that our counties prosper more economically.

Madam Temporary Speaker, I beg to move and call upon Sen. (Dr.) Musuruve to second the Motion.

Sen. Malalah: Madam Temporary Speaker, we were promised to receive the ruling at 3.30 p.m. and now it is time. I would like us to adjourn until we finish the issue of Solai Dam.

Madam Temporary Speaker, I beg to move a Motion for Adjournment under Standing Order No.32, that the Senate do now adjourn and suspends transacting any business until we receive the ruling on---

The Temporary Speaker (Sen. Pareno): Sen. Malalah, are you making a point of order or you have a Motion to move?

Sen. Malalah: I finished making my point of order and I am now moving---

The Temporary Speaker (Sen. Pareno): Then you are out of order because a ruling had been made by the Deputy Speaker that we wait for the ruling.

Sen. Sakaja: On a point of order, Madam Temporary Speaker. Pursuant to Standing Order No.1 and many others, you are now the Speaker because you are sitting on the Chair, the same way Sen. (Prof.) Kindiki was sitting because Hon. Lusaka is not there. It is now 3.30 p.m. You can make that ruling right now but we can get the details of the ruling later, just like the Supreme Court ruling was made. They just annulled President Uhuru's election and said that they would give us reasons in 30 days.

Madam Temporary Speaker, from where you are sitting, you have the mandate, wherewithal and authority to give a ruling on this matter, so that we can proceed.

Sen. Wambua: On a point of order, Madam Temporary Speaker. The mood in this House is a reflection of the mood in the country and we cannot continue procrastinating this matter. I request that you provide direction on this matter. If Senators have to debate this Report, then direct that they do so and deliver a reasoned ruling on the matter that was raised yesterday later.

The Temporary Speaker (Sen. Pareno): I have heard the two points of order but I rule that we proceed with seconding of the Motion as we wait for the Deputy Speaker to come with the ruling. Let us now have Sen. (Dr.) Musuruve.

Sen. (Dr.) Musuruve: Madam Temporary Speaker, I thank you for this opportunity to second the Motion. However, I would like to state clearly before everyone else that immediately the ruling comes, I will certainly sit down. I do not mind being interrupted because I understand the mood in the country.

Sen. (Dr.) Kabaka: On a point of order, Madam Temporary Speaker. I wish to state that the position of the Speaker is equivalent to the position of a judge of the High Court of Kenya. The moment you issue a ruling or an order, you cannot vary it at will. In law, we know that once an order is issued, it is not issued in vain.

The Deputy Speaker who was seated there clearly said that it will be given at 3.30 p.m. What is the meaning of 3.30 p.m.? In computation of time, it means 3.30 p.m. and there is no other meaning.

What you are pushing is null and void. Giving an opportunity to the lady Senator to second the Motion is like taking this House for granted. All the Senators here will not listen to anyone.

The Temporary Speaker (Sen. Pareno): Sen. (Dr.) Kabaka, I wish to state that the Deputy Speaker who was seated here made a ruling that he was going to deliver the ruling by 3.30 p.m. If the ruling was here, I would have proceeded to read it on his behalf. I do not have a ruling before me and I have subsequently proceeded to make a further ruling, that in view of the circumstances, we proceed with the Motion that was on the Floor of the House as we wait for the ruling.

Let us have Sen. (Dr.) Musuruve take the Floor.

Sen. (Dr.) Musuruve: Madam Temporary Speaker, thank you very much for this opportunity to second the Motion.

I want to state clearly that given the mood around and the mood in the country, I would like to respect what Kenyans want to hear. It will be unfortunate for me to continue and ignore what Kenyans want to hear from this House.

We were elected to serve with commitment the people of this nation. I would like to state from the bottom of my heart that I am a selfless leader. I would like to know exactly the ruling of the Senate on this particular matter that Kenyans are really eager to hear. I will proceed with the debate after the ruling has been made.

Sen. Cherargei: On a point of order, Madam Temporary Speaker. I understand the mood of the House and the country at large. At the beginning, I insisted that this matter is of national importance. We will not allow cartels to hold this House at ransom. We must stand and provide direction.

The people who died in the Solai Dam Tragedy cannot be wished away because their spirits will haunt us forever. This is the time that the Senate must show direction, fairness, equity and transparency in this country. We will not allow the interests of specific people to derail the entire process.

Therefore, Madam Temporary Speaker, in accordance to Standing Order No.32, it is important that we have a Motion for Adjournment so that--- In fact, there have been rulings and that is a tradition that it should not be varied. If you vary, you will be setting a dangerous precedent in this House of rules, procedures and records.

MOTION OF ADJOURNMENT

ADJOURNMENT OF THE SENATE TO DISCUSS THE REPORT OF THE SELECT COMMITTEE ON THE SOLAI DAM TRAGEDY

Sen. Olekina: Madam Temporary Speaker, for all the reasons which have been stated by my colleagues, I now, under Standing Order No.32, beg to move that the Senate now do adjourn so that we discuss the Solai matter. I request Sen. Sakaja to second.

The Temporary Speaker (Sen. Pareno): That is the direction you should have taken a long time ago. All of you were raising points of order but none moved a Motion for Adjournment.

I now invite Sen. Sakaja to take the Floor.

Sen. Sakaja: Thank you very much, Madam Temporary Speaker, for your kind indulgence. I wish to support the Motion under Standing Order No.32 that the Senate do now adjourn.

As the venerable and indefatigable Chairman of the Committee on Justice, Legal Affairs and Human Rights has said, this is a House of rules and precedent. The fact that it was ruled that at 3.30 p.m., the ruling shall be delivered when it is brought to the House, there is nothing else we shall discuss.

Further to that, as I support this Motion, because that is the Order that we are on now, even if the Kenya Broadcasting Corporation (KBC) goes off air at 4.00 p.m., we have K24 and Citizen television stations and I know that we have Kenyans who will even follow on Facebook to know what happened in Solai. I thank you.

[The Temporary Speaker (Sen. Pareno) left the Chair]

[The Deputy Speaker (Sen. (Prof.) Kindiki) in the Chair]

The Deputy Speaker (Sen. (Prof. Kindiki): Order, Senators! I am told the discussion is about adjourning the House. At this point, I will put the question, then you decide what the Senate needs to do in the circumstances.

(Loud Consultations)

Order Senators! The ruling is ready. We should not be overly excited when dealing with a grave matter where fellow citizens lost their lives. In the context of hurrying things up, you need to have a demeanor that you appreciate the discussion is about compatriots who lost their lives. It is a solemn occasion. It is not an occasion to show as if there is an excitement.

Secondly, I had said the ruling will be ready by 3.30 p.m., but it was not. Sen. (Dr.) Kabaka, you mentioned about time and I agree with you entirely that when a judge says it is 3.30 p.m., it is 3.30 p.m. You are a lawyer of many years standing. Judges say that judgment will be at 9.00 a.m. in the morning or soon thereafter.

(Loud consultations)

Order, Senators! If you were to use that analogy of 3.30 p.m. now that you said the Speaker of the Senate exercises power similar to judicial power which is true. Sen. (Dr.) Kabaka and others, 3.30 p.m. means 3.30 p.m. or soon thereafter. Now, the ruling is ready. It is soon after 3.30 p.m. Can we dispense with the Procedural Motion and then I will go ahead to read the ruling?

This Motion does not concern counties, voting will be by acclamation. I will now put the question.

(Question put and negatived)

Hon. Senators, I direct that we consider the matter on Order No.8. Let me now read the considered ruling.

CONSIDERED RULING

DETERMINATION ON WHETHER DEBATE ON THE SOLAI DAM TRAGEDY REPORT IS *SUB JUDICE*

The Deputy Speaker (Sen. (Prof. Kindiki): Hon. Senators, I will try to make my ruling as brief as possible because the detailed ruling can be availed later.

Hon. Senators, at the sitting of the Senate on 1st August, 2018, Sen. Gideon Moi rose on a point of order seeking the Speaker's guidance and ruling on grounds that the Solai Dam Tragedy matter was active in court and that to debate the report of the Select Committee on the Solai Dam Tragedy would violate the *sub judice* rule as set out in Standing Order No.92 of the Senate Standing Orders.

Several Senators while responding to the point of order raised by Sen. Moi urged the Speaker to find that the matter is not *sub judice* because the issues raised are of national importance, that the matter is one of public interest, that the inquiry by the Senate is not on the criminal charges, but on legislative and policy matters.

Finally, that the Senate started dealing with this matter long before the Director of Public Prosecutions (DPP) had commenced the investigations and proffering charges.

Lastly, that the House is not in anyway seeking to influence the decision of the court.

Hon. Senators, the Select Committee on the Solai Dam Tragedy was established by a resolution of the Senate on Tuesday, 5th June, 2018, and the Committee was mandated to-

(a) holistically investigate and establish the circumstances leading to the Solai Dam Tragedy;

(b) propose modalities for compensation of all the families of the deceased victims and the surviving families;

(c) ensure the dam owner makes compensation in regard to the destroyed environment, especially trees and other vegetation and top fertile soils and;

(d) propose measures to mitigate any such eventual disasters, especially for counties that are prone to floods and landslides;

(e) Standing Order No. 92 of the Senate Standing Orders provides as follows:

(1) Subject to paragraph (5), no Senator shall refer to any particular matter which is *sub judice* or which, by the operation of any written law, is secret.

(2) A matter shall be considered to be *sub judice* when it refers to active criminal or civil proceedings and the discussion of such matter is likely to prejudice its fair determination.

(3) In determining whether a criminal or civil proceeding is active, the following shall apply—

(a) criminal proceedings shall be deemed to be active when a charge has been made or a summons to appear has been issued;

(b) criminal proceedings shall be deemed to have ceased to be active when they are concluded by verdict and sentence or discontinuance;

(c) civil proceedings shall be deemed to be active when arrangements for hearing, such as setting down a case for trial, have been made, until the proceedings are ended by judgment or discontinuance;

(d) appellate proceedings whether criminal or civil shall be deemed to be active from the time when they are commenced by application for leave to appeal or by notice of appeal until the proceedings are ended by judgement or discontinuance.

(1) A Senator alleging that a matter is *sub judice* shall provide evidence to show that paragraphs (2) and (3) are applicable.

(2) Notwithstanding this Standing Order, the Speaker may allow reference to any matter before the Senate or a Committee.

Hon. Senators, in order to address Sen. Moi's concern, a clear understanding of Standing Order No.92 is critical. This Standing Order in the first paragraph is a general statement of the principle that a Senator shall not refer to any matter that is *sub judice* or which by operation of law is secret.

The general principle, therefore, is that matters under adjudication in a court of law cannot be brought into debate because no conduct ought to be prompted which is likely to prevent a case being conducted free of all matter of prejudice.

The second paragraph of Standing Order 92 has two realms of the *sub judice* rule. In that, a matter is *sub judice* if it refers to active criminal or civil proceedings.

Secondly, that discussing the matter is likely to prejudice a fair determination in a court of law. Thus, if a matter is of active criminal or civil nature, but its distinction does not prejudice its fair determination, then it is not *sub judice*.

Hon. Senators, what we are saying under paragraph 2 is that, two things must be proved; one, that there is an active matter and secondly, that discussing that matter is prejudicial to fair trial. The term used is the conjunction “and” which means that both must exist; that the matter is active and discussing it is prejudicial to a fair trial. It is not enough for just a matter to be active.

Paragraph 3 proceeds to prescribe the parameters to be applied in determining whether a matter is active or not. For criminal proceedings, which in this case were the subject matter in Sen. Moi’s point of order, a matter is considered to be active when a charge has been made or summons have been issued and ceases to be active when they are concluded by verdict, sentenced or are discontinued while in the case of an appeal, a matter is deemed to be active from the moment leave of appeal or notice of appeal have been filed until judgment is entered or a matter is discontinued.

Paragraph 4 imposes an obligation on the Senator alleging that a matter is *sub judice* to provide evidence that the matter is active in court and that its consideration is likely to prejudice a fair determination of the matter in court.

Paragraph 5 gives the Speaker the discretion to determine whether to permit any matter before the Senate or a Committee taking into account paragraphs 2 to 4 above. In other words, for clarity.

Paragraph 4 says as follows:

“Even if all the elements contained in paragraphs 1 to 4 exist, namely; there is an active matter, discussing it would be prejudicial? These are circumstances that a matter is active when it is not”.

In spite of all those elements and parameters being in existence, the Speaker still retains the discretion to allow whether a matter can proceed or not, so long as it is before the Senate and, or a Committee. So, even if all those matters are proved, the discretion of the Speaker in paragraph 5 still gives this House the authority through the Speaker, to determine whether a matter can still proceed and that will not violate the *sub judice* rule.

Hon. Senators, the *sub judice* rule has its origin in the Convention of the Commonwealth Parliaments, in that, restrictions need to be placed on the discussion of matters that are before the court. It is known as the *Sub Judice* Convention. The purpose of the Convention is to balance the freedom of speech in Parliament and fair trials which are both important values and neither can be permitted entirely to trample the other.

There are two recognized purposes of this Convention. The first is similar to the purpose of common law *sub judice*, in relation to media and the public, is to prevent, comment and debate of parliament from exerting an influence on juries and from prejudicing the position of parties and witnesses in court proceedings.

The second purpose of the Convention is to prevent parliamentary debate on matters *sub judice* so that Parliament is not set up as an alternative judicial forum to a court which could lead to a conflict between a House of Parliament and the courts.

Traditionally, the Convention was applicable when cases were determined by the laymen or non-lawyers in form of juries. However, over time, the doctrine has been narrowed in light of the supremacy of the Constitution, human rights guaranteed in the Constitution and the fact that Kenya does not have a jury system.

Hon. Senators, our criminal justice system is underpinned by the right to fair trial as set out in Article 50 of the Constitution which includes the presumption of innocence which was raised yesterday.

Hon. Senators, the conduct of a criminal trial is under the sole purview of the Director of Public Prosecutions (DPP) under Article 157. I am abbreviating because of time.

The point I have made here is that the *sub judice* rule is supposed to prevent bias or influencing judges or magistrates when they make decisions. It is my view that in the past, there was real danger or external influence from Parliament, the public, media, judges and other decision makers like jurors when decision making is by way of jury.

In this country, those who are conversant with our legal system are aware that in the past, there used to be within the judicial system lay magistrates who were decision makers and were not trained in law. We had very many, including the Senator for Garissa County, Sen. Haji, who was once upon a time, a lay magistrate in the country, despite him not being a lawyer.

So, my argument is that today courts are independent and are governed by people who are trained to apply the law and evidence. It does not matter what Parliament, the Executive, the public or the newspapers say. The decision is made on the basis of the law and evidence.

Secondly, it is also my opinion that under Article 157 (1) of the Constitution going downwards, there is a Clause which declares that the DPP is the one in control of the criminal trial and is an independent officer and shall not receive instructions, directions or advice from any quarter or authority whatsoever, including Parliament.

Hon. Senators, this position has been acknowledged by previous Speakers of this House. For example, in 2009, the ruling of former Speaker Kenneth Marende which I do not have time to quote. We have cited authorities from New Zealand, Australia and other Commonwealth jurisdictions.

The arguments which have been made are that several people have been taken to court on this matter and that, the matter is active in court. However, as to the matter being in court, the Speaker is not aware that the matter is in court. This is the reason that under paragraph (3), the Standing Orders require mandatorily that the Senator relying on the Standing Order to provide the evidence that the matter is active in court. It is not the business of the Speaker or of any Senator to go to all the courts of this country to find out what they are doing and which matters have been filed there so that they inform the proceedings of Parliament. That is not the business of the Speaker.

However, I also underline that the Speaker may take an equivalent of what is known as judicial notice where matters are of public notoriety that something has happened. Perhaps an equivalent of judicial notice would be parliamentary notice. The Speaker may have taken parliamentary notice that there could have been an active matter but strictly under the law, there is no evidence before this House that the matter is active.

Hon. Senators, I will skip a few paragraphs so that we end this matter quickly.

I have already said that the Senator is supposed to provide evidence as to whether debating this matter will prejudice its fair determination. I am of the view that the Senator did not adduce evidence that debate on this matter will prejudice proceedings in the court. Even then, the purpose of the rule is to balance freedom of speech in Parliament and the right to have fair trial.

As I have stated, these are both important matters. There will be many situations where important issues are before Parliament and before the courts at the same time, but the purpose of parliamentary process must be considered.

Hon. Senators, I am guided by the rulings made by the former Speaker, Hon. Kenneth Marende, and the other Speakers that I have mentioned earlier. I further view or opine that in determining whether the discussion of a matter will prejudice a fair trial, the Speaker must satisfy him or herself that the discussion will result in procedural and substantive injustices. Further, the likelihood of prejudice must be detailed with sufficient particularity to enable the Chair make the appropriate decision. The Senator who raised the question of *sub judice* averred that there are pending criminal proceedings with respect to the matter without availing any documentary evidence.

As to the question whether the issue is one where the Speaker has discretion under Standing Order 92(5), I have argued that even if all the elements are satisfied, there is discretion under Standing Order 92(5) and my finding is in the affirmative. This is a matter which, even if all the elements of active proceedings, prejudice, *et cetera*, have been met, the Speaker would still have discretion to decide whether this matter should proceed or not for the following reasons.

The first reason is because this is a matter of great public interest. Secondly, it is because this is a matter about human rights, including the most sacrosanct right; and that is the right to life.

(Applause)

Therefore, I want to summarize and come to the conclusion, but before I do that, let me just highlight that the Select Committee on the Solai Dam Tragedy was established, not only to investigate the circumstances leading to the tragedy, but also to propose compensation modalities, *et cetera*. The criminal cases instituted by the Director of Public Prosecutions (DPP) relate to criminal culpability; it has nothing to do with four or five items identified in the mandate of the Select Committee.

(Applause)

For criminal charges, a conviction can only be obtained if there is proof beyond reasonable doubt. Whether or not the accused persons will be found guilty is independent of any other factor except proof beyond any reasonable doubt that they are guilty for those charges.

Hon. Senators, going forward, I just want to make a quick concluding remark that we should conduct ourselves with the dignity that is commensurate with our status as Members of this House. The reason I am saying this is because there were suggestions yesterday about the Senator who relied on Standing Order 92 to bring this point of order.

I advise that we refrain from imputing improper motives on colleagues, because it might kill the morale of Senators from bringing out issues here. Unless a Senator has very serious proof, it is not right in the glare of the public to cast serious aspersions at a colleague. This is because that is somebody who has been sent here by the electorate. Therefore, let us maintain some decorum. By doing that, I am not trying to stifle debate, but let us have some general level decorum. I thought I should mention that.

Therefore, it is my considered opinion that debate on the Solai Dam Tragedy is not likely to prejudice the fair determination of any criminal proceedings that may exist out there as instituted by the DPP. This matter is, therefore, not *sub judice* and is not, in any way, likely to prejudice the fair determination of any pending or impending criminal proceedings.

I so rule.

(Applause)

The details will come later, but that is the upshot of it. Can we now proceed? Proceed, Sen. Mutula Kilonzo Jnr. Are you on a point of order or are you moving?

Sen. Mutula Kilonzo Jnr.: I am moving, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): Okay; proceed.

Sen. Mutula Kilonzo Jnr.: Mr. Deputy Speaker, Sir---

The Deputy Speaker (Sen. (Prof.) Kindiki): I can see several points of order. Is there any Senator on a point of order?

What is it, Sen. Outa?

Sen. Outa: Thank you, Mr. Deputy Speaker, Sir. I have listened to you providing what we call "Solomonic" wisdom, which I know the country has been waiting for. Would I, therefore, be in order to ask Sen. Mutula Kilonzo Jnr. to withdraw the statement where he had declared improper motives on Sen. Moi under Standing Order 93, for the sake of this House?

The Deputy Speaker (Sen. (Prof.) Kindiki): I am Sorry, Sen. Outa; I did not quite get you. What is out of order?

Sen. Outa: Mr. Deputy Speaker, Sir, I have just listened to you giving direction that we should not impute improper motives on our colleagues. Yesterday, Sen. Mutula Kilonzo Jnr. imputed improper motives by asking the Senator for Baringo County to declare his interest on this matter. After listening to you under Standing Order 93, could I ask Sen. Mutula Kilonzo Jnr. to withdraw, because it was on record?

(Sen. Mutula Kilonzo Jnr. stood up in his place)

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Sen. Mutula Kilonzo Jnr.! Before you say what you want to say, I strongly suggest we do not revisit the matters of yesterday. We have already spent a lot of time on this issue and it is already 4.00 O'clock. Therefore, Sen. Mutula Kilonzo Jnr., you may say what you want to say, but I strongly advice that we abandon further debate around yesterday's Standing Order. In any case, that is now a matter behind us. Secondly, I made a general remark; it was not just about yesterday, but also going forward.

Sen. Mutula Kilonzo Jnr.: Mr. Deputy Speaker, Sir, I will take a minute to respond. First, if I understand the Standing Orders correctly, any time a Senator makes a statement which he cannot substantiate, then that statement of fact is either withdrawn or apologized for. If I heard myself correctly – and I have no problem with my hearing – I asked a question; I never made a statement. The question was answered in the negative.

The Deputy Speaker (Sen. (Prof.) Kindiki): That is true, Sen. Mutula Kilonzo Jnr.

Sen. Mutula Kilonzo Jnr.: Therefore, Sen. Outa is imagining that it was me that you were referring to. However, you have already made a ruling and, therefore, allow me to proceed.

The Deputy Speaker (Sen. (Prof.) Kindiki): Proceed.

MOTION

ADOPTION OF REPORT OF THE SELECT COMMITTEE ON THE SOLAI DAM TRAGEDY

Sen. Mutula Kilonzo Jnr.: Thank you, Mr. Speaker, Sir. I beg to move:-

THAT, this House adopts the Report of the Select Committee on the Solai Dam tragedy, laid on the Table of the House on Thursday, 26th July, 2018.

Mr. Speaker, Sir, this report and the probe has given me, as the Chair, very anxious moments to the extent that Members of this Committee were intimidated; they were lobbied on and they received telephone calls, even as late as yesterday. I was worried about the security of my Committee Members. I was also worried that we will not complete this process. However, because God loves the people of Solai, we complied with the Standing Orders and this report was approved by a majority of the Members of the Committee.

Mr. Deputy Speaker, Sir, secondly, I was unanimously elected as the Chair of this Committee for reasons that the Senators, who are in this Committee, are best placed to explain but it gave me great pleasure to chair 21 meetings. I am informed reliably that this Committee is the first one that has complied with the timelines given by the House. We are actually ahead of the time that was allocated to us, and I can assure you that we have done a good job.

Straight to our mandate; we were given four mandates to holistically investigate and establish the circumstances leading to the tragedy; propose modalities for compensation of the families; ensure that the dam owner makes compensation in regard to destroyed environment, trees, and other vegetation; and propose measures to mitigate such disasters. I will, in my handling of the Report, deal with those issues as they are.

Mr. Deputy Speaker, Sir, we have determined with finality that the Solai Dam Tragedy was not an act of God, but an act of man. It was an act of omission and commission. It was deliberate. It was done knowingly and in collusion. It is criminal without hesitation.

The documents presented to us by the Ministry of Water and Irrigation, through Water Resource Management Authority (WARMA), in fact, confirm in finality that the owner of Solai Dam---

(Sen. Mwaruma spoke off record)

The Deputy Speaker (Sen. (Prof.) Kindiki): What is it, Sen. Mwaruma?

Sen. Mwaruma: Thank you, Mr. Deputy Speaker, Sir. Sen. Mutula Kilonzo Jnr. has said that the Report was approved by most of the Committee Members. Is it possible to know how many approved and how many did not approve, so that as we listen to the findings, we have that background?

The Deputy Speaker (Sen. (Prof.) Kindiki): I do not think there is anything out of order. There is a procedure of decision making in committees. If that procedure meets the threshold, there is no obligation for those disclosures.

Proceed, Sen. Mutula Kilonzo Jnr. You are at liberty, though, to read out those who did whatever.

Sen. Mutula Kilonzo Jnr.: Mr. Deputy Speaker, Sir, we bothered to get into the history of this matter. At the first instance, this Committee was met with a charade of what appeared to be incompetence. The first report that came to us from the National Construction Authority (NCA) suggested that this was an act of God. The fellow who prepared the report from NCA took photographs with his phone the following day, that is, 10th May, 2018 and bothered to come to the Committee investigating this to confirm that, that was the report of NCA.

We, in our usual style, dismissed NCA. I am happy to report that they have done two extra reports that are here. One of the Members will delve into the details of this. What is the finality of what these people have said?

[The Deputy Speaker (Sen. (Prof.) Kindiki left the Chair)]

[The Temporary Speaker (Sen. (Prof.) Kamar in the Chair)]

Madam Temporary Speaker, the Solai Dam was built at 1,694 meters above sea level. It had a 30-meter mud wall made of porous material, in this case murrum, and was holding at the time of the incident, 300 million litres of water with no spillway. That is confirmed. The Cabinet Secretary, Mr. Chelugui, has confirmed without hesitation that there was no license for a dam in Solai. In documents submitted to the Committee, in what appears to be a cover-up and deliberate omission, the owners of Solai Dam in 2005 to 2018 had sought for a license to have what is referred to as a weir – a 2.5 meter weir to divert 50 cubic meters of water daily and 2,045 cubic meters of water during floods up to December 2018.

On what basis did the owners of Solai Dam build a 30-meter wall of a dam, block the Watkins stream, yet knowingly, they applied and were licensed to have what is referred to as a weir? It is our finding that, that is where the problem is. That is where the problem started. It is a problem created by WARMA and the National Environment Management Authority of Kenya (NEMA). It is a problem created in a conspiracy – criminal as it is – by the persons of NEMA.

Madam Temporary Speaker, during the period, there is no report from WARMA that they ever inspected this weir. From 2003, they never inspected to confirm that, in fact, there was a weir. The permit granted to the dam owners, Mr. Perry Mansukh, and

his directors, had conditions. The conditions were to show that he has collected the water that he is permitted to do, which is 50 cubic meters and that he has created and allowed the water to go downstream to the people of Solai. How did a man, who is subject to the law of this country, divert and block a river from 2004 to 2018? What did he think was going to happen when it rained? The photographs in this Report, provided by NCA and the Ministry of Water and Irrigation without hesitation, prove and show in terms of our first mandate that this was a criminal conspiracy by people who were very greedy and prepared to take away the water that was going downstream to Solai.

In fact, the report by NCA demonstrates that the water catchment in the whole of Solai leads to the Watkins Stream, which goes into the dam where this man lives. These documents here, in fact, demonstrate that the people at WARMA – a gentleman by the name Thomas Odo – signed the last license for a water weir issued in 2012. He signed it in 2017.

Madam Temporary Speaker, this Committee has determined that it is possible that the documents submitted to us were a forgery; given to us for purposes of misleading us and the country that Mr. Patel and Mr. Perry Mansukh had a permit. Otherwise, why would a permit issued in 2012 be signed in 2017? That is not just for one dam. It is for another dam called Tinderes Dam. Tinderes Dam did not have a license for a dam. Tinderes Dam is actually not even a stream; it is a dam that is built on a river and blocked by one person. By the time the Kenya Defence Forces drained that dam, it had 180 million litres of water. It was leaking and about to drain that water into Solai.

This Report shows that the people of Solai were even saved. This Report shows that by virtue of breaking of the dam, the flood flow of this Solai Dam was diverted by a greenhouse from Solai Secondary School. It was going straight for the children. The NCA has said that it was an act of God, but the only act of God here is that the flood flow was diverted by a greenhouse. We would be talking about a different story today.

What is worse, my dear colleagues, is that if this happened at 10.00 p.m., one-and-a-half hours later, there would be nobody left in their homes in Solai. It was embarrassing to listen to NCA and NEMA telling us that this was an act of God and an accident. It was not an accident; this was deliberate. They knew what they were doing.

Madam Temporary Speaker, in our findings, we have proposed criminal action against all those people involved and named them, so that this never happens again.

The people of Solai do not sleep at night. A tire burst sends these people out of their homes. The noise that this dam made was like a bomb. When I said this is not a matter to joke about, I was prepared to lose my life. However, I was not going to be intimidated to cover the truth.

Mr. Perry Mansukh must pay dearly for two things. One, for diverting water; water is a resource given to us by God and granted to us by this Constitution yet he diverted it for his personal commercial use. The people of Solai must be compensated by him.

Mr. Perry Mansukh and his dam created such an environmental disaster. Our recommendation No.26 of this Report says that he cannot restore the Solai area and its residents without moving them from where they live. This is because the flood water washed away everything; top soil, second layer, third layer and left them with rocks. If he will rebuilt Solai and the livelihoods of those people as it is contemplated in the Environmental Management and Coordination Act (EMCA), how will he rebuilt it if he

does not restore that environment? How will he restore that environment when they are on site?

We have suggested that the people of Solai be moved. This company has 3,250 acres of land, 800 of which is a wildlife sanctuary; ostriches and impalas are enjoying being in Solai courtesy of Mr. Perry Mansukh. Why should the people of Solai, whose independence we fought for, live worse than his animals? He should give them land and will suffer nothing. That is the restoration that we have proposed.

We have further proposed something more drastic. Under EMCA, you are supposed to award compensation for the people who lost their relatives and compensation for the livelihoods. Their food was washed away; they will not plant now or soon. Mr. Perry Mansukh, in his act of love, because he profess love here, should provide food and water to the people of Solai until the time when they can start rebuilding their lives and livelihoods. We have made that proposal.

We have similarly made a proposal to say that this matter is so grave. It is not contemplated in the EMCA law. It has never happened in Kenya. Before he restores Solai, he should call an expert to determine the extent of damage. What Mr. Perry Mansukh is supposed to restore, one to 100, that expert will determine what he will do. By the time he is restoring, you have conditions granted to him so that the default clause that is in Section 143 of EMCA will apply to him in case he does not comply.

We were informed by the Cabinet Secretary in charge of environment, Mr. Keriako Tobiko, that if the rules under Section 28 of EMCA were in force, it would require Mr. Perry Mansukh and his co-directors to make a deposit under Environmental Management and Coordination (Deposit Bonds) Regulations, 2014. If these were in force, it would require any person keeping something that can cause a disaster in terms of environment to deposit with the National Environment Management Authority (NEMA). In the absence of these regulations, which, in my view, would have required Mr. Perry Mansukh to deposit something not less than Kshs5 billion, we have suggested that an environmental audit be done before anything starts.

Secondly, we must determine one by one the people who lost their lives and their livelihoods and award each one of them compensation in *personam* and not *in rem*. This means that you cannot guess the 48 people who lost their lives multiply effect and the 226 who lost their livelihoods and the multiply effect. This matter is so serious. We have a report here that there are 52 orphans. Most of them are in primary school. We have to multiply the school fees from primary to university. We have to multiply the amount of care and love they would receive from their parents, now that they are in primary to adulthood 25 years.

That is something that you cannot do in a manner suggested by the Cabinet Secretary through NEMA in the restoration order dated 19th July, 2018. We returned the one of 12th July, 2018 to him and he still sent us another one. We have refused this order for it does not cater for Section 108 and Section 109 in terms of particularity. We have even quoted in this Report a court case which says that the Environmental Restoration Order under Section 108 is like a final order. That is why that final order must be very particular. If it is not particular, you cannot enforce it. That case seeks to say that this must be the final order. To that extent, the criminal liability and civil liability of Mr. Perry Mansukh and his cohorts in this Report is clear. I do not need to get to further details.

I have also stated in the last mandate to find a method to restore the people of Solai. We have suggested that an environmental audit be done by an expert. It is contemplated in the Environmental Management and Coordination (Deposit Bonds) Regulations 2014 that I have just mentioned. The competent expert is defined as a multi-skilled team of environmental impact assessment or environmental audit experts licenced by the authority with speciality in environmental financial assurance, including environmental deposit bond.

Why do we say this and why have we suggested what would appear to be a very drastic measure? We have done so because NEMA stands accused. We do not trust NEMA to do this audit because they are accused. This can only be done outside this framework for supervision by another team. It cannot also be done by Kenya Water Resources Management Authority (WARMA), Nakuru. We have proposed that WARMA, Nakuru, in its entirety, be charged in court for abdicating duty in its entirety.

I have already spoken to the third mandate about ensuring that the dam owner makes compensation. The reason as to why we have suggested that there must be a calculation of the quantum payable is because--- The only way to make Mr. Perry Mansukh and his cohorts to pay for the damage they have caused, just for the death and livelihoods, is to have a figure. This figure can only be enforced by a court order from the High Court, the Environmental and Land Court. That way, if he does not pay, then it can be pursued as a decree which can attach part of his land. He has a lot of it. On the one on environment, if he does restore, it can then be enforced.

Similarly, we have suggested several amendments to the law and Section 143, which is the one that is the enforcement mechanism of the Environmental Restoration Order. The contradiction in Section 143 is that “in default of restoration, the person who has defaulted is subject to imprisonment for one year and a fine of Kshs4 million.” Mr. Perry Mansukh, in the middle of these investigations, gave out Kshs35 million in what he called consolation. This consolation was like a poisoned chalice. The consolation was accompanied by a form called an indemnity form. That indemnity form was absolving him and his directors from liability. Who distributed these forms? It was the County Commissioner of Nakuru. Who accompanied him? He was accompanied by the Deputy County Commissioner (DCC), Subukia. Who was witnessing? The Chief, Solai.

We have suggested that these three people be charged with obstruction of justice because it is a contradiction for the Government of Kenya to charge Mr. Perry Mansukh, his directors and managers and for the same Government officials to go dishing out forms - which were signed under duress - to the victims of the Solai Dam Tragedy. They must be charged in court for obstructing justice.

Madam Temporary Speaker, this afternoon, a Member of Parliament from Nakuru County - who is also in cahoots with these people - has made a very interesting remark that this Committee was fighting for Sen. Susan Kihika to become the Governor for Nakuru County in 2022. How fickle can a man be? How can one laugh at dead people?

An. Hon. Senator: Shame on him!

Sen. Mutula Kilonzo Jnr: Shame on him!

What does this have to do with being a governor? None of us was motivated by anything other than the truth. We have a document that is over 1,800 pages. At no point did we deal with the politics of Nakuru County. This gentleman should be told off. We are not interested in their petty wars and politics.

Madam Temporary Speaker, on 26th November, 1980 – that is why this Senate must stand firm - hon. Koigi Wamwere raised a point of order in Parliament. What was his concern? That document is on page 1,094. This problem is old. This farm and its owners have been blocking rivers since 1980. Hon. Wamwere raised it, but we ignored it. Forty-eight people are dead; we have 52 orphans and many other people who were buried in Patel's farm, some of whom have no relatives or could not find them. Are you as Senators going to leave this matter? Is the record going to reflect that you sat here and allowed this impunity to continue?

Madam Temporary Speaker, who is Mr. Perry Mansukh? What makes him above the law? Is it the money he has? What is it that makes the County Government of Nakuru come here and has no comment about this dam? They abdicated responsibility by saying: "This is not our business. This is a matter of the national Government." I wondered: Did the 48 people drop from Nairobi. These 48 people, 52 orphans and their parents voted for that county government, yet it had no report. It is embarrassing.

The national Government and its officials shake in their boots when they see Mr. Perry Mansukh. That is why he can send them. He did not even go for the meeting. He has never stepped into Solai to say sorry to anybody, but the national Government officials were happy to distribute Kshs35 million. In fact, if I was to be asked, this money was not distributed but they pocketed the bulk of it. This is where corruption has taken us. It has corrupted our souls, minds, thoughts and eyes. We are blind to everything, but not so for the Committee.

I thank the Members of my Committee for standing firm for the truth and the oath they took before this House; to protect the truth and promote the Constitution without fear or favour.

This man did self-audits. The concealment is unbelievable. He concealed material facts from the year 2004 that he was building a dam. He opened the stream where the water could come into his farm. The Water Resources Management Authority (WARMA) gave him a permit to do a weir; he did a dam. When they appeared before our Committee, the National Construction Authority (NCA) said: "This is not our jurisdiction." The National Environment Management Authority (NEMA) said: "This was done before we came into office." We have now confirmed that all of them have abdicated responsibility.

Madam Temporary Speaker, allow me to go the recommendations and observations because they will inform what this Committee has determined as the way forward in this matter-

(1) Further investigation and prosecution of the owners of Milmet Dam, public and state officers involved in the unlawful establishment and operation of Milmet Dam in contravention of the Water Act.

Madam Temporary Speaker, there must be an offence somewhere in the law about blocking a river. We have also recommended:

(2) Further investigation and prosecution of the officers of the national Government including and not limited to Mr. Joshua Nkanatha, County Commissioner Nakuru, Mr. Justus Kavita, Deputy County Commissioner (DCC) and Mr. Charles Kibiru, Chief Solai, be conducted for abuse of office and obstruction of justice.

This particular one bothered us. I have a video of them distributing money. We were told that they were distributing the money. Every person who sat here claimed that

they were not aware. This is the extent to which this country is corrupt that we will turn a blind eye to injustice.

This Committee has decided that the people of Solai and their lives matter which is why we have stood for the truth.

(Applause)

The actor will be the Office of the Director of Public Prosecutions (ODPP) and the Directorate of Criminal Investigations (DCI) and we have suggested the timeline of one month. We have further recommended-

(3) That from the documents we received in two batches, one from the Cabinet Secretary in charge of Water and one from the Principal Secretary, particularly the second batch of documents submitted to us by the PS, water be investigated in terms of authenticity.

All the licenses issued are dated the same day, and signed by the same person yet some of them are of the year 2009, 2012 and 2018. It is our conviction that these documents are forgeries. That is why we have suggested that it be determined if the officials who submitted them to this Committee intended to mislead us and have violated the Powers and Privileges Act so that action can be taken against them.

We have also recommended that-

(4) Further investigation be conducted against the owner(s) of Milmet Dam and subsequent prosecution for deliberately and unlawfully constructing the dam in full knowledge of WARMA and NEMA.

(5) That appropriate disciplinary action be taken against Mr. Maurice Aketch who submitted the NCA preliminary observation. It is our conviction the he wanted to mislead us that this was an Act of God.

(6) That further investigation be instituted against the owner(s) of the dam and subsequent prosecution for failing to notify the NCA on construction works on the dam between 2011-2017, in contravention of the NCA Act.

(7) Further investigations be made against the owner(s) of Milmet Dam and subsequent prosecution for failing to conduct and Environmental Impact Assessment (EIA) study on the Milmet Dam between the year 2004-2018, contrary to Section 58(2) and Environmental Management and Coordination (Amendment) (2015) Act (EMCA)

(8) That the DPP and DCI investigates public officers cited in this Report for contravening Article 232 of the Constitution and the Public Officers Ethics Act and the Public Service (Values and Principles) Act and for conspiracy to mislead the public, their respective authorities and the Committee. Officers to be investigated are not limited to the following-

1. Mr. Mohamed Shurie - the Chief Executive Officer (CEO) WARMA;
2. Eng. Boniface Mwaniki - WARMA;
3. Mr. James Chepolet - NCA;
4. Mr. Tompkins Odo - Ministry of Water;
5. Mr. Joshua Nkanatha - County Commissioner, Nakuru County;
6. Mr. Justus Kavita - DCC, Subukia; and,
7. Mr. Charles Kiragu - Chief of Solai Location.

(9) That the Governor of Nakuru County and all governors gazette the County Environmental Committees within the next three months under Section 29 of EMCA.

(10) Further, prosecution of the Owner(s) of Milmet Dam for contravening section 54 of EMCA by failing to disclose material information on Milmet Dam in the Self-auditing Reports of 2004-2018. In all those reports, they failed to disclose that they had a dam.

(11) We have further recommended for enhancement of the penalties in Section 143 of EMCA so that the person who is found to have befouled the environment can be punished so much and so punitively that everybody will learn a lesson.

Madam Temporary Speaker, it is our conviction that the owner(s) of the dam can afford Kshs4 million and not restore Solai Dam. That punitive measure is not enough.

We have further proposed, through this Committee, that we draft a Bill to establish the Meteorological Department in an Act of Parliament because as it is, they do not have an Act of Parliament. We have said so in our Report. This is because all the warnings they gave that there would be heavy rains in Nakuru were ignored.

In the meantime, we have further proposed and recommended that the national Government officials named in this Report for attempting to pay off the Solai victims, by causing them to sign indemnity forms in the pretext that it was consolation, be suspended. These are the Nakuru County Commissioner, Mr. Joshua Nkanatha; the Subukia Deputy County Commissioner, Mr. Justus Kavita and the Chief of Solai Location, Mr. Charles Kiragu.

Madam Temporary Speaker, we have also recommended, in Paragraph 15, that the Chief Justice directs that the suit by the NCA be expedited. The NCA was unable to complete the soil sampling of Solai Dam because Perry Mansukh and his cohorts refused to give them access, even after this Committee ordered them to conduct an audit through a dam expert. That is impunity.

Madam Temporary Speaker, we have also recommended, in Paragraph 16, that Parliament expedites the passing of the Disaster Risk Management Bill. We have attached the report of the Committee, led by Sen. Haji and deputised by Sen. Sakaja here. We have proposed that, that Bill be signed in to law in six months.

Madam Temporary Speaker, we have also recommended, in Paragraph 17, that the Ministry of Water and Irrigation establishes a National Dam Safety Monitoring Unit, which will monitor structural performance of dams. We have also recommended in Paragraph 18 that the Water Resources Management Authority (WARMA) – now called the Water Resources Authority (WRA) – the National Construction Authority (NCA) and the National Environment Management Authority of Kenya (NEMA), just after they have removed all of them from office, they should collate information, establish and maintain a national repository of all dams.

Madam Temporary Speaker, we have also recommended, in Paragraph 19, that for the enforcement of the restoration order of Solai to succeed, all national administration officials stationed in Solai and Nakuru must go home, including the officials I named before; Mr. Joshua Nkanatha, Mr. Justus Kavita and the Chief, Mr. Charles Kiragu.

Madam Temporary Speaker, we have also recommended, in Paragraph 20, that the Director of Public Prosecutions (DPP) conducts further investigations into the interference of the tragedy site against his orders. The DPP ordered that the site in Solai

be preserved. However, when we went to the site, it had been interfered with. Impunity has no bounds when it comes to Solai.

Madam Temporary Speaker, we have also recommended, in Paragraph 21, that the resolution issued by NEMA on 19th of July, 2018, be revoked and a new one be issued. The new resolution should have specific directions on the restoration and compensation in accordance with Section 108 and 109 of the Environmental Management and Co-ordination Act. This process should include, but is not limited to, the procurement of an independent environmental expert from a reputable firm to conduct an Environmental Impact Assessment or audit. The audit is to establish the extent of the environmental damage caused as well as assess the quantum of compensation payable to the families of the deceased, injured and for the loss of livelihoods. That is for people, like the Member of Parliament (MP), who thought that our only mission was to get Sen. Kihika into governorship. We could see further than him.

Madam Temporary Speaker, we have also recommended, in Paragraph 22, that further investigations should be undertaken with a view to prosecute the owners of Milmet Dam and WARMA officials for violating regulations 67(1) and (2) of the Water Resource Management Rules. Further, we have also recommended, in Paragraph 23, that Milmet Dam and Tinderess Dam – the one that is 3km apart – be decommissioned forthwith. We were informed – and it is on HANSARD – that Tinderess Dam has a valve which Mr. Perry Mansukh and his directors open at will. When the officials of WARMA went to drain that dam, they were getting calls from officials of the County Government of Nakuru, asking them: “Who told you to interfere with that dam?” Nakuru is like Sodom and Gomorrah; only fire can heal these people.

Madam Temporary Speaker, we have also recommended, in Paragraph 24 that the floor of Watkins Stream and Tinderess Dam should be restored forthwith. We also recommended that the restoration order issued by NEMA to increase provision of water for domestic use be granted to the residents until the river flow is fully restored. We have precedent on this one, when this Senate interrogated and investigated the Thange oil spill in Kibwezi in 2015. The people of Thange were moved from the river; the land was leased to the Kenya Pipeline Company (KPC), who have been cleaning it from 2015 to date. In the meantime, they offer food and water to the people of Thange. Solai is not any different because the people of Solai have no water, they should be given water courtesy of the owners of Solai Dam. We have also recommended, in Paragraph 26, that pending the restoration of the environment and the livelihoods of the residents, an alternative piece of land with all facilities be availed for use by the residents.

In a nutshell, Madam Temporary Speaker, those are the 26 recommendations of the Committee. They are far reaching, legal, practical and prosecutorial in order to fulfill our mandate number three and four in terms of compensation, restoring Solai and making sure that this never happens again.

Lastly, for those Senators and the MP who thought that we went to Solai to politic, we have the HANSARD of what we were told; it was a scene and a half. The people of Kenya are tired of impunity. An old man walked from the tent and confronted the Nakuru Deputy County Commissioner for claiming that they were lying. I saved him from the wrath of the people of Solai. They were so angry that he could make such a claim, that they confronted him. Secondly, the Chief of Solai was confronted so badly that we had to protect him. Why? It is because in his reports, he had three lists of people

who ought to have been paid. How did he end up having three lists of three or four villages? Once again, that is impunity.

Madam Temporary Speaker, we report that out of the Kshs35 million that was given out by Mr. Perry Mansukh, the people who lost their lives were paid Kshs100,000 and Ksh200,000 respectively, while the people who lost their businesses were paid Kshs1 million.

Hon. Senators: What?

Sen. Mutula Kilonzo Jnr.: That is what is called impunity. These people think that the value of the people of Solai is Kshs100,000 or Ksh200,000. Even if nobody does anything, we have made sure that this Report can be used in an environmental court internationally, not even in Kenya. This is because we saw the pain of the people of Solai. If you look at the list of victims, they are not only Kikuyu; it is a blend of Kikuyu, Kalenjin, Turkana and other tribes. The face of Kenya is in Solai and it should be treated as such.

Madam Temporary Speaker, with those few remarks, I beg to move and request my brother, Sen. Sakaja, to Second.

Thank you.

(Applause)

The Temporary Speaker (Sen. (Prof.) Kamar): Thank you, Senator.

Proceed, Sen. Sakaja.

Sen. Sakaja: Thank you, Madam Temporary Speaker, for this opportunity to second the Report of the *Ad hoc* Committee that was set up to look into the Solai tragedy.

At the outset, I want to thank the Deputy Speaker, Sen. (Prof.) Kindiki, for his reasoned ruling on the *sub judice* issue. I note that as he gave the ruling, it became evident why he took time to prepare it; it is a landmark ruling. It is especially so if you look at the provisions of Standing Order No. 92(2) with respect to the history of our judicial system and the fact that it is almost impossible that any deliberation of the Senate or of Parliament, for that matter, can be prejudicial to the fair determination of a matter that is under judicial consideration.

Madam Temporary Speaker, I also want to make it very clear that at no one time have we or I intended to impute improper motives on anyone. If it looks like a duck, talks like a duck and walks like a duck, it is must be a duck!

(Laughter)

Yesterday, we asked questions about one of our colleagues and we said that he would only appear to raise such an issue. Today, we are not seeing him, but we hope that it was all in good faith because that is the reason why he was elected. When I go straight to the matter---

The Temporary Speaker (Sen. (Prof.) Kamar): Order, Sen. Sakaja! I am not interrupting you because you have gone back to the issues of yesterday, on which a ruling has been made that we do not go back to them. Please, take your seat for a minute, because I have a communication to make.

(Interruption of debate on the Motion)

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM KITOTO
SECONDARY SCHOOL, MAKUENI COUNTY

The Temporary Speaker (Sen. (Prof.) Kamar): I would like to acknowledge the presence, in the Public Gallery this afternoon, of visiting students and teachers from Kitoto Secondary School, Makueni County.

In our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them. On behalf of the Senate and my own behalf, I wish them a fruitful visit.

Thank you.

(Applause)

Sen. Sakaja, you can continue.

(Resumption of debate on the Motion)

Sen. Sakaja: Thank you, Madam Temporary Speaker. I also want to join you in welcoming the students and to tell them that they are very lucky to have a great Senator in Sen. Mutula Kilonzo Jnr. We wish you all the best in your studies. I know that the young people of this country are the trustees of our country's posterity. We pray that you will achieve all your dreams once you believe in God and yourselves.

Madam Temporary Speaker, 48 out of the more than 200 victims, who were in a place where they considered the safe haven for themselves, their children and families, lost their lives in the most painful manner on the night of 9th May, 2018. We pray that the Lord God Almighty rest their souls in eternal peace.

Fifty two children are orphaned and traumatized. Sen. Mutula Kilonzo Jnr. has told us that even a tyre bust in the area of Solai causes shock and trauma. They are dealing with post-traumatic stress disorder. Women have become widows, men have become widowers and their livelihoods have been destroyed. Their lives will never be the same again. The question that has been going through my mind since this tragedy happened is: How do we honour the 48 Kenyans who died and the more than 200 people who have been affected through this tragedy? How else can we do that if not through this work that we are doing; by acknowledging that their lives mattered and were valuable and letting the truth of the circumstances that led to their death come out? How else do we honour them if not by doing all we can do to make sure that no other Kenyan, in the

more than 583,000 square kilometres of this land we call Kenya, has do die such a painful death if is avoidable?

Sometimes it is just a number and I am sure people have said that we sound like a broken record when we keep saying “48 people.” This Senate has 47 elected Senators and 20 Nominated Senators. If all the elected Senators of this Senate, including the Speaker, were to lose their lives at ago, through an avoidable circumstance, in a week, people will be behind bars and heads would roll. Are we saying that our lives are more valuable than the lives of the people of Solai? Does it mean that we have more right to live than them?

Madam Temporary Speaker, when you go into the depth of our deliberations, it is clear that there is a very casual outlook by Government agencies, the county government and parastatals that are supposed to have taken this matter more seriously. This country is crying out for justice. The ordinary Kenyans in this country want to feel that they are as Kenyan as you are and that their lives matter, as much as the life of my child, as well as my life.

It is for that reason that this Committee, for the last two months, has undertaken an in-depth inquiry. It is true that the Standing Committee on National Security, Defence and Foreign Relation, where I deputise the very able Senator for Garissa, Sen. Haji, immediately this happened, we went to the site to look at the rescue efforts and understand what we could do. Then, this House, in its wisdom, set up an *Ad hoc* Committee. However, for the last two months, we have visited the site, called witnesses and the relevant authorities and consulted experts. We have also not only spoken to, but also condoled with the victims of this tragedy. We can report to this House authoritatively, without fear of contradiction and with a clear conscience, that the Solai Dam tragedy was a manmade disaster that was a result of human negligence, criminal neglect of duty, abdication of responsibility of public officers and an outright disdain for the law and procedures, culminating into criminal acts and omissions of the law.

Madam Temporary Speaker, I want to thank the gallant Members of this Committee, who are now called the “the famous five.” It is not a joke when Sen. Mutula Kilonzo Jnr. says that there were attempts of intimidation, phone calls and threats. I want to encourage them by the words of Martin Luther King that: “Human progress is neither automatic nor inevitable. Every step towards the goal of justice requires sacrifice, suffering and struggle; the tireless exertions and passionate concern of dedicated individuals.” The Members of the Committee were Sen. Mutula Kilonzo Jnr., Sen. Olekina, Sen. Kasanga, Sen. (Prof.) Ekal and the “super Senator.”

(Laughter)

It is not about the Jubilee Party or the National Super Alliance (NASA); it was about concern. The other Members of the Committee were probably held up. I know that Sen. Kihika of Nakuru County was really concerned, but she had to be out this country.

However, I must specially mention those who burnt the midnight oil. Many of them I know ignored to go for trips. I am the Chairman of the Standing Committee on Labour and Social Welfare, whose Members were in Russia, but I could not go because of this work. It is through this that we will honour the people of Solai.

I would like to urge my colleagues to take time and go through this Report. I do not know the County Commissioner of Nakuru County, his deputy, the Deputy County

Commissioner (DCC) and the chief. We have no interest in the politics of Nakuru County, because we have our own politics to be interested about. So, all the attempts that have been there to derail us--- That is why I am asking this House to really forgive us if we have gone off the track. It is because of the pain we feel that there would be attempts to derail such noble and sacred work.

The book of James 1:27 in the Bible says that religion that God considers pure and faultless is this: To look after orphans and widows at their time of distress and keep oneself from being polluted by the world. This was not just a noble duty, but a sacred call and mandate.

(Applause)

Madam Temporary Speaker, we have observed the following and I will just touch on some of the areas that maybe Sen. Mutula Kilonzo Jnr. did not go into, because I am seconding the Motion. There was a clear ignorance or disdain towards procedures and the law. That is why, for us, this is more than just about Solai Dam. Beyond what we saw in Solai, this will be a landmark discussion by this House on impunity. The laws that we have in this country are not mere suggestions that can be followed when convenient and ignored when not convenient.

We lost 48 people in the Solai Dam tragedy. Sen. Kwamboka will tell you that we lose lives almost every two weeks through fires and collapsing of buildings in Nairobi City County. Two years ago, we lost more than 50 residents of Nairobi because of the collapse of a building in Huruma. Somebody felt that instead of taking appropriate procedure to get building approval to build a house properly, they took shortcuts, probably, bribed somebody in the Nairobi City County and built a seven-storey building in five months and it went down. We know he has another 10 buildings of the same quality and structural integrity. Unless we put a foot down on this one, Kenyans will continue to lose their lives.

Madam Temporary Speaker, this is an example I will not tire of giving; if Ngong River burst its banks and swept away 48 people in Karen, would we be here debating a report more than two months later? People would be in jail. If it was a building in Kileleshwa or Lavington that collapsed killing more than 50 people, we would not be discussing this. I remember the pain of carrying and retrieving dead children from a building that collapsed in Huruma. These children had a future. Let us remember that beyond just the Solai tragedy and sorting it, this country will not be the same if we are a country of justice.

What happened on 9th May, 2018 was a deliberate and criminal act on the part of the owner. The dam was not licensed. The dam is, in fact, called Melmet Dam. It did not have a dam licence. It is a pity that a dam carrying more than 300 million litres did not have a licence. Let that sink in. The Cabinet Secretary for Water and Sanitation told us that the dam had no licence. A few weeks later, officials from the Ministry of Water and Sanitation who had accompanied him when he told us there was no licence came and suddenly said that they had applied for a licence. Who is fooling who?

We must set a precedent in this House. That is why I have the Parliamentary Powers and Privileges Act with me here because we have recommended criminal proceeding to be taken against officers who willingly misled this House. When you speak

to Sen. Mutula Kilonzo Jnr., you are not speaking to him alone, but hundreds of thousands of people of Makueni County. When you speak to Sen. Sakaja in a Committee, it is not me alone because I represent more than five million Nairobians. So, when you come casually to Parliament and decide to either lie to a Committee or misrepresent facts, it is a serious crime.

Section 27(1) of the Parliamentary Powers and Privileges Act says-

“(1) A person commits an offence where the person—

(a) having been duly summoned in terms of section 18 fails, without sufficient cause to—

(i) attend at the time and place specified in the summons; or

(ii) remain in attendance until excused from further attendance by the person presiding at the inquiry;

(b) when called upon under section 20, refuses to be sworn in or to make an affirmation as a witness; or

(c) fails or disobeys without sufficient cause to—

(i) answer fully and satisfactorily all questions lawfully put to the person under section 20;

(ii) produce any document, paper, book or record in the person’s possession, custody or control which the person has been required to produce under section 20.

(2) A person who commits an offence under subsection (1) is liable, on conviction, to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding six months or to both.”

Madam Temporary Speaker, I hope Sen. Cherargei will lead the calls to amend this.

Part 3(f) that says-

“A person commits an offence where the person—

(f) with intent to deceive or mislead Parliament or a committee, produces a false, untrue, fabricated or falsified document;

Madam Temporary Speaker, as a Committee, we have held that the documents produced by the Water Resources Management Authority (WARMA) and the correspondence that came to this House were forgery. Former President, Mwai Kibaki used to say that if you decide to rig, do so with some brains. They have even put prefixes of telephone numbers on letter heads of 2003 and those prefixes did not exist until 2008. We have seen them and we are not investigators. That is why we have directed and asked the Directorate of Criminal Investigation (DCI) to get to the bottom of that forgery.

(The yellow light went off)

I need to know how many minutes I have.

(The Clerk-at-the-Table spoke off record)

Five minutes? Seconding is 20 minutes. I was making sure I am not being intimidated by the light.

The plethora of inconsistencies in the submissions of the CS for Water and Sanitation, the lack of record keeping on the dams and so on proves to us, there was some

forgery. There is an analysis on page 62 of the Report. Sen. Mutula Kilonzo Jnr. has given us an idea of approvals done this year and signed five years later. It is a joke and a charade. I think maybe these people have been spoilt by inquiries where people just gloss over issues. We went to the depth of this matter. We want a thorough investigation on it.

It was evident to the staff of WARMA that they had been approving a weir licence for a dam. The weir was of 2.5 metres high to take a capacity of 50 cubic metres during normal times and 2,045 during floods. They kept renewing that approval knowing fully well that there was a dam of three million litres. It is true. When the lawyer came here, who is my friend, but very arrogant - he said arrogantly that if there was a licence, it would not have stopped the dam from collapsing or the rains from coming down.

The reason we have rules in this country is that by the time you licensed that dam, you have seen its structural integrity and the spillways – this dam did not have single a spillway – and you have made sure that no matter the kind of rain that comes down, people downstream, with a gradient of four degrees, will not be swept away because of a flood. That is why we are insisting on that omission on the law. The owner did not apply and was not granted a dam licence on that stream.

It is painful ---

The Temporary Speaker (Sen. (Prof.) Kamar): You have two last minutes.

Sen. Sakaja: Madam Temporary Speaker, I think the timing is wrong. For responding, it is supposed to be 30 minutes.

The Temporary Speaker (Sen. (Prof.) Kamar): No. It is 20 minutes in our Standing Orders. Revise the Standing Orders.

Sen. Sakaja: Mr. Deputy Speaker, Sir, I kindly request just for 10 more minutes because the Mover spent less.

(Sen. Mutula Kilonzo Jnr. spoke off record)

The Temporary Speaker (Sen. (Prof.) Kamar): Hon. Members, there is no conversation between the Mover and the Seconder allowed in this House. I am adding you one minute. So, you have three minutes because you still have two Members of your Committee who want to contribute.

Sen. Sakaja: Thank you, Madam Temporary Speaker. We will give them the areas that we have not touched on sufficiently.

Let me just talk about the laxity of agencies who came to us more than a month after this had happened. They were shocked as if they did not know a dam had collapsed in Solai. The attitude by the National Construction Authority (NCA) officials must end. I know Sen. Kasanga will talk about the NCA. Whenever we asked them a question, they would say that they were not in operation at that time. Are they the NCA or the “National Ongoing Construction Authority”? In fact, their biggest budgetary item is paint because all they do is mark Xs, but do nothing about it. The laxity by those Government officials must be questioned.

Action must be taken on the habit of Government officials going round handing out cartels' money. When the Cabinet Secretary for Interior and Coordination of National Government, Dr. Matiang'i, my good friend who has been known to be diligent and conscientious, came here, he said that he is not aware that money was being dished out yet there were newspaper reports about his officers. That leaves a lot to be desired.

The rest of the recommendations in the Report are there for us to see. However, Members of this House should rise to the occasion and support this Report, so that we do our part in making sure impunity ends in Kenya so that we save lives in this country. Even as the restoration of the chief is being proposed, he cannot continue serving there.

Finally, Nakuru County Executive, led by the Governor, appeared before us and had no clue what their responsibility was. In the documents presented to us from the Governor, he named only national agencies forgetting that Part 2 of the Fourth Schedule of the Constitution of Kenya talks about county responsibilities, which include enforcement of environmental issues with respect to dams. He forgot that the Environmental Management and Co-ordination Act, (EMCA) provides that each county must set up an Environmental Management Coordination Committee (EMCC) but Nakuru County did not have one. That was neglect of duty. They did not have a clue about what their role is.

We have recommended that within the next six months, all governors must set up structures so that they stop shirking of responsibilities that are theirs claiming that they are functions of the national Government. You cannot lose 47 people and say that was a national Government's function. We laud them because they responded quickly. The County Government was there and we must acknowledge that but their omission of thinking that matters of environment are only left to the national Government is regrettable.

I will leave it at that because of time but I still have much more to say. I urge this House to support this Report. I would like to mention that on top of this Report and the action being taken in court, I will file a class suit on behalf of the people of Solai to make sure that on top of the criminal action, they get compensation as individuals.

I thank you.

The Temporary Speaker (Sen. (Prof.) Kamar): Hon. Senators, I will now propose the question.

(Question proposed)

I will allow two Members of the Committee to give additional information to help us move. Hon. Members, I would like to warn you that the list of Members who would like to participate is very long. I urge you, out of your generosity, to limit your debates to five minutes. You should limit as much as possible because we have a very long list.

Proceed, Sen. Kasanga.

Sen. Kasanga: Madam Temporary Speaker, I want to start by thanking the Speaker for giving the ruling that has allowed this debate to continue. This issue is dear to those of us who were in that Committee. Indeed, the Senate will be pleased that Members of that Committee did quite a bit of work. We put our hearts into this matter. More importantly, we promised the people of Solai to get to the bottom and the heart of issues surrounding the tragedy.

Madam Temporary Speaker, allow me to thank the Chair of the Committee for his very able steering that has led us to this point. Allow me to thank my fellow Committee Members because of their passion in the Committee. Allow me also, to thank the Clerk of the Senate and his team because they also worked very hard.

There is a lot that has been said by the two Senators who spoke ahead of me and I am aware that everyone wants to contribute to this Motion. Therefore, I will not take too much time. On a personal note, and I can also say this for the Members who were with us, this journey has taught us a lot. We have learnt how Government agencies work. We have also learnt how Government agencies are supposed to be working. We have learnt how the law should be applied by Government agencies. We have also learnt how we, the citizens, should be applying the law but most importantly we have learnt how Government agencies and the law should be working together for the benefit of Kenyans.

It was a shock for us that Government agencies, at least most of those that appeared before us, were so quick to absolve themselves of any liability when it came to this matter yet 48 Kenyans had died. The question that comes to our minds is: When did the rain start beating us? It is still beating us but when will it stop?

I believe the essence of this Report brought to this House is in the hope that we will get an overwhelming voting on it is because something has to be done. This country needs change. This Report is telling us that the time has come and this House must champion the change that Kenyans want.

We met Kenyans out there when we went to the site. We found angry Kenyans; Kenyans who have been pained because of lack of justice and that nobody is speaking for them. Our prayer is that Senators will internalise this because the learning lessons are across the board in every county. Today is Perry Mansukh but tomorrow it could be you, me, or our friends or relatives. Why are Kenyans not looking at each other as brothers and sisters? I believe the day we shall wake up and look at the person next to you as your own brother, is when things will begin to change.

Government agencies have gone to sleep. People went to sleep a long time ago yet when we challenged some of them, I must say, they did not come around. For instance, when we challenged the NCA, they came back with detailed reports of what they were supposed to have done in the first instance. Had they not been challenged, we would not have seen these kinds of reports. I wanted to go into the detail of it but I know I have to give time to my fellow Senators to speak as well.

The second report that came from the NCA was a combined task force from dam experts and other engineers who joined them when they were going to relook at the matter. First, it gave us volumes of water that we did not even know in the first place. We discovered that we were dealing with a double volume of water than what had been reported to us previously. The report of the NCA, which I pray that every Senator looks at, will indicate to you in good detail that the dam that collapsed was three kilometres away from Solai Village. It was at an altitude much higher.

I do not know how to explain 300,000 cubic metres of water because it is a lot of water. You will have to be on the ground to see the size of that dam and imagine the velocity with which the water went down to the village. These are not our words but facts in the NCA Report. We have heard everything else surrounding that fact. I commend the NCA because they felt that they had not done enough and they went back and did some more work. However, this is not the attitude we have received from across the board.

Going forward, as leaders, we have a duty to hold our Government agencies to account. Nobody should sleep on their job. The recommendations of this Report are far-reaching for that particular reason. There is time people take responsibility for the work they are being paid to do by Kenyans.

Madam Temporary Speaker, one thing that honestly hurts me the most is when Mr. Mansukh admitted that he had never gone to visit the people of Solai, yet in his submissions he said how much he loved them. The people of Solai told us they have lived side by side with Mr. Mansukh, his father and the father before him. When a tragedy of this magnitude happens, how do you not visit to say *pole*? How do you decide that the only way to communicate with the affected people is through a Committee?

There is so much I can say. When we went to the ground, the report of the primary school headmaster shocked us. He told us that he is housing 52 children, some who are totally orphaned and some with only one parent. There is no report here that tells us how those orphans are going to be taken care of. That is just completely unacceptable.

Madam Temporary Speaker, there was the role of the County Government which you have heard about. The County Government did nothing to ascertain what could have gone there. They were there for the rescue efforts, but that is not enough. When we devolve these functions, the idea is that on the ground the county government must be strong. In this instance, there was no report from them. Later we got a report from the County Executive Committee (CEC) Member of Agriculture. We were on the ground before the Agriculture CEC had visited and the residents kept saying that the CEC Agriculture came here and never came back again. They were very angry because he came and took some statistics and was never to be seen again.

Madam Temporary Speaker, we finally saw the report that refused to touch on any deaths or injured persons. It only dealt with livestock and a few items then gave a recommendation. I wish the Senators would look at that report. We, the Senators are the guardians of devolution. If this is the manner in which our county governments are going to conduct themselves with such pedestrian approach to issues, then we have a problem. The CEC was quick to write a recommendation for all environmental disasters that happened, give them seeds and fertiliser, yet there is no soil to plant on. It had been washed away.

I urge Senators to look into these reports which are self-explanatory and telling on the areas that we have huge gaps in this country; in our counties. We must champion the change that this country needs.

I thank my Committee Members for this effort and I look forward to having this House adopt this Report and recommendations.

The Temporary Speaker (Sen. (Prof.) Kamar): Thank you. Let us have Sen. Mugo then Sen. Olekina.

Sen. Mugo: Thank you, Madam Temporary Speaker, for the opportunity to contribute to this very sad issue. Let me start by congratulating the Members of the Committee and the Chair for such lovely piece of work. I know it was with a very heavy heart to go through all those issues. However, you have done a very commendable job and with your heart in it.

When I heard about this tragedy and having watched the news on television, it looked like a movie. It did not seem like real happenings until one realises it is. It was with great sadness to see children, women, old men and young men try to cling to anything to save their lives, which was extremely sad. It is equally sad to hear that some national and county government agencies, who are supposed to take care of our people during such a time, approached their work with a lukewarm spirit as if they were not dealing with lives.

It was the direct responsibility of the National Environment Management Authority (NEMA), the Water Resource Management Authority (WARMA) and the Ministry of Water and Sanitation to see the problem and help the people even before the Senate Committee got there. It is also criminal to note that there was no license for this dam but everything went on as normal. I hear there are other dams and yet we have Government agencies who are supposed to take care of that. It shows that either they do not care about the lives of Kenyans or they are just there. I wonder if they deserve to be in those jobs, because there are many Kenyans who would want to work and give service to other Kenyans. I strongly recommend the adoption of the Report. I also want to strongly urge the departments responsible for implementing this Report to make sure it is fully implemented.

(Applause)

Those who watched this tragedy in those departments should think back had it been members of their families or themselves. The County Government, the national Government and Mr. Mansukh should compensate these people in order to start their lives again. Those who lost loved ones should be compensated to the full because nothing can be done to compensate them for what they lost.

It is sad that sometimes we see these things and after a short time, we forget and everything is back to normal. Let this time not be business as usual. Let some heads roll so that it does not happen again. When nothing happens and we go on with our lives, tomorrow the same things will happen. We have experienced people who can make sure that dams and other areas which are dangerous to our people are guarded, taken care of and inspected.

In my mind, the NEMA has failed miserably because this is not the only case; we have been hearing of many other cases. The Water Authority must get to business and make sure that if there are any dams that are not licensed, either they are emptied or the construction is checked properly to ensure that we do not have such a tragedy again. I want to offer my condolences to the families and those who have passed on. We pray that they will find eternal peace.

Madam Temporary Speaker, we all can do something. This is the time to make sure that there is change in Kenya. We should take care of all lives the way we care for ourselves. There is no life which is more important than the other. My heart goes to those people. When time comes to compensate them, we must find some trustworthy people. They should be people who will make sure that funds for compensation are not wasted like those for the Internally Displaced persons (IDPs), where the people who were paid were not the IDPs.

In the news, I saw people complaining that the names that were taken were not of those affected, but friends of the people who were writing the names. That must not happen! I do not know whether we can get trustworthy people from the churches and mosques; but let us get women, because they bear children and they know how it hurts to see a life being lost.

Madam Temporary Speaker, with those few remarks, I beg to strongly support and commend this Report, so that my other colleagues can also contribute. I pray that this time, the Government will implement the recommendations of this Report fully.

Thank you, Madam Temporary Speaker.

(Applause)

The Temporary Speaker (Sen. (Prof.) Kamar): Thank you, Sen. Mugo. Hon. Senators, I have another Communication to make.

(Interruption of debate on Motion)

COMMUNICATIONS FROM THE CHAIR

VISITING DELEGATION FROM ST. DOMINIC WIGA SECONDARY SCHOOL, HOMA BAY COUNTY

Hon. Senators, I would like to acknowledge the presence, in the Public Gallery this afternoon, of visiting students and teachers from St. Dominic Wiga Secondary School in Homa Bay County. In our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them. On behalf of the Senate and on my own behalf, I wish them a fruitful visit.

I thank you.

VISITING DELEGATION FROM ELGEYO SOME PRIMARY SCHOOL, ELGEYO MARAKWET COUNTY

Hon. Senators, I would also like to acknowledge the presence, in the Public Gallery this afternoon, of visiting students and staff from Elgeyo Some Primary School in Elgeyo Marakwet County. In our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them. On behalf of the Senate and on my own behalf, I wish them a fruitful visit.

I thank you.

Proceed, Sen. Pareno.

(Resumption of debate on Motion)

Sen. Pareno: Thank you, Madam Temporary Speaker. I rise to strongly support this Report in its entirety, with the good recommendations as presented by the Chair of the Committee.

Madam Temporary Speaker, for those who have had the chance to look at this Report, I can attest that it has shown this Republic and the Senate that it is not business as usual. This was a bold and fearless investigation despite the Chairman's report that Members of this Committee were under a lot of pressure from external forces up to yesterday, including this morning. I thank this Committee for doing their work thoroughly and for producing such a big Report which has all the information and attachments. This is an investigation that exposes so much rot that is happening within our authorities, and it is not a mean task. They must have spent a lot of time and sleepless nights to analyze this Report and come up with the recommendations.

I am impressed with the recommendations because in each item, they have indicated what should be done, the person to do it and by what time. I thank this Committee for doing a thorough job and for reporting to this House in a manner that befits Members of Parliament (MPs) of this House.

Madam Temporary Speaker, if we care about our people, their livelihoods, justice, the property that was swept away, the restoration of their livelihoods and the environment that was destroyed, this Report must be implemented to the letter. I wonder what happened to the Committee on Implementation of this House, which I am told existed in the last Senate. It is time that we thought seriously of ways to reinstate it, because at a time like this, we long for such a Committee. We do not want to imagine what we heard from the Deputy Speaker; that sometime back, hon. Koigi wa Wamwere had raised the same issue which has now befallen the people of Solai, but nobody acted on his complaints. The hard work and Report of these Senators should not just gather dust in shelves and become like what became of the Koigi wa Wamwere intervention, that we now refer to.

I am happy to see the Senator for Nandi, who is also the able Chairperson of the Committee on Justice and Legal Affairs, coming in. This is because his Committee will make a follow up on most of the recommendations that have been made in this Report. I am sure that the very able Senator for Nandi as the Chair, together with the strong and honourable Members of that Committee, will follow up to ensure that these recommendations are implemented to the letter.

Madam Temporary Speaker, we will watch out for institutions that will try to subvert the interest of justice for the people of Solai.

*(Sen. Cherargei consulted the Temporary
Speaker (Sen.) (Prof.) Kamar)*

That able Chair should listen to this; that we will watch out – through the relevant Committees, even if the Committee on Implementation is not there – for those institutions or authorities that will subvert the interest of justice for the people of Solai.

Madam Temporary Speaker, Mr. Perry Masunkh is one man that seems to be above the law in this country. He operated a dam without a licence from 2004 to date and nobody realized it. Maybe they closed their eyes to ensure that they do not realize it. He is the only man who can block and divert rivers, thus denying residents of that area the use of that water and thus their livelihoods and nobody questioned him. He is also the man who used the County Commissioner, the Deputy County Commissioner and the chiefs as his labourers, to go and dish out money to people who suffered, lost their livelihoods and their loved ones. This is a man who commands a lot of attention! People died and the best that the County Commissioner, the Deputy County Commissioner and the chief could do was to dish out hand outs on behalf of a man who committed such a serious crime. We need to know who this man is. The Report says that he gave false information and refused to be sworn in. Who is this man, Perry Mansukh? It is also reported that he blocked officers from the Water Resources Management Authority (WARMA) from accessing the premises.

We need to go beyond Mr. Perry Mansukh and uncover the veil. We need to unmask this person. The impunity with which Mr. Mansukh is operating means that

there is somebody behind him. We need to investigate or ask the Director of Public Prosecutions (DPP) and the other agencies that can investigate, to tell us who is behind Mr. Mansukh. This is too much impunity. You will remember that it even took so long for him to be arrested. Is he above the law? If he is not above the law, who is he? Let us unveil the mask.

I do submit that we should use this very sad experience to ensure that no one else shall ever do this to Kenyans again. I do not want to be party to those that will be blamed for having not done the right thing at the right time. The blood of the victims of Solai, more so the children who were swept away, shall haunt people.

I conclude by thanking this Committee. Stand firm and the Senate shall be with you. We all agree that this is one Report that we will all look out for and ensure that it is implemented.

I thank you, Madam Temporary Speaker.

The Temporary Speaker (Sen. (Prof.) Kamar: Thank you, Senator.

The last Member of the Committee to contribute is Sen. Olekina.

Sen. Olekina: Madam Temporary Speaker, none of us alone can save the nation or the world, but each one of us can make a positive difference if we commit ourselves to doing so. Those are the words of a great mind.

From the outset, I rise to support that this House adopts the Report of the Select Committee on the Solai Dam Tragedy. I want to thank the Committee for having endured such a rough time while carrying out these investigations and trying to understand what led to the loss of 48 Kenyans. These were children whose parents will never see them. In Maasai we say that they will not go through circumcision and the parents are able to see them.

Madam Temporary Speaker, when we took this task, we spent sleepless nights so that we could present to this House a Report that could withstand the test of time. I can tell you that the amount of threats towards the Members is something that I hope this House will use to adopt this Report and use the law to ensure that the people of Solai are compensated. This is an opportunity for this country. As I stand here, I say: "Dear Government, I want to speak to you, but hope that I can find somebody that I can speak to."

Madam Temporary Speaker, I will limit my few minutes on the issue of National Environment Management Authority (NEMA). We received three reports from NEMA none of which was accurate. I can tell you, without any fear of contradiction, that when you see these reports which are here, from page 402, you will see a conspiracy to deny the people of Solai justice. One of the things that shocked me is that when the Cabinet Secretary for Environment and Forestry, my dear brother, Mr. Keriako ole Tobiko, appeared before this Committee, he had not gone through the documents.

The Committee was presented with documents which could not be used; documents marked clearly without prejudice. That was very sad. We pointed out those issues because this had to do with the issue of a restoration order that NEMA purportedly issued out for the Solai area to be restored. They did so completely disregarding the Act, which is very clear. If you look at Section 108 and 109 of the Act, the words used are: "The Authority may issue." However, upon issuing it, it becomes "shall." This restoration order talks about everything that shall be done and this forms the basis of our recommendation.

[The Temporary Speaker (Sen. (Prof.) Kamar) left the Chair]

[The Temporary Speaker (Sen. Pareno) in the Chair]

Madam Temporary Speaker, I used to call this gentleman “Perielis,” because I could not pronounce his name. The law is very clear that Mr. Perry Mansukh cannot run away from liability, even when NEMA tries to hide. I will refer to the document presented by NEMA. In their second report, on page 411, I will read some of their recommendations for you to see the kind of conspiracy. The people of NEMA have a fiducial responsibility and have to ensure that the environment is safe. However, they say-

“The community around the farm appreciates the development brought about by the existence of Solai Farm. The farm provides employment and also benefits from Corporate Social Responsibility (CSR), for example, the support to schools and provision of domestic water.”

The last one really annoys me. It is evident that from everything that the Chair has presented here, Mr. Perry Mansukh blocked the Watkins Stream. How dare you come and present yourself as a philanthropist, yet all what you are doing is denying Kenyans what the Lord has given them? Shame on you!

Madam Temporary Speaker, I beg to be given a few more minutes, so that I can show Kenyans and my dear brothers and sisters, the Senators, the conspiracy. When you look at the documents presented by NEMA, the Report on page 21 has the issue of an improvement order.

When you look at (v) it says-

“The farm had conducted an environment audit for the year 2016, but was unsatisfactory and hence, the farm Manager was issued with an improvement order to produce a fresh and comprehensive environmental audit and submit to NEMA, latest 6th June, 2018.”

Prior to that, the farm had carried out an Environmental Impact Assessment, but they failed to disclose the fact that they had seven dams in that farm which were not licensed. They gave an Environmental Impact Assessment on their macadamia and coffee farms; what oils their pockets. However, for the people who live downstream, where they have blocked all the water, they could not dare carry out an Environmental Impact Assessment to ensure that, that dam is safe. First, they did not get a license.

Secondly, the National Environment Management Authority of Kenya (NEMA) was aware because of all these audits. However, they ignored. They did not carry their duty diligently. My recommendation is brutal. We need to have a complete overhaul of the NEMA. There are things that we can do to improve this. Today, it has happened in Solai. The 48 people died. In the same report provided by NEMA the officials state that no incident has ever occurred. It says-

“Prior to the disaster, there was no other reported incident and the community feels that it was an unfortunate occurrence that affected their, otherwise harmonize society.”

Shame on you! How dare you say so? You work for this Government. The people of Solai pay taxes just like other Kenyans. They pay for your salary and you side with the people who have caused misery and death to people of Solai.

Let me translate Rachel versus Fletcher into Maasai language. That if I have a cow that it is known to be wild and sometimes it can escape, if it escapes from its own cow bane and hits the Senator for Nandi County, Sen. Cherargei, for example, I will be responsible. There is no way these NEMA officials will run away from their responsibility. There is no way that Mr. Perry Mansukh will run away from liability. He is liable. For him to have conspired with state officers and public officers to sign an indemnity form to deny the people of Solai---

Madam Temporary Speaker, please allow me some two more minutes I wrap it up.

The Temporary Speaker (Sen. Pareno): You have two more minutes.

Sen. Olekina: Madam Temporary Speaker, for him to conspire with the Chief, a Deputy County Commissioner and a Commissioner to pay those people what he considered as *pole*--- You should have seen that gentleman when he sat here. He said he cares so much about the people of Solai. When he was asked whether he has ever gone there to say *pole* to them, he said he has lived with them and he was waiting for a Committee to tell him to go. Shame on you!

This matter is so painful and it is sad. When you look at the recommendation that we have given, I hope that the Director of Public Prosecution (DPP) will follow up and see the work that has been done by men and women integrity. They believe in two initials PI which stands for Preserving Integrity for the future of this nation. He will get to the bottom line of this. We can no longer protect anyone in this country. We have to give the 52 orphans of Solai a chance to live an adult life like we are living.

Madam Temporary Speaker, finally, as I sit, we have made several recommendations. There is one which I want to emphasize on. It is imperative that complaints commissions or committees which are established under the Environmental Management and Co-ordination Act are devolved so that the people of Solai can report locally on any dangers or anything that can affect them.

It is also important for this House to look at this Act and ensure that it is implemented to the letter as Sen. Sakaja and my very good able Chair, Sen. Mutula Kilonzo Jnr. said. Laws are there, but they are not implemented. The restoration order is clear. I urge this House to adopt this Report and push for this Act to be fully adhered to, so that the people of Solai can live a better life. They must be given a life.

You cannot compensate me with Kshs50,000 after you have destroyed my livelihood. Shame on you! I hope this Report will go down in history as a Report that addressed the plight of Solai people. As I sit, this House will be remembered in the history as a House that fought for liberty of the poor people in this country.

(Interruption of debate on Motion)

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM KIMWANI
SECONDARY SCHOOL, NANDI COUNTY

The Temporary Speaker (Sen. Pareno): Hon. Senators, I have a Communication to make on visiting students and teachers from Kimwani Secondary School, Nandi County.

I would like to acknowledge the presence, in the Public Gallery this afternoon, of visiting students and teachers from Kimwani Secondary School, Nandi County. In our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them. On behalf of the Senate and on my own behalf, wish them a fruitful visit.

I thank you.

(Resumption of debate on Motion)

Sen. Mwaura: Madam Temporary Speaker, when you look at the history human rights, there is one thing that is very consistent. Owners of capital have for long derided the crusaders for a true, equal and just society. Summarize the decision in the statement that “human rights are virtue and cooperate rights are real.” It means that the pursuit for private profiteering is more important than any other right, including the right to life. “Mr. Speaker,” this is what is being demonstrated by this gentleman.

The Temporary Speaker (Sen. Pareno): Order, Sen. Mwaura! You keep referring to me as “Mr. Speaker”.

Sen. Mwaura: Sorry, Madam Temporary Speaker. I stand corrected. I think it is being used. Madam Temporary Speaker, Sen. Judith Pareno. This is what we are seeing with regards to this gentleman called Mr. Mansukh.

There is also a very telling connivance and the very essence of impunity in our country where we are seeing Government officials at the very slightest provocation are willing to be compromised with very little amounts of money. You cannot tell me that Kshs35 million is equal to the 48 lives of the people of Solai.

Madam Temporary Speaker, when I listen to the description that has been given by Sen. Kasanga that this water travelled over three kilometres, it is inconceivable that one would want to imagine that some people would sit and we are left to wait for “*Godot*.” That it is an act of God. That is what Sen Kasanga has said that when development has failed, it is because of coordination failure. Yet we have legislation in place. The Environmental Management and Coordination Act was passed in the Eleventh Parliament. I remember participating very robustly. However, when there is corruption, it means even if we have a law, we will be adding another layer of people who will be seeking rent. It is not enough to have laws because we cannot legislate against character.

I would want to stand with the recommendations of the Committee that the officers who acted negligently and even tried to mislead this House should be investigated. This is a crime and they need to be prosecuted. We cannot have a situation where officers at the ground hide under big names.

Recently, John Gakuo was charged. In fact, he was convicted for three years in jail and people were saying that they should go for the big shots. However, if you go for the big fish, you must also go for the small fish. You must speak the truth to power and

you must also speak truth to the powerless. This is the only way we are going to fight impunity and corruption in this country.

We stand here to debate a Report about some people trying to circumvent justice. Who in this country does not know about the 48 lives and properties that were lost in Solai? You then want to hide under the law, procedure and timeliness so as not to take responsibility. This means that if we do not act as a Senate; if this just becomes another Report, we will even have a bigger tragedy tomorrow.

This reminds me of the book 'Petals of Blood' by Ngugi wa Thiong'o, about the people of Ilmorog, who were duped to accept loans by the banks. It is the same situation that we are seeing with this Mr. Mansukh going behind to dupe poor people to accept Kshs100,000 for loss of lives. Shame on him and his money. If at all he has profited from this money, may he not benefit from all the wealth that he has created. It is totally unacceptable.

In African tradition, we would call ourselves under a tree and curse this individual. We cannot accept a situation where one takes advantage of the poverty of a people because if you give a hungry man food, they will even call you father and mother. That is the greatest height of subjugation.

This House does not legislate in vain. We have all stayed here to debate this Report. I want to pay great tribute to the gallant five Senators who refused to be compromised when the others looked the other way. They may be a little bit shy, but I want to say, Sen. Mutula Kilonzo Jnr., Sen. Sakaja, Sen. Olekina, Sen. Kasanga and Sen. (Prof.) Ekal, thank you, for making this House proud. We know very well that people are always called aside and given money. Disappearances are not automatic; it is not like the wind. It happens by design.

(Laughter)

About a month ago, I returned money that I was being given by a very big fish in this country but I told him 'take back your money' and I wrote him a letter. We need people of integrity to stand for the rights of Kenyans. That is how we are going to liberate our country. Even if we have ambitions to lead, how is it that we have no integrity? When we speak about our own inner resources, whatever convicts us, it is not about money. What is this that we are mortgaging? What is this that we are exchanging between ourselves and the owners of Solai Dam? Is it about the lives of Kenyans? Is it about our birth-right? This Senate has proved itself.

The Temporary Speaker (Sen. Pareno): You just made a statement that you might not want to reflect on if it is what I understood it to be. You have said that you first accepted some money then you had to send it back. For purposes of proper recording, you must put the record straight.

Sen. Mwaura: Madam Temporary Speaker, it is true, the money was sent to me. They do that. They cajole people. It was in the presence of some Senators who I will not mention here. That is what happens and I confronted the person. Sometimes, in our African set up, when these monies are presented to you, it will be in a public place where you are not supposed to challenge your seniors. It is about the value system. This is how it happens. You are told: "Oh, you are a good person. Oh, we help each other. Oh, this is

a gift.' It takes the moral consciousness of a strong leader to say no and return to sender. That is what I did. I stand by that and that gives me the authority to come up and speak.

We must ask ourselves, if we are going to feed on the suffering of others, do we deserve to be leaders? Are we going to circumvent the will of the people simply because we have been approached and told: "You know the Chief Executive Officer (CEO) of that company comes from your county?" Does it mean that you would also do the same if that tragedy happened in your own county? We must divorce ourselves from attachments of tribe, ethnicity and little monies simply because we are concerned about the money that we will get for campaigns in 2022. Let us rise to the occasion fellow Senators.

I do not want to belabour the point. This is a very good Report for it is a Report unto posterity. I would want to tell the Senators to soldier on. You may be few but we will stand with you and the people of Solai for Kenya to be liberated from the Mansukh's of this world and the bureaucrats who think that when they get an opportunity to serve, it is an opportunity to enrich themselves.

I support.

Sen. Sakaja: On a point of order, Madam Temporary Speaker.

The Temporary Speaker (Sen. Pareno): What is your point of order Sen. Sakaja?

Sen. Sakaja: Thank you, Madam Temporary Speaker. I know that Sen. Mwaura has resumed his seat but this Senate is very fortunate to have him. We have rules in our Standing Orders about dressing and most times, those rules are used when people have contravened them. However, is it in order for me to note how extremely well dressed Sen. Mwaura is today?

(Laughter)

Instead of using the negative connotation of the rules, he is really dressed in a splendour fashion and it is better than the numerous colours that he always has. He is on point today.

(Laughter)

The Temporary Speaker (Sen. Pareno): Sen. Sakaja, I thought that there was something out of order but you are just talking about things that are within order, so, you are out of order on that.

(Laughter)

Sen. Cherargei: Thank you, Madam Temporary Speaker. I also take note that Sen. Mwaura is sharply and impeccably dressed today. I have heard what he has said and I am happy that he supports the course for justice.

From the onset, I want to thank the Committee led by one of the corner stone or pillars of the Committee that I Chair, the Committee on Justice, Legal Affairs and Human Rights, that is Senator 017, Sen. Mutula Kilonzo Jnr.

I would also like to thank Sen. Sakaja, the "Super Senator". I know that they were somewhere yesterday, where we were told that Sen. Mutula Kilonzo Jnr., is the 'great'

Senator and Sen. Sakaja is the ‘super’ Senator. I would also like to thank Sen. Olekina, Sen. Kasanga and Sen. (Prof.) Ekal, the professor of Chemistry. We want to thank them for standing with this House.

One of the great minds of our times says that it does not need a million people to stand for the truth. It only needs one man who is convicted. Being the Chairperson of the Committee on Justice, Legal Affairs and Human Rights, we will ensure that the recommendations are fully implemented, including the full stop.

When I read this story, the Report of the Committee looks fictional. It is like a movie but it is shocking that Kenyans have been treated to a circus and drama that has plagued their lives. It is sad that corruption has eaten into our thinking, soul, imaginations, dreams and actions simply because when this tragedy occurred, someone had the audacity to give people Kshs35 million for them to sign an indemnity form for him not to be charged. Shame on him!

It is very sad. Where I come from, Nandi County, you do not take blood money. It is like dancing on the graves of those people and their spirits and blood will haunt them forever. I thank God that I am in this Senate that will right the wrongs that these people have always endured as from 1980. I have read the laws that govern the use of water under the Water Act and it is very sad that Kenya’s Water Resources Management Authority (WARMA) slept on their job.

I thought that the person that we should fear the most is an outright dictator as it happens in other countries. I am told that when some of the officers, including those from the County Government of Nakuru see Mr. “Mashur Pashakur Patel,” they shake in their boots. I suspect, with all due respect, that they even urinate on themselves.

(Laughter)

The Temporary Speaker (Sen. Pareno): Order! He is not Mr. “Mashakur,” but Mr. Perry Mansukh.

Sen. Cherargei: Madam Temporary Speaker, I stand guided. He is called Mr. Patel. I am told that even the courts in that area fear him. That is very shocking!

Madam Temporary Speaker, I want to highlight a few issues that I have seen in this Report. The County Government of Nakuru failed. We are not doing politics, we are not interested and we do not care who becomes governor there in the year 2022. We have our own politics where we come from that we can concentrate on. However, the outright ignorance and lack of diligence by the County Government of Nakuru is very sad, to say the least. They do not know the role of the county governments as per the Fourth Schedule of the Constitution. I dare say that the County Government, led by the Governor, should be taken for a one week retreat. I request Sen. Mutula Kilonzo Jnr. and senior lawyers in this House to organize a free capacity building workshop, so that they can be sensitized on their roles, as a county government. The Environmental Management and Co-ordination Act (EMCA) is very clear that they must be aware of what they should be doing. They did not do it, meaning that they are complicit with Mr. Patel.

Madam Temporary Speaker, who is this Mr. Patel? The President himself, who we love so dearly and the Deputy President – who, of course, will be the fifth President of Kenya in 2022 – do not evoke such fear. Who, then, is Mr. Patel? Is he “God” or a

demi-god that he evokes such fear when he passes, even among senior government officials? The County Government of Nakuru must take all the liability for their outright criminal negligence in this matter.

Secondly, Madam Temporary Speaker, where is WARMA? They must also face the full force of the law. I have seen the Report by my good friend, the Cabinet Secretary (CS) in charge of Water and Sanitation, Mr. Chelugui. You cannot just butter a serious issue like this one, where 48 people died, leaving 52 orphans! We are looking at 52 lives that have been disoriented due to lack of parental care; their future is uncertain and bleak and yet somebody is just buttering a serious issue like this. It is like smearing Blue Band on bread and assuming that nothing has happened. We expected the Ministry concerned--

(The amber light went on)

Madam Temporary Speaker, with all the passion that I have, and my blood sugar level has gone up, it is good that you allow me a few more minutes.

(Laughter)

This is because I am the Chairperson of the Committee that will implement these recommendations. It is, therefore, good that I speak my mind and heart so that when we are seized of the matter, we will fully implement it.

The Temporary Speaker (Sen. Pareno): Senator, when the blood sugar levels go up, then you might have to rest.

(Laughter)

Sen. Cherargei: Madam Temporary Speaker, I will control it. I am the person who will be tasked with proceeding from where the Committee will stop. Therefore, the WARMA must be held liable for criminal negligence. I urge the Director of Public Prosecutions, Mr. Noordin Haji –who said that he will go hunting for both the small fish, the big fish as well as the whales –that he must do so on this one too. We want to know whether he means his words, because when interviewed by some of the media, he asked why we go for small fish and big fish when we can go whaling. Let us do the whaling now! We want to see the people who are responsible for criminal liability being punished painfully, harshly and within the law.

Madam Temporary Speaker, I have heard some rumours in that region that this Mr. Patel is so good that we should not even mention him in bad light. However, even one life is sacred in this country, yet 48 lives were lost in Solai. Article 26 of the Constitution is very clear on that. We cannot go on that way. Therefore, the WARMA must take responsibility on that. Those in the national administration such as CS Matiangi, the ball is in their court. He has been known to be a rabble-rouser; he has been known to be effective and lethal. Could he now deal with his officials who were complicit in this matter?

(Laughter)

He should act on this Report immediately and in good faith so that as we fight corruption in this country---

Madam Temporary Speaker, I have never seen such a person who has so much power, such that he decides how water, which is a natural resource, is used.

(Several Senators spoke off record)

I have never seen such a thing where I come from; it is shocking! Are we still in Kenya? Can we confirm whether we are still in Kenya? Is this real? Are we in the country that prides itself of having a progressive Constitution and a Bill of Rights? Are we in the same country? Come on; this is not serious! That somebody denies people water and then uses the same water to bribe them to loyalty so that when we want discuss that he be prosecuted, there is a feeling that he is a “God”. Shame on you!

Hon. Senators: Shame!

Sen. Cherargei Finally, Madam Temporary Speaker, I want to pledge that, as a Committee, we will follow up to the letter to ensure full implementation of the recommendations. I call upon the agencies and our President – whom we love so dearly-- - I am one of the ardent supporters of the President, together with the former Chairman of The National Alliance (TNA) party, who is also the “Super Senator.” I can also see Sen. Olekina and Sen. Mutula Kilonzo Jnr.; we welcomed the Wiper Party just the other day. Therefore, should any recommendations on this issue come to the President, I beg you, Mr. President, that you kindly implement them fully and to the letter, including the full stop at the end, so that it can be a lesson to many other people.

If we allow Mr. Patel to get away with it, why will we not allow our “road to Shanghai,” the Chinese, to mistreat us? If we will be punishing the Chinese for racism or for exploitation of labour and then allow Mr. Patel to go scot free, what will prevent other people from coming to this country and do as they wish? I, therefore, call upon the President and the agencies that will be tasked in implementing the recommendations, including Mr. Noordin Haji, that they must take their place in history.

Madam Temporary Speaker, as I go to sit down, I am happy because when the history of this country will be written, I will have a special place because it will be shown that I supported justice, legal redress, liberty and full compensation for these individuals.

(Applause)

Even if they do not do that, you can never know, maybe we might run for the presidency in future – after Hon. William Ruto completes his term – and Sen. Sakaja will be my Deputy President.

(Laughter)

The Temporary Speaker (Sen. Pareno): Order, Senator! Your time is up and you are politicking.

Sen. Cherargei: Madam Temporary Speaker, I am finalising my contribution. The best gift that we can give to the people of Solai and many others who have

undergone through this kind of a tragedy, is to ensure the full implementation of this Report.

Madam Temporary Speaker, I beg to support.

(Applause)

The Temporary Speaker (Sen. Pareno): Proceed, Sen. (Dr.) Milgo.

Sen. (Dr.) Milgo: Thank you, Madam Temporary Speaker, for also giving me a chance to add my voice to this debate. I thank this great Committee for a job well done. From what we have heard, Members of this Committee put their lives on the line for the sake of the people of Solai. Thank you very much.

(Applause)

In fact, in front of me is a very voluminous “book” that was done out of this great investigation.

Madam Temporary Speaker, as I look at this Report, I still mourn the 48 people who perished as a result of this tragedy. I also sympathize with the 52 orphans who do not have their parents today; we do not even know whether they have food and shelter right now. This Report will go down in the record books of history that in the Twelfth Parliament, the Senate stood up for the great people of Solai.

Madam Temporary Speaker, the Solai Dam has given the people of that region psychological and physical torture. From the outset, I aver that you do not need to attend any school of law to realise that this Mr. Perry Mansukh has been operating an illegal company without any registration. This is especially so after learning that nobody was allowed to enter into that farm.

As my colleagues have said, I also do not know whether this is a demigod, god or goddess. Whoever he is, we ought to condemn this man in the strongest terms possible for the harm that he has done to the people of Solai.

Madam Temporary Speaker, any company of this magnitude has to do what we call Corporate Social Responsibility (CSR). This includes taking care of the people surrounding that particular company. It does not only involve providing schools, employment and the water that he purported to have been giving them, but also touches on any physical harm or harm from pollutants, such as gas and any others. Those people should have been protected.

It is quite sad to learn that this particular company went ahead to build such a high dam up to the height of 30 meters. I can visualize how tall that particular dam was. That is why that water was able to flow for over five kilometres. This was preparation of physical harm to the people of Solai and we ought to condemn this in the strongest terms it deserves.

Madam Temporary Speaker, it is saddening to realise that somebody went ahead, with all the impunity and corruption, to block water that flows naturally. That means that the drought and shortage of food that is observed at Solai is actually manmade. In any case, these people have suffered for a long time. This begs the questions: What was the reason for having devolution? What is the role of the county government? How about the National Environment Management Authority of Kenya (NEMA) and the Water

Resource Management Authority (WARMA)? All these people should be taken to a court of law to explain the reason they neglected their duties to the extent that we lost a large number of people.

Madam Temporary Speaker, from the incident, Solai has not only soil that is good for agriculture, but the people in that particular area also lost their livelihoods, including their buildings and all that they had invested in life. My imagination is that unless those people are properly counselled, some of them will suffer mental illnesses. I ask our Government to look into this as a matter of urgency. The Government is currently talking about dealing with the issues of corruption. If this is not corruption, what is it?

I can only compare this incident to a mining company that was based in Mombasa County, where I saw people suffer in that area. Children were born as Persons with Disabilities (PWDs). I even saw animals with wounds on their bodies. The people of Solai can only be compared to those people. I am sure that if we were to go round the country, we would find other companies that are operating with impunity without any legality. I am sure that the people who live around those areas are suffering not only from chemical pollution, but also waiting for other disasters to happen, just like the Solai case.

Madam Temporary Speaker, I thank God that the President and the Jubilee Government has declared war on corruption. They are thinking about the poor and that is why they are supporting development in the counties. I urge them to take up the recommendations from the Senate and implement them to the letter.

I want to commend the Chairperson of Committee on Justice, Legal Affairs and Human Rights for saying that they will implement to the letter recommendations in this particular Report. I would like to see its recommendations implemented immediately. We will keep on talking about it until it is fully implemented.

Once again, I want to thank the Committee led by the able Chairperson, Sen. Mutula Kilonzo Jnr., Sen. Sakaja, Sen. Kasanga, Sen. (Prof.) Ekal, Sen. Olekina and others for this great job.

With those few remarks, I support.

Sen. (Dr.) Musuruve: Thank you, Madam Temporary Speaker, for giving me an opportunity to add my voice to this very important matter of national concern. We, as Senate, are very concerned about the welfare of our people. That is why we wanted to adjourn until the Chair made a ruling. I want to thank the Speaker's Panel for coming up with the Considered Ruling.

The nation should know that the select Committee that was led by Sen. Mutula Kilonzo Jnr. did a commendable job. They did not allow themselves to be compromised in any way. The Committee was impartial and objective. Indeed, it wanted the nation to know what exactly happened in Solai.

Madam Temporary Speaker, the recommendations of the Committee are authentic. They went to the ground and got data that is verifiable. This data cannot be challenged and that it will stand the test of time. It is for this reason that the findings of the Committee should not just go down unnoticed. They must reach the highest authority. They must be acted upon by the President.

When lives are lost because of manmade disasters, it is truly hurting. It came out so clearly that Mr. Perry Mansukh deliberately diverted the water because he is an entrepreneur who was benefiting from it. It was very unfortunate that many people lost their lives. He knew very well that after diverting the water he would still use it to mint

money from people. Mr. Mansukh is not a genuine person. He was just being cunning. Kenyans want to know the content of this Report.

We, as the Senate, need to go on record that we are concerned about what is happening. The Chairperson recommends here that there is need for an environmental audit. I support him. We should not involve WARMA in this audit because they are an interested party. We need an impartial body to do so.

The Temporary Speaker (Sen. Pareno): Order, Senator---

Sen. (Dr) Musuruve: I think you are unfair; the time is too brief for me.

The Temporary Speaker (Sen. Pareno): Order, Senator. Kindly resume your seat. Sen. (Dr.) Musuruve, you will have a balance of five minutes when the debate on this Motion resumes.

ADJOURNMENT

The Temporary Speaker (Sen. Pareno): Hon. Senators, it is now 6.30 p.m., time to interrupt the business of the Senate. The Senate, therefore, stands adjourned to Tuesday, 7th August, 2018, at 2.30 p.m.

The Senate rose at 6.30 p.m.