

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

Tuesday, 7<sup>th</sup> August, 2018

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

*[The Speaker (Hon. Lusaka) in the Chair]*

### PRAYER

### MESSAGE FROM THE NATIONAL ASSEMBLY

#### APPROVAL OF APPOINTMENT OF A NON-MEMBER COMMISSIONER TO THE PSC

**The Speaker** (Hon. Lusaka): Hon. Senators, I wish to report to the Senate that, pursuant to Standing Order 41 (3) and (4), I have received the following message from the Speaker of the National Assembly regarding the appointment of a member into the Parliamentary Service Commission:

“THAT, pursuant to the provisions of Article 127(2)(d) of the Constitution, by a resolution passed on Wednesday, August 1, 2018, the National Assembly appointed the hon. Samuel Kiprono Chepkong’ a as a Member of the Parliamentary Service Commission;

NOW THEREFORE, in accordance with the said provisions of the Standing Orders, I hereby convey the aforementioned resolution of the National Assembly and invite the Senate to also consider the said person for appointment to the Parliamentary Service Commission.”

Hon. Senators, Pursuant to Standing Order 41 (6), when the Speaker reports a message from the National Assembly under paragraph (4) or (5), the message shall be deemed to have been laid before the Senate and the Speaker may-

- a) direct that the message be dealt with forthwith;
- b) appoint a day for the consideration of the message; or
- c) refer the message to the relevant Committee of the Senate for consideration.

Hon. Senators, I now, therefore, refer the Message to the Standing Committee on Labour and Social Welfare for consideration, together with the Report on the appointment of non-Member to the Parliamentary Service Commission that was tabled in the Senate on Thursday, 1<sup>st</sup> August, 2018.

I direct the Committee to consider the Report and the Message from the National Assembly and report back to the Senate by Thursday, 9<sup>th</sup> August, 2018.

I thank you.  
Next Order.

### PETITION

UNLAWFUL DEPRIVATION OF LAND OF MR. DAVID  
MUGAI NG'ANG'A IN KAPUTIEI NORTH,  
KAJIADO COUNTY

**The Speaker** (Hon. Lusaka): Hon. Senators, I hereby report that a Petition has been submitted through the Office of the Clerk of the Senate by Mr. David Mugai Ng'ang'a.

As you are aware, under Article 119(1), the Constitution states-

“Every person has a right to petition Parliament to consider any matter within its authority, including to enact, amend or repeal any legislation.”

Hon. Senators, the salient issues raised on the Petition are-

(1) THAT, in September 2011, the Petitioner negotiated for and purchased a 5-acre parcel of land, namely Plot No. KJD/KAJIADO/KAPUTIEI NORTH/28126, for the sum of Kshs1,750,000.

(2) THAT, all the legal formalities for the transfer were completed, and the title deed for the said parcel of land issued thereon in his wife's name. The petitioner thereafter proceeded to affix steel pipe poles at the four corners of the said parcel, duly demarcating its boundaries;

(3) THAT, early this year, the petitioner visited the property with the intention of developing the same, only to find, to his surprise, that the poles had been affixed, as well as the beacons to the parcel of land, were no longer in place. The petitioner approached the neighbour to the property who stated that the whole property, including the one in question belonged to the family, and the family had never subdivided nor sold it.

(4) THAT, thereafter, the petitioner sought the assistance of the Chief Land Registrar at Ardhi House, the Director of Surveys, the District Surveyor in Kajiado, the Senior Land Registrar and various other offices, both at the county and national level, to have the matter resolved. All these offices have not been able to resolve the matter.

1) The petitioner prays that the Senate urgently investigates this matter with a view to having his right to property upheld and guaranteed in the Constitution and for assistance to having ownership of the said parcel of land reinstated to him.

Hon. Senators, pursuant to Standing Order 225, I shall now allow comments, observations or clarifications in relation to the Petition for not more than 30 minutes.

**Sen. (Dr.) Musuruve:** Mr. Speaker, Sir, thank you very much for giving me an opportunity to add my thoughts to this Petition. The petitioner is justified to bring his petition here. This is because the issues of land deals gone sour are rampant in this country. There are many people who spend a lot of money to buy parcels of land, some take loans and only realize that they did not buy land but 'air'. This has become very common. There are people who are duping innocent Kenyans. That is a sad situation.

If a search was done, some ancestral lands have issues. For instance, a man who had five sons and decided that Son A would get five acres of land, Son B would get three acres of land, while Son C would get two acres of land and so on. If one son decides to

sell his parcel of land and takes money from people, in such a situation, you find that the son might not have a title deed and decides to sell his inheritance. If that person has sincerely taken money from someone, he has to provide land to the petitioner.

Mr. Speaker, Sir, I really feel for this person who spend close to Kshs2 million to buy non-existent land. He thought that he was buying five acres of land only to realize that there was no land but 'air'. I feel for this person because I imagine that he went to develop that land. I imagine that he went with the materials that he had bought; building stones, ballast, cement and all the other things that are needed to come up with a structure.

This is somebody who wants a roof over his head. I, therefore, feel for him because he might have taken a bank loan only to realize that that bank is deducting him money for a non-existent land. That is really painful.

I feel sorry for this person because he went to the relevant authority; the people who matter in Kajjado County. I can imagine that he even almost knelt before them to show how desperate he was but they did not attend to him. They gave him a deaf ear.

My suggestion is that the Senate should see how to intervene for this person so that he could get the land that he bought. If he is not given the land, then he should be compensated. If he is compensated, it should not be the exact amount that he gave the seller. I can imagine if he gave Kshs2 million for the land, right now, the money has gained interest of Kshs6 million because of the appreciation of land.

Mr. Speaker, Sir, I suggest that this Petition should go to the relevant Committee and the issue should be addressed with speed. I can imagine that the man is frustrated. When someone is frustrated, he can vent his frustration on the wrong people. I hope that this man is not venting his frustration on his children or wife. Let us intervene with speed and see how we can redeem this situation. We are here to serve Kenyans and help the vulnerable. At the moment, the petitioner is vulnerable. We, therefore, need to intervene with speed.

**Sen. Mutula Kilonzo Jnr.:** Mr. Speaker, Sir, I have been concerned for the last 10 minutes after that Petition was read. I am concerned because of the threshold that we have used as the Senate for admitting petitions. We are now dealing with a private transaction. My office has about 1,000 of them. The Senate has admitted one. That precedent is wrong, in my view.

If we get into private ownership transactions, we will turn ourselves into a court of law or village elders. This is a matter we should not get ourselves into. The Senate should deal with public matters where we do not have interest or where we are not going to pass judgement on personal matters of people where they have done transactions.

*(Applause)*

Mr. Speaker, Sir, there are avenues that are easily available for people like these ones who have not received transactions at the Kituo cha Sheria. My only concern is that we are already overloaded with work. Why would we load this Senate with private transactions of dear Kenyans when we have lawyers who can do *pro bono* cases for them including myself without burdening the taxpayers with this petition? I am extremely concerned.

I thank you.

**Sen. Cheruiyot:** Mr. Speaker, Sir, I would also like to register my concern alongside that of Sen. Mutula Kilonzo Jnr. that when this Petition was read, I was discussing with a fellow colleague while Sen. (Dr.) Musuruve was making her contribution, that time has come for us as the Senate to set the threshold of what passes to be a petition worth being brought before this House.

Basic knowledge should be able to inform us that it must be a matter of extreme public interest, for example, one that affects a county because that is our primary duty. Otherwise, we will be adjudicating ourselves roles that we do not have in the first place. The simple question that I have is: What will the Committee conclude? What will they say? Where will they take the person who has deprived Mr. Ng'ang'a off his land? It does not make sense.

I oppose this Petition.

**Sen. Olekina:** Mr. Speaker, Sir, from the onset, I rise to oppose this Petition on the following reasons: One, even though the Constitution gives every Kenyan a right to petition Parliament, there are certain things that can be dealt with by courts of law. If we limit ourselves to looking at individual transactions where somebody was probably duped by a broker to buy a parcel of land that belongs to a Maasai and the community does not even realise that the parcel of land was sold, we will not be able to do the work that the Constitution mandates us to do in terms of making legislation.

Mr. Speaker, Sir, Article 40 of the Constitution protects the right to property. However, Kenyans ought to know that there is a provision in same Constitution that does not protect any property that could have been acquired illegally. This petitioner ought to have followed the due process of the law and filed his Petition in the Lands Court, which is very active nowadays. Let me congratulate the Judiciary for having expedited many land cases in this country.

Mr. Speaker, Sir, it is also important for this House to look at Article 119 of the Constitution which gives the person a right to petition this Parliament. We need to come up with legislation on what should be accepted as petition.

All these land transactions and what is happening in the Mau Forest are as result of corruption. Many people in the Mau Forest might have been duped to buy Government land. Therefore, instead of us wasting a lot of time on issues that can be dealt with by either a group of elders in the village, the court or the Ministry of Lands, let us focus our efforts on the Mau Forest issue which affecting hundreds of thousands of people who live in this country and beyond.

Mr. Speaker, Sir, I oppose this Petition. I think you should do what your brother in the "Lower" House did, put it where it belongs. That is the dustbin.

**Sen. (Dr.) Zani:** Mr. Speaker, Sir, as I listened to that Petition being read out, I had those thoughts about whether it is well positioned within the Senate. The answer is 'yes' and 'no,' partly. As much as these issues are significant to this particular individual, they also affect many other people. Therefore, there is a problem in the Ministry, board level or policy. Every other day, we find people buying land without involving all members of the family. If a man has three wives and their children might consent to that land being sold, then much later on, another son might appear on board to complain that he was not involved in the transaction.

Some sort of mechanism has to be put into place to ensure that if family members are meant to consent to that sale wholesomely, then each member should be involved. I

have a feeling that this is a trick that the family used. It is the oldest and easiest trick to use in the book. All you have to do is to come later on and reclaim the land and say that you did not know initially that all members had actually given consent. Philosophically speaking, you may not be able to get all the members on board. To me, this is a problem that is indicative of a particular ill.

We might not want to contextualize this Petition as a Petition of the Senate, but we might want to give an agenda to the relevant committee to look into these issues.

Mr. Speaker, Sir, now Kenya is opening up and people are buying land in Kitengela, Malindi and Kajiado. So, this problem will recur over and over again. By this petitioner bringing this Petition to the Senate, he has faith in us. He did not take it to the National Assembly; he brought it to the Senate because he felt that some sort of justice would be dispensed.

Yes, it is from an individual. However, from a macro-perspective, it is an issue that affects many other Kenyans who might not be able to bring up this problem. We might not want to take individual petitions and specific cases. However, we need to look at the broader picture and ask ourselves whether these issues have been well consolidated within the context of the wards and counties. This will ensure that when parcels of land are properly sold and paid for, such a situation would not arise. As much as the petitioner is very specific and has recourse to other organizations or boards that might help him, he has raised critical issues that are dear to many Kenyans.

Mr. Speaker, Sir, through this Petition, we are coming across important issues that affect many Kenyans. If we are talking about development, this will be done through infrastructure and agriculture. Many Kenyans who are unemployed and they are practicing agriculture. They are buying land for agricultural activities. This person, probably, had a dream to achieve, but now may not achieve it. I do not know what decisions we will make and how we will handle it. However, there is a way that we can refer this issue to the Committee so that they can look at it from a macro-perspective and analyze what problems might be happening.

This gives us a chance to call in the officials from the Ministry of Lands to have a look at the issues that are coming up which need to be dealt with because the confidence of Kenyans is being lost. People want to invest, but they are not sure where to invest. You do due diligence, but later realize you have not done due diligence. You sell your land today and then somebody comes and tells you that that land had not been sold.

You find that you have a piece of land, then somebody comes and sells that piece of land. The problem with this is that sometimes in certain places, it actually causes a lot of conflict at a social level and also at a county level where you have problems with people who feel that they are being displaced. Some people are able to have another title deed for a property which somebody else already has a title deed. This is not the first time we are facing these issues; we have had them for almost 10 years. I do not think they have been properly and systematically addressed and that is why the problem persists.

**Sen. Khaniri:** Thank you, Mr. Speaker, Sir, for the opportunity. I just walked in when Sen. Cheruiyot was on the Floor and, therefore, I do not have the privilege to have listened to the prayers in the Petition. I do not know the merits or the demerits. Therefore, I will not speak to the contents of the Petition.

Mr. Speaker, Sir, I want to speak to the procedure because I heard Sen. Ledama and Sen. Cheruiyot asking you to disregard this Petition. I want to differ with them

because the Constitution of Kenya is very explicit that any Kenyan is free to Petition any House of Parliament. Therefore, this particular Kenyan who petitioned the Senate was just exercising his democratic right as provided for in the Constitution.

Mr. Speaker, Sir, further to that, our Standing Orders are also very explicit on how we deal with a Petition that is validly presented to this House. I want to believe that this Petition, whether it has merits or demerits, is validly presented to this House. Therefore, we must follow the procedures as provided for in the Standing Orders in disposing of this particular Petition.

Standing Order No.226(1) says that every Petition presented or reported pursuant to this part shall stand committed to the relevant standing Committee. We cannot run away from that. The Petition is already presented here and validly so. Therefore, it must be committed to the relevant committee, notwithstanding the merits or demerits of the Petition.

Mr. Speaker, Sir, yes, I see the point being raised by Sen. Olekina and Sen. Cheruiyot. Sen. Olekina says that we should throw the Petition to the trash; we cannot do that. Let us just deal with it the way it is supposed to be dealt with. However, going forward, that is where we must find a remedy. These petitions must be vetted before they are presented to the House. Once it is presented to the House, then we have no choice, but deal with it regardless how skewed it may be. Going forward, we must have a mechanism to vet these petitions before they are presented to the House.

I, therefore, want to urge you to follow our Standing Orders and commit this Petition to the relevant Committee. Let it deal with the Petition.

**The Speaker** (Hon. Lusaka): Hon. Senators, pursuant to Standing Order 226(1), the Petition stands committed to the Standing Committee on Lands, Environment and Natural Resources. I hope the Committee will take note of the issues raised by hon. Senators as they address the issue. So, in terms of Standing Order No. 226(2), the Committee is required in not more than 60 days from the time of reading the prayer to respond to the petitioner by way of a report addressed to the petitioner and laid on the Table of the Senate.

Thank you.

*(Petition was committed to the Standing  
Committee on Lands, Environment and  
Natural Resources)*

Next Order.

## PAPERS LAID

REPORT ON THE SALARIES AND REMUNERATION  
COMMISSION (AMENDMENT) BILL, 2018

**Sen. (Eng.) Mahamud:** Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the House of the Senate today, Tuesday, 7<sup>th</sup> August, 2018:-

Report of the Standing Committee on Finance and Budget on the Salaries and Remuneration Commission (Amendment) Bill (Senate Bills No.12 of 2018).

*(Sen. (Eng.) Mahamud laid the document on the Table)*

REPORT OF THE PRC ON REVIEW OF THE STANDING ORDERS

**Sen. (Prof.) Kamar:** Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate today, Tuesday, 7<sup>th</sup> August, 2018:-

The 2<sup>nd</sup> Report of the Procedure and Rules Committee on the Review of the Standing Orders laid on the Table of the House on Tuesday, 7<sup>th</sup> August, 2018.

*(Sen. (Prof.) Kamar laid the document on the Table)*

**The Speaker** (Hon. Lusaka): Next Order.

The Clerk-at-the-Table: Order No. 6; Notice of Motion.

**Sen. Cherargei:** Mr. Speaker, Sir, I thought the debate on Solai was supposed to proceed.

**The Speaker** (Hon. Lusaka): Give a notice of Motion.

**Sen. Cherargei:** Mr. Speaker, Sir, I beg to move:-

THAT, AWARE, that the Senate passed a Motion on “Review of Policy and Legislative Framework on the Fight Against Corruption” by Sen. Dr. Isaac Mwaura on 31<sup>st</sup> May, 2018 and referred to the Senate Standing Committee on Justice, Legal Affairs and Human Rights for consideration;

APPRECIATING, that the duration accorded to the Committee to consider the Motion is due to lapse on 31<sup>st</sup> July, 2018;

REGRETTING, that due to the heavy workload and sheer magnitude of the assignment, the Committee is yet to conclude its deliberations and table its Report in the House and requires more time to conduct a further and thorough inquiry into the matter;

NOW THEREFORE, the Senate resolves to extend the duration by a further period of 30 days----

**POINT OF ORDER**

PROVISION FOR SENATORS TO SIT AND SPEAK FROM  
EITHER SIDE OF THE HOUSE

**Sen. Mutula Kilonzo Jnr.:** On a point of order, Mr. Speaker, Sir. I am very curious, maybe you can direct us. My good friend, the Chairman, is moving his Motion from this side of the House. We actually do not mind adopting him from this side of the House because he is a good gentleman and a good lawyer. However, is it right, under the Standing Orders and is it plausible that a Member can move a Motion from either side of the House? That is something that is very curious under the Standing Orders, otherwise, then Sen. Orendo should be on whichever side he feels like being, any day of the week.

**The Speaker** (Hon. Lusaka): Proceed, Sen. Haji.

**An hon. Senator:** It is Sen. Sakaja.

**The Speaker** (Hon. Lusaka): Okay, proceed, Sen. Sakaja. Are you using Sen. Haji's card?

**Sen. Sakaja:** Mr. Speaker, Sir, I deputise Sen. Haji in the Standing Committee on National Security, Defence and Foreign Relations. It seems as if the system is reading based on the place, and not on the card, because I have inserted my card.

Mr. Speaker, Sir, the point of order raised by Sen. Mutula Kilonzo Jnr. is very interesting, because he is a Member of the Standing Committee on Justice, Legal Affairs and Human Rights. This is a matter on which you need to give us direction. Despite the fact that provisions might be in the Standing Orders, we are in a new dispensation since the promulgation of the new Constitution in 2010. We no longer have an Opposition in Parliament; all we have are the Majority and Minority sides. This is not because of the handshake, but because of the constitutional dispensation.

Mr. Speaker, Sir, apart from the leadership of the House, who have specific designated places – not by operation of the Standing Orders, but for the convenience of the House – I would suggest that every other Member be allowed to sit freely. I think there is free sitting in the House; it is just that it has become customary that the Majority side sits on this side and the Minority side sits on that other side. However, there is no such provision.

Mr. Speaker, Sir, I can see Sen. Khaniri, who is the connoisseur of Standing Orders in this House, looking at the Standing Orders. There is no provision on sitting arrangements; it has just become a tradition since the Eleventh Parliament to date. However, if I go and sit next to Sen. Olekina today, I will not have defected to the Orange Democratic Movement (ODM). I will be exercising my right to sit anywhere in this House.

**Sen. Cheruiyot:** Mr. Speaker, Sir, this is a very interesting intervention by a good friend, Sen. Mutula Kilonzo Jnr. However, I want to warn that the route that my good friend, Sen. Sakaja, wants to take you, is extremely risky. It is risky because there are many things we do in this Parliament that are not documented in our Standing Orders. However, on many occasions in previous instances, I have heard of rulings being made by Speakers, seated where you are; and one of the things that they have referred to is the traditions of this House, together with the traditions of Parliament.

If we want to vary that today, then the question that we will be opening is; to what extent are we willing to vary these traditions, including dressing, bowing to the Chair, *et cetera*? It is not that I would mind, as a young person, because there are many things that do not make sense to me; given that, as young people, we like challenging traditions. However, out of respect for this House and the institution that it represents, I want to warn that, that is an extremely risky route if you decide to take it. Therefore, while giving your ruling, please, bear that in mind.

**Sen. Khaniri:** Thank you, Mr. Speaker, Sir. Indeed, before Sen. Mutula Kilonzo Jnr. raised the point of order, he consulted me on what the Standing Orders say about this particular thing.

*(Laughter)*



I told him that there is no provision for this. However, the observation made by Sen. Cheruiyot is spot on, because not everything will be provided for in the Standing Orders. However, there is what we call tradition, practice, precedence, custom and the normal procedures that we use.

Mr. Speaker, Sir, Standing Order No.1 gives you those powers to make a determination on a matter like this based on precedence. I just want to inform the House that, yes, there is no provision; but we must stick to the practice, precedence and traditions that we have set.

Thank you, Mr. Speaker, Sir.

**Sen. Poghiso:** Thank you very much, Mr. Speaker, Sir. There is an imaginary wall between this side and the other side. We might not see it, but it is provided for in the Standing Orders. Before I cross to that side, I must go to the Bar, bow and then cross over to the other side. I am not allowed to take a shortcut to easily cross to the other side. Therefore, apart from this problem – which I think we should follow through – the Westminster practice is adversarial. Therefore, it means one side is pitted against the other. I believe that as per tradition, we should maintain the sides; the Minority and Majority sides.

Mr. Speaker, Sir, the Chairman of the Standing Committee on Justice, Legal Affairs and Human Rights did not only break that rule, but he also broke the normal tradition of moving Motions or giving notice of Motions. That should also be done procedurally. He should, therefore, quickly apologise to the House, move over to this side and then give notice for his Motion.

Thank you very much, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): Order, Senator! I have not made that ruling. You are not going to make a ruling on behalf of the Speaker. You are, therefore, out of order.

*(Laughter)*

**Sen. Sakaja:** Mr. Speaker, Sir, I am not speaking twice, but was it in order for one of the Members who stood to say that ‘it is a route I am taking?’ There is no route I am taking; I am just saying my observation. It is not right to refer us to a Westminster model while we are in a Presidential model. In fact, in Congress, there are no sides.

Finally, Mr. Speaker, Sir, as you give us your considered ruling, kindly advise us. We are 67 Senators and given what is happening in this country today in the spirit of the handshake and whatnot, you might find that after the next election, 60 Senators will belong to one party. Will we then all squeeze on one side or will we sit anywhere? Will you consider that as you give us your ruling?

**Sen. Omogeni:** Thank you, Mr. Speaker, Sir. I just wanted those who sit on the other side of the House to note that Sen. Cherargei is the Chairman of the Standing Committee on Justice, Legal Affairs and Human Rights, yet all the legal brains are on this side.

*(Laughter)*

Therefore, it is for convenience---

**The Speaker** (Hon. Lusaka): Order, Sen. Omogeni! Order! You are out of order. All Senators have brains – I do not know whether they are legal or not – but you are out of order!

**Sen. Omogeni:** Mr. Speaker, Sir, we have three Senior Counsel in the House, and they all sit on this side. Therefore, for purposes of easier consultation, Sen. Cherargei has found it more convenient to sit on this side. Because the Standing Orders are silent on this issue, for purposes of giving comfort to the Chairman of the Standing Committee on Justice, Legal Affairs and Human Rights so that he can consult quickly among Senior Counsels, you should rule that he has not breached any of the Standing Orders by choosing to sit closer to where Senior Counsel sit.

Thank you, Mr. Speaker, Sir.

*(Laughter)*

**Sen. (Prof.) Ongeri:** Thank you, Mr. Speaker, Sir. Let me also weigh in on this matter. We should take this as a serious business; that under normal circumstances, when you cross the Floor, you have indeed crossed the Floor. In former traditions, that would then require you to resign. I would have expected that, by now, Sen. Cherargei would have sensed the mood and quietly crossed over to the other side so that he can prosecute his agenda or Motion. Obviously, he is on the wrong side. I would have expected him by now, to have politely and quietly – while the debate is going on, seeking your ruling – moved back to that side so that he can give notice of this Motion properly.

Mr. Speaker, Sir, there is so much that goes into it; you take time and pain to walk through there and bow to the Mace before resuming your seat. Surely, for a Motion being moved by a Member from the Government side – because it is obvious that we are not in the Government but in opposition – it should be moved from the other side. However, that does not preclude us from supporting that Motion simply because it has been moved from the other side. However, procedurally, he should move it from the Government side.

**The Speaker** (Hon. Lusaka): Okay, hon. Senators! Like you have rightly observed, the Standing Orders do not designate a place for a Senator moving anything, except for the leadership. People sit where they are, either for sentimental reasons; you have been sitting there and you are comfortable. Sen. Cherargei is moving the Report as the Chairpersons of the Committee on Legal and Human Rights. He is, therefore, at liberty to move it from wherever he wants.

**Sen. Cherargei:** Mr. Speaker, Sir, let me tell the Minority side that I am a rare breed and that is why they should have me on the other side also.

*(Laughter)*

**The Speaker** (Hon. Lusaka): What is your point of order, Senator for Tana River County? You are not on record.

**Sen. Wario:** On a point of order, Mr. Speaker, Sir. Is the Senator who is moving the Motion in order to cross from the other side to this side? I need your guidance. I thought that when he was moving to this side---

**The Speaker** (Hon. Lusaka): Order, Senator! He did not just cross; he passed through the other side. Let us give him time to present his Motion.

What is it, Sen. Seneta?

**Sen. Seneta:** Mr. Speaker, Sir, thank you for giving me a chance. I raised my point of order earlier. This is a House of traditions and order.

**The Speaker** (Hon. Lusaka): I hope you are not challenging my ruling, otherwise, you will be out of order.

**Sen. Seneta:** Mr. Speaker, Sir, I am not challenging your ruling. However, your direction on this matter will guide many of us on how we can conduct business in this House. If I decide tomorrow to sit where the Senate Minority Leader is supposed to sit, I will have done so according to your ruling today. So, I think you needed to give us direction as to why ---

**The Speaker** (Hon. Lusaka): Order, Senator! You are challenging the Speaker. I was very clear and explicit that the leadership has designated areas, but there are no Standing Orders limiting the Chair from giving direction. Before giving that direction, I had thought about it seriously as the Speaker.

**Sen. Seneta:** Mr. Speaker, Sir, I stand guided.

**The Speaker** (Hon. Lusaka): Thank you.

**Sen. Mutula Kilonzo Jnr.:** Mr. Speaker, Sir, on the same point, the seats in the National Assembly are clearly designated. You said that these seats are designated, but they are not. Since we are in the same Parliament, should there be that sort of designation? Sen. Seneta is saying she cannot sit where the Senate Minority Leader sits, not because it is marked, but because that is where he sits. That sort of thing would help what the good Senator was raising.

**The Speaker** (Hon. Lusaka): That is not a problem. We can physically label them, although if you sit where you are not supposed to, I know you will be uncomfortable. That shall be done.

*(Laughter)*

Sen. Cherargei, proceed.

## NOTICES OF MOTIONS

### EXTENSION OF TIME FOR THE COMMITTEE REVIEWING POLICY AND LEGISLATIVE FRAMEWORK ON THE FIGHT AGAINST CORRUPTION

**Sen. Cherargei:** Thank you, Mr. Speaker, Sir. I beg to give notice of the following Motion:

THAT, AWARE that the Senate passed a Motion on “Review of Policy and Legislative Framework on the Fight Against Corruption” by Sen. (Dr.) Isaac Mwaura on 31st May, 2018 and referred it to the Senate Standing Committee on Justice, Legal Affairs and Human Rights for consideration;

APPRECIATING, that the duration accorded to the Committee to consider the Motion is due to lapse on 31st July, 2018;

REGRETTING, that due to the heavy workload and sheer magnitude of the assignment, the Committee is yet to conclude its deliberations and table its report in the House and requires more time to conduct a further and thorough inquiry into the matter;

NOW THEREFORE, the Senate resolves to extend the duration by a further period of thirty (30) days to enable it conclude its work and table its report in the House.

Thank you.

**The Speaker** (Hon. Lusaka): Next is Sen. (Prof.) Kamar.

**Sen. (Prof.) Kamar:** Mr. Speaker, Sir, I beg to give notice of the following Motions:-

APPROVAL OF PRC REPORT ON REVIEW OF  
THE STANDING ORDERS

THAT, pursuant to Standing Order No. 246, the Report of the Procedure and Rules Committee laid on the table of the House, today, Tuesday, 7<sup>th</sup> August, 2018, be approved.

ESTABLISHMENT OF MORE YOUTH  
POLYTECHNICS IN THE COUNTIES

AWARE THAT youth polytechnics, also known as Vocational Training Institutes or village polytechnics, are educational institutions that offer primary and secondary school leavers opportunities to acquire relevant knowledge especially technical and vocational skills to increase their employability;

FURTHER AWARE THAT youth polytechnics provide industrial and entrepreneurial skills training to young people in order to increase employment opportunities, reduce dependency levels and increase self-reliance among the youth;

RECALLING THAT in 2005, the Youth Training Department of the then Ministry of Youth Affairs and Sports was established through the Presidential Circular No.1 of 2005, with a mandate of revitalizing the Youth Polytechnics countrywide in order to empower youth through provision of accessible, appropriate and quality training in technical, vocational, industrial, entrepreneurship and life skills;

COGNIZANT THAT youth polytechnics are a devolved function;

PERSUADED THAT Vocational Education and Training is a critical aspect for a developing economy and that it would contribute towards the realization of the Big Four Agenda;

CONCERNED THAT, in Kenya, the number of young people who have completed the primary school education but have not joined secondary schools continues to rise by the day;

FURTHER CONCERNED THAT county governments have not prioritized youth polytechnic establishment despite the polytechnics' capacity to ultimately contribute to both social and economic development;

NOW THEREFORE, the Senate calls upon each of the 47 county governments to:

(a) establish youth polytechnics in every location within their respective areas of jurisdiction and to revamp the already existing youth polytechnics;

(b) to develop a structure/guidelines for sensitizing the youth who have completed their primary school education but have not progressed in education to embrace vocational training in order to acquire the necessary skills to join the labour market.

ESTABLISHMENT OF *AD HOC* COMMITTEE TO  
INVESTIGATE THE MAIZE SITUATION IN THE COUNTRY

**Sen. (Prof.) Kamar** Mr. Speaker, Sir, I beg to give notice of the following Motion-

WHEREAS maize is Kenya's staple food whose demand and supply is monitored by the Government through the Strategic Grain Reserves;

AND WHEREAS that Kenya has been experiencing maize shortage mainly due to the high cost of production, the effects of climate change and poor management of the Strategic Grain Reserves;

NOTING that maize farmers have called to question the efficiency and capacity of the National Cereals and Produce Board (NCPB), which is the institution mandated to buy maize from farmers to continuously replenish the strategic reserves, to effectively handle and manage maize produce, forcing small-scale farmers to sell their produce to unscrupulous traders at very low prices;

COGNIZANT that the NCPB has on many occasions declined to buy maize from farmers, claiming that its stores are full to capacity, and failed to pay the farmers whose produce it has received, thereby exposing them to severe financial problems;

CONCERNED that although the Government has committed to supporting maize farming in Kenya in order to ensure Kenya's food security, little has been done to improve the efficiency of NCPB and protect the maize farmers from exploitation;

AWARE that the Government, during periods of maize shortage, grants waivers to enable importation of maize duty-free;

CONCERNED that the last duty-free window which was scheduled to terminate in October, 2017 was not terminated and that deliveries continued until late December, 2017 leading to overstocking of most NCPB stores with no clarity as to where the maize deliveries came from;

CONCERNED that failure to properly manage the maize situation in Kenya could lead to disillusionment of farmers, famine, civil strife and economic sabotage;

NOW THEREFORE, the Senate resolves to establish an *Ad Hoc* Committee to inquire into the maize crisis in the country and report to the Senate within sixty (60) days after the adoption of this Motion on-

- i. why farmers who have delivered their produce to NCPB have not been paid to date;
- ii. the quantity of duty-free maize imported into the country during the duty-free window which was to end in October, 2017 and why the period was extended;
- iii. the challenges facing the maize farmers and the NCPB and make recommendations on how to resolve the challenges;
- iv. the maize received by the NCPB for the 2017/18 season, to establish the suppliers; and
- v. the criteria for identification of millers and business persons involved in the importation of maize to the country.

AND FURTHER that the following Senators be members of the *ad hoc* Committee-

- 1) Sen. (Prof.) Margaret Kamar, EGH, MP;
- 2) Sen. Moses Wetangula, EGH, MP;
- 3) Sen. Samson Cherargei, MP;
- 4) Sen. (Dr.) Christopher Langat, MP;
- 5) Sen. Petronila Were Lokorio, MP;
- 6) Sen. (Dr.) Michael Mbito, MP; and
- 7) Sen. (Dr.) Boniface Kabaka, MP.

**The Speaker** (Hon. Lusaka): Let us go to the next Order.

## STATEMENTS

### GRISLY ROAD ACCIDENT INVOLVING PUPILS OF ST. GABRIEL'S PRIMARY SCHOOL IN MWINGI, KITUI COUNTY

**Sen. Wambua:** Mr. Speaker, Sir, I rise to make a statement pursuant to Standing Order No.46(2)(a) on an accident that happened over the weekend in Mwingi, Kitui County.

I wish to draw the attention of the Senate to a grisly road accident that happened in Mwingi Central Constituency of Kitui County on Saturday, 4<sup>th</sup> August, 2018. The accident claimed the lives of 10 pupils of St. Gabriel's Boarding Primary School in Mwingi Town. The pupils accompanied by three teachers and the school matron had gone on a trip to Mombasa and were barely three kilometres back home when the accident happened.

Before I proceed, I kindly request Hon. Members to rise and observe a minute of silence in honour of the departed innocent souls.

*(Hon. Senators stood and observed a minute of silence)*

Mr. Speaker, Sir, I wish to condole with the families of the children we lost and pray that God will continue to give those families the strength. There is so much they need to deal with the loss. To the children who were injured in the accident, I wish them quick recovery and to the entire school community, may God's grace be sufficient for them as they try to come to terms with that most traumatizing accident.

As we mourn the innocent children whose lives have been cut short so early, three things stand out, which require the immediate attention of this House and the Government. Night travel and especially long-distance night travel is indeed a very dangerous adventure. It is even more dangerous for school children using school transport in institutions where drivers of school buses are only accustomed to driving short distances.

The distance from Mwingi to Mombasa is approximately 600 kilometres and any driver would be fatigued to drive such a long distance. This must be an eye-opener to the relevant authorities to strictly enforce a ban on night travel for school children. There is absolutely no benefit in transporting school children at night. Night travel for school children can and must be avoided and with it, we shall avoid a lot of evil including accidents.

Secondly, the Nairobi-Garissa Road, especially the section between Kanyonyo and Nguni is dangerously narrow and its shoulders have been worn out. Ongoing attempts to repair the shoulders leave a lot to be desired because the contractors are patching up the worn-out shoulders using murram, making the road too dusty and even more dangerous for oncoming traffic moving in either direction.

I call on the Committee on Roads and Transportation of this House in which I sit and engineers of the Kenya National Highways Authority (KeNHA) to prioritise a visit to that section of the road and recommend and enforce appropriate action to avert further imminent loss of lives.

The section where the Saturday grisly accident occurred is so narrow and made even worse by mounds of murram recklessly heaped by the roadside, making it difficult for drivers to navigate through a narrow lane, leading into an even narrower bridge at Tia River.

Thirdly is the state of Mwingi Level 4 Hospital where the survivors of the accident were taken. The hospital does not serve only the people of Mwingi or Kitui County. That facility serves people all the way from Matuu to Garissa and beyond, especially victims of road accidents. The facility does not have a trauma centre rendering it unable to deal with critical cases.

Six of the children who suffered severe injuries following the Saturday night accident could not be attended to at the hospital. They were referred to Kenyatta National Hospital (KNH) which is about 200 kilometres away. Two of them died while being transferred to KNH. If the facility was properly equipped with a trauma centre, perhaps we could have saved those two children.

I want to appeal to the Ministry of Health and the Department of Health in the County Government of Kitui to collaborate and establish a trauma centre at the Mwingi Level 4 Hospital, to effectively deal with critical cases at this facility.

Mr. Speaker, Sir, I want to report to this House that, on Thursday this week, there will be a requiem mass for all the ten children that died before the bodies are released to

their families for burial. I want to appeal to this House to see what help can be extended to these families. These children do not just come from Kitui County; we have children from as far as Nakuru, Embu and Tharaka-Nithi. Any assistance given to these families by this House in preparing for the burial of these children will be most appreciated.

**The Speaker** (Hon. Lusaka): Thank you, Senator. As a matter of procedure, I know we are dealing with a tragedy. Normally, it is the Speaker to ask the House to rise to observe a one-minute silence. I did not want to interfere but I thought I should mention that in future, let us observe procedure.

Let us have Sen. Mutula Kilonzo Jnr.

**Sen. Mutula Kilonzo Jnr.:** Mr. Speaker, Sir, I was impressed that you could rise on somebody else's orders although unprecedented. Sen. Khaniri said that in the last 26 years, he has not seen anything of the sort. I must say that I am living in good times where Sen. Cherargei was on this side and then the Speaker stood up on the orders of a Senator.

Mr. Speaker, Sir, this incident is terrible to the extent that it is clear that children did not have safety belts, some lost their heads, we had to look for jaws, eyes and many things on the site. Children of the poor had to be transported all the way to Kenyatta National Hospital (KNH). If these were children from a private school, most probably they would have ended up in Nairobi Hospital, Aga Khan Hospital or maybe a chopper would have been dispatched to pick them.

Every time, we discuss anything concerning the poor in this country, there is always a sad story. When will this end? How will it end and where will we be? It is sad that the children of the poor can die like this and most of them in Class Eight. The parents are traumatised. Kitui County is on the other side of the world and they are really suffering. I can only pass my condolences to my colleague, Sen. Wambua.

However, even the status of health in this country--- Every time, some these things happen, we give credence to the people who say that the function of health should go to the national Government because we have not interrogated this function, although we take pride in saying that 93 per cent of it is devolved. Sometimes I think we should turn back like Saul to Damascus or make this work.

Mr. Speaker, Sir, I pass my condolences to those families. It is a real tragedy

**The Speaker** (Hon. Lusaka): Sen. Farhiya, proceed.

**Sen. Farhiya:** Thank you, Mr. Speaker, Sir. I join my colleagues in condoling with the families, especially the mothers of those children. Only a mother knows the pain another mother will go through. I can tell you that it is very painful to lose a child.

Mr. Speaker, Sir, we were told that there was one matron, three teachers and a driver. There was a chain of police officers who were along the way on road blocks or on the side of the road. Each and every person had a responsibility to ensure the safety of those children because 11.00p.m. is not like 11.00a.m., it is night. If I am not wrong, there was a directive by the Ministry of Education stopping travel of school buses at night. Why have all these people not been following that procedure? As a result, lives have been lost.

In terms of the pecking order, the driver is at the least fault if you compare a teacher who was in charge of the trip. If those teachers have not perished then I think they also need to be brought to book.



I also believe that the matron should be brought to book. A record should be kept because I am sure the police know who is supposed to be at the road block along the route that children died, from 6.00p.m., on that fateful day.

They were not supposed to travel from 6.00 p.m., and so, any police officer who was supposed to ensure that the law is followed and did not, then that person also needs to be brought to book. They should be held accountable because they are the custodians of the law in this country.

Mr. Speaker, Sir, like everybody else has said, this is a road that is partially damaged. In Wajir County where I come from, there is no road. We have murram roads everywhere but no tarmac from Garissa to the County Headquarters. If we ask the Ministry of Transport and Infrastructure Development to be accountable, then it should be extended to other counties that have no tarmac road whatsoever, other than a small stretch in town done by the county government when devolution started. The rest of Wajir County from Garissa to Mandera, there is just murram road to the county headquarters.

There is need for equality in this country in terms of how services reach the common *mwananchi*. It is dusty in Wajir throughout the year and in the statement, we are talking about a small stretch. This is a road that leads to the county headquarters of Wajir and Mandera County. The Government needs to be accountable to ensure that roads are made better. Healthcare also needs to be addressed adequately.

**The Speaker** (Hon. Lusaka): Sen. Khaniri, proceed.

**Sen, Khaniri:** Mr. Speaker, Sir, I thank you for the opportunity. I rise with a heavy heart. From the onset, I want to say that on my own behalf, my family and the people of Vihiga County, I want to convey my deepest condolences to the affected families who lost their loved ones. I also take this opportunity to wish those who are recovering in Mwingi Level 4 Hospital and KNH a quick recovery.

Mr. speaker, Sir, this was an extremely sad incident affecting the most vulnerable; that is our children. We lost very promising lives. I watched news last night and the children who had taken the trip, if what we watched on the news is anything to go by, must have been the brightest of the pupils in that school. So, we have lost very brilliant promising lives in this accident that happened Saturday night.

Mr. Speaker, Sir, this culture that we, as a country, have developed of waiting for a disaster to happen, then we start to lament and point fingers must come to an end. We must be proactive and take action. For example, on this particular issue, there was a Government policy that no public buses will be allowed to travel at night. School buses are part of public transport. What happened to the enforcers of this particular policy? It is so sad that we always wait for something to happen then we start lamenting and pointing fingers when we could have corrected it before it occurred.

I urge the Government to ensure that the culprits are brought to book. Anybody who caused this to happen, either through omission or commission must pay for it. Secondly, the Government must stand with the families that have lost their children and those that are admitted in hospital to help them meet those expenses.

I wish those in hospital a quick recovery and inform their parents that we are praying for them and we hope that God will give them the strength to endure this terrible loss. We pray that the same Almighty God will rest the souls of the young pupils in eternal peace.

**Sen. Halake:** Thank you, Mr. Speaker, Sir, for giving me this opportunity to add my voice and offer my condolences to the country for the loss of the 10 children.

I also commend you for not making this about yourself and standing in honour of the children as opposed to hierarchies and other considerations. We are proud of you.

Mr. Speaker, Sir, I worked most of my life scooping dead bodies on Mombasa Road. The highest killer in this country after certain communicable diseases is our roads. This is not the first time we have lost children on the road. I hope that the death of the 10 children will be a wake-up call for us to find a more lasting solution to road accidents in this country.

Mr. Speaker, Sir, I am a bit emotional because we cannot just stand here year after year, day after day, and month after month, to speak about these things and scooping lifeless bodies of young children from our roads and nothing seems to be done. We have close to 4,000 deaths on our roads every year. This is a report from disaster organizations and Government agencies that are mandated to handle issues of disasters.

Trauma centres need to be built on blackspots and hotspots that have become killer spots on our country, for example, along Mombasa Road and Nakuru-Eldoret Road, especially Salgaa area. However, nobody seems to do anything about these things. Bringing culprits to book is okay, but we need to find a more lasting solution to the whole issue of killer roads. It is a pity that the poor people suffer most.

Mr. Speaker, Sir, this is a sad situation. Our systems are broken. We have policemen on the road, but they are not doing their work. We have teachers that have orders, but they do not enforce them. I wonder what our obligation as leaders in protecting our children is. We are facing broken systems; be it in education, health and security. Who would make our people account for their actions? What is the role of this House in this matter and others?

Mr. Speaker, Sir, as a mother, I feel very emotional. We have lost children on the roads before, but it should not happen in this age when we are looking at taming corruption and fixing our systems. Is it a smokescreen where we want to just talk so that we get votes, or do we seriously want to take the obligation to protect our children when they travel on these roads? Is it lack of goodwill, resources or what is the problem? We will scoop these dead bodies, then come back and sit here. Again, stand in silence and mourn them. Something must be done and more sustainable solutions must be sought. It is the obligation of leadership, especially of this House which is showing the direction for this country to do something.

Mr. Speaker, Sir, I hope that you will direct some sort of inquiry or commit some of these things to the Committees of this Senate which have of late have done good job to make our people to account for their actions. We need to move beyond just mourning and scooping the lifeless bodies of our children to taking action and obligation of leadership to protect those that are dependent on us.

Mr. Speaker, Sir, I know we have many problems, but we need to make sure that we do not mourn or offer condolences on our behalf, our families and our constituents. We must take this issue seriously and find out what this House can do in addition to some of the things that Sen. Wambua has requested we do. We need to look at sustainable ways in which this House will exercise its representation, oversight role and its moral and political responsibility to deal with this, once and for all.

I thank you for the opportunity. Once again, I reiterate my own condolences to the families and pray for the quick recovery of the children that are in hospital. I also know that they are, probably, not getting the best services that they can. Out of this, some children at an early stage will be maimed and their lives altered for the rest of their lives. Is this the kind of situation we, as leaders, want to preside over? We need to rise up to the occasion when the obligation and responsibility of leadership rest with us to ensure that this does not happen again.

Mr. Speaker, Sir, once again, I wish the children who are in hospital quick recovery.

**The Speaker** (Hon. Lusaka): Thank you. I can see there is a lot of interest. I will limit the time to three minutes per Senator.

Proceed, Sen. Lokorio Petronila.

**Sen. Were:** Thank you, Mr. Speaker, Sir, for giving me the opportunity to express my sympathy and consolation to the families and the school that lost 10 children in a road accident.

There is a law we passed here barring school buses from transporting children beyond 6.00 p.m. This bus had an accident at 11.00 p.m. There were policemen, parents and members of the public along that road, but nobody saw it fit to stop the bus because the driver was flouting the law. Kenyans also need to take responsibility. The era of looking aside when somebody's child is making a mistake is long gone. We should all take responsibility for whatever is happening in this country.

It is the frequent accidents by school buses that made the Ministry to Education direct that all school buses be painted in yellow colour. This bus was painted yellow. Does it mean that we need to do something more to school buses other than paint them yellow? Do we need to put the reflectors on them as it is with the trailers? That is something that the Ministry of Education needs to look into. We should also have two drivers per bus. There is a rule to have two drivers per bus so that if one driver is exhausted, the other one can drive. I am not sure whether schools have more than one driver.

School drivers should also have some special qualifications other than just a driver's license. They should have particular number of years of experience other than just having a driver's license and having driven for two years. There must be a record of the schools they have worked in as drivers. I am sure that some of these schools have all these regulations, but the problem is with their enforcement. Who has the responsibility to enforce some of these rules in our schools? Is it the quality assurance inspectors of schools? If it is, are they not doing their jobs? Who should take responsibility?

Therefore, Mr. Speaker, Sir, even as we debate this issue and blame the roads, matrons and teachers for not ensuring that the children had seatbelts, how do we move from here so that we do not have a repeat of this? This Statement should be taken to the relevant Committee so that these issues are looked into, because it is not interesting to lose ten innocent children.

Thank you, Mr. Speaker, Sir.

**Sen. (Eng.) Hargura:** Thank you, Mr. Speaker, Sir. On behalf of the people of Marsabit County and on my own behalf, I send my sincere condolences to the affected families. From what I got from the news today, one family lost two school-going children who were not sick and who had gone for a trip. That is double tragedy for that particular

family. As my colleagues have said, something has to be done about law enforcement. We do not lack laws; what we lack is enforcement, and it is high time that our police officers on the road got serious.

Mr. Speaker, Sir, concerning what Sen. Wambua said about that road, I know that the road was done about 22 years ago. This is because when I graduated from the university, that was the first road I was taken to for training when it was being tarmacked. That is a long time ago and it needs to have been redone. That is actually the gateway to the whole of north eastern because it is only through that road that you can go to Garissa, Wajir, Mandera and parts of Tana River.

There is something about that road, because for those of us who have travelled on it, the surface is not as black as any other road; it looks patchy. It actually has something to do with the material which was used for sealing that road. By then, I was just a graduate engineer and a trainee student. I know that by the time I left there, they were trying the white chippings from Nguni on that road, and that is maybe why it has been coming off. That was 22 years ago.

That was not even a proper tarmac; it was a sealed road, where you just have bitumen on top of the base, and then you put the chippings. It is not like the Ashford concrete that we have now. This road should have been reconstructed, because its maximum life would have been 10 or 15 years, but now it is 22 years old. Therefore, the Kenya National Highway Authority (KeNHA) has questions to answer.

Therefore, Mr. Speaker, Sir, as the Vice Chairperson of the Committee on Roads and Transport, I take that request from Sen. Wambua – who is also a member of that Committee – seriously, so that we visit that road. The KeNHA has to tell us why that road has not been recarpeted because it should have been reconstructed maybe some seven years ago.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): Hon. Senators, I have a brief Communication to make.

*(Interruption of Debate on Statement)*

## COMMUNICATIONS FROM THE CHAIR

### VISITING DELEGATIONS FROM SCHOOLS IN BUNGOMA AND NANDI COUNTIES

Hon. Senators, I would like to acknowledge the presence, in the Public Gallery this afternoon, of visiting students and teachers from Kapsokwony Adventist Primary School, Bungoma County, and Chemaje 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, I wish them a fruitful visit.

I thank you.

*(Applause)*

*(Resumption of Debate on Statement)*

**Sen. (Prof.) Onger:** Thank you, Mr. Speaker, Sir, for giving me this opportunity to pass my condolences, on behalf of my family and the people of Kisii County, to the people of Kitui County for the untimely death of very young and dedicated future leaders of our nation.

I watched that clip last night and it was a painful moment when we walk through the motion of the parents who have lost their young ones in that accident without any notification at all. In fact, as I sat there, as a professional, I almost wondered about the amount of psychological trauma that the teachers, parents and the community must have gone through.

Mr. Speaker, Sir, it quite obvious that the road is a major trunk road connecting many counties all the way up to Mombasa. When I was the Minister for Health, such a situation arose when we found out that the Nakuru-Kericho-Kisii-Terumo Road experienced many traffic accidents leading to loss of many lives. We then made a conscious decision to create a trauma referral centre at Kericho Hospital and also at Kisii Hospital.

Therefore, I expect that the Ministry of Health, together with County Government of Kitui, will now erect one of the state of the art hospitals at Mwingi or wherever the Level Four hospital is; upgrade it to Level Five and, if possible, to Level Six. This is because we can see that whereas this was just one accident, we expect many more accidents – God forbid – happening along that road.

Mr. Speaker, Sir, we now need to take proactive action against these kinds of vices. In addition, we need to advice our teachers and students that when they go for a retreat to whichever place, they should consider the time of travel. Travelling long distances leads to mental fatigue, natural wear and tear at any given level for both the driver and the passengers. For them to be replenished, they should measure the time when they are able to travel and when they are not able to travel.

Mr. Speaker, Sir, I do not want to dwell on this matter, but this is a matter that now requires national attention. I expected that at the time when the national Government---

**The Speaker** (Hon. Lusaka): Sen. (Prof.) Onger, your time is up.  
Proceed, Sen. Seneta.

**Sen. Seneta:** Thank you, Mr. Speaker, Sir, for also giving me a chance to condole with the families and the people of Kitui County, on behalf of my family and the people of Kajiado for losing their loved ones. I will point out three things in this particular incident. As many of my colleagues have just said, we have lost quite a number of people through road accidents, not only on that particular road, but also on many other major and small roads in our counties. We keep on burying road accident victims every other day in many parts of this country.

Mr. Speaker, Sir, we are not lacking policies; we lack implementation and enforcement of these policies. If there are policies which require public vehicles not to transport children and passengers at night, then it should be enforced. Those who fail to abide by this policy should be brought to book.

Mr. Speaker, Sir, secondly, there is the issue of lorries and trucks. Whenever we travel to our counties, we try to avoid truck drivers who drive carelessly. So, the Kenya

National Highways Authority (KeNHA) and National Transport and Safety Authority (NTSA) should look into their systems and tighten them up. They should also monitor roads and repair damages, so that we can reduce accidents in our country.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): Proceed, Sen. Olekina.

**Sen. Olekina:** Mr. Speaker, Sir, from the outset, I would like to convey my deepest condolences to the families, on behalf of the people of Narok County, my family and myself. The people of Kitui County have suffered. Those children did not deserve to die.

As we think about this sad moment, it gives us an opportunity to try and see what we can do within our powers to ensure that this does not happen again. Some of my colleagues have suggested that there is a law or policy that prohibits night travel. I remember that in January this year, there was a decision by the High Court in Nakuru that found the NTSA Act, which I have also had an opportunity to look at, does not have any provision that restricts night travel.

Mr. Speaker, Sir, yesterday, the Governor for Machakos County issued a directive banning all night travels and imposing a fine. I caution that anytime we do anything, it has to be backed by law. If, indeed, there is a law that bans night travel, it should be listed in the laws of Kenya. It should actually be in the NTSA Act.

I would caution the Governor for Machakos County that he cannot ban night travel and impose a fine of Kshs50,000. We have an opportunity in this House to amend the NTSA Act and ensure that everything we do is protected by the law. If governors can just wake up and say there is a law and if you break it, you pay Kshs50,000, then I do not know what we will be doing in this House.

Mr. Speaker, Sir, I would like us to take this opportunity to look at the NTSA Act, amend it to include a provision that focuses on safety. The Ministry of Education had issued a policy, but it can be more effective. We are a country that is governed by the rule of law. I hope that my brother from Kitui will take this opportunity to introduce amendments to this NTSA Act and provide those provisions of security, so that it is clear. This is a country where people go to court and it is their right to do so. When you go to court, you should present a case.

I know that people will go to court tomorrow. We may need to come up with better policies that encourage safety. I like what my sister, Sen. Were, has suggested; that when these students travel at night, they should have at least two drivers; that is, if they have to travel at night. One of the problems we have on our roads, which I have observed having lived outside the country, is that we have encroached so much into our road reserves to a point where there are no rest areas. There are very few rest areas. This is an opportunity for us to consider and look at all our roads network and introduce rest areas.

Thank you, Mr. Speaker, Sir. I see my time is over.

**The Speaker** (Hon. Lusaka): Proceed, Sen. Wario.

**Sen. Wario:** Asante Bw. Spika kwa kunipatia nafasi hii. Ninatoa rambi rambi zangu za dhati kwa niaba yangu, familia yangu na watu wa Kaunti ya Tana River kufuatia ajali iliyotokea huko Mwingi ambapo vijana walipoteza maisha yao.

Barabara ambayo inatoka Mwingi inaunganisha sehemu yangu ya Tana River na Garissa pia. Huwa ninasafiri katika barabara hiyo kila wakati ninapoelekea Kaunti ya Tana River. Kwa hakika, barabara hiyo iko katika hali ya kusikitisha sana hasa sehemu

ya Nguni kuelekea Bangali. Sehemu hiyo iko katika hali mbaya zaidi. Wakati mwingi, ajali zinatokea katika sehemu hizo. Vijana wengi husafiri kwenda kujifunza na kujionea mambo halisi yalivyo katika sehemu tofauti tofauti. Hata hapa bungeni, wanafunzi wengi huja. Hata sasa kuna vijana kutoka Tana River ambao wanasafiri kuja hapa Bunge kupitia barabara hiyo.

Sehemu hiyo ya barabara haifai kupitiwa na magari. Ni wakati halisi kwa wale wanaohusika na barabara hiyo kuirekebisha. Hii ni kwa sababu tunazungumza mambo ya ajali ambayo imefanyika na waathiriwa wako hospitalini. Hawa ni vijana wa watu masikini ambao ni tumaini letu kwa siku zijazo. Walipata ajali na familia moja iliwapoteza vijana wawili. Hiyo ni uchungu sana na haya ni mambo ambayo tunaweza kuepukana nayo. Maji yakimwagika hayazoleki tena. Kupitia Seneta ambaye ni rafiki yangu---

**The Speaker** (Hon. Lusaka): Your time is up.

Proceed, Sen. (Dr.) Musuruve.

**Sen. (Dr.) Musuruve:** Mr. Speaker, Sir, I thank you very much for giving me an opportunity to condole with the families that have lost their loved ones. On behalf of my family and myself, I pass my condolences. It is really unfortunate that these children had almost reached their destination when the accident happened. It is just like going to the well, fetch water and then, on just reaching at the doorstep, the pot breaks. It is very painful. That is exactly what happened.

One mainstream media said that they were three kilometers away from their destination. Another one said that they were two kilometers away from their destination. That tells that they were near their destination and it is very painful. I remember vividly seeing a man on electronic media saying that he had actually spoken to his daughter, who actually confirmed that she had improved to position ten. The father was waiting to meet and commend her for the performance.

It is painful that ten students died. These are ten leaders who died. The ten students who died would have probably been ten Senators or even dignitaries, for we do not know what they would have become in the future. It is unfortunate that their lives had to come to a stop at that particular time. I feel sorry for the parents of these children for they are going through psychological trauma and they need psychosocial support. There is need for centres to be put in place to give psychosocial support for people who lose their lives abruptly like this, especially through road accidents.

These were children who were not sick but the cruel hand of death took them away in that terrible manner. There is also need for schools to ensure that they implement the provision of traveling during the day.

**Sen. (Dr.) Langat:** Thank you, Mr. Speaker, Sir, for giving me the opportunity to condole with the parents and families that lost their children.

We commend the policies of the Ministry of Education, Science and Technology that are in place right now and if implemented, they can safeguard these children.

The greatest problem in our country is enforcement of the policies and regulations that are there. We are always on the reactive side. This is the time when the traffic policemen are very active but after two weeks or so, it becomes business as usual.

We want to ask all those concerned with safety on our roads to enforce the roads safety regulations throughout. This includes the National Transport and Safety Authority (NTSA), the police and all the other agencies. Otherwise, we should not keep on

lamenting about things that can be prevented if enforcement departments do their work. It was unfortunate that we lost souls and lives and, indeed, I condole with the families.

**Sen. (Dr.) Zani:** Ahsante sana, Bw. Spika, kwa nafasi hii. Ningependa kuwaambia pole, wale ambao walipoteza wapendwa wao, haswa ile familia ambayo tuliona katika magazeti ambayo imepoteza watahiniwa wawili. Hili ni jambo la huzuni lakini sio jambo jipya. Ni jambo ambalo limezungumziwa mara nyingi lakini hakujakuwa na suluhu ambayo imeweza kupatikana ndio hizi ajali zisifanyike.

Wengi wamezungumza juu ya sera ambayo ni muhimi, na sera zipo. Sera moja muhimu ambayo ilikuwa imewekwa ni kwamba; ni lazima basi ambalo linapeleka wanafunzi pahali fulani liendeshwe baina ya masaa fulani; halitakikani kuendeshwa usiku.

Jambo la pili ni kwamba, dereva ambaye anaendesha hilo basi, ni lazima awe na mwenzake. Mimi nilijiuliza; 'kwani, basi hilo ama dereva huyo hangeweza kupumzika ama hawakuwa na mpangilio mwingine ambao ulikuwa umewekwa kuhakikisha ya kwamba wanafunzi hao wanalala pahali fulani?'. Hii ni kwa sababu imesemekana ya kwamba, ajali ilifanyika kwa sababu ilikuwa ni usiku. Ajali hiyo ilifanyika kwa sababu dereva aliacha barabara kwa sababu kulikuwa na kilima ambacho kilimzuia kuona barabara vizuri.

Wengi wetu ambao tumekuwa katika barabara, mara nyingi tukifika nyumbani ni lazima tumshukuru Mungu. Huwa tunastaajabu ya kwamba tumefika salmini, kwa sababu ni maajabu ukifika bila ajali. Barabarani, utapata wale ambao wamebeba mizigo mikubwa au mtu ambaye ameingia barabarani katika kona bila kuzingatia usalama wa wenzake.

Itakuwa vizuri tukiangalia sera ambazo tumeziweka. Nilisikia kwamba sera hizi zitaangaliwa kuhakikisha ya kwamba zimefuatwa. Nafikiria ya kwamba dereva yule amepolekwa kortini na akifungwa, itakuwa ni dereva mmoja tu. Lakini, ni kwa nini sera zivunjwe? Na kama zimevunjwa, kwa nini ziendele kuwekwa? Lazima tujiulize na tuhakikishe ya kwamba mambo kama hayo hayafanyiki. Kama ni sera imewekwa, lazima sera ifuatwe na mtu ambaye hatafuata hiyo sera anatikiwa kuadhibiwa vilivyo.

Kuna sera nyingi ambazo zinawekwa, kwa mfano, mabasi za shule yapakwe rangi moja. Watu kwa wakati huu wanazungumza kuhusu sare za wanafunzi ambazo zinaonyesha shule wanakotoka. Lakini, ninafikiri ya kwamba tutapata shida kwa sababu sisi kwa mara nyingi tunazungumza juu ya kutunga sera bila kuhakikisha ya kwamba zimefuatwa. Kwa mara nyingine, katika historia ya Kenya, tumeingia katika shida kwa sababu ya ajali kubwa ambayo imetendeka kwa sababu ya kutokufuata sera.

*(Sen. (Dr.) Zani's microphone went off)*

**Sen. (Dr.) Milgo:** Thank you, Mr. Speaker, Sir, for giving me this chance to condole with the parents and the people of Kitui. On behalf of the people of Bomet County, I wish to send my condolences to the bereaved families.

I looked at the photographs of the pupils who passed on with a lot of pain. You will realize that many of those kids were the top cream of that school, thus the school lost - as somebody pointed out - engineers, doctors and many other special people that we would have had in the future.



The Ministry of Education, Science and Technology has put a rule that no school bus or students should be transported after 6.00 p.m. I am sure that the people concerned did not implement this policy and that is why we have school buses on our roads even past 11p.m.

It is unfortunate that we lost these particular children at 11.00 p.m. I am sure that visibility was very dim on the roads and even if they had two drivers, none of them would have been able to negotiate the big lump of soil that was on the road. I am sure that there is somebody in the Ministry of Education, Science and Technology who is sleeping on the job and that is why this rule has been left to die. During this holiday, we have seen many school children travelling and we have to stamp authority to ensure that the policy that has been put in place is followed to the letter.

I am sure that if the Level 4 Hospital was working, some of the children would have been saved. However, it is unfortunate to hear that a hospital of that particular level lacked a trauma center and medicine. One of the four pillars of the Jubilee Government is affordable health care. If a Level 4 Hospital does not have the necessary services, what do you expect of the other hospitals? Somebody should be held responsible in that particular hospital. Were there any drugs in that particular hospital? Were there any necessary services or the people on call to receive those pupils or any other people who could be taken to that hospital at that particular time?

**Sen. Faki:** Ahsante sana, Bw. Spika, kwa kunipa fursa hii kuchangia arifa iliyoletwa na Seneta wa Kitui; Sen. Wambua. Ninachukua fursa hii kutoa rambirambi zangu binafsi na za watu wa Mombasa kwa watu wa Kitui kutokana na mkasa huu wa ajali uliotokea majuzi.

Fikra zangu na maombi yangu yote yako kwa familia hususan ile familia ambayo ilipoteza watoto wawili kutokana na hiyo ajali. Mwenyezi Mungu awaweke mahala pema peponi.

Mhe. Spika, swala la ajali barabarani limekuwa donda ndugu katika nchi yetu ya Kenya. Tumeona hapo nyuma mwezi wa nne kulikuwa na ajali zilizotokea na watu wengi wakapoteza maisha yao na mpaka sasa NTSA haijafanya jambo lolote kuzuia ajali hizi. Kuna maswala ya shirika la Transport Licensing Board (TLB) na maafisa wa polisi wa Idara ya Usafiri ambao wanasimama katika kila kaunti kupokea hongo, wakati mwingine ili kuyaruhusu magari ya abiria kubeba zaidi. Pia, magari ambayo yana makosa madogo madogo ya trafiki yanakubaliwa kuendelea na safari.

Mhe. Spika, hayo yote yanaweza kukoma iwapo serikali itakaa ngumu na kuhakikisha ya kwamba sheria za barabarani zimedumishwa. Kwa mfano, haiwezekani gari litoke Mombasa na Saa Tano ya usiku likibeba watoto wadogo ambao wanatakiwa wakati kama huo wawe wamelala ili waweze kupumzika na safari na machovu mengi.

Ni lazima serikali ijifunge kibwebwe hususan mwezi huu wa nane ambapo kuna safari nyingi za wanafunzi kutoka sehemu moja kwenda nyingine. Jana, nilibahatika kuona zaidi ya magari kumi ya wanafunzi. Kulikuwa wanafunzi wadogo sana ambao hawawezi kwenda masaa 12 bila kupumzika.

Mhe. Spika, ninachukua fursa hii kuomba Serikali kuhakikisha ya kwamba sheria za barabarani zinadumishwa. Hayo yatafanyika iwapo Serikali itakaa ngumu na maafisa wa trafiki na NTSA kuhakikisha ya kwamba sheria zinadumishwa. Acha safari zichelewe lakini watoto waweze kufika salama.

**Sen. (Rev.) Waqo:** Thank you, Mr. Speaker, Sir, for allowing me also to give my condolences to the affected families. It is a very sad thing that has happened. As a mother, I feel sad together with the Senator from that county. It has become a tradition for us that every holiday, April, August and December, we lose many of our children, which is a very sad thing.

There is need for us, as Senators, to speak in one voice so that NTSA can put proper measures in place to provide safety on the roads. There is also need for the drivers not to be overworked. This is because most of the time we save money, but lose lives. It is good for us to recommend that all the school buses should have two drivers when they make these long journeys.

There is also need for us to implement the ban on night travel. Many of us get excited when we travel during the night. We think that we save money, time and everything. However, at the end of the day, we are the losers.

It is very sad that we have lost these pupils and that the parents and the entire nation are mourning. Our prayer is that God will encourage and give hope to those who have lost their loved ones and comfort the entire nation. At the same time, we recommend that those pupils who have survived be given proper attention in terms of medical care, so that they can recover quickly. Counseling sessions should be started immediately because we know that most of them are candidates.

Mr. Speaker, Sir, as I was reading newspapers, many teachers confessed that those pupils who lost their lives were the best performers. It is very sad that we have lost our best performing pupils on the roads and at that time of the hour.

We, as Senators, should stand with the families. We must properly vet the people who are driving school vehicles and put measures in place to save lives of our children.

**Sen. Shiyonga:** Thank you, Mr. Speaker, Sir, for giving me this opportunity to condole with the families. I support the Statement on the tragedy that befell our children.

Mr. Speaker, Sir, my first Statement in this House was with regard to traffic rules. Many of our drives flout these rules with impunity. I remember the tragedy along the Nakuru–Eldoret Highway. We discussed it at length. I hope even with this tragedy, something will be done.

Mr. Speaker, Sir, it is painful to lose 10 children. Every life is precious. I saw parents collapsing when they saw the lifeless bodies of their beloved ones in the mortuary.

It is high time the Kenya National Highways Authority (KeNHA) put proper road signs in all our major roads. Mombasa Road is one of the killer roads in this country because it does not have proper road signs. For example, zebra crossing markings are faded and yet it is a highway. Many Kenyans have lost their lives crossing this road. We need to take necessary actions to save lives on our roads.

**The Speaker** (Hon. Lusaka): I thank you, hon. Senators. For the convenience of the House, we will defer Orders No.8 and 10 and therefore, move to Order No.10.

## BILLS

### *Second Reading*

#### THE COUNTY GOVERNMENTS (AMENDMENT) BILL

(SENATE BILLS NO.13 OF 2018)

*(Bill deferred)*

*Second Reading*

THE LOCAL CONTENT BILL  
(SENATE BILLS NO. 10 OF 2018)

*(Bill deferred)*

**Sen. Ndwiga:** on a point of order, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): what is your point of order?

**Sen. Ndwiga:** Mr. Speaker, Sir, you had referred a statement to the Senate Committee on Agriculture and given us 30 days. We would like to make the progress report at this point.

**The Speaker** (Hon. Lusaka): Hon. Senator, can we list it for tomorrow?

**Sen. Ndwiga:** Mr. Speaker, Sir, it is okay.

**Sen. Halake:** On o point of order, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): what is your point of order, Sen. Halake?

**Sen. Halake:** Mr. Speaker, Sir, I was just trying to queue early to contribute on the Report of the Select Committee on the Solai Dam Tragedy.

**The Speaker** (Hon. Lusaka): It is okay, since we are on that Order.  
Next Order.

## MOTION

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

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.

*(Sen. Mutula Kilonzo Jnr. on 2.8.2018)*

*(Resumption of Debate Interrupted on 2.8.2018)*

**The Speaker** (Hon. Lusaka): Let us have, Sen. Halake. Order.

I am sorry I was told, Sen. (Dr.) Musuruve, you had five minutes balance. We give you the first chance.

**Sen. (Dr.) Musuruve:** Thank you, Mr. Speaker, Sir, for giving me this chance to continue with the debate in the adoption of the report of the select committee on the Solai Dam Tragedy.

It came our clearly from the Report that the tragedy was manmade and deliberate.

*[The Speaker (Hon. Lusaka) left the Chair]*

*[The Temporary Deputy Speaker (Sen. Nyamunga) in the Chair]*

I am sorry, Madam Temporary Speaker, I did not notice that there was a change of Chair while I was debating.

*(Laughter)*

Madam Temporary Speaker, it came out clearly from the Report that the tragedy was man made and that it was not an act of God. It also came out clearly that the Patels deliberately did this by diverting the water, because they were cunning. They had projected that they were going to mint money out of the diversion of water.

Madam Temporary Speaker, it also came out clearly that there was environmental degradation due to immense soil erosion. A lot of soil was eroded from the first, second and third layer of soil. This erosion will have a terrible impact on food security. For this soil to be replaced, it may require transporting soil from another area and bringing it to this area so that people can move on with their lives.

Madam Temporary Speaker, it is unfortunate that, at the moment, people are moving on with their lives. Life moves on for everyone else except for the families which were involved in the Solai Tragedy. Their lives have not moved on and things are not as usual. As we speak today, we have orphans and there is need for us, as a nation, to ask ourselves where they will go. These orphans lack parental support because they do not have their parents; they do not have a roof over their heads or food. This is painful because these orphans have a long journey in life. If there will be any interventions, there is need to ensure that these orphans are taken care of throughout their journey in life.

Madam Temporary Speaker, I remember there was such a tragedy during the bombing of the US Embassy bombings Nairobi and many children were orphaned. The American Government took it upon itself to ensure that these orphans moved on with life. They were taken to colleges, some have even become prominent people in life and they are independent. Therefore, there is need for intervention so that the Solai Tragedy orphans are not just left hanging somewhere.

As we talk of orphans, Sen. (Dr.) Milgo said that there are also Persons with Disabilities (PWDs) as a result of the Solai tragedy. It is painful, for example, for one to wake up one morning and realise that they do not have one leg or one eye because of a manmade tragedy. There is, therefore, need for intervention. We need to find ways of arresting intentional acts that lead to and/or cause disabilities. Let them be acts of God and not manmade acts.

**The Temporary Deputy Speaker** (Sen. Nyamunga): Proceed, Sen. Wambua; you have the Floor. I am sorry, Sen. Halake. I will allow Sen. Wambua to proceed, but you will be the next speaker.

**Sen. Wambua:** Thank you, Madam Temporary Speaker, for this opportunity to add my voice on this Report. I will be brief, but concise.

From the Report that was tabled by the Chairman, who is also the Senator for Makeni County, Sen. Mutula Kilonzo Jnr., Perry Mansukh is a person of interest with regard to security operations in Nakuru. This is a man who did not just commit an

illegality in the construction of the dam, but also sought to conceal that illegality by attempting to bribe the very people that were adversely affected by his actions.

Madam Temporary Speaker, the three national Government representatives in Nakuru County – the Nakuru County Commissioner, the Assistant County Commissioner of Subukia and the Chief of Solai – have no business being in office today. These officers are charged with the responsibility of being the eyes and the ears of the national Government on the ground and protecting the interests of the people they preside over. However, these are the same people who the Report says were working in collaboration with the owners of Solai Dam, by distributing bribes concealed as compensation to the families that were affected by the tragedy.

I dare say that these officers should have been suspended by now. Besides being suspended and irrespective of what the outcome of the investigation will be, these people are not fit to hold any public office. I say so because, unfortunately, the County Commissioner is the Chairperson of the Security Committee of Nakuru County by virtue of the position he holds.

Madam Temporary Speaker, the Committee has recommended further investigations and grilling of the dam owners and it is unimaginable that the Chairperson of the Nakuru County Security Committee will constitute part of the team that will investigate this matter. I would, therefore, urge that in setting up that team, the security team should not be drawn from Nakuru County. It must be drawn from enforcement agencies and units from outside Nakuru County. The Nakuru County Commissioner, the Subukia Assistant County Commissioner and the Chief of Solai must not sit anywhere near the investigating team, unless they appear before the Committee as persons of interest.

Madam Temporary Speaker, I want to add my voice to that of my colleagues who called for justice to be done for the lives that were lost in Solai. It will be important that proper and befitting compensation is given. There is no amount of compensation that can return lost lives. However, there is a level of compensation that will begin to bring this matter to closure. For us, in this House, and for this country, what we are looking for in Solai is closure, especially for the families of the victims of the tragedy.

With those few remarks, I beg to support the Motion.

Thank you, Madam Temporary Speaker.

**Sen. Halake:** Thank you very much, Madam Temporary Speaker, for giving me the opportunity to add my voice to that of my colleagues on the issue of Solai Dam Tragedy. It is with great sadness that we keep talking about innocent loss of lives. It appears to me that the lives of the poor do not really count because the manner in which young lives or the lives of people that are less privileged in this country is handled just boggles the mind.

Madam Temporary Speaker, before I go into detail, please allow me to congratulate the *ad hoc* Committee that was set up to look into the Solai Tragedy for a very fine piece of work.

We are very proud, as the Senate, to be associated with this Committee that stands for the greater good of this country. Some Members of the Committee went against immense and back stage pressure from different sources and decided that this country is greater than anything that is in their personal interest. For that reason, I would like to congratulate the Chairperson of the Committee, Sen. Mutual Kilonzo Jnr. and other

Members of the Committee including Sen. Kasanga, Sen. Sakaja, Sen. (Prof.) Ekal and Sen. Olekina for standing up for Kenyans against impunity and making this House very proud.

Madam Temporary Speaker, as I stand here, I am aware that not everybody signed the Committee Report. I do not wish to cast aspersions on anybody, but I would like to say that our country is better because of those who have stood for its greater good and not for personal interests. They have overcome arm-twisting and sacrificed.

Having read the Report, the observations that were listed in it are mind boggling. I have said before, informally, that the Solai Dam tragedy Report should mark a turning point for this country. We should use the recommendations of the Solai Dam tragedy Report to fix the many issues that ail our country. The systems, processes, institutions, values and culture of this country have gone to the dogs. The people who are vested with the responsibility to protect the systems of this country have failed us.

Mr. Perry Mansukh, who is the owner of Solai Dam, represents many of these faceless people that have brought impunity in this country. When a private investor dams a whole river and becomes the sole provider of water to the residents of an entire region, what does that say about our country? We have the Executive, Judiciary, Legislature and agencies like the Water Resource Management Authority (WARMA), the National Environment Management Authority of Kenya (NEMA) and so on. It is not about all of us drawing salaries and living a good life; we are supposed to look after these issues. I am told that the water was dammed on Watkins River without proper procedure being followed, but nobody is enforcing it. The people of Solai only drink water as and when Mr. Perry Mansukh decides. What kind of leaders preside over that kind of impunity?

Madam Temporary Speaker, I could read the recommendations, but I am sure that all of you have read them. I do not know what to call this level of impunity. A revolution is in the offing in this country. This revolution is not about tribes or where we come from. It is about the divide between the haves and have-nots. People are watching us and asking: "What are our leaders doing or is it that the lives of the poor are worth nothing?" We cannot have people becoming gods because they have money and the poor are just beggars.

I am surprised that we are still debating this issue and nobody has been arraigned in court. Even where the cases are in court, we are surprised that the speed with which they are moving is very slow. I do not want to belabour the details of the Report. The Report and the recommendations are very clear. These are some of the issues that we need to deal with. The different sectors, including forestry, land, education and health are facing problems because of faceless people who are actually loading over the rest and nobody is doing anything.

This House has stood up and investigated this case and the rot. We are told of situations, within the observations, where millions of shillings have been given to shut everybody down. Millions of shillings have been given by the county administration and other people within Government to have the people of Solai sign some documents and shut up. This is unacceptable and this House must not be part of that rot.

I am told that there is a committee somewhere that went to have a meeting in the house of Mr. Perry Mansukh. Who does that? My question is: Will this House ensure that the recommendations in this Committee Report are supported by this House? Will everybody that is responsible for the loss of lives--- What this will serve to do is to give

notice and bring to book the perpetrators and account for the rot that is happening in all the sectors in our country. Look at what is happening to our forests, land that is being grabbed left, right and centre, and the education system. What is it that is left?

Madam Temporary Speaker, even as people campaign to become leaders in this country, what are they going to preside over? Will they preside over dead bodies? I am very saddened and the sadness that I speak of is actually one that shows a near collapse of our country. I am aware, for instance, that our National Treasury is broke. They give us excuses about the Integrated Financial Management Information System (IFMIS) and the timeline of end of August, but the truth of the matter – and I have raised this in this House before – is that the country's debt is out of control and we do not have money. As a country, we are broke, even if we do not want to admit it.

Given that our institutions are not working, what is it that we are campaigning to preside over? As leaders, we must change this otherwise history will judge us harshly. We have a political and moral responsibility, but more importantly, we are employed to do this. We have a responsibility to do our jobs, namely, to speak up for those who cannot speak up for themselves, represent those who brought us to this House, oversight as per the mandate that was given to us in Article 96 of our Constitution and make sure that we mitigate against presiding over a country that is coming to a standstill because of the impunity that is going on in every sector.

Madam Temporary Speaker, the Solai Dam tragedy is just a tip of the iceberg in every sector that we have in this country. We have no country to preside over, even for those of us who are very happy to be sitting here as leaders. What kind of leadership are we offering in this country? In any crisis or problem there are aggressors. Mr. Perry Mansukh has been an aggressor. However, worse than the aggressor, are the people who are conspiring with him, yet they are in positions of power. More importantly, this House, thankfully, has not been just a bystander. Let us not be bystanders. We now have a great Report to implement. Let us not be on the wrong side of history, as bystanders who just watched when people were being victimised just because they are poor.

Madam Temporary Speaker, I support every aspect of this Report and I am proud of its contents. I have read it and the observations are actually painful to read and sound, out of this world. That said, we now have an opportunity to make sure that we implement the recommendations and are not judged as having stood by as our country went to the dogs. I especially congratulate the team that had the moral authority to stand with the people and sign this Report. They can be relied upon to help implement it. Congratulations, team. I am very proud to be associated with this.

I support.

**The Temporary Speaker** (Sen. Nyamunga): Very well. Sen. M. Kajwang, proceed.

**Sen. M. Kajwang'**: Thank you, Madam Temporary Speaker. I rise to add my voice to the Senators who have spoken before me in support of the Report of the Committee that was established by this House to look into the Solai Dam tragedy. This Committee has done us proud. It is a Select Committee that has brought back a Report to the House before the expiry of its term. For those of us who have been around for a while, we have seen select Committees established but the reports rarely end up in this House.

The Chairperson of this Committee and I served in a select Committee some time back. We were looking at reforms to prisons and borstal institutions and making sure that we align them to the Constitution. We did very impressive recommendations until we tripped on a live wire. The live wire was the fact that Kenyans of high positions have stolen land belonging to prisons across the country. Suddenly, that report never saw the light of day.

I congratulate the group that went to the public and then sat down to come up with the 25 recommendations that are before us. I also pay special tribute to our boys and girls at the Kenya Defense Forces (KDF). This is because this Report tells us that they responded quickly and they could have been the only meaningful response to this tragedy. Counties need to have capacity to address disasters. We did not see the county respond. It was KDF that responded. Neither did we see the national Government, unless KDF is now to be considered a national Government entity.

Madam Temporary Speaker, it has come a time when we need to start thinking about the mandate of our boys in uniform because we are in an era where wars are no longer fought using bayonets, machetes and rifles but online in social media. We have cyber wars and so we need to make our boys meaningfully engaged in other aspects of national building and construction. Going forward in terms of construction of dams in this Republic, we could make that something that KDF, the National Youth Service (NYS) or any other disciplined Government unit can render. So that we train them properly, let them understand the specifications and be the ones to deliver that service.

I have always reflected on the 10 plagues contained in the Bible that the Almighty visited upon Egyptians at the point when Israelites wanted to be freed. Of all the 10 plagues, it is at the tenth plague that the first born died. However, there was an 11<sup>th</sup> event which has never been considered the eleventh plague. It is at the eleventh plague that the strongest men and the soldiers of Egypt died in water. I have always wondered why God reserved death in water to be the final event for the people of Israel to be free. It is because death in water is one of the most painful things that you can ever come across. Death is death but to die in water the way these 48 people died, it was the ultimate punishment for innocent Kenyans.

Previously, we were told it was 48 people but that was statistics and this Committee has helped us to see the names. We have read names such as Ms. Metrin Wanjala, Mr. Charles Muchiri Njunge and Ms. Jane Muthoni Munene. I have seen a Ms. Ruth Wairimu and by the time you give the name “Ruth” to a child, you are reflecting on the Biblical Ruth, a woman of faith. This is a woman who probably grew up in faith and had faith in the future. There are children here and the saddest thing is to prepare dinner—whether on a jiko, stove or fire wood – eat, sing and say a prayer with your family and tuck your children in bed. The next day, you are all dead. That is what happened to these people.

Madam Temporary Speaker, when we talk about the bourgeoisie— the rich and powerful of this world – the Perrys of this world and the other accomplices to the act, sometimes they think that we are wasting time in this Senate talking about 48 small people. These are the 48 people who make Kenya what it is and this is not any section of Kenya but the entire Kenya. This is the hope of parents of this Republic and the hope and future of this country that was snuffed out in one night.



The 25 recommendations that the Committee has brought, one thing that I am happy about is that now we are bringing in some discipline by identifying who should take action, what time frame within which the action should be taken and who should follow up. I congratulate the Committee for bringing this framework because you can see for every recommendation, who should take action, when and who should ensure that follow-up is done.

Other speakers have also wondered loudly; for us to put this tragedy in context, should we pray that Nairobi Dam bursts its banks and kills our brothers and sisters in Kibera and surrounding areas? Maybe then, it will look like a real tragedy. Or, should Ndakaini Dam burst its banks so that it wipes property and the lives of the affluent? Maybe then, it will be a tragedy. As a House, we maintain that the lives of the 48 are as important as the lives of those who died in Westgate, our boys who die in Somalia every day and any member of this country who loses his or her life unnecessarily.

I also propose that a copy of this Report and the recommendations should find its way in our counties because county governments are digging some things that they call dams but they are just shallow graves and death traps. If a crisis or tragedy was to occur in Homa Bay County where I have seen the kind of things that they are digging and calling dams and the rain was a little bit too much---

In fact, for the folks that live around some of the dams that have been built in our counties, it is God who is still keeping us alive. The standards we are talking about should not just apply to the national Government. The same standards must be enforced for every dam or water storage facility that is set up in this Republic.

I learnt through this Committee that we have two authorities in that space on water. There is the Water Resources Management Authority (WARMA) and another animal called Water Harvesting Authority (WHA). I do not know what they do and whether it is an authority where, for you to work there, you have to be a rain maker. The Committee also did not seem to tell us exactly what they do.

There seems to be a proliferation of authorities with mandates that are unclear and zero visibility. I would like this WHA, if they are following these deliberations, to find a way of engaging this Senate so that the Senate can understand what they do and support them. Otherwise, we will be calling for their disbandment.

Finally, I thank this Committee for working very hard under a hostile climate. The Members of the Committee who spoke told us that they faced intimidation and got threatening calls. However, they decided to soldier on. Even though some Members have gone on record questioning why not everyone signed, I do not think that is a problem. As long as a report has been signed by a majority of the Members of the Committee, we should not draw adverse conclusions about the others. That is the issue that I would like to beg Members of the Senate; not to come to adverse conclusions.

Madam Temporary Speaker, this Committee worked collectively and five out of nine signed and the Report is before the House. That is proper. We should not question where the others were because they are bound by the collective decision of the Committee. If anyone disputed what the Committee said, they ought to bring a minority opinion. Until someone brings a minority opinion, we will say that all the nine Members of the Committee did a good job.

Madam Temporary Speaker, we must call it out and deal with the trend of threats and intimidation to committees working on behalf of the Senate. I chair the County

Public Accounts and Investments Committee (CPAIC) of this House. I am doing a job on behalf of this House. In every twist and turn of inquiry, people call to threaten and intimidate us and others call to compromise us.

There is an inquiry that we will soon be tabling before the House, where we were investigating crooks and thieves who go to schools and try to find ways of stealing land belonging to schools. Schools should be hallowed grounds. They should be grounds where you can step without shoes, just the way Moses was told to step on some ground without shoes. You cannot go to a school to steal land. If you were to do that, the hottest corner of hell is definitely going to be reserved for you.

When we do an inquiry on behalf of this House, I receive calls. I want to go on record that I have been called and threatened. Strange people have appeared at my gate. If it were not for the vigilance of my watchman, probably you could be talking about the same story of Ojode, Saitoti, Mutula Kilonzo, Kajwang, Boy Juma Boy, Ouko and J.M. Kariuki.

Many others have come before me and have disappeared funnily. I am not afraid of going down that route. However, I must say that I fear none but God Himself because he is the one who has put me in this position of responsibility. He is the one who gives me the breath to come and do the job that the people of Homa Bay voted me to do. So, for those who are fond of calling Senators and Members of this House, threatening, intimidating, appearing at their door steps, tapping their telephone conversations and offering enticements and bribes, shame on them because this House is not going to go the direction that the country has moved away from.

I am so happy that we never heard of wrangles concerning the Committee Report on Solai Dam Tragedy. We never heard that Members had taken money and so they were bringing in a minority report. That is the spirit that I encourage all Members of this House to have.

Regarding intimidation and threats that have been made on my part, probably it would be futile to go and report to a police station where sometimes you feel like the persons you are investigating are part and parcel of that system. I have put it on record today that those threats must stop. The crooks in this Republic must know that this Senate is a House where they will not get away with their shenanigans.

Sen. Mutula Kilonzo Jnr. and his team have shown us the way. We have no other duty or option but to follow that; route to soldier on despite the threats and intimidation.

Madam Temporary Speaker, I support.

**The Temporary Speaker** (Sen. Nyamunga): Very well spoken. Let us now have Sen. Kwamboka.

**Sen. Kwamboka:** Madam Temporary Speaker, I rise to support this Report fully. I thank Members of the Committee; starting with Sen. Mutula Kilonzo Jnr., Sen. Sakaja, my Senator who never lets Nairobi down, Sen. Kasanga, Sen. Olekina and Sen. (Prof.) Ekal for doing a good job. I thank them for appending their signatures no matter the intimidation and the threats they faced. Kudos to them; I applaud them fully.

I got an opportunity to visit the area where the disaster happened. Indeed it was sad. The place where the victims used to call home is no longer home because everything was swept away. A playground is even better because you can find seats. In that area there was completely nothing. It was disastrous. I commend the Committee for observing

that the dam had no spillway to drain excess water and there were no licenses for those dams. That is a serious offence because that was a man-made disaster.

I disagree with the statement made by owners of the Solai Dam. When they appeared before the Committee, they said that they have been living with the community for their entire lives. My question is: Why did they have to console the victims with money? That is corruption! You cannot compensate people with Kshs100,000 because that is little.

If you go there, you will see that the house of Mr. Perry Mansukh is up, the dam is in the middle and villagers stay at the bottom. Why did he not let people stay at the top and the dams to be at a lower level? It is very unfortunate. Nobody is above the law and Mr. Perry Mansukh must carry his cross.

They went to Nakuru County telling people that they had no report on the Solai matter. I do not vote for Nakuru but Nairobi but I am concerned and I am in solidarity with the Solai victims. It is total shame. If they cannot take the interests of the people who stay close to them, then that is wrong. Those people are voters in Nakuru. The committee that deals with environmental matters should be disbanded by the county assembly. They cannot tell us that they did not have any report concerning the Solai Disaster.

Moving on, I fully support the recommendations of the Committee. It is high time that this House came up with an implementation committee to follow up on the recommendations being made by several committees. Let this be a lesson to other *ad hoc* committees. Once you are put in an *ad hoc* committee, you should agree with other Members. Five of them appended their signatures but all of them went there as a team to write the report. We should not fear anybody. It is only God who takes care of all of us and nobody should intimidate us.

Madam Temporary Speaker, I fully support this Report and kudos to the Chair of the Committee. I know it was hard but he put the interests of the people first before himself.

I thank you.

**The Temporary Speaker** (Sen. Nyamunga): We are getting very good debates on this. In fact, it is an important Report. I saw it, it is voluminous but it should be seen to the end.

Let us now hear from Sen. Waqo.

**Sen. Waqo:** Madam Temporary Speaker, thank you for allowing me to stand and add my voice to this very important Report. As I begin, I congratulate the Committee whose names of Members have been well captured in the Report. I congratulate especially the Chair who has portrayed very good leadership skills and has also shown that he is a bold leader.

Many times when people are faced with challenges like that, they give up. The cowards always run away but I congratulate our brother because we are proud of what he has done. I was not here when he tabled the Report but I was following and I prayed for him. This Senate is proud of the Committee and we pray that many more will come up and be like his Committee.

Madam Temporary Speaker, we have heard so many stories about Parliament and how we can be compromised. I have not come across any of that in my experience for the few months I have been here. People say many things about us, leaders. As I prepare myself

to give my comments on this, the saddest bit is when leaders are compromised and give a different story from the truth when we know that lives have been lost.

There are those of us who have been touched by national disasters, or a tragedy in life. Therefore, anything like this; touches our lives and moves us completely. My request and prayer to people holding positions in this country and have no feelings for Kenyans, is to try and understand what it means to lose a loved one in such a circumstance. Look at yourself as a human being because your time will come. I am saying this because some have pretended to be very ignorant and have refused to have special feelings for others.

In one of John Stott's books, he said that the world is suffering because we are lacking the listening ear. We are not providing the listening ear to our people. We are here to represent the interests of Kenyans. When discussing such a serious matter and you feel your colleagues are not supporting you, then it is time we, as Kenyans, asked ourselves what we are up to. The tragedy that happened is unfortunate. We lost many lives; women and children. The orphans and widows do not know how to begin their lives again. Therefore, we should all be concerned. The problem with us is that we forget so easily.

In 2006, when there was a plane crash in Marsabit involving senior Government officers, I was at home and I got confused. After that, I asked myself; is this country the same? I was not far from here. I was in Upper Hill and I asked myself whether the city was the same. I was surprised because a day after, we went to Lee funeral Home. I felt bad because I saw some people laughing, others jumping and dancing. Up to date, many Kenyans have the same feeling. I am sure the parents of the children who perished in the road accident are asking themselves: Is the school and this nation the same? Can the Ministry of Education do something? None of us can answer their questions.

The people who have lost their loved ones in the tragedy are asking the same question. Are our neighbours concerned? Are our political leaders concerned? When they see the way we behave and debate they get crashed completely and lose hope in life. It is unfortunate that we keep on debating, arguing and raising our concerns in this honourable House and nothing is done.

It is unfortunate that we sit here and receive our salaries at the end of the month when we know that for the last ten months we have been debating on issues and nothing has happened. Many of us have been debating so that our people on the ground can benefit. If nothing happens then we ask ourselves what we will be doing for the next four years. It is my request to the authorities concerned that we take things seriously. What happens next after the tragedy and writing of this report?

It is clear that the owners of the dam did not take whatever they were doing seriously. In the Committee's Report, they stated that "Similarly the Committee notes that the owners of Milmet Dam failed to carry an Environmental Impact Assessment (EIA) as contemplated under the Environmental Management and Coordination Act (EMCA)." They never took it seriously. The meteorological department warned every Kenyan that we would receive heavy rains this season, they would have known.

In 2012, the biggest dam broke its walls and spilled water which should have been the warning, but nobody took it seriously. The families of close to 49 lives we lost are suffering up to date. What has the National Disaster Management Unit done? What can they tell Kenyans? In the Committees' Report, they registered very well under the response to the disaster, the multiagency team consisting of teams from the Kenya Red

Cross Society (KRCS), the National Youth Service (NYS), the Kenya Army, the Kenya Navy, the National Disaster Management Unit, the Kenya Police, World Vision, the County Government of Nakuru and other Non-Governmental Organisations (NGOs) responded to the disaster.

As I was reading the Report, I saw that the owner of the dam gave Kshs35 million. What is Kshs35 million compared to the lives we lost? The support we are giving is not enough and so the recommendations that the Committee has put in place should be honoured and implemented.

The Cabinet Secretary, Ministry of Interior and Coordination of National Government informed the Committee that the Government provides assistance of Kshs50,000 issued to families which cannot even buy the casket. I remember when the tragedy happened some people gave us Kshs50, 000 and we appreciated. However, it is nothing compared to what you have lost and it cannot help you. When a whole Ministry gives Kshs50,000 to people then we have a lot to consider.

Madam Temporary Speaker, we have always debated on disasters and tragedies in this country. My question is to the Government officials who sit in different offices because this report shows that some people slept on their jobs. Why should those people be in those offices now? They should be at home as they wait for the next action.

We have the County Government of Nakuru with a lot of differences here and there. If the political leaders cannot unite at such a time, when can they unite and speak for their people? If the political leaders can victimise each other and side-line one another at this time when their people need them, when can they unite?

When we are campaigning and moving from one place to the other, we all protect our personal interests. This is the time that Nakuru County should stand up as one united team and speak for the poor people who perished due to negligence. This responsibility should be owned by the entire nation. As I said earlier, many are the times when people say that Members of this House are compromised.

If you are among the people who receive bribes and run away with information, I think you are at the wrong place, simply because we are here to be the voice for the voiceless. Kenya is at this pathetic stage because our leaders neglected their roles in the past. If we cannot make a difference, we will not be doing justice to ourselves and to the nation.

As I conclude, Madam Temporary Speaker, the Committee's recommendations should be honoured and, as Sen. Kwamboka suggested, we should have a Committee on Implementation. As I agree with that, my only suggestion would be that we should get the people who have the same passion and who are ready to continue with the same to do this job. However, if we get people who are 50-50, this report will be killed. That, then, will mean that the same Committee is to continue, because we have seen their recommendations, passion and commitment. I suggest that the Committee continues with the job so that we see the success of this good work that they have begun.

Thank you, Madam Temporary Speaker.

*(Applause)*

**The Temporary Speaker** (Sen. Nyamunga): That is a very passionate debate. Proceed, Sen. Shiyonga.

**Sen. Shiyonga:** Thank you much, Madam Temporary Speaker, for giving me this opportunity to add my voice to this Motion. I would like to start by applauding the Committee, led by Sen. Mutula Kilonzo Jnr., for the diligent work done and for the dedication they had to accomplish this giant task.

Madam Temporary Speaker, this report, in itself, is an initial step taken towards justice for the people and victims of the tragedy. It is unfortunate that I am speaking today on the tragedy that happened in Solai on the same date when the US Embassy bomb blast tragedy happened in this country. It is also the same date when the Twin Towers tragedy happened in the USA. What a coincidence!

Madam Temporary Speaker, it is sad to talk about the 48 generations and innocent souls that were lost in this man made tragedy. Since this afternoon began, we have been talking about tragedies that have befallen our people. It is unfortunate that we have systems, departments and organizations in place which do not realize the essence of human lives in this country. I submit that compensation of the families of the victims must be fasttracked to prevent further victimization that may be associated with delayed compensation. If this is done, it will avoid causing more harm to the families that were left behind.

Madam Temporary Speaker, it is, indeed, true that this Committee did excellent work. As my colleagues have said, implementation, follow up and feedback is key for this House. It is unfortunate that Government officials were involved in this particular episode, where they were exchanging lives of these particular individuals with money. This is blood money that cannot save any lives; it is even money that is humiliating. More so, it is saddening that these individuals are still in office and are even threatening the Committee.

If the world, the country and the Government are watching, they should take this matter seriously. It is unfortunate that the Perry's and Patel's, the so-called owners of this particular project, are walking freely because they are supported by their blood money. The recommendations of this Committee need to be taken with the seriousness they deserve so that the people of Solai and any other persons who have fallen victim to such tragedies can be listened to. This should be done so that the voiceless bodies that are now decaying in the soil can get justice.

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

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

Mr. Temporary Speaker, Sir, it is unfortunate that people in today's Government are going scot-free yet we have families of the victims of the Sinai fire, Westgate Mall and other tragedies that have never been compensated. Nobody cares to know how they are doing. It is my wish that the decaying souls of our generation that were taken away will give us a signal on what we can do as a country.

Thank you, Mr. Temporary Speaker, Sir. I rest my point and beg to support the Report.

*(Applause)*

**Sen. Seneta:** Thank you, Mr. Temporary Speaker, Sir, for also giving me a chance to add my voice to this very important Report. From the outset, I congratulate the Committee, which has done quite a commendable job. This time round, we have a Committee that has shown total support to the common poor people of this country. They brought the voice of these people to be heard because this is the first time that the views of the poor against the rich have reached the Floor of this House. I commend them for being bold enough to bring every concerned stakeholder to the table to be listened to and to be heard on this issue of Solai.

Mr. Temporary Speaker, Sir, it is unfortunate that there are quite a number of victims of different tragedies in this country, which happened due to negligence. This country has suffered a great loss because of negligence. Just the other day, we saw victims of the Gikomba fire, which was as a result of negligence by some people. Today, there is demolition of important structures in Kileleshwa because of negligence by some Government agencies.

We have just finished debating the loss of children due to negligence. Therefore, it is time for this country to look into the issue of negligence by our Government agencies.

Mr. Temporary Speaker, Sir, I watched a report yesterday by one of the media houses, where the Water Resources Management Authority (WARMA) and the National Environment Management Authority (NEMA) were demolishing houses that have been built on riparian catchment areas. Why were they allowed to build these houses in the first place? Why did NEMA allow this investor to build a dam in the wrong place and way? Why should we keep quiet about a construction until it causes such big tragedy to our country and then we start looking at compensation?

This Report should be implemented. Its recommendations should be an eye-opener for the Government and all the ministries, who should have done their duty to prevent such a tragedy. This particular Report should be a lesson to many Government agencies that are being corrupted to allow people do wrong things which will eventually cost this country. As leaders of this country and the Senate, we should treat negligence as a special crime. For example, if you cause an accident because of neglecting your duties, you should face the law. We are suffering as a country because people have failed to do their duty.

Mr. Temporary Speaker, Sir, our counties should also learn from this particular tragedy. I am told that they are supposed to have environmental management and coordination committees that should implement the Environmental Management and Coordination Act. If they have these committees in place, they should implement this particular Act, so that our people can be safe. Today, we have investors who are putting up big buildings along our catchment areas, riparian areas and road reserves, thus causing huge losses to the people of this country and the Government.

This particular Report should be implemented and the Government agencies that have been found to have neglected their duties brought to book. I support this Report and urge other Committees to emulate this commendable work. They should come up with reports that can help this country streamline the services that we offer to our people.

Thank you, Mr. Temporary Speaker, Sir.

**Sen. Were:** Thank you, Mr. Temporary Speaker, Sir, for the opportunity to contribute to the Report of the Select Committee on the Solai Dam tragedy. First and

foremost, what happened at Solai Dam, and the events thereafter, is a classic example of impunity in this country; that people can do anything they want for their personal benefit at the expense of the general public and get away with it.

Fortunately for us in this House, we set up a Committee that was incorruptible. That Committee has given us a Report that tells us that this dam was illegal from *ab initio*. So, whatever we discuss thereafter should be on the basis that this dam was illegal. Therefore, everyone who was concerned with the construction of the dam, from the so-called investors, provincial administration, the NEMA, the National Construction Agency (NCA) and WARMA, must take responsibility without asking any questions. I am happy that the Director of Public Prosecutions (DPP) has already identified those who are responsible and the case is in court.

Mr. Temporary Speaker, Sir, we are even told that there was an attempted cover up. How do you cover up something that has killed hundreds of people? The 48 people who perished were from various communities. Therefore, it is not an issue of one community. Forty eight is not a small number of people. These were breadwinners for their families and, therefore, the people who were affected is triple the number of those people who have passed away.

This Report, therefore, should be a yardstick of how we do things in this country, from Parliament, county assemblies, and the agencies that are given the responsibility to investigate such issues that affects a number people.

Mr. Temporary Speaker, Sir, in this Report, we are told that there is no policy or legal framework for disaster management. Fortunately for this country, the Senate has come up with The Disaster Risk Management Bill, sponsored by our great Sen. Mutula Kilonzo Jnr. He should be commended for a good job. We should move very fast with that Bill, so that the issue of lack of policy or legal framework for disaster management is dealt with once and for all.

I conclude by saying that the owners of this dam must be held liable for that tragedy under the law. Since they have 3,500 of acres of land, a percentage of it must be allocated to the affected families.

Thank you, Mr. Temporary Speaker, Sir.

**The Temporary Speaker** (Sen. Lelegwe): Thank you, Hon. Senators. I, therefore, call the Mover of the Report of the Select Committee on the Solai Dam tragedy to reply.

**Sen. Mutula Kilonzo Jnr.:** Thank you, Mr. Temporary Speaker. First, I would like to thank the Senators for their contributions. I have been here for a while, but I have not heard such passionate speeches. I have listened to Sen. (Rev.) Waqo, Sen. Mugo, Sen. Cherargei, Sen. Cheruiyot, Sen. Halake, Sen. Olekina, Sen. Shiyonga and all the other Senators. The Bible says: “The truth shall set you free.” Unfortunately, the pain that you see in the contribution by Sen. (Rev.) Waqo does not leave; I wish it could go. Sometimes, I wish I did not see the pain that I saw in a pregnant Turkana lady who rescued children from mud and water. That trauma will not go and Solai Primary School will never be the same. So, the truth, in this case, will not set us free.

My problem is that the Report is here and we have done what we needed to do. What is going to happen in future is something that I cannot tell. I wish somebody would listen to us. The Senators who have stated here clearly, that this is a country divided into two – the rich and the poor; the haves and the have-nots. This is the county of Karl Marx.



If a son of a poor man in Kenya called “Ole somebody” was the owner of this dam, he would not be treated like a prince, like Mr. Perry Mansukh. Mr. Perry Mansukh has had the liberty to fly to India and he is going again. He is flying first class. He is going to fly, do his business and come back because nothing is going to happen to him. The first order to fly, he got it *ex parte*. Nobody thinks that this man is a criminal.

Mr. Temporary Speaker, Sir, if the Director of Public Prosecutions (DPP) had not recommended charges, we would have recommended for this man to be charged with first degree murder. That is what the owners of the dam in Brazil were charged with – murder – because it is death by deliberate action. When you cause death by deliberate action, you do not get a slap or a pat on your back; you are charged with murder and you treat that person like a murderer.

If these were sons of the people who matter in this country – if it was an accident on Mombasa Road that killed the sons of rich men--- Like I said, if those children in Mwingi were sons of rich people in this country, they would have been flown to Nairobi Hospital by helicopter. However, they died on their way to Nairobi.

Mr. Temporary Speaker, Sir, this is a country of Karl Marx; the bourgeoisie and the proletariat. These children do not matter. They are probably in unmarked graves. In a few days they will be forgotten. If you read the report of Mr. George Kegoro, some people were buried in a hurry. Why? They were in a hurry because they could not contact their relatives. They are buried in the Patel farm. They are forgotten in unmarked graves. That is what happens to people who do not matter.

The Bible says that even if you walk in the valley of shadow of death, you shall fear no evil. Sen. M. Kajwang’ has said that he fears no evil. The ones who wanted to walk the path and walk the talk, through the valley of the shadow of death, we fear no evil because we have conquered in Jesus’ name.

Mr. Temporary Speaker, Sir, I coincidentally saw a report this morning by the Kenya National Commission on Human Rights (KNCHR) who have arrived at the same finding. The same finding that the Chief of Solai was compromised to draw three lists and put his friends. This man is still in office. This is a country of Karl Marx; people who are protected because the people who are their Lords are not the Constitution, but their pockets, money and their stomachs.

Greed is what got Mr. Perry Mansukh to construct a dam like he was God. He attempted to play God and God came down and punished him. I told Mr. Perry Mansukh here that as he celebrates on his 800-acre farm where wildlife live better than people, the cries of these children who were in primary school when they wake up every morning and cannot find their fathers and mothers around the house, will be in his house for the rest of his life.

Mr. Temporary Speaker, Sir, that is the Bible. I am not quoting something that is out of the ordinary. That is what it is. He and his wealth are cursed. He had better begin donating his land to the people of Solai and give them food. The worst thing you can do to a human being is deny them food. This dam has denied people food. They cannot farm or live peacefully because every time they hear a small bang, they think water is coming down.

The circumstances and environment will never be the same in Solai. Those who say that this tragedy was five kilometers are not right because this tragedy was 15 kilometers of flowing water at high speed. Sometimes I think that we should have

extended this investigation to 15 kilometers to check. From the reports I have seen from the national Government, after the Solai trading center, we are not told what happened beyond that.

Mr. Temporary Speaker, Sir, you cannot even trust these county commissioners who were busy dishing money as a consolation and signing for it. The *Daily Mail* in London quoted the story of Kenyan Government officials paying money. Cabinet Secretaries sat here in this beautiful Senate and said that they do not read newspapers or listen to television, and so, they do not know.

That place in the Bible where they say; hear no evil, speak no evil and see no evil. That is what I saw here. Why would people get to that level; worshipping money, just like in the Bible. They would not see any evil. What is our role?

Mr. Temporary Speaker, Sir, as I finish, there is a parable in the Bible about the person who asked; Lord, when did you visit me when I was in prison? When did you clothe me when I did not have clothes? When did you visit me when I was in hospital? That is what the Senate is. The people seated here today do not vote nor live in Nakuru County. We will never ask for a vote in Nakuru County, but history will to show that the Senate of this Republic stood for the truth, the downtrodden and the *mama mboga*; the people who do not matter, when it counts, except when we are looking for their votes.

That is where I put the Governor for Nakuru County. I told him this is not a national function. These are people who voted you in. You should have asked the question. You are waiting for the President to tell you to go and look out for the people who voted for you? That you have no report and you do not know? This is where this country has reached; Karl Marx.

Mr. Temporary Speaker, Sir, laws are made for the rich against the poor. Somebody said that you would not know the pain of losing a child unless you are a mother. How I pray that this country elects more women.

*(Applause)*

This is because women know the pain of losing children. The pain of having 52 orphans just somewhere in Solai. Some place that looks God- forsaken, but is beautiful. May truth and justice be the shield and defender of the 52 orphans of Solai, the 48 Kenyans who lost their lives and the 223 people who were rendered destitute by a man who wanted to play God and have everything to himself, including water. I must say that I have not seen anything worse than this. I hope that the people who we have been tasked with the mandate of doing what is called regulation can do their job.

Mr. Temporary Speaker, Sir, Sen. Seneta has said that the National Environment Management Authority (NEMA) has all of a sudden woken up from its slumber. They have gone and demolished Java Restaurant in Kileleshwa and Kileleshwa Petrol Station, but there are people who have a flat on Argwings Kodhek and a river is under it. Shame on you!

There is a person here at Mbagathi Road near T-Mall, the river passes under his beautiful building, but you did not give the person who runs a chemist in Kileleshwa even notice to remove medicine that is curing Kenyans; the land of Karl Marx where people just oppress their fellow men for the sake of it.

If the governors were to take cue from this, they would ensure that the committees we have proposed under Section 29 are put in force. If there was a committee on national environment in Narok, we would not be having the crisis in Mau Forest today where people are so greedy to have built tents all the way, such that the crocodiles have no place to bask on riparian land. *Tamaa imetufikisha hapo.*

I pray for one gentleman called Noordin Haji. He was seated here. He told us that he was under pressure to charge the watchmen as opposed to the owners of the dam. I wonder who was putting him under that sort of pressure. They are prepared to hide the truth, but I want to tell the people who think that they can buy truth, Senators, or air, that they cannot hide the sun. They will pay. They will perish and where they will go, there will be gnashing of teeth because it will be the hottest place in hell. Even their children will suffer the curses of the blood money that they are keeping in their pockets.

I beg to move.

**The Temporary Speaker** (Sen. Lelegwe): Thank you, Hon. Senators. I have determined that the Motion does not affect the counties. I, therefore, proceed to put the question.

*(Question put and agreed to)*

## BILLS

### *Second Reading*

#### THE LOCAL CONTENT BILL (SENATE BILLS NO.10 OF 2018)

Hon. Senators, Order No.10, the Local Content Bill (Senate Bills No.10 of 2018) is deferred.

*(Bill deferred)*

### *Second Reading*

#### THE IMPEACHMENT PROCEDURE BILL (SENATE BILLS NO. 15 OF 2018)

**The Temporary Speaker** (Sen. Lelegwe): I call upon the Mover to move the Bill.

**Sen. Cherargei:** Thank you, Mr. Temporary Speaker, Sir, for the opportunity. I want to thank the Chairperson of the Select Committee on the Solai Dam Tragedy and his Committee Members who stood against “the axis of evil”. We are proud of them because they are profiling the Senate very well.

Secondly, I did not have the opportunity to condole with the parents who lost 10 children in Mwingi, Kitui County through a road accident. On behalf of the people of Nandi and myself, I want to pass our heartfelt condolences and wish those in hospital a quick recovery. I hope the necessary agencies that are tasked with such work, especially

in responsive mechanisms, will ensure that our children are safe. I hope that we will prevent more fatalities on our roads this season.

Thirdly, I was privileged to host the reigning champion of the 3,000 metres steeple chase, Mr. Conseslus Kipruto. I want to congratulate the entire team that went to Nigeria. We are proud of them. Athletics is one of the things that has given a trademark to this country. I do not know what the Brand Kenya corporation is doing, but I hope that they can use our athletes, footballers and other sportsmen, so as to show them that we are proud of them.

The Impeachment Procedure Bill (Senate Bills No.15 of 2018) has generated a lot of debate because, from the first time, we have come up with a legal framework.

**The Temporary Speaker** (Sen. Lelegwe): Order, Hon. Chairperson. You need to follow the procedure. In moving the Bill, you need to say; ‘Mr. Temporary Speaker, I beg to move the Bill’ then you read the content of the Bill.

**Sen. Cherargei:** My apologies, Mr. Temporary Speaker, Sir. I think that I was carried away by the Solai issue.

Hon. Temporary Speaker, Sir, I beg to move that the Impeachment Procedure Bill (Senate Bills No. 15 of 2018) and indicate that the principal purpose of the Bill is to provide for the procedure---

**Sen. (Dr.) Zani:** On a point of order, Mr. Temporary Speaker, Sir.

**The Temporary Speaker** (Sen. Lelegwe): Continue, Sen. (Dr.) Zani.

**Sen. (Dr.) Zani:** Thank you, Mr. Temporary Speaker, Sir. I want to go back to the procedure of moving that Bill. I thought that he needed to say that ‘I beg to move that this Bill be read a Second Time’. I think that is what is supposed to be said. Otherwise, we will not have read it a second time which is important.

**The Temporary Speaker** (Sen. Lelegwe): Proceed, Sen. Cherargei.

**Sen. Cherargei:** Mr. Temporary Speaker, Sir, I beg to move that the Impeachment Procedure Bill (Senate Bills No. 15 of 2018) be now read a Second Time.

As I said, I do not know what is happening today. I have had a run-in the whole afternoon, starting from the time when I moved the notice of Motion. I do not know if the Solai issues have affected me.

This Bill is for the procedure of the removal of the President, Deputy President, Governor, Deputy Governor and Members of the County Executive. The impeachment process anywhere across the world is a political process. However, we are giving impetus and ensuring that we create a legal framework where the impeachment of the President, Deputy President, Governor, Deputy Governor and Members of the County Executive can be done in a more structured and legal way.

It is good to note at this point that Articles 145 and 150(1)(b) and (2) of the Constitution of Kenya have provided for an elaborate procedure on how a President or a Deputy President can be impeached. Therefore, it is “copy and paste”. Essentially, we have relooked at this Bill and the process that is always there has now been elaborated and has been given in detail.

The procedure for the removal of the President and the Deputy President by impeachment may be described as an indictment chamber while the Senate is the trial chamber. The Senators are the main people who prosecute while the Senate is the trial chamber. As you are aware, it is like a quasi-judicial process. They ensure that they prosecute and that is why it is called a trial chamber.

Although the Constitution under Article 152(6) provides that a Member of the National Assembly--- by at least quarter of all Members may move a Motion to require the President--- Sorry, my apologies. I got mixed up.

Article 152(6) of the Constitution requires that-

“A member of the National Assembly, supported by at least one-quarter of all the members of the Assembly, may propose a motion requiring the President to dismiss a Cabinet Secretary—

(a) on the ground of a gross violation of a provision of this Constitution or of any other law;”

Going further, this is pegged on Article 152(7), which states that-

“If a motion under clause (6) is supported by at least one-third of the members of the National Assembly—”

That is the overview of the Bill that we are trying to look at.

Mr. Temporary Speaker, Sir, Article 181 has also, in itself, provided how a county governor should be removed. I know that you and all the Senators are very keen on this, because there is a specific interest, especially considering that, as all of us are aware, one of the key roles of the Senate is to ensure that we oversight counties. There are so many impeachment proceedings for governors that this House has processed before, although some of us did not have the privilege of being there.

Sen. Mutula Kilonzo Jnr. was in the last Senate and they prosecuted quite a number of impeachment proceedings. The major obstacle at that time was the procedure. However, we have now ensured that even as the county assemblies generate that impeachment process from the lowest level, they should do it within a prescribed form and within the law so that it becomes easy.

Mr. Temporary Speaker, Sir, as an overview of the impeachment proceedings, when a Member of the National Assembly submits a Motion in the prescribed form, this is key because it makes it easy to tie it with the tradition, usage and the procedure that has been provided. When that Motion is supported by at least one third of the Members of the National Assembly and forwarded to the Clerk of the National Assembly, the Clerk must be satisfied that it complies with the Act.

Many people will ask whether we are giving too much power to the Clerk; no, we are not. The Clerk is just to cross check whether it complies with the requirement of the law that it should be supported by a third of the Members as required. They will check to ensure that it complies with the law and not for approving or disapproving it. Therefore, that is the standard. If the Clerk is satisfied that the Motion complies with the Act, he will submit it to the Speaker of the National Assembly.

Many people have said that we are giving power to the Speaker, but we are not. I do not want to cast aspersions, but we believe that the Speaker of the National Assembly and the Speaker of the Senate are men of integrity; are beyond reproach and like Caesar's wife, are above suspicion. Therefore, they are the ones who will examine the Motion. That is the power that people are saying we have given too much of to the Speakers. The Speaker will examine it within three days.

Of course, we do not anticipate that during the lifetime of this Parliament, someone will want to impeach the President or the Deputy President. However, we will, of course, see many impeachments of governors. That wisdom is, therefore, needed,

explaining why we will need Speakers who have Solomonic wisdom so as to ensure that they agree within three days.

After the three days, if in the wisdom of the Speaker, the Motion is approved, then that matter should be disposed of with the Moving of the Motion as required within 14 days. Someone might ask what the law provides for if the Speaker rejects the Motion. We have followed the principles of natural justice, where one must give reasons for decisions made. If it is the reason of procedure or if it was done in bad faith or that it does not comply with the Constitution or any tradition and many other laws that govern our country, especially the supreme law--- It is then after that time, I do not want to dwell so much on the details, that the National Assembly must be seized of, or dispose of the matter within seven days.

After that, Mr. Temporary Speaker, Sir, if the matter is approved, it shall be transmitted to the Speaker of the Senate within two days and, therefore, it will not proceed. Clause 5(1) states that-

“Pursuant to Article 145(3) of the Constitution, within seven days after receiving the notice of a resolution from the Speaker of the National Assembly under section 4(8)(a)

(a)The Speaker of the Senate shall convene a meeting of the Senate to hear charges against the President.”

This is very important, and that is why we are calling the Senate a trial chamber.

*(Sen. Kang'ata consulted with the Temporary Speaker)*

Mr. Temporary Speaker, Sir, I do not know why the Acting Senate Majority Leader is excited; maybe he has taken tea at the Senators' Lounge and, therefore, the sugar levels are good.

I know that Kenyans are curious. The process of convening a meeting of the Senate within seven days is the same that we use for impeachment procedures of governors. I, therefore, need to copy and paste so that Kenyans can understand that the matter is brought to the Senate, which now sits and hears the charges against the President.

Clause 5(b) says-

“The Senate, by resolution, may appoint a special committee comprising eleven of its Members to investigate the matter.”

The role of this special committee is to investigate the allegations against the President. If the special Committee finds any of the allegations to be substantiated, the Senate is to vote on the impeachment charges.

Mr. Temporary Speaker, Sir, even as the Senate sits and looks at the charges, we have also taken consideration of the principles of natural justice where the President has an opportunity to come to this Senate and defend himself. This is the same way where, in the last Senate, governors could, either through their legalrepresentatives or any other way, defend themselves. The President will come here, having been given a date, place and time of hearing.

Mr. Temporary Speaker, Sir, Clause 5(7) states:-

“Pursuant to Article 145(7) of the constitution, if at least two-thirds of all Members of the Senate vote to uphold any impeachment charge, the President ceases to hold office.”

Anywhere across the world, the impeachment procedure has always been a political process more than a legal one.

Clause 7 states-

“Pursuant to Article 150(2) of the Constitution, the provisions of Sections 3 to 6, relating to the removal of the President, shall apply, with necessary modifications, to the removal of the Deputy President, by impeachment, under Article 150(b) of the Constitution.”

I would not want to go through that part because it seems to be clear and, therefore, we should ensure we look at it.

Mr. Temporary Speaker, Sir, on the removal of the Cabinet Secretary, Part III of the proposed Bill has prescribed the procedure. Clause 9(2) states-

“A Member of the National Assembly who proposes a motion for the removal of a Cabinet Secretary under subsection (1) shall submit to the Clerk of the National Assembly a copy of the proposed motion for the removal of the Cabinet Secretary together with a list of the Members of the National Assembly who support the motion, in the form prescribed in the Schedule.”

The Clerk of the National Assembly will look at that Motion and if it complies with the law, shall submit it to the Speaker.

Clause 9(5) says-

“The Speaker shall examine the proposed motion and the list containing the names of the supporting members submitted under subsection (2), and if satisfied that the motion—

(a) complies with subsection (1), approve it and inform the Member within three days; ”

Of course, we expect the Speaker of the National Assembly, with the guidance of Solomonic wisdom – I would not want to say lack of it – will, within three days, be seized of the matter. If it will be supported by at least a third, then the National Assembly will also be called upon to form a select committee that will investigate the allegations within ten days. Therefore, there is a timeline so that we prevent the stretching.

Mr. Temporary Speaker, Sir, I hope that when such issues will come, we will look forward to our colleagues rising and standing up on a pedestal of integrity as a paragon of hope against corruption. Going by what we have seen before, especially on the issues of sugar, which has become bitter-sweet sugar in this country, we will hope and expect that Members of the National Assembly shall, within ten days investigate allegations against Cabinet Secretaries.

I saw one Cabinet Secretary (CS) - I do not want to discuss him - raising a lot of issues about some rhinos. I think the eleventh one died yesterday; may its soul rest in peace. They were the pride of this Country.

The Select Committee shall sit within ten days and I hope that the Cabinet Secretaries will not tell us to go to hell. This is in compliance with Chapter Six of the Constitution on Leadership and Integrity. If the allegations are unsubstantiated, no further proceedings shall go on. If the resolution requiring the Cabinet Secretary to be dismissed

is supported by the majority by acclamation, the President has an obligation to dismiss that Cabinet Secretary.

I urge Senators and the Members of the National Assembly to support this Bill. If they do so, many CSs will be on the chopping board, so that we can safeguard the integrity of this country. I am not casting aspersions on a court of law, but given the way Chapter Six of the Constitution is being violated, if this Bill is passed, we will correct many wrongs that have been committed.

The Bill has a provision that will ensure we are not unfair to the CSs. They will have the right to be heard. They will appear before the select committee during its investigations. That is why we have principles of natural justice; the right to be heard and to a fair and just process.

Part IV of the Bill, on the procedure for removal from office, by Impeachment, of a governor and a deputy governor is of interest to many Kenyans. I hope there are no Senators who intend to sponsor such Motions at the lowest level. A member of a county assembly who intends to move such a Motion shall submit to the Speaker of the county assembly the Motion together with a list of the members of the county assembly who support the Motion, in the form prescribed in the Schedule. So, there will be a system with no challenges.

Mr. Temporary Speaker, Sir, you are the Senator for the great people of Samburu and know that capacity sometimes is an issue. I am not saying that we have illiterate Members of County Assemblies (MCAs) who have not gone to school, but capacity is still a challenge. Therefore, we have provided for a prescribed form that an MCA can fill if the governor violates Article 181 of the Constitution.

The speakers of the county assemblies have been put on a high pedestal. Even though there are many complexities that come with Motions to impeach Governors, it will depend on the 47 county speakers - if they are men and women of integrity - to decline or approve such Motions.

If the speaker of, for example, the county assemblies of Nandi, Makueni or Mombasa will look at the Motion and decline to approve it, they must give reasons for refusal. This is to avoid scenarios where a speaker with vested interests declines to approve the Motion. We are putting them to task to give their reasons. That is what is important. If the speaker fails to respond within seven days of receiving the Motion, the Motion shall be deemed to have been approved. So, we have ensured that the process of impeachment is tight.

In Kenya we have a challenge with the deputy speakers in the county assemblies. This is something we have discussed in my Committee. The speaker can be 'technically' absent, go on paternity leave or become 'technically' sick and an impeachment Motion is on his table. We have guarded against such cases in the Bill. The Bill says that if there is no response from the Speaker within seven days, the motion will be deemed approved. So, if there is vested interest, we have protected that. That is the case with regard to any Bills that the President fails to assent to.

We have also given timelines. The clerk of the county assembly shall, at least seven days before the date on which the motion is to be moved in the assembly, serve the governor with a copy of the motion and invite the governor to appear and be heard by the county assembly. I stand to be corrected on Gov. Wambora's impeachment case. One of the reasons the charges preferred against him were dismissed, is because, at that point in



time, the principles of natural justice were not followed. That is why the Bill seeks to give the governor an opportunity to be heard, so that a fair and just process is conducted.

If the motion is supported by at least two-thirds of all the members of the county assembly, the speaker of the county assembly shall inform the Speaker of the Senate of that resolution within three days. Within ten days after receiving the resolution from the speaker of the county assembly, the Speaker of the Senate shall convene a meeting of the Senate to hear the charges against the governor. In this regard, the Senate may investigate the matter with or without the involvement of a special committee.

I know that in the past, this House has used a special committee to hear impeachment cases. Therefore, this will be dependent on the wisdom of the Speaker. If the Speaker deems that the charges drawn against the governor will be prosecuted in a fair and just manner by a special committee, he shall so direct. However, that will not be an impediment to the successful prosecution of that matter.

At the beginning, I said that this House will be a trial chamber on this matter. We will use county delegations when voting on this matter. That means that if you are not in a delegation, you will have no vote. Of course, if you are a Nominated Member you know your delegation. If the charges against the governor are upheld, he will cease to hold office. The Speaker of the Senate will inform the speaker of the county assembly about that resolution. If the Senate vote fails to result in the removal of the governor, then a motion to impeach the governor on the same charges may only be introduced in the county assembly 90 days from the date of the previous Senate vote.

If a matter arises and a county assembly wants to impeach a governor, and I do not want to say which governor looks impeachable--- What happens, for example, when a motion to remove the governor of County "X" from office is passed by the county assembly and the vote in the Senate fails? We have put a stop-gap measure in the Bill of 90 days, which translates to three months. There is the principle of double jeopardy in criminal law, where you cannot bring the same charges over the same issue. So, if you do not take care, within one week, the MCAs may bring back that matter. The same procedure should apply for the governors. We only need to modify the procedure of the deputy governor.

I have heard that the governors are uncomfortable with this Bill. I know that many governors are serving their second term and they are headed here. This is being called the trial chamber. We in the trial chamber are preparing the ground-work for them. When Sen. Mutula Kilonzo Jnr. goes back to the village, God willing, to be the Governor of Makueni County, the person who will end up as the next Senator of Makueni County should have a proper legislative and policy framework in case Sen. Mutula Kilonzo Jnr. violates the Constitution or has gross misconduct while serving as the governor.

I would like to assure the Council of Governors (CoG) that this is not an animal kingdom where other animals are more equal than others. This is where we apply equity and equality in the same measure. Therefore, they should not be uncomfortable with this Bill. It is not a witch-hunt. We are not making this law in bad faith or because the Senators are interested in running for the gubernatorial seats, be it in Samburu or wherever else.

Mr. Temporary Speaker, Sir, I know that your Governor is serving the second term. I also know that there are many people who are salivating over his seat and he might want to run for the Senate, therefore, this is not in bad faith. I would like to advice

the CoG led by their able Chair, Governor Nanok, that they should not worry. We are just ensuring that we build the legislative mandate.

I am a lawyer and Senior counsel, Sen. Omogeni here and Sen. Mutula Kilonzo Jnr. said earlier today that there are three senior counsels in this House. In law, there is what we call precedence. We have also given courts of law the aspect where they can grow the law through the interpretation of the Constitution and the precedence that we set in courts. The law grows daily. The laws that we put in place will ensure that devolution works.

This law should not scare governors. Why should they be scared if they know that they have not violated the law? We are not saying that this is politically motivated and that governors should give hand-outs. This law will apply if one violates the law. If the President and the Deputy President violate the Constitution under the provisions of the law, they can be removed from office.

Mr. Temporary Speaker, Sir, we should tell the governors that unless they are planning to violate the law, they should not be scared. I found it laughable when I saw governors at a press conference. We have three learned senior counsels including myself and I think that we should give the Governors *pro-bono* services. I heard Sen. Mutula Kilonzo Jnr. say that he used to advise one of us here and had he taken his advice seriously, he would not have taken the route that he did.

We have three senior counsels in this House, if the CoG needs legal advice. I was shocked when I saw them issue a press conference to say that they should be excluded in the fight against corruption. Unless they are premeditating to commit an offence, why should they worry about a law that will come into place? If they have no intention of violating the law, why are they saying that this is witch-hunt? They are now telling the Members of the National Assembly that the Senators are going for their jobs. The decision of whether to vote in a governor or not is not ours.

Mr. Temporary Speaker, Sir, I know that Sen. Olekina's governor, Gov. Samuel Kuntai Ole Tunai, is serving a second term. We are, therefore, preparing Sen. Olekina for a better tomorrow, such that when he becomes the Governor of Narok County, we will have a legal framework so that by the time he is impeached, he will feel that the law has been fair. It is as simple as that and that is our business as the Senate. Therefore, why would my governor or any other governor be worried about this law?

This law is trying to bring order. When you study the social foundations of law which I was taught by Prof. Tom Ojienda and Prof. Mutakha Kangu, I learned that according to Thomas Hobbes, Jeremy Bentham and Kantian Theory in, FLB 101, Social Foundations of Law, the reason all of us surrender our institution called governance is not governance to create anarchy, but to create law and order. I am just paraphrasing; that is Thomas Hobbes and also Jeremy Bentham says: "Life at that time was short, nasty and brutish." I want to tell the governors, let us not be worried about this law.

Mr. Temporary Speaker, I do not know whether the charges against violation of Mau issues can be used to impeach a governor. Maybe, when Sen. Olekina will be contributing on this, he will tell us if that is a violation of the law.

On the issue of removal of a County Executive Committee Member, it is almost the same process. I think we have created all the prescribed forms. This can be achieved by a Member of the County Assembly submitting to the Speaker of the respective county assembly a Motion in a prescribed form by at least one-third. We have tried to ensure that

we create a standard procedure, so that the Speaker does not have a reason. If we had given them room without a prescribed form in the impeachment of a CEC, maybe an MCA can decide to engage an advocate or decide to represent himself. So, the Speaker should not have an excuse because it is a prescribed form where you do a checklist.

We have assisted the Clerk to do a checklist. By the time he is approving, it becomes easy for him. If one-third of the MCAs agree, then the process of removing a CEC Member can commence. In Vihiga County, for example, they removed two CECs by at least one-third. The process is almost similar with the requirements. The MCA intending to move the Motion notifies the Speaker within two days. If the Speaker declines to approve it, he shall inform the Member within two days.

We have reduced for the governor to be four days and for the CEC to be two days. The reasons must be given. The reason we are doing so, it is not a tradition that we want to perpetuate, but we are trying to ensure that we focus on ensuring the process is perfect.

Mr. Temporary Speaker, Sir, the Member is required to move the Motion and be supported by at least one-third. The county assembly shall appoint a select committee to investigate within 14 days. The MCA has a right to appear and be represented before the select committee during investigation.

On the same process of natural principles, we have also ensured that an MCA and governors should come, kneeling down and thanking us and saying: "Long live the Senate! Hail the Senate!". This is because in the past they could not fire a CEC. In Bomet County, for example, there was a CEC who was fired by Governor Isaac Rutto, but he could not go home because there was no law in place.

The governors should look at the Senate as a partner, not in crime, graft, corruption and lethargy in counties, but as a partner of changing the lives of the people at the lowest level, even along the cutline in Mau. I know the sugar levels of my good friend Sen. Olekina---

**The Temporary Speaker** (Sen. Lelegwe): Sen. Cherargei, you have 23 minutes to continue moving when debate on this Bill resumes.

### ADJOURNMENT

**The Temporary Speaker** (Sen. Lelegwe): Hon. Senators, it is now 6.30 p.m., time to interrupt the business of the Senate. The Senate, therefore, stands adjourned to Wednesday, 8<sup>th</sup> August, 2018, at 2.30 p.m.

The Senate rose at 6.30 p.m.