

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Tuesday, 5th June, 2018

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

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

PRAYER

PAPERS LAID

Sen. Kihika: Mr. Speaker, Sir, I beg to lay the following Papers on the Table of the Senate today Tuesday, 5th June, 2018-

REPORT ON THE MARSABIT COUNTY EXECUTIVE SOCIAL PROTECTION FUND

Report of the Auditor General on the Marsabit County Executive Social protection Fund for the year ended 30th June, 2017

REPORT ON THE MARSABIT COUNTY GOVERNMENT SCHOLARSHIP FUND

Report of the Auditor General on the Marsabit County Government Scholarship Fund for the year ended 30th June, 2017

REPORT ON THE FINANCIAL STATEMENT OF THARAKA-NITHI COUNTY ASSEMBLY REVOLVING FUND

Report of the Auditor General on the Financial Statements of Tharaka-Nithi County Assembly Revolving Fund for the year ended 30th June, 2017

(Sen. Kihika laid the documents on the Table)

The Speaker (Hon.) Lusaka: Next order.

(The Speaker consulted with the Clerks-at-the-Table)

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Proceed, Sen. Poghisio.

(Sen. Poghisio consulted with the Clerks-at-the-Table)

REPORT ON THE INDUCTION WORKSHOP OF THE
COMMITTEE ON DELEGATED LEGISLATION

Sen. Poghisio: Mr. Speaker, Sir, I beg to lay on the Table of the Senate the Report of the Induction Workshop of the Sessional Committee on Delegated Legislation held in the Four Points Hotel by the Sheraton, Nairobi from 10th to 12th March, 2018.

(Sen. Poghisio laid the document on the Table)

The Speaker (Hon.) Lusaka: Next order. Where is Sen. Sylvia Kasanga?
Let us move to the next order.

(The Speaker consulted with the Clerks-at-the-Table)

Hon. Senators, we have rearranged our Order Paper. We will go to Order No.14.

MOTION

ESTABLISHMENT OF SELECT COMMITTEE ON
THE SOLAI DAM TRAGEDY

Sen. Kihika: Mr. Speaker, Sir, I beg to move the following Motion –

AWARE THAT on Wednesday, 10th May, 2018, Kenyans woke up to the tragic news of the Solai Dam Tragedy following the bursting of the banks of the privately owned Solai Dam the previous night;

CONCERNED THAT, as result of the tragedy, approximately fifty (50) people lost their lives - most of them being small school-going children - in the most unfortunate circumstances and that many more who survived are now hospitalized due to the bodily and psychological injuries inflicted on the them;

FURTHER CONCERNED THAT hundreds of families are now homeless with orphans and destitute among them and that majority of the people who had their own habitations, whether own homes, rental or farm quarters, have not been resettled;

APPRECIATING the good work of the Red Cross Society of Kenya and the National Government for their swift response upon receiving the information of the dam tragedy;

DEEPLY CONCERNED THAT this human catastrophe occurred despite the existence of the Water Resources Management Authority

(WARMA), an institution created by the Water Act of 2002 and mandated to ensure rational and effective management of water resources;

FURTHER CONCERNED THAT WARMA does not have a framework on licensing, construction, usage, sharing of dam water resources, insurance and inspection of earth dams and that currently there are no standards which dam owners are required to adhere to and comply with;

ALSO CONCERNED THAT although WARMA knew that the Solai Dam posed a great risk to Kenyans living downstream, they did little or nothing to avert the danger and that the Solai Dam tragedy appears to have occurred as a result of negligence;

NOTING WITH CONCERN the sad revelations following an investigative report by Kenya Human Rights Commission (KHRC) on the Solai Dam tragedy that point to ignorance and a suspicious relationship between the owners of the Dam (the Mansukh Patel family), the National Environmental Management Authority (NEMA) and WARMA officials in their singular and joint omission that resulted in failure to act on early warning information given to them about the impending danger, and the continued failure by NEMA to put in place standards on quality of dam walls and regulations to address the downstream effects and impact of dams whose walls burst, especially the protection and restoration of the flora and fauna and the environment in general;

APPREHENSIVE THAT with the continuing heavy rainfall, now and in future, such incidents as the Solai one could happen elsewhere in Kenya;

DESIREROUS of the need to take steps towards ensuring that similar man-made disasters are prevented from recurring;

NOW THEREFORE the Senate resolves to establish a select committee to

- a) holistically investigate and establish the circumstances leading to the Solai Dam Tragedy;
- b) propose modalities for compensation of all the families of the deceased victims and the surviving families;
- c) ensure the Dam owner makes compensation in regard to the destroyed environment, especially trees and other vegetation and top fertile soils; and
- d) propose measures to mitigate any such eventual disasters especially for Counties that are prone to floods and landslides.

AND THAT the following Senators be members of the Select Committee

- (i) Sen. Fatuma Dullo, CBS, MP;
- (ii) Sen. Mithika Linturi, MP;
- (iii) Sen. Sakaja Johnson, MP;
- (iv) Sen. (Eng.) Ephraim Maina, EBS, MP;

- (v) Sen. Mutula Kilonzo Junior, MP;
- (vi) Sen. (Prof.) Imana Malachy, MP;
- (vii) Sen. (Arch.) Sylvia Kasanga, MP;
- (viii) Sen. Ledama Olekina, MP; and
- (ix) Sen. Susan Kihika, MP.

AND FURTHER THAT the Select Committee reports back to the Senate within 60 calendar days after its establishment.

Mr. Speaker, Sir, I rise to move this Motion on the establishment of the Select Committee to investigate the circumstances that led to the Solai Dam tragedy. It was one of those horrendous tragedies that we all woke up to. We saw the kind of loss that can occur due to negligence of different parties that are put together to make sure that there is sanity in this area. It is because of this that I bring this Motion to establish a Select Committee to get to the bottom of what happened on that day and also beyond that, have the Committee determine if there was negligence on any party.

The committee should also find out different ways that the victims, survivors and the homeless can be compensated in a bid to make them whole again. The Committee should also determine whether some of the agencies that have been entrusted with ensuring that this sort of disasters do not happen have been carrying out their jobs properly. If not, the Committee should then look into what needs to be done so that this does not keep happening.

Mr. Speaker, Sir, allow me to give a little bit of a background. When this incident occurred and the dam burst its walls, it was late at night; at about 8.30 p.m. When the dam – which is build upstream and had more water than it had been licensed to carry – broke its banks, it caused so much damage that it carried away two whole villages.

It was a wave that was about a metre and a half high that travelled downstream very quickly to the settlements further downstream. This very powerful wave travelled for about 15 kilometres and it caused a lot of damage in its wake. Like I said earlier, a lot of people lost their lives as a result. At the moment, the count is 48 people, but many more were injured and hundreds were rendered homeless.

Mr. Speaker, Sir, I also take note that the Senate Standing Committee on Security, Defence and Foreign Relations visited that area immediately this tragedy occurred. The Committee was led by our able Chairman, Sen. Haji and Committee Members Sen. Dullo, Sen. Kwamboka and I. We were able to get to the ground very quickly for a fact finding mission. This Motion is in pursuit of the initial findings of this Committee, which recommended that a Select Committee of the Senate be established for thorough investigations on the circumstances surrounding the breaking of the walls of the dam and the subsequent catastrophe. The rallying call for this Select Committee of the House is to ensure justice for the victims as well as to make recommendations on how to prevent such occurrences in the future.

Mr. Speaker, Sir, let me focus on the killer dam. Reports from an initial investigation indicate that a wall of the dam build on high ground plunged down in darkness, sweeping homes, cars, mud and huge rocks towards sleeping villages. The flood waters swept across Nyakinyua village at a very high speed, washing away homes

in this village and at the another neighbouring village in pitch darkness. In the process, it destroyed everything in its path, including a primary school and power lines.

This dam was holding a bigger quantity of water than it was designed to. The killer dam is owned by Mansukulal Patel, a farmer in the area. The dam was designed to hold 50,000 cubic meters, but it had over five times this capacity when the walls and embankments – which were being added from time to time without any structural integrity – came apart.

Mr. Speaker, Sir, this dam lies adjacent to and draws its water from River Kabazi. The dam also drains its water to another dam next to Kamukunji trading centre. The Patel Farm in Solai has a horticulture farm, a coffee plantation and they are also involved in large scale dairy farming. There is a problem here, particularly on the issue of blocking the rivers in this area and diverting them to a private farm, in this case the Solai Farm.

This has the effect of leaving residents in the area at the mercy of the little water that the farm owner then releases and acts as though it is a Community Social Responsibility (CSR) while, indeed, he has blocked all the rivers in the area. In Solai, where the farm is located, access to the expansive farm, including six other mega dams, is strictly restricted. The farm neighbours Marigwe, Nyakinyua, Solai and Kabazi villages; and the very fact of holding water in a poorly constructed upstream dam has been a big danger to the residents of this area. It is also against the Water Resources Management Authority (WARMA) regulations and licensing standards of sharing of water resources.

Mr. Speaker, Sir, although the Patel family has been involved in a number of CSR activities like building a classroom at Solai Secondary School and equipping a maternity ward at a local health centre, they have completely denied surrounding communities access and sharing of water, which is their basic right. To make matters worse, there are several dams within their farm; actually a total of seven dams, as the Standing Committee on Security Defence and Foreign Relations determined when they went on the ground for a fact finding mission.

What is scary is that the WARMA officials then stated that the only dam that was licenced, in spite of having seven, is actually the one that broke its walls. This then makes one wonder what the other dams look like and whether they should be allowed to continue being in place. As we speak and following this tragedy, two of these dams were professionally drained by WARMA officials as they, too, posed great danger to the residents of the area, just like the dam that broke its walls. It will be upon the select committee to find out whether the other dams on the property are legal and whether they meet the required standards of construction, maintenance and capacity for security and safety purposes.

The Kenya Water Resource Management Authority (WARMA) is the lead agency that is mandated to manage the water resources in the country. The questions that come to mind are; how do earth dams get licensed? Are there regular inspections? Does the WARMA have adherence standards which dam owners must comply with? What are the regulations on construction, usage and sharing of the dammed water and the insurance aspects in relation to those dams?

The WARMA is squarely on the spot for sleeping on their mandate. As a regulatory authority in this regard, the buck is on their table. The very acknowledgement

by the WARMA that they knew of the dams and that there had been visits to the farm but they had been refused access and the fact that there had been reports on the concerns noted and the actions called for points to a carefree approach and attitude on the part of the authority, especially the ones in Nakuru County Office.

The committee will also be tasked with finding out whether the WARMA maintains a record of visits to all the farms and what they do when they are not allowed to access the farm. They will also delve into how this House can establish whether in the first place the officers ever visited the Solai Farm and what they did once they were refused entry. Is it just that once they are chased away then they leave never to go back and not do anything anymore? Those are some of the questions that the select committee will seek to unravel.

So far, the blame game that has been witnessed between the farm management and the WARMA has not helped explain why 48 lives were lost as we speak. The legality of the dams is also clearly in doubt. The WARMA officers stated that they had ordered Mr. Patel to regularize the ill-fated dams to which a farm manager had retorted by a one-line sentence that the dam was already licensed. The truth is yet to be ascertained.

It is utterly ridiculous and irresponsible to say the very least. How can they license a structure whose construction they do not inspect? Are the dams expected to be insured in the event of such eventualities of bursting the embankment walls and causing deaths and destruction as the Solai Dam did?

It is very unfortunate when a state corporation acts in such a manner. It is very uncaring of the threats to life posed by the dams and it could be the same case across the country. Therefore, action must be taken now before it is too late.

The underlying reason behind this Motion is that a few weeks ago, it was Nakuru and specifically the people of Solai who bore the brunt of this kind of impunity towards human life. Tomorrow it could be in another part of the country. This House has to take remedial action that will help to mitigate and prevent future occurrences of such disasters.

After the disaster happened, the Cabinet Secretary for Water and Sanitation saw the need to order for inspections and review of licensing of earth dams in the country. It is most unfortunate that the Solai Dam Tragedy had to happen for the Ministry to wake up from slumber and statutory neglect. It is my hope that the Cabinet Secretary will not call for a task force. Indeed, the said inspection of earth dams in the country is further wastage of public resources as a result of the officers' negligence.

The deaths could have been prevented and destruction to property could have been avoided had the WARMA acted decisively on the residents' complaints of spillage in 2015 which caused a scare though no life or property was lost at that time. Had they taken action, the occurrences two years after would have been prevented.

Compensation for the victims of the Solai Dam Tragedy has been mentioned and no one is ready to state matters as they are. There is a principle on destruction of the environment, especially on pollution, called; the Polluter Pays Principle. The principle compels any person, be it an individual or corporate, to compensate for any pollution caused by their actions; if their actions, either through omission or commission, may lead to pollution of the environment. I am drawing upon this principle because as the Senator for Nakuru, I cannot comprehend how the families will normalize their lives.

Mr. Speaker, Sir, and hon. Senators, let me indulge you on compensations which have happened in this country when accidents of such magnitude have happened. There was compensation for the Mtongwe Ferry Disaster, the Kathekani Train Disaster and the American Embassy Bomb Victims, to name but a few.

I wish to ask the Senators to support the committee and to support me as well as the leaders of Nakuru in demanding for justice and fair treatment of the victims. Justice can only be found when a select committee of this House is established to unearth the happenings, summon the farm owner, hear the victims, summon regulatory agencies and recommend to the House and the national Government on how to deal with the aftermath of the Solai Dam Tragedy.

The national Government offered support to cater for funeral expenses of the victims only but the challenge of the survivors still remain. Their resettlement compensation can only get the legal basis through a select committee of this House.

There is a need to remove the cloak surrounding the manner the farm is managed as well. Though it is private property, it has a direct impact and relation with the neighbouring community. There seems to be a strong relationship between the local administration, state corporation officers and the farm management which has directly and indirectly affected the interests, rights and welfare of Solai residents. That is the reason why I am pushing for the Motion that this House establishes a select committee because if the fate and pending matters of survivors as well as families of victims are left in the hands of the local administration, no justice will come out of it.

As representatives of the people, let us stand up for their rights. Lives cannot be restored to what they used to be but the recommendations on the resettlement and compensation can make life bearable for those people.

As I conclude, I urge Senators to support this Motion and make it symbolic in remembrance of the Solai Dam Tragedy Victims, by appointing a select committee that will unearth all issues and make recommendations that will make the departed souls rest in peace because of the justice that will be dispensed by this House.

Mr. Speaker, Sir, I beg to move and call upon Sen. Olekina to second the Motion.

Sen. Olekina: Mr. Speaker, Sir, I rise to second the Motion on the establishment of a select committee to investigate the circumstances that led to the Solai Dam Tragedy. It is commonsense that to solve a problem, you must first of all recognise your share of responsibility. As a nation, we tend to escape a lot of our own responsibilities. We have institutions and Government bodies that have been set up to outline regulations or things that must be done in order to store water.

There is no way a dam can shift if developed properly like the Seven Forks Dams which were constructed about 40 years ago. The select committee will do Kenyans justice and particularly the families of those affected because of the actions of one investor.

We have a problem in this country. Sometimes when we have investors, we forget the interest of the common *wananchi*. It will be important for this House and Kenya in general to understand the stages of maintenance or the records on maintenance of the dam.

Mr. Speaker, Sir, we have been told that this dam was constructed upstream, and downstream, the rivers could not flow. This is an investor who purports to be a

philanthropist but denies Kenyans what is naturally theirs. This questions our responsibility as a country. Therefore, the constitution of this Select Committee is important. I thank Sen. Kihika for moving this Motion so that we can inspect the other dams in the country. This might give us an opportunity to review our own legislations and know whether certain requirements should be put in place on yearly basis to maintain a dam.

We have destroyed our environment by cutting trees and this has resulted in changing weather patterns. If Solai Dam was made to hold a certain capacity of water, every year, we need to readjust that. So, due to the changes of weather patterns in this country, it is important for us to examine and interrogate how this dam was licensed. It is sad to hear that there are seven dams in the property and only one of them has been licensed.

It is also going to be helpful for this Select Committee to visit the site and look at the dam's spillway. We know that a dam is created to hold a certain volume of water. Therefore, if the water is more than what the dam can hold due to heavy rainfall, then the spillway should slowly move the water down and save people from being affected by the overflow.

Mr. Speaker, Sir, it would also be important for us to determine the magnitude of the catastrophe that has been caused by this dam being upstream. Is it logical or safe for any dam in this country to be constructed upstream and people are living downstream? There are other additional dams there and we know that this farm relies on this water for irrigation, but honestly, can we do that at the expense of other people who are living downstream?

We know that when the flow of water is altered, there are so many things which are denied. When water is flowing, it is not only flowing so that it can empty water into the lake or ocean, it goes down with minerals. This is why there are clear regulations on how you cultivate crops next to a river. Therefore, these are some of the issues that the Select Committee would identify once they visit the site.

In addition, it will also be important for us to find out – given that this dam was constructed upstream and people were living downstream – what was the liability. Was this dam insured? Was it a requirement for it to be insured? If so, how are these people going to be compensated? I tend to believe that in most cases, we overburden the public coffers. Sometimes we ask for compensation and yet the people who are responsible are not taken to task. The taxpayers may end up paying millions of shillings to compensate these families and maybe that dam was insured. So, this would help us to understand, if it is not a requirement now with WARMA, whether that should be included in subsequent legislations.

Mr. Speaker, Sir, the designs of some dams which were built in this country are outdated. This would also help us advise this House properly on whether a review of all the dams in this country needs to be changed. We would know whether certain dams which are constructed and are dangerous can be destroyed and redesigned in a way that when there is a lot of water flowing into the dam, it does not break the banks. In Narok County, we have frequent floods and, therefore, we do not construct a dam upstream

because the water would overflow. In some cases, even if you construct that dam with heavy concrete, the foundation will move.

So, the Select Committee would identify all these things. However, this is not a matter that can only be resolved by a Standing Committee. It requires dedicated Senators to go out, spend time and within 60 days, come up with a report that can help us. This has happened in Solai, but tomorrow, it might happen elsewhere. So, this is an opportunity for us to save taxpayers money and ensure that if it requires that every dam in this country takes liability insurance, then so be it.

With those few remarks, I beg to support.

(Question proposed)

Sen. Cheruiyot: Thank you, Mr. Speaker, Sir. I rise to support this Motion because it is extremely important. I understand the passion with which the Senator for Nakuru County has picked up this matter. When you replay the scenes that led to this unfortunate event, you will see ordinary Kenyans who were sleeping in their tiny shacks, worrying about the tribulations that they face in life, and before they knew it, more trouble befell them.

Those who were lucky to survive had their households swept away and some even had dead family members. They do not have a voice and have no one to speak out for them. The people in authority do not seem to care so much about it because, ordinarily, they are 'nobody.' Time has come for us, parliamentarians, to rightly stamp our authority and do that which concerns the people who voted for us to come to this House, and speak to the very matters that affect their lives on a daily basis.

This is an extremely timely Motion and I hope that our colleagues who have been granted an opportunity to serve in this Select Committee will do justice to it by going to the root of the problems that are being raised. Disasters continue to happen every day. Last weekend it was a building in Huruma that tumbled down. Despite tens of buildings tumbling down in this City, not a single engineer has ever been charged for negligence or for approving or allowing the construction of a building without proper legal channels being followed.

It is my sincere hope that our colleagues, who will serve in this Committee, will make far-reaching recommendations and give us a document that can be quoted years down the line. The document should be one that people will say that it was during the time of the Twelfth Parliament that a Committee of the Senate was constituted, which led to the end of manmade disasters in this country. People must be charged for negligence and brought to book. The people who approved the construction of this dam and those who were supposed to send the early warning signals but slept on the job must face the law.

Unfortunately, on many occasions, we, as legislators, obsess ourselves with matters which we consider to be more important to us than those facing the people who elected us to this House. There are many things that I would have wished to say, but I know that there is a lot of interest from my colleagues. I will leave it at that and hope that justice will be done to the victims of the Solai disaster.

Thank you, Mr. Speaker, Sir.

Sen. Mutula Kilonzo Jr.: Thank you Mr. Speaker, Sir. I also support the Motion to set up a Select Committee and thank Sen. Kihika for the initiative. At some point, it appeared as if the quest to get justice by Sen. Kihika was being challenged by some of our colleagues in the National Assembly. This is timely to the extent that matters concerning water provision are entirely our jurisdiction as a Senate and we must get to the root of this matter.

The principles of law which govern where a person keeps a reservoir or a dam, like in this case, are as old as history itself. When applying the principle of Rylands versus Fletcher on keeping a reservoir, where a reservoir like this one ended up in somebody's mine, the civil liability of Mr. Patel is beyond doubt. He is liable for the deaths and damage caused to every family and we must say so. It is important that the people who faced this tragedy get to know that they have limitation of time. They do not have all the time to finish this process. They have three years to file a civil suit under the law of tort for them to be paid.

This is urgent because in 2014, 32 people lost their lives in Makueni when somebody sold them liquor that was nicely packaged. There was mourning and lofty statements, like the ones I heard in Nakuru; these statements were made but nothing happened. The person who supplied that liquor became a phantom and was never put to task.

In fact, I am surprised that the owner of this dam and farm was given such a high profile position in newspapers about the Corporate Social Responsibility (CSR) that he does. This is what these people do. They keep dangerous things like sinking a dam with 2 million litres of water, like in this case, on a hill or a slope with a mud wall. They then employ people and educate a few children once in a while, and all of a sudden, they become a god and untouchable. He is said to have been well connected to all the regimes.

How did one individual have 2 million litres of water on a hill that has a mud wall? It is beyond science. This thing was going to collapse at some point. It is nothing but greed. We have taken greed to the extent that human lives do not matter. The story of the two young boys; one a Kikuyu and the other one a Kalenjin, who held on to each other until the water passed while they watched another child drown next to them will replay in their memories for the rest of their lives.

If we do not take action, somebody in WARMA or the national Government will cover it up. We have forgotten about Solai and we are now dealing the case of Ngirita. We have forgotten about 48 Kenyans who have no fathers, mothers or children. We do not even know where they are sleeping. Instead, we have a girl with nice hair on our news every day. Next is the Kenya Pipeline Company and that is the tragedy of this nation. People have forgotten about Solai and we must investigate this matter.

There are two instances where this Senate did something of this nature and it has come to pass. The first one was on the issue of Kenya Airways. The Senate must be prepared because the National Assembly and other people will fight this Committee tooth and nail, and, therefore, we must work quickly. They fought us when we were looking into the issues at Kenya Airways and what was the result? Kenya Airways went under

and it is insolvent. The recommendations that we initially made were all ignored. Finally, those recommendations were followed albeit begrudgingly.

The second one was on the issue of prisons, although the report was not tabled. Land belonging to prisons has been grabbed by Kenyans and the report is available. Land belonging to Shikusa, Kodiaga, Shimo La Tewa and Langata Women's Prison has been grabbed by Kenyans. No wonder the former Principal Secretary, Lillian Omolo, does not want to sleep there; she wants to sleep at Kenyatta National Hospital. Langata Prison has been squeezed so much that there is no space for prisoners to sleep.

One of the things that we must interrogate in terms of recommendation is whether or not the WARMA should be in office. How does it do the licensing? Who approved and inspected the Solai Dam? How does the license look like? There was a knee jerk reaction made by – I am not sure who – maybe the Cabinet Secretary for Water and Irrigation, that licences for all dams had be revoked, even the ones of 100 and 200 litres capacity. This was a blanket statement meant to make the public feel good that something important was being done.

This is one tragedy that this Senate should not leave untouched. From these documents, let us request for civil and criminal liability. Let heads roll. For us, we will do whatever it takes to see justice is done to the people of Solai.

Part of the Committee hearings should be conducted in Solai. We need to hear from the ordinary Kenyans there. They do not have to travel to Nairobi. Let us not conduct the Committee hearings in Nairobi City. Let them be done in Nakuru Town. We would like to hear from young children giving us the accounts of their harrowing story of the Solai incident. They will be on record so that no Kenyan will ever dare, in pursuit of wealth and greed, keep so much water or any dangerous substance.

This because the principle of Rylands vs. Fletcher talks of any substance that you keep in your premise. If you keep a dog and it bites somebody, you will be responsible. If you keep a leopard in your house and it bites your neighbour, you will be responsible. If you have an industry like orbit chemicals or anything else in your compound for commercial, domestic or otherwise purposes, you will be responsible.

Mr. Speaker, Sir, I beg to support this Motion. I hope that you will give this Committee as much latitude as possible, secretariat, resources and whatever it takes for it to execute its task. Even if a chopper will be required for them to execute their mandate, let it be availed. We must deal with this issue as quickly as we can.

Sen. Sakaja: Thank you, Mr. Speaker, Sir. First, I want to thank Sen. Kihika for bringing this Motion to the House, touching on the issues of Solai Dam. I want to accept my nomination as a Member to the proposed Select Committee to investigate the circumstances that led to the Solai Dam tragedy. I do not know why Sen. Susan Kihika thought that I should support her in this work.

Immediately after this tragedy happened, my able Chairperson of the Committee on National Security, Defence and Foreign Relations led and his team swung into action. That team was the team was led by him to go to Solai to look at the situation, especially on matters of disaster response.

Mr. Speaker, Sir, after that, I also went together with you and a few other Senators like, Sen. Malalah for the funeral service of the Solai victims. The stories that

we heard from the families of the victims were harrowing. The saddest occurrence was the attitude that kept being repeated by everybody who spoke of “it has happened, let it be.” Lives were lost and we were told it was an act of God. Even the church had the same attitude.

It was as if there was an agreement that no one should take responsibility, whether the owner had a dam license or not. The tragedy had happened and it was an act of God – “*ya Mungu ni mengi*”. I thought hypothetically if a dam that has been put up along River Ngong’ burst its banks and swept away Karen Estate or a dam in Kiambu County swept away Runda Estate, will we be in the same situation like now, where we are trying to force a discussion on this issue? It is as if in this country, there are different categories of different values of life. This has happened not only in Solai, but also in Tana River where we visited two weeks ago. Villages were swept away because of similar natural causes.

The law exists for a reason; there is a reason why dams need to be registered and certified to be proper. There is a reason why we have WARMA. When some individuals know that they are able to do one or two things for society, they feel as if they do not need to go by the set out regulations. That is impunity. The Committee will establish whether the regulations were followed or not. However, the attitude of letting it pass by without establishing what really happened, should not be entertained. The Committee needs to follow up on this issue to its logical conclusion.

That is the same attitude we see when buildings collapse in this country. A few years ago in Nairobi County, a building collapsed in Huruma in Mathare Constituency. We lost tens of thousands of lives. The president went there. I was also there for a while. We marked buildings for demolition, but nothing happened. Last week, another building collapsed in the same area and lives were lost and nothing happened.

Mr. Speaker, Sir, I want to put it to you if a building collapsed in Kileleshwa or Lavington estates right now, there are people who will be behind bars by the end of the day. When will the poor person in this country get justice? Do we have a different set of laws for the people who cannot speak for themselves? Why are we even in this House? It is extremely painful that the downtrodden do not have a voice. It has always been easier to take action when something affects those who are better off in society.

The other day we had an incidence in Moi Girls High School, Nairobi. It was sad and I am glad that action is being taken. What happened in that school happens almost daily in Mukuru kwa Njenga Slum and other slums in this city. When will we ensure that justice is our shield and defender and available to the richest and poorest person in this country? If we, as a Senate, cannot assure Kenyans of that, then we have no business being in this House or being called leaders.

I am glad that we are looking at the possibility for compensation. We will never return the lives that were lost. Let every Kenyan know whether he is a businessman, a politician or an ordinary citizen that there is a reason why we have laws. If we do not follow laws, we lose lives. Corruption and lawlessness cost lives. Today it is Solai; tomorrow it might be your county, family or relative. No one is above the law.

Mr. Speaker, Sir, I trust that the Committee will take its time to objectively listen to the victims of the Solai tragedy and put to task agencies of law enforcement on why to

date no action or investigation has been done. We refuse to join the choir of those singing the chorus of “let us move on.” We will honour the life of everyone who died in Solai. I hope that as we do this, we will entrench a culture in this country where just because you have resources, you do not have a right to whatever latitude you want over natural resources that belong to the greater community.

We have seen this in many places. Our country is one of the few countries where a private individual can own land by the ocean; this is just for the information of the House. Other countries value what we call public resources. Rivers and beaches are public resources. The fact is that one can put up a dam and ration water to a community and once in a while, he doles out favours like taking children to school, providing jobs and other goodies for the community members. This is a culture that must be condemned and stopped in this country. Every resource in this country must be used for the good of the greater public. That is the reason why we are in this House.

So, I commit to be a Member of this Committee if approved by the House and offer whatever support is required for us to get to the bottom of what happened and recommend serious action. These lessons will be learnt and implemented.

Mr. Speaker, Sir, maybe, with consultation before this debate ends, we could use the same Committee. I will also be bringing a Motion for us to put an end to what is happening in the slums in this city. We have lost too many lives in Mathare, Huruma, Nyamakima and other areas like Pipeline where buildings have collapsed. Those buildings that are supposed to be demolished stay on. To date, if we go, I can show the Committee more than 20 buildings that are about to collapse and there are people living in there. Nothing is happening with regard to law enforcement. With consultation with the Mover of this Motion, we could amend and expand the mandate because at the end of it, it might be a water issue and this might be a construction issue but the underlying issue is impunity and corruption.

I beg to support.

The Speaker (Hon. Lusaka): Before we proceed, I have a communication on visiting students and teachers.

(Interruption of Debate on Motion)

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM TAITO KTGA SECONDARY
SCHOOL, NANDI COUNTY

I would like to acknowledge the presence, in the Public Gallery this afternoon, of visiting students and teachers from Taito Kenya Tea Growers Association (KTGA) Secondary School, Nandi County. On behalf of the Senators and my own behalf, I welcome them to the Senate and wish them well for the remainder of their stay.

Thank you.

Sen. Wetangula, proceed.

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(Resumption of Debate on Motion)

Sen. Wetangula: Thank you, Mr. Speaker, Sir, for this opportunity to contribute to this Motion. For a start, I join you in welcoming the students from Nandi County who are in the Gallery.

I congratulate the Senator for Nakuru County for the commitment she has shown to the people who elected her since this tragedy occurred. I also support the creation of a Committee to look at what happened but with a caution that; if you go through the HANSARDS of this Parliament and the records, there have been many Committees. If there is no follow-up mechanism to enforce the recommendations of the committees, it just becomes a statistic. I urge this House that we bring back the Implementation Committee so that if the recommendations from this Committee come, we follow them to the end.

What happened in Solai is not an act of God but that of a human being. They have told us of a Mr. Patel, his managers and so on. The problem in this country is not shortage of laws or regulations. The problem in this country is a shortage of those with the ability to enforce the laws to the letter. After this tragedy, that man called Patel and his managers committed several criminal offences. The least offence that would have been preferred against this man is criminal negligence. A very simple misdemeanor; not even that has been preferred. Malicious damage to property or murder - even that has not been preferred.

If you hold a volume of water and it releases such venom on the public, that is malice aforethought and it leads to murder. Nobody has talked about that. I am sure after this debate which he is probably watching, Patel will enjoy his evening beer with a policeman who should be arresting and prosecuting him. That is the tragedy of this country.

Mr. Speaker, Sir, we are told 48 lives were lost. I encourage the Senator for Nakuru County not to lose sight of also the properties that were destroyed. This is because not only lives of human beings were lost but their properties. Their animals have been swept away, houses destroyed, farms rendered unproductive and they are now destitute.

Let me tell you; looking to Government for compensation without arm-twisting it will not work. We have a history of everybody turning up looking very sorry and holy, saying all manner of things, like, "No stone will be left unturned until we get to the bottom of this," and it all ends with the cameras going off and we walk away. That is Kenya for you. That is the impunity that the Senator for Nairobi County has been talking about.

Why has anybody in WARMA not been suspended or prosecuted? Even we, as lawyers, we are licensed to practice law and you renew your licence every year. So, you are not given a licence to construct and own a dam *ad infinitum*. It must be inspected and renewed annually. Have these dams been inspected? Have the licences been renewed? If they have not been inspected, who is responsible? If they have been renewed fraudulently, who is responsible? These are the big questions that we must be asking.

It is not just the Solai Dam, but there are many other dams that are disasters awaiting to be visited on the people. My Committee on National Security, Defence and Foreign Relations visited Tana River County. KenGen, a public corporation, has released water from the dams of the Seven Forks and caused terrible damage to the people of Garissa and Tana River counties as the River goes down to the ocean. People have lost lives and crocodiles have come out of the river and eaten people in their houses but nobody is talking about it.

The other day, a lion escaped from the Nairobi National Park into the rich suburbs of Karen. The Kenya Wildlife Service (KWS) came to a standstill and everybody went hunting for the lion – a single lion. Karen, where I live, became like a war zone - the KWS officers coming from one side, the police, Administration Police (AP) and the General Service Unit (GSU), each coming from one side, for one lion.

(Laughter)

If you go to Karen, there is no way that lion would have entered anybody's home because they have barricaded themselves with electric fences, big walls and everything. However, when it is the ordinary man – the man in Mathare, Mandizini in Bungoma County, Shabab in Nakuru County – all we need to do is go and show a lot of piety at the funeral and donate money to the dead. There is no property in a dead person. Protect lives.

Mr. Speaker, Sir, in the Roman days, there used to be a doctrine called “Falling on the Sword”. If you are given the responsibility and privilege to guard the king and you let the king be harmed by strangers, you do not wait to be dealt with. You pick your sword and strike yourself dead. In this country, nobody wants to take responsibility. We were told that now they have gone to let all the other dams empty the water. Who has inspected to find out whether they are good dams or not? That is called a knee-jerk reaction, where people just wake up and panic. We do not want to run a country on whims.

These people who lost their lives, I am sure they were workers who were weeding and sorting out coffee and nobody will give any value to their lives. I would want to see a situation where this Committee that will look at this matter also recommends compensation in real monetary terms. The fact that this family lost their livelihood, their loved ones and everything, they must, one, be bought some land somewhere to settle the remaining members of the family. Two, they must be built some shelter and be given money to start a new life.

Mr. Speaker, Sir, I also feel sorry for what happened in Moi Girls High School in Kibra, Nairobi, which is an upmarket school. In my own county of Bungoma, a school teacher impregnated 18 younggirls aged between 12 and 16 years in one school. He has not been arrested or prosecuted; instead, he was transferred to another school. I do not think he was doing anything else in that school!

(Laughter)

If that teacher had impregnated a daughter of a rich man in Alliance Girl's High School or any other school, that man would probably not be a man anymore. They would have rendered him invalid through castration by whatever means possible because he has done that to a rich man's child. We must bring equity to this country for the rich and the poor. The only equality we enjoy is before the law, as it should be.

You have seen what happens when a rich person is arrested. They go to prison, become invalid, fall sick and are taken to Kenyatta National Hospital (KNH), where they are kept in 'five star' wards. However, if a 'small' man in Bungoma or Laikipia is found with a mug of *busaa*, the police will come as if there has been a robbery with violence somewhere.

(The yellow timer went on)

Mr. Speaker, Sir, since my time is running out. I urge this Committee, as it goes to work, to make sure that the people of Mtongwe are compensated. I heard Sen. Mutula Kilonzo Jnr. saying that they have been compensated, but they are still in court. Similarly, the people of Mukuru *kwa* Njenga, where there was a burst pipeline, have not been properly compensated. Many tragedies in this country remain unresolved. Nobody talks about the 100 people that lost their lives in a fire incident in Sachangwan in Nakuru County. I am urging us all to ensure that this country becomes a caring country.

Mr. Speaker, Sir, this House, as a representative of counties, their governments and the people that live therein, we should relook at Schedule Four. Water is a shared responsibility and we must hold the County Government of Nakuru to account. If you look at Schedule Four, water falls under the national Government and the county governments. So, let us not just focus on the national Government. What was the County Government of Nakuru doing in the face of all this? I saw my poor friend, Governor Lee Kinyanjui, running there and looking very sorry for what had happened. We do not want leaders to feel sorry; we want them to prevent tragedies. That is what we expect them to do; that is what governments must do; protect people!

Therefore, Mr. Speaker, Sir, I thank the Senator for Nakuru County, who is a daughter of a good friend of mine whom we were within the Seventh Parliament. I can see that she inherited the passion of her father; the apple will never fall far away from the tree. I urge her to pursue this to the end and help the people of Nakuru County through this Senate and this Senate will stand with you.

If we find your governor culpable, we will say it. If we find the Ministry of Water and Irrigation culpable, we must say it. If you find anybody else culpable, say it. Your recommendation should also look at The Water Act. I warned on this Floor that we created so many parastatals in that Act which just pile on each other. What does the National Environment Management Authority (NEMA) do under The Environment Act? When you want to do something, NEMA officials rush there and ask that they be paid 5 per cent of the value, and that is the end of their job. They will never come back to see what you are doing as people suffer from these tragedies.

Mr. Speaker, Sir, I beg to support.

Sen. (Dr.) Musuruve: Thank you, Mr. Speaker, Sir, for giving me an opportunity to add my voice to this Motion. Before I go far, I would like to commend Sen. Kihika for bringing this catastrophe to the Floor of the House. It is important for the Senate to know what is happening on the ground. The whole nation is watching to see what exactly we will do about it. Are we going to intervene? We are the voice of the people and Sen. Kihika has spoken on behalf of her people.

Mr. Speaker, Sir, I commend the idea of coming up with a select Committee to address this issue. This is important because it will investigate whether the catastrophe was manmade or divine. When there is a disaster, there is usually a lot of shock. There is need to investigate so that justice is not delayed, especially for the families that were affected. When I look at this tragedy, quite a number of people were affected; 50 people died. We cannot, therefore, take it for granted because their families are hurting out there. We need to stand with these families and ensure that we help them to heal.

Mr. Speaker, Sir, there is also need for the Committee to investigate what exactly the WARMA is doing as a regulatory body. Did it take the right measures to ensure that Mr. Patel got the right papers? It has also come out clearly that Mr. Patel also had philanthropic activities that helped the community. So, there is need for this select Committee to investigate so that justice is not flouted in any way or delayed.

Mr. Speaker, Sir, when it comes to compensation of the affected people, the bomb blast incident in the American Embassy is very clear because the families were compensated. The children of those who died in the tragedy were taken to school. If you make a follow up, you will find that these children now earn a living and they have been sponsored to good schools. So, the gap that was left when their parents died in this tragedy was filled.

Mr. Speaker, Sir, there is need for the team to ensure that the gap that is left by the victims is filled. The children of those families need to have an education; they need to also benefit from the finer details in life. There is also need for psychological counseling for the families, especially considering that there are families which lost everything they owned.

This incident happened around 8.30 p.m. at night. It took the villagers unawares and there was no way anybody could escape from it. Nobody expected their houses to be brought down or that they would lose their properties. Therefore, in a twinkle of an eye, these families were affected. Some of them did not wake up, but those who were lucky enough to survive woke up and found that they had no houses, cattle or property that they had worked so hard to get. By the time someone has established his or her family or home, they have spent a lifetime on it.

These people woke up to find out that their homes and cattle were all gone. Therefore, this House should do something to ensure that there is compensation and psychological counseling for these families. This is because the victims of this tragedy will never be the same again and they cannot pick up the pieces. There is need for this team to investigate and I suggest that the report that comes from this team should not be taken for granted. This is because we want to arrest a situation like this from happening in the future. There are instances where reports are brought to the Floor of the House but

their findings are ignored. Eventually, if such a situation recurs, history will then repeat itself and we want to arrest such a situation.

Thank you very much, Mr. Speaker, Sir. I beg to support this Motion and thank Sen. Kihika for coming up with it.

Sen. Malalah: Thank you, Mr. Speaker, Sir. I stand to support this Motion and congratulate Sen. Kihika for such an effort. I remember that on that fateful day, she endured the midnight cold to stand with the families. She has been very vocal when it comes to advocating for the rights of the victims who lost their lives and the families who survived. She is an able Senator who is executing her mandate very well.

I was aggrieved when I attended the funeral service at Solai and the protocol officers there wanted to deny Sen. Kihika a chance to speak as a representative of the people of Nakuru. I condemn that act and shame those people who wanted to deny a representative of the people an opportunity to address the gathering, and speak out the truth. In fact, she was gagged and warned not speak the truth. The establishment of this Committee will now give you a chance, Sen. Kihika, to speak out your mind without intimidation.

Mr. Speaker, Sir, I support my brother, Sen. Sakaja, on the issue of social injustice that is very sad. In Musanda Market in Kakamega County, there was a *bodaboda* rider who knocked down a school girl. He was charged in court for not renewing his driving licence. He was given a cash bail of Kshs100,000 which he has not paid to date. He is still in remand just because he did not renew his driving licence. It is sad that the people who caused the death of the Solai victims have not appeared before any court to be charged. Up to now, they are walking free.

I feel very bad that such incidences have happened before and nothing has been implemented as per the recommendations that were made. I remember the Khuvasali Mudslide in Malava Constituency, where we lost twelve people. Up to now, nothing has been done.

Commenting on the proposal by Sen. Sakaja that we expand the mandate of this Committee; I think that we shall be diluting the seriousness of the Solai matter. I suggest that we maintain the terms of reference of this Committee and address the incident independently. If need be, we can form another committee.

Mr. Speaker, Sir, this matter is passionate to me, and that is why I had to go to the funeral with you. I remember you saying that I had already participated in a foreign trip, simply because you took me in a chopper.

(Laughter)

I am passionate about this thing. I was asking Sen. Kihika why she did not include me in the Committee. If I am allowed by the provisions of the Standing Orders, I seek to move an amendment on the composition of the membership of the Committee to remove Sen. Sakaja; and replace him with Sen. Malalah since I am more passionate. Sen. Sakaja, you have other issues of Moi Nairobi Girls Secondary School and Huruma building collapse to handle. This House should vote on whether he should be removed and replaced with me immediately.

The Speaker (Hon. Lusaka): You do not have a “passion-meter” to know how passionate---

(Laughter)

Sen. Sakaja: Ona point of order, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): What is your point of order, Sen. Sakaja?

Sen. Sakaja: Mr. Speaker, Sir, the good Senator, Sen. Malalah who, it has been reported to me also calls himself “Super Senator” in Kakamega County, should know that he can be an additional member of the Committee if he wants. He does not gain by removing the real “Super Senator” from the Committee. In as much as we may look alike, we can both serve in the Committee.

The Speaker (Hon. Lusaka): Let us have Sen. Wario.

Sen. Wario: Asante sana, Bw. Mhe. Spika, kwa kunipa nafasi hii. Naunga mkono Hoja hii iliyoletwa na Sen. Kihika kuhusu janga la mafuriko lililotokea sehemu ya Solai. Nawapa pole zangu walioathirika na kuunga mkono Kamati ambayo imechaguliwa kwenda kuchunguza tukio hilo.

Mambo ya Solai yalikuwa magumu sana na ya kusikitisha. Nawatangazia ya kwamba sehemu nyingi nchini mvua imesita wakati huu. Hata hivyo, kuna mafuriko mengi katika Kaunti ya Tana River tangu juzi kuliko wakati ule w amwanzo. Jambo hili linasikitisha sana. Maji yanayo beba watu sehemu hiyo ni yale yanayo achiliwa kwa makusudi kwenda kuathiri watu wa Kaunti ya Tana River.

Bw. Mhe. Spika, mabwawa ambayo yanatumia kuzalisha umeme katika sehemu ya juu ya Mto Tana kama vile Masinga, Kindaruma na Kiambere yanaendelea kuachilia maji kwa wingi sana wakati huu. Ni ajabu sana kuwa wakati mvua imesita, maji yanabeba watu Tana River. Wakati huu ninapongea, sehemu ya Tana Delta imezama kabisa. Miji yote iko nusu mlingoti ndani ya maji, majumba yote yamesombwa kuanzia sehemu ya Kipini mahali Mto Tana unaunganika na Bahari Hindi. Sehemu ya Kikomo, Kipao, Otole na Handaraku zote zimezama. Watu hao walipata nafuu wiki jana na w kurudi makwao, na mara ya nne wameondolewa tena. Wakati huu wanatangaziwa waende sehemu za nyanda za juu. Hakuna nyanda za juu upande huo kwa sababu yote ni sehemu ya maji.

Bw. Mhe. Spika, wakati huu, watoto hawaendi shule. Ninaweza kukueleza yale Kamati hii inaweza kwenda kuandika kwa sababu niko na taarifa hiyo tayari. Watu upande huo wanaugua malaria kwa wingi, kuumwa na tumbo, kuendesha tumbo na maradhi ya ngozi yaliyoletwa na maji. Hali ni ya kusikitisha sana sehemu hiyo.

Dunia yote na Kenya inajua kuwa Kaunti ya Tana River ndiyo sehemu ambayo imeathirika zaidi. Maji yote ambayo yananyesha sehemu za juu ya mlima Kenya, yanafuata mto huo na kuelekea Kaunti ya Tana River. Seneta wa Kaunti ya Tana River anafaa kuwa katika Kamati ambayo itaangalia maafa ya maji. Hii ni kwa sababu sehemu hiyo imeathirika na nyote mnajua. Hata nchi za nje zinajua kuwa sehemu hiyo imefurika na nyumba zote ziko nusu mlingoti ndani ya maji.

Kama kuna historia mbaya ya kuandikwa kuhusu mathara ya maji, Kaunti ya Tana River iko mstari wa mbele. Sioni sababu ya Seneta wa Kaunti ya Tana River kukosa katika Kamati ya kuangalia majanga yanayoletwa na maji hasa wakati huu.

Ninaunga mkono Hoja ya Seneta wetu mpendwa, Sen. Kihika, na singependa kupoteza wakati kwa kuleta Hoja ambayo ni sawa na Hoja hii ambayo iko mbele yetu. Ningependa kuunganisha Hoja hii na mambo ya Kaunti ya Tana River. Hoja hii inahusu mkasa wa Solai, lakini nikileta Hoja ingine kesho kuhusu kuundwa kwa Kamati maalum ya kuangalia maafa ya maji, tutakua tunafanya kazi ambayo inafanana kwa wakati moja. Ili tutumie wakati vizuri na kufanya kazi nzuri, ningependa kuunganisha Hoja yangu pamoja na Hoja hii ili Kamati hii iweze kwenda Solai na Kaunti ya Tana River.

Katika hali hiyo nimeshatembea Kaunti ya Tana River na Kamati ya Seneti ambayo inaangalia mambo ya usalama. Tulienda kule na Sen. Haji, Sen. Sakaja, Seneta wa Lamu, Sen. Pareno na Sen. Wetangula. Tulisafiri kwa ndege na kuangalia vile miji ilivyoathirika katika Kaunti ya Tana River. Huwezi kuamini yale tuliyaona na mashahidi wako hapa. Nyumba katika miji zaidi ya 30 ziko ndani ya maji nusu mlingoti. Ng'ombe na mbuzi wote wamesombwa hadi Bahari Hindi. Vile vile kuna watu ambao wamesombwa na mali zao zote. Ninavyoongea, watu wanaishi katika hema ambazo zimepelekwa na Shirika la Msalaba Mwekundu.

Bw. Spika, mambo ya Kaunti ya Tana River ni zaidi ya vile tunavyoongea hapa na yale yanayoandikwa kwenye magazeti. Hali kule ni ya kutatanisha. Watu wengi walifariki kule Solai na wakazikwa, lakini ninawatangazia kwamba watu kule Tana River wanendelea kusombwa na maji na kuzikwa kila kukicha.

Hata jana, kuna kijana aliyesombwa na maji akienda shule. Kwa hivyo hali hii itaendelea kule Tana River kwa sababu wasimamizi wa mabwawa ya maji ambayo yanazalisha umeme upande wa juu wa Mto Tana bado wanaendelea kuwachilia maji kwa kusudi bila kujali haya maji yanaenda wapi. Hakuna mtu wa Tana River ambaye amejiriwa na Kenya Electricity Generating Company (KenGen), licha ya maafa mengi ambayo yanaletwa kule. Isitoshe, sehemu nyingi katika Kaunti ya Tana River hazina umeme. Watu wengi wanaishi katika hali duni.

Ningependa kuomba kwamba Seneta wa Tana River ajumuishwe katika Kamati hii ili niweze kwenda na Kamati hii kule Kaunti ya Tana River baada ya kutembelea Solai ili niwaonyeshe hali halisi ilivyo na yale maafa ambayo yanaletwa. Maafa ya Solai yametokea mara moja lakini yale ya Tana River yalitokea hapo mbeleni na yataendelea kutokea kwa sababu mabwawa ambayo yako juu na yanazalisha umeme; bado yatakuwa hapo na mvua itaendelea kunyesha. Iwapo mvua itaendelea kunyesha na mabwawa yatakuwa hapo, maafa haya yatatokea hata miaka zijazo. Hali hiyo inafaa kuchunguzwa na ripoti halisi iweze kuletwa katika Seneti hii. Tunafaa kufanya mambo ambayo tunaweza kufanya ili tuepukane na hali kama hii katika siku zijazo.

Bw. Spika, vile nilisema hapo awali, haifai kuletwa kwa Hoja tofauti kuhusu maji kila wakati. Kwa hivyo ningependelea Hoja hii ihusishe pia maafa katika Kaunti ya Tana River. Ningependa hasa wewe kama Spika wetu uweze kuangalia jinsi ambavyo Hoja hii inaweza kuhusisha Kaunti ya Tana River. Pia, sio siri ya kwamba Kaunti ya Tana River imeathirika zaidi na maji yote ambayo yanatoka sehemu za juu. Hata maji ya mvua inayonyesha hapa Nairobi yanaelekea sehemu ya Tana River.

Mafuriko ninayozungumzia yanahusu Mto Tana na Mto Sabaki. Mafuriko hayo yanatuathiri pamoja na Seneta wa Kilifi. Tuliwahi kwenda sehemu ya Bombi kwa ndege na tukaona hali ni hivyo.

Naunga mkono Hoja hii lakini Naomba iambatanishwe na maswala ya Kaunti ya Tana River.

Asante sana, Bw. Spika.

The Speaker (Hon. Lusaka): Thank you, hon. Senators. Sen. Malalah is not here but he had raised a point, although I did not have the ‘passionometer’ to know how passionate Sen. Sakaja is. However, I want to refer you to Standing Order No. 183 (2) which says:-

“Whenever a Motion for approval of a list under paragraph (1) is moved in the Senate, no objection against the proposed membership of a Senator in a Select Committee shall be permitted and objections, if any, shall be formulated against the proposed membership as a whole.”

So, we cannot remove only one Member of the Committee. You either reject the entire Committee or approve it. I hope that will guide the House.

Proceed, Sen. Kwamboka.

Sen. Kwamboka: Thank you, Mr. Speaker, Sir, for giving me this opportunity to contribute to this important Motion on the establishment of a Select Committee to investigate the circumstances that led to the Solai Dam tragedy. I thank the Senator for Nakuru County for coming up with this Motion and standing firm in solidarity with the Solai victims.

I was among the Members who visited the affected area with our Committee on National Security, Defence and Foreign Relations. It was sad to see a place where people used to call home flooded and everything washed away, including the animals. Due to that tragedy we have orphans, widows and widowers. Some of the victims are still in the hospital and we do not know who will pay their bills.

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

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

Mr. Deputy Speaker, Sir, this was not a natural disaster alone. It was a natural/manmade disaster because there are people who slept on their jobs. An example is an institution like the WARMA. They have answers to give this House.

Mr. Deputy Speaker, Sir, I am sure the Select Committee is up to the task, they will do a thorough investigation and accord justice to the victims. The Committee should not only look into the accusations listed here, but go deep and address allegations of mistreatment of workers in those farms. I do not know if they are insured despite the fact that they work for more than 8 hours without a break. They are subjected to harsh working conditions in the rose flower plantations. These allegations have to be looked into and the victims should be compensated.

On the issue of forgiveness and spirit of living as brothers and sisters, I wonder why Mr. Patel cannot donate 300 acres to those victims out of his 4,000 acres of land so

that they get a place to settle. I would like also this Committee to investigate how he acquired that parcel of land.

I beg to support.

The Deputy Speaker (Sen. (Prof.) Kindiki): Thank you, Sen. Kwamboka.

Proceed, Sen. Poghio.

Sen. Poghio: Mr. Deputy Speaker, Sir, thank you very much for the opportunity to contribute to this Motion. To add my voice in concurrence to that of colleagues who have spoken before me, I would like to support this Motion and also congratulate the Senator for Nakuru County for the courage that she has shown in standing with her people.

If anything like this happened in West Pokot, I would be here too, seeking the same kind of a select committee to deal with the issue that deeply touch the lives of our people. Crisis occurs also in West Pokot, but in other spheres of trauma and tragedy. When we have a tragedy like this one, we should always try and deal with the matter while it is hot, fresh and still captures our emotions. In this country, tragedies and such experiences overtake each other so fast. If the situation is not handled immediately, other tragedies come and take over. Therefore, the minds of our people are so quickly moved away.

Mr. Deputy Speaker, Sir, this Motion wants to bring us back to think about that particular incident. The County of Nakuru has gone through so much in the last few years. However, the tragedy of that flood cannot and should not be swept under the rug. The reason I support this Committee is that it should be kept permanently on our minds. Why should we continue to solve problems of the same nature over and over again? We, as legislators, should come up with solutions that are not only reaching and affecting Rongai, Solai and Nakuru County, but those that can be applied to any such situations in the country.

When I look at the list of those who have been proposed, they are Members of the Senate in good standing who will remain neutral and who will hopefully withstand any attempt to derail them. I am sure they will be fought, but I urge them to soldier on. They should stand firm and not allow their resolve to be swallowed, bought or to be otherwise convinced.

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Sen. Poghio! Are you trying to insinuate that there are some Members of this House who can be bought? Is that the direction you are going?

Sen. Poghio: Mr. Deputy Speaker, Sir, I would never go in that direction. I am only affirming the Members who are in this list. In fact, if all the 68 names of the Senate were here, I would have said the same statement.

(Laughter)

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

Sen. Poghio: Mr. Deputy Speaker, Sir, while we can solve the compensation lot and the other very obvious ways, there is trauma which is not very obvious and must be dealt with. There are people who will show signs of withdrawal for many years. Some

children will never live normal lives again. Unfortunately for us in this country, we are not prepared for such trauma. We do not have the wherewithal and capacity to handle trauma in terms of psychological suffering that our people go through. This is an area that we have neglected. We have not trained enough psychologists, counsellors or people who can handle trauma. I remember when the Sachangwan incident happened, it was the same thing. There are families who are still traumatised today from that incident.

I expect this Committee to make far reaching recommendations on how we should handle the children who woke up one day to find the other children absent and know exactly what happened to them. Those are traumatised children. Their parents and teachers are traumatised. I hope that the Committee will come up with the recommendation on how to deal with that matter and make lives normal again for these children.

Mr. Deputy Speaker, Sir, this matter seems to be gaining concurrence and everybody seems to be going the same direction. I would not like to see the recommendations of this Committee gathering dust in the shelves, but be implemented to the letter. It is a pity that injustices meted to people in marginalized areas are easily swept under the rug. I would like to see the strength of this Committee and the House - the resolve that we make today - that the recommendations of this report will not gather dust in shelves, but will be implemented for the benefit of our country, our people and help us solve most of our problems. That is the nature of the work that we have been elected to do.

Mr. Deputy Speaker, Sir, the other issue is on Kenyans not being treated equally. If an incident happens in an area that is considered geographically insignificant or in an area of low status, not much attention is accorded to victims. If an incident occurs in the so called rich suburbs, it will be investigated thoroughly. The entire police force, military personnel and other security departments will be deployed to sort out that matter. However, when such tragedies happen in areas considered insignificant, we go there one day and think that we have solved the problem. The issue is left to rest.

We should begin to inculcate in ourselves the philosophy that every life of a Kenyan is important, irrespective of his status. If a tragedy happens in Tana River or in any other place, for example, it appears on the front pages of our newspapers. However, if it happens in West Pokot, Turkana or Narok where my friend comes from or somewhere else, it is not taken seriously. Injustice anywhere should be treated the same.

The privileged class must understand people living in disadvantaged backgrounds are there to work for them. Without them, they cannot be privileged. Next to every upmarket estate in Nairobi, there is a slum. This is because we are only in upmarket areas because there are those guys living there. Therefore, we must deal with Kenyans as Kenyans. In the report, I would like to see us recommend tough measures because these lives are Kenyan lives and matter a lot.

Mr. Deputy Speaker, Sir, I would like to commend the Committee. I hope that we can pass all of them. I do not think that we are allowed to select who goes in that Committee. If we do not like them; we do not like them all. If we like them, we pass them all. However, I would like to see that this recommendation that we make and the passage of this Motion brings a result that gives Kenyans hope in their houses. This is to ensure

that we are not in a place of just talking but in a place where when we say something, it can be done.

With those few remarks, I beg to support.

The Deputy Speaker (Sen. (Prof.) Kindiki): Thank you, Sen. Poghisio. You make it appear as if this House will pass the list on the basis of liking or not liking the list. However, I am sure that is not what you wanted to say.

Order, Senators! I have a communication to make.

(Interruption of debate on Motion)

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM TERET HIGH SCHOOL, NAKURU COUNTY

I would like to acknowledge the presence in the Public Gallery this afternoon, of visiting students and teachers from Teret High School in Nakuru County. On behalf of the Senators and on my own behalf, I welcome them to the Senate and wish them well for the remainder of their stay.

Proceed, Sen. Faki.

(Resumption of debate on Motion)

Sen. Faki: Asante Bw. Naibu Spika kwa kunipa fursa hii kuchangia Hoja ya mkasa wa Solai ambayo imeletwa na Seneta wa Kaunti ya Nakuru; Sen. Kihika. Kwanza, ningechukua fursa hii kutuma rambirambi zangu kwa mara nyingine tena kwa watu wa Nakuru kwa janga hilo lililowapata. Ninawaomba Mungu wale ambao Mwenyezi Mungu aliwachukua na aweke roho zao mahali pema peponi. Vile vile, ningependa pia kuchukua fursa hii kutuma rambirambi zangu kwa watu wa Kaunti ya Tana River ambao wamepata mkasa wa mafuriko na pia sehemu zingine zote za nchi ya Kenya ambazo kuna janga la mafuriko kwa sasa.

Kwa hakika, majanga kama haya siyo ya kwanza nchini Kenya. Katika mwaka wa 1993, kulikuwa na janga kubwa la kwanza kabisa la feri ya Mtongwe ambapo zaidi ya watu 200 walifariki dunia. Wakati huo feri ilikuwa ni mali ya Serikali. Mpaka sasa, Serikali bado haijawalipa ridhaa wale ambao walipoteza maisha yao na wale ambao waliathirika na mkasa ule wa feri kuzama. Kwa hivyo, Mswada huu umekuja wakati mwafaka kabisa kwa sababu wakati wa sasa, Bunge linataka kuchukua hatua kali ili kuhakikisha kwamba mikasa kama hii ikitokea wakati mwengine, wale ambao wameathirika wanalipwa ridhaa ili iwe funzo kwa wengine.

Bw. Naibu Spika, tukiangalia mikasa mingine kama vile Kyanguli, Sachangwan na pia maajuzi hapa, mkasa wa eneo la Pipeline wakati “pipe” ya mafuta ilipopasuka na kukatokea moto na watu wengi kupoteza maisha yao. Hata hivyo, mpaka sasa bado Kenya Pipeline Company haijaweza kuwalipa ridhaa.

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Senator! *Pipe* ni mfereji.

(Laughter)

Sen. Faki: Ndio, ni mfereji. Asante Bw. Naibu Spika. Mifereji ya mafuta ilipopasuka, mpaka leo wale ambao waliathirika bado hawajalipwa ridhaa. Kwa hivyo, imekuwa ni mwelekeo kwamba janga linatokea, watu wanaomboleza siku mbili, wanatoa hotuba kali kali, lakini baada ya hapo, inakuwa ni jambo la kawaida.

Kwa upande mwingine, tunaona kwamba janga la ufisadi ni kubwa zaidi. Hii ni kwa sababu zile pesa ambazo zingekwenda kwa matibabu ya watu wote ambao hawajiwezi na kusaidia wazee wale wanaolipwa ruzuku na Serikali, zote zinafujwa kwa sababu ya ufisadi.

Bw. Naibu Spika, kwa hivyo, tungeomba kwamba Serikali ichukulie majanga kama haya hatua kali zaidi kuliko vile wanavyofanya kwa sasa. Hii ni kwa sababu, baada ya Serikali kutuma ujumbe na kusema kwamba, “tunasisitiza kwamba swala kama lile halitarudiwa” lakini tunaona mikasa kama hii inaenda ikirudiwa kila mwaka. Sababu ni kwamba hatuna msimamo thabiti kuhusiana na vile tunavyokabiliana na majanga kama haya.

Leo Tana River imekuwa ni kama wimbo. Kila siku tunazungumuzia Tana River na imekuwa ni Kaunti ambayo inapelekewa misaaada ya chakula kila mwezi. Hii ni kwa sababu ya majanga ya mvua na mafuriko ambayo yanakabili watu wa Tana River.

Bw. Naibu Spika, ningependa pia kuunga mkono maelezo yaliyotolewa na ‘Super Senator’ wa Kaunti ya Nairobi, Sen. Sakaja.

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

Sen. Faki: Seneta ‘spesheli’ Sakaja.

(Laughter)

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Senator! Can you do the right thing?

Sen. Faki: Bw. Naibu Spika, naondoa neno ‘Super Senator’. Nasema Sen. Sakaja ambaye ni Seneta wa Kaunti ya Nairobi. Ni Seneta wa jiji kuu kama vile mimi, Seneta wa Kaunti ya Mombasa na Seneta wa Kaunti ya Kisumu.

The Deputy Speaker (Sen. (Prof.) Kindiki): Sema Seneta wa Kaunti ya Nairobi.

Sen. Faki: Bw. Naibu Spika, nakubaliana nawe na ninaondoa hiyo. Sina haja ya kuomba msamaha kwa sababu ni jambo ambalo ni zuri kwake.

The Deputy Speaker (Sen. (Prof.) Kindiki): It is like you are introducing another hierarchy other than what is in the Standing Orders.

Sen. Faki: Asante Bw. Naibu Spika. Kwa hivyo, ninasema kwamba maswala yale ambayo yanawakumba ndungu zetu wanaoishi katika vitongoji duni ni maswala ambayo lazima tuyaangalie na tuhakikishe Sheria imetumika sawa sawa katika sehemu zote za Jamhuri ya Kenya.

Tumeona kwamba maswala ya ubakaji katika maeneo yale ni maswala ya kawaida. Mimba zisizopangwa na uwaviaji mimba kiholela ni mambo ambayo yanatokea

sana katika sehemu zile za makazi duni. Hii ni kwa sababu wengine wanashindwa kuishi na uja uzito ambao umetokana na ubakaji na hata labda ni wa familia.

Kwa hivyo, ni wakati sasa mwafaka tuchore mstari tuseme kwamba yale yaliopita yashapita lakini kuanzia sasa kuenda mbele, lazima Sheria ifanye kazi yake kulingana na vile inavyotakikana. Na inamanisha kwamba, lazima tupeleke rasilmali za kutosha katika kaunti zetu ili kuhakikisha kwamba kitengo cha usalama katika hizi kaunti kinapewa fedha za kutosha. Hatua hii itahakikisha kwamba kuna vituo vya polisi vya kutosha ili polisi waweze kufukia sehemu zote kwa urahisi wakati wanapohitajika na wananchi ambao wako katika majanga tofauti tofauti.

Bw. Naibu Spika, pia ningependa kuunga mkono yale majina ya Maseneta ambao wamependekewa kuhudumu katika hii kamati maalum ya kuchunguza swala la Solai. Ninaona kwamba ni watenda kazi na wataleta ripoti ambayo itasaidia nchi hii kuenda mbele kutokana na mikasa kama hiyo.

Bila ya kuongeza mengi, ninaunga mkono Hoja hii. Asante.

The Deputy Speaker (Sen. (Prof.) Kindiki): Asante sana Sen. Faki.

Sen. Sakaja, nothing prevents you from transacting that ‘Super Senator’ business elsewhere. For example, when you are opening a cattle dip or when you are in some rally in some corner in this country, nothing prevents you from using it. However, here we have to follow the Standing Orders.

Proceed, Sen. Kinyua.

Sen. Kinyua: Asante sana Bw. Naibu Spika. Mimi ninasimama kuunga mkono Hoja hii. Kwanza kabisa, ninamshukuru Seneta wa Kaunti ya Nakuru, Sen. Kihika, kwa kuleta Hoja hii. Ninasema tena, pole kwa wale waliopatwa na janga hili pale Solai, Nakuru.

Kwanza ningependa kusema ya kwamba, itakuwa ni vizuri kama vile Spika alivyosoma akatuambia kwamba tunaweza kuongeza majina. Kwangu itakuwa ni kosa kama tutapitisha haya majina bila kumwongeza Seneta wa kutoka Kaunti ya Tana River. Hii ni kwa sababu, ukiongea kuhusu mambo ya mvua kunyesha na watu kubebwa hata na maji, yeye mwenyewe anauzoefu, anaujuzi na watu wake wamekuwa wakikumbwa na hilo janga mwaka nenda mwaka rudi.

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

(Sen. Kinyua continued standing)

“Order” means, order. The Standing Orders do not allow amendments of such a Motion. You either approve the names as they are in total or you reject them in total. That is straight forward. So, we can proceed.

This issue is settled in the Standing Orders. If you want to pursue an amendment of the Standing Orders, you can ask for what to do elsewhere; not here.

Sen. Kinyua: Asante sana Bw. Naibu Spika. Umenijibu kikamilifu. Nakubaliana nawe mia kwa mia.

Kwanza kabisa, kuhusiana na janga la bwawa la Solai, idara husika zilifanya kazi duni kabisa. Zimezembea katika kazi, hasa halmashauri ya WARMA. Walikuwa wamepeana leseni kwa bwawa ambalo lilivuja na baadaye maji yake yakawasomba watu.

Kwa hivyo inamaanisha kuwa ikiwa kuna mabwawa saba na lile ambalo lina leseni ndilo lilisomba watu, ni heri hakungelikuwa na leseni, pengine watu hawangesombwa na maji. Idara hii imezembea kazini. Ni dhahiri kwamba ufisadi umekita mizizi kwa kuwa wafanyikazi wa zile idara hawafanyi kazi vile wanapaswa kufanya. Kwa hivyo ni vizuri sisi tuwe tunawaangalia na kila mtu aliye hapa nchini afanye kazi ile ambayo anapaswa kufanya.

Jambo la pili ambalo wenzangu wamelitaja, inaonekana ya kwamba sisi huwa tunaongea jambo likitendeka. Watu wanaongea halafu baadaye wanasema, maneno haya yamekwisha. Inakuwa vile Mswahili alivyosema, “yaliyopita si ndwele tugange yajayo.” Lakini nasema kwamba yaliyopita tunapaswa tuyagange kwa sababu kama wataka kwenda mbele ni mpaka uangalie nyuma mahali umetoka. Inaonekana ya kwamba unaweza kuilinganisha nchi yetu ya Kenya na matukio katika kitabu cha *Shamba la Wanyama*.

Kuna watu ambao ni muhimu zaidi kushinda wale wengine kwa sababu janga likitokea maneno tu yanazungumzwa; watu wanaambiwa pole na hakuna chochote kinachofanyika. Twasema kwamba wale watu wa kutoka pale Solai wanapaswa kufidiwa ipasavyo kwa sababu nyumba, mifugo na mimea yao ilisombwa na maji. Sasa ni walala hoi. Inaonyesha kwamba kuna wala nyama na wala nyasi; walala hoi na wale ambao ---

(Hon. Senators consulted loudly)

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

Proceed, Sen. Kinyua.

Sen. Kinyua: Kwa hivyo ni vizuri sisi sote tufuate sheria. Sheria ya Kenya ni dhahiri kabisa. Tunapaswa kuishi kama Wakenya kwa mujibu wa sheria zilizowekwa na tuzifuate ipasavyo. Ninaunga mkono Hoja hii. Hii kamati ambayo tumeteua siku ya leo ifanye kazi yake na wafuatilie vizuri kisa na maana ya jambo hili kutendeka. Kusisemekane huyu ni muungwana ambaye ni mmiliki wa mabwawa.

Mkifika pale anapaswa kuulizwa maswali na ajibu vililvyo ili ijulikane wazi asiwe yeye maisha yake ni mazuri zaidi kushinda wale wengine. Inasemekana kwamba kwa sababu ana yale mabwawa anaajiri vijana wawili kazi, anajenga shule na hospitali. Hospitali tutazitengeneza za nini ikiwa watu wote watakuwa wamekufa? Shule ni ya nini ikiwa watu wote watakuwa wamesombwa na maji? Itakuwa ni bure na haina haja yoyote.

Kwa hivyo tukubaliane na wale watakaotuwakilisha pale kama kamati waonyeshe ule uadilifu wetu kama Seneti kwa sababu sisi sote tujuavyo ni Waheshimiwa, watu waliomakinika na watu ambao wataangalia haya maneno kwa njia ifaayo. Tukifanya hivyo, jambo lolote likitendeka hapa, Seneti ikichunguza iweke jambo la kudumu – mambo ambayo tutakuwatukiyafuatilia. Tusiwe watu ambao kazi yao ni kukimbia wakati jambo limetendeka. Tunapaswa tuzuie kwa sababu Mswahili alisema ni bora kuzuia kulika kuponya.

Asante sana Bw. Naibu Spika.

(Applause)

The Deputy Speaker (Sen. (Prof.) Kindiki): Well done, Sen. Kinyua. Very fine Kiswahili. You even go the proverb right; *yaliyopita si ndwele, tugange yajayo* because I am told there are others who put it differently; *yaliyo ndwele sipite* ---

(Laughter)

Order! What is it, Sen. Sakaja?

Sen. Sakaja: Bw. Naibu Spika, nina hoja ya nidhamu. Umempongeza Sen. Kinyua kwa kutumia misemo ya Kiswahili lakini ile aliyomalizia sio msemu wa Kiswahili. Ni msemu wa Kiingereza ambao ametafsiri na akasema ni Mswahili alisema. Naomba atueleze ni Mswahili yupi aliyesema ama Wahenga walionena kwa sababu hiyo ni kwa Kiingereza wanasema; *prevention is better than cure* wala sio ni bora kuzuia kuliko kutibu.

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. Kinyua, ni Mswahili yupi aliyasema haya maneno?

Sen. Kinyua: Bw. Naibu Spika, ni vizuri nimweleze Seneta wa Kaunti ya Nairobi ya kwamba haya yalisemwa na Mswahili wa kutoka Mlima, pale Unguja. Aliyesema vizuri kabisa. Ni vizuri aviangelie vitabu vyake vya Kiswahili. Ataona hivyo.

The Deputy Speaker (Sen. (Prof.) Kindiki): What is it Sen. Mutula Kilonzo Jnr.?

Sen. Mutula Kilonzo Jnr.: Bw. Naibu Spika, nipe nafasi pia niseme kwamba nakubaliana na Seneta wa Laikipia kwamba msemu huu ni wa Kiswahili. Kuzuia ni bora kuliko kuponya.

The Deputy Speaker (Sen. (Prof.) Kindiki): What is your evidence?

Sen. Mutula Kilonzo Jnr.: Bw. Naibu Spika, rudia kwa Kiswahili.

(Laughter)

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Sen. Mutula Kilonzo Jnr.

Sen. Mutula Kilonzo Jnr.: Bw. Naibu Spika, ukinipa nafasi, kesho nitakuja na vitabu vya Kiswahili; darasa la kwanza, darasa la pili na darasa la tatu.

The Deputy Speaker (Sen. (Prof.) Kindiki): Do not go there, Senator. What is it Sen. Faki?

Sen. Faki: Bw. Naibu Spika, ndugu yetu Seneta wa Laikipia angetumia msemu “usipoziba ufa, utajenga ukuta.” Huo ndio ungekuwa msemu mwafaka kwa kumalizia hotuba yake.

The Deputy Speaker (Sen. (Prof.) Kindiki): You should have declared that you are coming to the rescue of Sen. Sakaja.

Very well. Proceed, Sen. Kasanga.

Sen. Kasanga: Mr. Deputy Speaker, Sir, I thank you for this opportunity. I rise to support this Motion by the Senator for Nakuru County; Sen. Kihika. I commend her for keeping this issue alive, for being very passionate about it and for speaking for people without voices as we have heard on the connotation of the *Animal Farm*. This is indeed true leadership. I commend you. Keep it up.

If approved, I am happy to participate in the team. We are ready to work. Truly speaking, the Solai Dam tragedy is the kind of disaster that leaves you feeling that our total underbelly of engineering has gone haywire. This disaster and many others is a symbol of everything gone wrong in this country.

We have so many layers of authority. You wonder why these things happen. Last week we were debating the Motion that was brought by Sen. Mwaura. It clearly points to corruption. It is very sad that we have all these authorities and everyone is looking away. Worse still, it is our citizens who have the ability to make this country a better place yet they collude with the authorities to get their way for their own benefit. It is very sad.

I do not want to belabour everything that the Senators who spoke before me have spoken extremely passionately; but I hope that this Committee will be accorded all support.

Mr. Deputy Speaker, Sir, my prayer is that whatever work that this Committee does, it is highlighted, spotlighted and that Kenyans know that Senators will not keep quiet about these things. Kenyans, including our journalists, are fond of sweeping everything under the carpet. They do not talk about these things. Once it has died down, that is it. We want to keep this alive. That this Committee and whatever recommendations it brings, be a case study and be a reference point to how every other disaster should be dealt with in this country.

Mr. Deputy Speaker, Sir, I would love to call for the Senate to spearhead the paradigm shift that this country needs. We speak about corruption, we laugh about it sometimes and we look away, because we feel nothing is going to be done. However, as leaders, we should never keep quiet. We should spearhead this fight against corruption; we should fight for a paradigm shift and we should fight this impunity, which we are clearly seeing in this case.

Mr. Deputy Speaker, Sir, I wish that the Senate would open up more communication so that Kenyans can know that we are discussing these things all the time. Many at times, Kenyans do not know or hear enough of what the Senate is doing. In the newspaper, we are always reading about Members of Parliament (MPs) from the National Assembly, and it seems like they are running ahead of us; and I could be wrong. However, we are not being heard of enough and I still feel that we are the champions of some of these items.

Being guardians of devolution, our voices need to be heard. I wish that the Senate administration can look for ways in which everything that we discuss, even in Committees, can be highlighted in the daily newspapers. This would be wonderful. This Motion is so important that it would be good if Kenyans knew that this issue has not died and that the Senator for Nakuru is keeping it alive. It would be good if Kenyans knew that we are not going to look away this time round and that this is the time for change.

Mr. Deputy Speaker, Sir, I beg that this Committee is supported and accorded all necessary support. I beg to support the Motion.

Thank you, Mr. Deputy Speaker, Sir.

Sen. Gona: Bw. Naibu Spika, asante kwa kunipa nafasi hii ili nichangie yale niliyonayo kuhusu mjadala huu wa mafuriko. Kabla sijaendelea, ningependa kumshukuru ama kumpongeza Sen. Kihika kwa kuuleta mjadala huu hapa. Mkasa Huu ulifanyika

nilipokuwa nje ya nchi, lakini kama ningekuwa, kwa hakika ningefika kwa sababu mbili. Moja, kwa sababu nafahamu kwamba niko hapa kuwakilisha kina mama. Niko na hakika kwamba mkasa ule uliwausa sana mama na watoto, ikiwa wao ndio nawaangalia sana. Japokuwa naangalia watu wote, lakini namwangalia mama kwa undani sana. Vile vile, nasimamia watu masikini, kwa sababu nimesimama hapa katika Seneti ilhali nimetoka katika jamii maskini, na najua umaskini unauma vipi.

Bw. Naibu Spika, najua kwamba kuna matajiri wanaojenga kulingana na utajiri wao, na wanatafuta mahali pazuri kulingana na pesa walizonazo. Lakini vile vibanda vidogo vilivyokuwa pale, ndio vilivyokuwa mali ya wale masikini. Watu hawa wametumia wakati wao na maisha yao yote kuvitafuta, japokuwa vilikuwa vibanda vya namna gani; vilikuwa ndio uwezo wao wote. Katika Biblia, kuna mtu mmoja aliyetoa sadaka ndogo sana, na wanafunzi wakasema “huyu ametoa sadaka ndogo.” Lakini Yesu akasema “huyu ametoa kile alichokuwa nacho chote.”

Kwa hivyo, kwa wale masikini, vile vibanda walivyokuwa navyo vilikuwa ndio mali yao yote na hakuna fidia ambayo inaweza kukidhi ile hasara waliyoipata. Hakuna pesa wanazoweza kupewa zinazoweza kufidia uhai wa wale waliokufa isipokuwa tu ni kuwalipa ili wale waliobakia waanze maisha upya. Lakini mwanadamu hawezi kulipika kwa sababu thamani yake na uhai wake hauwezi kuulipa. Lakini kwa sababu ni lazima tuhifadhiane na kusaidiana, ndio maana twaiomba serikali – hata sio kuiomba - twataka iwalipe fidia. Serikali inafaa ilipe pale mahali imeingilia, na vile vile huyo mtu mwenye hayo mabwawa kuna mahali pia anaingilia.

Bw. Naibu Spika, shida hii haijaanza huko peke yake; shida hizi ziko Kenya mzima. Nitazungumzia sasa masuala ya Kilifi pia. Wahenga walisema “palipo na mwanzo pana mwisho” ama “marefu hayakosi ncha.” Mito hii huanzia juu, lakini miteremko yake huwa chini. Nasi, kwa bahati nzuri au mbaya, ikatokea kwamba ni wakazi wa kule chini ambako mafuriko ama maji huteremkia.

Sasa, maji haya yakiteremka, huja kule pwani; na yakija, sana sana yanaumiza watu wa Tana River na Kilifi. Nikiwa natoka Kaunti ya Kilifi, hivi sasa ninavyozungumza, kama kuna watu waliangalia mtandao wa *Facebook*, Jumamosi niliweka habari kwamba kuna watu waliokuwa wamebebwa na maji ya Mto Galana, nikaenda katika mazishi yao. Vile vile, kuna mto Sabaki na saa hii ukienda huko chini, utakuta hakuna watu kwa sababu wamehama; wanaishi katika mashule.

Kuna mashule ambayo saa hii yamefungwa kwa sababu wale watu ambao walikuwa kule chini wanakaa humo. Hivi sasa, hakuna watoto wanaoenda shule kwa sababu shule zimefungwa. Kule Pwani, sisi tumekuwa watu wa kuomba omba kila mwaka, kisa na sababu ni mafuriko. Twalia kwa kuwa hakuna mvua, lakini kila mwaka hakuna siku tutakosa mvua Kenya hii. Lakini mvua ikinyesha, hata kama haitanyesha kule kwetu, maji huja na hubeba watu, kwa sababu itanyesha huku juu na itateremka kule chini. Kwa hivyo, kunyeshe ama kusinyeshe, kule kwetu watu watakufa hivyo hivyo.

Kwa hivyo, Bw. Naibu Spika, janga hili halijaanza jana, juzi wala leo; ni la kitambo. Kuna mahali fulani kuna utepetevu; kuna watu ambao hawafanyi zile kazi ambazo wanapaswa kufanya. Kidole changu kinaelekeza sehemu mbili; Serikali ya Kitaifa na serikali za kaunti. Serikali za kaunti ndizo zinajua hasa ni nini kinachoendelea pale chini mashinani. Tulipoletewa ugatuzi, tulifikiria kuna mambo mengine kama haya

ambayo hayataokea tena. Lakini mpaka sasa, mafuriko yanatumiza kule kwetu kwa sababu kuna watu ambao hawafanyi kazi vile wanavyopaswa kufanya.

Naungana na wenzangu waliosema kuwe na sheria kali; sijui sheria itakuwa na ukali gani. Kama ni kutunga sharia nzuri nzuri, kama Wapwani sio namba moja ama sio wa kwanza, basi labda wa pili. Lakini je, twazifuata? Kiongozi mzuri ama meneja mzuri ni yule ambaye akipeana kazi, halafu huifuatilia. Sisi twatunga sheria vizuri, lakini baadaye mfuatilio hakuna. Watu wanatembea tembea kule njiani, hawafanyi kazi zao na hakuna anayewauliza kwa nini wanafanya hivi. Ningeomba, kama twasema hiki hakifai, iwe hakifai; lakini sio baadaye kikitengenezwa kiwe chafaa. Kama hakifai, hakifai!

Jambo la kwanza la kufanya ili mambo kama haya yasitokee tena ni kuwa naunga mkono kwamba Kamati iliyochaguliwa iendelee. Lakini vile vile, kuwe na mfuatilio. Kama ni watu kulipwa, walipwe. Wale ambao wako kule na hawana makwao, wamewekwa katika mashule, wao pia ni binaadamu. Tumechoka kuomba omba sisi watu wa Mombasa; kila siku twaambiwa kwamba hatulimi. Twalima jamani! Lakini mvua ikinyesha kama hivi, yabeba chakula chote; mahindi yabebwa na kila kitu chabebwa, halafu twabaki vile vile, tukiomba omba.

Hivi sasa, ukienda Pwani, utasema watu hawakulima. Lakini watu walilima, lakini hakuna mahindi kwa sababu yote yamesombwa na maji. Kwa nini na twalia hakuna maji? Twaweza kufanya kilimo cha unyunyizaji maji---

(Loud consultations)

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Senators! Order, Sen Mutula Kilonzo Jnr! If you want to help your colleague, you know what to do.

Endelea, Seneta.

Sen. Gona: Twaweza kufanya kilimo cha kunyunyizia maji mimea, kwa sababu kwa vile mvua ni haba kule kwetu. Gavana aliyeko kule anayeona yale mambo, angehakikisha kwamba kuna mshiko fulani wa maji kuhakikisha kwamba maji hayo hayatafika kule kuwamaliza watu. Yatakikana majai yale yakingwe ili yasiwe yakifika kule ili wananchi wayatumie kwa kunyunyizia chakula. Hili ni jambo ambalo halifanyiki, na serikali ya kaunti na ya kitaifa zimekosa kushirikiana kwa ujumla katika jambo hili.

Ni sisi ambao tunaangalia yanayofanyika, maanake tuko katika kaunti zetu kila siku. Mambo haya yanafanyika Kenya nzima; sio Nakuru, Kilifi ama Tana River peke yake. Yatakikana tuyaangalie haya mambo na tuwe na mfuatilio ili tufaulu. Hata mtoto kufanya vizuri, lazima kila siku uwe unaangalia vitabu vyake. Sasa sisi tukishapeana mwelekeo, tunaacha kabisa na hatuafuatili tena. Lazima kuwe na mfuatilio, mshikamano na kusaidiana.

Asante, Bw. Naibu Spika. Naunga mkono.

The Deputy Speaker (Sen. (Prof.) Kindiki): Asante sana, Sen. Zawadi Gona.

Proceed, Sen. Khaniri. I hope you will continue in Kiswahili, since, it is Kiswahili day.

Sen. Khaniri: Asante sana, Bw. Naibu Spika; nitajaribu.

(Laughter)

Mwanzo kabisa, Bw. Naibu Spika, nataka nikushukuru kwa kunipa nafasi hii ili nami pia nichangie Hoja hii, ambayo ni muhimu sana. Nimesimama kuunga mkono Hoja hii na nataka nichukue nafasi hii ya kwanza kumshukuru Seneta wa Nakuru kwa msimamo aliouchukua tangu msiba huu uwakumbe watu wake. Twakushukuru kwa kusimama na watu wako, umekuwa sauti ya wanyonge. Kuna wengi ambao wamepinga msimamo wake lakini amesimama imara na sisi kama Seneti tutakuwa pamoja naye katika safari hiyo.

Mwanzo kabisa, Seneta wa Nakuru alileta *statement* na wenzangu walichangia. Walipata nafasi ya kutuma rambirambi zao lakini mimi sikupata nafasi ya kufanya hivyo wakati huo kwa sababu sikuwa hapa ndani.

Japo sikuwepo, nakuchukua nafasi hii kwa niaba yangu na kwa niaba ya familia yangu na watu wa Vihiga kusema pole kwa wale waliopoteza wapendwa wao na wale ambao mali yao iliharibiwa kutokana na mkasa uliowakumba. Huo ulikuwa mkasa mbaya sana.

Namshukuru kwa sababu katika Hoja yake, kuna mambo manne ambayo Seneta wa Nakuru angependa kamati itakayoundwa itekeleze. Ni vyema tupate kiini cha kilichofanyika mpaka watu wetu wakapoteza maisha na mali yao kuharibiwa kama vile Sen. Kihika ametaja katika (a) ambapo amesema “*holistically investigate*”, *just to quote what is in the Motion*.

Pili, tunataka haki kwa wale waliokumbwa na mkasa huo. Hiyo imejitokeza katika (b) ambapo amesema; *propose modalities for compensation*. Lazima wapate haki yao hata kama ni wanyonge na sisi kama Seneti tutasimama naye.

Ya tatu ni *ensure the dam owner makes compensation also* na ya nne ni *propose measures to mitigate such eventual disasters* ili mkasa kama huo usiwahi kutokea tena.

Kwa hivyo kamati hiyo itakuwa na majukumu. Hata hivyo, jambo ambalo ningependa waongeze katika majukumu yao ni kuangalia *preparedness* – sijui nitasema namna gani kwa Kiswahili – ya serikali zetu zote. Yani Serikali ya kitaifa na serikali za---

The Deputy Speaker (Sen. (Prof.) Kindiki): Order Senators.

Sen. Khaniri, you know once you start debate in one of the two languages that are permissible, you are supposed to proceed seamlessly until the end. The patchwork you are doing runs a foul to the Standing Orders and it is too late now to change. Preparedness *ni nini?*

Sen. Khaniri: Bw. Naibu Spika, utakubaliana nami kwamba nilipoanza kuzungumza, nilisema kwamba nitajaribu kwa sababu mlitaka nizungumze Kiswahili. Kwa hivyo najaribu na naomba uniwie radhi.

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

Sen. Khaniri: Nimeambiwa *preparedness* ni matayarisho. Kamati hiyo lazima iangalie matayarisho ambayo serikali zetu zote mbili, yani serikali za kaunti na Serikali ya kitaifa, zitaweka ili kukabiliana na majanga kama hayo yanapotokea.

Mara nyingi majanga kama hayo yanapotokea katika taifa letu, watu ninaoona ni maafisa wa Shirika la Msalaba Mwekundu. Wao huwa watu wa manufaa sana katika nchi hii majanga yanapotukumba kama taifa.

Mbali na majukumu ambayo Sen. Kihika ameorodhesha hapa, lazima waangalie jambo gani serikali zetu zote mbili zinaweza kufanya ili kukabiliana na majanga kwa sababu bado yatatokea. Hilo sio janga la mwisho kutukumba. Majanga bado yatatokea na lazima tuwe tayari kama serikali.

Tusiwe tunategemea Shirika la Msalaba Mwekundu kutusaidia wakati wa majanga. Ndio maana nililetwa Hoja hapa tulipoanza Bunge la 12 kutaka sisi kama Serikali kutafuta njia ya kufadhili Shirika la Msalaba Mwekundu. Hoja hiyo ilipita lakini ningependa tuwe na Mswada kuangazia jinsi Serikali itaungana na Shirika la Msalaba Mwekundu ili shirika hilo lipate ufadhili kutoka kwa Serikali kwa sababu kazi wanayofanya ni kazi ambayo inafaa kufanywa na serikali zetu ambapo Wakenya wanalipa ushuru.

Nilisimama ili kumhakikishia Sen. Kihika kwamba tuko pamoja naye na tuna imani na haya majina aliyopendeza. Hawa ni watu ambao tunawafahamu na amefanya mchanganyiko mzuri. Nina imani kuwa watafanya kazi tutakayowapa.

Lazima mtu abebe msalaba wake. Kuna yule aliyesababisha yaliyotokea yakatokea na hatuwezi kuficha. Wanakamati hawa watakuwa na jukumu la kuchimbua ili tujue nani alisababisha vifo vya watu wetu. Tukishamjua, naye pia akabiliane na mkono wa sheria na Serikali iangalie jinsi *ita-compensate* watu walipatwa na mkasa huo.

Asante sana Bw. Naibu Spika.

The Deputy Speaker (Sen. (Prof.) Kindiki): Asante sana. *Ku-compensate* ni kulipa ridhaa.

Sen. Khaniri: Nashukuru Bw. Naibu Spika kwa kunirekebisha. Serikali inafaa iwalipe ridhaa wale waliopatwa na mkasa huo.

The Deputy Speaker (Sen. (Prof.) Kindiki): Asante sana Sen. Khaniri.

Hivi majuzi Sen. Pareno alituambia vile walikuwa wanasema kule katika Bunge la Jumuiya ya Afrika Mashariki mahali lugha ya Kiswahili ilizaliwa, mahali ilipata maradhi na mahali ilikumbana na mauti.

Najua unatoka karibu na mahali lugha ya Kiswahili ilikumbana na mauti lakini umejaribu sana.

Very well---

Sen. Sakaja: Point of order!

The Deputy Speaker (Sen. (Prof.) Kindiki): What is it Sen. Sakaja of Nairobi City County?

Sen. Sakaja: Bw. Naibu Spika, nilikuwa na hoja ya nidhamu wakati Sen. Khaniri alikuwa anazungumza lakini nakubaliana na vile ulisema. Wahenga walisema kupanda mchongoma, kushuka ndio ngoma. Alipoanza alikuwa na ari ya kuzungumza Kiswahili lakini akapata hitilafu baadaye.

Kiswahili kinafaa kutukuzwa na Wakenya wamefurahia kwa sababu amejaribu. Naomba tutenge siku moja kwa wiki iwe siku ya Kiswahili ili Maseneta wote wajaribu kupata umaarufu wa kuzungumza Kiswahili.

The Deputy Speaker (Sen. (Prof.) Kindiki): I am sure if I put the question, the Motion will lose. If I put the question, I am not so sure that the Motion will carry the day.

Order, Senators, we are moving towards the end. Let us now have Sen. Prengei.

Sen. Prengei: Thank you very much, Mr. Deputy Speaker, Sir, for giving me this opportunity to also put my contribution towards the Motion.

I support the Motion by our Senator, Susan Kihika, because there is so much that happened during the tragedy. There was loss of lives and properties, businesses were disrupted and there was also soil degradation.

Mr. Deputy Speaker, Sir, as the Committee is being formed, I know that they will try to answer the questions that are lingering in the minds of the people of Nakuru County and Kenyans as a whole. First, it is alleged that there were early warnings as early as 2016. The residents of Solai raised an alarm that the said dam was leaking and information was ignored.

Secondly, it was alleged that the dam is operating without a licence. I know that the Select Committee will be looking at that and also if there was an Environmental Impact Assessment that was done before the issuance of that license. Thirdly, it is alleged that the owner of that particular dam has illegally diverted several rivers into the dam for commercial use. In addition, I believe that the Committee will address the issues that have been raised by the people of Nakuru County in order to bring justice to them.

Finally, as the Select Committee does its work, it is good that they come up with short-term and long-term solutions. Short-term means we have to look at the situation on the ground and immediately address what is happening. As a long-term solution, we need to ensure that the same incidences do not happen in future.

Thank you.

Sen. Omogeni: Thank you, Mr. Deputy Speaker, Sir, I also want to join my colleagues in, first and foremost, registering my own condolences to the families of about 50 Kenyans who passed away during the Solai Dam Tragedy. For the surviving members of those families, I want to register my sympathy with them. I hope that they will live long enough to see that justice is done to them.

Secondly, I also want to join my colleagues in passing my congratulations to the Mover of this Motion, Sen. Kihika, who has come out passionately in support of the people of Nakuru County whom she ably represents before the Senate. Thirdly, before I make my contributions, I want to register my support for the nine Senators who have been nominated to serve as Members of the Select Committee. All of them are able Senators, and I have no fear that they will do a good job. I do not know how to measure the passion of Sen. Sakaja, but I hope he will vindicate himself when the time comes.

I begin by looking at the national values that govern us under Article 10 of our Constitution that we enacted in 2010. One of the values, which I must say some business people in this country never pay attention to, is one that talks about human dignity. This means treating every Kenyan and giving each Kenyan the human dignity that they deserve – social justice and equity.

Without sounding to be a racist, I must register my concern that there are members of some communities in this country who do not treat Kenyans like human beings. I was listening to the contributions of Sen. Kwamboka, who said that the Committee on Defence, National Security and Foreign Affairs paid a visit to the Solai Dam. They were saddened by the inhuman conditions in which the people working in Solai Dam were serving.

Mr. Deputy Speaker, I will take this country back on the history lane. You remember, there was another time we had another tragedy that involved Nakumatt Supermarket along Moi Avenue. What we heard is that there is a business enterprise that locked Kenyans inside the supermarket when fire broke out. We know of cases in Industrial Area, where Kenyans who work in particular industries are locked inside so that if a tragedy were to happen, all of them will be condemned to death.

I was shocked on Madaraka Day when I went to join the people I represent in the Nyamira County. I visited one constituency called Borabu and while I was passing round, I received information that two families working in Kerito Tea Estate had lost their loved ones. As Africans, going by our tradition of mourning with the dead, I visited those families and gave them my condolences. I was surprised to learn that for you to access those families in those factories, you need the permission from the owner of that factory. We are talking about a factory that employs over 1000 people who are Kenyans, Africans and black like me and you, but people who run industries casually treat Africans like we do not belong to the same human race.

Therefore, I hope that this Select Committee will go deeper into the conditions under which our brothers and sisters who are our fellow black Africans working in these enterprises are subjected to. I hope this time, we will see a Senate that has teeth. We want recommendations that can propose stern action including, if possible, withdrawal of any licence of a Mr. Patel. If he is found culpable, we should make very firm recommendations.

Mr. Deputy Speaker, Sir, I have also had the benefit of looking at the way the Motion was drafted. I get the feeling that the county government did not respond to this tragedy the way it is supposed to. The people who have been acknowledged there is the national Government and the Red Cross. I sat here wondering where the county government was. When we came up with the devolved system of government, the hope of Kenyans was that when such tragedies happen, the first call of response would be the county governments.

We cannot wait for the national Government to move from Nairobi all the way to Nakuru County to respond to a tragedy that could easily be attended to by the county government. I have read that there are a number of people from the County of Nakuru who are hospitalised to-date. I am wondering what the response has been. What action has the County Government of Nakuru taken? I hope that when this Committee goes down to investigate this Solai Dam Tragedy, this would enable us to interrogate the kind of response we get from the county governments when we have these tragedies. That is why we have the county governments.

I have seen the proposed recommendations on the issues that this Committee should address. However, there is one thing that I wanted to bring to the attention of this Committee. As a country, there is a time we passed an Act which was titled 'Workman Compensation Act.' Under that Act, it used to be compulsory that if you are running a factory, you must take out insurance for all the workers working under your factory. In this country, we have two organizations; Water Resources Management Authority (WARMA) and the National Environment Management Authority (NEMA). However, none has any legal framework on to how license people who want to construct dams.

There is no framework to force people who come up with dams to take insurances that can take care of people in the surrounding areas. This should not be restricted to the workers in the dams only.

If there is an overflow, the neighbourhood will definitely be affected. Once the Members of this Select Committee are approved by this House, and I hope that they will be approved, they should go further and make necessary proposals for us to bring amendments to the Water Resources Management Authority (WARMA) Act and the National Environment Management Authority (NEMA) Act. This will ensure that there is a good and clear legal framework on how we license people who want to construct dams.

It will also guide on how inspections should be done every year before we renew licenses. We will have a legal framework for compulsory insurances for people who are constructing dams. We are here to pass legislations that can protect the people we serve and this tragedy gives us a window to relook at these laws and make proposals that can ensure that we have a very clear mechanism on compensation going forward. I do not know how we can force the owner of the Solai Dam to compensate the neighbourhood and even restore the environment if we do not have a clear legal framework.

In conclusion, we know that over 50 people lost their lives during the Solai tragedy and the best way to ensure that their families get compensation is by making a recommendation that they be given an opportunity to get legal services at the cost of the Government or the county government. If these families sit back and wait for compensation from the National Government, it may never come or see the light of day. I want to propose to the Select Committee to consider making a proposal for the national Government or the county government to take up legal services, fully paid, for these families, for them to pursue their compensation.

With those remarks, I fully support the Motion on the establishment of the Select Committee to investigate the circumstances that led to the Solai Dam tragedy.

The Deputy Speaker (Sen. (Prof.) Kindiki): Thank you, Sen. Omogeni. There being no other interest, I now call upon the Mover to reply. She may reply in Kiswahili or English in accordance with the Standing Orders.

(Sen. Kihika spoke off record)

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Sen. Kihika. You are not on record.

Sen. Kihika: Thank you Mr. Deputy Speaker, Sir. If I attempt to reply in Kiswahili, I might kill a very popular Motion by my incompetence.

The Deputy Speaker (Sen. (Prof.) Kindiki): Now that Kiswahili died in Uganda, you might bury it.

Sen. Kihika: Thank you Mr. Deputy Speaker, Sir. I beg to reply. I am grateful and thankful to all the Senators who have contributed and supported the Motion. As much as we say that we cannot measure passion, I feel the passion in support of the Motion in the House. I thank all the Senators and let them know that I have taken note of all the issues, suggestions and proposals raised. Hopefully, in the event that the Motion passes, I will be able to bring them before the Select Committee.

Finally, I humbly request that the House passes this Motion.

I beg to move.

The Deputy Speaker (Sen. (Prof.) Kindiki): Hon. Senators, I determine that this is not a Motion concerning counties. Therefore, we shall take a vote by way of acclamation.

(Question put and agreed to)

The Deputy Speaker (Sen. (Prof.) Kindiki): Let us move on to the next Order.

BILL

Second Reading

THE COUNTY GOVERNMENTS RETIREMENT SCHEME BILL (SENATE BILLS NO.6 OF 2018)

Sen. Sakaja: Mr. Deputy Speaker, Sir, I beg to move that the County Governments Retirement Scheme Bill (Senate Bills No.6 of 2018) be now read a Second Time.

This Bill was published on 7th March, 2018 and read for the First Time in this House on 27th March, 2018. The principal object of this Bill is to establish the County Governments' Retirement Scheme as a mandatory scheme for all county government officers, provide for the establishment of the Scheme's Board of Trustees and provide for the management and administration of the Scheme.

According to Robert Palacios and others, 2006 Publication, they say-

"The rationale for setting up retirement benefits arrangements are similar to both the government and private sector employers. Government sets out schemes to secure the independence of public servants, make career in public service attractive against the backdrop that the private sector pay higher remuneration, shift the cost of remunerating public servants into the future and retiring older civil servants in a politically and socially acceptable way."

The Future of Corporate Pensions, 2010 Publication says that-

"Similarly, the intention of sponsors of occupational private sector schemes even to the current times is to attract and retain talent and skilled workers."

In a survey conducted in the United Kingdom (UK) where 201 executives were interviewed, it showed that by establishing retirement benefits plans, it made them to remain competitive with the other companies in the same sector. A generous well done pension scheme is a source of differentiation and a tool for recruitment and retention. Companies recognise that they have a duty to provide for their employees in retirement.

Mr. Deputy Speaker, Sir, before I delve into the contents of this Bill, allow me to give a brief background so that Members can understand where we have come from. I also bring to the attention of Members that the Report of the Committee is available. This

is an extremely important Bill. It is in the front and centre of the business of this House because it is securing the future for county workers. I urge my colleagues, distinguished Senators, to grab a copy of the Bill and the Report of the Committee that has a matrix of amendments. The reason we kept pushing the moving of this Bill was because the Report was ready for the benefit of Members.

In December, 2013, the Council of Governors (CoGs), the Transition Authority (TA) and the Senate constituted an interagency Technical Committee that was chaired by the Retirement Benefits Authority (RBA). The Committee was to study and advice on a suitable county pension scheme as envisaged within our laws. The Intelligence Technical Committee prepared a report with the following recommendations:

- (a) Establishment of an umbrella pension scheme for all county government staff;
- (b) Local Authorities Pensions Trust (Laptrust) and Local Authorities Provident Fund (Lapfund) to be close to new members with effect from the date the new umbrella scheme was established;
- (c) Enactment of an Act of Parliament by the Senate to give the umbrella scheme a national outlook and protect public interest;
- (d) Administration services of Laptrust and Lapfund be merged to offer administration services to a new umbrella scheme and the two closed funds; and,
- (e) The CoG to set up an implementation committee to oversee the implementation of these recommendations.

Before that, there was a County Retirement Scheme Bill (Senate Bills No. 25 of 2014) that was sponsored by, Hon. Sen. (Prof.) Kithure Kindiki and published on 27th June, 2014. You might be aware of the said Member---

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Sen. Sakaja! You were otherwise doing well.

Sen. Sakaja: Mr. Speaker, Sir, let me stick to the contents of the Bill.

The Bill was read the first time in the Senate on 6th August, 2014. However, the Bill was lost during the second reading on 28th July, 2015. Consequently, the Senate Standing Committee on Labour and Social Welfare in the Eleventh Parliament embarked on a process of coming up with a new Bill for introduction in the Senate as per the recommendations of the Intelligence Technical Committee. This Committee had all the stakeholders involved. I will request that we attach that to the report that is being circulated. All of the stakeholders approved a version of the Bill that would take care of all the interests, fears and hopes of the millions of Kenyans whose future we intent to secure.

A draft Bill that considered that was submitted to the Standing Committee by the task force chaired by the former chairperson of the now defunct TA, Mr. Kinuthia wa Mwangi. The task force was set up by the Committee at a stakeholders' forum in October, 2015. On conclusion of its work, they submitted a draft report to the committee which included the Bill that I have mentioned and the Report was signed by all the stakeholders. The Bill was then published on 2nd, December, 2016 and read for the first time on 23, February, 2017, for the second time on 9th June, 2017 and then passed on 15th June, 2017. The Bill was then referred to the National Assembly where it lapsed in the Eleventh Parliament. Due to the importance of the Bill, the Standing Committee on

Labour and Social Welfare took over the issue of the pension scheme and published the same Bill that was signed by the stakeholders. That is the Bill that is currently before this House.

If I may quote Salome Nichieri who did some seminal work on transferring defined benefits schemes to defined contribution schemes. I want to note that retirement benefit schemes, for the benefit of Members, are designed as Defined Benefit Schemes (DBS) or Defined Contribution Schemes (DCS). More recently, we have hybrid schemes which have both features of a DBS and a DCS scheme in varying degrees. However, more often than not, hybrid schemes are defined as Defined Benefits Schemes because of the guarantee component of what you get after the period. The main differentiator is that a DBS sponsor shoulders all the risks associated with the scheme and in the DCS system it is the individual employees who bear all the risks. Members might be aware that we are transitioning most of our DBS schemes. They are close to any new members. The members who are currently there are being served until their close. A circular was issued and that is being entrenched now in this law.

Internationally, more schemes are being transitioned in that manner in the United Kingdom (UK) and the United States of America (USA). In fact, they moved in the 1970s or 1980s – I will confirm – to what we call individual schemes and what they call the 401(K) case. That is more of where the world is moving. Of course, the choice of the scheme design vests with the sponsors of retirement benefits schemes in many instances with the professional advice of actuaries, which is a field that I am a bit in the know of. Sponsors include employers, government institutions such as insurance companies and associations or organised groups.

Generally, a sponsor is the legal entity that sets up a scheme. The focus of this desk research is limited to employers in the private sector as sponsors of occupational schemes. In the private sector, employers voluntarily sponsor the establishment of occupational retirement benefit schemes for their employees.

Mr. Deputy Speaker, Sir, the move towards establishing this umbrella pension scheme got many challenges in the last House. This was mainly because of lack of clarity from the stakeholders and the fear of the future. This is why we took it upon ourselves, as a Committee, to make sure that we involve all stakeholders in public participation, listen to all their concerns and make sure not one side gets 100 per cent of their wishes and none gets zero per cent. So, there has been a lot of give and take and the Committee has considered positively many of the amendments proposed by all of those who came before us. We shall be presenting that to the House at the Committee Stage during consideration of this Bill.

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

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

Madam Temporary Speaker, I note the change in the Chair. I once heard a Member of County Assembly (MCA) say: “Madam Speaker, Sir.” I think that is inappropriate.

So, this Bill will transition all county government employees, former local authorities and national Government employees who were seconded to county governments under a national retirement scheme and retirement arrangements into one universal scheme for all the 47 county governments. This is besides being open to other public officers including you and I and any other person approved by the Board. The Committee sat on 29th March, 2018 10th and 11th April, 2018 to consider all the submissions that I am saying. We have incorporated this and views will be coming as we present ourselves at that stage.

I will now take Members through, clause by clause or in terms of parts, so that I do not take too much time. The objects of the Bill, from Part 1 and II contain the preliminary matters. That is, the Short Title, Interpretation of terms, Application Clause – which includes all county government employees as well as heading public institutions, organizational state officers who may wish to join. The Scope of the Bill is to extend the range of those who may access the services of this Scheme.

Madam Temporary Speaker, Clauses six to 21 provides for the Establishment and Management of the County Governments' Retirement Scheme and the Board of Trustees. It also provides for the procedure for appointment of the trustees and their necessary qualifications. It also provides the trustees' functions and powers and sets the tenure to three years, renewable only once, based on performance. We had to be keen that the renewal can only be based on performance.

Clause 7 states that the Trustees shall comprise of-

- (a) a representative from the Council of Governors;
- (b) two elected representatives from the County Public Service Board who shall not be of the same gender - we are alive to the gender issues;
- (c) an elected representative of the County Assembly Service Boards;
- (d) two Trustees nominated by trade union umbrellas representing public servants;
- (e) three other persons nominated by employees of county governments of whom at least two shall not be of the same gender; and,
- (f) the chief executive officer who shall be an ex officio member and the secretary to the Board.

There is also listed the qualifications for appointment as a Trustee. Of course, you can only be a citizen of Kenya; you must have a degree from a university recognised in Kenya; at least five years' experience in finance, law, economics, actuarial science or an area that is relevant to the functions of the Board; and, then meet the requirements of Chapter Six of the Constitution, which is extremely important and this must be measured. The rest of that deals with the tenure.

In Clause 10, a trustee can only be re-appointed based on performance. Also, the Board shall put arrangements such that, at least, one third of the trustees are appointed in a staggered six months so that we can have continuity and institutional memory in the Board of the Scheme.

The functions are to formulate policies relating to the Scheme in accordance with the provisions of the Retirements Benefits Act. At this point, I must state that there are law provisions that in the Retirement Benefits Act that we did not deem fit to put in this Act. This is because when it comes to matters of retirement benefits, the Retirement

Benefits Act has primacy in terms of the hierarchy of laws when it comes to dealing with pension issues. So, there is no need for duplication and repetition.

Madam Temporary Speaker, additionally, the Board shall collect contributions and income payable to the Fund under this Act; pay out various benefits to persons entitled to the benefits as provided under the Act and protect the Fund's assets. As it is now, the schemes and funds that exist have in excess of Kshs50 billion in terms of assets. These are assets of Kenyans which must be protected. Many former county workers have not accessed their retirement benefits and most counties are not remitting retirement benefits to these schemes. Once we pass this law, we will come back to this House to ask for certain arrangements in the next financial year. Certain arrangements must be made to recover this money from the allocations to these counties. Some counties – I am very embarrassed that my county tops the list. The county owes different schemes like the Local Authorities Provident Fund (Lapfund) and Laptrust close to Kshs20 billion. That is from the month on month nonpayment.

Of course, this happened from the days of the county councils to the days of devolution under the first governors up to date. I am aware current county governments are trying to sort it out. However, we can protect these Kenyans. When we are discussing the Division of Revenue Bill and the County Allocation of Revenue Bill, in order to deal with the backlog, we can create a direct conditional provision that says that a certain portion of the money we allocate to a county should go directly to these pension schemes. Many people are dying before they receive their benefits and many of them are suffering.

As I proceed, I would just like to have a confirmation of how much time I have from the Clerks-at-the-table since it is a big Bill. The Board has power in Clause 15 to supervise the assets of the Scheme in such a manner as best promotes the purpose for which the Scheme was established. Of course, this must be monitored by the Senate. Some schemes are best known to invest in areas that are not of benefit to the pensioners. The Board will also appoint a custodian, fund manager and administrator. They will carry out the functions as specified in the Retirements Benefits and determine the provisions to be made for administrative expenses as provided for under Clause 40 and for reserves of the Fund as provided for under Clause 39.

Madam Temporary Speaker, there are also provisions from Clause 22 to Clause 27 on the Administration of the Scheme. This part also provides for appointments of a Fund manager and custodian, their functions, the CEO and the vesting of benefits.

The Temporary Speaker (Sen. Pareno): Order, Sen. Sakaja. You were entitled to 60 minutes. You still have 42 minutes.

Sen. Sakaja: Thank you, Madam Temporary Speaker. I want to assure Members, because I have seen that their faces have dropped, that I will not take all that time, especially as the Mover of the Bill.

Madam Temporary Speaker, the Bill provides for the membership of the Scheme without a sponsor, the vesting of benefits and withdrawal from the retirement savings account and retirement from the service, among others. It also sets out the prohibited payments from the Scheme.

Clause 22(2)(a) provides that-

“The fund manager shall, in addition to the duties prescribed under the Retirement Benefits Act –

(a) implement the investment policy of the scheme as approved by the Board;”

This must be underscored because you might find definitions from the investment policy approved by the Board that are inexplicable. This is where public malfeasance comes in. This is where you find that some these schemes might be having unrelated investments that you cannot really quantify in terms of the benefit to the pensioner. So, an investment policy is actually set as proposed and approved by the Board of this Scheme. The Chief Executive Officer (CEO) and the managing trustee have to follow that to the letter in terms of any acquisitions or any other investments. They must also manage the Schemes’ funds and assets in accordance with the provisions of the Retirement Benefits Act, which I have said has policy issues. They will also maintain books of account, which will be reviewed by the Auditor-General and this House.

Madam Temporary Speaker, part of the tug of war that existed from 2013 was on the issue of corporate administration of these schemes. There is a school of thought that felt that this Scheme would best be administered by a private administrator. In fact, one of the versions of the Bill had a certificate number of a private institution to administer this scheme. That has never been done in legislation in the Commonwealth. You cannot legislate specifically for private entity. We felt that the funds of Kenyans will be better kept and administered by an institution that is fully accountable to the institutions of oversight in this country, which include the Office of the Auditor-General, the National Assembly and the Senate; and in this case, the Senate.

Madam Temporary Speaker, in addition to the duties that are provided in the Retirement Benefits Act, the custodian receives the total contributions remitted not later than the next business day following the receipt or contributions from a sponsor. The custodian must also notify the fund manager and the administrator of such receipt not later than the next business day. He or she will also receive and keep in safe custody the title documents, securities and monies of the scheme in trust for the members and beneficiaries.

Clause 24(2) of the Bill provides-

“The functions of the administrator shall be to-

(a) open and maintain an account for each member;”

This is because these days, we have technology across the country which enables us to get information of the status of the account in real time. This will enable members and beneficiaries to know how many their contributions are and how much is due to them upon retirement.

“(b) upon receiving details of the contributions remitted under this Act, cause the amount of the contributions to be credited in the account of the member in respect of whom the sponsor has made payment;

(c) inform the Board if a member’s contributions details differ from the expected;”

This will enable us to deal, in real time as days go by, with the issues of non-remittance, which is done by many of our county governments.

Madam Temporary Speaker, beyond that, Clause 25(1) and (2) provides that-

“A member shall, so long as he remains in the employment of a sponsor, contribute not less than seven and a half per cent of his pensionable emoluments to the scheme.

(2) A sponsor shall contribute to the scheme fifteen percent of the pensionable emoluments of every employee who is a member of the scheme and amounts necessary to cover the premiums for the Insured Benefit.”

It is important to define these amounts in a manner that is not prohibitive for greater contributions. That is why we are using the words “not less.”

Clause 27(1) of the Bill provides that-

“A member shall not withdraw membership or retirement benefits on the scheme while the member is in the employment of a sponsor.”

Further, Clause 27(2) states-

“A member may withdraw benefits from the account before Normal Retirement Age in the following circumstances –

- (a) resignation;
- (b) dismissal
- (c) ill health; or
- (d) immigration;”

Of course, that one is qualified. I was having a discussion with Sen. Farhiya that if one is still under the employ of a sponsor and is a member, they can withdraw if they are on contract after retirement. For instance, if a person worked for the Parliamentary Service Commission (PSC) for 40 years, they then resign and get a contract immediately, their retirement benefits for 40 years are payable to them even as they remain under the contractual employ of a sponsor when they are members. It is important to put that distinction because many people who retire sometimes get engaged by the same employer and have a hard time accessing the retirement benefits because of that lacuna.

Madam Temporary Speaker, Clause 28(2) of the Bill provides that-

“The proof of age of a retiring member for the purposes of subsection (1) is the date of birth in any of the following documents –

- (a) birth certificate;
- (b) national identification card; or
- (c) a valid passport;
- (d) at the discretion of the Board as to acceptance a written declaration of date of birth by the member on the first appointment.”

That is the one which is relied on; the dates declared when a person is first appointed and joined the scheme. We assume that everybody grows at the same rate every year, so that should not change when you retire.

Madam Temporary Speaker, Clause 30(1) provides that-

“Where a member retires as provided for in this Act, the member may request the board in writing to pay to him–

- (a) a lump sum from the balance in his or her retirement savings account that shall not exceed the equivalent of one third of that balance;

- (b) a monthly or quarterly income drawdown in accordance with the formula prescribed by the Board on the advice of a registered Actuary;
- (c) a monthly or quarterly annuity for life purchased from an approved issuer of their choice.”

This must be in writing to avoid fraud.

Madam Temporary Speaker, the next part of this Bill mainly focuses on the financial provisions and establishes the retirement fund that we are talking about. It provides how surplus funds can be dealt with, how they may be invested and sets out a requirement for the board to have a reserve account, which is extremely important in this case.

Clause 38 of the Bill provides for the fund to be established by the board of trustees. This consists of monies as may vest in or accrue to the scheme in the performance of its functions under this Act or under any other written law. It also includes contributions from sponsors and members, grants, gifts donations or other endowments that are given to the scheme. All of them form part of the fund.

The next part, Madam Temporary Speaker, which is from Clause 45 to 53 sets out the general provisions giving the duty of care of the board, protection of the trustees and employees of the scheme from personal liability, offences and proceedings for recovery or deductions from employers under a general penalty clause. The proceedings for recovery or deductions from employers is extremely important. The example I just gave earlier is one of the proceedings that we would wish to take in this House when it comes to allocation of resources to those employers to make sure that they are able to cover the contributions as they should by law.

Madam Temporary Speaker, I want to draw Members to Clause 48. It provides that-

“(1) A person who –

- (a) wilfully fails to remit contribution to the scheme as required;
- (b) knowingly gives false information to the scheme;
- (c) being a Trustee or employee of the scheme, wilfully misappropriates the assets of the scheme

commits an offence and is liable on conviction to a fine not exceeding five million shillings---”

We want to adjust that.

“---or to imprisonment for a term not exceeding two years or to both.”

Madam Temporary Speaker, the penalty for corruption on retirement money for older people who have worked for years and given services to our county governments and county councils must be severe. Part of the amendments that we are bringing is to make these penalties a serious deterrent to anyone who imagines that they can play around with retirement money meant for the benefit of hardworking Kenyan civil servants who have put in their sweat, tears and blood into service to this country. We will be bringing more stringent proposals for that.

Madam Temporary Speaker, even as this goes on, we hope that it will be implemented in that manner starting with those who wilfully failed to remit contribution to the Scheme as required. They know how much they are remitting for their employees

and the budgets are passed by the county assemblies. However, if after that the Chief Finance Officer (CFO) or the County Executive Committee (CEC) member in charge of finance fails to remit, let them know - I hope they are listening wherever they are across this country- that they shall be personally held liable for that crime. That is the first charge of the money that goes to the county and they must honour the work of those who have been working before us and those who are still in the employment of the county governments. They must remit money to the retirement scheme.

Madam Temporary Speaker, Clause 52 of the Bill deals with the phasing of contributions and provides that-

“The contributions by the members of the scheme who were previously employed by the national Government shall be phased in the first three years after the commencement date, at the rates of two per cent, five per cent and seven and a half per cent of the member’s pensionable emoluments in the first, second and third years respectively.”

We have had some issues when it has come to those who have been employees of the national Government, who upon the commencement of devolution were seconded to county governments. They should also get the benefits once they retire.

Madam Temporary Speaker, clauses 54 to 56 provide for the Saving and Transitional Clauses Provisions. Clause 55(1) of the Bill on Local Authorities Provident Fund (Lapfund), the Local Authorities Pension Trust Fund (Laptrust) provides that-

“An eligible employee of a sponsor who immediately before the commencement of this Act was a member of the Local Authorities Provident Fund or the Local Authorities Pension Trust Fund or Laptrust Umbrella Retirement Fund shall, upon commencement of this Act be deemed to be a member of the scheme”

Madam Temporary Speaker, it is important to note that on top of being a member, we want to assure the employees of Lapfund and Laptrust umbrella retirement funds that their jobs are still there even once this scheme comes to be. We are bringing the schemes together; merging oranges with oranges and apples with apples and the only apple is retirement benefits scheme. The two schemes will come together because we are serving the same Kenyans. We need a predictable and accountable way through which we shall provide for retirement benefits to these employees.

Madam Temporary Speaker, as part of our work as a Senate Committee on Labour and Social Welfare, and because of the outstanding issues among all these institutions, on 10th and 11th April, we called a meeting pursuant to Standing Order No.134. The following were represented: The National Treasury, the Kenya National Union of Nurses, the Kenya County Governments Workers Union, Lapfund, the Retirement Benefits Authority (RBA), the Council of Governors (CoG), the Ministry of Public Service, Youth and Gender Affairs, State Department of Public Service, CPF Financial Services Limited, which is a corporate administrator and a privately owned company and Mr. Nahahson Chania-a very jolly old man from central Kenya region - who was a representative of Laptrust pensioners. He said that we could do whatever we wanted provided he still received his money in the manner he has been receiving it.

We also had the Salaries and Remuneration Commission (SRC), the Chairperson Siaya County Public Service Board, Hon. Joe Donde, Mr. Kung’u of Nairobi City County

Public Service Board, who is also the Chairperson of all the County Public Service Boards whenever they come together.

Madam Temporary Speaker, majority of the stakeholders noted that the Bill captures the spirit and intention of establishing a county pension scheme. It adopts the recommendations of the inter Agency Technical Committee which they all sat in a few years ago. It advised on the way forward on the management of county pensions and in particular embraces the establishment of a new pensions scheme, closing the existing ones and beginning afresh with an independent scheme without liabilities. That is what they felt.

The main issue of concern they raised were: one, administration of the scheme. Most were of the view-and the Committee agrees-that the scheme should be administered by an internal administrator like other schemes in the country such as the National Social Security Fund (NSSF) and the National Health Insurance Fund (NHIF), for accountability and transparency. Some stakeholders preferred a corporate manager since that is the arrangement they are in currently. The Committee, however, noted that the scheme would be best administered by an internal administrator so that we can account for every shilling that they receive on behalf of pensioners.

There is a percentage that is given for administration. Once that percentage is given, if they use less, it is profit to that external private company. However, if it is internal, it remains as part of the pensioners' money. We felt that administration costs cannot be just a percentage of the entire amount in the scheme because there are certain costs that are identifiable immediately. If today, the scheme becomes Kshs200 billion, it does not follow that the administration costs also grow proportionately. If we needed "x" number of staff, we probably would still need a similar number with only a marginal increase.

Madam Temporary Speaker, on co-mingling of assets and liabilities of the cross schemes, some stakeholders wanted a definitive way of dealing with that. To deal with that uncertainty, we will propose amendments at the Committee stage; that:-

"The Auditor General shall cause an actuarial audit and valuation of all these schemes at the commencement of the Act to ascertain the assets acquired, liabilities accrued and employees of the schemes. That report shall be submitted to the Senate to consider and approve appropriate action."

The Bill will transition all county governments' employees, former local authorities and the national Government employees under the scheme and will be open to everybody else.

As I move to finish, I thank all those Kenyans and private individuals who came for public participation. It is a core part of our Constitution and of being a Kenyan that you have come and participated in the lawmaking function of this House. I thank the institutions that came and note that in as much as this has previously been such a dicey and divisive affair, we can see light at the end of the tunnel.

All the stakeholders we have spoken to are beginning to appreciate and understand that at the end of the day, we must have this umbrella pension scheme. Not everybody will get 100 per cent. In any negotiation whether about a border between Pokots- led by Sen. Poghisisio and Turkanas; between a parent and a child, or at the United

Nations Organisation (UN) between countries; a proper negotiation is where no party leaves with a 100 per cent of their demands met while the other goes with zero per cent. We have been able to find a middle ground.

This Bill is available for all the Members to go through keenly and propose amendments. We must put our foot down as a Senate. We must note that the same Bill that we published on the 7th March, 2018, was then published again on 10th April, 2018 by the Government in the National Assembly. If you look at the copy of the Bill that you have, off course it is not a money Bill with the meaning of Article 114, and is a Bill that concerns county governments. In the Bill published by the National Assembly, they still assert that it is not a Money Bill and is not concerning county governments.

We do not understand the rationale for ignoring the Senate, especially, when they assert that it is not a money Bill. We heard the pleas even by the national Government at the Legislative Summit where His Excellency the Deputy President asked that we merge all these numerous Bills. The Bills are exactly the same. They copied my Bill, word for word, with exception of the grammatical errors they introduced in the National Assembly Bill. We are asking them to step down theirs which is yet to go for Second Reading, so that once this Bill is done in this House it then goes to the National Assembly and comes back to the Senate. It not being a money Bill and a Bill concerning county governments, there is no rationale whatsoever for it to originate from the National Assembly after it has already been published and is being debated in the Senate.

Madam Temporary Speaker, with those many remarks, I wish to move and invite a Member of my Committee, the good Senator for West Pokot County, Sen. Poghio, to second.

Thank you.

Sen. Poghio: Thank you, Madam Temporary Speaker. I beg to second the County Governments Retirement Scheme Bill (Senate Bills No. 6 of 2018) as ably moved by the Chairman of my Committee, the Senator for Nairobi City County.

Allow me first to also congratulate you for being appointed to the Speaker's Panel. It will allow us to get used to "Madam Speaker" without putting the "Sir" as some people have done today.

You notice that the Mover of this Bill has gone into great details to move the Bill in such a way as to make it easy for all of us to debate. I second by just adding bits to what he has already said, the details of which are in the Bill. I would like to congratulate Sen. Sakaja for such great detail in moving the Bill. Of course, it affirms that he is an expert in this area and so, he can speak to this information.

The name "county governments" that is implied there does not preclude employees of the national Government or any other organization. It gives us an opportunity, therefore, as we merge this existing schemes to make one, not to lose anything in the process. I hope that the smooth transition can be attained.

I would like to dwell mostly on the formation of the Board of Trustees. At this point, I particularly pick on something that has become very common. We put in all requirements for Boards of Trustees that they should meet the requirements of leadership and integrity as set out in Chapter Six of the Constitution. This is common. Despite saying that we are surprised when we see the kind of people who end up in the trustees'

list or the boards. You ask yourself whether we made it clear that people should read Chapter Six of the Constitution and understand that the people we are looking for are those who qualify under that. As a result of the way we do things in this country, people who have no relationship with Chapter Six of the Constitution are the ones appointed and nominated by friends and relatives.

Fortunately for this particular one, they are categorised. You need to come from a particular institution and background. I hope that those who have the opportunity to select or elect members to the boards will definitely look at Chapter Six of the Constitution, especially now that we are going into a stage in our country when we want to fight corruption. The people who have benefited from proceeds of corruption and been named in reports are known. Through lifestyle audits and even what we see, they do not qualify under the provisions of Chapter Six on leadership and integrity. They should, therefore, not find their way into a big fund like this one. As you know, the people with problems of integrity only go there to do what they do best. They look at the big fund and think there is an opportunity for them to divert some of the funds.

It is provided for and listed clearly that this is a body corporate. So, those who end up being in the Board of Trustees need to know that it is not the body corporate which will be sued in case of mismanagement. Each one will be held personally responsible. This is always good for warning. Because of the laxity with which we have fought corruption in the past, people tend to take for granted these provisions. As we form this particular one, this board needs to be careful about who becomes part of the trustees. In any case, the word 'trustee' should speak for itself. These are people you can trust and put your resources under their care.

Apart from that, there is the face of Kenya. I would also like to focus on that. When we have opportunities to put people in places of management, apart from the usual standard qualifications that we have; academic, experience or otherwise, the face of Kenya needs to be seen clearly and deliberately in a fund like this one. It is good practice for everybody to know that if we have three people out of seven coming from the same region or community, it makes it difficult for us to improve in our realization that we are not a tribal nation. As we look at these things, let us not only look at the qualifications, but also the face of Kenya. For purposes of understanding, there can even be someone from Pokot, for example, who has never been in such a fund. Get one of them to be there for the first time or another one from Wajir or some other place, so that we understand that Kenya is bigger than our thinking.

Since my speaker has moved the Bill in detail, I will not spend time going through the same thing. I just want to remind ourselves of the organisations.

The Temporary Speaker (Sen. Pareno): Did you say "my Speaker?" Is it your speaker or the Mover?

Sen. Poghiso: What did I say, Madam Temporary Speaker?

The Temporary Speaker (Sen. Pareno): You said: "My Speaker has moved."

Sen. Poghiso: Madam Temporary Speaker, the Speaker cannot move. When I said that, I meant 'my Chairman,' because you cannot move even if you wanted.

There are certain provisions which are very standard. We will bring amendments on the Floor of the House because there are certain things that are basic to make sure that

we cover the organisations well. For example, under the general provisions, in Clause 46, it is very clear that that board shall take reasonable care to ensure that the management of the scheme and safekeeping of the assets of the scheme is carried out in the best interest of the members of the scheme. In this case, all the 47 counties are represented plus whoever else may want to join.

I propose that the members of the counties need to be trained. Civil education must be taken to the grassroots also for people to understand during the time of transition. I know there will be so many questions.

We have done public hearings here. However, during the transition, we can begin to cascade it down so that Members understand it so that there is no confusion about why one scheme is being folded while another one is being created. I know that is particularly for those who belong to the county councils or the councils of the past who need to understand this transition.

I would like to stop there, but during the Committee of the Whole stage, we will be proposing our amendments.

With those few remarks, I beg to second.

(Question proposed)

Sen. Farhiya: Madam Temporary Speaker, thank you, for giving me this opportunity to contribute to this Bill. First of all, the county retirement benefit is very important, especially with an Executive that is changing every five years. It is very commendable that we are creating this fund to ensure that the security of the counties is taken care of in terms of their retirement to give the county workers a decent retirement.

From what I have read, this fund gives people opportunity to even save extra if they wanted. That creates a saving culture which gives them better ability to have a decent retirement. Any pension scheme usually creates funds where Kenyans, the Government or anybody else can borrow which are also beneficial to the economy of this country. This is a welcome venture. I am glad that the Senate is bringing it up.

Madam Temporary Speaker, one of the amendments that we should have in the Bill is that the trustees should be trained according to the Retirement Benefits Act. When we talk about evaluations and actuarial audits, those are two different functions in retirement benefits that have different functions in that actuaries determine the value of the fund *vis-à-vis* the retirement age and other considerations in terms of their current salaries while auditors do a health check on the finances. They also give us assurance that the assets that exist in both funds are also real and not imaginary as we have witnessed in the National Youth Service (NYS) saga.

Let me look at the specific provisions in this Bill which I feel need to change. I do not know how many minutes I have left because I have very many suggestions.

The Temporary Speaker (Sen. Pareno): Hon. Senator, you still have 11 minutes.

Sen. Farhiya: Thank you, Madam Temporary Speaker. Looking at the Preliminary, there is a definition of “approved issuer” which reads that it is according to the definition in the Retirement and Benefits Act and Regulation. As you are aware,

regulations change after 10 years, but the Act lives forever. Therefore, in my opinion, we should define it the way we want or according to the Retirement Benefits Act.

Looking at page No.93 of the Bill, it is stated that “sponsor” means an employer or any other body who makes contributions on behalf of a member. I understand that. However, in the context of this Bill, I think that should change to the county government as the employer in this case. This is because this is a County Governments’ Retirement Scheme Bill.

On the same page, Clause 3 states-

“This Act applies to all eligible employees of the County Governments and Associated Organisations.”

We need to define the associated organisations. Who are they exactly? If left that way, we will open a box that we cannot define.

Madam Temporary Speaker, Part III of the Bill, Clause 7(1)(d)states that-

“There is established the Board of Trustees of the scheme who shall comprise of-

(d) two Trustees nominated by trade union umbrellas representing public servants;”

Trustees are people who have the interest of the members at heart. Therefore, the two trustees nominated by union umbrellas should be a union for county governments and not anybody else. We do not want the Central Organization of Trade Unions (COTUs) of this world to come and hijack this process and this ends up facing the same fate as the one of the National Social Security Fund (NSSF). That is why I insist that we should specify instead of leaving it as it is.

Madam Temporary Speaker, Clause 11 of the Bill says a trustee may be removed from office for reasons that are listed there. I would like them to add one more reason on that list, to be no.(g), and read “for any other reasons as prescribed by the RBA Act.” That is important because there might be other reasons why someone needs to be removed from office that is much stronger but miss it.

Clause 14 of the Bill lists the responsibilities of the Board from (a) to (h). They should also add the last responsibility to read as prescribed by the RBA Act.

Clause 15(3)(b) states that the Board shall have power to appoint a custodian, fund manager and administrator. An actuary needs to be added to that list. This is because you need an actuary at every given time in any retirement benefit scheme for you to know that even the fund managers who are supposed to invest the money are doing the right thing. They give awareness. They are very good for the trustees to perform their duties well.

This scheme also needs to be defined as much as the Chairperson of the Committee on Labour and Social Welfare has said that this is a defined contribution other than the existing. That needs to come out very clearly. I was going through this Bill and I do not remember seeing any of that.

In Clause 17 on Page 98, the trustee shall be paid remuneration or allowance as may be determined. In my view, instead of remuneration, because all the money that will be paid comes out of the pension scheme, we should just give the trustee only seating allowance; not remuneration. This is because that money will be lost to the--- Pay the

people who work for the scheme but for the trustees, just pay them seating allowance according to the---. For the rest, the Salaries and Remuneration Commission (SRC) circular can apply.

Clause 19(7)(e) states-

“The chief executive officer may be removed from office on the recommendation of the Board if the chief executive officer-

(e) conducts himself in a manner deemed to be inconsistent with this Act.”

I am proposing an amendment to include Retirement Benefits Authority (RBA) Act.

Clause 19(8)(b) says-

“Before the chief executive officer is removed under subsection (7), the Board shall give the chief executive officer-

(b) an opportunity to be heard either in person or by a legal representative”.

This needs to be checked against the Employment Act because legal representative normally comes after the internal process is complete. So, in my view, this needs to be harmonised.

The Temporary Speaker (Sen. Pareno): Your time is almost up.

Sen. Farhiya: Madam Temporary Speaker, I still have so many---

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

Sen. Farhiya: Okay. Madam Temporary Speaker, I still have some contributions to make. Could I ask for your indulgence to give me some more minutes because this is where money is concerned and it is so sensitive?

There is also Part IV, that is, Clause 22(2)(d) which states-

“The fund manager shall, in addition to the duties prescribed under the Retirement Benefits Act-

(d) Provide regular information on investment strategy, market returns and other performance indicators to the Board;”

On this one, to say “regular” is not good enough. It should provide the specific time. For example, I will recommend at least four times in a year the way the meetings are. Each meeting should provide that information. Otherwise, the investment managers will go into slumber and you will never realise. That way, the members will lose their money.

I am also going to bring all these amendments anyway. I am just giving feedback so that the Committee starts thinking about them.

Clause 23(2)(c) states-

“The custodian shall in addition to the duties prescribed under the Retirement Benefits Authority-

(c) receive and keep in safe custody the title documents, securities and monies of the scheme in trust for the members and beneficiaries.”

I propose we also include interests and any other investment income. That needs to be included. Otherwise, people might pocket that money.

In the same Clause, there is a provision which says:

“Provide reconciliation on a regular basis.”

I recommend that we amend it to a quarterly basis. Every time they come for a meeting, let them have those reconciliations of funds.

Clause 24(2)(d) states-

“The functions of the administrator shall be to-

(d) provide customer support services to members, including access to members’ account balances and statements;”

I propose we indicate “on a quarterly basis.” If you leave it blank, people will never give proper information to the trustees.

In the same Clause, particularly, Clause 24(2)(g), we should add, “From time to time, proper books of accounts of the funds needs to be kept”.

In Clause 25(2) which states-

“A sponsor shall contribute to the scheme fifteen per cent of the pensionable emoluments of every employee who is a member of the scheme and the amounts necessary to cover the premiums for Insured Benefit.”

The word “at least” needs to be included so that “at most” can be better.

In my view, Clause 25(4) should be deleted because all contributions by the members and the sponsor shall be reduced by amounts of contribution to the National Social Security Fund (NSSF) in respect of members. Right now, we only contribute Kshs400 to NSSF. This should be at least and then this other one can be an extra contribution. So, that Clause needs to be deleted.

In Clause 25(6) which states-

“Contribution required to be made under subsection (1) and (3) shall be deducted by a sponsor from the salary of the contributor on each occasion on which the salary is paid and shall be paid into the scheme together with the sponsor’s contribution before the tenth day of every calendar month or before any other day which may be notified in writing and approved by the Authority.”

I propose that the word “occasion” be replaced by “month”.

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

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

Sen. Malalah: Madam Temporary Speaker, I stand to be guided; is it in order for the hon. Senator to take us through the amendments and yet she is just supposed to second the Bill? I think she should be addressing the gist of the Bill generally not to take us through the specific amendments. I would suggest that she address the generalities of the Bill and not the specific amendments. That can be done in the Committee of the Whole.

Thank you.

The Temporary Speaker (Sen. Pareno): Sen. Farhiya is in order. The Bill was seconded by Sen. Poghio and she is contributing to the Bill. So, she is quite in order.

Please, proceed.

Sen. Farhiya: Thank you, Madam Temporary Speaker. There is also Clause 29 which is just a repeat of Clause 28. Particularly, Clause 29(2) is a repeat of Clause 28(2).

The Temporary Speaker (Sen. Pareno): Order, Sen. Farhiya! Your time is up, but I have added you another two minutes.

Sen. Farhiya: Thank you, Madam Temporary Speaker for your indulgence.

Another Clause that was addressed by the Chair is Clause 37. I am still of the view that Clause 37(a) should be deleted because the essence of retirement benefit is to save for retirement. If the person has worked for 40 years and he is still working for the same institution before withdrawing his funds, what we should be asking is; if the county government can continue contributing to the fund because you already have an employment---

If we cannot do that then at least be fair to the member by deleting Clause 37(a) because the person is still in gainful employment and he or she does not need to take that fund.

Lastly, in Clause 39, in terms of sharing the reserves, we should continue creating the reserve to give members some more income on a yearly basis. However, if anybody leaves, that pension should be shared among the members so that that member who is leaving can get his or her share at that point. This is because if you allow reserves to accumulate without giving benefit to the members who are leaving, this can bring litigation in future years to the trustees. This is because someone would have contributed money when he was an employee and he would not have left with his benefits if the reserve is left like that.

Thank you for adding me the extra time.

ADJOURNMENT

The Temporary Speaker (Sen. Pareno): Hon. Senators, it is now 6.30 p.m., time to interrupt the business of the Senate. The House, therefore, stands adjourned until tomorrow, Wednesday, 6th June, 2018 at 2.30 p.m.

The Senate rose at 6.30 p.m.