

REPUBLIC OF KENYA



PARLIAMENT

THE SENATE

SECOND SESSION

REPORT OF THE SELECT COMMITTEE ON THE SOLAI DAM TRAGEDY
(Established, Tuesday 5th June, 2018)

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ABBREVIATIONS AND ACRONYMS

NCA	– National Construction Authority
EIA	- Environmental Impact Assessment
KMD	– Kenya Metrological Department
KDF	– Kenya Defense Forces
NEMA	– National Environment Management Authority
SEN	- Senator
WRMA	- Water Resources management Authority

PREFACE

1. The Select Committee on the Solai Dam Tragedy was established by a resolution of the Senate on Tuesday, 5th June, 2018.
2. The Committee was established in response to the Solai dam tragedy in May, 2018 and is mandated to-
 - a) holistically investigate and establish the circumstances leading to the Solai Dam Tragedy;
 - b) propose modalities for compensation of all the families of the deceased victims and the surviving families;
 - c) ensure the Dam owner makes compensation in regard to the destroyed environment, especially trees and other vegetation and top fertile soils; and
 - d) propose measures to mitigate any such eventual disasters especially for Counties that are prone to floods and landslides.
3. The Committee comprised of the following Senators:-

(1) Sen. Mutula Kilonzo Junior, MP	-Chairperson
(2) Sen. Mithika Linturi, MP	-Vice - Chairperson
(3) Sen. Fatuma Dullo, CBS, MP	-Member
(4) Sen. Sakaja Johnson, MP	-Member
(5) Sen. (Eng.) Ephraim Maina, EBS, MP	-Member
(6) Sen. (Prof.) Imana Malachy Ekal, MP	-Member
(7) Sen. (Arch.) Sylvia Kasanga, MP	-Member
(8) Sen. Ledama Olekina, MP	-Member
(9) Sen. Susan Kihika, MP	-Member

EXECUTIVE SUMMARY

Mr. Speaker Sir, The Solai dam tragedy on 9th May 2018, where (48) people died is not just an ordinary tragedy. The tragedy is a culmination of Intricate and sophisticated criminal conspiracy between the owner(s) of Solai dam in cahoots with Public officers, who in the proverbial, “hear no evil, see no evil and speak no evil,” turned a blind eye to a unlicensed monstrous man-made earth dam sitting 1694 metres above sea level, made of porous material, with a 30 metre mud wall, holding 300,000m³ of water and no spill way. It was a disaster waiting to happen.

Mr. Speaker Sir, We have since established that former Member of Parliament Hon. Koigi wa Wamwere raised concerns on the blocking of rivers in the National Assembly on 12th November 1980. No one took action. Similar complaints by residents were not acted upon. This Senate is called upon the rise to the occasion by dealing decisely and conclusively with this impunity.

Mr. Speaker Sir, pursuant to the mandate bestowed upon the Select Committee on the Solai Dam tragedy, the Committee conducted an in depth and detailed inquiry on the areas of concern during the last (2) months. This report will clearly demonstrate that the tragedy was deliberate and systemic criminal negligence by owner(s) of the dam, WARMA and NEMA.

Mr. Speaker Sir, in the course of the proceedings, the Committee was perturbed by what appeared to be a casual glossing over of the ills of the above tragedy. In all cases, the concerned officers had either omitted documents, could not conveniently remember pertinent facts and in one occasion, the officials of the Water Ministry attempted to mislead the Committee. We have recommended appropriate punishment for the above misadventures.

Mr. Speaker Sir, in executing its mandate, the Committee was motivated largely with the desire that never again should a Kenyan die due to the criminal neglect of duty by a public servant(s), and no person is above the law however wealthy,

Mr. Speaker Sir, we witnessed the pain of the victims of Solai Dam. Our pain was exacerbated by an attempt by the owner(s) and National Government Officials to compel them to sign forms to absolve the owner(s) of the dam from liability under the pretext that they were being paid consolation money. This committee has unearthed the evil scheme and recommended stern action against National Government officials.

Mr. Speaker Sir, after interrogating the facts, perusing documents and reports, the committee has come up with legal solutions to restore Solai to its original state and at the same time restore the livelihoods of its residents. We have established that the legal provisions under Environmental Management Act for enforcement of restoration orders are not deterrent enough. The Environmental Restoration regime in the Act will need amendments. Nonetheless, we have proposed deliberate and systemic solutions to the Solai disaster under the principle “Polluter pays principle”.

Mr. Speaker Sir, among the Submissions that were received by the Committee and that revealed vital including; That

1. The admission by a Cabinet Secretary and Ministry officials that the dam was indeed an illegal dam,
2. The tragedy was not an Act of God.
3. There was attempted cover up of the whole incident by not securing the scene after the tragedy despite an order from the Director of Public Prosecutions.
4. There is a lack of both a policy and legal framework for disaster management;
5. There is a general casual manner in which the all the agencies dealt with this matter before and after the tragedy.
6. There was a general recalcitrant attitude by agencies, with all of them abdicating their roles. During the initial stages of the investigation, all the agencies that appeared before us submitted that the dam was constructed before their existence;
7. There was lack of goodwill by the concerned agencies to get to the bottom of this tragedy with several attempts to mislead the Committee, contrary to the Parliamentary Powers and Privileges Act 2017;
8. Satellite images and in-depth analysis, however, revealed that there were recent earthworks done with the full knowledge of government agencies; and,
9. The owner of the Dam in cahoots with Government officials caused the victims to sign forms absolving the said owner(s) from liability by paying off the victims under the pretext that they were receiving consolation money.

Mr. Speaker Sir, The owner(s) of the dam surreptitiously applied for permits to contract a 2.5m weir to divert/abstract 50m cubic of water during normal flow and 24000m cubic of water during floods. The Ministry of Water officials and Water Resource Management Authority did not produce any record to show that they consulted the community before allowing the owner(s) of the dam to divert 5000 liters a day of water. During our visit to the site, we noted that the stream was seasonal. The above water was possibly all the water available the whole day. With a stroke of a pen and without checking, WARMA allowed a water source to be diverted and later blocked entirely. The owners have benefitted from an illegality and must compensate the Solai Residents.

Mr. Speaker Sir, the Committee was cognizant that even as this inquiry progressed, various court cases touching on this matter were still ongoing and we hope these too, will deal with the criminal elements of the situation. The Committee was throughout the process guided by standing order 92 of the Senate Standing Orders, and the rules of natural justice. We did not venture into the evidence of any case and neither did we ask to see it. We relied on the materials submitted to us. The totality of the evidence leads to one inevitable and irresistible conclusion; The owner(s) must be held liable for the tragedy under the law, and correspondingly pay for deliberately and knowingly violating the laws of Kenya.

Observations

Mr. Speaker Sir, the Committee has observed, and this report will show, that the people of Solai were on their own in as far as legal protection before and after the tragedy.

The Committee during its inquiry observed a myriad of issues which among these are;

1. The Solai dam tragedy of 9th May, 2018, was a result of deliberate criminal acts and omissions on the part of the owner(s) and criminal neglect of duty, abdication of responsibility, conspiracy and concealment by officers of NEMA, NCA and WRA. The (48) people did not die accidentally or through an Act of God. The risks taken in constructing a dam of that magnitude were obvious.
2. That the owner did not apply and were never granted a permit for a dam on Watkins stream. The owner of Milmet dam knowingly and unlawfully constructed Milmet dam by blocking Watkins stream since 2004, on the basis of a permit for a weir contrary to the provisions of the Water Act with the full knowledge of Water Resource Authority and the Ministry of Water and Sanitation officials; This is Criminal and must be treated and punished as such.
3. The owner(s) was aware of the Provisions of the law on dam and water works as they had designed and applied for a dam license on Tindress River in 2004. Their actions of Watkins River were casual, deliberate and imputinous.
4. It is apparent from the satellite images that there were major earth works on Milmet dam between 2014 to 2017. During this period, the owner(s) of the dam had applied for permits of a weir of 2.5 m high to abstract/divert 50cm³ of water during normal flow and 2045cm³ during floods while they were constructing a dam. If this is not Criminal, nothing will ever be.
5. Kenya Metrological Department issued advisories in good time on excessive rainfall. However, the rain on the day of collapse was within the normal regime in

that region hence not the cause of the collapse of Milmet dam. To suggest, that boulders and logs caused the breakage of the dam, is at best delinquent and disingenuous.

6. Satellite images submitted by the Cabinet Secretary for Water and Sanitation dated 2004, demonstrated that the owner of Milmet dam had completely blocked the natural course way of Watkins stream denying the residents downstream the use of the water resources. It is dumfounding that someone thought they could impound (in a dam) all the rain in Solai. There is no vocabulary for this sort of Greed.
7. There is low public confidence and trust in the post-disaster management of the tragedy by National Government coordination officers and the County Government. For posterity and restoration, Solai needs deliberate change of all the current officials of National Government.
8. Perry Mansukh Kansagara, the Managing Director of Kensalt Limited and Patel Coffee Estates Limited, during his appearance before the Committee made vague statements, refused to disclose information, alleged to have no recollection of pertinent information and made false statements about the construction, licensing and operation of Milmet dam in a bid to mislead the Committee. We have no hesitation in finding him dishonest.
9. The Committee did not see any act of love for the people of Solai as proclaimed by him during his evidence.

Recommendations

Mr. Speaker Sir, having observed these very serious issues, the Committee was unanimous that the (48) lives should not, cannot and shall not die in vain. The victims of the mass murder that is Solai dam tragedy must be honored. It is on this basis that the Committee makes far reaching recommendations among them;

1. Urgent investigations with a view to Prosecute b0e conducted on the officers of the National Government including the County Commissioner, Nakuru, DCC and Chief in Solai, for abuse of office for obstruction of Justice.
2. ODPP and DCI investigates with a view to Prosecute the authenticity of the documents submitted to the Committee by the Cabinet Secretary for Water and Sanitation to determine whether the documents were false or submitted with the intention to mislead the Committee contrary to the provisions of the Parliamentary Powers and Privileges Act;
3. That the ODPP investigates the public officers cited in this report for contravening Article 232 of the Constitution, the Public Officers Ethics Act and the Public

Service (Values and Principles) Act for conspiracy to mislead the Public, their respective Authorities and the Committee;

4. That the Governor Nakuru County and all other Governors appoint by Gazette County Environment Committees within three months in line with section 29 of EMCA within 3 months.
5. That the Restoration Order issued by NEMA on 19th July, 2018 be revoked and a new one be issued with specific directions on the restoration and compensation in accordance with section 108 and 109 of the EMCA.
6. That Parliament expedites the passing of the Disaster Risk Management Bill, 2018, Senate Bill No. 8 of 2017.
7. That the Restoration of Solai be given priority after a comprehensive Environmental Audit by a reputable firm to assess the parameters of restoration of Solai and assess the quantum of compensation payable to the families of the deceased, injured and for loss of livelihoods.
8. That an alternative parcel of land be issued to the affected Solai residents as the restoration of their lands is being carried out.

Acknowledgement

Mr. Speaker Sir, the Committee takes this opportunity to thank the offices of the Speaker and the Clerk of the Senate for facilitating the technical and administrative work of the Committee. The Committee is also grateful to the witnesses from Government bodies and members of the public for appearing before the Committee on various occasions and submitting documents required by the Committee.

Mr. Speaker Sir,

It is my pleasant duty, pursuant to Standing Order 203, to table the Report of the Select Committee on the Inquiry into the Solai Dam Tragedy for consideration and adoption by this Honourable House.

Signed.....

Date.....

SEN. MUTULA KILONZO JUNIOR, M.P.

CHAIRPERSON

THE SELECT COMMITTEE ON THE SOLAI DAM TRAGEDY

CHAPTER ONE: INTRODUCTION

The Senate on Tuesday 5th June, 2018 approved a motion moved by Sen. Susan Kihika, M.P., pursuant to the Senate Standing Order No. 48, establishing a Select Committee on the Solai Dam Tragedy. This report has been done pursuant to the motion tabled in the Senate and adopted for actualization.

Motion

Establishment of Select Committee on the Solai Dam Tragedy

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.

Methodology

The Committee, pursuant to its mandate adopted various methods in executing the inquiry as listed below:

- 1) Deliberative meeting sessions;
- 2) Interrogative sessions;
- 3) Field visit;
- 4) Analysis of submitted documents; and,
- 5) Public hearings.

CHAPTER TWO: SUBMISSIONS FROM KEY STAKE HOLDERS

SCHEDULE OF MEETING WITH KEY STAKEHOLDERS

The Committee upon constitution adopted a work plan and resolved to meet various stakeholders. The Stakeholders appeared before the Committee as detailed in the schedule below:

NO.	DATE	ORGANIZATION	SUBJECT
1.	27 th June, 2018	National Construction Authority	Briefing on their mandate, and involvement <i>before and after the tragedy.</i>
2.	27 th June, 2018	National Environment management Authority	Briefing on their mandate, and involvement <i>before and after the tragedy.</i>
3.	27 th June, 2018	Kenya Metrological Department	Briefing on their mandate, and involvement <i>before and after the tragedy.</i>
4.		Ministry of Water and Sanitation	Briefing on the mandate, and involvement before and after the tragedy
5.	28 th June, 2018	Ministry of Defense	Briefing on their mandate, and involvement <i>before and after the tragedy.</i>
6.	4 th July, 2018	Kenya Red Cross society	Briefing on their mandate, and involvement <i>before and after the tragedy.</i>
7.	17 th July, 2018	Ministry of Environment and Forestry	Briefing on their mandate, and involvement <i>before and after the tragedy.</i>
8.	17 th July, 2018	Nakuru County Government	Briefing on their mandate, and involvement <i>before and after the tragedy</i>
9.		Kenya Human Rights Commission	Submitted a report on the Solai Dam Tragedy
10.	6 th July, 2018	Public Hearing	Public submission at Solai AIC grounds on the experiences of the Community
11.	18 th July, 2018	Office of the Director of Public Prosecutions	Briefing on their mandate, and involvement <i>before and after the tragedy</i>
12.	17 th July, 2018	Solai Group of Companies	Ownership and involvement before and after the tragedy
13.	23 rd July, 2018	Ministry of Interior and Coordination of National	Briefing on their mandate, and involvement <i>before and after</i>

1. NATIONAL CONSTRUCTION AUTHORITY (annex p.g 39 – 350)

The Ag. Executive Director, Eng. Maurice Akech appeared before the Committee and made a presentation on 27th June, 2018 through written submissions and highlighted the following:

1. That the mandate of the National Construction Authority, as provided under Section 5 of the Act, the object for which the Authority is established to oversee the construction industry and coordinate its development. Pursuant to Section 5(2) of the National Construction Authority's Act No. 41 of 2011 the Authority's functions are as follows;
 - a) Promote and stimulate the development, improvement and expansion of the construction industry;
 - b) Advise and make recommendations to the Minister on matters affecting or connected with the construction industry;
 - c) Undertake or commission research into any matter relating to the construction industry;
 - d) Prescribe the qualifications or other attributes required for registration as a contractor under the Act;
 - e) Assist in the exportation of construction services connected to the construction industry;
 - f) Provide consultancy and advisory services with respect to the construction industry;
 - g) Promote and ensure quality assurance in the construction industry;
 - h) Encourage the standardization and improvement of construction techniques and materials;
 - i) Initiate and maintain a construction industry information system;
 - j) Provide, promote, review and coordinate training programmes organized by public and private accredited training centers for skilled construction workers and site supervisors;
 - k) Accredite and register contractors and regulate their professional undertakings;
 - l) Accredite and certify skilled construction workers and construction site supervisors;
 - m) Develop and publish a code of conduct for the construction industry; and,
 - n) Do all other things that may be necessary for the better carrying out of its functions under the Act.
2. That further to its regulatory functions, the National Construction Authority is mandated to prescribe the qualifications or other attributes required for registration as a contractor under the Act. Under its schedule of contract works, the Authority classifies contractors licensed to construct dams under Civil Works (Water).

3. The Authority is also mandated to register dam construction projects in line with Section 5(2) (i) of the Act and Section 17(of the NCA Regulations which provides;
 - i. That the Water Act 2016 provides for the regulation, management and development of water resources, water and water sewerage services. Further, Section 11 of the Act establishes the Water Resources Authority with a mandate to formulate and enforce standards, procedures and regulations for the management and use of water resources and flood mitigation among other functions.
 - ii. That the Authority is empowered to undertake registration of contractors under its enabling Act and prescribe the qualifications or other attributes required for registration against an evaluation criteria.
 - iii. That the Authority was at the time proposing a Revised Evaluation Criteria 2018 that highlights the requirements for contractors involved in the construction of dams. The current evaluation criteria provides for civil works contractors but is not specific to applicants specialized in the construction of dams.
4. Under the Draft Revised Evaluation Criteria 2018, dam contractors are classified as civil works (water) contractors for purposes of registration with the Authority. The requirements provide that the applicant must provide a Ministry of Water license to undertake water supply, sewerage, irrigations works, dams and pans. Further, the Criteria prescribe a higher threshold for plant and equipment for contractors involved in dam construction.
5. That the Authority is mandated to promote and ensure quality assurance in the construction industry. In line with Section 5(2) (g) as read together with Section 23(2) & (3) of the Act, the Authority ensures compliance in the industry by conducting inspections and investigations of projects.
6. That the Authority did not undertake a structural inspection of the Solai Dam prior to the unfortunate tragedy as its regulatory scope is with regard to structures under construction.
7. That the NCA Central Rift Regional Team had visited the scene of the collapsed dam in Solai Centre, Nakuru County on 10th March 2018. The Authority's preliminary observation was that the dam failure was likely to have been triggered by high water levels which might have exceeded its capacity as a result of heavy rainfall experienced in the area. The Authority submitted a breakdown of the number of registered civil works (water) contractors in Kenya.

8. That there were seven dams/ water pans on the farm namely;
 - i. **Milmet Dam** (which collapsed) was one of the two large dams located at the high reaches of the farm. The Dam was located approximately three kilometers upstream of Solai Market
 - ii. **Tinderess Dam** is one the two large dams which are located on the high reaches of the Farm. The Dam was evacuated a few days after the breach of Milmet Dam as it is located directly upstream of Milmet Centre.
 - iii. **Pelican water pan** is the smallest of the seven dams and possess no major risks to downstream resident
 - iv. **Moi dam** which is a medium dam that is located on the lower reaches of Milmet Fam. Basic inspection revealed a stable embankment with no visible structural defects. The downstream was covered with vegetation.
 - v. **Duck Dam** (formerly Main House Dam) is an embankment dam and classified as class B (Medium Hazard). The Dam is located within middle reaches of the farm.
 - vi. **D.O Dam** is also an embankment dam classified as class B (medium Hazard)
 - vii. **Mini Moi Dam** is also an embankment dam and classified as class B (Medium Hazard). It is located downstream of Moi Dam.
9. One of the main reasons that aggravated the destruction force of Milmet dam was its elevation. Milmet and Tinderess Dams are located on the higher reaches of Solai Farm and were approximately three kilometers upstream of the Solai Market (the most affected area after the breach). The elevation at the Tinderess and Milmet Dam Sites is approximately 1694 meters above sea level while Solai Market is at an elevation of 11365 masl. This showed that the dam was 329 metres above sea level.
10. The average gradient from the Milmet and Tinderess dam sites to Solai market is approximately 4%. There was also a concern that Milmet and Tinderess Dams have completely blocked stream flows. On breaching, the water from the reservoir did not assume and neither was it contained in its original river valley. This aggravated the destruction as water column had to 'finds its way' to the rivers downstream of Solai Market.

The NCA, upon direction of the Committee conducted and submitted a preliminary forensic investigation report on the collapse of the Dam on 18th July, 2018. The investigating team reviewed documents, satellite images, and conducted interviews with stakeholders and conducted hydrological analysis of the catchment area.

The preliminary Forensic Audit Report contained the following conclusions:

1. The Milment Dam failed because of Piping. (Internal erosion of the embankment material along the left hand side of the abutment viewing from the upstream or reservoir area);
2. That there was no evidence to indicate that the developer followed the laid down regulations governing the design, construction and supervision of the construction and supervision of the construction works of the Dam;
3. That there was no evidence that the owner had engaged a registered contractor to construct the Dam;
4. That there was no evidence that the owner was carrying out operations and maintenance of the Dam as prescribed in the Water Resource management Rules;
5. That the loss of lives and property damage would have been minimized had the owner acted on noticing early signs of Dam failure; and
6. That the total seasonal rainfall within the catchment was above average but the rain on the day of collapse was within the normal regime in that region.

The report presented the following recommendations;

1. An audit of all high hazard dams in Kenya to establish their safety status;
2. A review of the enforcement structure of the Water Resource Management Rules (2007);
3. All high hazard/ risk dams to accommodate a warning system supported by effective instrumentation;
4. Establish guidelines on siting of dams to ensure minimal risk to downstream residents in case of a breach;
5. Enforce regular inspection of dams in line with their risk levels;
6. Establish a National dam safety Monitoring Unit which will be mandated to continuously monitor structural;
7. Establish an inventory and classification of all dams in Kenya;
8. Review of the Legal and Institutional framework governing the construction of dams, to include a comprehensive compensation and rehabilitation mechanism in case of a disaster
9. The NCA presented that they were unable to conclude investigations including material tests as the investigative team were denied access to the site. This necessitated the filing of an application in court under certificate of urgency to seek

orders allowing access to the site. The matter (CMCC No.746 of 2018 (NCA Vs Kensalt Ltd.) was undetermined by the time of writing this report.

2. NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY (annex p.g 351 – 547)

The Director General was represented at the meeting of the Committee on 27th June, 2018 by Mr. David Ongare, and made a presentation through written submissions and highlighted the following. The Authority subsequently submitted a control audit and a restoration order.

1. In the matter of the mandate of the NEMA, Mr. Ongare presented that the National Environment Management Authority (NEMA) is established under the Environmental Management and Coordination Act (EMCA) CAP 387 of the Laws of Kenya and became operational on 1st July 2002 following the merger of three government departments, namely: the National Environment Secretariat (NES), the Permanent Presidential Commission on Soil Conservation and Afforestation (PPCSCA), and the Department of Resource Surveys and Remote Sensing (DRSRS).
2. NEMA is mandated to exercise general supervision and coordination of over all matters relating to environment and to be the principal instrument of the government in implementation of all policies relating to environment in collaboration with the lead agencies.
3. The authority presented that NEMA ensures that they undergo EIA before commencement of construction. This requirement came into effect in the year 2004 after gazettment of the Environmental Impact Assessment/ Environmental Audit Regulations of 2003 which was after the Solai Dam had been constructed.
4. That NEMA learnt of the incident from media reports on the night of Wednesday 9th May 2018. Consequently, NEMA Nakuru Office dispatched officers to assess the situation on the morning of Thursday 10th May, 2018 and to offer technical support.
5. NEMA environmental inspectors from headquarters visited the farm on the 23rd May 2018 accompanied with their Nakuru counterparts. The officers inspected the site to assess environmental impacts post the incident and to recommend the next course of action particularly on environmental restoration as well as verifying compliance to EMCA by the Patel Farm Management. The report from the team had the following highlights:
 - i. That the dam was owned by Kensalt plantations Ltd;

- ii. That the farm had been submitting environmental audits for the farm and the last one was submitted to NEMA on 10th April 2017 reference number NEMA/NKR-C/EA/2674);
 - iii. That Agricultural activity, in the farm such as the macadamia farms and green houses have EIA licenses.
 - iv. That an environmental impact assessment license was obtained in 2016 for green houses reference number NEMA/NKR/PR/5/2/3039 and another in 2017 for more green houses and composting area reference number NEMA/NKR/PR/5/2/3810;
 - v. That the farm had conducted an environmental audit for the year 2016 Ref **NEMA/NKR-c/2017/EA/2674 but was unsatisfactorily and hence the farm manager was issued with an improvement order to produce a fresh and a comprehensive environmental audit and submit to NEMA *by the 6th of June, 2018***
 - vi. That The incident impacted on infrastructure as follows:
 - vii. The Nakuru – Solai road was blocked by debris from the dam spill and excavations works were ongoing to open the road at the time of the inspection.
 - viii. Access roads had also been destroyed by the floods.
 - ix. Solai Primary school had received major damage with various structures and pieces of furniture destroyed.
 - x. Solai secondary also had parts of the perimeter wall destroyed; 450 households affected, a number of houses were swept away.
6. The team of inspectors recommended for a control audit of the farm which would be spearheaded by NEMA.
7. In order to avert future incidences the Director General directed all the NEMA County Directors of Environment in the 47 Counties to form technical teams of relevant lead agencies and inspect the current status of dams in the country.
8. NEMA submitted their control audit which is annexed to this report.

3. KENYA METROLOGICAL DEPARTMENT (KMD) (annex p.g 548 – 553)

The Assistant Director Mr. James Muhindi appeared before the Committee on 27th June, 2018 presented as follows:

1. That as a matter of policy the KMD has always given early warning messages to Kenyans and specific stakeholders to enable them prepare for any disasters as a result of weather. The Assistant Director further stated that the department uses satellite imaging and state of the art equipment to forecast and record data. KENGEN was singled out as a stakeholder whom always took their warnings seriously.
2. KMD always issues 24-hour, 5-day, monthly (30-day), and seasonal (90-day) forecasts. KMD also provides specialised services to other sectors of the economy including; Aviation, Agriculture, Energy, Health, Insurance, Water Resources, Forestry and Wildlife, Tourism, Disaster Management, Marine and the environment, among others.
3. Analysis of the March, April, May (MAM) 2018 rainfall from 1st March to 31st May 2018, indicates that most meteorological stations in the country recorded excessive rainfall that was far much above-average, this included Nakuru station under which the subject area lies.
4. The amount recorded at Nakuru station was also the highest in record since 1964. The station recorded 656.8mm compared to 564.8mm recorded during the MAM 1988 season.
5. The MAM 2018 temporal distribution for Nakuru was 55 days which was the highest ever recorded. This is in comparison with the areas average of 38 days.

4. MINISTRY OF WATER AND SANITATION (annex p.g 652 – 951)

The Cabinet Secretary, Mr. Simon Chelugui appeared before the Committee on 3rd July, 2018 together with the management of the following agencies;

- The Water Resources Authority;
- The Rift Valley Water Service Board; and
- The National Water Pipeline Corporation;

and made a presentation and later submitted written submissions and highlighted the following:

1. That the Water Act, 2016 provides guidelines on the institutions mandated to play various roles in the water sector and the responsible institutions include; Water Resources Authority and National Water Harvesting and Storage Authority.

Water Resources Authority (formerly WARMA) provides information and advice for formulation of policy on national water resource management, water storage and flood control strategies and its functions include;

- a) Formulate and enforce standards , procedures and regulations for the management and use of water resources and flood mitigation;
- b) Regulate the management and use of water resources;
- c) Enforce regulations made under the Act;
- d) Receive water permit application for water abstraction, water use and recharge and determine, issue, vary water permits; and enforce the conditions of those permits;
- e) Collect water permit fees and water use charges;
- f) Determine and set permit and water use fees;
- g) Provide information and advice to the Cabinet Secretary for formulation of policy on national water resource management, water storage and flood control strategies;
- h) Coordinate with other regional, national and international bodies for the better regulation of the management and use of water resources; and,
- i) Advise the Cabinet Secretary generally on the management and use of water resources.

The functions of National Water Harvesting and Storage Authority include;

- a) Undertake on behalf of the national government, the development of national public water works for water resources storage and flood control;
- b) Maintain and manage national public water works infrastructure for water resources storage;
- c) Develop a water harvesting policy and enforce water harvesting strategies;
- d) Undertake on behalf of the national government strategic water emergency interventions during drought; and,

- e) Advise the Cabinet Secretary on any matter concerning national public water works for water storage and flood control.
2. That the Ministry of Water and Sanitation provides the overall policy and guidelines on dam development and management and is responsible for policy, coordination and monitoring, including setting of standards, some of which include;

The Water Act, 2016 that gives powers to WRA to;

 - a) Monitor compliance by water users with the conditions of permits and the requirements of the Act;
 - b) Ensure that there is in place a national monitoring and geo referenced information system on water resources;
 - c) Regulate and implement Water Act 2016 once finalized and operationalized to ensure dam safety in Kenya;
 - d) Implement the National Water Policy (currently under review)
 - e) Provide procedures for permitting and water allocation (Water Resources Rules and Regulations, 2007);
 - f) Implement the Water Resources Management Strategy; and ,
 - g) Design Manual for Dams in Kenya.
 3. That licensing and procedures for the establishment of private dams include;
 - i. Submission a duly completed and signed Water permit Application to WRA;
 - ii. Pay appropriate permit assessment fees which is dependent on the class of the permit application;
 - iii. Commission at his/her own cost a Dam Design Report carried out by a qualified water resource professional as set out in Rule 57 of the Water Resources Management Rules, 2007;
 - iv. Commission at his/her own cost an Environmental and Social Impact Assessment (ESIA) in accordance with the Environmental Management and Coordination Act 2015 for NEMA to issue a licence;
 - v. Upon authorization to construct, the applicant must;
 - Commission at his/her own cost a Qualified Contractor;
 - Commission at his/her own cos a Qualified Water Resource Professional to supervise construction;
 - Ensure that the construction is inspected at the milestones stated in the Authorization to construct; and,
 - Ensure notice is issued in respect to any possible damage downstream in the event of any leakage from the dam.
 - vi. Apply for an extension to the authorization to construct in the event that the works are not completed within the allotted time.
 - vii. Report any dam failure or damage to the WRA in accordance with Rule 67 of the WRM Rules, 2007 which is part of the Dam operation and management.
 4. That there are 843 regulated dams by WRA, while records show that there are about 4,140 dams and pans in the country. The Ministry is currently updating inventory of all dams and pans in the country to guide in the classification in terms of location, size, usage, status and ownership.

5. That private dam owners are required to monitor the performance of their dams and periodically report to WRA. Further, WRA is mandated to carry out periodic monitoring, based on the owners report, of the water storage infrastructure through the regional offices to ensure that the developers are operating and maintaining the facility as required.
6. That a task force comprising of the following members had been appointed to enquire, investigate, assess operations, safety and general status of dams in Kenya;
 - i. Eng. SAO Alima (Chairperson) - Ministry of Water and Sanitation
 - ii. Mr. Job Kihamba Kegoye - Nairobi Water and Sewerage Company
 - iii. Eng. Peter Njaggah - Water Services Regulatory Board
 - iv. Eng. Boniface Mwaniki - Water Resources Authority
 - v. Mr. Charles Ngugi Gathara - Nairobi County Government
 - vi. Mr. John Elungata - Ministry of Interior and Coordination of National Government
 - vii. Mr. Johnson Kamau - Nakuru County Government
 - viii. Dr. Zablon N. I. Oonge - University of Nairobi
 - ix. Mr. Willis O. Ochieng - KENGEN
 - x. Mr. Paul Nganga Macharia - Murang'a County Government
 - xi. Eng. Michael Wainaina - Association of Consulting Engineers of Kenya
 - xii. Bishop (Dr.) Daniel K. Chemon - Full Gospel Churches of Kenya
 - xiii. Mr. Paul Murage - Kenya Meteorological Department
 - xiv. Mr. Benedict A. Omondi - Kenya Forest Service

The Cabinet Secretary further presented that

7. That Salt Manufactures Kenya Limited submitted an application to the District Water Office, Nakuru on 13th March, 2004 to;
 - a) Renew a permit (No. 5235 amount of water 454.55m³/d or 454.550 l.p.d of flood flow from Watkins Stream for general irrigation of 20 hectares of roses)
 - b) Amendment of quantity of water
 - c) Transfer of permit (from Milmet Limited to Salt Manufactures Limited)
 - d) Proposed diversion was by weir 2.5 meters high, pump and pipeline
8. That permit No.5235 was renewed on 22nd July 2005 in respect to Watkins stream.
9. That upon expiry of the permit No. 5235, an application renewal was submitted to WRMA and was renewed on 23rd April, 2009 (**WRMA/RVC/SW/788**), with amount of water amended as follows;
 - a) 50.45m³/d for domestic use from normal flow
 - b) 2045.45 for commercial irrigation from flood flow

10. That in 2012 WRMA introduced a permit processing data base system (PDB) that required all existing users to re-submit applications in respect to existing works/uses. Salt Manufacturers Kenya Limited submitted another renewal application to WRMA through permit No.WRMA/20/KAB/2EC/25/s dated 14th December, 2012 which remains valid until 5th December, 2018.
11. That it is the responsibility of the operator of any dam to take adequate measures at his or her cost within the approved Dam Operation Report to notify the Authority and persons downstream likely to be affected in the event of any discharge from the dam whether caused by dam failure or intended releases from the dam that might result in damage downstream pursuant to Rule 76 of the Water Resources Management Rules.
12. That Salt Manufacturers Kenya Limited was only permitted to abstract by weir of 2.5m high.
13. That the Water Resources Authority has no report in regard to the dam operated by Salt Manufacturers Kenya Limited.
14. That the Ministry intends to strengthen Water Resources Authority by introducing capacity building.
15. The Ministry is in the process of developing National Water Policy to incorporate dam safety guidelines and disaster mitigation.
16. That to avoid a similar incident, the Ministry has taken the following measures;
 - a) Prioritizing identification and draining of high risk dams to safe water levels in the country.
 - b) Development of a strategy to improve surface water drainage.
 - c) Undertake an extensive audit of all dams across the country to avert any future tragedies.
 - d) Development of metrological network that will determine the amount of rainfall that falls in a catchment area to be used as early warning system.
17. That the existing legislative framework is sufficient to address matters relating to drainage and water storage, but the Ministry is in the process of reviewing the existing legislations, policies, regulations and strategies in light of emerging challenges.

In the Ministry's subsequent submission, the Cabinet Secretary informed the Committee that;

1. The contractors who worked on the construction of the water works were not known to the WRMA;
2. The WRMA had no record detailing instances when inspection officers were denied access to the farm;

3. The last inspection of the authorized works was undertaken on 7th November, 2014 with the next one due for December, 2018;
4. That there were two major streams namely Watkins stream on which the collapsed dam was located and Baileys stream on which Tindress dam was constructed; and
5. The Tindress dam had been drained and was scheduled to be decommissioned.

The Cabinet Secretary tabled the following document copies to the Committee:

1. The initial and subsequent applications for abstractions for Milmet and Tindress dams;
2. The permits issued for the dams in Solai farm indicating the authorized daily water;
3. Inspection reports carried out on the dams and orders issued to the owner;
4. Correspondence on complaints from residents on Main House;
5. Aerial satellite imagery of Milmet dam from August 2015 – August 2016;
6. An order in respect of the collapsed Milmet dam.

5. MINISTRY OF DEFENCE (annex p.g 554 – 561)

The Cabinet Secretary, Amb. Rachyelle Omamo made a presentation during her appearance and through written submissions and highlighted the following-

1. That the Milmet Dam (locally known as Patel Dam) which had a 190 million litre capacity water reservoir was located in Solai farm in Subukia Constituency, Nakuru County.
2. The tragedy occurred on 9 May 18 at around 8:30 pm when a section of the Dam wall collapsed and released flood waters downstream causing heavy loss of lives and destruction to property.
3. That the Rift Valley Multi-Agency Coordination Committee (MACC) contacted the General Officer Commanding Western Command at around 5:30 a.m. on 10th May 2018, requesting for KDF assistance on the Solai Dam Tragedy. Consequently, mobilization of Military personnel and equipment commenced immediately and by 6:00am the first group had left Lanet barracks for the site. The KDF Specialized Disaster Response Unit (DRU) was mobilized from Embakasi, Nairobi and arrived to the scene at 11:00 a.m. on 10th May 2018.
4. That the following personnel and equipment that KDF committed to the operation as follows:
 - a) 26 Officers and 337 Service Members;
 - b) Five (5) Troop Carrying Vehicles (TCVs) and five (5) Land Rovers from Lanet;
 - c) One (1) Rapid Response Vehicle with complete Search and Rescue equipment, two (2) Land Cruisers (Hazardous Material-HAZMAT) and one (1) Minibus from the DRU;
 - d) Four (4) Ambulances and Emergency Medicine/First Aid kits; and
 - e) Seven (7) tents (utilized for Command Coordination Centre) and fuel.
5. That the operation involved Search, Rescue and Recovery of the missing persons which stretched to approximately 15Km. By the third day, the whole stretch had been covered with KDF coordinating the operations alongside other State Agencies and non-State Agencies.
6. The Disaster Response Unit helped pump out water from a second Dam of 180 million litre capacity that was on the verge of collapsing. This took five (5) days to reduce the water level to 40%. The decision to drain the Dam was arrived at by the Multi-Agency Coordination Committee as a wider management to avert similar incident.
7. That KDF also used 5 trucks to ferry 450 bags of maize from National Cereals and Produce Board (NCPB) stores in Nakuru to Incident Command Post (Solai Division

Administration Police Commander's Office) for distribution to the affected people and provided a platoon of 40 personnel for security in the area throughout the operation.

8. That possible areas of improvement in such incidences, the Ministry submitted that the Country should-
 - i. Develop disaster response capability across the Country with a focus on structures from the National, Regional, County, Sub-County and Ward levels in the full spectrum of disaster preparedness, early warning, response, management, mitigation and recovery.
 - ii. Equip State Agencies/Departments with essential resources.
 - iii. Formulate and operationalize clear Joint Standing Operating Procedures (SOP) on Disaster mitigation.
 - iv. Fast track the implementation of the National Disaster Management Policy and develop relevant legislation as this would offer elaborate response, management and coordination of disasters and other National crisis.
 - v. Conduct Multi-Agency Disaster Response Training at both National and County levels to enhance capacity.

6. KENYA RED CROSS SOCIETY (annex p.g 952 – 990)

The Secretary General was represented by Mr. Venant Ndighila, Emergency Operations Manager Committee was informed the Committee as follows;

1. In partnership with other agencies, National Youth Service, Kenya Army, National Disaster Management Unit (NDMU), Kenya Police, where forty seven (47) bodies were retrieved.
2. Medical referrals were done within Nakuru County and its environments i.e. Nakuru PHG, Bahati and Mile Kumi HC and all open cases successfully closed.
3. The agency did a cash transfer programme of a total amount of Kshs.8,159,875/= disbursed to the affected victims, with pending payments of Kshs.483,75/=, totalling to Kshs.8,643,626/=.
4. A total to 223 households were paid out to different categories as follows;
 - i. Tenants - Kshs.30,000/=
 - ii. Semi-permanent Houses - Kshs.50,000/=
 - iii. Permanent Houses - Kshs.100,000/=
5. A total number of thirty seven (37) houses of permanent and semi-permanent structures were completely destroyed.
6. The agency carried out daily camp management, provision of food, provision of NFIs, children engagement, in addition to daily psychosocial support.

Upon request of further documentation the agency submitted the following through a letter referenced EO/SG-Senate/02/2018

- a) Names of persons who lost their lives as a result of the tragedy;
- b) A note indicating number of households affected by the tragedy duly signed by the County Government and the Regional Commissioner on behalf of national government; and,
- c) Record of Mpesa payment to the affected households.

7. MINISTRY OF ENVIRONMENT AND FORESTRY (annex p.g 1372 – 1486)

The Cabinet Secretary, Mr. Keriako Tobiko, EGH appeared before the Committee on Tuesday 17th July 2018 and presented as follows;

1. That there exists Sessional Paper No. 10 of 2014 on the National Environment Policy with the following objectives;
 - a) To provide a framework for an integrated approach to planning and sustainable management of Kenya's environment and natural resources.
 - b) To strengthen the legal and institutional framework for good governance, effective coordination and management of the environment and natural resources.
 - c) Ensure sustainable management of the environment and natural resources, such as unique terrestrial and aquatic ecosystem, for national economic growth and improved livelihoods.
 - d) To promote and support research and capacity development as well as use of innovative environment management tools such as incentives, development, Strategic Environmental Assessments (SEAs), Environmental Impact Assessments (EIAs), Environmental Audits (EA) and payment for Environmental Services (PES).
 - e) To promote and enhance cooperation, collaboration, synergy, partnerships and participation in the protection, conservation, sustainable management of the environment and natural resources.
 - f) To ensure inclusion of crosscutting and emerging issues such as poverty reduction, gender, disability, HIV&AIDS among other diseases in the management of the environment and natural resources.
 - g) To promote domesticating, coordination and maximization of benefit from strategic Multilateral Environmental Agreements (MEAs).
2. Environmental Management and Coordination Act (EMCA) Cap 387 and Provisions for Environmental Restoration Orders with Section 108 of EMCA providing as follows;
 - a) Subject to any other provisions of the Act, the Authority may issue and serve on any person in respect of any matter relating to the management of the environment an order in the order referred to as an environmental restoration order.
 - b) An environmental restoration order issued under subsection (1) or section 111 shall be issued to-
 - i. Require the person on whom it is served to restore the environment as near as it may be to the state in which it was before the taking of the action which is the subject of the order;

- ii. Prevent the person of whom it is served from taking any action which would or is reasonably likely to cause harm to the environment;
 - iii. Award compensation to be paid by the person on whom it is served to other persons whose environment or livelihood has been harmed by the action which is the subject of the order;
 - iv. Levy charge on the person on whom it is served which in the opinion of the Authority represents a reasonable estimate of the costs of any action taken by an authorized person or organization to restore the environment to the state in which it was before the taking of the action which is the subject of the order;
- c) That an environmental restoration order may contain such terms and conditions and impose such obligations on the persons on whom it is served as will, in the opinion of the Authority, enable the order to achieve all or any of the purposes set out in sub-section (2).
- d) That an environmental restoration order may require a person on whom it is served to-
 - i. Take such action as will prevent the commencement or continuation of cause of pollution;
 - ii. Restore land, including the replacement of soil, the replanting of trees and other flora and the restoration as far as may be, of outstanding geological, archaeological or historical features of the land or the area contiguous to the land or sea as may be specified in the particular order;
 - iii. Take such action to prevent the commencement or continuation or cause of environmental hazard;
 - iv. Cease to take any action which is causing or may contribute to causing pollution or an environmental hazard;
 - v. Remove or alleviate any injury to land or the environment or to the amenities of the area;
 - vi. Prevent damage to the land or the environment, aquifers beneath the land and flora and fauna in, on or under or about the land or sea specified in the order or land or the environment contiguous to the land or sea specified in the order;
 - vii. Remove any waste or refuse deposited on the land or sea specified in the order and dispose of the same in accordance with the provisions of the order; and,
 - viii. Pay any compensation specified in the order.
- e) That, in exercising the powers of Section 108 of EMCA, the Authority shall-

- i. Be guided by the principles of good environmental management in accordance with the provisions of the Act; and,
 - ii. Explain the right of appeal of the persons against whom the order is issued to the Tribunal or if dissatisfied with the decision of the Tribunal, to superior courts.
3. That pursuant to the second schedule of EMCA Cap 387, dams and associated infrastructure are required to undertake Environmental Impact Assessment before commencement of the construction work.
4. That according to regulation 31 of the Environmental (Impact Assessment and Audit) regulations, 2003, the proponents of facilities that were undertaken prior to the enactment of EMCA, 1999 are required to undertake initial Environmental audit study followed by a control audit as may be agreed upon by NEMA and the proponent.
5. That the Ministry has finalized the drafting of the Environmental Management and Coordination (Deposit Bond) Regulations, together with the Regulatory Impact Statement and Explanatory Memorandum, with an objective of the Environmental Management and Coordination Regulations (2015) to promote good environmental practices that would result in sustainable development. The regulation seeks to;
 - a) Establish a register for those activities, industrial plants and undertakings which have or are most likely to have significant impacts on the environment when operated in a manner that is not in conformity with good environmental practices;
 - b) Ensure availability of funds in the form of a refundable deposit bond that shall be paid in the environmental restoration fund which guarantees effective remediation of the affected environment during the life cycle of a project; and,
 - c) Promote self-regulation and environmental best practices among the regulated entities.
6. That the Solai Dam Tragedy caused environmental damage of a large portion of farmlands that were extensively eroded and top soil and vegetation washed away including;
 - i. Destruction of property
 - ii. Destruction of farmlands and vegetation
 - iii. Destruction of public utilities (roads, power lines, drainages etc)
 - iv. Loss of habitat
 - v. Destruction of waste water effluent system

- vi. Alteration of downstream sediment dynamics and water quality in streams, rivers, wetlands
- 7. That an assessment of the extent of the environmental damage was undertaken during the Control Environmental Audit exercise by NEMA, WRA, Ministry of Agriculture and KFS.
- 8. That relevant agencies have been instructed to undertake detailed remediation requirements and prescribe remediation standards to inform the costs of remediation works.
- 9. That to restore the local environment, the Ministry has taken the following actions;
 - a) Control Environmental Audit – through NEMA the Ministry undertook a Control Environmental Audit of the farm between 3rd and 5th July 2018. The audit involved NEMA, WRA, KFS and Ministry of Agriculture (report tabled).
 - b) The Ministry through NEMA has issued an Environmental Restoration Order restoration order issued vide a letter dated 12th July, 2018, Ref: NEMA/5/11/Vol.III to the Directors of Kensalt Plantations Ltd & Patel Coffee Estates directing as follows;
 - i. restoration of farmlands by replacing with top soil rich in manure/humus, subsequently putting in place soil conservation measures;
 - ii. restoration farms that have over deposition of soil to their original status;
 - iii. recreation the riparian reserve through excavation of the natural waterway to the recommended depth and width to allow the natural water flow downstream;
 - iv. restoration of destroyed infrastructure such as access roads, homes and schools to near original state;
 - v. undertaking and submitting an EIA project report to National Environmental Management And Coordination Act before decommissioning Tindress and Milmet dam within 30 days;
 - vi. carrying out biodiversity inventory of your game sanctuary in consultation with KWS and a status report submitted to National Environmental Management And Coordination Act within 30 days;
 - vii. planting appropriate trees on the dam catchment areas in consultation with KFS;
 - viii. putting in place adequate and appropriate sanitary facilities and include the compliance in the next farm environmental audit;
 - ix. ensuring compliance with relevant laws and regulations such as water rules as pertains to water abstraction; and
 - x. submitting a remediation report demonstrating completion of the remediation works.

10. The Ministry is in the process of liaising with the Ministry of Water and Sanitation to support WRA initiative to undertake a countrywide assessment of all dams to ascertain their legal status, stability and safety with a public Notice being issued by WRA on Friday 25th May, 2018.
11. That the Ministry was not aware of any signing of indemnity forms and compensation being done by Government officials together with the dam owners.
12. That he was not consulted before the restoration order was given.
13. The Cabinet Secretary undertook to revoke the restoration order issued by NEMA and instead to issue a properly designed restoration order in accordance with the Act within seven (7) days.
14. That a public complaints committee is in place (National Environmental Complaints Committee based in Nairobi.
15. There exists a code of conduct on consultants that undertake assessments.
16. That on 16th July 2018 a Committee constituted by the Ministry to consider the conduct of the affected consultants.
17. The Cabinet Secretary proposed the following recommendations to be considered by the Committee;
 - There is need to put in place a holistic national policy to be replicated at the County Level that focuses on coordination of all agencies to avoid delay and duplication.
 - Enhance capacity of County Governments to gazette County Environmental Committees.
 - Enhance the capacity of NEMA, especially in the monitoring and inspections.
 - Need to have standard specifications for dams.

8. THE COUNTY GOVERNMENT OF NAKURU (annex p.g 1350 – 1363)

The Governor of Nakuru, Hon. Lee Kinyanjui, appeared before the Committee on Wednesday 17th July, and presented as follows;

- i. That dams are not a mandate of the County Government.
- ii. That the County Government of Nakuru did not carry out any investigations and hence had no report on the same.
- iii. That the Milmet Dam was constructed using porous material with little or no compaction done on embankment material.
- iv. The embankment slopes were too steep and the dam had ineffective and inadequate spillway.
- v. The County Government of Nakuru has put the following measures in place to manage future disasters;
 - A disaster coordination unit in place
 - Nakuru County Fire and Rescue Act 2016
 - Established County Transport and Safety Committee
 - Established emergency ambulance dispatch centre and procurement of 2 (two) more ambulances during 2017/2018 financial year
 - An ambulance / referral policy to guide the operation of ambulances in the County
- vi. Following the Solai tragedy, the Nakuru County Government;
 - a) Made an immediate visit to the tragedy site and supported the rescue team;
 - b) Support in recovery and evacuation of the injured persons to the health facilities in Nakuru;
 - c) Mobilization of County medical personnel to the site of tragedy;
 - d) Joint multi sectorial rescue team moved the affected families to Solai Secondary School and provided bedding and food;
 - e) Drained water run off for ease of recovery and evacuation process;
 - f) Paid for all the mortuary charges as well as carrying out post mortem on all the bodies before burial;
 - g) Provision of food (hot meals) for the volunteers and the affected families through the entire response phase;
 - h) Distributed donations to the victims on 19th and 20th May 2018 in collaboration with the joint multi-sectoral rescue team;
 - i) Provided potable water to the affected population residing in the camp and the volunteers on site;
 - j) Distributed water treatment chemicals to the local community for household drinking water;
 - k) Provided psycho-social support and counseling to victims;

- l) Did placement of the affected students to nearby primary schools in collaboration with the National Government;
 - m) Clearance of accessible roads and pathways that had been blocked by debris from the effects of the collapsed dam; and,
 - n) Supported the families who were conducting mass burial in the excavation and subsequently in back filling the graves.
- vii. A joint committee was established consisting of the National Government, County Government, Kenya Red Cross Society and World Vision, co-chaired by the Regional Commission, Mr. Mwongo Chimwaga and the Governor, Nakuru County to look into post disaster recovery and rehabilitation of affected victims.
- viii. In partnership with the Kenya Red Cross, the County Government launched an appeal for donations both in cash and in kind.
- ix. To restore the environment the County Government is engaged in;
 - a) Promotion of tree planting;
 - b) Carrying out continuous education and awareness on natural resource protection and management; and,
 - c) Encouraging agroforestry and farmer-managed natural regeneration for the denuded areas in collaboration with World Vision.
- x. To avoid any other occurrence of this nature, the County Government is;
 - a) Working closely with WRA to establish the status of all the existing dams and water pans in the County for continuous assessment and monitoring.
 - b) Development of early warning systems like the use of text messages for the population.

9. KENYA HUMAN RIGHTS COMMISSION (annex p.g 992 – 1119)

The Kenya Human Rights Commission (KHRC) is a Non-Governmental Organization (NGO) in Africa with a *mandate of enhancing human rights centered governance at all levels*. It established and incorporated on 9th April 1992 by Kenyans exiled in the United States of America (USA) and later registered in Kenya on 20th of January 1994.

The Commission submitted its report on the Solai Dam tragedy to the Committee detailing their findings following an investigation on the matter stating that;

1. That 47 people lost their lives in this tragedy while 41 were injured and hospitalized. Further 223 households lost their homes and a total of 5,000 people were displaced. Public amenities like the Solai Nyakinyua Primary and a Private Medical Dispensary were also heavily damaged.
2. The rescue and responses processes were led and coordinated by the Kenya Red Cross (KRC), National Disaster Unit (NDU) in collaboration with the local administration, security organs (National Police Service and Kenya Defense Forces), county officials, political leaders (area MP, MCA and Governor) and citizenry. The search and rescue was initially commenced by locals supported by the area MP and the MCA and later by the police and the National Youth Service (NYS). Subsequently, the search was taken over by the Kenya Defense Forces (KDF) as from Thursday 10th May 2018. KDF continued with the search until 15th of May 2018 when it scaled down.
3. That interviews with community members revealed several gaps pertaining to immediate and interim support processes, among them; (1) alleged looting and diversion of supplies and other kinds of material support meant for the affected victims by area chiefs (2) alleged extortion of victims by the area chiefs demanding a share of the initial resettlement monies and unscrupulously expunging names of victims who resisted this extortion (3) delays in distributing necessary material support such as mattresses and blankets to land owners and other integrated victims (4) delays by the government agencies in furnishing the relatives of the victims with requisite documents such as postmortem results and death certificates, doctors medical reports of all the injured persons.

4. That the following recommendations be considered;

Legal Actions

- a) Criminal charges should be preferred against NEMA, WRA, Registrar of Companies, the local level administrators, police officers and other public officers for either abetting the tragedy¹ or mismanaging the resources related to the rescue and response processes.
- b) that the Patel Coffee Estates Ltd has criminal liability in this matter based on the doctrine of strict liability espoused in the ***Rylands v Fletcher*** case, which states that “A person who for his own purposes brings onto his land and collects and keeps there anything likely to do mischief if it escapes, must keep it at his peril, and if he does not do so, is *prima facie* answerable for all damage which is the natural consequence of its escape. The use of the land must amount to a non-natural use”.

Administrative Actions by Authorities on the Urgent/ Pertinent Issues to the Victims

- a) Urgent finalization of the DNA testing process of one deceased child whose body at the mortuary had been claimed by two different families should be undertaken so as to bring closure to her family;
- b) A crucial review of the list of victims should be done in order to identify and support those who were omitted from the initial list. This exercise will also excise those who were fraudulently included in the lists of the affected persons.
- c) Provision of school uniforms and other relevant utilities for school going children affected by the tragedy;
- d) Provision of food relief beyond the initial 3 months period for the affected families so as to support them as they get back on their feet.
- e) Water from other 2 drained Patel dams is currently flooding people’s homes and farms creating more victims in the process. It would be prudent to manage
- f) Provision of the psycho-social support to the affected victims, to assist them to cope with the accruing psychological trauma caused by the tragedy.
- g) Prosecution of those threatening representatives of victims demanding for accountability in the support process.
- h) Finally, the Kenya Red Cross should undertake conclusive and transparent disbursement of the all financial assistance earmarked for the victims

Investigative Actions and Reports by State Institutions

- 1. The release of reports commissioned by different government agencies should be expedited. These reports include:

- A report by the Inspector General of Police who had been directed by the Director of Public Prosecutions to investigate the causes of the tragedy and names of those culpable;
- A joint report by WRA, Nakuru Water Company & National Pipeline and the Rift Water Service Board on environmental impact;
- A report on an assessment by the experts in the Ministry of Land and Urban Planning and the Ministry of Agriculture of the loss and damage on agricultural land, destruction of houses and commercial buildings so as to guide compensation and resettlement.

Policy and Legislative Actions

That the various relevant regulatory agencies failed to continuously and consistently undertake their mandate to avert the Solai dam tragedy. Adherence to the law by both state and non-state actors is quite pertinent so as to ensure that every Kenyan is protected from harm and from such catastrophes and recommend the-

- a) strengthening of institutional and political capacities of NEMA, WRA, the Registrar of Companies and the necessary public officers to be able to reign in and hold to account corporations and state and non-state actors who violate our laws and policies related to business and other public interests with impunity;
- b) Enactment of a national policy and law on disaster management. This will help to enhance coordination and reduce conflict of roles regarding disaster management among various government agencies. Further Nakuru and other counties should establish a County Environment Committee as stipulated under Section 29 of the Environmental Management and Co-ordination Act, 1999; and,
- c) Development and adoption of a national policy on business and human rights (the National Action Plan). This would go a long way in domesticating the United National Guiding Principles on Business and Human Rights expounded in this report. Finally, we should continually monitor and hold to account the different state and non-state institutions along the established laws and policies.

7. PUBLIC SUBMISSIONS

The Committee Pursuant to the provisions of Article 118(1) (b) of the Constitution and standing order 134 of the Senate Standing Orders, invited interested members of the public and stakeholders to submit their views to the Committee in form of memorandum.

The call for memorandum appeared in local dailies on **Thursday 28th June, 2018**

Mr. Godfrey Braganza (via email)

- a) Mr Braganza submitted that in his accesement of the available information, the tragedy was caused by overtopping or spillway failure and subsequent erosion causing the water to flow out at an uncontrolled rate followed by further rapid erosion leading to the tragedy.
- b) Mr. Brangaza further suggested that investigators should investigate as to:
 - 1) If the dam had a spillway or not;
 - 2) If it did, had it been designed by a spillway engineer and in line with the standard spillway design; and
 - 3) If the dam and spillway construction was supervised by an experienced technical person.

8. SUBMISSION DURING THE SOLAI DAM TRAGEDY SITE VISIT – FRIDAY 6TH JULY, 2018 (annex p.g 1120 – 1139)

The Committee in pursuant to its mandate and with the authority of the Speaker of the Senate pursuant to standing order 190 conducted a site visit and held a sitting at the Solai AIC grounds with community members and local leaders on Friday, 6th July, 2018.

The Committee, during the site visit at the site of the Tragedy, was accompanied by the Ministry of Water and Sanitation led by the Chief Administrative Secretary Ms. Winnie Guchu, local political and community leaders and officers from the provincial administration.

During the meeting at the AIC grounds, those in attendance included, Victims of the Tragedy, community members, local political leaders from both levels of Government and government officials.

During the visit to the tragedy site and Tindress Dam, the Committee observed and deduced the following;

- 1) That the owner had embarked on modification of the site under the direction of the WRMA;
- 2) That the catchment area just above the dam was bare;
- 3) That the dam had totally blocked its feeding river/ stream and previous complaints by the community on the blockage had not been responded to were not;
- 4) That the dam had no spillway to drain excess water;
- 5) That the site of milmet was highly elevated in relation to the Solai community;
- 6) That the Tindress dam the 2nd dam that was drained) had been properly constructed with a spillway and an exit for the river to continue with its natural flow;
- 7) The owner had however increased the embankment of the dam illegally.

During the public meeting at the AIC grounds, the Committee listened to submission from the community members present. Residents of Solai made presentations through representatives from the various villages namely, Energy, Nyakinyua. The local member of the National Assembly and the local Member of County Assembly also made submissions.

The Committee received and deduced the following salient issues:

- 1) That the community members were concerned that the owner of the Dam had not apologized to the Community for the tragedy;
- 2) That the most affected of the victims were minors with the tragedy leaving 52 children as partial or complete orphans;

- 3) That the community had previously complained about the dams on the farm to the authorities had not been responded to;
- 4) That the owner of the dam had, in collaboration with the county commissioner constituted a committee and identified victims and offered some payout – this was done after community members signed indemnity forms without proper legal representation in the presence of National Government Administration Officer;
- 5) That the relief that had been donated by agencies and members of the public had been mismanaged with a specific allegation that roofing sheets were stole;
- 6) That the local administration had allegedly mismanaged the list of those affected by the tragedy by omitting the names of victims and inserting names of people who were not affected;
- 7) That indeed the dam owner had blocked the natural flow of the river for a long time; and
- 8) That the Community demanded justice been done for the victims in terms of criminal justice, environmental restoration and fair financial compensation.

The following documents were tabled before the Committee during the meeting:

- 1) The multiagency report on the tragedy, tabled by the Ag Regional Commissioner;
- 2) A list of the affected persons, tabled by the Ag Regional Commissioner ; and
- 3) The minutes of the urgent Board of management meeting of Solai Nyakinyua Primary School held on 10th May, 2018 tabled by the Head teacher of the School.

9. OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS (annex p.g 1509 – 1573)

In his presentation before the Committee on Wednesday 18th July 2018, the Director of Public Prosecutions, Mr. Noordin M. Haji, OGW, made the following presentation;

i) Mandate

- a) That the Director of Public Prosecutions is an independent office constituted under Article 157 of the Constitution and is mandated to administer prosecution services in the Republic of Kenya, with an objective of bringing to account any suspects, timely advice and making decisions in all cases presented and to respond adequately to any issues within its mandate.
- b) The DPP has powers to direct the Inspector General of Police to investigate the cases and to prevent the abuse of office.
- c) The ODPP administers prosecution services with a vision to provide a just, fair, independent and quality public prosecution service in an impartial, effective and efficient prosecution service to all.

The DPP informed the Committee that investigations are still going on, even though some persons have already been arraigned in court on various charges.

9. SOLAI GROUP OF COMPANIES (annex p.g 1364 – 1370)

On Wednesday 17th July 2018, Mr. Perry Mansukh appeared before the Committee and gave the following details;

- a) That he has lived with the Community of Solai his entire life;
- b) That he has a lot of love for the people of Solai;
- c) Solai Farm is situated on LR 11278 owned by Kensalt Limited, having been purchased in 2003 from Milmet Estates Limited.
- d) Solai Farm was established in 1965 and has expanded over the years.
- e) Milmet Dam was constructed in the year 2004 following acquisition of relevant requirements.
- f) That the collapsed Milmet dam was duly licenced by relevant authorities.
- g) The farm covers acreage of approximately 3,250 with 8 dams that have all been duly approved and registered.
- h) The farm mainly deals with coffee and dairy farming, and has employed approximately 1,500 people.
- i) Solai Group undertakes other activities aimed at improving the welfare of the residents that include;
 - (i) Building and maintaining of 9 schools and surrounding areas;
 - (ii) Provision of water through boreholes;
 - (iii) Building of the offices and residence of the local administration in the area; and,
 - (iv) Building and maintaining an all-weather road to ease access in the area.
- j) All the dams in the Solai Farm are duly registered and have the requisite approvals from the relevant authorities.
- k) Regular inspections have been carried out on the farm by relevant government environmental agencies.
- l) That the dam in Solai Farm burst as a result of heavy rainwater and deforestation.
- m) Following the tragedy, an independent committee comprising of the local leadership was constituted for a fact-finding mission to assess the loss suffered by families. The Committee issued a report, which set out details of loss occasioned by the Solai Dam Tragedy.
- n) Out of good will and following the report, the Solai Group provided financial assistance to all the victims as consolation.
- o) Following the tragedy the Solai Group has taken the following initiatives;
 - Work with the Nakuru County Government to level the grounds around the Solai Farm;

- Plant more trees in the Solai Farm and surrounding areas;
 - Undertake more corporate social responsibility work such as assisting the residents to build semi-permanent homes that may withstand possible flooding; and,
 - Adopt any other measures that may be recommended by the regulatory bodies.
- p) That payments paid to the victims was not compensation but consolation to assist the affected families to continue with their normal livelihoods.
- q) The management of Solai Group has not visited the affected victims since the tragedy following an advise of the independent committee.

10. MINISTRY OF INTERIOR AND COORDINATION OF NATIONAL GOVERNMENT (annex p.g 562 – 651)

The Cabinet Secretary, Dr. Fred Matiang'i appeared before the Committee on Monday 23rd July, 2018 and submitted as follows;

- a. That Solai Dam Tragedy occurred when Milmet Dam which is located on a private agricultural farm of 3,500 acres in Rongai Sub-County in Nakuru Count, breached its embankment on 9th May 2018 about 20.30 hours and collapsed causing damage to property and loss of 47 lives.
- b. That following the tragedy the following persons lost their lives;
 1. Faith Nyambura
 2. Gideon Wachira
 3. Jane Wambui
 4. Stephen Waweru Mbugua
 5. Esther Munai
 6. Tabitha Wairimu
 7. Rolens Chege
 8. Sarah Wanjiku
 9. Ronald Kibe
 10. Julius Karimi kahuria
 11. Brenda Amolijet
 12. Julius Namoit
 13. Margaret Nyambura
 14. Rehema Chepkorir
 15. Phyliss Ingatu
 16. Eunice Wairimu
 17. Eunice Njeri Ng'ang'a
 18. John Koina
 19. Ann Wambui
 20. Sarah Ekiro Namkuru
 21. Ruth Kemunto
 22. Dickson Lekarab
 23. Anastacia Chepkemai
 24. Samwel Awoi Amugi

25. Jane Mithoni Munene
26. Virginia Wanjiru
27. Nancy Muthoni Kimondo
28. Mary Wachira
29. Isaac Kamau Gathogo
30. Fred Waweru
31. Ruth Wairimu
32. Juliet Agei
33. Emmaculate Kamau
34. Maxwell Kamau
35. Alicia Namuru
36. Joseph Lwamanat
37. Charles Muchiri Njunge
38. Mercy Njeri
39. Beatrice Nafula
40. James Karanja
41. Jane Amana
42. Metrine Nanjala
43. Alfred Karogo
44. Eunice Wanjiku
45. Tabitha Nyambura
46. Marianna Wangechi
47. James Ikemer
48. James Njuge

- c. That 48 people were confirmed dead, 41 injured and 6 admitted, 37 discharged from hospitals and 223 families displaced from their homesteads.
- d. That various interventions were conducted to ensure the affected got immediate life support which include; shelter, food, health and sanitation support.
- e. That the question of liability was being addressed in court proceedings and its determination will provide guidance on the matter of claims for compensation.
- f. The Government provided assistance to alleviate pain and suffering to the victims as tabulated below;
 - Kshs.50,000/= issued to families of the 46 deceased victims of the Solai Dam tragedy (Kshs.2,300,000)
 - Kshs.50,000/= issued to 6 families of flooding victims in Naivasha (kshs.350,000) and
- g. That the Ministry was not aware nor party to transactions of payments to victims by the Solai Dam Owner and that no Government official was involved in the activity

CHAPTER THREE: COMMITTEE ANALYSIS OF DOCUMENTS AND SUBMISSIONS MADE BEFORE THE COMMITTEE

The Committee pursuant to its mandate, analyzed the documentation presented and the submissions made before it by the various parties:

Licensing

1. The establishment of dams is primarily governed by various statutory provisions. Section 142 of the Water Act No. 43 of 2016, provides that *the Cabinet Secretary may make Regulations with respect to any matter which by the Act is required or permitted to be prescribed, or which is necessary or expedient to be prescribed for the carrying out or giving effect to the Act including construction, extension or improvement of dams and the licensing of persons carrying on business as dam contractors. In this respect, the Water Resources Management Rules of 2007 provide for the following requirements with respect to dams-*
 - (a) *a dam is classified according to the criteria set out in the Fourth Schedule to the Regulations. The Regulations further provide that when establishing the class of a dam the criterion resulting in the higher risk class prevails;*
 - (b) *a dam is to be designed and supervised by a qualified water resource professional;*
 - (c) *a dam is to be constructed by the appropriate category of contractor;*
 - (d) *every dam owner shall ensure that the dam is inspected according to the criteria and an inspection report prepared and submitted to the authority;*
 - (e) *compliance with the dam inspection requirements shall be among the conditions to be considered before permit renewal is processed where dams are involved.*
2. In the report presented to the Committee on 3rd July, 2018, by the Cabinet Secretary for Water and Sanitation, it was averred that Salt Manufacturers Kenya Limited submitted an application for the renewal of a permit for a weir, amendment of water quantity and transfer of the permit from Milmet Limited to Salt Manufacturers Limited. The permit attached to the report of the Ministry of Water (*folio.....*) indicates that it was a permit granting the permit holder **permission to divert water** from the Watkins stream.

3. The Ministry of Water also attached a letter dated 23rd April, 2009, in which the Director of Salt Manufacturers was informed by the regional manager of the Water Resources Management Authority that a water permit *Ref: No. WRMA/RVC/SW/788* had been issued authorizing the abstraction of water from Watkins stream. The letter also drew the attention of the Director to the conditions attached to the Water permit. The officials of the Ministry of Water did not attach the permit itself and therefore the Committee is unable to ascertain the veracity of the letter and any conditions that might have been attached to the granting of the permit to abstract.
4. The report presented to the Committee by the Cabinet Secretary for Water and Sanitation also included satellite images of the site at which the Milmet dam was located. According to the images in 2004, there appears to be no dam located in the area and there was forest cover visible. However, the images from 2011 show that the dam had been established and forest cover on the site is markedly reduced. Images of the site dating between 2013 to 2018 show the location of the dam and further show the various access roads leading to the dam.
5. From the foregoing therefore it is the assertion of the Ministry of Water and the Water Resources Management Authority that in 2004, the owners of the farm applied and were granted a renewal of a permit for a weir on the Watkins stream for purposes of diverting water from the stream. Subsequently in 2012, Salt Manufacturers Limited were issued with a surface water permit to abstract water from Watkins stream.
6. In the oral and written representations by the Ministry of Water, there was no indication that the owners of the farm had applied for a license for the establishment of a dam in conformity with the Water Act and Regulations. The Committee however noted that the chronology of events relating to the Millmet dam as set out in the report presented by the Cabinet Secretary for Water seemed to date back to a permit for renewal of a weir. It would only follow that the permit for renewal would be premised on an initial permit issued to Millmet Limited for the construction of a weir. The Committee took great exception to the lack of proper records by officials of the Ministry of Water and the Water Resources Authority.
7. The requirement for application of a license for a dam is both an end in itself and a means to an end. This is because through the application for a license to build and maintain a dam, the relevant authorities are able to ensure that certain criteria, including safety considerations, have been put in place by the applicant.
8. For instance regulation 61 of the Water Resources Management Rules, provides that the minimum acceptable return period for the design of a dam spillway shall be as set out in the Fourth Schedule and the Authority may require a higher return period with respect to the conditions and risks associated with each site. The import of this

rule is therefore that the Authority would assess the application of a prospective dam owner *vis* the site on which the dam is proposed to be situated and determine the spillway that would ensure safe discharge of excess water. Failure by the owners of the farm to make an application for a permit to build a dam therefore not only violated the provisions of the law but also acted as a deliberate impediment to lawful authorities from carrying out their duty under the law.

9. The building and management of dams is also regulated through laws relating to environmental management. Section 58(1) of the EMCA provides that *“Notwithstanding any approval, permit or license granted under this Act or any other law in force in Kenya, any person, being a proponent of a project, shall before financing, commencing, proceeding with, carrying out, executing or conducting or causing to be financed, commenced, proceeded with, carried out, executed or conducted by another person any undertaking specified in the Second Schedule to this Act, submit a project report to the Authority, in the prescribed form, giving the prescribed information and which shall be accompanied by the prescribed fee”*.
10. Section 58(2) of the EMCA further provides that *“the proponent of any project specified in the Second Schedule shall undertake a full environmental impact assessment study and submit an environmental impact assessment study report to the Authority prior to being issued with any licence by the Authority: Provided that the Authority may direct that the proponent forego the submission of the environmental impact assessment study report in certain cases”*. Paragraph 4 of the Second Schedule to the Act provides that projects requiring the submission of an environmental impact study report include *dams, rivers and water resources including —*
 - (a) *any project located within a distance prescribed by a written law from a wetland, ocean, sea, lake, river, dam, stream, spring or any other water body.*
 - (b) *storage dams, barrages and piers.*
 - (c) *river diversions and water transfer between catchments.*
 - (d) *large scale flood control schemes.*
 - (e) *drilling for the purpose of utilizing ground water resources including geothermal energy.*
11. In addition to the requirement to carry out an environmental impact assessment study, the Environmental (Impact Assessment and Audit) Regulations, 2003, provides for self-auditing in the following terms-

In executing a project, after the environmental impact assessment study report has been approved by the Authority, or after the initial audit of an ongoing project, the proponent shall take all practical measures to ensure the implementation of the environmental management plan by-

- (a) carrying out a self-auditing study on a regular basis;*
- (b) preparing an environmental audit report after each audit and submitting the report to the Authority annually or as may be prescribed by the Authority; and*
- (c) ensuring that the criteria used for the audit is based on the environmental management plan developed during the environmental impact assessment process or after the initial audit.*

12. Regulation 33 of the Environmental (Impact Assessment and Audit) Regulations, also provides for control auditing in the following terms-

*(1) A control audit shall be carried out by the Authority, whenever the Authority deems it necessary to check compliance with the environmental parameters set for the project or to **verify self-auditing reports (emphasis our own)**.*

(2) A control audit shall—

(a) confirm that the environmental management plan of the project is being adhered to; and

(b) verify the adequacy of the environmental management plan in mitigating the negative impacts of a project.

13. Regulation 14 of the Environmental (Impact Assessment and Audit) Regulations provides for the registration of environmental impact assessment experts in the following terms-

(1) A person or firm wishing to apply for registration as an environmental impact assessment expert or firm of experts for carrying out environmental impact assessment studies or audits shall be required to meet the qualification criteria set out in the Fourth Schedule to these Regulations.

(2) An applicant for registration under subparagraph (1) shall submit an application in Form 4 set out in the First Schedule to these Regulations, accompanied by the prescribed fees.

(3) An environmental impact assessment expert practising under a firm of experts shall be registered as an individual expert.

(4)The Authority shall issue a certificate of registration to a qualified environmental impact assessment expert in Form 5 set out in the First Schedule to these Regulations.

(5)An environmental impact assessment expert registered as such under these Regulations may be de-registered if the expert contravenes any of provisions of the code of practice issued by the Authority.

14. The Committee however noted with great concern that regulation 31 of the Environmental (Impact Assessment and Audit) Regulations provides that “*an environmental audit shall, unless it is a self-auditing study under regulation 34, be conducted by a qualified and authorized environmental auditor or environmental inspector who shall be an expert or a firm of experts registered in accordance with regulation 14*”. The import of this regulation is that the less emphasis is placed on the regulation the qualifications of an environmental auditor contracted to carry out a self-audit. Further the duty to adhere to the code of practice issued by the Authority under regulation 14 would not be applicable to an auditor carrying out a self-audit.
15. The EMCA therefore provides for various means through regulation of dams for the proper use of the environment may be achieved. The building and maintenance of the Millmet dam and other dams within the Solai farm is subject to the above canvassed provisions of the EMCA and the Environmental (Impact Assessment and Audit) Regulations.
16. The Cabinet Secretary for Environment and Forestry presented a control environmental audit report to the Committee on 17th July, 2018. The report was prepared pursuant to the provisions of section 68(1) of EMCA which provides that *the Authority or its designated agents shall be responsible for carrying out environmental audit of all activities that are likely to have significant effect on the environment* and section 33.
17. In the aforementioned report at least four dams were identified on the Solai farm: Tindress dam; Milmet dam on Watkins River; Main house dam and centre dam. The report states that at least four dams were identified on the property. With respect to the four dams identified, the report indicates that there are no records of an Environmental Impact Assessment study carried out. The report however refers to audit reports of 2014, 2015, 2016 and 2017 having no specific information about the dams.
18. The Cabinet Secretary further presented to the Committee an environmental restoration order issued vide a letter dated 12th July, 2018, Ref: NEMA/5/11/Vol.III to the Directors of Kensalt Plantations Ltd & Patel Coffee Estates directing as follows-

- (a) restoration of farmlands by replacing with top soil rich in manure/humus, subsequently putting in place soil conservation measures;
- (b) restoration farms that have over deposition of soil to their original status;
- (c) recreation the riparian reserve through excavation of the natural waterway to the recommended depth and width to allow the natural water flow downstream;
- (d) restoration of destroyed infrastructure such as access roads, homes and schools to near original state;
- (e) undertaking and submitting an EIA project report to National Environmental Management And Coordination Act before decommissioning Tindress and Milmet dam within 30 days;
- (f) carrying out biodiversity inventory of your game sanctuary in consultation with KWS and a status report submitted to National Environmental Management And Coordination Act within 30 days;
- (g) planting appropriate trees on the dam catchment areas in consultation with KFS;
- (h) putting in place adequate and appropriate sanitary facilities and include the compliance in the next farm environmental audit;
- (i) ensuring compliance with relevant laws and regulations such as water rules as pertains to water abstraction; and
- (j) submitting a remediation report demonstrating completion of the remediation works.

19. The Committee noted the provisions of section 108(2) of the EMCA which provides that

An environmental restoration order issued under subsection (1) or section 111 shall be issued to—

- (a) require the person on whom it is served to restore the environment as near as it may be to the state in which it was before the taking of the action which is the subject of the order;*
- (b) prevent the person on whom it is served from taking any action which would or is reasonably likely to cause harm to the environment;*

(c) award compensation to be paid by the person on whom it is served to other persons whose environment or livelihood has been harmed by the action which is the subject of the order;

(d) levy a charge on the person on whom it is served which in the opinion of the Authority represents a reasonable estimate of the costs of any action taken by an authorised person or organisation to restore the environment to the state in which it was before the taking of the action which is the subject of the order.

20. Section 109(1) of the EMCA further provides for the contents of a restoration order in the following terms-

An environmental restoration order shall specify clearly and in a manner which may be easily understood—

(a) the activity to which it relates;

(b) the person or persons to whom it is addressed;

(c) the time at which it comes into effect;

(d) the action which must be taken to remedy the harm to the environment and the time, being not more than thirty days or such further period as may be prescribed in the order within which the action must be taken;

(e) the powers of the Authority to enter any land and undertake the action specified in paragraph (d);

(f) the penalties which may be imposed if the action specified in paragraph (d) is not undertaken;

(g) the right of the person served with an environmental restoration order to appeal to the Tribunal against that order, except where the order is issued by a court of competent jurisdiction, in which case the right of appeal shall lie with superior courts.

21. The Committee noted that the restoration order issued by NATIONAL ENVIRONMENTAL MANAGEMENT AND COORDINATION ACT on 12th July, 2018, failed to comply with the provisions of section 108(2)(c) as the order-

(a) did not set out any award or compensation to be paid to persons whose environment or livelihoods had been harmed by the actions of the dam owners in Solai;

- (b) did not set out the particular land that would be subject to restoration and was therefore vague, ambiguous and likely to be difficult to comply with;
 - (c) did not specify the time at which the order is to come into effect; and
 - (d) did not specify the power of National Environmental Management And Coordination Act to enter upon the land and undertake any action to remedy the harm to the environment
22. The Committee therefore directed the Cabinet Secretary for the Environment and Forestry to ensure that the restoration order is re-issued setting out clear and unambiguous actions to be taken by Salt Manufacturing Limited and adhering to the provisions of section 108 of the EMCA.
23. The building and maintenance of dams is also governed by the provisions of the National Construction Authority Act No. 41 of 2011 which establishes the National Construction Authority that *inter alia* is mandated to-
- (a) prescribe the qualifications or other attributes required for registration as a contractor under the Act;
 - (b) promote and ensure quality assurance in the construction industry;
 - (c) accredit and register contractors and regulate their professional undertakings; and
 - (d) accredit and certify skilled construction workers and construction site supervisors.
24. Section 15(1) of the National Construction Authority Act provides that “a person shall not carry on the business of a contractor unless the person is registered by the Board under this Act”. Section 16(1) further provides that “*for the purposes of this Act, a person carries on business as a contractor where such person, for reward or other valuable consideration, undertakes the **construction**, installation or erection, for any other person, of any structure situated below, on or above the ground, or other work connected therewith, or the execution, for any other person, of any alteration or otherwise to any structure or other work connected therewith... ..*”.
25. Section 2 of the National Construction Authority Act defines construction works to include the “*construction, extension, installation, repair, maintenance, renewal, removal, renovation, alteration, dismantling, or demolition of any bridge, viaduct, **dam**, reservoir, earthworks, pipeline, sewer, aqueduct, culvert, drive, shaft, tunnel or reclamation works,*”;

26. The construction of dams and particularly the registration and accreditation of contractors for construction works related to dams therefore fall within the purview of the National Construction Authority Act.
27. The National Construction Authority presented to the Committee a report dated 27th June, 2018, in which the Authority stated that it did not undertake a structural inspection of the Solai Dam prior to the incident as its regulatory scope is with regard to structures under construction. The Authority further averred in its report that the National Construction Authority Central Rift Regional Team visited the scene of the collapsed dam in Solai Centre, Nakuru County on 10th March 2018. The Authority's preliminary observation was that the dam failure was likely to have been triggered by high water levels which might have exceeded its capacity as a result of heavy rainfall experienced in the area.
28. The Committee is cognizant that the National Construction Authority Act came into operation in 2011. The Committee further notes that there seems to be no consensus on when the dams at Solai farm came into being. The satellite images presented by the Cabinet Secretary for Water and Sanitation however show that the dam was visible from the year 2011 onwards. The import of this is that works were undertaken to convert the weir on Watkins stream to a dam within the period that the National Construction Authority Act came into operation. The owners of the Milnet dam and any contractor undertaking construction works on the dam were under the duties contemplated in the National Construction Authority Act.

Enforcement

29. The Committee in its inquiry is cognizant that there are two duty bearers under the law. Persons or entities who are under a positive duty under the law and the agents of the state required to monitor compliance with the law. With respect to the present matter, the various agents of the State under the Water Act, the EMCA and the National Construction Authority were under a duty to ensure the provisions of these laws are adhered to.
30. Section 11 of the Water Act establishes a Water Resources Authority charged with inter alia-
- a)formulating and enforce standards, procedures and Regulations for the management and use of water resources and flood mitigation;
 - (b)regulating the management and use of water resources;
 - (c)enforcing Regulations made under the Act;

(d)receiving water permit applications for water abstraction, water use and recharge and determine, issue, vary water permits; and enforce the conditions of those permits;

31. The officers of the Ministry of Water and Sanitation as well as officers of the Water Resources Authority conceded to the issuance of permits for weir to divert water and abstract water from Watkins dam. The officers however were unable to produce before the Committee any inspection reports made prior to the issuance of a renewed permit for diverting water issued in 2005 and the permit for abstracting water issued in 2012. It is the opinion of the Committee that the relevant officers of the Ministry of Water and the Water Resources Authority (and its predecessors) failed to enforce the standards and regulations for the proper use of water resources as contemplated under the law.
32. Similarly the Committee notes that the owners of Milmet dam failed to carry out Environmental Impact Assessment as contemplated under the EMCA and the Regulations. The Committee however also notes that in the control audit report presented by the Minister of Environment and Forestry, there is reference to certain self-audit reports relating to years 2014, 2015, 2016, 2017. As earlier canvassed, one of the purposes of a control audit as contemplated under Regulation 33 of the EIA Regulations is to verify self-auditing reports. Therefore the law, while creating a system of self-regulation, puts in place fail safe mechanisms to ensure that ultimately, officers of National Environmental Management and Coordination Act are responsible for the veracity of any claims made in self-auditing report.

Disaster Management

33. Solai dam tragedy occurred on the night of 9th may 2018 led to deaths of 47 Kenyans, injury to victims, destruction and loss of property and displacement of people.
34. As best practice, there is need to manage a disaster throughout the whole cycle of preparedness, response, recovery and mitigation so as to lessen the adverse impacts and possibility of a disaster.

Disaster preparedness

35. Analysis by the Committee on how prepared the state and non-state agencies and the local community were on Solai dam tragedy shows that they were not properly and adequately prepared to manage it despite Solai dam being one of the major dams in Nakuru County.
36. In the submissions to the Committee, some of the agencies only meet at the scene of the disaster yet they should be meeting before to get and analysis reports they received from different agencies like meteorological department and agree on the mode of operation in case of a disaster or how to mitigate them.

37. In as much as meteorological department informed the committee that they had issued early warning signals, which should have been sent to multi-agency team as contemplated in the National Disaster Management Bill 2017 that there will be a multi-agency team at the National and County level to lead and coordinate with matters related to disaster management, there was no adequate preparation that would avert or mitigate the impact of Solai dam disaster.
38. One of the core mandates of the National Disaster Management Unit which falls under the Ministry of Interior & Coordination of National Government is to provide leadership, coordination, command, and control, before, during, and after emergencies and disasters in the country.
39. Nakuru County Government which is mandated by paragraph 12 of Part 2 of the Fourth Schedule of the Constitution to be in charge of firefighting services and disaster management only came in the response phase of the disaster implying either it was oblivious of or it abdicated its role.
40. In the oral and written submissions by Ministry of Water and the Water Resource Authority, there was no indication that any effort was channeled to prepare residents in downstream in Solai in case the dam broke a responsibility which as set out in section 12 of the Water Act 2016 belongs to the Water Resource Authority. The Committee was informed that residents had reported cases of the dams in Solai leaking to the WRA but no action was taken.
41. Regulation 67 (1) of the WRM Rules 2007 required the owner of the mitigate against such disasters by taking adequate measures to notify the authorities and people leaving downstream likely to be affected in the event of any discharge from the dam, whether caused by dam failure or intended releases from the dam.
42. Regulation 67 (2) of the WRM Rules 2007 required the owner of the mitigate against such disasters by taking adequate measures to protect persons infrastructure and environment downstream that can be affected in the event of any discharge from the dam whether caused by dam failure or intended releases from the dam.

Response to the Disaster

43. A multi-agency team consisting of teams from Kenya Red Cross, National Youth Service, Kenya Army/Navy, National Disaster Management Unit (NDMU), Kenya Police, World Vision, County Government of Nakuru and other non-governmental organization headed by Regional Commissioner, Rift Valley Region, responded to disaster.
44. In a report presented to the Committee, Kenya Red Cross Kenya submitted to the Committee that it responded to the disaster supplementing Nakuru County Disaster Management Unit in attempts to save lives, evacuation of the affected persons, retrieval of fatalities, tracing services and in managing the situation on the ground. Together with National, County Government, well-wishers and other agencies, they provided the affected people with basic needs such as food, shelter, and medical care.

45. The committee notes that it was only after the magnitude of the disaster was ascertained is when a multi-agency team was formed to coordinate the response.
46. The Society's role in disaster management in the Country is very critical because of its expertise, experience, impartiality, wide network and the trust Kenyans have in it across the Country if well supported and integrated into all the aspects of disaster management.
47. The Cabinet Secretary of Defence informed the Committee that they responded promptly to tragedy units from Lanet and Gilgil bases and KDF specialised Disaster Response Unit from Embakasi after it was contacted at around 5.30 am on 10th May 2018 as required under Article 241(3)(b) of the Constitution and section 8(1)(b) of the Kenya Defence Forces Act of No. 25 of 2012, to assist and cooperate with other authorities in situations of emergency or disaster.
48. The committee however notes with great concern that Kenya Defence Forces was informed of the disaster almost 8 hours after it had happened which again points to the disjointed response efforts to the disaster.
49. The Cabinet Secretary of Interior and coordination of National Government informed the Committee that various interventions was conducted to ensure recovery of the dead and the affected persons got immediate life support which include; security, shelter, food, health and sanitation support.

Recovery after the disaster

50. The Committee was informed that National Environment Management Authority had issued an Environmental restoration order on 12th July 2018 as set out in 108 and 109 of EMCA. The Committee noted that order was insufficient and did not meet the requirements of a restoration order and therefore it directed the Authority to withdraw it and issue a new one.
51. Kenya Red Cross informed the Committee that it had started a one off cash transfer program to the affected population facilitate their recovery process. The cluster of affected persons was based on their previous shelter state. Those who were tenants received a one off transfer value of Kshs. 30,000, those who resided in semi-permanent shelter received a one off transfer of KShs 50,000 and those who had permanent structures received an amount of Kshs. 100,000. Red Cross requested the mobile service provider Safaricom to assist in the process of registering the beneficiaries with the mobile sim card, and the government registrar of persons assisting in the preparation of identification cards for those who lost them.
52. Red Cross also informed the Committee that it had received Kshs. 1 billion from the National Government which is for assisting flood victims in the country part of which they will channel assist the affected people in Solai.
53. The Committee noted that there was mismanagement of the donated relief items for the victims and the list of victims to be compensated for the disaster by officers of the National Government in Solai.
54. Mr. Perry Mansukh Kansagara informed that the Committee that he had issued Kshs. 35 million to victims of the tragedy. The Committee however noted that the

money given was pegged on the victims signing a document absolving Mr. Perry from the blame and it was being issued by officers of the National Government which is an attempt to deny the victims justice.

55. Mr. Perry Mansukh Kansagara also informed the Committee that in an effort to help in the recovery process following the tragedy, Solai Group has taken initiative to plant more trees in Solai farm and surrounding areas; it has undertaken more corporate social responsibility work such as assisting the residents to build semi-permanent homes that may withstand possible flooding; and, worked together with the Nakuru County Government to level grounds around Solai farm.
56. With respect to the actions that Solai Group has undertaken to help in the recovery process, the Committee noted that they were not adequate considering several families lost their breadwinners and source of livelihoods which Solai Group had not addressed.
57. The Cabinet Secretary of Interior and coordination of National Government informed the Committee that the Government provided assistance of Kshs.50, 000/= issued to families of the 46 deceased victims of the Solai Dam tragedy to help them in the recovery process. The Committee however notes that post disaster support to victims which should be long-term like psychosocial support which square falls in NDMU under the Ministry was not properly managed.

Mitigation

58. Analysis of the various measures the various agencies have put in place to mitigate against such disaster is not adequate.
59. Nakuru County Government had not constituted County Environment Committee as required by section 29 of EMCA. The County Environment Committee which is responsible for management of Environment will go will help in mitigating against such disasters.
60. The Ministry of Water informed the Committee that it is in the process of developing National Water Policy to incorporate dam safety guidelines and disaster mitigation.
61. In the matter of standards regulating the construction of dams in Kenya, he presented that the Water Act 2016 provides for the regulation, management and development of water resources, water and water sewerage services. Further, Section 11 of the Act establishes the Water Resources Authority with a mandate to formulate and enforce standards, procedures and regulations for the management and use of water resources and flood mitigation among other functions.

Compensation

62. The Cabinet Secretary Ministry of Environment informed the Committee that National Environment Management Authority had issued an Environmental restoration order on 12th July 2018 as set out in 108 and 109 of EMCA. The Committee noted that order was insufficient and did not meet the requirements of a

restoration order and therefore it directed the Authority to withdraw it and issue a new one.

63. The proper process of identifying of victims of the tragedy for purpose of compensation was not properly carried out which can result to disjointed and uncoordinated compensation process that can lead to abuse. This is depicted by the high number of complaints that was received by the Committee when it visited Solai.
64. Nakuru County Ministry of Agriculture, Livestock and Fisheries conducted a crops, livestock and fish Damage assessment to Solai farmers who were affected by the tragedy and confirmed that 456 farmers were affected in various ways. They also conducted an assessment to the damage to ecosystem and ecological units and made several recommendations. The Committee however noted that environmental auditors can help in quantifying the loss property and environment .
65. Public Complaints Committee as established under section 31 of EMCA if devolved will give the public a forum to lodge complains and also investigate and undertake public interest litigation on behalf of the citizens in environmental matters. NEMA can also exercise their power to institute public interest litigation as set out in section of EMCA.

**ANALYSIS MATRIX ON DOCUMENTS RECEIVED FROM THE MINISTRY OF
WATER AND SANITATION AND THE WATER RESOURCES AUTHORITY**

	DOCUMENT REF NO.	DESCRIPTION	OBSERVATION
	ANNEX 1		
1	1W page 2	Unable to decipher nature of document as it is ineligible.	Ineligible, Bears stamps and notation made between August and November 1993
2	1W page 3	• Application for water permit Milmet Estates LTD • Relating to Watkins stream • Weir 3ft, Dam and ground pipeline • Water bailiff reports that site was last inspected 24/9/1980 • Diversion in existence only dam being added • Recommended application be approved subject to availability of flow, measuring and controlling device be installed and no objection received as a result of advertisement and dam design being submitted to Director Water.	• Application not signed • No date indicated on application
3	1T	• Application for water permit on Tindress river dated 08/10/2003 • Application approved for proposed diversion by dam 15M high • Works authorized to be constructed • Permits to be issued upon filling out Form WAB 17 dully signed, verification of title and details of methods of diversion	• Signed by Secretary Water Apportionment Board
4	28	• Internal memo (Ministry of Water) to PS from Registrar of Water rights dated 19/09/2003 • Seeking approval for construction of	• Document signed on behalf of Registrar of

	DOCUMENT REF NO.	DESCRIPTION	OBSERVATION
		dam on Tindress river on LR No. 9941 • Application submitted 26/05/1995 • WAB at meeting on 14/15 August 1996 deferred application until approved designs are submitted • Dam design report dated March 2002 submitted by Eng. Iddi Mwasina • Design report evaluated and approved by water conservation division of Ministry on 29/08/2003	Water Rights • Inordinate and unexplained delay between submission of application and submission of design plan • Design report evaluated and approved one and a half years after submission
5	IT	• Letter dated by 6/3/1997 by Patel Coffee Estate Ltd to Director Water Development • Informing Director that in the process of preparation of a dam design plan and report • Undertakes to submit dam design plan and report in the next one month • Makes reference to a letter dated 6/02/1997	• As observed earlier there was an inordinate delay in the submission of the dam design for approval. • However letter shows that dam design was to be submitted within one month
6	IT	• Application for water permit on Tindress river LR 9941 • Dated 07/12/1994 • Signed by applicant/authorised agent (Patel Coffee estates) • Indicates payment Ksh. 340	• Stamp is ineligible • According to internal memo of 19/09/2003 application was submitted on 26/05/1995, yet the application for water permit is signed and

	DOCUMENT REF NO.	DESCRIPTION	OBSERVATION
			dated 07/12/1994, therefore we observe an unexplained discrepancy of about 5 months
7	IT	• Application for water permit on Bailey Spring LR 11278 • Signed by applicant/authorised agent (Salt Manufactures Ltd) • Indicates payment Ksh. 23200 • Deed plan No. 78896 attached signed on behalf of survey Nairobi 12th September 1982 •	• The application is not dated nor stamped. • A change in the name of the applicant
8	2W	• Water permit issued on 05/12/12 to Salt Manufactures Ltd with respect to abstraction on Watkins Stream • Permit expires 05/12/2018 • Signed by Water Resources Authority Officer Tomkin Odo on 23/06/2017	• While the permit to abstract is granted on 05/12/12, it was signed five years later on 23/06/2017
9	2W	• Letter dated 27/03/2009 by Regional Manager Water Resources Management Authority to Salt Manufacturers Kenya Ltd informing that water permit for abstraction on Baileys stream issued Ref. No. WRMA/RVC/SW/784 dated - 27/03/2009 • Permit expires 13/12/13 • Letter signed by Regional Manager Water Resources Management Authority Permit attached Ref. No. WRMA/RVC/SW/784 and signed 27/03/2009 by Regional Manager Water Resources Management Authority for diversion	• The letter indicates that a permit for abstraction has been issued yet the permit attached authorizes diversion

	DOCUMENT REF NO.	DESCRIPTION	OBSERVATION
10	2W	- Letter dated 23/04/2009 by Regional Manager Water Resources Management Authority to Salt Manufacturers Kenya Ltd informing that water permit for abstraction for Watkins stream issued Ref. No. WRMA/RVC/SW/788 dated 23/04/2009 - Permit expires 13/12/13 - Letter signed by Regional Manager WARMA - Permit attached Ref. No. WRMA/RVC/SW/788 and signed 23/04/2009 by Regional Manager Water Resources Management Authority for diversion	The letter indicates that a permit for abstraction has been issued yet the permit attached authorizes diversion
11	2W	- Letter dated 13/12/2012 by J. Muasya Ndolo, Assist. Technical Coordination Manager Water Resources Management Authority to Managing Director of Salt Manufacturers Kenya Ltd informing that a permit for abstraction for Watkins stream issued Ref. No. WRMA/20/KAB/2EC/25/S - Permit expires 05/12/13 - Letter signed by Regional Manager Water Resources Management Authority - Permit attached Ref. No. WRMA/20/KAB/2EC/25/S and signed 14/12/2012 signed by Mr. J. Muasya Ndolo Assist. Technical Coordination Manager Water Resources Management Authority for abstraction	Prima facie the permit is in order, however another permit bearing a similar Ref. No. signed by another officer is also attached
12	2W	Permit attached Ref. No. WRMA/20/KAB/2EC/25/S issued to SALT MANUFACTURERS KENYA LTD on 05/12/12 and signed 23/06/2017 signed by Mr. J. Muasya Ndolo SRM WARMA for	That the permit Ref. No. is similar to the permit Ref. No. issued and signed by J.

	DOCUMENT REF NO.	DESCRIPTION	OBSERVATION
		abstraction • Permit expires 05/12/18 • Signed by Water Resources Authority Officer Tomkin Odo on 23/06/2017	Muasya Ndolo on 14/12/12 • The permit is signed on 23/06/2017 and yet it was issued on 05/12/2012 and indicates that it was to expire on 05/12/2018 • It is unclear whether the permit was to act retrospectively which is not contemplated in the Law or the permit is fabricated
13	2W	• Permit attached Ref. No. 5235 issued to Salt Manufacturers Kenya Ltd on 21/07/2005 signed by I. K. Chebuk Ag. Registrar of Water Rights to <i>divert from Watkins stream</i> LR NO. 11278 • Permit expires 21/07/2008 • It has special conditions attached • Method of diversion by masonry weir 2.50m high	
14	2W	• Permit attached Ref. No. 1218 issued to Salt Manufacturers Kenya Ltd on Watkins stream on 21/07/2005 signed by I. K. Chebuk Ag. Registrar of Water Rights <i>to divert from Watkins stream</i> LR NO. 11278 • Permit expires 21/07/2009 • Method of diversion by masonry weir 1.0m high	• Two permits were issued on the same date permitting diversion from Watkins stream by weir. • However

	DOCUMENT REF NO.	DESCRIPTION	OBSERVATION
			different heights of weir were prescribed in both permits. Expiry dates also differ
15	2W	- Letter dated 21/07/2005 by I. K. Chebuk for Director of water to Managing Director of Salt Manufacturers Kenya Ltd informing that a following application for water permit, water permit Ref. No. 1218 to abstract from Irelands stream has been issued. - Letter signed by I. K. Chebuk for Director of water	- The letter is not on any official letter head - The letter makes reference to permit Ref. No. 1218 of 21/07/2005 - As observed above, permit Ref. No. 1218 was actually issued to divert water from Watkins stream and not to abstract water from Irelands stream
16	2T	Letter dated 08/10/2003 by Director of water development to Manager of Patel Coffee Estate ltd informing that authorization Ref. No. P27229/29 of 08/10/2003 to construct water works for abstraction on Tinderess river has been issued	- Letter does not bear official letter head. - Letter not signed but bears the stamp name S. C. M. Ochieng
17	Appendix 3	Authorization dated 08/10/2003 to construct works for diversion, abstraction, storage of use of water	

	DOCUMENT REF NO.	DESCRIPTION	OBSERVATION
		on Tinderess river for Patel Coffee estate ltd Signed by J. R. Nyaoro on behalf of chairman of WAB	
18	2T	- Copy of handwritten notations referring to file 27229 - Indicates dam 15m high, pump and pipeline - Indicating fees received ksh. 340 - Indicating report inspection date 25/11/1994 - The inspection report itself has not been attached	- Some details not explained for instance the nature of the document. - The document does not bear any official stamp, mark or letter head. - The document does not bear the name or signature of author
19	2T	- Letter dated 30/07/2004 by C. K. Gichaga the District Water Officer to PS Ministry of Water, informing that design of Baileys stream dam has been revised and attached as per instructions - Application for water permit by Salt Manufacturers Kenya Ltd on Baileys stream LR. No. 11278	The design report and letter instructing revision not attached
20	2T	Letter dated 01/07/2004 by C. K. Gichaga the District Water Officer to Director Ministry of Water, informing that design of Baileys stream dam has been revised and attached as per instructions	- The design report and letter instructing revision not attached. - Contains a comment to one Kigenyi on 6/07/2004 notes that the

	DOCUMENT REF NO.	DESCRIPTION	OBSERVATION
			District Water Officer (DWO) has not calculated the factor of safety and the calculations of the overturning moments is wrong. The DWO is instructed to calculate factor of safety and moments and moments to whether the dam is safe The contents of the letter are similar to the one canvassed immediately above but with different addressees.
21	2T	- Letter dated 27/03/2009 by Regional Manager WARMA to director Salt Manufacturers Kenya Ltd informing that water permit Ref. No. WRMA/RVC/SW/784 for abstraction for Baileys stream issued - Permit expires 13/12/13 - Letter signed by Regional Manager WARMA - Permit attached Ref. No. WRMA/RVC/SW/784 and signed 27/03/2009 by Regional Manager WARMA for diversion	The letter indicates that a permit for abstraction has been issued yet the permit attached authorizes diversion
22	2T	Letter by District water officer to Secretary Rift Valley water	Letter not dated

	DOCUMENT REF NO.	DESCRIPTION	OBSERVATION
		catchment Board informing that proposed diversion will be by dam 10m high, pump and pipeline • Letter relates to application for water permit on Baileys LR. No. 11278 • Fees Ksh. 23200 • Site inspected on 24/02/2004 and found suitable • Permit attached Ref. No. WRMA/20/KAB/2EC/24/S for abstraction and storage • Granted on 01/12/2010 and signed by Tomkin Odo on 23/06/2017	• The permit is signed on 23/06/2017 and yet it was issued on 01/12/2010 and indicates that it was to expire on 13/12/2018
	ANNEX 3		
23	3T	• Baileys stream dam project design report • Report bears coat of arms on the first page • Its titled Ministry of water resources Management and Development • Dated March 2004 • Bears the address of the district water office in Nakuru • Attached letter (3T) dated 17/06/2004 by Eng. L. N. Simitu for Director of Water commenting on design report and directing necessary correction and re-submission of design.	• Design report does not bear the name and signature of the author • The letter does not any official government letter head
	ANNEX 4		
24	4W	• Application for a water permit for Milment Estates L.R. No. 11278 Watkins stream • Diversion by weir 3ft, dam and gravity pipeline • Fees paid Kshs. 290 • Site and river inspected and gauged on 24/09/1980 • Water bailiff reported a diversion is in existence only a dam is being added	• The document is barely legible. • The exact year in which the application is marked received is ineligible

	DOCUMENT REF NO.	DESCRIPTION	OBSERVATION
		• Application be approved subject to no objection as a result of advertisement • Bears a stamp acknowledging receipt with an ineligible date	
25	4w	• A letter dated 27/06/2003 Ref. No. N/107/3/73 by district Water Officer to Director Ministry of Water • Letter Ref. is transfer and renewal of water permit no. 1218 from Milmet Estate Ltd to Salt Manufacturers Kenya Ltd for Watkins stream on LR. No. 11278	• As observed earlier permit Ref. No. 1218 was issued to Salt Manufacturers Kenya Ltd on Watkins stream on 21/07/2005 and yet this letter dated 27/06/2003 relates to transfer and renewal of a water permit bearing the same number
26	4W	• Document bearing notation 'minute 31/04' • Referring to transfer and renewal of water permit No. 1218 from Milmet estate to SALT MANUFACTURERS KENYA LTD for Watkins stream on LR. No. 11278 • Existing diversion is by boulder weir and gravity pipeline • Fee paid ksh. 1000 • Site inspected 24/02/2004 • Permit expired on 31/03/1988 • Resolved that transfer and renewal of water permit no. 1218 be approved	• The nature of the document cannot be ascertained • Does not bear the name or signature of the author
27	4W	• Inspection report for a borehole on Watkins stream by Water Resources Management Authority • Owners of works/land inspected are Salt Manufacturers Kenya Ltd	• The inspection report relates to a borehole

	DOCUMENT REF NO.	DESCRIPTION	OBSERVATION
		Signed by Winnie Mutisya of Water Resources Management Authority on 07/11/2014	
28	4T	Internal Memo dated 14/9/2014 on stability of Bailey stream and attached measurements of Bailey stream dam	The Memo relates to Baileys stream dam
29	ANNEX 5	- Letter dated 12/10/17 Ref: WRMA/RVCA/ENF/GEN/3/15/Vol II/(155) by Regional Manager WARMA Bernard S. Omuya to Patel Coffee Estates Ltd .stating that after dam inspection at Tinderess village on 10/10/2017- (a) Approved designs of dam not available; (b) Farm manager informed Water Resources Management Authority officers verbally that repairs would be undertaken after dam water was depleted; (c) Outlet has been opened to let water out continuously to reduce risk; (d) No action plan available in case of dam failure. (e) Water Resources Management Authority officers required a dam failure report in a prescribed format to be submitted within 14 days;	- The letter does not specify the particular dam that was inspected and to which the instructions were issued. - There is no further indication that preparation of the dam failure report was submitted to WARMA or any other follow up made by WARMA officers after the lapse of 14 days.
30	ANNEX 6	7 Satellite images	
	ANNEX 7		
31	7	Copy of an Order under Water Act 2016 issued to SALT MANUFACTURERS KENYA LTD on 14/5/2018 relating to Kings stream and Baileys stream requiring Salt Manufacturers Kenya Ltd to-	Order referred to Kings Stream instead of Watkins stream and further referred

	DOCUMENT REF NO.	DESCRIPTION	OBSERVATION
		(a) Empty water stored in the Tinderess dam and dam located along road from Nakuru to Solai market centre; (b) Stop impoundment, storage, conveyance in above mentioned dams; (c) Submit initial designs and relevant licenses/permits approving construction of the dams; (d) Before re-construction is carried out all necessary dams detailed designs reports be submitted to the Authority; and (e) Items 1, 2 and 3 take effect immediately and item 4 on or before 21 days starting on 15/5/2018. • Order signed by Herman Kiruaye, Water Rights Officer	to second dam by its location instead of its name. This oversight rendered the order vague ambiguous and unenforceable.
32	7	• Letter dated 13/5/2018 Ref: WRA/RVCA/ENF/GEN/3/15/Vol III(42) by Regional Manager WRA Simon W. Wang'ombe to Patel Coffee Estates Ltd. On instruction on dams in your farm • Refers to a meeting held Tinderess Farm on 29/5/2018 • Makes reference to instructions on way forward- (a) that Milmet dam be decommissioned; (b) not to impound, divert, store or abstract water from Milmet dam; (c) cut through embankment of Milmet dam to let water flow through its natural water	• The letter draws the attention of the addressee to the duties of class B and C dam owners.

	DOCUMENT REF NO.	DESCRIPTION	OBSERVATION
		course without any obstruction; (d) to avail certain documents including designs, plans, assessment reports, EIA license, dam inspection report; (e) failure to comply would result in shutting down of operations of the dam, decommissioning of dams at owner's cost	
33	ANNEX 8	Satellite image	
	ANNEX 9		
34	9	- Letter dated 8/6/2018 Ref: DCI/SEC/RVR/4/4/2/Vol. I/61 by DCI Regional Commander Rift Valley Region to the Regional Manager WRA Nakuru - Letter ref: DCI Rongai Inquiry file No. 2/2018 - Investigating circumstances leading to collapse of Milmet dam - Requesting original documents relating to collapsed dam - Also attached inventory of original documents submitted to DCI as witnessed by Wang'ombe, Martin and Omutelema (a) Letter addressed to Bernard Omuya by Patel Estates Ltd dated 3/11/2017; (b) Original inspection report dated 12/10/2017 addressed to Patel Coffee Estates Ltd; (c) Internal Memo dated 12/10/2017 (d) Water permits issued by Tomkins Odo dated 23/6/2017 (e) Forwarding letter addressed to Managing Director of Salt Manufacturers Kenya Ltd dated 13/12/2017	

	DOCUMENT REF NO.	DESCRIPTION	OBSERVATION
		(f) Water permit Ref: WRMA/20/0094 permit no. P.WRMA/20/KAB/2EC/25/S (g) Original forwarding letter dated 23/04/2009 ref no: WRMA/RVC/SW/788(16) signed by Matagaro (h) Permit in relation to the forwarding letter in clause 4 (original) permit no: WRMA/RVC/SW/788 Additional documents picked by DCI (a) Inspection report WRMA 007 signed by Winnie Mutisya dated 7/11/2014. (b) Letter from head office WRMA/HQ/WR/3/15/2/3(11) dated 31/10/2014	

ANALYSIS ON THE ENVIRONMENTAL RESTORATION ORDER ISSUED BY NEMA

1. Cabinet Secretary for Environment and Forestry presented to the Committee an environmental restoration order issued *vide* a letter dated 12th July, 2018, Ref: NEMA/5/11/Vol.III, signed by the Director-General NEMA directing the Directors of Kensalt Plantations Ltd & Patel Coffee Estates to undertake the following actions-
 - a) restore of farmlands by replacing with top soil rich in manure/humus, subsequently putting in place soil conservation measures;
 - b) restore farms that have over deposition of soil to their original status;
 - c) recreate the riparian reserve through excavation of the natural waterway to the recommended depth and width to allow the natural water flow downstream;
 - d) restore destroyed infrastructure such as access roads, homes and schools to near original state;
 - e) undertake and submit an EIA project report to National Environmental Management and Coordination Act before decommissioning Tinderess and Milmet dam within 30 days;
 - f) carry out biodiversity inventory of the game sanctuary in consultation with KWS and a status report submitted to National Environmental Management and Coordination Act within 30 days;
 - g) plant appropriate trees on the dam catchment areas in consultation with KFS;
 - h) put in place adequate and appropriate sanitary facilities and include the compliance in the next farm environmental audit;
 - i) ensure compliance with relevant laws and regulations such as water rules as pertains to water abstraction; and
 - j) submit a remediation report demonstrating completion of the remediation works.
2. Section 108(2) of the National Environmental Management and Coordination Act which provides that

An environmental restoration order issued under subsection (1) or section 111 shall be issued to—

(a) require the person on whom it is served to restore the environment as near as it may be to the state in which it was before the taking of the action which is the subject of the order;

(b) prevent the person on whom it is served from taking any action which would or is reasonably likely to cause harm to the environment;

(c) award compensation to be paid by the person on whom it is served to other persons whose environment or livelihood has been harmed by the action which is the subject of the order;

(d) levy a charge on the person on whom it is served which in the opinion of the Authority represents a reasonable estimate of the costs of any action taken by an authorised person or organisation to restore the environment to the state in which it was before the taking of the action which is the subject of the order.

3. Section 109(1) of the EMCA further provides for the contents of a restoration order in the following terms-

An environmental restoration order shall specify clearly and in a manner which may be easily understood—

(a) the activity to which it relates;

(b) the person or persons to whom it is addressed;

(c) the time at which it comes into effect;

(d) the action which must be taken to remedy the harm to the environment and the time, being not more than thirty days or such further period as may be prescribed in the order within which the action must be taken;

(e) the powers of the Authority to enter any land and undertake the action specified in paragraph (d);

(f) the penalties which may be imposed if the action specified in paragraph (d) is not undertaken;

(g) the right of the person served with an environmental restoration order to appeal to the Tribunal against that order, except where the order is issued by a court of competent jurisdiction, in which case the right of appeal shall lie with superior courts.

4. The Committee noted that the restoration order issued by National Environmental Management Authority on 12th July, 2018, failed to comply with the provisions of section 108 as the order-
 - (e) did not set out any award or compensation to be paid to persons whose environment or livelihoods had been harmed by the actions of the dam owners in Solai;
 - (f) did not levy any charge, on the owner of Solai dam, for the estimated costs of any action taken by an authorised person or organisation including the Kenya Red Cross and the Ministry of Water to restore the environment to the state in which it was before the tragedy took place;
 - (g) did not set out the particulars of the land that would be subject to restoration and was therefore vague, ambiguous and likely to be unenforceable;
 - (h) did not specify the time at which the order was to come into effect; and
 - (i) did not specify the power of National Environmental Management and Coordination Act to enter upon the land and undertake any action to remedy the harm to the environment
5. The Committee therefore directed the Cabinet Secretary for the Environment and Forestry to ensure that the restoration order of 12th July, 2018, be revoked a new restoration order be issued by NEMA in compliance with section 108 and 109 of the National Environmental Management and Coordination Act.
6. NEMA issued a subsequent restoration order dated 19th July, 2018, in which the Directors of Kensalt Plantations Ltd, the Directors Patel Coffee Estates Ltd, Mr. Perry Mansukh Kansagara and Mr. Vinoj Jaya Kumar have been directed to-
 - (a) immediately use and cease to use and operate or deal in any manner the Tinderess and Milmet dam;
 - (b) within 21 days of service of the restoration order, undertake and submit an Environmental Impact Assessment project report to NEMA for decommissioning of the Tinderess and Milmet dam;
 - (c) restore the degraded environment immediately as near as it may be to the state in which it was before the collapse of the dam and in particular, restore the degraded areas as follows-
 - (i) **restoration of riparian reserves:** undertake the restoration of the degraded rivers, streams and riparian reserves as a result of the collapse of Milmet dam;

- (ii) **restoration of destroyed infrastructure:** restore destroyed infrastructure such as access roads, homes, markets and schools to near original state;
- (iii) award compensation to persons whose environment or livelihood has been harmed by the collapse of the Milmet dam on the basis of reports provided by NEMA, Ministry of Agriculture and Livestock and Fisheries, Ministry of Interior and Coordination of National Government, Ministry of Health, Kenya Forest Service, Kenya Wildlife Service, Water Resources Authority, Kenya Rural Roads Authority, National Disaster Operation Centre, County Governments and any other relevant agency, within 30 days upon receipt of the report;
- (iv) pay within 30 days for costs incurred by any authorized person or organisation to restore the environment to the state in which it was before the taking of the action as will be determined by the Authority;
- (v) undertake and submit to NEMA a detailed Environment Audit report for the Main House dam, centre dam, Moi dam and Nursery dam within 21 days upon service of this restoration order;
- (vi) carry out a biodiversity inventory of the Game sanctuary in consultation with Kenya Wildlife Service and provide a report to NEMA within 30 days upon service of the restoration order;
- (vii) ensure compliance with relevant laws and regulations on water abstraction;
- (viii) submit a remediation report to NEMA demonstrating compliance with the restoration order;
- (ix) within 7 days of receipt of the order, commit in writing that the addressees shall comply with this order.

7. In a letter dated 23rd July, 2018, the Cabinet Secretary attached inter alia the following-

- (a) a letter dated 20th July, 2018, addressed to the Ministry of Interior and Coordination of National Government, Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works, the Governor Nakuru County Government and Chief Executive Officer Kenya Red Cross Society seeking information on costs and expenses incurred by respective Ministries and entities in relation to the Solai dam tragedy; and

- (b) a letter reference NEMA/7/71/Vol.1 directing relevant lead agencies to urgently undertake detailed assessment of damages relevant to their mandate and to prescribe remediation standards with costs.

8. The Committee notes that the restoration order dated 19th July, 2018, does not conform in its form to the provisions of section 109(1)(e) as it does not specify clearly and in a manner which may be easily understood the powers of NEMA to enter upon any land and undertake any remedial action with respect to the environment. The Committee is cognizant of the ruling in ***R v National Environment Management Authority & another ex-parte Philip Kisia & City Council of Nairobi (2013)*** in which the court found that an environment restoration order invalid as it failed to indicate to the that NEMA can enter the collection sites and restore those sites in accordance with section 109(1)(e) of the Act. The court therefore found that in that instance there was no proper or valid environmental restoration order.
9. The Committee further notes that in NEMA has not quantified the award of damages to be paid by the owner(s) of Milmet dam under section 108(2)(c) of the EMCA. NEMA has given a general award of damages predicated on assessments being carried out by other government agencies.
10. To further compound this challenge, the Cabinet Secretary for Environment and Forestry has instructed various government agencies and the Kenya Red Cross to indicate any costs incurred by these entities for the restoration of the environment. A similar request has not been made to the same Ministries to propose a quantified figure of damages to be paid to residents of Solai to be compensated for damage to their environment and livelihoods under section 108 of the Act.
11. The Committee further noted that the restoration Order requires the persons to whom it is addressed to “*within 7 days upon service of this order, commit in writing that you shall comply with this Order*”. Due to the nature and extent of damage caused to the environment and livelihoods of the residents of Solai, an undertaking in writing may be insufficient security for compliance with the Order. Section 28(1) and (2) of the Act provides that-
- (1)The Authority shall create a register of those activities and industrial plants and undertakings which have or are most likely to have significant adverse effects on the environment when operated in a manner that is not in conformity with good environmental practices.*

(2)The Cabinet Secretary responsible for Finance may, on the recommendations of the Cabinet Secretary, prescribe that persons engaged in activities or operating industrial plants and other undertakings identified under subsection (1) pay such deposit bonds as may constitute appropriate security for good environmental practice.

12. Application of the provisions of section 28 of the Act by NEMA requiring the owner(s) of Milmet dam to deposit a bond for the performance of a restoration Order issued by NEMA.
13. The restoration Order dated 19th July, 2018, does not comply with the law and is likely to be unenforceable as it does not set out material information on the determination of the compensation to be awarded including the time within which Ministries are to carry out an assessment to quantify damage to the environment and livelihoods of the affected residents of Solai.
14. The Committee further notes that as a matter of policy, section 108(5)(b) and section 109(1)(g) of the Act provide an avenue of appeal to the persons to whom an environmental restoration order is to be served. The Act does not provide for the right to appeal, to the Tribunal or a superior court, to a person whose livelihood or environment has been damaged and an award of compensation issued through a restoration order. This limits the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair as set out in Article 47(1) of the Constitution.

COMMITTEE OBSERVATIONS

The Committee observes as follows;

1. That the Solai dam tragedy of 9th May, 2018, was a result of deliberate and criminal acts on the part of the owner and neglect of duty, abdication of responsibility conspiracy and concealment by officers of NEMA, NCA and WRA.
2. The dam collapsed because it did not have a spillway.
3. That there is a plethora of inconsistencies in the submissions by the Cabinet Secretary, Water and Sanitation *vide* his submission dated 16th July, 2018 relating to licensing, enforcement, inspection and record keeping of the Milmet, Tindress and Baileys Dam as demonstrated in the analysis on page 62 of the report. The documents were hurriedly put together in a bid to falsely establish the existence of a licence for a dam or a cover up of the incident.
4. That the owner of Milmet dam applied and was granted a permit for a weir and to abstract 50.45 cubic metres from normal flow and 2045.4 cubic metres from flood flow on Watkins stream LR No. 11278.
5. That the owner did not apply and was not granted a permit for a dam on Watkins stream. The owner of Milmet dam knowingly and unlawfully constructed Milmet dam by blocking Watkins stream since 2004 on the basis of a permit for a weir contrary to the provisions of the Water Act with the full knowledge of Water Resource Authority and Ministry of Water officials.
6. That there was a conspiracy to mislead and defeat the application of the law with relation to the establishment of Milmet dam on Watkins stream.
7. That Milmet dam was not constructed by a qualified and registered contractor and the design and construction of the dam was not supervised by the relevant and competent authority.
8. That the owner of Milmet Dam contravened regulation 67(1) of the Water Resource Management Rules 2007 by not taking adequate measures to notify the authorities (WRA) and persons downstream likely to be affected in the event of any discharge from the dam, whether caused by dam failure or intended releases from the dam.

9. That the owner of the Milmet dam contravened regulation 67(2) of the Water Resource Management Rules by failing to take adequate measures to protect persons infrastructure and environment downstream that was likely to be affected in the event of any discharge from the dam whether caused by dam failure or intended releases from the dam.
10. That the owner of Milmet dam contravened section 58(2) of the Environmental Management Coordination Act by failing to commission Environmental Impact Assessment Study Reports for the years 2004 to 2018 with respect to Milmet dam.
11. That the owner of Milmet dam contravened regulation 29 of the Environmental Management Coordination Regulations by failing to prepare and submit self-auditing reports on Milmet Dam from 2004.
12. That NEMA officials did not verify annual environmental audits on the other activities on Solai farm for the years 2014, 2015 and 2016.
13. That there was criminal neglect of duty by officers of-
 - i) National Environmental Management Authority in as far as enforcement of Environmental Management Coordination Act in Milmet Dam; and
 - ii) Water Resource Authority in as far as licensing and inspection of water works and proper record keeping with respect to Milmet dam; and
 - iii) the county government of Nakuru.
14. That the acts and omissions of officers of National Environmental Management Authority and Water Resources Authority amounted to a contravention of Article 232 of the Constitution, provisions of the Public Officer Ethics Act and the Public Service (Values and Principles) Act.
15. That the owner of Milmet Dam contravened regulation 54(2)(d) of EMCA Regulations by failing to disclose material facts relating to Milmet dam in the self-audit reports.
16. Those penalties prescribed for non-compliance under section 143 of EMCA are not deterrent enough.

17. That it is apparent from the satellite images that there were ongoing works on Milmet dam up to 2017 and there is no evidence of authorizations from NCA for these works.
18. That the management of the National Construction Authority, did not appreciate their statutory duty under Section 22 and 23 of National Construction Authority Act, to institute inquiries into the conduct of a contractor on its own initiative or upon a receipt of a complaint. As a result, there was a deficient report submitted to the Committee on 27th June, 2018, which led the Committee to direct the National Construction Authority to prepare a forensic report on the collapse of Milmet dam.
19. That there is lack of coordination between various regulatory agencies i.e. NCA, NEMA, WRA and the County Government on issues related to licensing, enforcement and compliance of construction works and environmental management leading to manipulation of the process by the owner of Milmet dam.
20. That residents of Solai had made several complaints on the integrity of the dams on Solai farm and these complaints were not acted upon or investigated by the relevant authorities.
21. Further a complaint of the death by drowning of a child in one of the dams on Solai farm several years before the incident was not investigated or acted upon.
22. That in the course of the work of the Committee, the Director of Public Prosecutions had preferred charges of manslaughter, neglect of duty and failure to prepare an Environmental Impact Assessment report jointly and severally against various individuals as set out in Annex
23. That the scene of the tragedy was not secured as of 6th July 2018 when the Committee visited the tragedy site, despite the DPP having given directions that the scene be secured.
24. That the County Government of Nakuru abdicated its duty of environmental management under paragraph 10 of Part 2 of the Fourth Schedule to the Constitution.
25. That the County Governor of Nakuru was oblivious of his duty under section 29 of Environmental Management and Coordination Act to constitute a County Environment Committee.

26. That the Kenya Metrological Department issued advisories in good time on excessive rainfall in Nakuru division. However, the amount of rainfall was not the cause of the collapse of Milmet dam. The dam collapsed due to the absence of spillways.
27. That the early warnings of excess rainfall given by the Kenya Meteorological Department gave the owners of Milmet dam sufficient time to construct spillways, ensure evacuation of persons downstream and put in place other measures to mitigate any likely damage caused by breach of the dam.
28. That during the Committee's visit to the tragedy site and during oral submissions made before the Committee, Water Resource Authority inspectors alleged that they had been denied access into Solai farm on various occasions to carry out their statutory duties. However, from the letter dated 12th October, 2017, received from the Cabinet Secretary Water and Sanitation, it is clear that officers of Water Resource Authority had been granted access to the farm at least six months before the tragedy. The assertion that Water Resource Authority officers had been denied access to Solai farm is therefore false.
29. That the National Construction Authority investigative team reported, in their preliminary forensic audit report, that they were denied access to Solai farm, hence were unable to conduct a detailed survey (geo-technical investigations) and material investigations into the collapse of Milmet dam. The investigators indicated that the matter was reported to the police and the case ***No. 746 of 2018 NCA vs Kensalt Ltd. Nakuru CMC*** is on-going. However, section 23 (2) and (3) of the National Construction Authority Act gives an investigating officer, appointed by the Board of National Construction Authority, powers to enter into any site and require production of any records and seize or take away said records. There is no evidence of how section 23(2) and (3) were applied by National Construction Authority.
30. That the Ministry of Defence responded to the emergency as required under Article 241(3)(b) of the Constitution as read together with section 8(1)(b) of the Kenya Defence Forces Act No. 25 of 2012, to assist and cooperate with other authorities in situations of emergency or disaster, albeit having been informed late.
31. That there is disjointed and uncoordinated relief and compensation initiatives for victims which has led to abuse.

32. That there is low public confidence and trust in the post-disaster management of the tragedy by national government coordination officers and the county government.
33. That the victims of the tragedy and the intended recipients of relief stated that there was misappropriation of donated relief items.
34. That the owner of the dam, in cahoots with national government coordination officers to wit, Joshua Nkanatha the County Commissioner Nakuru County, Justus Kavita the Deputy County Commissioner Subukia sub-county and Charles Kiragu the Chief Solai location attempted to pay off the victims of the tragedy, in a bid to prevent them from making any further claims on the owner of Milmet dam, under the pretext that these were consolation funds.
35. That the National Construction Authority does not have a repository of dams and water works in the country.
36. That the Water Resources Authority does not have a repository of dams and water works in the country.
37. That the Order issued under the Water Act to Salt Manufacturers Kenya Limited by the Water Rights Officer and dated 14th May, 2018 directing that Tinderess dam and a certain unnamed dam be decommissioned is vague, ambiguous and unenforceable as it erroneously referred to Kings Stream and Baileys Stream and referred to an unnamed dam on the property and further made reference to a "Kings Stream" instead of "Watkins stream".
38. That Perry Mansukh Kansagara, the Managing Director of Kensalt Limited and Patel Coffee Estates Limited, during his appearance before the Committee made vague statements, refused to disclose information, alleged to have no recollection of pertinent information and made false statements about the construction, licensing and operation of Milmet dam in a bid to mislead the Committee in contravention of section 27(3)(g) of the Parliamentary Powers and Privileges Act.
39. That from satellite images submitted by the Cabinet Secretary for Water and Sanitation dated 2004, the owner of Milmet dam had completely blocked the natural course way of Watkins stream denying the residents downstream the use of the water resources.

40. The restoration order issued on 12th July, 2018, by NEMA on a without prejudice basis is in contravention section 108 and 109 of EMCA. The restoration order of 19th July, 2018, one is materially insufficient and does not conform to section 108 and 109 of EMCA the even though the

41. Perry Mansukh did not deny liability for the collapse of Milmet dam resulting in the loss of life, damage to property, the environment and livelihoods.

RECOMMENDATIONS

Following the analysis and observations made, the Committee makes the following observations:

	RECOMMENDATION	ACTOR	TIMELINE	SENATE OVERSIGHT COMMITTEE	
1	Further investigations and prosecution of the owner(s) of Milmet dam, public and State officers involved in the unlawful establishment and operation of Milmet dam in contravention of the Water Act.	ODPP & DCI	Within 1 Month	Legal And Rights	Affairs Human
2	Further investigations and prosecution of the officers of the National government including Mr. Joshua Nkanatha, County Commissioner, Nakuru, Mr. Justus Kavita, DCC and Mr. Charles Kiragu, Chief in Solai be conducted for abuse of office and obstruction of justice	ODPP & DCI	Within 1 Month	Legal And Rights	Affairs Human
3	That the ODPP & DCI investigate the authenticity of the documents submitted to the Committee by the Cabinet Secretary Water and Sanitation to determine if the documents are false or submitted with the intention to mislead the Committee contrary to the provisions of the Parliamentary	ODPP & DCI	Within 1 Month	Legal And Rights	Affairs Human

	RECOMMENDATION	ACTOR	TIMELINE	SENATE OVERSIGHT COMMITTEE
	Powers and Privileges Act. Documents in annex			
4	Further investigations be conducted against the owner(s) of Milmet Dam and subsequent prosecution instituted against the Owner/s for deliberately and unlawfully constructing Milmet dam in full knowledge of WRA and NEMA officials	ODPP & DCI	Within 1 Month	Legal Affairs And Human Rights
5	That the charge sheets relating to persons arraigned in court with respect to the Solai dam tragedy be amended to reflect additional offences and particulars arising out of acts and omissions contrary to laws regulating water works.	ODPP & DCI	Within 1 Month	Legal Affairs And Human Rights
6	That appropriate administrative and disciplinary action is taken against Mr. Maurice Aketch who submitted the NCA preliminary observation report dated 10 th May, 2018, and submitted it to the Committee for negligence and attempting to mislead the Authority and the Committee	The NCA CEO,	Within One Month	LEGAL AFFAIRS AND HUMAN RIGHTS

	RECOMMENDATION	ACTOR	TIMELINE	SENATE OVERSIGHT COMMITTEE
7	That further investigation be instituted against the owner(s) of Milmet Dam and subsequent prosecution for failing to notify the NCA on construction works on the dam between 2011 – 2017 in contravention of the NCA Act	DPP, NCA	Within 1 Month	Legal And Rights Affairs Human
8	That further investigations on the owner/s of Milmet Dam be conducted and subsequent prosecution for failing to undertake an EIA study on Milmet dam between 2004 - 2018 in contravention of section 58 (2) of EMCA.	ODPP	Within 1 Month	Legal And Rights Affairs Human
9	That the ODPP and DCI investigate the public officers cited in this report for contravening Article 232 of the Constitution, the Public Officers Ethics Act and the Public Service (Values and Principles) Act for conspiracy to mislead the Public, their respective Authorities, the Committee. Officer to be investigated include but are not limited to: Mr. Mohamed Shurie – CEO	ODPP, DCI	Within 1 month	Legal and Rights Affairs human

	RECOMMENDATION	ACTOR	TIMELINE	SENATE OVERSIGHT COMMITTEE
	WRA Eng. Boniface Mwaniki WRA Mr. James Chepolet – NCA Mr. Tompkins Odo – Ministry of Water Mr. Joshua Nkanatha - County Commissioner, Nakuru County Mr. Justus Kavita - Deputy County Commissioner, Subukia and Mr. Charles Kiragu - Chief of Solai Location			
10	That the Governor of Nakuru County and all other Governors appoint by Gazette County Environment Committees within three months in line with section 29 of EMCA	The 47 County Governors	Within 3 months	Land and Natural Resources
11	Further investigations of the owner(s) of Milmet Dam be conducted for contravening regulation 54(2) (d) of EMCA by failing to disclose material information on Milmet Dam in the self-auditing reports between 2004 and 2018.	ODPP	Within 1 month	Legal Affairs and Human Rights
12	Section 143 of EMCA be amended to enhance the penalties	Senate	6 months	Senate

	RECOMMENDATION	ACTOR	TIMELINE	SENATE OVERSIGHT COMMITTEE
	for non-compliance with restoration orders That the National Environmental Public Complaints Committee to be devolved	CS Environment and Forestry	3 months	
13	That parliament enacts legislation to establish a framework to anchor the Kenya Metrological Department.	Senate	6 months	Senate
14	That National Government officers who were involved in the attempted payoff of victims by causing them to sign indemnity forms in the pretext that it was consolation money. These officers include: Mr. Joshua Nkanatha - County Commissioner, Nakuru County Mr. Justus Kavita - Deputy County Commissioner, Subukia and Mr. Charles Kiragu - Chief of Solai Location	DCI and ODPP	Within 1 month	Justice, Legal Affairs and Human Rights
15	That the Chief Justice directs that the case instituted by NCA be expedited and that the team submits the forensic audit to the	JSC	Within 1 Month	Committee on Justice, Legal Affairs and Human Rights

	RECOMMENDATION	ACTOR	TIMELINE	SENATE OVERSIGHT COMMITTEE
	Senate within 30 days.			
16	That Parliament expedites the passing of the Disaster Risk Management Bill, 2018, Senate Bill No. 8 of 2017	Parliament	6 months	Senate Business Committee
17	That the Ministry of Water and Sanitation establish a National Dam Safety Monitoring Unit which will be mandated to monitor structural performance of dams	The Cabinet Secretary, Ministry of Water and Sanitation	Within 1 month	Land and Natural resources
18	That WRA, NCA and NEMA collate information, establish and maintain a national repository of all dams and water works.	WRA, NCA and NEMA	6 months	Committee on Land and Natural Resources
19	That for the enforcement of the restoration order of Solai to succeed, all national Government administration officials stationed at Solai be suspended. These officials are: Mr. Joshua Nkanatha - County Commissioner, Nakuru County Mr. Justus Kavita - Deputy County Commissioner, Subukia	Cabinet Secretary Interior and Coordination of National Government	Immediately	Committee on National Security

	RECOMMENDATION	ACTOR	TIMELINE	SENATE OVERSIGHT COMMITTEE
	and Mr. Charles Kiragu - Chief of Solai Location			
20	That the DPP conducts further investigation into the interference of the tragedy site against his Orders and that any further action related to the site of the tragedy be under the direction of the DPP	ODPP	Immediate	Committee on Justice, Legal Affairs and Human Rights
21	That the Restoration Order issued by NEMA on 19 th July, 2018 be revoked and a new one be issued with specific directions on the restoration and compensation in accordance with section 108 and 109 of the EMCA, including the procurement of an independent environmental expert or reputable firm to conduct an environmental audit to establish the extent of environmental damage caused and assess the quantum of compensation payable to the families of the deceased, injured and for the loss of livelihoods.	NEMA	Immediate	Committee on Lands and Natural Resources

	RECOMMENDATION	ACTOR	TIMELINE	SENATE OVERSIGHT COMMITTEE
22	That further investigations in a view to prosecute be conducted for the contravention of regulation 67 (1) and (2) of the Water Resources Management Rules, 2007 by the owner(s) of Milmet dam.	DCI and DPP	1 month	Committee on JLAHR
23	That the Milmet and Tindress dams be decommissioned	Ministry of Water and Sanitation	Immediately	Land and Natural Resources
24	That the flow of Watkins stream and Tildress river be restored forthwith	Ministry of Water and Sanitation	Immediately	Land and Natural Resources
25	That the restoration order to be issued by NEMA to include provision of Water for domestic use is granted to the residents until the river flow is fully restored	NEMA	Immediately	Land and Natural Resources
26	That pending the restoration of the environment and livelihoods of the residents, and alternative parcel of lands be availed for the residents use with all facilities	NEMA	Immediately	Land and Natural Resources



Milmet Dam which collapsed killing 48 people on 9th May 2018. *(Picture taken on 6th July 2018)*



Tinderess River flowing into the Tinderess Dam, the dam was drained following the collapse of the Milmet Dam. *(Picture taken on 6th July 2018)*



Watkins River flowing into Milmet Dam (*Picture taken on 6th July 2018*)



Section of the Milmet Dam that was unblocked to release water to flow downstream (*Picture taken on 6th July 2018*)

**MINUTES OF THE FIRST MEETING OF THE SELECT COMMITTEE ON THE
SOLAI DAM TRAGEDY HELD ON WEDNESDAY, 13TH JUNE, 2018 AT 9.00 AM
THE MAIN PARLIAMENT BUILDINGS, FIRST FLOOR, SENATE SPEAKERS
BOARDROOM**

PRESENT

1. Sen. Mutula Kilonzo Junior, MP
2. Sen. Mithika Linturi, MP
3. Sen. Fatuma Dullo, CBS, MP
4. Sen. Susan Kihika, MP
5. Sen. Ledama Olekina, MP

-Chairman
-Vice Chairman
-Member
-Member
-Member

ABSENT WITH APOLOGY

1. Sen. Sakaja Johnson, MP
2. Sen. (Eng.) Ephraim Maina, EBS, MP
3. Sen. (Prof.) Imana Malachy Ekal, MP
4. Sen. (Arch.) Sylvia Kasanga, MP

-Member
-Member
-Member
-Member

IN ATTENDANCE

SENATE SECRETARIAT

1. Mr. Njenga Njuguna
2. Ms. Mary Chesire
3. Mr. Peter Muchira
4. Ms. Gloria Wawira
5. Ms. Lucy Radoli
6. Mr. Eugene Apaa
7. Ms. Farida Ngasura

- Director, Committee Services
- Deputy Director, Committee Services
- Clerk Assistant
- Clerk Assistant
- Legal Counsel
- Research Officer
- Audio Officer

MINUTE SEN/SCST/001:

PRELIMINARIES

The Director, Committee Services called the meeting to order at 9.45 a.m. The Director conveyed apologies of the Clerk of the Senate and informed the Committee that he had been directed to preside over the election of the Chairperson and Vice Chairperson.

The Director introduced the secretariat that will be attached to the Committee and pledged the support of the office of the Clerk of the senate to the operations of the Committee.

MINUTE SEN/SCST/002:

ADOPTION OF THE AGENDA

The Agenda for the meeting was adopted after being proposed by Sen. Fatuma Dullo, CBS, MP, and seconded by Sen. Ledama Olekina, MP.

MINUTE SEN/SCST/003:

ELECTION OF THE CHAIRPERSON

The Director of Committee Services and presiding officer, called for nominations of Senators for the election of the Chairperson.

Sen. Mutula Kilonzo Junior, MP was nominated by Sen. Susan Kihika, MP and seconded by Sen. Ledama Olekina, MP.

There being no other nomination, the presiding officer declared Sen. Mutula Kilonzo Junior, MP as the duly elected chairperson.

In his remarks, the chairperson thanked the Members for according him the opportunity to chair the Committee. He noted that the task ahead would not be easy but was confident that the Membership was up to the task.

MINUTE SEN/SCST/004: ELECTION OF THE VICE-CHAIRPERSON

The presiding officer called for nominations of Senators for the election of the Vice-Chairperson.

Sen. Mithika Linturi, MP was nominated by Sen. Fatuma Dullo, CBS, MP and seconded by Sen. Susan Kihika, MP.

There being no other nomination, the presiding officer declared Sen. Mithika Linturi, MP as the duly elected chairperson.

In his remarks, the Vice Chairperson thanked the Members for according him the opportunity to serve as the Vice Chairperson of the Committee. He urged the members to cooperate with each other and with the secretariat.

MINUTE SEN/SCST/005: ANY OTHER BUSINESS

The Chairperson tasked the secretariat to develop a tentative programme of activities and present it to the Committee during the next meeting for consideration.

MINUTE SEN/SCST/006: ADJOURNMENT

The Chairperson adjourned the meeting at 10.10 a.m. and set the date of the next meeting to be held on Tuesday 19th June, 2018 at 9.00 a.m.

SIGNATURE.....

(CHAIRPERSON: SEN. MUTULA KILONZO JUNIOR, MP.)

DATE.....

**MINUTES OF THE SECOND MEETING OF THE SELECT COMMITTEE ON
THE SOLAI DAM TRAGEDY HELD ON TUESDAY, 19TH JUNE, 2018 IN THE
SENATE SPEAKERS BOARDROOM, FIRST FLOOR, MAIN PARLIAMENT
BUILDINGS AT 9.00 AM**

PRESENT

- | | |
|---------------------------------------|-----------|
| 1. Sen. Ledama Olekina, MP | -Chairing |
| 2. Sen. Susan Kihika, MP | -Member |
| 3. Sen. (Eng.) Ephraim Maina, EBS, MP | -Member |

ABSENT WITH APOLOGY

- | | |
|--|----------------|
| 1. Sen. Mutula Kilonzo Junior, MP | -Chairman |
| 2. Sen. Mithika Linturi, MP | -Vice Chairman |
| 3. Sen. Fatuma Dullo, CBS, MP | -Member |
| 4. Sen. Sakaja Johnson, MP | -Member |
| 5. Sen. (Prof.) Imana Malachy Ekal, MP | -Member |
| 6. Sen. (Arch.) Sylvia Kasanga, MP | -Member |

IN ATTENDANCE

SENATE SECRETARIAT

- | | |
|-----------------------|--------------------|
| 1. Ms. Gloria Wawira | - Clerk Assistant |
| 2. Ms. Lucy Radoli | - Legal Counsel |
| 3. Mr. Eugene Apaa | - Research Officer |
| 4. Ms. Farida Ngasura | - Audio Officer |

MIN.NO. SEN/SCST/007:

PRELIMINARIES

Sen. Ledama Olekina was nominated to Chair the meeting in accordance with Standing order 196 of the Senate Standing Orders. He called the meeting to order at 9.25a.m.

MIN.NO. SEN/SCST/008:

ADOPTION OF THE AGENDA

The Agenda for the meeting was adopted having been proposed by Sen. Susan Kihika, MP, and seconded by Sen. Ephraim Maina, MP as follows-

1. Preliminaries;
2. Confirmation of Minutes of previous meeting;
3. **Consideration of proposed draft work plan;**
4. Any other Business;
5. Date of the next meeting.

MIN.NO. SEN/SCST/009:

**CONFIRMATION OF MINUTES OF THE
PREVIOUS MEETING**

Minutes of the first sitting were confirmed as a true record of the proceedings having been proposed by Sen. Susan Kihika, MP and seconded by Sen. Ledama Olekina, MP.

MIN.NO. SEN/SCST/010:

**CONSIDERATION OF DRAFT
COMMITTEE WORK PLAN**

The Committee Considered the draft work plan presented and adopted it with amendments as follows-

1. To add Red Cross Kenya, the County Government of Nakuru and the Ministry of Defence to the stakeholders to be invited at its hearing in Nairobi.
2. To engage an expert to assist in the execution of its mandate.
3. To publish and advertise a receipt of memoranda on the Solai dam tragedy.
4. To conduct a visit to Solai Dam from 5th -7th July, 2018.
5. The secretariat was tasked to amend the draft programme of activities and present it to the Committee during the next meeting for consideration.

MINUTE SEN/SCST/011:

ADJOURNMENT

The Chairperson adjourned the meeting at 10.30 am.

SIGNATURE.....

(CHAIRPERSON: SEN. MUTULA KILONZO JUNIOR, MP.)

DATE.....

MINUTES OF THE 3RD SITTING OF THE MEETING OF THE SELECT COMMITTEE ON THE SOLAI DAM TRAGEDY, HELD ON TUESDAY 26TH JUNE, 2018, IN COMMITTEE ROOM 4, MAIN PARLIAMENT BUILDINGS AT 9.00 A.M.

PRESENT

- | | |
|------------------------------------|---------------|
| 1. Sen. Mutula Kilonzo Junior | - Chairperson |
| 2. Sen. Fatuma Dullo, CBS, MP | - Member |
| 3. Sen. (Prof.) Imana Malachy, M.P | - Member |
| 4. Sen. Ledama Olekina, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|-------------------------------------|--------------------|
| 1. Sen. Mithika Linturi, MP | - Vice-Chairperson |
| 2. Sen. Sakaja Johnson, MP | - Member |
| 3. Sen. Susan W. Kihika, MP | - Member |
| 4. Sen. (Eng. Ephraim Mana, EBS, MP | - Member |
| 5. Sen. (Arch.) Sylvia Kasanga, MP | - Member |

SECRETARIAT

- | | |
|-----------------------|---------------------------|
| 1. Ms. Rose Mudibo | - Committee Clerk |
| 2. Mr. Eugene Apaa | - Research Officer |
| 3. Mr. Jeremy Chabari | - Legal Counsel |
| 4. Ms. Lucianne Limo | - Media Relations Officer |
| 5. Ms. Farida Ngasura | - Audio Recording Officer |
| 6. Ms. Sarah Rukwaro | - SAA |

MINUTE NO.SEN/SCST/012

PRELIMINARIES

The sitting commenced at 09.15 a.m. with a word of prayer.

MINUTE NO.SEN/SCST/013 AGENDA

The agenda of the meeting was adopted with amendments having been proposed and seconded by Sen. Ledama Okekina, MP and Sen. (Prof.) Imana Malachy Ekal, MP to read as follows-

1. Preliminaries
2. Confirmation of draft work plan
3. Brief by the Research Officer
4. Any Other Business
5. Date of the Next Meeting

MINUTE NO.SEN/SCST/014 CONFIRMATION OF DRAFT WORK PLAN

The secretariat took the Members through the draft work plan which was adopted with amendments (copy attached), and agreed on the following-

1. That an advert to invite the public to give their views on the matter to appear in the daily papers on Wednesday 27th June, 2018.
2. The secretariat to provide a brief on each stakeholder and the possible areas of concern (the Committee to meet the secretariat half an hour before the meetings scheduled for Wednesday 27th June, 2018).
3. To consider the changing of the order of meetings to have a flowing agenda and have the owner of the Dam to appear before the Committee after the visit by the Committee to the site.
4. The secretariat was tasked to assemble all Acts related to the stakeholders invited by the Committee.
5. The Committee confirmed to undertake a visit to Solai Dam between 5th and 7th July, 2018. The secretariat was tasked to make security arrangements and ensure that the Committee has access to the farm during the visit.
6. The Committee resolved to communicate and have the owner of the Dam to appear before the Committee in person.
7. The Committee resolved to consolidate a progress report after every activity.
8. The Committee resolved to have all the Government departments who are charged with giving approvals of dams to provide the following documentation;
 - a) Application forms
 - b) Approvals
 - c) Inspection for all the dams
 - d) Monitoring and Evaluation
 - e) Minutes
 - f) Proof of payment

MINUTE NO.SEN/SCST/015

BRIEF BY RESEARCH TEAM

The Committee secretariat through its Research Officer, briefed the Members on matters touching on the Solai Dam Tragedy. After deliberations, the Committee resolved to delete the words 'illegally and irregularly' in the first paragraph considering that this was not factual.

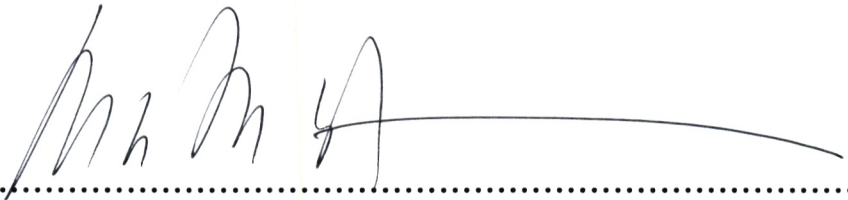
The Committee proposed to meet with the Research Team half an hour to the next meeting scheduled for 9.00 a.m. on Wednesday 28th June, 2018 for a briefing on specific matters of concern touching on specific invited stakeholders.

MINUTE NO.SEN/SCST/016

ADJOURNMENT

There being no other business the Committee adjourned at 10.30 a.m.

SIGNATURE.....



(CHAIRPERSON: SEN. MUTULA KILONZO JUNIOR, MP.)

DATE.....

25/7/18

**MINUTES OF THE FOURTH MEETING OF THE SELECT COMMITTEE ON
THE SOLAI DAM TRAGEDY HELD ON WEDNESDAY, 27TH JUNE, 2018 AT
THE COUNTY HALL, MINI CHAMBER AT 8.30 A. M.**

PRESENT

- | | |
|---------------------------------------|------------------|
| 1) Sen. Mutula Kilonzo Junior, MP | -Chairman |
| 2) Sen. Sakaja Johnson, MP | -Member |
| 3) Sen. (Arch.) Sylvia Kasanga, MP | -Member |
| 4) Sen. (Eng.) Ephraim Maina, EBS, MP | -Member |
| 5) Sen. Ledama Olekina, MP | -Member |

ABSENT WITH APOLOGY

- | | |
|--|-----------------------|
| 1) Sen. Mithika Linturi, MP | -Vice Chairman |
| 2) Sen. Fatuma Dullo, CBS, MP | -Member |
| 3) Sen. Susan Kihika, MP | -Member |
| 4) Sen. (Prof.) Imana Malachy Ekal, MP | -Member |

IN ATTENDANCE

A. SENATE SECRETARIAT

- | | |
|----------------------|--------------------|
| 1) Ms. Rose Mudibo | - Clerk Assistant |
| 2) Mr. Peter Muchira | - Clerk Assistant |
| 3) Mr. Eugene Apaa | - Research Officer |
| 4) Ms. Lucy Radoli | - Legal Counsel |
| 5) Mr. Vitus Okech | - Research Officer |
| 6) Ms. Sarah Rukwaro | - SAA |

MINUTE NO. SEN/SCST/017:

PRELIMINARIES

The Chairman called the meeting to order at 8.35 a.m. This was followed by a word of prayer.

MINUTE NO. SEN/SCST/018:

ADOPTION OF AGENDA

The agenda of the meeting was adopted after it was proposed and seconded by Sen. Ledama Olekina, MP and Sen. (Arch.) Sylvia Kasanga, MP respectively.

MINUTE NO. SEN/SCST/020:

**BRIEFING BY THE SECRETARIAT ON
THE DAYS WITNESSES**

The Chairperson welcomed the secretariat to brief the Members on the days inquiry and the order which would be followed.

The Secretariat presented various papers with background information, research data and inquiry line of question on the three stakeholders that were scheduled to appear before the Committee. These were:

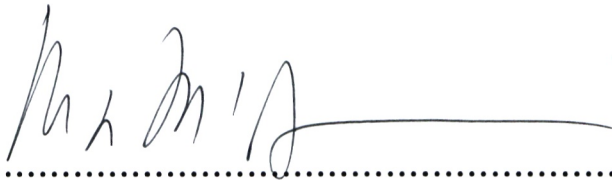
- (1) The National Construction Authority;
- (2) The National Environment Management Authority; and
- (3) The Kenya Metrological Department.

Members deliberated on the information presented and agreed on the line of questioning the Committee would take during the meetings.

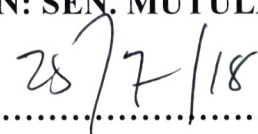
MINUTE NO. SEN/SCST/021:

ADJOURNMENT

The meeting was adjourned at 8:55 a.m.


SIGNATURE.....

(CHAIRPERSON: SEN. MUTULA KILONZO JUNIOR, MP)


DATE.....

**MINUTES OF THE FIFTH MEETING OF THE SELECT COMMITTEE
ON THE SOLAI DAM TRAGEDY HELD ON WEDNESDAY, 27TH JUNE,
2018 AT THE COUNTY HALL, MINI CHAMBER AT 9.00 A. M.**

PRESENT

- | | |
|---------------------------------------|------------------|
| 1. Sen. Mutula Kilonzo Junior, MP | -Chairman |
| 2. Sen. Sakaja Johnson, MP | -Member |
| 3. Sen. (Arch.) Sylvia Kasanga, MP | -Member |
| 4. Sen. (Eng.) Ephraim Maina, EBS, MP | -Member |
| 5. Sen. Ledama Olekina, MP | -Member |

ABSENT WITH APOLOGY

- | | |
|--|-----------------------|
| 1. Sen. Mithika Linturi, MP | -Vice Chairman |
| 2. Sen. Fatuma Dullo, CBS, MP | -Member |
| 3. Sen. Susan Kihika, MP | -Member |
| 4. Sen. (Prof.) Imana Malachy Ekal, MP | -Member |

IN ATTENDANCE

SENATE SECRETARIAT

- | | |
|----------------------|--------------------|
| 1. Ms. Rose Mudibo | - Clerk Assistant |
| 2. Mr. Peter Muchira | - Clerk Assistant |
| 3. Mr. Eugene Apaa | - Research Officer |
| 4. Ms. Lucy Radoli | - Legal Counsel |
| 5. Mr. Vitus Okech | - Research Officer |
| 6. Ms. Sarah Rukwaro | - SAA |

NATIONAL CONSTRUCTION AUTHORITY

- | | |
|--------------------------|-----------------|
| 1. Mr. Steve Oundo, OGW, | - Chairman, NCA |
| 2. Mr. Maurice Akech | - Ag. CEO, NCA |
| 3. Mr. Samson Lukoba | |
| 4. Ms. Susan Rutto | |
| 5. Mr. Stephen Mwilu | |
| 6. Mr. James Chepolet | |

MINUTE NO. SEN/SCST/022:

PRELIMINARIES

The Chairperson called the meeting to order at 9.10 a.m. This was followed by a word of prayer and a round of introductions.

MINUTE NO. SEN/SCST/023: ADOPTION OF AGENDA

The agenda of the meeting was adopted after it was proposed and seconded by Sen. Ledama Olekina, MP, and Sen. (Arch.) Sylvia Kasanga, MP respectively.

MINUTE NO. SEN/SCST/024: MEETING WITH THE NATIONAL CONSTRUCTION AUTHORITY

The Chairperson welcomed the delegation from the NCA and accorded them an opportunity to make their presentation.

The Chairman of NCA tabled a written response to issues raised by the Committee in the invitation letter, and proceeded to make his presentation under various thematic areas:

1. That as provided under Section 5 of the NCA Act, the Authority is established to oversee the construction industry and coordinate its development. Pursuant to Section 5(2) of the National Construction Authority's Act No. 41 of 2011, the Authority's functions are as include;
 - a) Promote and stimulate the development, improvement and expansion of the construction industry;
 - b) Advise and make recommendations to the Minister on matters affecting or connected with the construction industry;
 - c) Undertake or commission research into any matter relating to the construction industry;
 - d) Prescribe the qualifications or other attributes required for registration as a contractor under the Act;
 - e) Assist in the exportation of construction services connected to the construction industry;
 - f) Provide consultancy and advisory services with respect to the construction industry;
 - g) Promote and ensure quality assurance in the construction industry;
 - h) Encourage the standardization and improvement of construction techniques and materials;
 - i) Initiate and maintain a construction industry information system;
 - j) Provide, promote, review and coordinate training programmes organized by public and private accredited training centers for skilled construction workers and site supervisors;
 - k) Accredite and register contractors and regulate their professional undertakings;
 - l) Accredite and certify skilled construction workers and construction site supervisors;

- m) Develop and publish a code of conduct for the construction industry; and,
 - n) Do all other things that may be necessary for the better carrying out of its functions under the Act.
2. That the NCA in relation to the management of dams in Kenya, is mandated to prescribe the qualifications or other attributes required for registration as a contractor under the NCA Act. Under its schedule of contract works, the Authority classifies contractors licensed to construct dams under Civil Works (Water).
 3. That the Authority is mandated to register dam construction projects in line with Section 5(2)(i) of the Act, and Section 17 (of the NCA Regulations) which provides;
 - a) That the Water Act 2016 provides for the regulation, management and development of water resources, water and water sewerage services. Further, Section 11 of the Act establishes the Water Resources Authority with a mandate to formulate and enforce standards, procedures and regulations for the management and use of water resources and flood mitigation among other functions.
 - b) That the Authority is empowered to undertake registration of contractors under its enabling Act, and prescribe the qualifications or other attributes required for registration against an evaluation criteria.
 - c) That the Authority was at the time proposing a Revised Evaluation Criteria 2018 that highlights the requirements for contractors involved in the construction of dams and noted that current evaluation criteria provides for civil works contractors ,but is not specific to applicants specialized in the construction of dams.
 - d) That Under the Draft Revised Evaluation Criteria 2018, dam contractors are classified as civil works (water) contractors for purposes of registration with the Authority. The requirements provide that the applicant must provide the Ministry of Water and Sanitation license to undertake water supply, sewerage, irrigations works, dams and pans. Further, the Criteria prescribe a higher threshold for plant and equipment for contractors involved in dam construction.
 4. That The Authority is mandated to promote and ensure quality assurance in the construction industry. In line with Section 5(2)(g) as read together with Section

23(2)&(3) of the Act, the Authority ensures compliance in the industry by conducting inspections and investigations of projects.

5. That the Authority did not undertake a structural inspection of the Solai Dam prior to the unfortunate tragedy as its regulatory scope is with regard to structures under construction.
6. That the NCA Central Rift Regional Team had visited the scene of the collapsed dam in Solai Centre, Nakuru County on 10th March 2018. The Authority's preliminary observation is that the dam failure was likely to have been triggered by high water levels which might have exceeded its capacity as a result of heavy rainfall experienced in the area.
7. That a forensic audit was necessary to ascertain the causes of failure of the dam structure.
8. That the Authority had initiated the drafting of the first Construction Industry Policy with the first draft expected by 2nd July, 2018.

The NCA Chairman presented to the Committee a breakdown of the number of registered civil works (water) contractors in Kenya.

MINUTE NO. SEN/SCST/025: COMMITTEE'S INTERVENTION

Following the presentation by the Chairman National Construction Authority, the Committee raised various points of clarification including;

1. The report presented by the Chairperson, NCA was unsatisfactorily and depicted lack of seriousness by the authority in dealing with the matter;
2. That particularly the report presented by NCA Central Rift Regional Team was shallow and subjective.
3. That despite the NCA recommending a forensic audit, there was no motion towards conducting it.
4. Clarification on whether NCA had a database of all dams in Kenya
5. Whether NCA conducted a risk analysis on the other dams on the farm in Solai; and
6. Whether NCA had licensed the supposed fortification of the lines of weakness in the collapsed dam before the tragedy.

In response, the Ag. CEO indicated that:

1. The NCA did not have a database of existing dams in Kenya;
2. That the report by the Nakuru Regional team was a preliminary report and regretted the unsatisfactorily quality of the report;
3. That the NCA regional team relied on observation to make conclusion in its report presented to the Committee; and,
4. That the NCA will undertake a forensic audit on the tragedy and report to the Committee.

MINUTE NO. SEN/SCST/026:

COMMITTEE'S RESOLUTIONS

Following deliberations, the Committee resolved that it was not tenable to continue the meeting given the inadequacy of preparation and information from the NCA team.

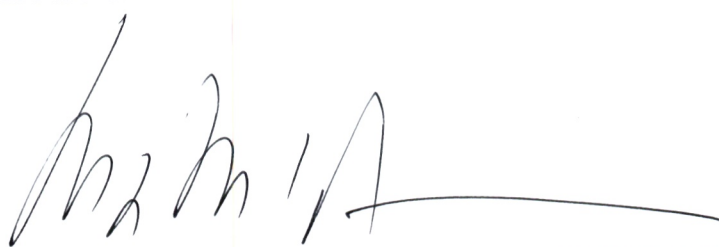
The Committee resolved as follows:

- (1) that the National Construction Authority conduct a forensic audit of the Solai Dam tragedy in line with your mandate and submit its report to the Committee by Wednesday; 18th July, 2018;
- (2) that the management of the NCA submit a written undertaking to conduct a forensic audit;
- (3) that the NCA submit an updated response to the issues raised with all the missing information noted during the meeting by Friday, 29th June, 2018; and,
- (4) that the NCA submit a list of the NCA registered contractors specifically allowed to undertake dam construction in the country by Friday, 29th June, 2018.

MINUTE NO. SEN/SCST/027:

ADJOURNMENT

The meeting was adjourned at 9:55 a.m.

SIGNATURE.....

(CHAIRPERSON: SEN. MUTULA KILONZO JUNIOR, MP)

DATE.....25/7/18

**MINUTES OF THE SIXTH MEETING OF THE SELECT COMMITTEE ON
THE SOLAI DAM TRAGEDY HELD ON WEDNESDAY, 27TH JUNE, 2018 AT
THE COUNTY HALL MINI CHAMBER AT 10.00 A. M.**

PRESENT

- | | |
|---------------------------------------|------------------|
| 1) Sen. Mutula Kilonzo Junior, MP | -Chairman |
| 2) Sen. (Arch.) Sylvia Kasanga, MP | -Member |
| 3) Sen. (Eng.) Ephraim Maina, EBS, MP | -Member |
| 4) Sen. Ledama Olekina, MP | -Member |

ABSENT WITH APOLOGY

- | | |
|--|-----------------------|
| 1) Sen. Mithika Linturi, MP | -Vice Chairman |
| 2) Sen. Sakaja Johnson, MP | -Member |
| 3) Sen. Fatuma Dullo, CBS, MP | -Member |
| 4) Sen. Susan Kihika, MP | -Member |
| 5) Sen. (Prof.) Imana Malachy Ekal, MP | -Member |

IN ATTENDANCE

SENATE SECRETARIAT

- | | |
|-----------------------|---------------------------|
| 1) Mr. Peter Muchira | - Clerk Assistant |
| 2) Mr. Eugene Apaa | - Research Officer |
| 3) Ms. Lucy Radoli | - Legal Counsel |
| 4) Mr. Vitus Okech | - Research Officer |
| 5) Ms. Farida Ngasura | - Audio Recording Officer |
| 6) Ms. Sarah Rukwaro | - SAA |

NATIONAL ENVIRONMENT MANGEMENT AUTHORITY

- | | |
|------------------------|------------------------|
| 1) Mr. David Ongare, | - Ag. Director General |
| 2) Mr. Erastus Gitonga | - NEMA |
| 3) Mr. Wachira Bore | - NEMA |

MINUTE NO. SEN/SCST/028:

PRELIMINARIES

The Chairman called the meeting to order at 10.10 a.m. This was followed by a word of prayer and a round of introductions.

MINUTE NO. SEN/SCST/029:

ADOPTION OF AGENDA

The agenda of the meeting was adopted after it was proposed and seconded by Sen. Ledama Olekina, MP and Sen. (Arch.) Sylvia Kasanga, MP respectively.

The Chairperson welcomed the delegation from NEMA and welcomed them to make a presentation

The Ag. Director General tabled a written response to issues raised by the Committee in the invitation letter and proceeded to make his presentation under various thematic areas as follows;

1. That the National Environment Management Authority (NEMA) is established under the Environmental Management and Coordination Act (EMCA) CAP 387 of the Laws of Kenya and became operational on 1st July 2002 following the merger of three government departments, namely: the National Environment Secretariat (NES), the Permanent Presidential Commission on Soil Conservation and Afforestation (PPCSCA), and the Department of Resource Surveys and Remote Sensing (DRSRS).
2. That NEMA is mandated to exercise general supervision and coordination of all matters relating to environment and to be the principal instrument of the Government in implementation of all policies relating to environment in collaboration with the lead agencies.
3. That NEMA ensures that they undergo EIA before commencement of construction. This requirement came into effect in the year 2004 after gazettment of the Environmental Impact Assessment/ Environmental Audit Regulations of 2003, which was after the Solai Dam had been constructed.
4. That NEMA learnt of the incident from media reports on the night of Wednesday 9th May 2018. Consequently, NEMA Nakuru Office dispatched officers to assess the situation on the morning of Thursday 10th May, 2018 and to offer technical support.
5. That NEMA environmental inspectors from headquarters also visited the farm on the 23rd May 2018 accompanied with their Nakuru counterparts. The officers inspected the site to assess environmental impacts post the incident and to recommend the next course of action particularly on environmental restoration, as well as verifying compliance to EMCA by the Patel Farm Management and produced a report that had the following highlights;
 - i. That the dam was owned by Kensalt plantations Ltd;

- ii. That the farm had submitting environmental audits for the farm and the last one was submitted to NEMA on 10th April 2017 reference number NEMA/NKR-C/EA/2674);
 - iii. Those Agricultural activities, on the farm such as the macadamia farms and green houses have EIA licenses.
 - iv. That an environmental impact assessment license was obtained in 2016 for green houses reference number NEMA/NKR/PR/5/2/3039, and another in 2017 for more green houses and composting area reference number NEMA/NKR/PR/5/2/3810;
 - v. That the farm had conducted an environmental audit for the year 2016 Ref **NEMA/NKR-c/2017/EA/2674**, but was unsatisfactorily and hence the farm manager was issued with an improvement order to produce a fresh and a comprehensive environmental audit and submit to NEMA *by the 6th of June, 2018*;
 - vi. That the tragedy impacted on infrastructure as follows:
 - The Nakuru – Solai road was blocked by debris from the dam spill and excavations works were ongoing to open the road at the time of the inspection;
 - Access roads had been destroyed by the floods;
 - Solai Primary school had received major damage with various structures and pieces of furniture destroyed; and,
 - Solai secondary also had parts of the perimeter wall destroyed; 450 households affected and a number of houses were swept away.
6. That a team of inspectors recommended for a control audit of the farm to be carried out by NEMA.
 7. That in order to avert future incidences, the Director General directed all the NEMA County Directors of Environment in the 47 Counties to form technical teams of relevant lead agencies and inspect the current status of dams in the country.

MINUTE NO. SEN/SCST/031:

COMMITTEE INTERVENTIONS

After the presentation of the Ag. Director General, the Committee raised various points of clarifications as follows; That NEMA was not proactive in investigating dams and developments built before the coming in to force of the Authority;

1. There was a gap of more than one year from the time of the audit and the issuance of the improvement order;
2. NEMA had not issued a restoration Order to the farm even after the tragedy; and,

3. That despite issuing an improvement order, the timelines had since been passed with no action taken.

MINUTE NO. SEN/SCST/032: RESPONSE BY NEMA

In response, the Ag. Director General indicated that:

1. The organization had inadequate human resource capacity to effectively discharge its duties across the country;
2. That the Control audit which had been recommended would be undertaken within a fortnight; and
3. That NEMA was committed to protecting Kenyans from environmental disasters.

Deliberations ensued and Members were of the opinion that it was not tenable to continue the meeting given the inadequacy of preparation and information from the NEMA team.

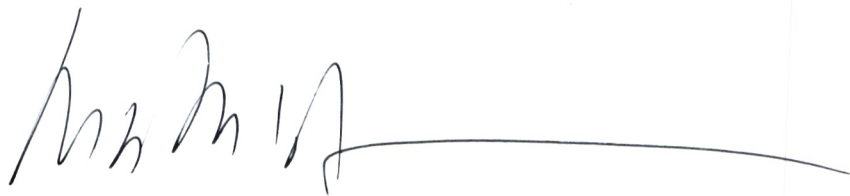
MINUTE NO. SEN/SCST/033: COMMITTEE RESOLUTIONS

After deliberations the Committee resolved and directed as follows:

- i. That NEMA conducts a control audit of the dams within Kensalt Plantation Ltd in Solai, in line with its mandate and submits its report to the Committee by Wednesday 11th July, 2018.
- ii. That NEMA submits an updated response to the issues raised with all the missing information that was noted during the meeting by Friday, 29th June, 2018.

MINUTE NO. SEN/SCST/034: ADJOURNMENT

The meeting was adjourned at 11:05 a.m.



SIGNATURE.....

(CHAIRPERSON: SEN. MUTULA KILONZO JUNIOR, MP)



DATE.....

**MINUTES OF THE SEVENTH MEETING OF THE SELECT COMMITTEE ON
THE SOLAI DAM TRAGEDY HELD ON WEDNESDAY, 27TH JUNE, 2018 AT
THE COUNTY HALL MINI CHAMBER AT 11.00 A. M.**

PRESENT

- | | |
|---------------------------------------|------------------|
| 1) Sen. Mutula Kilonzo Junior, MP | -Chairman |
| 2) Sen. (Arch.) Sylvia Kasanga, MP | -Member |
| 3) Sen. (Eng.) Ephraim Maina, EBS, MP | -Member |
| 4) Sen. Ledama Olekina, MP | -Member |

ABSENT WITH APOLOGY

- | | |
|--|-----------------------|
| 1) Sen. Mithika Linturi, MP | -Vice Chairman |
| 2) Sen. Sakaja Johnson, MP | -Member |
| 3) Sen. Fatuma Dullo, CBS, MP | -Member |
| 4) Sen. Susan Kihika, MP | -Member |
| 5) Sen. (Prof.) Imana Malachy Ekal, MP | -Member |

IN ATTENDANCE

SENATE SECRETARIAT

- | | |
|----------------------|--------------------|
| 1) Mr. Peter Muchira | - Clerk Assistant |
| 2) Mr. Eugene Apaa | - Research Officer |
| 3) Ms. Lucy Radoli | - Legal Counsel |
| 4) Mr. Vitus Okech | - Research Officer |
| 5) Ms. Sarah Rukwaro | - SAA |

KENYA METROLOGICAL DEPARTMENT

- | | |
|-------------------------|----------------------|
| 1) Mr. James K. Muhindi | - Assistant Director |
|-------------------------|----------------------|

MINUTE NO. SEN/SCST/035:

PRELIMINARIES

The Chairman called the meeting to order at 11.15 a.m. This was followed by a word of prayer and a round of introductions.

MINUTE NO. SEN/SCST/036:

ADOPTION OF AGENDA

The agenda of the meeting was adopted after it was proposed and seconded by Sen. Ledama Olekina, MP and Sen. (Arch.) Sylvia Kasanga, MP respectively.

MINUTE NO. SEN/SCST/037:**MEETING WITH THE KENYA
METROLOGICAL DEPARTMENT**

The Chairperson welcomed the Assistant Director from the Kenya Metrological Department and invited him to make a presentation.

The Assistant Director tabled a printed copy of his power point presentation and proceeded to a presentation as follows;

1. That as a matter of policy the KMD has always given early warning information to Kenyans and specific stakeholders to enable them prepare for any disasters as a result of the weather. He stated that the department uses satellite imaging and state of the art equipment to forecast and record data.
2. That particularly KENGEN is one of the stakeholders who always take the information seriously.
3. That KMD issues 24-hour, 5-day, monthly (30-day), and seasonal (90-day) forecasts.
4. That KMD provides specialised services to other sectors of the economy including; Aviation, Agriculture, Energy, Health, Insurance, Water Resources, Forestry and Wildlife, Tourism, Disaster Management, Marine and the environment, among others.
5. That the analysis of the March, April, May (MAM) 2018 rainfall from 1st March to 31st May, 2018, indicates that most meteorological stations in the country recorded excessive rainfall that was far much above-average, that included Nakuru station under which the subject area lies.
6. That the amount recorded at Nakuru Station was also the highest in record since 1964. The station recorded 656.8mm compared to 564.8mm recorded during the MAM 1988 season.
7. That the MAM 2018 temporal distribution for Nakuru was 55 days which was the highest ever recorded in comparison with the areas average of 38 days.

MINUTE NO. SEN/SCST/038:**COMMITTEES INTERVENTION**

After the presentation of the Assistant Director, Kenya Metrological Department, the Committee raised the following concerns that included;

1. The extent to which they collaborate with other agencies to avert disasters;
2. Whether the advisories were public; and,

3. To confirm availability of advisories and satellite imagery over the said area to the Committee.

MINUTE NO. SEN/SCST/039:

**RESPONSE BY KENYA
METROLOGICAL DEPARTMENT**

The Assistant Director, Kenya Metrological Department responded as follows;

- a) That Kenya Metrological Department gives advisories to relevant disaster management agencies in the Country and noted that as to whether the agencies use the information, was a matter outside their mandate;
- b) That the advisories were public and were readily available on the department's website; and,
- c) The Assistant Director, KMD undertook to avail satellite images of Nakuru Region of the tragedy period to the Committee.

MINUTE NO. SEN/SCST/040:

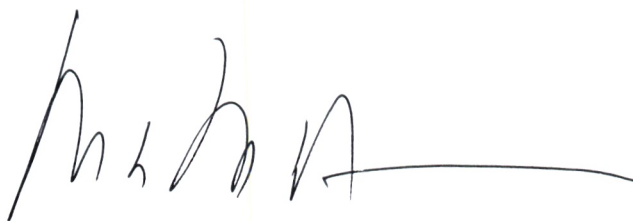
COMMITTEE RESOLUTION

The Chairperson thanked the Assistant Director for appearing before the Committee and submitting the information required. The Committee directed the Assistant Director, KMG to provide the satellite imagery of Nakuru Area to the Committee.

MINUTE NO. SEN/SCST/041:

ADJOURNMENT

The meeting was adjourned at 12:25p.m.



SIGNATURE.....

(CHAIRPERSON: SEN. MUTULA KILONZO JUNIOR, MP)

DATE.....

25/7/18

**MINUTES OF THE EIGHTH MEETING OF THE SELECT COMMITTEE
ON THE SOLAI DAM TRAGEDY HELD ON THURSDAY, 28TH JUNE,
2018 AT THE MAIN PARLIAMENT BUILDING, COMMITTEE ROOM 4,
AT 9.00 A. M.**

PRESENT

- | | |
|--|------------------|
| 1) Sen. Mutula Kilonzo Junior, MP | -Chairman |
| 2) Sen. Fatuma Dullo, CBS, MP | -Member |
| 3) Sen. (Prof.) Imana Malachy Ekal, MP | -Member |
| 4) Sen. Susan Kihika, MP | -Member |
| 5) Sen. (Arch.) Sylvia Kasanga, MP | -Member |

ABSENT WITH APOLOGY

- | | |
|---------------------------------------|-----------------------|
| 1) Sen. Mithika Linturi, MP | -Vice Chairman |
| 2) Sen. (Eng.) Ephraim Maina, EBS, MP | -Member |
| 3) Sen. Sakaja Johnson, MP | -Member |
| 4) Sen. Ledama Olekina, MP | -Member |

IN ATTENDANCE

SENATE SECRETARIAT

- | | |
|----------------------|--------------------|
| 1) Mr. Peter Muchira | - Clerk Assistant |
| 2) Mr. Eugene Apaa | - Research Officer |
| 3) Ms. Lucy Radoli | - Legal Counsel |
| 4) Ms. Sarah Rukwaro | - SAA |

MINISTRY OF DEFENCE

- | | |
|-------------------------|--------------------------------|
| 1) Amb. Raychelle Omamo | - Cabinet Secretary |
| 2) Mr. Mulata | - Kenya Defence Force |
| 3) Mr. Gerald Sakwa | -Parliamentary Liaison Officer |

MINUTE NO. SEN/SCST/042:

PRELIMINARIES

The Chairman called the meeting to order at 9.15 a.m. This was followed by a word of prayer and a round of introductions.

MINUTE NO. SEN/SCST/043:

ADOPTION OF AGENDA

The agenda of the meeting was adopted after it was proposed and seconded by Sen. (Prof.) Imana Malachy Ekal, MP and Sen. Susan Kihika, MP, respectively.

The Chairperson welcomed and thanked the Cabinet Secretary for the service in emergency response to the victims of Solai dam tragedy. The Chairperson invited the Cabinet Secretary to make a presentation;

The Cabinet Secretary of Defence made her presentation as follows;

- 1) That Tindress Dam (locally known as Patel Dam) that had 190 million litre capacity water reservoir was located in Solai farm in Subukia Constituency, Nakuru County.
- 2) That the tragedy occurred on 9th May 2018 at around 8:30 p.m., when a section of the Dam wall collapsed and released flood waters downstream causing heavy loss of lives and destruction to property.
- 3) That the Rift Valley Multi-Agency Coordination Committee (MACC) contacted the General Officer Commanding Western Command at around 5:30 a.m. on 10th May 2018, requesting for KDF assistance on the Solai Dam Tragedy. Consequently, mobilization of Military personnel and equipment commenced immediately and by 6:00 a.m., the first group had left Lanet barracks for the site. The KDF Specialized Disaster Response Unit (DRU) was mobilized from Embakasi, Nairobi and arrived at the scene at 11:00 a.m. on 10th May, 2018
- 4) That the Ministry personnel and equipment committed to the operation included;
 - i. 26 Officers and 337 Service Members;
 - ii. Five (5) Troop Carrying Vehicles (TCVs) and five (5) Land Rovers from Lanet;
 - iii. One (1) Rapid Response Vehicle with complete Search and Rescue equipment, two (2) Land Cruisers (Hazardous Material-HAZMAT) and one (1) Minibus from the DRU;
 - iv. Four (4) Ambulances and Emergency Medicine/First Aid kits; and,
 - v. Seven (7) tents (utilized for Command Coordination Centre) and fuel.
- 5) That the operation involved Search, Rescue and Recovery of the missing persons stretching approximately 15Kms and by the third day, the whole stretch had been covered with KDF coordinating the operations alongside other state agencies and non-state agencies.

- 6) That the Disaster Response Unit helped to pump out water from a second dam of 180 million litre capacity that was on the verge of collapsing. This took five (5) days to reduce the water level to 40%. The decision to drain the dam was arrived at by the Multi-Agency Coordination Committee, as a wider management to avert a similar incident.
- 7) That KDF used 5 trucks to ferry 450 bags of maize from National Cereals and Produce Board (NCPB) stores in Nakuru to the Incident Command Post (Solai Division Administration Police Commander's Office), for distribution to the affected people and provided a platoon of 40 personnel for security in the area throughout the operation.
- 8) That areas of improvement in such incidences include;
 - i. Developing a disaster response capability across the Country with a focus on structures from the National, Regional, County, Sub-County and Ward levels in the full spectrum of disaster preparedness, early warning, response, management, mitigation and recovery.
 - ii. Equip State Agencies/Departments with essential resources.
 - iii. Formulate and operationalize clear Joint Standing Operating Procedures (SOP) on Disaster mitigation.
 - iv. Fast track the implementation of the National Disaster Management Policy and develop relevant legislation as this would offer elaborate response, management and coordination of disasters and other National crisis.
 - v. Conduct Multi-Agency Disaster Response Training at both National and County levels to enhance capacity.

MINUTE NO. SEN/SCST/045: COMMITTEE INTERVENTION

The Committee raised the following concerns after the presentation of the Cabinet Secretary of Defence made a presentation;

- i. Whether the KDF acts on its own volition in such incidences or whether it has to prompted;
- ii. Whether the KDF files any reports after such missions; and,
- iii. If there was any resistance by the owner of the Solai Farm in accessing the dams.

**MINUTE NO. SEN/SCST/046: RESPONDE BY THE CABINET
SECRETARY OF DEFENCE**

The Cabinet Secretary of Defence responded that;

- The KDF waits to be informed and invited to disaster zones in the country by the 1st responder and the agencies in charge. In the case of Solai, this was the Regional Commissioner, Central Rift;
- The KDF prepares reports and forwards them to the National Assembly as required by the Constitution; and,
- The KDF was in the process of expanding its DRU to regional centres around the Country, but noted that KDF should never be the first responder to disasters.

**MINUTE NO. SEN/SCST/047: RESPONDE BY THE CABINET
SECRETARY OF DEFENCE**

The deliberated on the response and asked the Cabinet Secretary to;

- Submit the presentation formally in writing to the Committee;
- Assign an officer to accompany the Committee during site visit on 6th July 2018.

MINUTE NO. SEN/SCST/048: ADJOURNMENT

The meeting was adjourned at 12:25p.m.



SIGNATURE.....

(CHAIRPERSON: SEN. MUTULA KILONZO JUNIOR, MP)

DATE.....

28/7/18

**MINUTES OF THE NINTH MEETING OF THE SELECT COMMITTEE
ON THE SOLAI DAM TRAGEDY HELD ON TUESDAY 3RD JULY, 2018
AT THE COMMITTEE ROOM COUNTY HALL AT 09.00 A. M.**

PRESENT

- | | |
|-----------------------------------|------------------|
| 1. Sen. Mutula Kilonzo Junior, MP | -Chairman |
| 2. Sen. Sakaja Johnson, MP | -Member |
| 3. Sen. Fatuma Dullo, CBS, MP | -Member |
| 4. Sen. Susan Kihika, MP | -Member |

ABSENT WITH APOLOGY

- | | |
|--|-----------------------|
| 1. Sen. Mithika Linturi, MP | -Vice Chairman |
| 2. Sen. (Eng.) Ephraim Maina, EBS, MP | -Member |
| 3. Sen. Ledama Olekina, MP | -Member |
| 4. Sen. (Arch.) Sylvia Kasanga, MP | -Member |
| 5. Sen. (Prof.) Imana Malachy Ekal, MP | -Member |

IN ATTENDANCE

SENATE SECRETARIAT

- | | |
|----------------------|--------------------|
| 1. Ms. Rose Mudibo | - Clerk Assistant |
| 2. Mr. Eugene Apaa | - Research Officer |
| 3. Ms. Lucy Radoli | - Legal Counsel |
| 4. Mr. Vitus Okech | - Research Officer |
| 5. Ms. Sarah Rukwaro | - SAA |

MINISTRY OF WATER AND SANITATION

- | | |
|---------------------------|-----------------------------|
| 1. Mr. Simon Chelugui | - Cabinet Secretary |
| 2. Mr. Joseph Irungu | - Principal Secretary |
| 3. Eng. S. A. O. Alima | - Water and Sanitation |
| 4. Mr. Mohamed Shurie | - Water Resources Authority |
| 5. Eng. Boniface Mwaniki | - Water Resources Authority |
| 6. Eng. Sammy Msuru | - NWCP |
| 7. Mr. Wilfred Amwata | - Water and Sanitation |
| 8. Mr. Job Changwony | - Water Resources Authority |
| 9. Ms. Janet Olewe | - Water Resources Authority |
| 10. Eng. Henry G. Kigonyi | - NWCP |

MINUTE NO. SEN/SCST/049:

PRELIMINARIES

The Chairperson called the meeting to order at 09.30 a.m. This was followed by a word of prayer and a round of introductions.

MINUTE NO. SEN/SCST/050:**ADOPTION OF AGENDA**

The agenda of the meeting was adopted after it was proposed and seconded by Sen. Susan Kihika, MP and Sen. Johnson Sakaja, MP, respectively.

MINUTE NO. SEN/SCST/051:**MEETING WITH THE CABINET SECRETARY, MINISTRY OF WATER AND SANITATION**

The Chairperson welcomed the Cabinet Secretary, Ministry of Water and Sanitation and invited him to make a presentation.

The Cabinet Secretary was in company of officers from Water Resources Authority, Rift Valley Water Services Board, and NWCP. The Cabinet Secretary provided a report and proceeded to make his presentation as follows-

1. That the Water Act, 2016 provides guidelines on the institutions mandated to play various roles in the water sector and the responsible institutions include; Water Resources Authority and National Water Harvesting and Storage Authority.

Water Resources Authority provides information and advice for formulation of policy on national water resource management, water storage and flood control strategies and its functions include;

- a) Formulate and enforce standards, procedures and regulations for the management and use of water resources and flood mitigation;
- b) Regulate the management and use of water resources;
- c) Enforce regulations made under the Act;
- d) Receive water permit application for water abstraction, water use and recharge and determine, issue, vary water permits; and enforce the conditions of those permits;
- e) Collect water permit fees and water use charges;
- f) Determine and set permit and water use fees;
- g) Provide information and advice to the Cabinet Secretary for formulation of policy on national water resource management, water storage and flood control strategies;
- h) Coordinate with other regional, national and international bodies for the better regulation of the management and use of water resources; and,
- i) Advise the Cabinet Secretary generally on the management and use of water resources.

The functions of National Water Harvesting and Storage Authority include;

- a) Undertake on behalf of the national government, the development of national public water works for water resources storage and flood control;
- b) Maintain and manage national public water works infrastructure for water resources storage;
- c) Develop a water harvesting policy and enforce water harvesting strategies;
- d) Undertake on behalf of the national government strategic water emergency interventions during drought; and,
- e) Advise the Cabinet Secretary on any matter concerning national public water works for water storage and flood control.

2. That the Ministry of Water and Sanitation provides the overall policy and guidelines on dam development and management and is responsible for policy, coordination and monitoring, including setting of standards, some of which include;

- Water Act, 2016 that gives powers to WRA to;
 - a) Monitor compliance by water users with the conditions of permits and the requirements of the Act;
 - b) Ensure that there is in place a national monitoring and geo referenced information system on water resources;
 - c) Regulate and implement Water Act 2016 once finalized and operationalized to ensure dam safety in Kenya;
 - d) Implement the National Water Policy (currently under review)
 - e) Provide procedures for permitting and water allocation (Water Resources Rules and Regulations, 2007);
 - f) Implement the Water Resources Management Strategy; and ,
 - g) Design Manual for Dams in Kenya.

3. That licensing and procedures for the establishment of private dams include;

- i. Submission a duly completed and signed Water permit Application to WRA;
- ii. Pay appropriate permit assessment fees which is dependent on the class of the permit application;
- iii. Commission at his/her own cost a Dam Design Report carried out by a qualified water resource professional as set out in Rule 57 of the Water Resources Management Rules, 2007;

- iv. Commission at his/her own cost an Environmental and Social Impact Assessment (ESIA) in accordance with the Environmental Management and Coordination Act 2015 for NEMA to issue a licence;
 - v. Upon authorization to construct, the applicant must;
 - Commission at his/her own cost a Qualified Contractor;
 - Commission at his/her own cost a Qualified Water Resource Professional to supervise construction;
 - Ensure that the construction is inspected at the milestones stated in the Authorization to construct; and,
 - Ensure notice is issued in respect to any possible damage downstream in the event of any leakage from the dam.
 - vi. Apply for an extension to the authorization to construct in the event that the works are not completed within the allotted time.
 - vii. Report any dam failure or damage to the WRA in accordance with Rule 67 of the WRM Rules, 2007 which is part of the Dam operation and management.
4. That there are 843 regulated dams by WRA, while records show that there are about 4,140 dams and pans in the country. The Ministry is currently updating inventory of all dams and pans in the country to guide in the classification in terms of location, size, usage, status and ownership.
 5. That private dam owners are required to monitor the performance of their dams and periodically report to WRA. Further, WRA is mandated to carry out periodic monitoring, based on the owners report, of the water storage infrastructure through the regional offices to ensure that the developers are operating and maintaining the facility as required.
 6. That a task force comprising of the following has been appointed to enquire, investigate, assess operations, safety and general status of dams in Kenya;
 - i. Eng. SAO Alima (Chairperson) - Ministry of Water and Sanitation
 - ii. Mr. Job Kihamba Kegoye - Nairobi Water and Sewerage Company
 - iii. Eng. Peter Njaggah - Water Services Regulatory Board
 - iv. Eng. Boniface Mwaniki - Water Resources Authority
 - v. Mr. Charles Ngugi Gathara - Nairobi County Government
 - vi. Mr. John Elungata - Ministry of Interior and Coordination of National Government

- | | | |
|-------|-------------------------------|--|
| vii. | Mr. Johnson Kamau | - Nakuru County Government |
| viii. | Dr. Zablon N. I. Oonge | - University of Nairobi |
| ix. | Mr. Willis O. Ochieng | - KENGEN |
| x. | Mr. Paul Nganga Macharia | - Murang'a County Government |
| xi. | Eng. Michael Wainaina | - Association of Consulting Engineers of Kenya |
| xii. | Bishop (Dr.) Daniel K. Chemon | - Full Gospel Churches of Kenya |
| xiii. | Mr. Paul Murage | - Kenya Meteorological Department |
| xiv. | Mr. Benedict A. Omondi | - Kenya Forest Service |

Joint Secretaries

- | | |
|-------------------------|------------------------------------|
| Eng. Henry K. Cheruiyot | - Rift Valley Water Services Board |
| Eng. Joseph Kamau | - Athi Water Services Board |

7. That Salt Manufactures Kenya Limited submitted an application to the District Water Office, Nakuru on 13th March, 2004 to;
 - a) Renew a permit (No. 5235 amount of water 454.55m³/d or 454.550 l.p.d of flood flow from Watkins Stream for general irrigation of 20 hectares of roses)
 - b) Amendment of quantity of water
 - c) Transfer of permit (from Milmet Limited to Salt Manufactures Limited)
 - d) Proposed diversion was by weir 2.5 meters high, pump and pipeline
8. That permit No.5235 was renewed on 22nd July 2005 in respect to Watkins stream.
9. That upon expiry of the permit 5235, an application renewal was submitted to WRMA and was renewed on 23rd April, 2009 (**WRMA/RVC/SW/788**), with amount of water amended as follows;
 - a) 50.45m³/d for domestic use from normal flow
 - b) 2045.45 for commercial irrigation from flood flow
10. That in 2012 WRMA introduced a permit processing data base system (PDB) that required all existing users to re-submit applications in respect to existing works/uses. Salt Manufacturers Kenya Limited submitted another renewal application to WRMA through permit No.WRMA/20/KAB/2EC/25/s dated 14th December, 2012 which is remains valid until 5th December, 2018.
11. That it is the responsibility of the operator of any dam to take adequate measures at his or her cost within the approved Dam Operation Report to notify the Authority and persons downstream likely to be affected in the event of any

discharge from the dam whether caused by dam failure or intended releases from the dam that might result in damage downstream pursuant to Rule 76 of the Water Resources Management Rules.

12. That Salt Manufacturers Kenya Limited was only permitted to abstract by weir of 2.5m high.
13. That the Water Resources Authority has no report in regard to the dam operated by Salt Manufacturers Kenya Limited.
14. That the Ministry intends to strengthen Water Resources Authority by introducing capacity building.
15. The Ministry is in the process of developing National Water Policy to incorporate dam safety guidelines and disaster mitigation.
16. That to avoid a similar incident, the Ministry has taken the following measures;
 - a) Prioritizing identification and draining of high risk dams to safe water levels in the country.
 - b) Development of a strategy to improve surface water drainage.
 - c) Undertake an extensive audit of all dams across the country to avert any future tragedies.
 - d) Development of metrological network that will determine the amount of rainfall that falls in a catchment area to be used as early warning system.
17. That the existing legislative framework is sufficient to address matters relating to drainage and water storage, but the Ministry is in the process of reviewing the existing legislations, policies, regulations and strategies in light of emerging challenges.

MINUTE NO. SEN/SCST/052:

COMMITTEE INTERVENTION

Following the presentation the Committee asked of the Cabinet Secretary to provide the following documents;

1. The initial and subsequent applications for abstraction licenses for the dam;
2. The renewal permit after 2008;
3. All inspection reports carried out on the dams;
4. All correspondence of applications by the owner of the dam;
5. Details of incidences when WRA inspection officers were denied access to the farm;

6. Letters of authority to increase capacity of the dam beyond its original design.

MINUTE NO. SEN/SCST/053:

COMMITTEE INTERVENTION

In response, the Cabinet Secretary of Water and Sanitation informed the Committee;

1. That inspection officers relied on voluntary information provided by the management of the farm.
2. That there has never been a licence for a dam on the affected farm.
3. That since the tragedy occurred; three (3) dams have been broken and drained off.

MINUTE NO. SEN/SCST/054:

COMMITTEE INTERVENTION

Following the Cabinet Secretary's response, the Committee resolved that the Ministry provides all the missing documentation to the Committee in a period of two weeks.

The Cabinet Secretary acceded to the request to accompany the Committee to Solai to visit the tragedy site on Friday 6th July, 2018.

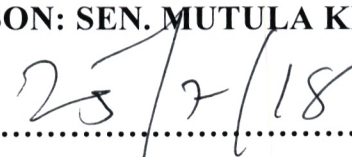
MINUTE NO. SEN/SCST/055:

ADJOURNMENT

The meeting was adjourned at 12:11p.m.

SIGNATURE.....

(CHAIRPERSON: SEN. MUTULA KILONZO JUNIOR, MP)

DATE.....

**MINUTES OF THE TENTH MEETING OF THE SELECT COMMITTEE
ON THE SOLAI DAM TRAGEDY HELD ON WEDNESDAY, 4TH JULY,
2018 AT THE MAIN PARLIAMENT BUILDING, COMMITTEE ROOM 4
AT 9.00 A. M.**

PRESENT

- | | |
|------------------------------------|------------------|
| 1. Sen. Mutula Kilonzo Junior, MP | -Chairman |
| 2. Sen. Fatuma Dullo, CBS, MP | -Member |
| 3. Sen. Sakaja Johnson, MP | -Member |
| 4. Sen. Susan Kihika, MP | -Member |
| 5. Sen. (Arch.) Sylvia Kasanga, MP | -Member |

ABSENT WITH APOLOGY

- | | |
|--|-----------------------|
| 1. Sen. Mithika Linturi, MP | -Vice Chairman |
| 2. Sen. (Prof.) Imana Malachy Ekal, MP | -Member |
| 3. Sen. (Eng.) Ephraim Maina, EBS, MP | -Member |
| 4. Sen. Ledama Olekina, MP | -Member |

IN ATTENDANCE

SENATE SECRETARIAT

- | | |
|----------------------|--------------------|
| 1. Mr. Peter Muchira | - Clerk Assistant |
| 2. Mr. Eugene Apaa | - Research Officer |
| 3. Ms. Lucy Radoli | - Legal Counsel |
| 4. Ms. Sarah Rukwaro | - SAA |

KENYA RED CROSS SOCIETY

- | | |
|------------------------|-----------------------------------|
| 1. Mr. Venant Ndighila | -Emergency Operations Coordinator |
|------------------------|-----------------------------------|

MINUTE NO. SEN/SCST/056:

The Chairman called the meeting to order at 9.15 a.m. This was followed by a word of prayer and a round of introductions.

PRELIMINARIES

MINUTE NO. SEN/SCST/057:

ADOPTION OF AGENDA

The agenda of the meeting was adopted after it was proposed and seconded by Sen. Sakaja Johnson, MP and Sen. Susan Kihika, MP respectively.

MINUTE NO. SEN/SCST/058:

MEETING WITH THE KENYA RED CROSS SOCIETY

The Chairperson welcomed the Emergency Operations Coordinator of Kenya Red Cross Society, after acknowledging the apology of the Secretary General of the Society and welcomed him to make a presentation.

In his presentation the Emergency Operations Coordinator stated as follows;

- 1) That the Kenya Red Cross in collaboration with other Agencies retrieved 47 bodies from the disaster area, and a total of 422 received psychosocial support.
- 2) That Red Cross carried out medical referrals to facilities within the County i.e Nakuru level 5 hospitals, Bahati and Mile kumi Health Centers and that all opened tracing cases were successfully closed.
- 3) That the Society administered a cash transfer programme as with the intention of getting the victims back on their feet as quickly as possible.
- 4) That the total disbursed amount was Kshs.8,159,875/=, while Kshs.483,751/= was still outstanding by the time of the meeting.
- 5) That affected tenants were given Kshs.30,000/=:, owners of semi-permanent houses were given Kshs.50, 000 and those with permanent houses were given Kshs.100,000/=:.
- 6) That the Society managed the displaced persons camp during the tragedy and recovery period.

MINUTE NO. SEN/SCST/058:

COMMITTEE INTERVENTION

After the presentation, Committee raised various points of clarification as follows;

1. Whether the KRCS had received the disaster funds promised by the President and how they had been put to use;
2. Whether the KRCS followed up on victim recovery after tragedies; and,
3. If the KRCS has programmes on disaster preparedness.

MINUTE NO. SEN/SCST/059:

RESPONSE FROM REDCROSS

In response, the Officer indicated;

1. That the KRCS had received one billion shillings as promised by the President for all victims of floods and the Solai victims would benefit after the ongoing vetting and verification of information was complete;
2. The society had continuous programmes of disaster management and response with many volunteers around the Country; and,

3. That the KRCS always followed up on victims and continued giving psychosocial support to them for as long as 5 months after any given disaster.

MINUTE NO. SEN/SCST/060:

COMMITTEE RESOLUTIONS

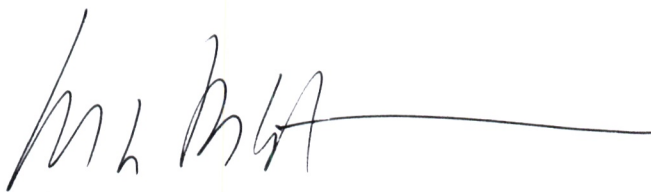
Upon deliberations the Committee asked Red Cross to submit the following information;

- i. Names and ages of the persons who lost their lives as a result of the tragedy; \
- ii. the number of household affected by the tragedy; and,
- iii. the Kenya Red Cross compensation plan for the victims.

MINUTE NO. SEN/SCST/061:

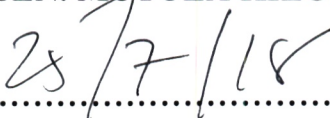
ADJOURNMENT

The meeting was adjourned at 11:25p.m.



SIGNATURE.....

(CHAIRPERSON: SEN. MUTULA KILONZO JUNIOR, MP)



DATE.....

MINUTES OF THE ELEVENTH MEETING OF THE SELECT COMMITTEE ON THE SOLAI DAM TAGEDY HELD ON THURSDAY, 12TH JULY, 2018 AT THE MAIN PARLIAMENT BUILDING, COMMITTEE ROOM 4, AT 9.00 A. M.

PRESENT

- | | |
|------------------------------------|------------------|
| 1. Sen. Mutula Kilonzo Junior, MP | -Chairman |
| 2. Sen. Fatuma Dullo, CBS, MP | -Member |
| 3. Sen. Sakaja Johnson, MP | -Member |
| 4. Sen. Susan Kihika, MP | -Member |
| 5. Sen. Ledama Olekina, MP | -Member |
| 6. Sen. (Arch.) Sylvia Kasanga, MP | -Member |

ABSENT WITH APOLOGY

- | | |
|--|-----------------------|
| 1. Sen. Mithika Linturi, MP | -Vice Chairman |
| 2. Sen. (Prof.) Imana Malachy Ekal, MP | -Member |
| 3. Sen. (Eng.) Ephraim Maina, EBS, MP | -Member |

IN ATTENDANCE

SENATE SECRETARIAT

- | | |
|----------------------|--------------------|
| 1. Ms. Rose Mudibo | - Clerk Assistant |
| 2. Mr. Peter Muchira | - Clerk Assistant |
| 3. Mr. Eugene Apaa | - Research Officer |
| 4. Ms. Lucy Radoli | - Legal Counsel |
| 5. Ms. Sarah Rukwaro | - SAA |

MIISTRY OF INTERIOR, AND COORDINATION OF NATIONAL GOVERNMENT

- | | |
|----------------------|-----------------------------------|
| 1. Mr. Patrick Ntutu | - Chief Administrative Secretary |
| 2. Mr. Nyakundi | - Office of the Cabinet Secretary |

MINUTE NO. SEN/SCST/062:

PRELIMINARIES

The Chairman called the meeting to order at 9.15 a.m. This was followed by a word of prayer and a round of introductions.

MINUTE NO. SEN/SCST/063:

ADOPTION OF AGENDA

The agenda of the meeting was adopted after it was proposed and seconded by Sen. Sakaja Johnson, MP and Sen. Ledama Olekina, MP respectively.

MINUTE NO. SEN/SCST/064:

**MEETING WITH THE MINISTRY OF
INTERIOR AND COORDINATION OF
NATIONAL GOVERNMENT**

The Chairperson welcomed the Chief Administrative Secretary (CAS), and the officers from the Ministry to the meeting. The Chairperson expressed disappointment of the Committee given that the Cabinet had not appeared and sought an explanation.

The CAS apologised to the Committee for the absence of the Cabinet Secretary and indicated that he handling the security situation in Northern Kenya. The CAS confirmed that the Cabinet Secretary of Interior and National Government will appear before the Committee on Monday 15th or Tuesday 16th July, 2018.

The CAS of Interior and Coordination of National Government tabled the Multi Agency report on the Solai tragedy, and presented the official position of the Government. He also stated that he was not well briefed on the matter and that emerging issues could be dealt with by the Cabinet Secretary when he appears.

The Committee noted that there was no specific response to the issues raised by the Committee in their invitation letter and demanded that those issues be responded to.

The Committee apprised the CAS on their visit to Solai and the accusation of the County Commissioner and National Government officials of complicity in the management of the disaster management and the ensuing relief and compensation efforts complaints.

The CAS informed the Committee that they were not aware of the accusations by residents of Solai against Government Officers, and undertook to investigate and report back to the Committee.

MINUTE NO. SEN/SCST/065:

COMMITTEE RESOLUTIONS

Upon deliberations the Committee resolved that the Ministry of Interior and Coordination of National Government submit to the Committee the following documents on or before Tuesday, 17th July, 2018-

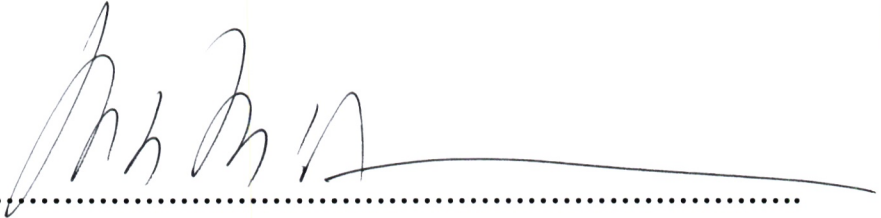
- (1) the names and ages of the persons who lost their lives as a result of the tragedy;
- (2) the number of households affected by the tragedy;
- (3) the Governments compensation plan for the victims of the tragedy; and,
- (4) the details of the alleged compensation given by the owner of Solai Farm and whether the Ministry officials were involved.

Following the undertaking of the CAS on the availability of the Cabinet Secretary, the Committee resolved that he appears in person on Tuesday, 17th July, 2018.

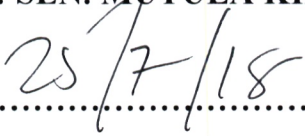
MINUTE NO. SEN/SCST/066:

ADJOURNMENT

The meeting was adjourned at 10:25a.m.

SIGNATURE..... 

(CHAIRPERSON: SEN. MUTULA KILONZO JUNIOR, MP)

DATE..... 

MINUTES OF THE TWELFTH MEETING OF THE SELECT COMMITTEE ON THE SOLAI DAM TAGEDY HELD ON TUESDAY 17TH JULY, 2018 AT THE MAIN SENATE CHAMBER AT 10.00 A. M.

PRESENT

- | | |
|------------------------------------|----------------|
| 1. Sen. Mutula Kilonzo Junior, MP | -Chairman |
| 2. Sen. Mithika Linturi, MP | -Vice Chairman |
| 3. Sen. Ledama Olekina, MP | -Member |
| 4. Sen. (Arch.) Sylvia Kasanga, MP | -Member |

ABSENT WITH APOLOGY

- | | |
|--|---------|
| 1. Sen. Sakaja Johnson, MP | -Member |
| 2. Sen. Fatuma Dullo, CBS, MP | -Member |
| 3. Sen. Susan Kihika, MP | -Member |
| 4. Sen. (Eng.) Ephraim Maina, EBS, MP | -Member |
| 5. Sen. (Prof.) Imana Malachy Ekal, MP | -Member |

A.SENATE SECRETARIAT

- | | |
|-----------------------|---------------------------|
| 1. Ms. Rose Mudibo | - Clerk Assistant |
| 2. Mr. Victor Bett | - Clerk Assistant |
| 3. Mr. Eugene Apaa | - Research Officer |
| 4. Ms. Lucy Radoli | - Legal Counsel |
| 5. Ms. Sarah Rukwaro | - SAA |
| 6. Ms. Farida Ngasura | - Audio Recording Officer |

MINISTRY ENVIRONMENT AND FORESTRY

- | | |
|-----------------------|---------------------|
| 1. Mr. Keriako Tobiko | -Cabinet Secretary |
| 2. Wilson Tonkei | -Personal Assistant |
| 3. Zephania Ouma | -NEMA |

MINUTE NO. SEN/SCST/067:

PRELIMINARIES

The Chairman called the meeting to order at 10.20 a.m. This was followed by a word of prayer and a round of introductions.

MINUTE NO. SEN/SCST/068:

ADOPTION OF AGENDA

The agenda of the meeting was adopted after it was proposed and seconded by Sen. Ledama Olekina, MP and Sen. (Arch.) Sylvia Kasanga, MP respectively.

MINUTE NO. SEN/SCST/069:

**MEETING WITH THE CABINET
SECRETARY, MINISTRY OF
ENVIRONMENT AND FORESTRY**

The Chairperson welcomed the Cabinet Secretary, Ministry of Environment and Forestry and spelt out the mandate of the Committee and invited him to make a presentation.

The Cabinet Secretary availed a written report and proceeded to make his presentation as follows-

1. Policy on Environmental Conservation and Restoration

That there exists Sessional Paper No. 10 of 2014 on the National Environment Policy with the following objectives;

- a) To provide a framework for an integrated approach to planning and sustainable management of Kenya's environment and natural resources.
- b) To strengthen the legal and institutional framework for good governance, effective coordination and management of the environment and natural resources.
- c) Ensure sustainable management of the environment and natural resources, such as unique terrestrial and aquatic ecosystem, for national economic growth and improved livelihoods.
- d) To promote and support research and capacity development as well as use of innovative environment management tools such as incentives, development, Strategic Environmental Assessments (SEAs), Environmental Impact Assessments (EIAs), Environmental Audits (EA) and payment for Environmental Services (PES).
- e) To promote and enhance cooperation, collaboration, synergy, partnerships and participation in the protection, conservation, sustainable management of the environment and natural resources.
- f) To ensure inclusion of crosscutting and emerging issues such as poverty reduction, gender, disability, HIV&AIDS among other diseases in the management of the environment and natural resources.
- g) To promote domesticating, coordination and maximization of benefit from strategic Multilateral Environmental Agreements (MEAs).

2. Environmental Management and Coordination Act (EMCA) Cap 387 and Provisions for Environmental Restoration Orders with Section 108 of EMCA providing as follows;

- a) Subject to any other provisions of the Act, the Authority may issue and serve on any person in respect of any matter relating to the management of the environment an order in the order referred to as an environmental restoration order.
- b) An environmental restoration order issued under subsection (1) or section 111 shall be issued to-
 - i. Require the person on whom it is served to restore the environment as near as it may be to the state in which it was before the taking of the action which is the subject of the order;
 - ii. Prevent the person of whom it is served from taking any action which would or is reasonably likely to cause harm to the environment;
 - iii. Award compensation to be paid by the person on whom it is served to other persons whose environment or livelihood has been harmed by the action which is the subject of the order;
 - iv. Levy charge on the person on whom it is served which in the opinion of the Authority represents a reasonable estimate of the costs of any action taken by an authorized person or organization to restore the environment to the state in which it was before the taking of the action which is the subject of the order;
- c) That an environmental restoration order may contain such terms and conditions and impose such obligations on the persons on whom it is served as will, in the opinion of the Authority, enable the order to achieve all or any of the purposes set out in sub-section (2).
- d) That an environmental restoration order may require a person on whom it is served to-
 - i. Take such action as will prevent the commencement or continuation of cause of pollution;
 - ii. Restore land, including the replacement of soil, the replanting of trees and other flora and the restoration as far as may be, of outstanding geological, archaeological or historical features of the land or the area contiguous to the land or sea as may be specified in the particular order;
 - iii. Take such action to prevent the commencement or continuation or cause of environmental hazard;
 - iv. Cease to take any action which is causing or may contribute to causing pollution or an environmental hazard;

- v. Remove or alleviate any injury to land or the environment or to the amenities of the area;
 - vi. Prevent damage to the land or the environment, aquifers beneath the land and flora and fauna in, on or under or about the land or sea specified in the order or land or the environment contiguous to the land or sea specified in the order;
 - vii. Remove any waste or refuse deposited on the land or sea specified in the order and dispose of the same in accordance with the provisions of the order; and,
 - viii. Pay any compensation specified in the order.
- e) That, in exercising the powers of Section 108 of EMCA, the Authority shall-
- i. Be guided by the principles of good environmental management in accordance with the provisions of the Act; and,
 - ii. Explain the right of appeal of the persons against whom the order is issued to the Tribunal or if dissatisfied with the decision of the Tribunal, to superior courts.
3. That pursuant to the second schedule of EMCA Cap 387, dams and associated infrastructure are required to undertake Environmental Impact Assessment before commencement of the construction work.
 4. That according to regulation 31 of the Environmental (Impact Assessment and Audit) regulations, 2003, the proponents of facilities that were undertaken prior to the enactment of EMCA, 1999 are required to undertake initial Environmental audit study followed by a control audit as may be agreed upon by NEMA and the proponent.
 5. That the Ministry has finalized the drafting of the Environmental Management and Coordination (Deposit Bond) Regulations, together with the Regulatory Impact Statement and Explanatory Memorandum, with an objective of the Environmental Management and Coordination Regulations (2015) to promote good environmental practices that would result in sustainable development. The regulation seeks to;
 - a) Establish a register for those activities, industrial plants and undertakings which have or are most likely to have significant impacts on the environment

- when operated in a manner that is not in conformity with good environmental practices;
- b) Ensure availability of funds in the form of a refundable deposit bond that shall be paid in the environmental restoration fund which guarantees effective remediation of the affected environment during the life cycle of a project; and,
 - c) Promote self-regulation and environmental best practices among the regulated entities.
6. That the Solai Dam Tragedy caused environmental damage of a large portion of farmlands that were extensively eroded and top soil and vegetation washed away including;
- i. Destruction of property
 - ii. Destruction of farmlands and vegetation
 - iii. Destruction of public utilities (roads, power lines, drainages etc)
 - iv. Loss of habitat
 - v. Destruction of waste water effluent system
 - vi. Alteration of downstream sediment dynamics and water quality in streams, rivers, wetlands
7. That an assessment of the extent of the environmental damage was undertaken during the Control Environmental Audit exercise by NEMA, WRA, Ministry of Agriculture and KFS.
8. That relevant agencies have been instructed to undertake detailed remediation requirements and prescribe remediation standards to inform the costs of remediation works.
9. That to restore the local environment, the Ministry has taken the following actions;
- a) Control Environmental Audit – through NEMA the Ministry undertook a Control Environmental Audit of the farm between 3rd and 5th July 2018. The audit involved NEMA, WRA, KFS and Ministry of Agriculture (report tabled).
 - b) The Ministry through NEMA has issued an Environmental Restoration Order restoration order issued vide a letter dated 12th July, 2018, Ref: NEMA/5/11/Vol.III to the Directors of Kensalt Plantations Ltd & Patel Coffee Estates directing as follows;
 - i. restoration of farmlands by replacing with top soil rich in manure/humus, subsequently putting in place soil conservation measures;
 - ii. restoration farms that have over deposition of soil to their original status;

- iii. recreation the riparian reserve through excavation of the natural waterway to the recommended depth and width to allow the natural water flow downstream;
- iv. restoration of destroyed infrastructure such as access roads, homes and schools to near original state;
- v. undertaking and submitting an EIA project report to National Environmental Management And Coordination Act before decommissioning Tindress and Milmet dam within 30 days;
- vi. carrying out biodiversity inventory of your game sanctuary in consultation with KWS and a status report submitted to National Environmental Management And Coordination Act within 30 days;
- vii. planting appropriate trees on the dam catchment areas in consultation with KFS;
- viii. putting in place adequate and appropriate sanitary facilities and include the compliance in the next farm environmental audit;
- ix. ensuring compliance with relevant laws and regulations such as water rules as pertains to water abstraction; and
- x. submitting a remediation report demonstrating completion of the remediation works.

10. The Ministry is in the process of liaising with the Ministry of Water and Sanitation to support WRA initiative to undertake a country wide assessment of all dams to ascertain their legal status, stability and safety with a public Notice being issued by WRA on Friday 25th May, 2018.

MINUTE NO. SEN/SCST/070:

COMMITTEE INTERVENTION

After the presentation, the Committee raised various points of clarification and concerns to the Cabinet Secretary of Environment and Forestry, that included;

1. That the restoration order issued by NEMA on 12th July, 2018, failed to comply with the provisions of section 108(2)(c) as follows-
 - (a) did not set out any award or compensation to be paid to persons whose environment or livelihoods had been harmed by the actions of the dam owners in Solai;
 - (b) did not set out the particular land that would be subject to restoration and was therefore vague, ambiguous and likely to be difficult to comply with;
 - (c) did not specify the time at which the order is to come into effect; and

(d) did not specify the power of National Environmental Management And Coordination Act to enter upon the land and undertake any action to remedy the harm to the environment.

2. To inform the Committee whether a Complaints Committee was in place to deal with any such cases and at what level.
3. To confirm whether he was aware of the compensation and signing of indemnity forms after the Solai Tragedy by the Solai Dam Owner and Government officials.
4. To confirm whether there exists sufficient regulations on environmental assessments by consultants and whether the consultants in this particular case have been charged.

MINUTE NO. SEN/SCST/071:

**RESPONSE BY THE CABINET
SECRETARY, MINISTRY OF
ENVIRONMENT AND FORESTRY**

In response, the Cabinet Secretary informed the Committee that-

1. The Ministry of Environment and Forestry was not aware of any signing of indemnity forms and compensation being done by Government officials together with the dam owners.
2. That he was not consulted before the restoration order was given.
3. That the Ministry will revoke the restoration order earlier issued and undertook to issue a properly designed restoration order in accordance with the Act within seven (7) days.
4. That a public complaints committee is in place (National Environmental Complaints Committee) based in Nairobi.
5. There exists a code of conduct on consultants that undertake assessments.
6. That on 16th July 2018 a Committee constituted by the Ministry to consider the conduct of the affected consultants (details to be provided to the Committee).

In concluding, the Cabinet Secretary, Ministry of Environment and Forestry proposed the following recommendations to the Committee;

1. There is need to put in place a holistic national policy to be replicated at the County Level that focuses on coordination of all agencies to avoid delay and duplication.
2. Enhance capacity of County Governments to gazette County Environmental Committees.

3. Enhance the capacity of NEMA, especially in the monitoring and inspections.
4. Need to have standard specifications for dams.

MINUTE NO. SEN/SCST/072:

COMMITTEE RESOLUTIONS

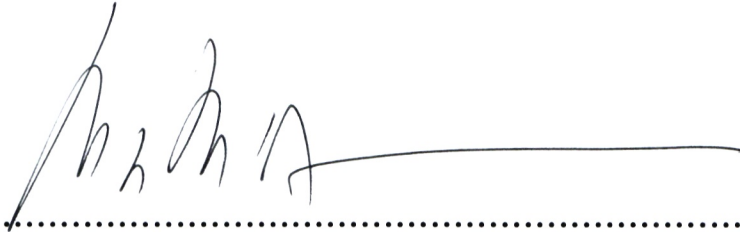
The Committee directed the Cabinet Secretary, Ministry of Environment and Forestry to-

- 1) Revoke the restoration order issued by NEMA and issue one that complies with the Act and provide a copy to the Committee.
- 2) To provide information of the consultants facing disciplinary action to the Committee.

MINUTE NO. SEN/SCST/:073:

ADJOURNMENT

The meeting was adjourned at 12:11p.m.

SIGNATURE.....

(CHAIRPERSON: SEN. MUTULA KILONZO JUNIOR, MP)

DATE.....25/7/18

MINUTES OF THE THIRTEENTH MEETING OF THE SELECT COMMITTEE ON THE SOLAI DAM TRAGEDY HELD ON TUESDAY 17TH JULY, 2018 AT THE MAIN SENATE CHAMBER AT 11.00 A. M.

PRESENT

- | | |
|------------------------------------|----------------|
| 1. Sen. Mutula Kilonzo Junior, MP | -Chairman |
| 2. Sen. Mithika Linturi, MP | -Vice Chairman |
| 3. Sen. Johnson Sakaja, MP | -Member |
| 4. Sen. Ledama Olekina, MP | -Member |
| 5. Sen. (Arch.) Sylvia Kasanga, MP | -Member |

ABSENT WITH APOLOGY

- | | |
|--|---------|
| 1. Sen. Fatuma Dullo, CBS, MP | -Member |
| 2. Sen. Susan Kihika, MP | -Member |
| 3. Sen. (Eng.) Ephraim Maina, EBS, MP | -Member |
| 4. Sen. (Prof.) Imana Malachy Ekal, MP | -Member |

SENATE SECRETARIAT

- | | |
|-----------------------|--------------------|
| 1. Ms. Rose Mudibo | - Clerk Assistant |
| 2. Mr. Victor Bett | - Clerk Assistant |
| 3. Mr. Eugene Apaa | - Research Officer |
| 4. Ms. Lucy Radoli | - Legal Counsel |
| 5. Ms. Farida Ngasura | -Audio Recording |
| 6. Ms. Sarah Rukwaro | - SAA |

MINISTRY OF INTERIOR AND COORDINATION OF NATIONAL GOVERNMENT

Hon. Patrick Ntutu -Chief Administrative Secretary, Ministry of Interior and
Coordination of National Government

MINUTE NO. SEN/SCST/074:

PRELIMINARIES

The Chairman called the meeting to order at 11.00 a.m. This was followed by a word of prayer and a round of introductions.

MINUTE NO. SEN/SCST/075:

ADOPTION OF AGENDA

The agenda of the meeting was adopted after it was proposed and seconded by Sen. Ledama Olekina, MP and Sen. (Arch.) Sylvia Kasanga, MP respectively.

MINUTE NO. SEN/SCST/076:

**MEETING WITH THE CABINET
SECRETARY, MINISTRY OF
INTERIOR AND COORDINATION OF
NATIONAL GOVERNMENT**

The Chief Administrative Secretary, Hon. Patrick Ntutu, appearing on behalf of the Cabinet Secretary, Ministry of Interior and Coordination of National Government, and proceeded to give apologies of the Cabinet Secretary and explained that he was engaged a meeting of the National Security Council.

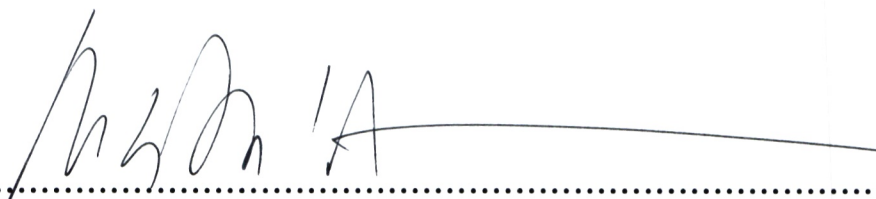
Upon consultations, the Committee noted that despite the confirmation of the Cabinet Secretary to appear before the Committee in person, the Committee did not have information or sufficient reasons of his absence.

The Committee resolved that the Cabinet Secretary appears before the Committee on Wednesday 18th July, 2018 at 11.00 a.m.

MINUTE NO. SEN/SCST/077: ADJOURNMENT

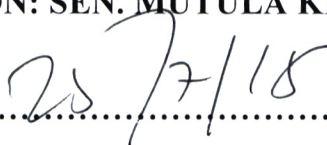
The meeting was adjourned at 11.20 a.m.

SIGNATURE.....



(CHAIRPERSON: SEN. MUTULA KILONZO JUNIOR, MP)

DATE.....



MINUTES OF THE FORTEENTH MEETING OF THE SELECT COMMITTEE ON THE SOLAI DAM TRAGEDY HELD ON WEDNESDAY 18TH JULY, 2018 AT THE MAIN SENATE CHAMBER AT 09.00 A. M.

PRESENT

- | | |
|------------------------------------|------------------|
| 1. Sen. Mutula Kilonzo Junior, MP | -Chairman |
| 2. Sen. Johnson Sakaja, MP | -Member |
| 3. Sen. Ledama Olekina, MP | -Member |
| 4. Sen. (Arch.) Sylvia Kasanga, MP | -Member |

ABSENT WITH APOLOGY

- | | |
|--|----------------|
| 1. Sen. Mithika Linturi, MP | -Vice Chairman |
| 2. Sen. Fatuma Dullo, CBS, MP | -Member |
| 3. Sen. Susan Kihika, MP | -Member |
| 4. Sen. (Eng.) Ephraim Maina, EBS, MP | -Member |
| 5. Sen. (Prof.) Imana Malachy Ekal, MP | -Member |

SENATE SECRETARIAT

- | | |
|-----------------------|--------------------|
| 1. Ms. Rose Mudibo | - Clerk Assistant |
| 2. Mr. Victor Bett | - Clerk Assistant |
| 3. Mr. Eugene Apaa | - Research Officer |
| 4. Ms. Lucy Radoli | - Legal Counsel |
| 5. Ms. Farida Ngasura | -Audio Recording |
| 6. Ms. Sarah Rukwaro | - SAA |

OFFICE OF DIRECTOR OF PUBLIC PROSECUTIONS

- | | |
|-----------------------------|----------------------------------|
| 1. Mr. Noordin M. Haji, OGW | -Director of Public Prosecutions |
| 2. Ms. Dorcas Oduor | |
| 3. Ms. Cathrine Mwaniki | |

MINUTE NO. SEN/SCST/078:

PRELIMINARIES

The Chairperson called the meeting to order at 10.00 a.m. This was followed by a word of prayer and a round of introductions.

MINUTE NO. SEN/SCST/079:

ADOPTION OF AGENDA

The agenda of the meeting was adopted after it was proposed and seconded by Sen. Ledama Olekina, MP and Sen. (Arch.) Sylvia Kasanga, MP, respectively.

MINUTE NO. SEN/SCST/080:

**MEETING WITH THE OFFICE OF
DIRECTOR OF PUBLIC PROSECUTIONS**

The Committee held a closed door meeting with the Director of Public Prosecutions, Mr. Noordin M. Haji, OGW, who informed the Committee that-

- a) That the Director of Public Prosecutions is an independent office constituted under Article 157 of the Constitution and is mandated to administer prosecution services in the Republic of Kenya, with an objective of bringing to account any suspects, timely advice and making decisions in all cases presented and to respond adequately to any issues within its mandate.
- b) The DPP has powers to direct the Inspector General of Police to investigate the cases and to prevent the abuse of office.
- c) The ODPP administers prosecution services with a vision to provide a just, fair, independent and quality public prosecution service in an impartial, effective and efficient prosecution service to all.

MINUTE NO. SEN/SCST/081:

COMMITTEE RESOLUTION

The Committee appreciated the work done by the DCI and Office of the Director of Public Prosecutions on Solai tragedy

MINUTE NO. SEN/SCST/082:

ADJOURNMENT

The meeting was adjourned at 11.00 a.m.

SIGNATURE.....

(CHAIRPERSON: SEN. MUTULA KILONZO JUNIOR, MP)

DATE.....

MINUTES OF THE FIFTEENTH MEETING OF THE SELECT COMMITTEE ON THE SOLAI DAM TRAGEDY HELD ON WEDNESDAY 18TH JULY, 2018 AT THE MAIN SENATE CHAMBER AT 12.00 NOON.

PRESENT

- | | |
|------------------------------------|------------------|
| 1. Sen. Mutula Kilonzo Junior, MP | -Chairman |
| 2. Sen. Johnson Sakaja, MP | -Member |
| 3. Sen. Ledama Olekina, MP | -Member |
| 4. Sen. (Arch.) Sylvia Kasanga, MP | -Member |

ABSENT WITH APOLOGY

- | | |
|--|-----------------------|
| 1. Sen. Mithika Linturi, MP | -Vice Chairman |
| 2. Sen. Fatuma Dullo, CBS. MP | -Member |
| 3. Sen. Susan Kihika, MP | -Member |
| 4. Sen. (Eng.) Ephraim Maina, EBS. MP | -Member |
| 5. Sen. (Prof.) Imana Malachy Ekal, MP | -Member |

SENATE SECRETARIAT

- | | |
|-----------------------|--------------------|
| 1. Ms. Rose Mudibo | - Clerk Assistant |
| 2. Mr. Victor Bett | - Clerk Assistant |
| 3. Mr. Eugene Apaa | - Research Officer |
| 4. Ms. Lucy Radoli | - Legal Counsel |
| 5. Ms. Farida Ngasura | -Audio Recording |
| 6. Ms. Sarah Rukwaro | - SAA |

SOLAI GROUP OF COMPANIES

Mr. Perry Mansukh - Owner, Solai Farm
Mr. Evance Monari - Lawyer

COUNTY GOVERNMENT OF NAKURU

Hon. Lee Kinyanjui -Governor, Nakuru County

MINUTE NO. SEN/SCST/083:

PRELIMINARIES

The Chairman called the meeting to order at 12.05 p.m. This was followed by a word of prayer and a round of introductions.

MINUTE NO. SEN/SCST/084:

ADOPTION OF AGENDA

The agenda of the meeting was adopted after it was proposed and seconded by Sen. Ledama Olekina, MP and Sen. (Arch.) Sylvia Kasanga, MP respectively.

Before commencement of Mr. Perry Mansukh's presentation, his lawyer Mr. Evans Monari objected to the Committee that the matters were about to be discussed were before a court of law, and therefore sub-judice. However, Mr. Evans Monari, Lawyer to Mr. Perry Mansukh was unable to point out to the Committee any matters raised in the invitation letter, that touched on the live court cases against Mr. Perry Mansukh.

Citing standing order 92 of the Senate Standing Orders, the Committee resolved that Mr. Perry Mansukh proceeds to make his presentation

Mr. Perry Mansukh proceeded to brief the Committee as follows:

- a) That he has lived with the Community of Solai his entire life;
- b) That he has a lot of love for the people of Solai;
- c) Solai Farm is situated on LR 11278 owned by Kensalt Limited, having been purchased in 2003 from Milmet Estates Limited.
- d) Solai Farm was established in 1965 and has expanded over the years.
- e) Milmet Dam was constructed in the year 2004 following acquisition of relevant requirements.
- f) That the collapsed Milmet dam was duly licensed by relevant authorities.
- g) The farm covers acreage of approximately 3.250 with 8 dams that have all been duly approved and registered.
- h) The farm mainly deals with coffee and dairy farming, and has employed approximately 1,500 people.
- i) Solai Group undertakes other activities aimed at improving the welfare of the residents that include:
 - (i) Building and maintaining of 9 schools and surrounding areas;
 - (ii) Provision of water through boreholes;
 - (iii) Building of the offices and residence of the local administration in the area; and,
 - (iv) Building and maintaining an all-weather road to ease access in the area.
- j) All the dams in the Solai Farm are duly registered and have the requisite approvals from the relevant authorities.
- k) Regular inspections have been carried out on the farm by relevant government environmental agencies.
- l) That the dam in Solai Farm burst as a result of heavy rainwater and deforestation.

- m) Following the tragedy, an independent committee comprising of the local leadership was constituted for a fact-finding mission to assess the loss suffered by families. The Committee issued a report, which set out details of loss occasioned by the Solai Dam Tragedy.
- n) Out of good will and following the report, the Solai Group provided financial assistance to all the victims as consolation.
- o) Following the tragedy the Solai Group has taken the following initiatives;
 - Work with the Nakuru County Government to level the grounds around the Solai Farm;
 - Plant more trees in the Solai Farm and surrounding areas;
 - Undertake more corporate social responsibility work such as assisting the residents to build semi-permanent homes that may withstand possible flooding; and.
 - Adopt any other measures that may be recommended by the regulatory bodies.
- p) That payments paid to the victims was not compensation but consolation to assist the affected families to continue with their normal livelihoods.
- q) The management of Solai Group has not visited the affected victims since the tragedy following an advise of the independent committee.

MINUTE NO.SEN/SCST/086:

COMMITTEE INTERVENTIONS

After Mr. Perry Mansukh's presentation, the Committee raised the following issues:

1. The Committee noted that Mr. Perry Mansukh did not provide any documentation requested on the licensing of Milmet Dam.
2. That Mr. Perry Mansukh explains to the Committee what funds had been given to the victims by himself with the help of Government officials in Nakuru County.
3. To inform the Committee whether he had ever visited the victims since the tragedy occurred.
4. To explain how the victims were identified leading to the pay outs.
5. To confirm to the Committee whether Milmet Dam was licensed by the relevant authorities.
6. To comment on the allegations by relevant authorities on denial of access to carry out inspections on the farm.
7. To explain the role of the area Chief, the Division Officer and some elected leaders in the purported compensation of victims.
8. To brief the Committee on when he realized that there was too much water in Milmet Dam.

9. Explain to the Committee why he had blocked two water sources, denying water to the population downstream.
10. Give details of the date of acquisition of dam license and the volumes of water for the Milment Dam.

MINUTE NO.SEN/SCST/087:

RESPONSE FROM MR. PERRY MANSUKH

In his response, Mr. Perry Mansukh responded as follows;

1. That he undertook to provide all documentations to confirm the dams in his farm are licensed as requested by the Committee within 48 hours.
2. That he did not give any compensation to the victims but consolation of Kenya Shillings thirty five million (Ksh. 35 million) to the victims of the tragedy paid with the assistance of National Government officials.
3. That after the tragedy an independent Committee was constituted comprising of local leadership, National Government officials and representatives of the victims.
4. That he had not visited or met the victims following advise from the independent Committee of victims.
5. That the list of victims used during the pay out to the victims was presented to him by the Independent Committee.
6. That there has never been a case of denial of access to the farm to any environmental agencies.
7. Confirmed to the Committee that Milmet Dam was licensed in 2004 and would provide the documents to the Committee within 48 hours.
8. He is aware of the indemnity forms issued to the victims of the Solai tragedy and the lawyer who prepared them, but he could not comment further because a suit was filed against him by one of the victims.

MINUTE NO. SEN/SCST/088:

COMMITTEE RESOLUTION

The Committee noted with concern that despite the loss of 48 people after the tragedy, Mr. Perry Mansukh could not provide information of when he acquired the dam license nor the volume of water licensed.

The Committee directed that the requested documentations be provided within 48 hours as promised through the Office of the Clerk of the Senate.

MINUTE NO.SEN/SCST/089:

DELIBERATIONS WITH NAKURU COUNTY GOVERNMENT

The Governor proceeded to make his presentation as follows;

- i. That dams are not a mandate of the County Government.
- ii. That the County Government of Nakuru did not carry out any investigations and hence had no report on the same.
- iii. That the Milmet Dam was constructed using porous material with little or no compaction done on embankment material.
- iv. The embankment slopes were too steep and the dam had ineffective and inadequate spillway.
- v. The County Government of Nakuru has put the following measures in place to manage future disasters:
 - A disaster coordination unit in place
 - Nakuru County Fire and Rescue Act 2016
 - Established County Transport and Safety Committee
 - Established emergency ambulance dispatch centre and procurement of 2 (two) more ambulances during 2017/2018 financial year
 - An ambulance / referral policy to guide the operation of ambulances in the County
- vi. Following the Solai tragedy, the Nakuru County Government;
 - a) Made an immediate visit to the tragedy site and supported the rescue team;
 - b) Support in recovery and evacuation of the injured persons to the health facilities in Nakuru;
 - c) Mobilization of County medical personnel to the site of tragedy;
 - d) Joint multi sectorial rescue team moved the affected families to Solai Secondary School and provided bedding and food;
 - e) Drained water run off for ease of recovery and evacuation process;
 - f) Paid for all the mortuary charges as well as carrying out post mortem on all the bodies before burial;
 - g) Provision of food (hot meals) for the volunteers and the affected families through the entire response phase;
 - h) Distributed donations to the victims on 19th and 20th May 2018 in collaboration with the joint multi-sectoral rescue team;
 - i) Provided potable water to the affected population residing in the camp and the volunteers on site;
 - j) Distributed water treatment chemicals to the local community for household drinking water;

- k) Provided psycho-social support and counseling to victims;
 - l) Did placement of the affected students to nearby primary schools in collaboration with the National Government;
 - m) Clearance of accessible roads and pathways that had been blocked by debris from the effects of the collapsed dam; and,
 - n) Supported the families who were conducting mass burial in the excavation and subsequently in back filling the graves.
- vii. A joint committee was established consisting of the National Government, County Government, Kenya Red Cross Society and World Vision, co-chaired by the Regional Commission, Mr. Mwongo Chimwaga and the Governor, Nakuru County to look into post disaster recovery and rehabilitation of affected victims.
- viii. In partnership with the Kenya Red Cross, the County Government launched an appeal for donations both in cash and in kind.
- ix. To restore the environment the County Government is engaged in:
 - a) Promotion of tree planting;
 - b) Carrying out continuous education and awareness on natural resource protection and management; and,
 - c) Encouraging agroforestry and farmer-managed natural regeneration for the denuded areas in collaboration with World Vision.
- x. To avoid any other occurrence of this nature, the County Government is:
 - a) Working closely with WRA to establish the status of all the existing dams and water pans in the County for continuous assessment and monitoring.
 - b) Development of early warning systems like the use of text messages for the population.

MINUTE NO.SEN/SCST/090:

COMMITTEE INTERVENTION

Following the presentation, the Committee noted with concern that the Governor did not fully own some sections of the report presented to the Committee, adding that it was done by the multi-agency Committee.

The Committee raised the following concern:

1. That the Governor confirms the existence of a County Environmental Committee in Nakuru County Government

MINUTE NO.SEN/SCST/091:

GOVERNOR'S RESPONSE

In his response the Governor informed the Committee that the County Government had no responsibility in matters environment.

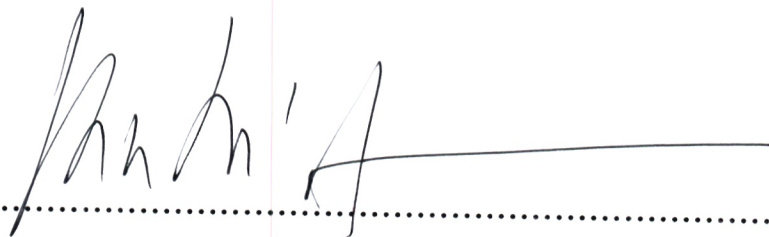
The Governor further informed the Committee that the County Government of Nakuru did not have a County Environmental Committee.

MINUTE NO. SEN/SCST/092:

ADJOURNMENT

The meeting was adjourned at 1.30 p.m.

SIGNATURE.....



(CHAIRPERSON: SEN. MUTULA KILONZO JUNIOR, MP)

DATE.....

25/7/18

MINUTES OF THE SIXTEENTH MEETING OF THE SELECT COMMITTEE ON THE SOLAI DAM TRAGEDY HELD ON THURSDAY 19TH JULY, 2018 AT SERENA KILAGUNI LODGE AT 8.30 A.M.

PRESENT

- | | |
|--|-----------|
| 1. Sen. Mutula Kilonzo Junior, MP | -Chairman |
| 2. Sen. Johnson Sakaja, MP | -Member |
| 3. Sen. Ledama Olekina, MP | -Member |
| 4. Sen. (Prof.) Imana Malachy Ekal, MP | -Member |

ABSENT WITH APOLOGY

- | | |
|---------------------------------------|----------------|
| 1. Sen. Mithika Linturi, MP | -Vice Chairman |
| 2. Sen. (Arch.) Sylvia Kasanga, MP | -Member |
| 3. Sen. Fatuma Dullo, CBS, MP | -Member |
| 4. Sen. Susan Kihika, MP | -Member |
| 5. Sen. (Eng.) Ephraim Maina, EBS, MP | -Member |

SENATE SECRETARIAT

- | | |
|-----------------------|--------------------|
| 1. Ms. Rose Mudibo | - Clerk Assistant |
| 2. Mr. Peter Muchira | - Clerk Assistant |
| 3. Mr. Eugene Apaa | - Research Officer |
| 4. Ms. Lucy Radoli | - Legal Counsel |
| 5. Ms. Farida Ngasura | -Audio Recording |
| 6. Ms. Sarah Rukwaro | - SAA |
| 7. Ms. Pamela Atieno | - Secretary |
| 8. Mr. Mariko Roche | - Office Attendant |

MINUTE NO. SEN/SCST/093:

PRELIMINARIES

The Chairperson called the meeting to order at 8.30 a.m., followed with a word of prayer.

MINUTE NO. SEN/SCST/094:

ADOPTION OF AGENDA

The agenda of the meeting was adopted after it was proposed and seconded by Sen. Ledama Olekina, MP and Sen. Johnson Sakaja, MP respectively.

MINUTE NO. SEN/SCST/095:

PRESENTATION OF SUBMISSIONS RECEIVED

The secretariat presented to the Committee referenced submissions received by the Committee since the inception of the Adhoc Committee.

MINUTE NO. SEN/SCST/096:

**CONSIDERATION OF DRAFT
REPORT**

The Committee considered the draft report and tasked the secretariat to come up in proposing possible observations out of the received submission in readiness for a meeting scheduled for the same day at 2.00 p.m.

MINUTE NO. SEN/SCST/097:

ADJOURNMENT

The sitting was adjourned at 1.00 p.m.

SIGNATURE.....



(CHAIRPERSON: SEN. MUTULA KILONZO JUNIOR, MP)

DATE.....

25/7/18

MINUTES OF THE SEVENTEETH MEETING OF THE SELECT COMMITTEE ON THE SOLAI DAM TRAGEDY HELD ON THURSDAY 19TH JULY, 2018 AT SERENA KILAGUNI LODGE AT 2.00 P.M.

PRESENT

- | | |
|--|-----------|
| 1. Sen. Mutula Kilonzo Junior, MP | -Chairman |
| 2. Sen. Johnson Sakaja, MP | -Member |
| 3. Sen. Ledama Olekina, MP | -Member |
| 4. Sen. (Prof.) Imana Malachy Ekal, MP | -Member |

ABSENT WITH APOLOGY

- | | |
|---------------------------------------|----------------|
| 1. Sen. Mithika Linturi, MP | -Vice Chairman |
| 2. Sen. (Arch.) Sylvia Kasanga, MP | -Member |
| 3. Sen. Fatuma Dullo, CBS, MP | -Member |
| 4. Sen. Susan Kihika, MP | -Member |
| 5. Sen. (Eng.) Ephraim Maina, EBS, MP | -Member |

SENATE SECRETARIAT

- | | |
|-----------------------|--------------------|
| 1. Ms. Rose Mudibo | - Clerk Assistant |
| 2. Mr. Peter Muchira | - Clerk Assistant |
| 3. Mr. Eugene Apaa | - Research Officer |
| 4. Ms. Lucy Radoli | - Legal Counsel |
| 5. Ms. Farida Ngasura | -Audio Recording |
| 6. Ms. Sarah Rukwaro | - SAA |
| 7. Ms. Pamela Atieno | - Secretary |
| 8. Mr. Mariko Roche | - Office Attendant |

MINUTE NO. SEN/SCST/098:

PRELIMINARIES

The Chairman called the meeting to order at 2.00 p.m. followed by a word of prayer.

MINUTE NO. SEN/SCST/099:

ADOPTION OF AGENDA

The agenda of the meeting was adopted after it was proposed and seconded by Sen. (Prof.) Imana Malachy Ekal, MP and Sen. Johnson Sakaja, MP respectively.

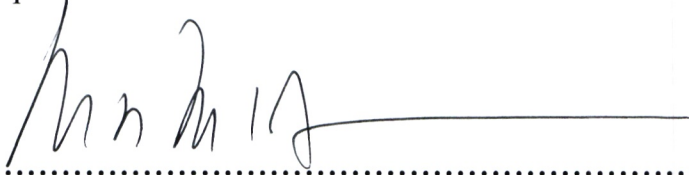
MINUTE NO. SEN/SCST/100:

CONSIDERATION OF DRAFT REPORT

The Committee considered the observations and proposed recommendations and resolved to finalize on the draft during the next Committee meeting.

MINUTE NO. SEN/SCST/101: ADJOURNMENT

The sitting was adjourned at 7.00 p.m.

SIGNATURE.....

(CHAIRPERSON: SEN. MUTULA KILONZO JUNIOR, MP)

DATE.....28/7/18

MINUTES OF THE EIGHTEENTH MEETING OF THE SELECT COMMITTEE ON THE SOLAI DAM TRAGEDY HELD ON FRIDAY 20TH JULY, 2018 AT SERENA, KILAGUNI LODGE AT 10.00A.M.

PRESENT

- | | |
|--|-----------|
| 1. Sen. Mutula Kilonzo Junior, MP | -Chairman |
| 2. Sen. Johnson Sakaja, MP | -Member |
| 3. Sen. Ledama Olekina, MP | -Member |
| 4. Sen. (Prof.) Imana Malachy Ekal, MP | -Member |

ABSENT WITH APOLOGY

- | | |
|---------------------------------------|----------------|
| 1. Sen. Mithika Linturi, MP | -Vice Chairman |
| 2. Sen. (Arch.) Sylvia Kasanga, MP | -Member |
| 3. Sen. Fatuma Dullo, CBS, MP | -Member |
| 4. Sen. Susan Kihika, MP | -Member |
| 5. Sen. (Eng.) Ephraim Maina, EBS, MP | -Member |

SENATE SECRETARIAT

- | | |
|-----------------------|--------------------|
| 1. Ms. Rose Mudibo | - Clerk Assistant |
| 2. Mr. Peter Muchira | - Clerk Assistant |
| 3. Mr. Eugene Apaa | - Research Officer |
| 4. Ms. Lucy Radoli | - Legal Counsel |
| 5. Ms. Farida Ngasura | -Audio Recording |
| 6. Ms. Sarah Rukwaro | - SAA |
| 7. Ms. Pamela Atieno | - Secretary |
| 8. Mr. Mariko Roche | - Office Attendant |

MINUTE NO. SEN/SCST/102:

PRELIMINARIES

The Chairman called the meeting to order at 10.00 a.m. followed by a word of prayer.

MINUTE NO. SEN/SCST/103:

ADOPTION OF AGENDA

The agenda of the meeting was adopted after it was proposed and seconded by Sen. Ledama Olekina, MP and Sen. Johnson Sakaja, MP respectively.

MINUTE NO. SEN/SCST/104:

CONSIDERATION OF DRAFT REPORT

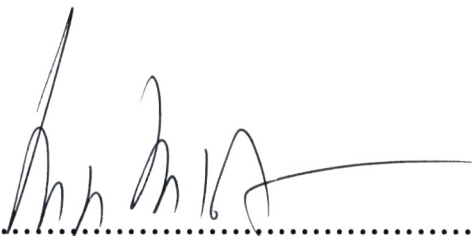
The Committee considered the draft report presented by the secretariat and resolved to continue at the next meeting.

MINUTE NO. SEN/SCST/105:

ADJOURNMENT

The sitting was adjourned at 01.00 p.m.

SIGNATURE.....



(CHAIRPERSON: SEN. MUTULA KILONZO JUNIOR, MP)

DATE.....



MINUTES OF THE NINETEETH MEETING OF THE SELECT COMMITTEE ON THE SOLAI DAM TRAGEDY HELD ON FRIDAY 20TH JULY, 2018 AT SERENA, KILAGUNI LODGE AT 4.00 P.M.

PRESENT

- | | |
|--|-----------|
| 1. Sen. Mutula Kilonzo Junior, MP | -Chairman |
| 2. Sen. Johnson Sakaja, MP | -Member |
| 3. Sen. Ledama Olekina, MP | -Member |
| 4. Sen. (Prof.) Imana Malachy Ekal, MP | -Member |

ABSENT WITH APOLOGY

- | | |
|---------------------------------------|----------------|
| 1. Sen. Mithika Linturi, MP | -Vice Chairman |
| 2. Sen. (Arch.) Sylvia Kasanga, MP | -Member |
| 3. Sen. Fatuma Dullo, CBS, MP | -Member |
| 4. Sen. Susan Kihika, MP | -Member |
| 5. Sen. (Eng.) Ephraim Maina, EBS, MP | -Member |

SENATE SECRETARIAT

- | | |
|-----------------------|--------------------|
| 1. Ms. Rose Mudibo | - Clerk Assistant |
| 2. Mr. Peter Muchira | - Clerk Assistant |
| 3. Mr. Eugene Apaa | - Research Officer |
| 4. Ms. Lucy Radoli | - Legal Counsel |
| 5. Ms. Farida Ngasura | -Audio Recording |
| 6. Ms. Sarah Rukwaro | - SAA |
| 7. Ms. Pamela Atieno | - Secretary |
| 8. Mr. Mariko Roche | - Office Attendant |

MINUTE NO. SEN/SCST/106:

PRELIMINARIES

The Chairman called the meeting to order at 4.00 p.m. followed by a word of prayer.

MINUTE NO. SEN/SCST/107:

ADOPTION OF AGENDA

The agenda of the meeting was adopted after it was proposed and seconded by Sen. Ledama Olekina, MP and Sen. Johnson Sakaja, MP respectively.

MINUTE NO. SEN/SCST/108: CONSIDERATION OF DRAFT REPORT

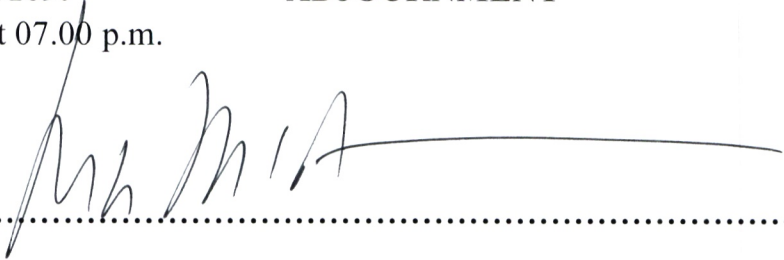
The Committee considered the draft report presented by the secretariat and resolved to continue at the next meeting.

MINUTE NO. SEN/SCST/109:

ADJOURNMENT

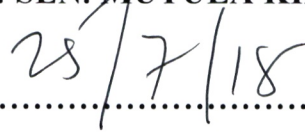
The sitting was adjourned at 07.00 p.m.

SIGNATURE.....

A handwritten signature in black ink, appearing to read 'Mutula Kilonzo', written over a dotted line.

(CHAIRPERSON: SEN. MUTULA KILONZO JUNIOR, MP)

DATE.....

A handwritten date '28/7/18' in black ink, written over a dotted line.

MINUTES OF THE TWENTIETH MEETING OF THE SELECT COMMITTEE ON THE SOLAI DAM TRAGEDY HELD ON SATURDAY 21ST JULY, 2018 AT SERENA, KILAGUNI LODGE AT 10.00 A.M.

PRESENT

- | | |
|--|------------------|
| 1. Sen. Mutula Kilonzo Junior, MP | -Chairman |
| 2. Sen. Johnson Sakaja, MP | -Member |
| 3. Sen. Ledama Olekina, MP | -Member |
| 4. Sen. (Prof.) Imana Malachy Ekal, MP | -Member |

ABSENT WITH APOLOGY

- | | |
|---------------------------------------|-----------------------|
| 1. Sen. Mithika Linturi, MP | -Vice Chairman |
| 2. Sen. (Arch.) Sylvia Kasanga, MP | -Member |
| 3. Sen. Fatuma Dullo, CBS, MP | -Member |
| 4. Sen. Susan Kihika, MP | -Member |
| 5. Sen. (Eng.) Ephraim Maina, EBS, MP | -Member |

SENATE SECRETARIAT

- | | |
|-----------------------|--------------------|
| 1. Ms. Rose Mudibo | - Clerk Assistant |
| 2. Mr. Peter Muchira | - Clerk Assistant |
| 3. Mr. Eugene Apaa | - Research Officer |
| 4. Ms. Lucy Radoli | - Legal Counsel |
| 5. Ms. Farida Ngasura | -Audio Recording |
| 6. Ms. Sarah Rukwaro | - SAA |
| 7. Ms. Pamela Atieno | - Secretary |
| 8. Mr. Mariko Roche | - Office Attendant |

MINUTE NO. SEN/SCST/110:

PRELIMINARIES

The Chairman called the meeting to order at 10.10 a.m. followed by a word of prayer.

MINUTE NO. SEN/SCST/111:

ADOPTION OF AGENDA

The agenda of the meeting was adopted after it was proposed and seconded by Sen. Ledama Olekina, MP and Sen. Johnson Sakaja, MP respectively.

MINUTE NO. SEN/SCST/112:

**CONSIDERATION OF DRAFT
REPORT AND WAY FORWARD**

The Committee considered the draft report presented by the secretariat and finalized on the chapters of observations and recommendations and resolved that the report is presented to the Committee at a later date for adoption.

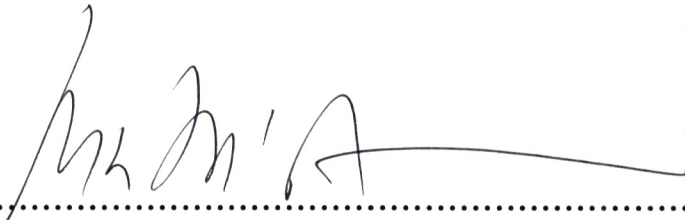
The Committee further resolved to consider all the Committee minutes during the next committee meeting.

MINUTE NO. SEN/SCST/113:

ADJOURNMENT

The sitting was adjourned at noon.

SIGNATURE.....



(CHAIRPERSON: SEN. MUTULA KILONZO JUNIOR, MP)

DATE.....

25/7/18

MINUTES OF THE TWENTY FIRST MEETING OF THE SELECT COMMITTEE ON THE SOLAI DAM TRAGEDY HELD ON MONDAY 23RD JULY, 2018 AT THE CHAMBER, MAIN PARLIAMENT BUILDINGS, 7.00 A.M.

PRESENT

- | | |
|--|------------------|
| 1) Sen. Mutula Kilonzo Junior, MP | -Chairman |
| 2) Sen. Johnson Sakaja, MP | -Member |
| 3) Sen. Ledama Olekina, MP | -Member |
| 4) Sen. Fatuma Dullo, CBS, MP | -Member |
| 5) Sen. (Arch.) Sylvia Kasanga, MP | -Member |
| 6) Sen. (Prof.) Imana Malachy Ekal, MP | -Member |

ABSENT WITH APOLOGY

- | | |
|---------------------------------------|-----------------------|
| 1) Sen. Mithika Linturi, MP | -Vice Chairman |
| 2) Sen. Susan Kihika, MP | -Member |
| 3) Sen. (Eng.) Ephraim Maina, EBS, MP | -Member |

IN ATTENDANCE

SENATE SECRETARIAT

- | | |
|----------------------|--------------------|
| 1) Ms. Rose Mudibo | - Clerk Assistant |
| 2) Mr. Peter Muchira | - Clerk Assistant |
| 3) Mr. Eugene Apaa | - Research Officer |
| 4) Ms. Lucy Radoli | - Legal Counsel |
| 5) Ms. Sarah Rukwaro | - SAA |

MINISTRY OF INTERIOR AND COORDINATION OF NATIONAL GOVERNMENT

- | | |
|------------------------|-------------------------------|
| 1) Dr. Fred Matiang'i | -Cabinet Secretary |
| 2) Hon. Patrick Ntuntu | -Chief Administrative Officer |
| 3) Dr. Karanja Kibicho | -Principle Secretary |
| 4) Amb.. N. gathecha | -Secretary, Internal Security |
| 5) Mr. A.A. Osinya | -SNA |
| 6) Mr. J. Nyakundi | -LA |
| 7) Mr. Mwenda Njoka | -Communication Department |
| 8) Mr. Simon Karanja | -Personal Assistant |

MINUTE NO. SEN/SCST/114:

PRELIMINARIES

The Chairman called the meeting to order at 7.10 a.m. followed by a word of prayer and a round of introductions.

MINUTE NO. SEN/SCST/115:**ADOPTION OF AGENDA**

The agenda of the meeting was adopted after it was proposed and seconded by Sen. Ledama Olekina, MP and Sen. Johnson Sakaja, MP respectively.

MINUTE NO. SEN/SCST/116:**DELIBERATIONS WITH THE
CABINET SECRETARY, MINISTRY
OF INTERIOR AND
COORDINATION OF NATIONAL
GOVERNMENT**

The Chairperson welcomed the Cabinet Secretary to the meeting and invited him to make his presentation.

The Cabinet Secretary proceeded to make his presentation as follows;

- a. That Solai Dam Tragedy occurred when Milmet Dam which is located on a private agricultural farm of 3,500 acres in Rongai Sub-County in Nakuru Count, breached is embankment on 9th May 2018 about 20.30 hours and collapsed causing damage to property and loss of 47 lives.
- b. That following the tragedy the following persons lost their lives
 1. Faith Nyambura
 2. Gideon Wachira
 3. Jane Wambui
 4. Stephen Waweru Mbugua
 5. Esther Munai
 6. Tabitha Wairimu
 7. Rolens Chege
 8. Sarah Wanjiku
 9. Ronald Kibe
 10. Julius Karimi kahuria
 11. Brenda Amolijet
 12. Julius Namoit
 13. Margaret Nyambura
 14. Rehema Chepkorir

15. Phyliss Ingatu
16. Eunice Wairimu
17. Eunice Njeri Ng'ang'a
18. John Koina
19. Ann Wambui
20. Sarah Ekiru Namkuru
21. Ruth Kemunto
22. Dickson Lekarab
23. Anastacia Chepkemai
24. Samwel Awoi Amugi
25. Jane Mithoni Munene
26. Virginia Wanjiru
27. Nancy Muthoni Kimondo
28. Mary Wachira
29. Isaac Kamau Gathogo
30. Fred Waweru
31. Ruth Wairimu
32. Juliet Agei
33. Emmaculate Kamau
34. Maxwell Kamau
35. Alicia Namuru
36. Joseph Lwamanat
37. Charles Muchiri Njunge
38. Mercy Njeri
39. Beatrice Nafula
40. James Karanja
41. Jane Amana
42. Metrine Nanjala
43. Alfred Karogo
44. Eunice Wanjiku
45. Tabitha Nyambura
46. Marianna Wangechi
47. James Ikemer
48. James Njuge

- c. That 47 people were confirmed dead, 41 injured and 6 admitted, 37 discharged from hospitals and 223 families displaced from their homesteads.
- d. That various interventions were conducted to ensure the affected got immediate life support which include; shelter, food, health and sanitation support.

- e. That the question of liability was being addressed in court proceedings and its determination will provide guidance on the matter of claims for compensation.
- f. The Government provided assistance to alleviate pain and suffering to the victims as tabulated below;
 - Kshs.50,000/= issued to families of the 46 deceased victims of the Solai Dam tragedy (Kshs.2,300,000)
 - Kshs.50,000/= issued to 6 families of flooding victims in Naivasha (kshs.350,000)
- g. That the Ministry was neither aware nor party to transactions of payments to victims by the Solai Dam Owner and that no Government official was involved in the activity.
- h. That the Cabinet has adopted a National Disaster Policy Framework that proposes to create an Authority that will focus on coordination during disasters and help in managing of resources during disasters.

MINUTE NO.SEN/SCST/117:

COMMITTEE INTERVENTIONS

Upon completion of the Cabinet Secretary's presentation, the Committee asked him to clarify on the following;

- 1) To comment on a matter that the Cabinet Secretary, Ministry of Interior and Coordination of National Government was quoted in a section of the media on the conduct of the Committee of the Senate.
- 2) To confirm his knowledge on the interference of the scene of the tragedy.
- 3) To explain to the Committee why officers of National Government were involved in the pay outs to the victims together with the owner of the dam in a bid to absolve any blame on the owner.
- 4) To confirm his knowledge of restoration order issued by the Ministry of Environment and Sanitation and what his Ministry is doing to ensure that it is enforced.
- 5) To clarify if the amount of Kshs.50,000/= given by the Government and Kshs.30,000/= was the same.
- 6) To explain to the Committee why the National Disaster Management Policy has not been shared with the Senate despite a request from the Committee on National Security, Defence and Foreign Relations.
- 7) To inform the Committee on what the Government is doing about the families left behind.

- 8) To confirm whether the money paid out by the Ministry and that of Red Cross is one and the same.
- 9) To confirm any record of reports made by the residents of Solai on the leaking dams prior to the tragedy.
- 10) To explain to the Committee on who was in charge of donations given after the Solai tragedy and confirm any reports of misappropriation.
- 11) To comment on the role of the Chief Administrative Secretaries.

MINUTE NO.SEN/SCST/118:

**CABINET
RESPONSE**

SECRETARY'S

In his response the Cabinet Secretary stated as follows;

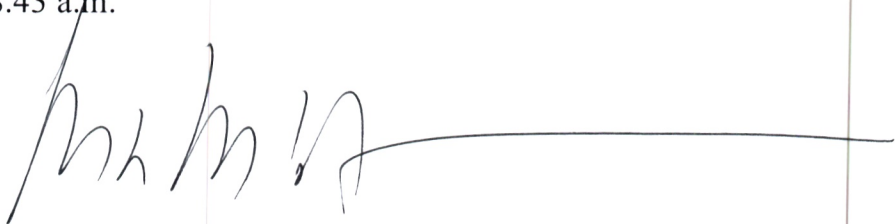
- 1) That there was need to hold an in-camera session with the Committee to discuss a report from the Rift Valley Regional Security Committee regarding the matter of reports of sections of the media.
- 2) That he was not aware that the tragedy scene had been interfered with.
- 3) That the Ministry did not have any information that officers of the Government were involved in aiding the owner of the dam in paying funds to the victims. The Cabinet undertook to carry out investigations on the matter.
- 4) That the National Government does not compensate victims of tragedies.
- 5) That the National Disaster Management Policy was in place and promised to avail it to the Senate before Friday 27th July, 2018.

Upon his response, the Committee resolved to consult with the Cabinet Secretary on a possible date to hold a meeting in camera.

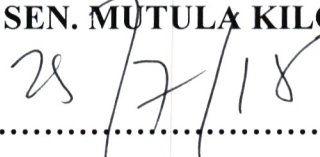
MINUTE NO. SEN/SCST/119:

ADJOURNMENT

The sitting was adjourned at 8.43 a.m.

SIGNATURE.....

(CHAIRPERSON: SEN. MUTULA KILONZO JUNIOR, MP)

DATE.....

MINUTES OF THE TWENTY SECOND MEETING OF THE SELECT COMMITTEE ON THE SOLAI DAM TRAGEDY HELD ON MONDAY 23RD JULY, 2018 AT THE CHAMBER, MAIN PARLIAMENT BUILDINGS, 3.00 P.M.

PRESENT

- | | |
|--|------------------|
| 1) Sen. Mutula Kilonzo Junior, MP | -Chairman |
| 2) Sen. Johnson Sakaja, MP | -Member |
| 3) Sen. Ledama Olekina, MP | -Member |
| 4) Sen. (Arch.) Sylvia Kasanga, MP | -Member |
| 5) Sen. (Prof.) Imana Malachy Ekal, MP | -Member |

ABSENT WITH APOLOGY

- | | |
|---------------------------------------|-----------------------|
| 1) Sen. Mithika Linturi, MP | -Vice Chairman |
| 2) Sen. Fatuma Dullo, CBS, MP | -Member |
| 3) Sen. Susan Kihika, MP | -Member |
| 4) Sen. (Eng.) Ephraim Maina, EBS, MP | -Member |

IN ATTENDANCE

SENATE SECRETARIAT

- | | |
|----------------------|--------------------|
| 1) Ms. Rose Mudibo | - Clerk Assistant |
| 2) Mr. Peter Muchira | - Clerk Assistant |
| 3) Mr. Eugene Apaa | - Research Officer |
| 4) Ms. Lucy Radoli | - Legal Counsel |
| 5) Ms. Sarah Rukwaro | - SAA |

MINUTE NO. SEN/SCST/120:

PRELIMINARIES

The Chairman called the meeting to order at 3.20 p.m. followed by a word of prayer.

MINUTE NO. SEN/SCST/121:

ADOPTION OF AGENDA

The agenda of the meeting was adopted after it was proposed and seconded by Sen. Ledama Olekina, MP and Sen. Johnson Sakaja, MP respectively.

MINUTE NO. SEN/SCST/122:

CONFIRMATION OF MINUTES

Minutes of the third sitting

Minutes of the third sitting were confirmed as a true record of proceedings having been confirmed and seconded by Sen. Ledama Olekina, MP and seconded by Sen. (Prof.) Imana Malachy Ekal, MP.

Minutes of the fourth sitting

Minutes of the fourth sitting were confirmed as a true record of proceedings having been confirmed and seconded by Sen. Johnson Sakaja, MP and seconded by Sen.(Arch.) Sylvia Kasanga, MP.

Minutes of the fifth sitting

Minutes of the fifth sitting were confirmed with amendments as a true record of proceedings having been confirmed and seconded by Sen. Johnson Sakaja, MP and seconded by Sen.(Arch.) Sylvia Kasanga, MP.

Minutes of the sixth sitting

Minutes of the sixth sitting were confirmed as a true record of proceedings having been confirmed and seconded by Sen. Ledama Olekina, MP and seconded by Sen.(Arch.) Sylvia Kasanga, MP.

Minutes of the seventh sitting

Minutes of the seventh sitting were confirmed as a true record of proceedings having been confirmed and seconded by Sen. Ledama Olekina, MP and seconded by Sen.(Arch.) Sylvia Kasanga, MP.

Minutes of the eighth sitting

Minutes of the eighth sitting were confirmed as a true record of proceedings having been confirmed and seconded by Sen. (Prof.) Imana Malachy Ekal, MP and seconded by Sen. (Arch.) Sylvia Kasanga, MP.

Minutes of the ninth sitting

Minutes of the ninth sitting were confirmed as a true record of proceedings having been confirmed and seconded by Sen. Johnson Sakaja, MP and seconded by Sen. Mutula Kilonzo Junior, MP.

Minutes of the tenth sitting

Minutes of the tenth sitting were confirmed as a true record of proceedings having been confirmed and seconded by Sen. Johnson Sakaja, MP and seconded by Sen. (Arch.) Sylvia Kasanga, MP.

Minutes of the eleventh sitting

Minutes of the eleventh sitting were confirmed as a true record of proceedings having been confirmed and seconded by Sen. (Arch.) Sylvia Kasanga, MP and seconded by Sen. Mutula Kilonzo Junior, MP.

Minutes of the twelfth sitting

Minutes of the twelfth sitting were confirmed as a true record of proceedings having been confirmed and seconded by Sen. (Arch.) Sylvia Kasanga, MP and seconded by Sen. Mutula Kilonzo Junior, MP.

Minutes of the thirteenth sitting

Minutes of the thirteenth sitting were confirmed as a true record of proceedings having been confirmed and seconded by Sen. (Arch.) Sylvia Kasanga, MP and seconded by Sen. Ledama Olekina, MP.

Minutes of the fourteenth sitting

Minutes of the fourteenth sitting were confirmed as a true record of proceedings having been confirmed and seconded by Sen. Johnson Sakaja, MP and seconded by Sen. Ledama Olekina, MP.

Minutes of the fifteenth sitting

Minutes of the fifteenth sitting were confirmed as a true record of proceedings having been confirmed and seconded by Sen. Johnson Sakaja, MP and seconded by Sen. Ledama Olekina, MP.

Minutes of the sixteenth, seventh, eighteenth, ninetieth and twentieth sittings

Minutes of the sixteenth, seventh, eighteenth, ninetieth and twentieth sittings were confirmed as a true record of proceedings having been confirmed and seconded by Sen. Johnson Sakaja, MP and seconded by Sen. Ledama Olekina, MP.

Minutes of the twenty first sitting

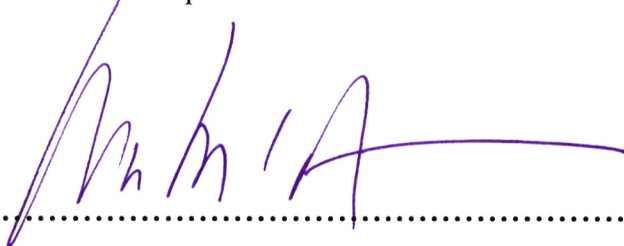
Minutes of the twenty first sitting were confirmed as a true record of proceedings having been confirmed and seconded by Sen. Johnson Sakaja, MP and seconded by Sen. Ledama Olekina, MP.

MINUTE NO. SEN/SCST/123: CONSIDERATION AND ADOPTION OF COMMITTEE REPORT

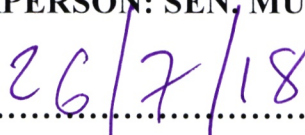
The Committee held lengthy deliberations and adopted the report with a majority of the membership (5) present (signed copy attached), having been proposed and seconded by Sen. Ledama Olekina, MP and Sen. Johnson Sakaja, MP.

MINUTE NO. SEN/SCST/124: ADJOURNMENT

The sitting was adjourned at 8.30 p.m.

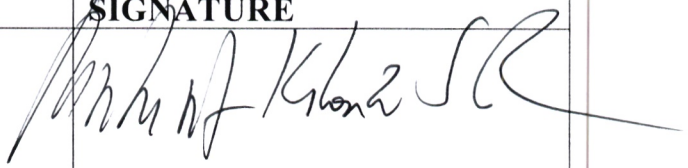
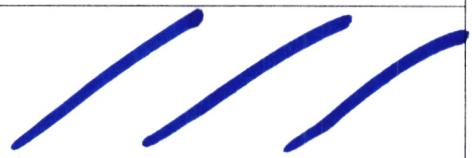
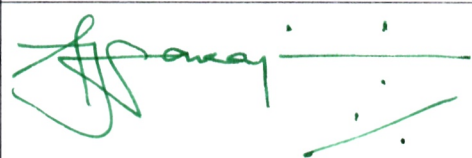
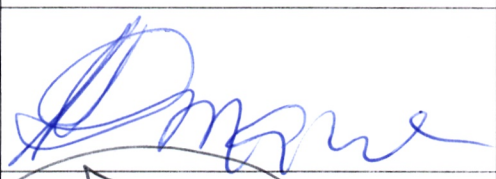
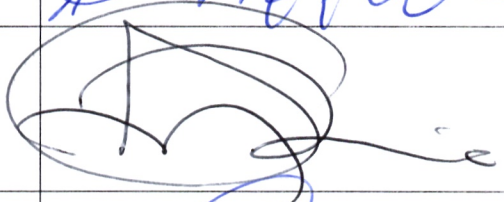
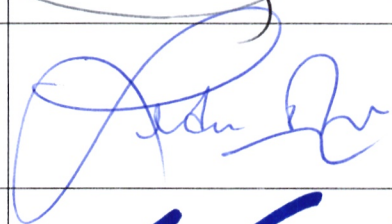
SIGNATURE.....

(CHAIRPERSON: SEN. MUTULA KILONZO JUNIOR, MP)

DATE.....

**THE SENATE
ADHOC COMMITTEE ON THE SOLAI DAM TRAGEDY
FINAL REPORT ADOPTION ROLL**

DATE 23/7/2018 VENUE MAIN CHAMBER

SENATOR	SIGNATURE
Sen. Mutula Kilonzo Junior, MP -Chairperson	
Sen. Mithika Linturi, MP -Vice - Chairperson	
Sen. Fatuma Dullo, CBS, MP -Member	
Sen. Sakaja Johnson, MP -Member	
Sen. (Eng.) Ephraim Maina, EBS, MP -Member	
Sen. (Prof.) Imana Malachy Ekal, MP -Member	
Sen. (Arch.) Sylvia Kasanga, MP -Member	
Sen. Ledama Olekina, MP -Member	
Sen. Susan Kihika, MP -Member	