



DAMNED DAMS

EXPOSING CORPORATE AND STATE IMPUNITY IN THE SOLAI TRAGEDY

A report by the Kenya Human Rights Commission, Freedom of Information Network and Mid Rift Human Rights Network





ISBN:978-9966-100-38-2

Published by:

Kenya Human Rights Commission

P.O Box 41079-00100, Nairobi,

Kenya Gitanga Road opp. Valley

Acade Shopping Centre Phone

Email: admin@khrc.or.ke

Cell 0722-264497/0733-629034

Twitter: @thekhrc

Facebook: Kenya Human Rights

Commission

Freedom of Information Network,

P.O. Box 2275 - 20100, Nakuru

Baraka Plaza 3rd floor

E -Mail: foi.riftvalley@yahoo.com

Cell: 0720361038/0771338898

Midrift Human Rights Network (MIDRIFT

HURINET) Mburu Gichua Road, opposite

Nakuru Central SD church.

P.O Box 16326-20100, Nakuru Kenya.

Email: info@midrifthurinet.org

Cell: 0702520894

Facebook: Midrift Human Rights Network

Website: www.midrifthurinet.org

Twitter: @midrifthurinet

TABLE OF CONTENTS

ACRONYMNS, ABBREVIATIONS AND GLOSSARY OF TERMS	3
ANNEX LIST	4
MAP OF SOLAI/ SITE OF THE INCIDENT	5
ACKNOWLEDGEMENT	6
DEDICATION	7
FOREWORD	8
EXECUTIVE SUMMARY	10
CHAPTER 1	17
METHODOLOGY IN DOCUMENTING AND RESPONDING TO THE SOLAI DAM TRAGEDY	17
CHAPTER 2	20
THE PROFILE, INTERESTS AND CONDUCT OF THE PATEL COFFEE ESTATE.....	20
CHAPTER 3	23
THE TRAGEDY AND ITS IMPACT.....	23
1. The Tragedy	23
2. Impact on the Community.....	24
CHAPTER 4	30
RESPONSE TO THE TRAGEDY.....	30
1. Rescue and Immediate Responses.....	30
2. Immediate Support to Victims	30
3. Operational Gaps and Recommendations.....	31
4. Intermediate Actions Taken	32
5. Administrative, Legal and Policy frameworks.....	33
CHAPTER 5	37
CAUSALITY AND CULPABILITY	37
1. Introduction	37
2. Major Violations and Atrocities Committed by Duty Bearers	38
3. Liability of the Company and State Agencies.....	43

CHAPTER 6	48
KEY OPERATIONAL AND POLICY ISSUES AND RECOMMENDATION	48
1. Legal Actions	48
2. Administrative Actions by Authorities on the Urgent/ Pertinent Issues to the Victims 49	
3. Investigative Actions and Reports by State Institutions.....	50
4. Durable Solutions and Remedies for Harm and Damages Suffered	51
5. Policy and Legislative Actions	53
6. Reflection on and Documentation of Related Violations and Disasters Responses	54
ANNEX A: Article; IEK- Solai Dam disaster was not an accident but due to human error. <i>Published on 17th of May 2018.</i>	57
ANNEX B: Statement by the Cabinet.....	58
ANNEX C: Parliamentary Hansard on Patel Estate issued on <i>12th November 1980.</i>	60
ANNEX D: A complaint letter written to Kenya Red Cross by a victim of the Solai tragedy.	61
Annex E: Request for assistance and advice by a victim of the Solai tragedy.....	62
ANNEX F: Press statement from Patel family and members of the Patel farm management. <i>Published, on May 15, 2018 Daily Nation page 5</i>	63
ANNEX G: Information on the ownership of Patel Coffee Estates	64
ANNEX H: Request for memoranda on dam planning, design, construction, operation and decommissioning- <i>Published on June 19, 2018 page 22</i>	65
ANNEX I: Solai Incident Questionnaire to Duty Bearers.....	66
ANNEX J: Solai Incident questionnaire to community members.....	68
ORGANISATIONS PROFILE.....	70
The Kenya Human Rights Commission	70
Freedom of Information Network (FOI NETWORK).....	70
Mid Rift Human Rights Network.....	71

ACRONYMNS, ABBREVIATIONS AND GLOSSARY OF TERMS

CITAM	Christ Is The Answer Ministries
EIA	Environmental Impact Assessment
EMCA	Environmental Management Coordination Act
FHK	Flamingo Horticulture Kenya
FOI	Freedom of Information Network
HURINET	Human Rights Network
IEK	Institution of Engineers of Kenya
KCSE	Kenya Certificate of Secondary Education
KDF	Kenya Defence Forces
KHRC	Kenya Human Rights Commission
KRC	Kenya Red Cross
KNEC	Kenya National Examinations Council
MCA	Member of County Assembly
MP	Member of Parliament
NDOC	National Disaster Operation Centre
NEMA	National Environment Management Authority
NDMU	National Disaster Management Unit
NYS	National Youth Service
UNGPs	United Nations Guiding Principles
WRA	Water Resources Authority

ANNEX LIST

Annex A: IEK: Article: Solai Dam disaster was not an accident but due to human error. Published on 17th of May 2018.

Annex B: Statement by the Cabinet.

Annex C: Parliamentary Hansard on Patel Estate issued on 12th November 1980.

Annex D: A Complain letter written by a victim of Solai tragedy.

Annex E: Request for assistance and advice by a victim of Solai tragedy.

ANNEX F: Press statement from Patel family of Solai and members of the Patel farm management. Published on May 15, 2018 Daily Nation page 5

ANNEX G: CR 12.

Annex H: Request for memoranda on dam planning, design, construction, operation and decommissioning- Published on June 19, 2018 page 22.

ANNEX I: Solai Incident Questionnaire to duty bearers.

ANNEX J: Solai Incident questionnaire to community members.

MAP OF SOLAI/ SITE OF THE INCIDENT



Photo credits: Ministry of Interior and Coordination of National Government Multi-Agency Report (9th to 19th may 2018)



Photo credits: Ministry of Interior and Coordination of National Government Multi-Agency Report (9th to 19th may 2018)

Solai is politically and administratively based in: Kabazi Ward, Subukia Constituency, Rongai Sub-County, Solai Location/ Division, Rongai District, Nakuru County in Kenya.

ACKNOWLEDGEMENT

The Kenya Human Rights Commission (KHRC), Freedom of Information (FOI) Network and Mid Rift Human Rights Network (HURINET) thank all who participated in the Solai Patel dam tragedy fact finding mission that has resulted in this report.

We cannot mention them all but we remain grateful to the many government officials, victims and representatives of agencies who talked to us on the tragedy. It was not easy for the victims to narrate their painful losses and experiences but they did so with courage and in the hope that no one has to ever experience what they did, the hope that they will be compensated and resettled soon and that the cause of the tragedy will be investigated by the government agencies and anyone found culpable held to account.

Much gratitude goes to the phenomenal fact finding team that was derived from the KHRC, Mid Rift HURINET and FOI Network. We acknowledge the contribution of the following KHRC staff: George Kegoro, Davis Malombe, Diana Gichengo, Elizabeth Kariuki, Sylvia Mbataru, Mary Kambo, Sandra Oyombe, Aki Nasanga, Martin Mavenjina, Bernard Mugendi, Faith Alubbe, David Ng'ethe and Duncan Kung'u. From the Mid Rift Human Rights Network, Joseph Omondi and Moses Chavene, and from the FOI Network, Robert Njenga.

Also, we thank Davis, Diana, Elizabeth, Mary, Sylvia, Robert and Moses for coordinating the fact finding mission. While Davis, Sylvia, Mary and Elizabeth authored the report, Elizabeth and Medika Medi were responsible for editing and design, respectively. Moses and Robert made available very useful information and contacts on the ground. Faith and Sandra provided insightful policy and case law researches, respectively. Aki Nasanga, Martin and Irene Soila provided great support to the project.

We also thank George Kegoro, the Executive Director of KHRC; Joseph Omondi, the Executive Director of Mid Rift HURINET and Robert Njenga, the Coordinator of FOI Network, for the strategic support and guidance in the fact finding mission and the development of this report. We thank Robert, George and Joseph for pioneering and nurturing the very novel and timely, fact finding idea. We remain indebted to Mid Rift Network for hosting the mission and KHRC for providing financial and technical support.

DEDICATION

We dedicate this report to the Solai victims and residents who have and continue to suffer egregious human rights violations in the hands of Patel Coffee Estates Limited. Your resilience and dedication to justice is a great inspiration to those who continue to face gross corporate- related violations in the society.

May Justice Be Our Shield And Defender!



FOREWORD

At around 7.30 p.m. on 9th May 2018, a man-made dam within the vast Patel Coffee Estates located in Solai, Nakuru, broke its banks gushing out 190 million litres of water washing away settlements downstream. It left in its wake; gruesome deaths, horrible injuries (physical, mental and emotional), massive destruction of property and unprecedented displacement of people.

Ironically, this disaster happened at the time, when another dam owned by Finlays in Naivasha had its water overflowing into the Sher Karuturi flower farm, and in the process, causing minor damage to the premises of the company and its residents. Over the same period, Masinga dam, Kenya's largest hydropower dam, overflowed after it reached its full capacity thus exposing the people downstream in Garissa and Tana River counties to grave danger.

Questions still linger as to what exactly caused the bursting of the Solai dam. Residents of affected villages: Endao, Energy, Nyakinyua, Milmet and Arutani in Solai division believe that the bursting was brought about by excess water from three rivers that were blocked by the Patels and directed to the ill-fated dam.

The burst dam is amongst eight that have been constructed within the vast Patel Coffee Estates Ltd. The dams are fed by water from rivers that have been diverted to the farm mainly for dairy farming, nurturing of coffee bushes and macadamia trees as well as the production of flowers for the export market.

For the last forty years the presence of the dams on the estate, the diversion of natural sources of water and the general conduct of the company have been the subject of public and policy discussions. Concern about the company was first raised before the National Assembly by the then Subukia Member of Parliament, Koigi Wamwere on 12th November, 1980. At the time, Ngengi Muigai, then Assistant Minister for Water Development (representing the Ministry in Parliament), committed to address the issues. There is no evidence that this commitment was ever followed up.

Despondently, the status of the Patel dams has remained unaddressed for decades due to lack of political goodwill from the requisite institutions and blatant disregard of the law by the Patel Coffee Estates Ltd. This unfortunate tragedy catapulted a myriad of issues to national and international limelight is a classic case of inaction by the State to tame and regulate corporate behavior and a clear depiction of impunity on the part of the business.

It is on that basis that the KHRC, FOI Network and Mid-Rift HURINET commissioned a joint fact finding mission on 17th May 2018 to look into the causes, impact and possible

actions. The team relied on both the primary and secondary sources of data and information.

This report sheds light on the man-made disaster that happened in Solai village highlighting the causes of the tragedy which revolve around allegations of corporate impunity and the failure of government agencies to take appropriate action to avert the tragedy. The report goes further to propose a number of legal, urgent, administrative, and legislative and policy actions towards addressing all the underlying issues.

It is hoped that this report will not only inform the ongoing investigations by the various agencies of the government but will also be a tool for reforming the various government departments charged with regulating management of private and public waters sources. More importantly, it is hoped that the report will propel the government towards quicker restitution for the victims of the tragedy, as well as compel action to be taken on every person found culpable for the senseless loss of lives, property among other possessions and valuables in the Solai tragedy.

George Kegoro,
Executive Director,
Kenya Human Rights
Commission, NAIROBI

Joseph Omondi,
Executive Director
Mid Rift Human Rights
Network, NAKURU

Robert Njenga,
Coordinator Freedom of
Information Network,
NAKURU

June 18, 2018

EXECUTIVE SUMMARY¹

Damned Dams: Exposing Corporate and State impunity in the Solai Tragedy

The events of 9th May 2018 remain firmly etched in the minds of Kenyans, and more so, the victims of the harrowing, traumatic and devastating man-made disaster that has come to be referred to as the Solai Dam tragedy. On the material day, Kenyans were shocked to hear of the distressing and dreadful news of the bursting of a mammoth private dam in the Patel Coffee Estates Limited.² A large section of an otherwise quiet and little known community living in Solai, Nakuru County, had been literally swept off when the broken dam gushed out 190 million litres of water destroying anything on its way including homes, people, farm animals and produce, public amenities, infrastructure, and other facilities and assets. Pictures of unprecedented carnage were beamed on different media stations as eye witnesses and victims interviewed narrated heart wrenching accounts of the unfortunate incident. At that point, everything seemed to have come to a standstill and the attention of Kenyans and the world was quickly drawn to the emerging unparalleled humanitarian crisis.

Kenya Human Rights Commission, Freedom of Information Network and Mid Rift Human Rights Network conducted a preliminary desk review of the matter and came up with a report titled 'Duty to Protect, Obligation to Redress: The Legal Issues Arising From the Solai Dam Tragedy. The three organizations commissioned a joint fact finding mission on 17th May 2018, to establish the facts of this matter with a view to documenting the violations, ascertaining culpability, proposing recommendations for action and demanding accountability from relevant duty bearers at various levels. This mission collected both primary and secondary data to obtain a good understanding of the matter. The primary data was collected through interviews with victims, workers at the farm, key informants such as government officials in Nakuru county and representatives of regulatory bodies among them NEMA and WRA among others.

To augment this, the mission conducted a thorough review of media reports, Parliament and Senate Hansards, statements issued by various actors including the President and Cabinet Secretary in charge of the Ministry of Water and Sanitation, information obtained from the Companies' Registry documents and from a press conference held by the Institution of the Engineers of Kenya (IEK). Further, an analysis of the tragedy *vis- a-vis* case law and the national and international legal and human rights frameworks was undertaken to support our findings and recommendations.

In our report, entitled: **Damned Dams: Exposing Corporate and State impunity in the Solai Tragedy**, we found 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

¹ Published and dispatched as a public statement in a press conference held at the Solai Catholic Church on Wednesday, June 20, 2018.

² Also known as Patel Farm which is located in Nakuru County.

people were displaced. Public amenities like the Solai Nyakinyua Primary and a Private Medical Dispensary were also heavily damaged. The unfortunate event resulted in the closure of most of the surrounding schools since they were converted in to holding camps for the 223 displaced households. Such schools included; Jamhuri Primary School, Solai Nyakinyua Primary, Akuisi and Ruiru Secondary Schools. There were also damages to farms in Nyakinyua, beacons to plots and power connections; loss of monies (in cash), food stuff, assets, personal valuables, certificates, official documents among others. People also suffered and continue to face indescribable and irreparable social, emotional, psychological and mental harm and anguish.

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 Defence 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.

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.

Other gaps entail the failure to: finalize the DNA testing of one deceased child to facilitate the burial; protect victims who are demanding for accountability in the management of the rescue and support processes; provision of school uniforms to the affected children; fully support all the genuinely affected victims and involve victims in the key decisions affecting them. There is also the failure to deal with the water drained from 2 dams, now flooding people's farms and homes and the limited psycho-social supports to the victims.

Our findings provide overwhelming evidence that the bad conduct of Patel Coffee Estates Limited was not a NEW phenomenon for it was first raised in Parliament on November 10, 1980 to no avail. Moreover, the dam tragedy was NOT an accident BUT a man-made disaster that was bound to happen sooner or later. This was also confirmed by the Government of Kenya through a statement issued by the Hon Simon Chelugui,

the Cabinet Secretary in charge of the Ministry of Water and Sanitation on Friday, 11th May, 2018 where he posited thus: “the tragedy was not an accident but a case of human error”. The same position was affirmed by the Engineers Institute of Kenya, the Senate Committee on National Security, Defense and Foreign Relations (who visited the site), and the Senator for Nakuru County (Hon Susan Kihika) among other policy makers.

The fact finding mission unraveled systemic corporate-sanctioned human rights abuses owing to corporate capture and impunity by Patel Coffee Estates Limited. Also evidenced include stark negligence, weak and compromised regulatory and accountability regimes under the National Environment Management Authority (NEMA); Water Regulatory Authority (WRA); Registrar of Companies (ROC), the local administration and the National Police Service.

In a very worrying revelation, interviews with victims, some who work in the Estate, indicated that in the last few years, communities living in the surrounding villages had complained severally to the farm owners and the local leaders; through parents’ meetings and chiefs’ *barazas*, about visible cracks on the ill-fated dam but no meaningful actions had been taken by the company and state authorities. Similarly, the community indicated that they had also made complaints to the area Member of Parliament about blocked rivers by the farm owners but there was still no action taken, even after one other dam overflowed and leaked due to cracks in 2012.

Further, in a very interesting twist, a search undertaken at the Companies registry on Kensalt Plantation Ltd revealed that no such company was registered under such a name at the registry. Additionally, the company has been accused by NEMA and WRA of operating dams illegally without all requisite licenses.

We therefore recommend the following set of actions:

1. Legal Actions

Based on the findings of this report, the collapse of the Solai Dam was caused by omission and commission of various actors. We therefore demand that:

- 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 tragedy³ or mismanaging the resources related to the rescue and response processes. Their gross acts of omission and resultant incompetence, negligence, complacency and complicity caused the death, destruction and displacement of the residents of Solai.
- b) We also categorically state that the Patel Coffee Estates Ltd has criminal liability in this matter based on the doctrine of strict liability espoused in the *Rylands v*

³ Mainly by ignoring early warning signs, operating illegal dams, illegal diversion of water and other violations

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”.

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

The fact finding report revealed that affected families not only lost loved ones but have also been displaced as a consequence of the unfortunate incident.

We therefore demand that:

- 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 to the following specific categories of victims:
 - Tenants who lived in semi-permanent houses, made to receive a one off payment of Kshs. 30,000;
 - Tenants living in semi-permanent houses, to get a one off payment of Kshs. 50,000
 - Land lords with permanent structures will receive a one off payment of Kshs. 100,000.

3. Investigative Actions and Reports by State Institutions

After the unfortunate event, various state and non-state actors documented the incident and made instrumental recommendations to avert such an occurrence again. We therefore recommend that:

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.
2. We also call for speedy surveying and titling of various parcels of land in the area as committed by the government, among them, Nyakinyua Solai farm. Further, we call upon the Labour Office in Nakuru County to initiate regular inspections within the Patel Coffee Estates Farm with a view of assessing labour rights violations and taking the necessary legal actions.
3. Further, we recommend that the Kenya Red Cross and the local administration discloses the totality of resources collected (in cash and kind) and how these resources availed were utilized in the support of the victims. There is also the need to investigate and deal with the government and humanitarian officials accused of corruption in the profiling of victims and disbursement of relief and financial support received.
4. We welcome the formation of the Special Committee of Senate investigating the Solai Tragedy and call for rigour and autonomy in the execution of its mandate. Moreover, we embrace the appointment of the Taskforce on Inquiry, Investigations, Assessment of Operations, Regulating Regimes, Safety and General Status of Dams in the Country and upon this taskforce to adopt environmental and human rights impact assessment approach in the execution of its mandate.
5. Finally, and based on a request from the KHRC, we thank the United Nations Working Group on the issue of human rights and transnational corporations and other business enterprises for choosing Solai and Patel Coffee Estates Limited as one of its site for field visits in July 2018. The group (also referred to as the Working Group on Business and Human Rights) was established by the Human Rights Council in 2011 (resolution [17/4](#))⁴.

⁴ <https://www.ohchr.org/EN/Issues/Business/Pages/WGHRandtransnationalcorporationsandotherbusiness.aspx>

4. Durable Solutions and Remedies for Harm and Damages Suffered

It is important to note that what was promised or provided to victims was not remedies for the individual and collective harm suffered but initial humanitarian support to enable them manage the immediate impacts of the tragedy.

Thus the National and County governments and Patel Coffee Estate should support the Solai community in re-constructing the damaged properties, infrastructure and social amenities including houses, schools, bridges, hospitals, roads, electricity; replace lost documents; and reclaim eroded farms.

Beacons for the affected plots should be fixed and power reconnected to the necessary residents. There is need to improve the existing boreholes, especially the one in Nyakinyua, to serve various villages with water.

An inter-agency committee (involving victims) should be established to carry out a comprehensive assessment of the extent of major harms and damages suffered and provide compensation and other forms of remedies to victims. This should be in line with the United Nations Basic Principles on the Rights to remedy and Reparations for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law. Patel Coffee Estates Limited, being a key perpetrator should provide some resources for the proposed reparatory programmes.

Note: *All remedies and other actions to support the victims by government and other agencies should ensure their adequate representation and participation. The solutions should be agreed on mutually and not imposed on the victims*

5. Policy and Legislative Actions

It is evident 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. We therefore:

- a) Call for the 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) Demand for an urgent 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.

- c) Appeal for the conclusion of the 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.

6. Reflection and Documentation of Related Violations and Disasters Responses –

We advocate for sustained documentation and responses to corporate related violations and reflections about the lessons and challenges realized in the response to the Solai tragedy. Perhaps our report and the Multi-Agency document published by the Government of Kenya⁵ can be points of reference.

We call for accountable and ethical conducts by the business entities; mainstreaming of risk assessment in all environmental audits, land assessments, and general environmental governance. We also demand for risk identification, assessment, monitoring and early warning on disasters; extensive public education and knowledge management in assessments and responses to disasters; disaster prevention by reducing underlying causes; preparedness for effective response and recovery and the adoption of a human rights approach to humanitarian support.

In Conclusion: We should never again wait for disasters to happen for different actors to intervene. Eternal vigilance and accountability is key. Victims should be involved in the decisions and processes affecting them. To that effect, victims should establish and manage an inclusive and accountable association to deal with all the above issues and processes.

⁵ Republic of Kenya, Ministry of Interior and Coordination of National Government Multi--Agency Report, “Solai Dam Disaster”, Rongai Sub-County, Nakuru County, 9th to 19th May 2018.

CHAPTER 1

METHODOLOGY IN DOCUMENTING AND RESPONDING TO THE SOLAI DAM TRAGEDY

This report is the product of a prolific partnership between the Kenya Human Rights Commission (KHRC), Freedom of Information (FOI) Network and Mid-Rift Human Rights Network. The key data collection methods applied entailed fact finding and a review of secondary sources of information. “Fact-finding means a mission, visit or activity mandated by an NGO to ascertain the relevant facts relating to and elucidating a situation of human rights concern, whether allegedly committed by State or non-State actors”.⁶



Representatives from Kenya Human Rights Commission, Freedom of Information Network and Mid Rift Human Rights Network during the fact finding mission in Solai.

⁶ <https://www.ibanet.org/Document/Default.aspx?DocumentUid=D7BFB4EA-8EB6...>

Thus, on 17th May 2018, a fact finding mission comprising representatives from the three organizations visited the market centre, facilities and farms that were most affected by the tragedy that occurred on 9th May 2018 when a man-made dam within the vast Patel Coffee Estates located in Solai, Nakuru, broke its banks, leading to deaths and destruction and a massive humanitarian crisis.

The purpose of the mission was to investigate and document the causes and extent of damage, its impact and the responses by concerned authorities and recommend the necessary actions. The mission involved interviews with the key informants (government officials, civil society, development agencies, media personalities, victims and the citizenry in general) and the review of the necessary literature.

The interviews were conducted with key officials ranging from the Chief of Staff at the Nakuru County Government, area Member of the County Assembly (MCA), a former Member of Parliament (MP) Koigi Wamwere, officers from the Water Resources Authority (WRA) County office, County National Environmental Management Authority (NEMA) officials, County Labour Officer, area Assistant County Commissioner, officials of the Kenya Red Cross civil society actors, journalists, current and former school head teachers and area chiefs. In this regard, the interviewed persons had been pre-identified as relevant to the mission.

In addition, about 30 victims were interviewed, including property owners, landlords, business owners, tenants and current and former workers at the Patel farm. Although there were pre-developed questionnaires, most of the interviews did not entirely depend on the semi-structured set of questions.

We also observed developments on the ground, especially within the Solai Boys High School and local market centre where many victims were hosted, and others integrated, respectively. All the information obtained was recorded in the form of short notes and also captured photographically.

Secondary sources of information included media reports (both print and electronic), Parliament and Senate Hansards, statements issued by various players including the President and Cabinet Secretary in the Ministry of Water and Sanitation, information obtained from the companies registry documents and information from a press conference held by the Institution of the Engineers of Kenya (IEK). An analysis of the tragedy against case law and the national and international legal and human rights frameworks was also undertaken to support our findings and recommendations.

However, as with any fact-finding mission, factors including time constraints, political sensitivities and unavailability of some of the targeted respondents meant that the list of sources consulted and information provided was not exhaustive.

Finally, since ours was a pro-active and action based mission, we strived to respond to the emerging or unresolved issues by raising the same with the relevant authorities (both local and national), organizing victims to demand for their rights and engaging the media through interviews and the press statement we dispatched on the preliminary report on 25th May, 2018.

CHAPTER 2

THE PROFILE, INTERESTS AND CONDUCT OF THE PATEL COFFEE ESTATE⁷

Mr. Shantilal Nathalal Patel arrived in Solai from India in 1930 with the colonial settlers. He started off as a manufacturer of Indian sweets and went on to set up a small shop where he sold farm produce to the settlers on a small scale as the farms were exclusively owned by white settlers. Later he went on to buy Lorries and began transporting milk for all the dairy farmers to the creameries. After independence he bought his first land estate from a settler who was known to the locals as Kayunga. The former Kamungi farm is what is now called the Patel coffee estate and houses the biggest of the dams known as Tindress dam which, since the tragedy, has been drained of water in an initiative by the government to empty dams in the farm found to be structurally unsound and potentially risky to neighboring communities.

Mr. Patel then went on to buy another farm named Ottoman estate from a settler by the name Mercantile. He would later acquire the third farm from Endao Farmers' Cooperative which was a section of the cooperative's land located on the upper side of the road so as to ensure that there was break of ownership between the Kamungi estate and the Ottoman estate. Much later, Patel bought the Milmet estate from a settler by the name Jack. The Patel estate is therefore a combination of four estates previously owned by white settlers and which is watered by 8 dams. In the 1980s, Mr. Patel sold part of his Ottoman estate to the locals. This settled over 600 households on what would later be known as the Nyakinyua settlement but due to leadership wrangles, the inhabitants only hold certificates of ownership of shares commonly referred to as *share certificates*.

It is noteworthy that issues and concerns about the dams in Patel Coffee Estates have been raised by surrounding communities for a long time. In 1980, the then Member of Parliament for Subukia Constituency, Koigi Wamwere, raised in the National Assembly the issue of diversion of water from the surrounding rivers by the Patel Coffee Estates which was causing water shortages experienced by small scale farmers in Mangu, Bomet, Nyandarua and Ndabibi areas of Solai in Nakuru.⁸ In response to the question, the Assistant Minister for Water and Development confirmed that his Ministry was aware that during drought, the said villages suffered acute water shortages. He also confirmed that Solai stores were authorized to extract only 2500 gallons of water per day for domestic use and 40,000 gallons of water per day for irrigation of coffee, puffing and washing⁹.

The Assistant Minister, however, indicated that his ministry was not aware that the company was blocking the flow of a river in the area for purposes of irrigating coffee.

⁷ As shared by a local leader who has lived in Solai since 1940

⁸ Hansard of the National Assembly of Kenya; 12th November 1980 – See attached Annex C

⁹ Ibid

He assured the house that his ministry would investigate this complaint. It is unclear whether any action was ever taken thereafter¹⁰.

Our findings established that the construction of dams during the colonial and post-colonial period was done haphazardly at best. Most of the dams, including those in Solai, were built without community participation and little consideration was given to the needs of the surrounding communities who rely on agriculture as a means of livelihood. Little attention was given to the social and environmental protocols when building the dams and priority was given to immediate needs (economic and social development) for the political elites over those of future generations and ecosystems.

Little was known about Patel Coffee Estates before the dam tragedy that saw at least 47 lives lost and more than 5000 families rendered homeless in Energy and Nyakinyua villages, in Solai, Nakuru County. The Coffee Estate has been passed down generations from Shantilal Nathalal Patel to the current CEO Perry Mansukh Kansagra, Shantilal Patel's, great grandson.

Over time, the business grew into a multibillion agribusiness empire that now includes coffee and macadamia farming, production of flowers and dairy farming. The flowers, branded as Solai Roses, are sold in the export market mainly in Scotland and through the Dutch auction¹¹. From his dairy farm, Patel is said to be the biggest supplier of milk to Brookside Dairies, one of the biggest milk processing companies in Kenya, and said to be linked to the family of President Uhuru Kenyatta

Registered on 16th March 1966¹², Patel Coffee Estates is just one business within the broader Solai Group of Companies. Solai Group of Companies is the mother company for Enkasiti Flower Growers Limited based in Thika, Rak Ceramics in Nairobi and a company only known as Supplies and Services Limited. Information obtained from the Registrar of Companies through the eCitizen¹³ portal confirms that the Patels own the Coffee Estates and Supplies and Services Company. In both companies, Shantilal Nathalal Patel is listed as a shareholder, Perry Mansukh as a director while Mansukhlal Shantilal Patel is listed as both director and shareholder. For Enkasiti Flower Growers Limited Company, Mansukhlal Shantilal Patel is listed as both director and shareholder while Saimar Limited and Margaret Wanjiku Saitoti, said to be the widow of a former Vice President of Kenya, George Saitoti, are listed as shareholder and director respectively. The connection between the Patels and the influential personalities in Kenya is further established from the ownership of Enkasiti Flower Growers Company.

¹⁰ Ibid

¹¹ Information received from workers during the fact finding mission.

¹² Registrar of Companies in Kenya, Ecitizen Portal, 16th May 2018.

¹³ <https://www.ecitizen.go.ke/ecitizen-services.html>

The Solai Group of Companies is said to have operations in 14 countries including India and the United Kingdom¹⁴. The Patel family also owns the Malindi-based Kensalt; Africa's largest producer of salt with an estimated annual output of 1 million tonnes. Kensalt controls 75% of the salt market in Kenya with a further 50% control of the salt market in Uganda¹⁵. The dam that burst was located in what was previously Milmet Estate which was acquired from Jack. At the time that this fact finding mission was conducted, it emerged that that the dams on the vast Patel Estate had blocked one river and 3 streams; Tindress dam had blocked river Kabaazi which flows into Lake Baringo, Ottoman dam had blocked a stream that would flow down into the Nyakinyua settlement scheme and Milmet dam had blocked a stream that would flow through Endao settlement farm¹⁶.



One of the entrances to Patel's farm in Solai.

¹⁴ John Kamau, "Perry Manskulal, the billionaire behind Solai killer dam", Daily Nation, 13th May 2018.

¹⁵ Ibid

¹⁶ As shared by a local leader who has lived in Solai since 1940

CHAPTER 3

THE TRAGEDY AND ITS IMPACT

1. The Tragedy

Around 7.30 p.m. on 9th May 2018, a human-made dam within the vast Patel Coffee Estates located in Solai, Nakuru, broke its banks gushing out 190 million litres of water through settlements, leaving in its wake; gruesome deaths, horrible injuries (physical, mental and emotional), massive destruction of property and an unprecedented displacement of people.



Deep gully erosion caused by water from the Solai Killer Dam.

Questions linger as to what exactly caused the bursting of the dam. Residents of affected villages, namely, Endao, Energy, Nyakinyua, Milmet and Arutani in Solai division believe that this was occasioned by structural deficiencies of the dams which caused the dams to burst under the pressure of excess water from three rivers that were blocked by the Patels and directed to the ill-fated dam. In what turned out to be one of the worst human-made disasters and the most glaring cases of corporate impunity and state negligence, the Patels owned and managed nearly 8 private dams without the requisite permits and accountability to the public.

Ironically, this disaster happened at the time, when another dam by Finlays in Naivasha had its water overflowing into the Sher Karuturi flower farm, and in the process, causing minor damages to the company and its residents. Incidentally, and over the same period, Masinga dam, Kenya's largest hydropower dam, overflowed after it reached its full capacity thus exposing the people of the downstream Garissa and Tana River counties to grave dangers.

2. Impact on the Community

The Solai tragedy left in its wake acute suffering and destruction of unprecedented proportions for the neighboring community. This included tens of gruesome and devastating deaths, numerous grievous physical injuries and trauma, loss of homes and farm animals, wiping out of several farms, businesses, social amenities and infrastructure; and unprecedented displacement of people. The harm and damage suffered was both personal and communal.

When KHRC, Mid Rift HURINET and FOI Network arrived in Solai a week after the tragedy for a fact finding mission, residents of Energy village, one of the villages worst hit by the disaster, were still trying to come to terms with the occurrence of the fateful night. A few businesses were open, perhaps in a desperate attempt to return to normalcy.

But the aftermath of the disaster was still apparent one week later. A fresh grave could be seen uphill on the Patel Farm. This was the place where about six people from northwestern Kenya were buried as their families were unknown to the locals. Debris of damaged houses and vehicles were a stark reminder of the extent of destruction caused by the gushing waters. Boulders, loose twigs and fallen trees were yet another reminder.



One of the graveyards in Nyakinyua village, Solai, where three victims of the killer dam were buried.

Generally, victims fell within the following seven categories:

- i.** Those who died and had their bodies taken to the mortuary in preparation for burial;
- ii.** Those who got injured and required the necessary medical and psycho-social support;
- iii.** Tenants and land lords who lived in the area and had their shelter; destroyed
- iv.** Landlords whose rental houses were partially or completely destroyed;
- v.** Key public facilities and institutions that got grossly damaged;
- vi.** Business people, whether tenants or land lords, who lost their investments in the process;
- vii.** Land owners, especially in Nyakinyua farm whose produce and soil were completely washed away.
- viii.** People who in whatever category, lost their personal valuables such as certificates, official documents etc.



What remained in the aftermath of the Solai Dam tragedy.

a) Deaths

Although official reports by the government and media indicate that 47 people lost their lives, community members in the affected villages in Solai opined that there could have been more casualties owing to the possibility that there may have been some non-locals who may have visited the area on the fateful night and suffered death. As tabulated below, most of those affected were women, children and elderly persons. This is because, there were higher chances of them being at home by the time the disaster happened at 7:30pm.

The number of deaths was disaggregated as follows¹⁷;

Subject	Adult male	Adult female	Child male	Child female	Total
Deceased	8	16	12	11	47

Moreover, irate members of the community, on the same night, headed to the farm demanding to get access to the premises. Upon seeing the angry mob, the security

¹⁷ Ibid

guard at the farm tried to restrain them from getting access. However, in yet another tragic turn of events, the mob descended on the guard killing him instantly.

b) Injuries and Hospital Admissions¹⁸

Total hospital admissions were 41. At the time of publishing this report, 4 people were still admitted in Bahati Sub-County Hospital.

Damage to Houses



The foundation of one of the buildings which was swept away by water from the dam.

The number of affected households was categorized as follows¹⁹

- i.** Tenants - 149 households
- ii.** Land Owners with semi-permanent houses -65 households
- iii.** Land owners with permanent house - 9 households

c) Destruction of Public Utilities

Public amenities were also damaged including Solai Nyakinyua Primary and a Private Medical Dispensary.

¹⁸ ibid

¹⁹ Ibid



Private medical center damaged by the Solai dam waters.

Following the tragedy, students at Jamhuri Primary School, Solai Nyakinyua Primary, Akuisi and Ruiru Secondary School could not go to school since these schools were closed temporarily.

d) Displacements

A total of 5,000 people were displaced by the calamity. 223 households were sheltered at the Solai Secondary School after the raging waters swept their homes away.²⁰

e) Other losses and damages

These include the loss of businesses and investments; complete erosion and destruction of soil at the Nyakinyua farms; obliteration of beacons at the Solai shopping centre; disruption of power connection due to destruction of power lines; loss of money (in cash), food stuff, assets, personal valuables, certificates, official documents etc. People also suffered and continue to face irreparable social, emotional and mental harm and anguish.

²⁰ Report by the Ministry of Interior And Coordination of National Government, Multi-Agency Report **Solai** Dam Disaster, Rongai Sub County Nakuru County, 9th To 19th May 2018



A reflection of what is left of land owned by Solai Victims.

CHAPTER 4

RESPONSE TO THE TRAGEDY

1. Rescue and Immediate Responses

The rescue and response processes were led and coordinated by the Kenya Red Cross (KRC), National Disaster Unit (NDU) in collaboration with the local administration, security organs (including the National Police Service and Kenya Defence Forces), county officials, political leaders (including the area MP, MCA, Governor) and ordinary citizens.

Local citizens commenced the initial search and rescue efforts and were supported by the area MP and the MCA and later by the police and the National Youth Service. Thereafter, the Kenya Defense Forces took over from 10th May 2018, and continued the search until 15th May 2018. On this day, they scaled down but continued the search in what was described as an 'objective search'²¹.

According to the MCA for Kabazi Ward, Peter Mbae, within which the dam falls, the rescue team managed to evacuate about 40 people on the night of the tragedy and a total of 47 people lost their lives. According to Mbae, an intergovernmental committee was quickly formed on site²² on the night of the tragedy and members of the committee addressed the victims at 1 am, after evacuation efforts had subsided. Thereafter the committee proceeded to hold a crisis meeting until 4 am.

2. Immediate Support to Victims

The victims were sheltered at Solai Boys High School. They were released from the shelter on the fourth day of the tragedy. The school had been closed to accommodate them and thus they needed to be cleared so as to pave way for the earliest reopening of the school. All victims were to be paid via one of the electronic money transfers (MPESA) and for that process, the government took special measures to replace the destroyed and/or lost identity cards of the victims to enable them to access the assistance. Replacement of other documents was to follow thereafter pursuant to the relevant laws.

In addition to the financial assistance, other provisions, including food and clothing, donated by well-wishers were distributed to all categories of victims. Further, medical support was provided by the relevant agencies. Counseling services to the affected groups were also rendered by the Kenya Red Cross, churches (for instance Christ Is the Answer Ministries (CITAM) Nakuru) World Vision among others. The special cases

²¹ Objective search was clarified to mean searching in areas where bodies were likely to have been trapped or where there were leads provided by members of the public and not a general search in all areas within the way of the flow of the water.

²² See next page for the composition and roles given to the committee

addressed involved provision of the necessary support to women, children (for instance sanitary pads, food etc.) and persons with disabilities as well as those living with HIV/AIDS.

Thereafter, government also covered the burial cost for those who had died including the cost associated with the digging of graves, the provision of coffins, and clothing. Also the government waived mortuary and post mortem costs. While it was very encouraging to see the great roles played by the different players in the rescue and support processes, the Assistant County Commissioner noted that it somehow exposed the gaps in the local knowledge of the mandates and capacities of the different stakeholders involved in rescue and other disaster operations. This experience demonstrated the need for the local administrators and leaders in the country to have contacts of the key actors in the event of a similar or related disaster.

3. Operational Gaps and Recommendations

Interviews with community members revealed the following gaps pertaining to the immediate and interim support processes:

- Land owners (in plots and farms) and other integrated victims were yet to get the necessary material support of mattresses, blankets etc.
- There were allegations that area chiefs looted or diverted the supplies and other kinds of material support meant for the affected victims.
- There were allegations that the area chiefs extorted victims by demanding a share of the initial resettlement monies and that at the same time, chiefs unscrupulously expunged names of victims who resisted this extortion.
- There were allegations that the chiefs would irregularly add to the list of victims, people who had not been affected by the tragedy. According to the allegation, the chiefs would subsequently share the proceeds paid to these fake claimants.
- There were 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.²³
- There was delay in the transfer of the initial resettlement payments to some of the victims.²⁴
- There were complaints that a great number of victims who lost their loved ones were not involved in the planning and execution of their burials. The process was fully controlled by the government, which unilaterally established a burial date without consulting with families of victims or local community.
- There were allegations that while the government did not involve the local community in processes that followed the immediate response to the tragedy, the

²³ Letter dated 12th June 2018 by Solai Disaster Remnants to the Regional Coordinator.

²⁴ Ibid

government always consulted the Patel family in whatever decisions were to be made.

- There were accusations about an unaccountable reduction in the amount of money earmarked for the landlords, according to which some of the landlords were earmarked to receive/had received Ksh. 30,000 which was a lower sum of money than either Kshs. 50 000 or Kshs. 100 000 which the Kenya Red Cross had set aside for landlords, the differential in the higher amounts depending on the type of house they had prior to the tragedy.

The team raised these and other issues with the relevant authorities who indicated that they had created a process and an office to respond to those issues. They also requested that the team informs the victims affected to report to the Red Cross team and file complaints for action.

4. Intermediate Actions Taken

The mission takes cognizance of the other efforts undertaken that were meant to address the medium to long term needs and issues:

- The discharging of water, by the Kenya Defense Forces, held in two other dams that were considered dangerous to the residents.
- Commissioning of assessments on the state of the five remaining dams by WRA, Nakuru Water Company & Pipeline Corporation and Rift Water Service Board.
- The carrying out of initial assessments on the extent of damages caused to crops and land within the affected farms by the Ministry of Agriculture.
- The efforts by the county government to assess with a view to fixing new beacons of the plots affected in the shopping centre.
- The initiative by Kenya Power and Lighting Company to restore the electricity posts and lines which were destroyed for reconnection of power to be considered.
- The efforts by the Ministry of Devolution & ASAL through Huduma Centre to identify and support those who lost crucial personal documents, such as the national identity cards.
- The Director of Public Prosecutions' directive that the Inspector General of Police investigates the causes of the tragedy, establishes possible culpabilities and submits a report in two weeks.
- Establishment of a Special Committee of Senate under the initiative of Susan Kihika (Senator for Nakuru County) to investigate the Solai tragedy and report within 60 days. The Committee is led by Prof Kindiki Kithure, the Senator for Tharaka Nithi County²⁵.

²⁵ https://www.youtube.com/watch?v=z_jGAZx0Y8M

- Appointment of the Task Force on Inquiry, Investigations, Assessment of Operations, Regulating Regimes, Safety and General Status of Dams in the Country.
- Court actions, including that initiated by the Kabazi Ward MCA, Peter Mbae²⁶ and the one advanced by John Ngugi Mwangi (a victim via Chuma Mburu and Co. advocates) who is suing Patel Coffee Estates Limited for damages.²⁷

5. Administrative, Legal and Policy frameworks

The core governance systems in question pertaining to disaster, water resource and environmental management and the general administration of public affairs as per the Constitution of Kenya. Also relevant are the set standards and precedents on business and human rights discussed elsewhere in the report.



Victims of Solai Dam tragedy picking clothes that were donated by well-wishers.

²⁶ Seeking an Environmental Impact Assessment Report and Social Audit on the 6 remaining dams at Patel Farm

²⁷ For causing deaths, injuries, damage to property and a lot of suffering to Mr. Mwangis family.



Victims of the Solai dam tragedy and representatives from Kenya Human Rights Commission, Freedom of Information Network and Mid Rift Human Rights Network during a press conference on the findings of the fact mission, in Nakuru town.

Kenya has a draft National Policy on Disaster Management of 2009 that is yet to be updated in line with the Constitution of Kenya. Additionally, there is a disaster management Bill of 2018 before Senate. Disaster management is coordinated by National Disaster Operation Center that was put in place in 1998 after the bombing of the United States Embassy in Nairobi.

There is also the National Disaster Management Unit that came into the limelight after the Garissa attack that claimed at least 147 lives. The unit was visibly involved in the response to the Jomo Kenyatta International Airport (JKIA) fire, collapse of a building in Huruma slums and was responsible for the management of the Solai dam tragedy. It's not clear the roles and linkages of the center and the unit. It is hoped that the Bill before the Senate will synchronize the roles and linkages.

Moreover, the Water Act 2016 establishes a Water Resources Authority which is a regulatory authority mandated to issue permits amongst other functions²⁸. Issuance of permits is related to the entity vested with rights to water. In line with the provisions of the Constitution of Kenya, the Water Act, provides that all water resources are vested in the National Government in trust for the people of Kenya.²⁹ This has to be read with Section 9, which states that ‘every person has the right to access water resources’ and Section 7, which regulates this right to water providing that it may only be alienated or transferred in accordance with the Water Act. A ‘water right’ under this Act means ‘the right to have access to water through a water permit’.

The Act provides procedural safeguards against large landholders disenfranchising the rights of other water users in the issuance of new permits because “all new permits shall be subject to public consultation and environment impact assessment (EIAs)”, which is managed by the National Environment Management Authority (NEMA) under the Environmental Management and Coordination Act (“the EMCA”).

The team interviewed WRA officials who focused on two basic categories of water rights:

- “Basic water right” that people have as a consequence of primary legislation, which is permanent and not subject to any administrative process.
- The second is a “water-use right” conferred through an administrative process of water allocation, such as licensing.

Since water resources are vested in the state, it is the responsibility of the government to carry out various efforts to guarantee water availability for every person and for rudimentary needs. According to a WRA official, toward realization of their mandate the government has put in place laws and policies that govern water allocation. The official stated that:

“Water allocation” is the function of assigning water from a given source to a given user or number of users for abstracting it and applying it to a given use. He noted that within a system, where the state is responsible for a country’s water resources, the decision of who should abstract water and for what use rests with a public authority. The resulting authorization for use is granted, transferred, reviewed, and adapted as a “water-use right.” Priority for allocating water is defined in law or through strategy development or planning processes.

The permitting system is the tool that WRA uses to regulate the use of the water resources which is legally vested in the government of Kenya. Permitting, which includes authorization and permit issuance has been steadily increasing with more water users registering their abstractions with WRA.

²⁸ Sec 11 of the Water Act 2016

²⁹ Sec. 5 of the Water Act 2016



Solai Victims re-building one of the school walls which was destroyed by spillage from the Solai Dam

CHAPTER 5

CAUSALITY AND CULPABILITY

1. Introduction

The technical analysis below present an ugly case of corporate impunity and gross laxity by state authorities; all of which occasioned one of the worst human-made disasters in Kenya, thus demanding criminal, administrative and political accountability to the culprits.



A semi-permanent building in Nyakinyua village, Solai destroyed by waters from the killer dam.

In a statement issued by the Hon Simon Chelugui, the Cabinet Secretary (CS), Ministry of Water and Sanitation on Friday, 11th of May 2018,³⁰ **“the tragedy was not an accident but a case of human error”**. The same was, as indicated, below affirmed by the Engineers Institute of Kenya, Senate and other policy makers. Quite worrying is that the tragedy that occurred on the fateful night reveals blatant negligence by NEMA and

³⁰ Statement by the Cabinet secretary: <https://www.wra.go.ke/statement-by-the-cabinet-secretary/> - copied May 28,

WRA which are the authorities responsible for overseeing environmental and water resource management respectively.

Notably, complaints about the cracks and diversion of water had been made by the communities severally but to no avail. It is indeed unsettling that no action was taken by state authorities to inspect the dams in the area after one other dam overflowed due to cracks in 2012.

It is on that basis that some the senators called for the arrest and prosecution of Manskul Patel, the owner of Solai Dam, for negligence. They also called for the disbandment of the Water Resources Authority (WRA) for laxity in discharging its mandate.³¹

2. Major Violations and Atrocities Committed by Duty Bearers

a) Early Warning Signs Ignored

In a very worrying revelation, interviews with victims, some who work in the Estate, indicated that in the last few years, communities living in the surrounding villages had complained severally to the farm owners and the local leaders; through parents' meetings and chiefs' *barazas*, about visible cracks on the ill-fated dam but no meaningful actions had been taken by the company and state authorities. Similarly, complaints had severally been made to their area Members of Parliament about blocked rivers by the farm owners but there was still no action taken.

An interview with one of the victims also reveals a previous similar ordeal where another dam just adjacent to the one in question had a dangerous overflow in 2012. Luckily, there was an aquarium downwards used to rear fish that accommodated the overflow for some time before it could reach residents downstream. This saw water with fish flow to Energy village; presenting an opportunity for a free and an unexpected harvest by the residents. That one, he says, is the largest dam of all the eight, and would have caused worse damage had it been the one that burst on the fateful night.

A question that arises is why the relevant state officers and authorities never acted on the concerns about visible cracks in the ill-fated dam, and why the previous incident of 2012 in an adjacent dam did not elicit a need on their part to assess the capacity and viability of dams in that area.

b) Operating Illegal Dams

A meeting with two NEMA officials in the NEMA Nakuru office revealed that none of the dams at the Patel Coffee Estates were licensed. In fact, NEMA claimed to have been unaware of the existence of the dams until the tragedy struck. Further, although the dams have been in existence for more than 15 years, NEMA had not conducted any

³¹ <https://www.capitalfm.co.ke/news/2018/05/senators-want-solai-dam-owner-arrested-prosecuted/>

Environmental Impact Assessment (EIA) and neither had audits of the dams been done. However, the company had, as recently as last year, conducted self-assessment environmental audits under *Kensalt Plantations Limited* and submitted the report to NEMA.

In the report, the company indicated that it had two sources of water which included borehole and dam water and that it had a water permit from the Water Resources Authority formerly Water Resources Authority (WRA). In its reactionary statement after the tragedy struck, WRA publicly declared the water sources in Patel Coffee Estate unlicensed; and therefore illegal.



One of the dams within the Patel Coffee Estate in Solai, Nakuru.

The fact that the company withheld crucial information from NEMA by declaring only the broad categories of its water sources as opposed to a full disclosure on the actual number of dams and boreholes in place must have been an attempt to beat the system. Further, the report reads in part *“the company has applied for efficient discharge license for the flower farm, pulping unit and fuel station; however the license had not been issued by the NEMA.”* With this statement, it is hard to believe that NEMA did not know about the existence of the dams.

Further, in a very interesting twist, a search undertaken at the Companies’ registry on Kensalt Plantation Ltd revealed that no such company is registered under such name at

the registry. A number of questions beg answers: Who are the shareholders of Kensalt Plantations Ltd? What is their relation to Patel Coffee Estates? Do the alleged self-audits by Kensalt Plantations Ltd relate to the dams in Patel coffee Estate? On what grounds did NEMA decline to issue Kensalt Plantations the license applied for? Was the refusal informed by the findings of some audit? The self-assessment report indicated that the farm had a license for its water sources from WRA. On the other hand, WRA in its statement to the media denied issuing a license to the farm. Given these contradictions, the truth was unclear.

In an interview with a Nakuru County Government official at the Governor's office, he expressed concern over sub-standard dams built by investors in Nakuru County. The official alluded to another dam by Flamingo Horticulture Kenya (FHK); a flower company in Naivasha, that spilled over at 8:30 p.m. three weeks before the Solai incident displacing residents inhabiting and working within Sher Karuturi flower farm. These disasters according to him, cost the county government resources that would otherwise be channeled to other development projects. The official also pointed to negligence by the authorizing agencies and noted a lapse with regard to ensuring safety of the dams and also confirming the fact that the burst dam was structurally below standard.

The above sequence of events reveals the level of brazen corporate impunity by companies such as the Patel Coffee Estates. It is baffling that for many years the company has had the daring audacity to construct and maintain dams without adherence to relevant laws. The Cabinet Secretary in charge of Water and Sanitation, in a statement issued on 28th May 2018³², reiterated that the dam owner and operator was in breach of the law and did not adhere to the legal requirements. He also further noted that the dams on the farm were illegal, and assured the country that his ministry would assist the law enforcement agencies in their investigations. The cabinet secretary ordered the immediate draining of ALL dams at the Patel Farm, in order to avert any likelihood of a similar occurrence of disaster in the area.

Similarly, the Institution of Engineers of Kenya (IEK) took a similar position after they issued a statement indicating that the unfortunate incident that occurred at Solai dam was not an accident but the end result of human error. The engineers affirmed that the process used to construct the dam was wrong which was the reason it collapsed.³³ They emphasized that law enforcement agencies ought to be on high alert to ensure that the construction processes put in place are followed to the letter and that infrastructure projects are carried out by competent staff. In this regard, a representative from IEK stated:

³² Statement by the Cabinet secretary: <https://www.wra.go.ke/statement-by-the-cabinet-secretary/> - copied May 28,

³³ Press conference by the Institution of Engineers of Kenya, on 17th May 2018. Click on link to watch full media coverage : <https://www.nation.co.ke/video/news/4146788-4566644-esosabz/index.html>

“Someone has ignored due process for proper construction and operation of dams. They have gone about this process wrongly and hence the collapse.”³⁴

c) Illegal Diversion of the Flow of Natural Water Sources

As previously highlighted, Patel Coffee Estates had blocked Kabazi river and two other rivers hence obstructing the natural flow of water downstream. Several complaints from community members had been made to this effect. An interview with one of the chiefs confirmed that he too had reported the blockage of rivers by the Patels and consequent acute shortage of water for communities downstream. Unfortunately, no action was taken. The chief would resignedly say during the interview, *“Madam, hii nchi iko na wenyewe”* loosely translated to mean *“Madam, this country has its owners.”*



Water from one of the Patel dams discharged by government officials, flowing on the main road, into people’s farms and causing further damage.

NEMA officials indicated that construction of dams around natural water sources and consequent diversion of rivers was not in itself illegal. The precondition, however, is that a certain percentage of water; calculated and established by WRA through relevant laws, should be allowed to flow uninterrupted for access by those downstream. The fact that the Patels completely blocked the flow of Kabazi and two other rivers for decades without intervention from the relevant government agencies is a clear case of corporate

³⁴ Ibid

impunity and a demonstration of laxity by government agencies mandated to regulate ownership and management of private dams.

d) Corporate Capture and Labour Violations by Patel Coffee Estates

The coffee, cut flower and dairy farming ventures are said to provide employment to more than 1 000 residents of Solai³⁵. It is little wonder therefore that some of those affected prefer to look the other way and move on as if nothing happened. They are worried that by speaking up they will have no jobs to go back to. These ones consider the Patels philanthropists who have “*done a lot for us by building schools, roads and supporting our police stations.*” The local administration confirms that the Patels have a firm grip on institutions including the local police stations and also take charge of development initiatives that are primarily the responsibility of the government. This perhaps explains the reluctance by authorities to hold the company owners to account for the senseless deaths visited upon the people of Solai.

While the Patels have positioned themselves as philanthropists who care about corporate social responsibility, there is another side to them. This side is known first-hand by most of those who have worked at the farm. Phillip Makena³⁶, a former supervisor recounted his days as an employee at the Patel Coffee Estate. Asked how he had interacted with the Patels, Phillip said he worked at the farm cumulatively for 16 years from 2001 to 2017; both as a casual worker and later on as a permanent worker. At the supervisor level, Phillip earned a gross salary of Kenya Shillings 9 000 per month. He described the work environment at the Patel Farm as both difficult and unpredictable.

More often than not, the set production targets would not be completed within the stipulated working hours; 7.00 a.m. to 3.00 p.m, hence forcing workers to put in 2-3 extra hours of work. Further, they worked for six hours either on Saturday or Sunday. According to Phillip and five other workers interviewed, the extra hours resulting from excessively high production targets were not considered overtime work and hence were not compensated. In total therefore, workers put in up to 56 hours of work every week. This contravenes the Regulation of Wages (Agricultural) Order Paragraph 5 which provides that the normal hours of work with respect to workers in the agricultural sector shall be 46 hours spread over six days of the week. It further offends Paragraph 6 of the same regulation that provides that any employee who works in excess of the normal hours of work shall be paid at one and a half times the basic hourly rate in respect of the extra time worked.

In addition to long hours of work, workers were arbitrarily terminated and dismissed from work on flimsy grounds. Phillip, who was seen by management to be pro-workers

³⁵ Stephen Mkawale, “Patel: Little known farmer but highly respected philanthropist”, Standard Digital, 12th May 2018.

³⁶ The name has been changed to protect identity.

for constantly agitating for a downward review of the production targets, became a soft target for dismissal. He was eventually sacked in 2017 on grounds of negligence and failure to complete assigned tasks within the allocated time. Section 41 of the Employment Act 2007 provides for the procedure for termination of employment which includes the obligation on the employer to ensure the employee understands the reason for termination and is allowed representation by a fellow employee or a union representative of the employee's choice. Phillip was not allowed room to question the process of termination and neither was he allowed representation.

Like many workers before him, Phillip did not report to the labour office even when he knew full well that he was unfairly terminated. All the five workers interviewed said they lacked confidence in the labour office since the County Labour Officer was suspected of colluding with the owners of Patel Farm to frustrate the workers. In fact, whenever workers reported disputes to the county labour office, the labour officer would have all the details beforehand; confirming workers' fears that a discussion between the employer and the labour officer always preceded the official complaint by workers.

A meeting with the County Labour Officer during the fact finding mission seemed to confirm the indifference with which he handled labour matters. The labour officer appeared to trivialize the labour disputes reported to him indicating that most of the disputes were resolved at the farm level and that very few were escalated to his office. He denied knowledge of any cases of unfair termination at the Patel Coffee Estate.

3. Liability of the Company and State Agencies:

A Case of Strict Liability for Patel Coffee Estates LTD

The general rule with regards to harm caused to others by objects brought into another's land was set out by English courts in 1868 *Rylands v Fletcher*³⁷ as follows:

*"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"*³⁸

The case of *Rylands v Fletcher*³⁹ concerned the plaintiff who owned a mine, and the defendant who constructed a reservoir on his land, but the water escaped from the defendant's land and flooded the claimants mine as a result of the negligence of the contractors hired to build the reservoir. The result was that shortly after filling up for

³⁷ UKHL 1, (1868) LR 3 HL 330

³⁸ Blackburn J: *Rylands vs Fletcher*, UKHL 1, (1868) LR 3 HL 330

³⁹ *ibid*

the first time, Rylands' reservoir burst and flooded a neighboring mine run by Fletcher, causing £937 worth of damage.

The *Rylands* case imposed strict liability on those found culpable without having to prove a duty of care or negligence. This case developed the *doctrine of strict liability*. By definition, strict liability is the legal responsibility for damages, or injury, even if the person found strictly liable was not at fault or negligent.⁴⁰

These parameters of the rule were reiterated by Lord Moulton in *Rickards v Lothian*⁴¹, where he emphasized "*It must be some special use bringing with it increased danger to others and must not merely be the ordinary use of the land or such a use as is proper for the benefit of the community*".

English case law forms part and parcel of Kenya's law. In light of the above analysis, the Patel Coffee Estates designed, constructed and brought to their farms, several dams in the Solai area to irrigate their vast farms. In doing this, they took upon themselves the liability for any risks arising from the use and maintenance of these dams.

Thus, the law imposes upon the farm strict liability for the effects and impacts of the dam tragedy, thus attracting a possible charge for criminal negligence below.

i) Criminal Negligence by Patel Coffee Estates

This is based on the following facts:

- Patel Farm breached the Water Act and its regulations which provide that the right to water may only be alienated or transferred in accordance with the Water Act.
- The owners of Patel Farm did not have a water right as defined in the Water Act 2016 as 'the right to have access to water through a water permit'.
- Patel Farm failed in its obligation to apply for a water right or permit which was applicable to *all* Kenyans investing in 'water works' for any domestic and productive uses.
- Patel Farm evaded and avoided to pay charges to the Authority for the use of water in accordance with the Act which includes effluent discharge fees by means of 'polluter pays principle'.
- The Company failed to take adequate measures 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.
- The Company failed to protect persons, infrastructure and environment 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.

⁴⁰ West's Encyclopedia of American Law, edition 2. Copyright 2008 The Gale Group, Inc. All rights reserved.

⁴¹ 1913 AC 820

- Patel Farm failed to submit to WRA an interim dam damage or failure report within three days with respect to the serious damage or failure.

ii) Administrative Negligence by WRA

Laxity by WRA attracts administrative liability on its part based on the following grounds:

- Failure to exercise its mandate and regulate water abstractions by various users
- Failure by WRA to monitor compliance by water users with the conditions of permits and the requirements of the Act stipulated in section 13c of the Water Act
- Failure to demand and issue penalties to Patel dam for non-compliance.
- Failure to decentralize the management of water resources as mandated by Water Act 2016 by establishing Basin Water Resources Committee and Water Resource Users Association.

iii) Breach of International and National standards on the Conduct of Businesses

The malfeasances by the Patel Coffee Estates and Kenyan authorities in this situation affront the following set standards and precedents on business and human rights.

UN Guiding Principles on Business and Human Rights – A global framework for the conduct of businesses

In June 2011, the UN Human Rights Council unanimously endorsed the UN Guiding Principles (UNGPs) on Business and Human Rights⁴² and went on to recommend, 4 years later during the Universal Periodic Review of 2015, that UN Member States should develop National Action Plans (NAPs) to facilitate the implementation of the UNGPs. The Guiding Principles provide an authoritative framework with regard to duties of states and responsibilities of business enterprises in addressing adverse business-related human rights impacts.

The Principles are hinged on three pillars, 1) the legal duty of States to protect individuals from adverse human rights impacts occasioned by business activities, 2) the responsibility of business to respect human rights and, 3) the need for states and businesses to ensure access to remedy in the event that adverse impacts occur as a result of business activities.

The responsibility for business enterprises to respect human rights is based on the principle that a business should do no harm. Business enterprises are expected to act with due diligence to ensure that they do not infringe on the human rights of other people. On the other hand, the duty of the State to protect against adverse business-related human rights impacts is outlined in Guiding Principle 1 to include the

⁴² Guidance on National Action Plans on Business and Human Rights; UN Working Group on Business and Human Rights (P.1)

obligation to take appropriate *steps to prevent, investigate, punish and redress* human rights abuses through *effective policies, legislation, regulations and adjudication*.

Kenya accepted, in April 2016, the recommendation by the UN Human Rights Council to develop a NAP on business and human rights to advance the implementation of the Guiding Principles. With this acceptance, which was buttressed through a public pronouncement by the Attorney General two in the same year, the government of Kenya committed to protect every individual from any harm that may emanate from business activities. That the government allowed unlicensed dams to be operated for decades at the Patel Coffee Estate is a clear demonstration of laxity on the part of the state.

Further, that no one had been held to account for the loss of lives and destruction of property by the time of writing this report, is a blatant contravention of the Guiding Principles that the government has committed to implement. The government must move with speed to punish those found culpable as well as adequately invoke the existing laws and regulations to avert a similar tragedy.

Kenyan Case Law - Physical development must be subject to the Constitutional and Statutory framework

The High Court of Kenya has pronounced itself very well with regards to mandatory adherence to legal and constitutional frameworks in the undertaking of physical developments. The court has stated as follows⁴³

“...the State under Article 69 of the Constitution is enjoined to ensure sustainable development. The State is also to ensure that every person has a right to a clean and healthy environment. However physical development must also be allowed to foster to ensure that the other guaranteed rights and freedoms are also achieved. Such physical development must however be undertaken within a Constitutional and Statutory framework to ensure that the environment thrives and survives. It is for such reason that the Constitution provides for public participation in the management, protection and conservation of the environment. It is for the same reason too that the Environmental Management and Coordination Act (“the EMCA”) has laid out certain statutory safeguards to be observed when a person or the State initiates any physical development.

⁴³ Pet. No. 613 of 2014, Patrick Musimba –vs- The National Lands Commission and Others

The petition challenged the Kenya Government decision through the Kenya Railways Corporation to embark on designing and implementing a standard gauge railway track project which was to run from the coastal town of Mombasa to the shores of Lake Victoria. The petitioners averred that the said project would deprive off persons of the right to property and the right to a clean and healthy environment. The Petitioner further contends that the state failed to undertake an appropriate environmental and social impact study of the Standard Gauge Railway project in accordance with the Constitution and the law.

Although the court dismissed the suit on the basis that the petitioner had no sufficient evidence on the violations or threatened violations of the Constitution, the court made the above mentioned very critical observations which are material to our report

At the core is the Environmental Impact Assessment and Study which is undertaken under Section 58 of the EMCA and the regulations thereunder. Under Regulation 17, the Environmental Impact Assessment Study must involve the public. The inhabitants of any area affected by a physical development must be given an opportunity to air their views on the effects of any such development. After the Environmental Impact Assessment Study report is compiled, the same report must be circulated to the affected persons."

CHAPTER 6

KEY OPERATIONAL AND POLICY ISSUES AND RECOMMENDATION

From the discussions held with the Solai Dam Victims the following are the recommendations that KHRC puts forth:

1. Legal Actions

Based on the findings of this report, the collapse of the Solai Dam was caused by omission and commission of various actors. We therefore demand that:

- 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 tragedy⁴⁴ or mismanaging the resources related to the rescue and response processes. Their gross acts of omission and resultant incompetence, negligence, complacency and complicity caused the death, destruction and displacement of the residents of Solai.



George Kegoro (left), Executive Director at the Kenya Human Rights Commission (KHRC), addresses representatives of the victims of the dam tragedy during a consultative meeting convened by KHRC, Freedom of Information Network and Mid Rift Human Rights Network in Nakuru town.

⁴⁴ Mainly by ignoring early warning signs, operating illegal dams, illegal diversion of water and other violations

- b) We also categorically state 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 infers 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”.

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

The fact finding report revealed that affected families have not only lost loved ones but have also been displaced as a consequence of the unfortunate event.

We therefore demand that:

- a) Urgent finalization of the DNA testing process of one deceased child whose body at the mortuary had been claimed by two different families so as to bring closure;
- 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 eliminate 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 resulting into a near calamity. The dams should be drained out in a manner that does not cause more harm to the people.
- f) Provision of 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 all the financial assistance earmarked to the following specific categories of victims:
 - Tenants who lived in semi-permanent houses, made to receive a one off payment of Kshs. 30,000;
 - Tenants living in semi-permanent houses, to get a one off payment of Kshs. 50,000
 - Land lords with permanent structures will receive a one off payment of Kshs. 100,000.

3. Investigative Actions and Reports by State Institutions

After the unfortunate event, various state and non-state actors have documented the incident and made instrumental recommendations to avert such an occurrence again. We recommend that:

The release of reports commissioned by different government agencies should be expedited and be made public. These reports include:

- A report by the Inspector 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 on the loss and damage on agricultural land, destruction of houses and commercial buildings so as to guide compensation and resettlement.

We also call for speedy surveying and titling of various parcels of land in the area as committed by the government, among them, Nyakinyua Solai farm. Further, we call upon the Labor Office in Nakuru County to initiate regular inspections within the Patel Coffee Estates Farm with a view of assessing labor rights violations and taking the necessary legal actions.

Further, we recommend that the Kenya Red Cross and the local administration disclose the totality of resources collected (in cash and kind) and how these resources were utilized in support of the victims. There is also need to investigate and deal with the government and humanitarian officials accused of corruption in the profiling of victims and disbursement of relief and financial support received.

We welcome the formation of the Special Committee of Senate investigating the Solai Tragedy and call for rigour and autonomy in the execution of its mandate. Moreover, we embrace the appointment of the Taskforce on Inquiry, Investigations, Assessment of Operations, Regulating Regimes, Safety and General Status of Dams in the Country and upon this taskforce to adopt environmental and human rights impact assessment approach in the execution of its mandate.

Finally, and based on a request from the KHRC, we thank the United Nations Working Group on Business and Human Rights for choosing Solai and Patel Coffee Estates

Limited as one of its site for field visits in July 2018. The group was established by the Human Rights Council in 2011 (resolution [17/4](#))⁴⁵.

4. Durable Solutions and Remedies for Harm and Damages Suffered

The Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act ⁴⁶, popularly known as the IDP Act, makes provisions for the protection and assistance to internally displaced persons and affected communities. This Act further gives effect to the Great Lakes Protocol on the Protection and Assistance to Internally Displaced Persons, and the United Nations Guiding Principles on Internal Displacement and for connected purposes.⁴⁷

The Act ⁴⁸ provides that internal displacement can be attributed to a) Conflict including politically instigated violence and resource-based conflicts, b) Natural or man-made disasters (such as fire, floods, landslides and drought) and c) Violations of human rights causing arbitrary displacement (such as development induced displacement and reforestation)⁴⁹It is against this definition that the Solai Dam Tragedy issue should be addressed.

It is important to note that what has been promised or provided to victims was not remedies for the individual and collective harm suffered but an initial humanitarian support to enable them manage the immediate impacts of the tragedy. Given the massive individual and collective losses experienced by the local community, we propose the following reparatory programmes:

a) Reconstruction and Rehabilitation:

The National and county governments and Patel Coffee Estate should support the Solai community in re-constructing the damaged infrastructure as follows:

- i. Facilities and Infrastructure:*** Rebuild the public infrastructure and facilities that were affected, mainly the bridges, roads, schools, dispensaries etc. Beacons for the affected plots should be fixed and power reconnected to the necessary residents. There is need to improve the existing boreholes, especially the Nyakinyua one to serve various villages with water.

⁴⁵<https://www.ohchr.org/EN/Issues/Business/Pages/WGHRandtransnationalcorporationsandotherbusiness.aspx>

⁴⁶ (No. 56 of 2012)

⁴⁷ The Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act (No. 56 of 2012)

⁴⁸ Ibid

⁴⁹<https://www.rckkenya.org/internally-displaced-persons/>

- ii. ***Land reclamation and ownership:*** Mechanisms for the necessary state agencies to reclaim farms that were massively eroded and thus rendered unproductive should be put in place. The Nyakinyua farmers should be provided with title deeds.
- iii. ***Housing for the Affected:*** This should mainly apply for the landlords/ owners in question. There should be an option of relocating those feeling unsafe and uncomfortable with resettling in the area. Victims recommended that the state should not consider repairing houses on site for their foundations were badly shaken and weakened.
- iv. ***Lost Documents.*** Seeing that the Solai tragedy changed the lives of victims fundamentally, we recommend that victims be guaranteed the replacement of all government documents that were lost in the tragedy. The government through the Assistant County Commissioner should conduct an audit of all documents that were destroyed and lost and identify the relevant issuing authorities.

Once the identification of all relevant authorities has been done, a mobile registration and reissuance exercise should be organized to restore lost documents for the victims.

b) Compensation.

Moreover, an inter-agency committee (involving victims) should be established to carry out a comprehensive assessment of the extents of major harms and damages suffered and provide compensation and other forms of remedies to victims. The final report should be submitted to the Senate and the County Assembly of Nakuru for public information, oversight and action.

Programmes for the societal and personal losses suffered and support considered should be in line with the United Nations Basic Principles on the Rights to remedy and Reparations for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.⁵⁰ Patel Coffee Limited, being a key perpetrator should provide some resources for the proposed reparatory programmes.

The Kenya Red Cross should undertake conclusive and transparent disbursement of the all financial assistance earmarked to the following specific categories of victims:

⁵⁰ “Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law”: Adopted and proclaimed by General Assembly resolution 60/147 of 16 December 2005- <https://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx>

- i. Tenants who lived in semi-permanent houses, made to receive a one off payment of Ksh. 30,000;
- ii. Tenants living in semi-permanent houses, to get a one off payment of Kshs. 50,000
- iii. Land lords with permanent structures will receive a one off payment of Kshs. 100,000.

Note: All remedies and other actions to support the victims by government and other agencies should ensure their adequate representation and participation. The solutions should be agreed on mutually and not imposed on the victims

5. Policy and Legislative Actions

a) Devolution of the Regulatory and Response Mechanisms

Section 29 of the Environmental Management & Co-ordination Act, 1999 establishes the County Environment Committee. Section 30 goes on to stipulate the duties of the Committee which include proper management of the environment within the County in respect of which they are appointed and to perform any other additional functions as may be prescribed in the Act or by the Cabinet Secretary. County governments are yet to establish the Committees as required by the environment law. To this effect:

- The County government of Nakuru should move with haste to gazette the Environment Committee and to adequately resource its operations.
- There is need for the NEMA office in Nakuru County to be adequately resourced both financially and technically. The County office currently has 5 technical officials and one director covering the entire county.
- Decentralization of decision making and operations from the national level to the catchment level to increase efficiency and effectiveness.
- Devolution of responsibilities for water resources management to the Water Resources Authority, Catchment Boards, communities and other actors.
- The inclusion of stakeholders and users in advisory and decision-making capacities wherever possible
- Procedural safeguards against large landholders disenfranchising the rights of other water users in the issuance of new permits because all new permits shall be subject to public consultation and Environmental Impact Assessments (EIAs).
- It is worth reviewing the proportion of permit allocation to landholders carrying out large-scale irrigation in contrast to small-scale water users. This will be informative as regards to whether the current permitting system perpetrates inequalities particularly based on landholdings.

b) Administrative and Legislative Reforms

First we call for strengthening of the 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

Moreover, there is need to urgently enact a national policy and law on disaster management. Such would help to enhance coordination and reduce conflicting of roles regarding disaster management. It would also facilitate systematic programming on disaster management in line with the Sendai Framework for Disaster Risk Reduction⁵¹ which would be pivotal in mitigating disasters especially those arising from systemic lapses in adherence to set rules of laws and procedures. The law would allow for the formation of a national board and county boards in each.

Perhaps, this tragedy offers the momentum for the conclusion of the 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. **We should never again wait for disasters to happen for different actors to intervene. Eternal vigilance and accountability is key.**

6. Reflection on and Documentation of Related Violations and Disasters Responses

We advocate for sustained documentation and responses to corporate related violations and reflections about the lessons and challenges realized in the response to the Solai tragedy. Perhaps our report and the Multi-Agency document published by the Government of Kenya⁵² can be points of reference. The following lessons and recommendations are critical:

a) Risk identification, assessment, monitoring and early warning

In the Solai tragedy the local leaders, workers at the Patel farm, Patel farm management, NEMA, WRA had a pivotal role to play in helping with early warnings. KHRC learnt that at least three of the dams had fissures. Whenever workers at the farm raised the issue, the farm management responded by reinforcing the walls of the dam with heaps of soil. As a result, this would raise the height of the dam, increase its holding capacity and temporarily mask the cracks.

We recommend that risk assessment be mainstreamed in all rural areas land assessments, environmental audits and general environmental assessments. It's worth noting that the Solai dam tragedy was the second in Nakuru county and came just days

⁵¹ <https://www.unisdr.org/we/coordinate/sendai-framework>

⁵² Republic of Kenya, Ministry of Interior and Coordination of National Government Multi--Agency Report, "Solai Dam Disaster", Rongai Sub-County, Nakuru County, 9th to 19th May 2018.

after another dam burst in Naivasha washing away flower farms. Unfortunately even that did not prompt responsible agencies to conduct necessary risk assessment of other bulk water facilities in the county at the very least.

b) Public education and knowledge management in assessments and responses to disasters

There is need for extensive education that is localized and based on an assessment of possible risks. Most of the people are very ignorant of possible disasters around them and unfortunately there is no plan by either the county or national government to create general awareness. Often times, disaster management education is equated to fire drills.

c) Investment in reducing underlying risk factors for disaster prevention

The fundamental prerequisite of all disaster management lies in preventing disasters from occurring. This role is borne by various government agencies responsible for any planning, regulation and compliance depending on the circumstance. Unfortunately disaster management is not yet mainstreamed into regulatory frameworks of government agencies. In this instance, reports filed by environmental experts who conducted environmental assessment for the Patel estate only focused on equipment and fire. In the Solai dam tragedy, the blockage of the course of natural rivers by the construction of over 8 dams with no visible outlets for the water was a disaster in waiting.

d) Preparedness for effective response and recovery through effective coordination

Ultimately when disaster strikes, effective and quick response helps to reduce the casualties and even general damage. When the Solai tragedy happened there was fairly good coordination between the national government, the county government and the locals. The response was affected by power blackout and inaccessibility of some of the victims due to the raging waters that temporarily cut off the road.

There is, however, need to constantly build the capacity of county disaster teams and agencies as they are more localized. In the Solai incident, it was the locals, county ambulances, NYS and local leaders who offered initial help and discovered nearly 49% of the persons who died in the incident and were trapped in debris.

e) Effective and human rights centered humanitarian support

- Ensure that all complaints from the different categories of victims are resolved immediately and effectively.
- Consider the quantum of loss suffered by all groups of people; for instance, some victims lost their personal wares, machinery among other physical assets which were not part of the material support availed.
- Create a process for effecting timely communication between the people affected, at different times, for this would have saved many casualties downstream.
- Effect a system for overseeing accountable management of the material and financial resources provided.

- Initiate a framework for creating proper understanding and engagement with all the necessary state and non-state actors involved or interested in disaster response processes.
- Enforce a sustainable system for continued support (like psycho-social and material support) and durable solutions to victims for some cases and their effects do not end with the closure of the camp.

Victims should be involved in the decisions and processes affecting them. To that effect, victims should establish and manage an inclusive and accountable association to deal with all the above issues and processes.



George Kegoro (sitted, left), Executive Director at the Kenya Human Rights Commission (KHRC), addresses the media during the launch of this report in Solai, Nakuru. He was joined by victims of the tragedy and representatives from KHRC, FOI Network and Mid Rift Human Rights Network.

ANNEX A: Article; IEK- Solai Dam disaster was not an accident but due to human error. Published on 17th of May 2018.

Secure | <https://www.nation.co.ke/video/news/4146788-4566644-esosabz/index.html>

DAILY NATION NEWS BUSINESS COUNTIES SPORTS BLOGS & OPINION LIFE & STYLE VIDEOS PHOTOS

IEK: Solai Dam disaster was not an accident but due to human error

17/5/2018

The Institute of Engineers of Kenya says the unfortunate incident that occurred at Solai Dam claiming the lives of 47 people was not an accident but the end result of human error. The Engineers said that the process used to construct the dam was wrong which was the reason it collapsed. They say law enforcement agencies are supposed to be on high alert to ensure that the construction processes put in place are followed to the letter with infrastructure projects carried out by competent staff.



12 41:53 Subscribe to latest videos at 'Kenya NTV' on YouTube

ANNEX B: Statement by the Cabinet.

Statement by the cabinet

secretary <https://www.wra.go.ke/statement-by-the-cabinet-secretary/> -copied May 28, 2018

May 23, 2018 BadmUn Uncategorized



STATEMENT BY MR. SIMON CHELUGUI, CABINET SECRETARY, MINISTRY OF WATER AND SANITATION, ON PATEL DAM DISASTER IN SOLAI, SUBUKIA SUB-COUNTY ISSUED ON FRIDAY, 11TH MAY, 2018

First and foremost, I wish to take this opportunity to pass my sincere condolences to the families of those who lost their lives and property in this disaster. As a Ministry, we are deeply disturbed by this disaster and have joined other Government Ministries and Agencies to put in place measures to help the affected families to cope with the effects of the disaster.

This disaster is a water related occurrence arising out of development and operation of private dams. I wish to reiterate that the function of ensuring dam safety is vested with My Ministry as per the Water Act, 2016. In this regard, the Ministry through the Water Resources Authority (WRA) regulates the management and use of water resources. This responsibility includes regulation of the development and use of all water storage infrastructure. In order to do this, the law requires all dam owners and operators to follow the regulations as hereunder:

- Conduct feasibility studies and submit project designs prepared by registered professionals in accordance with acceptable Dam Construction and Operation Standards.
- An Environmental and Social Impact Assessment Licence issued by NEMA.
- A permit issued by the Water Resources Authority based on acceptable designs and adequate site investigations.
- Construction of the works should be undertaken by dam contractors registered by My Ministry and supervised by Water Resources Authority.

In the case of Patel Dam, it is observed that the dam owner who is also the dam operator was in breach of the law and did not adhere to any of these requirements. We further note that the other dams on his farm are also illegal. It is unfortunate that this incident has occurred when the Water Resources Authority has been pursuing the owner to ensure compliance. The Ministry will assist the law enforcement agencies in their investigations of this unfortunate event.

I wish to assure the Country that My Ministry has a technical team in place that ensures compliance with dam safety measures throughout the country. The technical team will continue to undertake comprehensive assessment of all existing dams and necessary measures to ensure safety of all

dams. Further, My Ministry will constitute a National Multi-Sectoral Taskforce to undertake an extensive audit of all dams across the country in order to avert any future losses emanating from such catastrophes.

Due to the on-going rains, I wish to call upon members of the public to be vigilant and provide timely reports on suspected illegal dams that may threaten their lives and property to the Ministry of Water and Sanitation at our various regional and sub-regional offices across the country. The Water Resources Authority may also be reached through a 24 hour emergency phone line **0700 056472**.

I hereby direct that all the other dams at Patel's Farm be drained with immediate effect in order to avert any likelihood of a similar occurrence of disaster in the area.

I wish to assure Kenyans that my Ministry will demolish any water works that have been constructed in contravention of the Law and owners of unpermitted dams will be prosecuted and they are hereby put on notice of our intention to immediately implement all enforcement mechanisms provided for in law.

ASANTENI NA POLENI.

ANNEX D: A complaint letter written to Kenya Red Cross by a victim of the Solai tragedy.

John Ngugi Mwangi
P.O Box 18868
Nakuru
Tell: 0722407870
Date 18/06/2018

The manager in charge
Kenya Red Cross
Nakuru branch
P.O Box 3195-20100,
Nakuru.
Contact 020 2079832

Dear Sir/Madam,

REF: SOLAI DAM VICTIMS DISPLACEMENT ALLOWANCE.

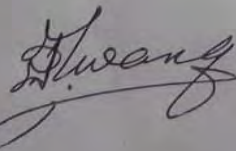
I am writing here by to declare that I am genuinely and regally a beneficiially of the above named allowance, during the dam disaster I lost my lovely and beautiful hardworking wife plus my permanent home and house, I and my class five girl and my class five granddaughter were drowned and got injured. The girls are aged eleven and ten years old respectively. Both are former pupils of Solai Nyakinyua Primary School (0722440315), their names are Beatrice Njeri and Shelmith Wanjiru. Now they are at Mizpah Ambassador Primary School Bahati.

Am here by writing to demand immediate payment of my displacement allowances held by your office illegally since the same was disbursed to the other victims now a month ago. I have complained about this issue several times through the Assistant Sub county Commissioner Solai, Sub County Commissioner Rongai, County Commissioner Nakuru, Regional County Coordinator Rift Valley, and finally in your Red Cross Office Nakuru Branch on Tuesday last week. I personally staged peaceful demonstrations in various public meetings with no avail. I have demonstrated in demand of the same before the Assistant Commissioner Solai. I have demonstrated before his Excellency the Governor of Nakuru County who ordered a Mr Keboi to pay me immediately with his own money to no avail. In all these cases things have been the same unfruitful song of promises. Now am very angry with your Office and demand that you pay me immediately and within 48 hours starting from today 12:00 noon failure to which I will take legal action against you.

Angrily looking forward to your argent reaction Sir.

Yours Faithfully,

John Ngugi Mwangi.



CC:

1. Chuma Mburu Advocates and Company Limited.
2. The Governor Kenya Red Cross Headquarters Nairobi.
3. Regional County Commissioner Rift Valley.
4. The manager Kenya Human Rights Commission Nakuru.

Annex E: Request for assistance and advice by a victim of the Solai tragedy.

**SOLAI DAM DISASTER
REMNANTS**

P.O BOX 18868,

NAKURU.

12/06/2018

TO:

THE REGIONAL COMMISSIONER/CO-ORDINATOR

P.O BOX

NAKURU.

Dear Sir/Madam

REFERENCE: REQUEST FOR ASSISTANCE AND ADVICE.

Please sir, accept our humble and honest appreciation of the good work you have done for us towards our welfare and wellbeing. We also appreciate the work and concern accorded to us by our national government and especially the warm hand of sympathy stretched to us by our president, His Excellency Uhuru Muigai Kenyatta. Pass our warm regards to him sir.

Sir, things are moving on well on the ground at Solai as far as we are concerned but of course not without a few challenges here and there. We humbly request you to assist us or advise us in the following areas;

1. Acquisition of postmortem results of all the deceased.
2. Acquisition of Death Certificates of all the deceased.
3. Doctors' medical report/Certificates of all the injured victims who were hospitalized.
4. Some cases are yet to be paid displacement allowances e.g. I the chairman of the victims has not yet received my allowance to date.
5. Cases of corruption at Solai administration office mostly as appertains to the chiefs.

Thank you Sir. Please we look humbly look forward to your assistance and advice at your earliest convenience sir.

Yours Faithfully,

JOHN NGUGI


CHAIRMAN FOR THE SECRETARY.



Copy to:

1. CC NAKURU
2. DCC RONGAI
3. ACC SOLAI
4. SENIOR CHIEF SOLAI.

ANNEX F: Press statement from Patel family and members of the Patel farm management. Published, on May 15, 2018 Daily Nation page 5



14th May 2018

PRESS STATEMENT

On **Wednesday, May 9th**, we lost **47 precious lives** to the Solai dam tragedy. We, the Patel family of Solai and members of the Patel farm management would like to express our deepest condolences.

Since 1935, the Patel family has been an integral part of the Solai community and has always supported projects that uplift the general standard of living of the Wananchi. We are currently investigating how this could have happened and deeply regret the occurrence.

Investigations point to the heavy rainfall in Dundori forest resulting in massive soil erosion with high pressure water accompanied by dead stumps, logs and big boulders that hit the wall of the dam causing a huge gush of water into the farm and outlying settlements.

The Patel Farm Management is working round the clock with the government and our engineers and the National Disaster Management Unit. We are doing everything we can to provide the necessary resources to displaced families affected by this unfortunate tragedy.

During this time of immeasurable grief and sorrow, we stand united with our community in Solai whole-heartedly. We appreciate the grace with which the government and Non-Governmental Organizations have handled the situation.


We will work together with the relevant governmental and county authorities to rebuild what has been lost and restore normalcy to the community.

We pray that the Almighty in his infinite mercies may rest the souls of the departed in peace.

For all inquiries: solai.nakuru@gmail.com

**MANSUKH PATEL
CHAIRMAN, SOLAI GROUP**

ANNEX G: Information on the ownership of Patel Coffee Estates



BUSINESS REGISTRATION SERVICE
P. O. BOX 30031
NAIROBI
16 MAY 2018

To
ANN NASANGA AKI
P.O.Box 41079
00100 - G.P.O NAIROBI

THE COMPANIES ACT, 2015


According to the records relating to the below company held by the Companies Registry as at **16 May 2018 07:42 pm**

COMPANY	THE PATEL COFFEE ESTATES LIMITED
COMPANY NUMBER	C.6653
NOMINAL SHARE CAPITAL	1,250,000.00
NUMBER AND TYPE OF SHARES (VALUE PER SHARE)	ORDINARY: 12500 (KES 100.00 EACH)
DATE OF REGISTRATION	1966-03-16
REGISTERED OFFICE	P.O BOX 10282, TELEPHONE: , EMAIL: COUNTY: , DISTRICT: , LOCALITY: STREET: , BUILDING:
POSTAL ADDRESS	P.O BOX 10282
ENCUMBRANCES	SUBJECT TO OFFICIAL SEARCH OF THE PHYSICAL REGISTER

Name of Directors and Shareholders of the above company with their particulars are as follows :

NAME	DESCRIPTION	ADDRESS	COUNTRY	SHARES
SHANTILAL NATHALAL PATEL	SHAREHOLDER	P.O BOX 50315 CITY SQUARE		ORDINARY: 3750
PERRY MANSUKH KANSAGRA	DIRECTOR	P.O BOX 50315 G.P.O NAIROBI		
MANSUKHLAL SHANTILAL PATEL	DIRECTOR/SHAREHOLDER	P.O BOX 50315 CITY SQUARE		ORDINARY: 8750

Yours Faithfully,
REGISTRAR OF COMPANIES



DISCLAIMER: THIS IS A SYSTEM GENERATED CERTIFICATE AND DOES NOT REQUIRE A SIGNATURE

ANNEX H: Request for memoranda on dam planning, design, construction, operation and decommissioning- Published on June 19, 2018 page 22

Tuesday, June 19, 2018 | DAILY NATION



MINISTRY OF WATER AND SANITATION

TASKFORCE ON INQUIRY, INVESTIGATION, ASSESSMENT OF OPERATIONS, REGULATING REGIMES, SAFETY AND GENERAL STATUS OF DAMS IN THE COUNTRY

REQUEST FOR MEMORANDA ON DAM PLANNING, DESIGN CONSTRUCTION, OPERATION AND DECOMMISSIONING

1. The **Cabinet Secretary, Ministry of Water and Sanitation**, through a gazette notice no 43 of 2016 dated 6th June 2018, appointed a Taskforce to inquire, investigate, assess operations, regulate regime, safety and general status of Dams in the country. The secretariat for the Taskforce will be based at The Ministry of Water and Sanitation offices at MAJI House.
2. The Terms of Reference for the taskforce is: -
 - a. Review the existing policies, legal and regulatory frameworks for planning, design, construction, operation and decommissioning of Dams particularly: -
 - i. Determining the status of the existing Dams in the country and document their operational conditions.
 - ii. The procedures and conditions of issuance or permits and licenses for water pans, dams in order to determine adequacy, fairness and appropriateness of the process
 - iii. Effectiveness of monitoring and surveillance mechanisms put in use
 - iv. Procedure for registration of Dam contractors, consultants and Dam panel of experts
 - v. Effectiveness and efficiency of Dam construction and supervision in the country
 - b. Propose guidelines on safety and sustainability of Dams in the country with emphasis on: -
 - i. Dam Surveillance and monitoring
 - ii. Dam safety inspections
 - iii. Preparation of Emergency Action Plan
 - iv. Dam Break Analysis
 - v. Community Participation in management of dams.
 - c. Determine institutional capacity of all regulatory agencies involved in dam activities and make appropriate recommendations.
3. The taskforce is expected to prepare a report with recommendations in 60 days and submit to the Ministry of Water and Sanitation
4. In this regard the taskforce will hold consultative meetings with principal dam stakeholders, owners and operators. Several issues related to Dam planning, design, construction, operation and decommissioning as well as dam safety will be raised, discussed and procedures reviewed
5. The taskforce hereby requests the general public, all principal dam stakeholders, owners and operators to submit memoranda on the planning, design, construction, operation and decommissioning of dams under their jurisdiction to the taskforce secretariat. The purpose of the memoranda will be to:
 - establish cooperative relationships with regulatory agencies and other agencies dealing with dam planning, design, construction,
 - develop consultative processes to consider operational procedures, strategic inputs, and other aspects of dam safety
 - Allow for exchange data and information.
6. The memoranda in writing are to be submitted on or before **19th July 2018** to the following address.

**The Chairman,
Taskforce on Inquiry, Investigation, Assessment of Operations, Regulating
Regimes, Safety and General Status of Dams in the Country,
Ministry of Water and Sanitation,
Maji House- Room 521, 5th Floor,
P.O Box 49720-00100,
dwssd2017@gmail.com
NAIROBI.**

ANNEX I: Solai Incident Questionnaire to Duty Bearers

General questions on Solai Company and the Dam

1. What do you know about Solai dam, and the solai company?
2. What activities does the company undertake in the area?
3. When was the solai dam constructed?
4. Was the company licenced to construct and maintain the dam?
5. In which part of the community is the dam located?
6. For what activities is the dam used for?
7. Have there been any concerns that the neighboring communities have had concerning the dam, or other dams in the area?
8. Have the communities reported any concerns to authorities in previous years? If so, which authorities?

The violation: Burst its Banks

1. When and how did you learn about the recent Solai dam incident?
2. Please briefly describe the circumstances that led to the incident

Impact: Injuries, loss and damage

1. Which area(s) exactly has the incident affected? County, location, sub-location, village(s) etc
2. How many sub-counties? Villages?
3. What has been the impact of the incident to the families and community? Please briefly explain (Number of households affected, displaced, number of lives lost, number of victims hospitalised)
4. What has been the impact on livelihoods? Please briefly explain

Response by authorities

1. When did the rescue efforts begin following this particular incident? By which authority/organisation?
2. What has been/is being done by the company or other authority to mitigate any affects/impacts mentioned above?
3. Are you aware of any investigation by the authorities? If so, which authority?
4. Have there been any discussions on compensation and/or relocation of the victims? If so, by which authority?
5. Have there been any interactions between the company and the communities? If so, who? (Name, Rank in the Co
6. Have concerns been raised about this dam and other dams in previous years by authorities? Which authorities (eg WARMA)
7. Has a report been a report(s) been made (or underway) by any authority on the impact of the incident

Early warning signs

1. Has there been a similar (albeit of smaller magnitude) incident from this dam or other neighbouring dams in this area previously? eg leakages etc?
2. If yes, when? Was it reported?
3. What action was undertaken? By whom?

ANNEX J: Solai Incident questionnaire to community members

Victim's details?

1. What is your name?
2. Where do you live/lived before the incident
3. Family details: number of children, where do they go to school?
4. Where do you work?

General questions on Solai Company and the Dam

9. What do you know about Solai dam, and the solai company?
10. What activities does the company undertake in the area?
11. When was the solai dam constructed?
12. Was the company licenced to construct and maintain the dam?
13. In which part of the community is the dam located?
14. For what activities is the dam used for?

The violation: Burst its Banks

- What did you witness?
- Describe the incident in detail; what caused it?

Impact: Injuries, loss and damage

5. How has the incident affected you and your family?
6. What has been the impact of the incident to other families in your village? Please briefly explain (Number of households affected, displaced, number of lives lost, number of victims hospitalised, number of children unable to attend school, number of schools and public facilities affected)
7. Are you aware of any people that have not yet been accounted for and that could still be missing ever since the incident took place? If so, how many
8. Have affected families been able to bury their loved ones? How are the authorities handling this requests by families?

Response by authorities

8. When did the rescue efforts begin following this particular incident? By which authority/organisation?
9. What has been/is being done by the company or other authority to mitigate any affects/impacts mentioned above?
10. Have there been any discussions on compensation and/or relocation of the victims? If so, by which authority?
11. Have there been any concerns that the neighboring communities have had concerning the dam, or other dams in the area? If so, was this reported? To whom?
12. Have concerns been raised about this dam and other dams in previous years by authorities? Which authorities (eg WARMA)

Early warning signs

4. Has there been a similar (albeit of smaller magnitude) incident from this dam or other neighbouring dams in this area previously? eg leakages etc?
5. If yes, when? Was it reported?
6. What action was undertaken? By whom?

ORGANISATIONS PROFILE

The Kenya Human Rights Commission

The Kenya Human Rights Commission (KHRC) is a premier and flagship Non-Governmental Organization (NGO) in Africa with a *mandate of enhancing human rights centred 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. Its founders are among the foremost leaders and activists in struggles for human rights and democratic reforms in Kenya and beyond.

Our work remains grounded on the 2014/2019 Strategic Plan whose **Vision** is to *secure human rights states and societies*. Our **Mission** is to *foster human rights, democratic values, human dignity and social justice*. We espouse a very holistic concept of human rights that straddles *civil and political rights* (as fundamental to political democracy); *economic and social rights* (as critical building blocks for social democracy); and *equality and non-discrimination* (both as integrated and specific interventions in programming).

Our interventions are executed under four interdependent strategic objectives and thematic programmes: *Transformative Justice (TJ)*; *Economic and Social Justice (ESJ)*; *Identity and Inclusion (I &I)* and *Institutional Support and Development (ISD)*. All the Programmes are meant to synergise and to deliver at county, national, regional and global levels.

Towards this, we remain committed to working with our more than thirty Human Rights Network (HURINETs) and other grassroots communities (based in more than thirty counties in Kenya); partnering with more than thirty national level- state and non-state actors and coalitions and engaging with the more than fifty sub-regional, regional and international human rights organizations and networks.

Freedom of Information Network (FOI NETWORK)

Freedom of Information Network (FOI NETWORK) is a grassroots network founded in 2008, based in Nakuru Kenya and registered as an NGO in 2010 with the aim of working towards transparent and accountable governance through access to information. FOI envisions a just, enlightened, responsible and reflective society able and willing to be involved in sustainable development and good governance. Our mission is to build the capacity of grassroots communities for active participation in governance and protection of human rights and advocacy for social justice through capacity building, human rights education and monitoring, lobbying and advocacy, information sharing and social audit of public expenditure. FOI has established strategic networks in 14 counties within the Rift Valley. These Networks are established to enhance community involvement, training at local and grassroots level. In the last 10 years' FOI has dealt on issues of governance and human rights both at County and

National level. These include direct engagement with the people, Community Service Organisations and the County Government. Advocacy, partnerships', capacity building, public interest litigation and civic engagement are the major building blocks of FOI.

Mid Rift Human Rights Network

Mid Rift Human Rights Network (HURINET) is an advocacy Public Benefits Organization (PBO) that was registered in 2008 and works to empower citizens to claim their rights in local development and governance processes through dialogue forums with the Duty Bearers within Nakuru and neighbouring counties. Midrift Hurinet envisions a state and society that respects, protects and promotes human rights as we mainstream human rights based approaches in programming in order to promote sustainable interventions. Our mandate is to empower citizens through training, advocacy, networking and linkages in areas of Human and Constitutional Rights in the following four thematic areas, Policing and Police reforms, Good Governance Peace Building and Conflict Transformation Human Rights Advocacy. While still focusing on these thematic areas our goal is to Establish firm partnership with the National and County Governments and other stakeholders based on the principle of mutual respect for each other's authority and role in the formulation, development and implementation of policies anchored on human rights.

“

This report sheds light on the man-made disaster that happened in Solai village highlighting the causes of the tragedy which revolve around allegations of corporate impunity and the failure of government agencies to take appropriate action to avert the tragedy. The report goes further to propose a number of legal, urgent, administrative, and legislative and policy actions towards addressing all the underlying issues.

It is hoped that this report will not only inform the ongoing investigations by the various agencies of the government but will also be a tool for reforming the various government departments charged with regulating management of private and public waters sources.

More importantly, it is hoped that the report will propel the government towards quicker restitution for the victims of the tragedy, as well as compel action to be taken on every person found culpable for the senseless loss of lives, property among other possessions and valuables in the Solai tragedy.

”

DEDICATION

We dedicate this report to the Solai victims and residents who have and continue to suffer egregious human rights violations in the hands of Patel Coffee Estates Limited. Your resilience and dedication to justice is a great inspiration to those who continue to face gross corporate- related violations in the society.

MAY JUSTICE BE OUR SHIELD AND DEFENDER!



Kenya Human Rights Commission
P.O Box 41079-00100, Nairobi,
Kenya Gitanga Road opp. Valley
Acade Shopping Centre Phone
Email: admin@khrc.or.ke
Cell 0722-264497/0733-629034
Twitter: @thekhrc
Facebook: Kenya Human Rights
Commission

Freedom of Information Network,
P.O. Box 2275 - 20100, Nakuru
Baraka Plaza 3rd floor
E -Mail: foi.riftvalley@yahoo.com
Cell: 0720361038/0771338898

Midrift Human Rights Network (MIDRIFT
HURINET) Mburu Gichua Road, opposite
Nakuru Central SD church.
P.O Box 16326-20100, Nakuru Kenya.
Email: info@midrifthurinet.org
Cell: 0702520894
Facebook: Midrift Human Rights Network
Website: www.midrifthurinet.org
Twitter: @midrifthurinet