



Kenya National Commission on Human Rights

The Malindi Public Inquiry Audit Report

*An Audit of 2006 KNCHR
Public Inquiry on Salt Harvesting
in Magarini, Malindi*

In partnership with:



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The Malindi Public Inquiry Audit Report

*An Audit of 2006 KNCHR
Public Inquiry on Salt Harvesting
in Magarini, Malindi*

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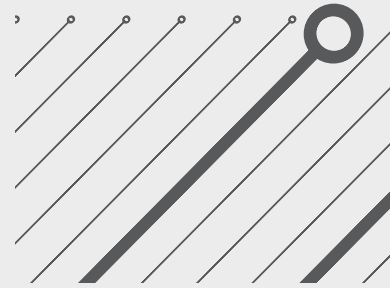
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Acronyms and Abbreviations

GBV	Gender Based Violence
CSO	Civil Society Organizations
CSR	Corporate Social Responsibility
CBO	Community Based Organization
DCC	Deputy County Commissioner
DEC	District Environmental Committee
EO	Executive Officer
EIA	Environmental Impact Assessment
EMCA	Environmental Management and Coordination Act
FDG	Focus Group Discussion
GoK	Government of Kenya
JCM	Joint Crediting Mechanism
KAM	Kenya Association of Manufacturers
KNCHR	Kenya National Commission on Human rights
KFS	Kenya Forest Service
LR	Land Registry
MRF	Malindi Rights Forum
NEMA	National Environmental Management Authority
NLC	National Land Commission
OSHA	Occupational Safety and Health Act
PWID	People who Inject Drugs
PPE	Personal Protective Equipment
SDG	Sustainable Development Goals
WIBA	Work Injuries Benefit Act
WRMA	Water Resource Management Authority



On general powers of the Commission section (26) (H) of 2011 KNCHR Act, the Commission has powers to conduct audits of any public or private institution to establish the level of compliance with the constitution with regard to integrating the principle of equality and equity in its operations.

Preface

In line with its powers KNCHR conducted a human rights audit at the salt companies along the Magarini salt belt in Kilifi County. This was to review milestones achieved eleven (11) years after 2006 public inquiry into human rights violations. The exercise was to examine the extent at which stakeholders, more so the Kenya Association of Manufacturers (hereinafter referred to as KAM) and other duty bearers have implemented the seventeen (17) recommendations in the 2006 public inquiry report.

KAM which convenes the six salt companies doing salt harvesting along the salt belt reached out to KNCHR and requested for a human rights audit. This was after various stakeholders carried out programs based on the seventeen (17) recommendations towards ensuring human rights compliance in the industry. Among the



The report has demonstrated the different levels of compliance as well as best practices adopted by some companies.

The audit team managed to visit
four (4)
out of the five salt companies.

programs carried out were bringing on board the Global Compact program on business and human rights compliance and Nairobi Process, establishment of community liaison office at Gongoni, establishment of CSR committee and Multi stakeholders forums and training.

Development of tools, both qualitative and quantitative data was collected through inspection of individual companies and interviews with the company Directors and Workers

The audit team managed to visit four out of the five salt companies. One of the companies had two distinct operation centers and the other company was under receivership. The Commission also visited the Artisanal salt harvesters these are local small scale salt harvesters mostly located next to the large scale salt harvesters.

Using both structured and unstructured questionnaires, interviews were carried out with key duty bearers and FGDs with the community and representatives of salt workers. Findings presented in this report focus on the seventeen (17)

recommendations that formed the basis of the audit. A comprehensive analysis indicating the milestones and challenges is presented with further recommendations on specific interventions.

The 2006 public inquiry gave a general presentation of the salt companies, this report has captured each audited company's performance separately. The report has demonstrated the different levels of compliance as well as best practices adopted by some companies. The report is an opportunity for those companies lagging behind to learn and adopt best practices from fellow salt companies.

Kagwiria Mbogori
Chairperson, Kenya National Commission on Human Rights



Foreword

The ability for industry to create an inclusive society is often obscured by narratives that center profits and markets or languages of GDP growth and trade statistics. Yet, the single most important function of a well-established manufacturing base for any country is to create social equity, reduce inequality and alleviate poverty. A well-established Industry is synonymous with the creation of an inclusive economic order for any society where respect for Human Rights is at the heart of a company's responsibility.

The focus when it comes to this very function rests on the capacity of industry to create productive jobs, and whilst that is indeed a crucial pillar, a holistic perspective connects the intricacies of human development and industrialization in a more profound way. Respect for Human Rights as embedded in international standards and local laws ensures industry contribution to sustainable development is meaningful and lasting. This means industry players must commit to respecting human rights, conduct on-going due diligence to identify, prevent, mitigate and account for any adverse impacts and provide remedy for any human rights impacts they cause or contribute to.

Over the last five years, Kenya Association of Manufacturers (KAM) have worked with the Salt manufacturing companies in our membership through a multi-stakeholder engagement model to ensure industry contribution to human rights and development is both positive and sustainable. As a key sector to Kilifi's economy, the Salt industry employs over 1,100 workers directly from the community and contributes substantially to the socio-economic development of the county through various social investments.

A key achievement of these efforts has been to institutionalize a sector wide-community dialogue and action process that has seen key issues raised by various stakeholders addressed, while fostering a harmonious relationship between the industry and community.

In partnership with the Global Compact Network Kenya, KAM continues to promote human rights centered approach to business through awareness programmes, and advocacy work which is not limited to land, labour, social and environmental issues affecting the community.

As Industry, we are committed to the attainment of Sustainable Development Goals (SDG) and to partnering with the government and other key stakeholders to bridge the gaps in inclusive development and human rights. Through this, we can realize sustainable economic growth, which is characterized by innovation,

increased employment and poverty alleviation. Our work also focuses on conserving the environment and mitigating climate change.

As a signatory to the UN Global Compact Principles and the host of the Global Compact Network Kenya, we adhere to the Human Rights Principles that call on businesses to support and respect the protection of internationally proclaimed human rights and make sure that they are not complicit in human rights abuses. Thus, categorically standing against practices that undermine human rights and upholding those that tangibly advance reverence of human decency and respect for all individuals.

Phyllis Wakiaga,
KAM Chief Executive



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The Kenya National Commission on Human Rights wishes to recognise all those who have contributed to this Audit report. The Commission would like to thank the Kenya Association of Manufacturers (KAM) Salt sub-sector Working Group under the able leadership of their chairman Mr. K.M Kimiri. The work and support of other members; Hasmita Patel, Dinesh Shikotra of Krystalline Salt Limited; Caleb Kamote of Kensalt Limited; Mohamed Kaderdina of Kurawa Industries, Mohamed Islam and Suheil of Malindi Salt Ltd is acknowledged as well. Special thanks go to the personnel who provided the technical expertise during the audit.

The entire team from KAM led by the CEO Phyllis Wakiaga, Tobias Alando, Head of membership Unit, Judy Njino, Global Compact Kenya Country Coordinator, Eunice Mwanyalo, the former EO (Executive Officer) salt -sub-sector, Anne Murithi, the Executive Officer and Patrick Gambo, the community liaison officer for the daily support in ensuring that all the logistical arrangements were in place. The CSR committee members led by their Chairman Mr. Samuel Lewa for availing themselves and sharing concerns from the community. The fact that Samuel Lewa fully participated in the Malindi public inquiry of 2006 made it easier to pinpoint the changes which have happened over time.

The Commission is grateful to the Malindi Rights Forum (MRF) and all the other Civil Society Organizations for continued support and advocacy on human rights violations along the salt belt. Their consistent efforts to enhance protection and respect for human rights must be acknowledged. KNCHR highly appreciates the partnership and collaboration on the ground and the sharing of information by individuals and groups. Special gratitude goes to the entire Magarini community who supported the audit process. The County Commissioner of Kilifi Mr. Joseph Keter, DCC Marafa, Mr. Lokorio and other local leaders, the local chiefs who actively participated in the FGDs. Special thanks to the government agencies in particular the labour officer Mr. Willy Kimani,

Kilifi County Forest Coordinator Mr. Christopher Maina, Mr. Andrew Makoti, the Chief Officer Department of water, environment and natural resources and Eunice Bosibori of Water Resources Management Authority. Others are; Mr. Samuel Mwasambo of the Directorate of Occupational Health and Safety, Mr. Isaac Kimitei, the NEMA Environmental Officer and Mr. Josphat Matheka, the Senior Land Administration Officer.

Finally, the Commission acknowledges the great effort of its team from head office in Nairobi and the Coast Regional Office based in Mombasa who worked tirelessly towards the development and publication of this report. These team members are;

- i. Commissioner George Morara
- ii. Dr. Bernard Mogesa
- iii. Ms. Alice Mbuvi
- iv. Mr. Dominic Kabiru
- v. Ms. Maureen Mwadime
- vi. Mr. Salim Gitau and
- vii. Mr. Elias Baya

For those who we may have failed to mention specifically, your contribution towards the audit is appreciated.

Executive Summary

This report is the product of an audit conducted in February 2017 by the Kenya National Commission on Human Rights (KNCHR) with cooperation of representatives from the salt sub sector. The audit is premised upon the 2006 public inquiry into allegations of human rights violations arising from the activities of salt manufacturing companies in Magarini in Malindi sub- County. The 2006 public inquiry was prompted by several complaints received by the Commission. KNCHR undertook an open public inquiry to establish compliance to human rights principles and standards. KNCHR produced a report in July 2006 with a number of recommendations for implementation which were shared with the stakeholders for action.

This audit established that concerted efforts have been taken towards resolving the human rights violations. As result of the Malindi public inquiry recommendations, a Salt sub-sector Working Group was formed in 2013 under the stewardship of Kenya Association of Manufacturers (KAM) with the general objective for the members of the sub-sector to become self-regulating while maintaining the highest standards of business ethics. The Sub sector comprises of five (5) salt companies all based along the Malindi-Lamu highway on the salt belt. These are Krystalline Salt Ltd, Kensalt Ltd, Malindi Salt Ltd, Kurawa Industries Ltd

and KEMU Salt Packers Ltd. The audit focused on these salt companies with the exception of KEMU Salt Packers Ltd. By the time of the audit, the latter was under receivership and therefore this report does not include any information about its state of compliance with the recommendations of the public inquiry.

It is important to note that under the umbrella of KAM the Salt sub sector has since employed an Executive Officer and Community Liaison Officer to deal with issues between the salt firms and the community through the CSR committee members. They are also running a programme with Global Compact which deals with enhancing respect of human rights in business. They contracted Ufadhili Trust to take lead in the process. The lobbying and advocacy services offered to the salt investors under the salt sub-sector include and are not restricted to labour, land, human rights, community and environment issues and acquiring a social license among others.

The KNCHR was tasked to bring together the CSOs in order to engage them in the monitoring of human rights issues in the salt sub sector. This was one of the recommendations that has seen several meetings being held and which in a way has improved the relationship between the salt companies and the local community. For instance, before KAM Salt Sub Sector Working Group was formed, there were a number of court cases pitting the communities against the salt companies. The court cases have since shown a downward trend.

The 2006 public inquiry report indicated a poorly coordinated Corporate Social Responsibility program marked by an adhoc implementation model with no consultations with the community members on their priority needs. The politicians were previously used as a link between the companies and the communities which translated to both parties being taken advantage of whenever circumstances suited the politicians. The current audit collected evidence of a fairly well organized and coordinated CSR programs by the salt companies. A CSR community committee comprising of three (3) community members from each catchment area is in place. The objective is to directly engage the community on CSR projects, land ownership, labour engagement, security, and environment protection and conservation programs. This twenty five (25) member committee has gone through training sessions on land ownership, labour laws, environment conservation, time management and CSR project proposal writing among others. There are monthly meetings with all members for purposes of networking and keeping tabs on activities in relation to the set objectives.

The current audit further collected evidence on status of compliance with the labour laws and other guidelines. However, the presence of unregulated artisanal salt miners remains a source of violation of such laws and at times one may not easily distinguish their operations from those of the licensed

salt companies. This audit recommends that these operators be subjected to the government's regulations on quality of products and compliance with statutory obligations of doing business.

Land ownership within the salt sub sector remains a controversial matter. The audit team obtained official land documents detailing ownership by the salt companies. However, the local communities disputed the authenticity of the documents. In an attempt to address this problem, the National Land Commission (NLC) held an inquiry in early 2016 and at the time of carrying out this audit, the report had not been released. The salt companies participated in the exercise and provided the required documents. It is therefore recommended that the NLC report be released as soon as possible to address the land issues in the area. In addition, the land demarcations and beacons must be in place to reduce encroachment by both the companies and the members of the local communities. The government resettlement program of the squatters is pending and must therefore be revisited and an immediate solution found.

CHAPTER 01

Introduction

1.1 Kenya National Commission on Human Rights (KNCHR)

The Kenya National Commission on Human Rights (KNCHR) is an independent National Human Rights Institution entrenched in the Constitution of Kenya 2010 under Article 59 (4) and subsequently established through an Act of Parliament (the Kenya National Commission on Human Rights Act No. 14 of 2011 and revised in 2012).

KNCHR operations are guided by the United Nations approved principles on establishment and functioning of independent human rights institutions otherwise referred to as the Paris Principles. KNCHR is an accredited “A” Status National Human Rights Institution.

The Commission implements two key broad mandates:

- i. It advises and supports public and private actors to promote the respect, protection and realization of fundamental human rights (***promotion mandate***) and
- ii. It plays a key leadership role in advising and moving the country towards a human rights state; one that respects

and promotes the rights of all citizens (***protection mandate***).

The functions of the Commission as provided for under Section 8 of the KNCHR Act, 2011 include to:

- i. Promote respect for human rights and develop a culture of human rights in the Republic;
- ii. Promote the protection and observance of human rights in public and private institutions;
- iii. Monitor, investigate and report on the observance of human rights in all spheres of life in the republic;
- iv. Receive and investigate complaints about alleged abuses of human rights, except those relating to the principle of equality and freedom from discrimination under the Gender and Equality Commission, and take steps to secure appropriate redress where human rights have been violated;
- v. On its own initiative or on the basis of complaints, investigate or research a matter in respect of human rights, and make recommendations to improve the functioning of State organs;
- vi. Act as the principal organ of the state in ensuring compliance with obligations under international and regional treaties and conventions relating to human rights except those that relate to the rights of special

interest groups protected under the law relating to equality and non-discrimination;

- vii. Formulate, implement and oversee programs intended to raise public awareness of the rights and obligations of a citizen under the Constitution;
- viii. Work with the National Gender and Equality Commission and the Commission on Administrative Justice to ensure efficiency effectiveness and complementarity in their activities and to establish mechanisms for referrals and collaborations;
- ix. Perform other functions as the Commission may consider necessary for the promotion and protection of human rights and
- x. Perform other functions as may be prescribed by the Constitution and any other written law.
- xi. Governments must also ensure that no one is rendered homeless or vulnerable to the violation of other human rights as a consequence of eviction.

Section 8 (e) of the KNCHR Act mandates the Commission “on its own initiative or on the basis of complaints investigate or research matter in respect of human right, and make recommendation to improve functioning of state organs”. It is within this context that the Commission carried out a public inquiry on the allegations of human rights violations by salt mining firms in Magarini, Malindi Sub County. This was in response to the Commission’s statutory mandate to ensure that the human rights of all Kenyans are protected, promoted and fulfilled through law, policy and practice by both public and private institutions.

1.2 Kenya Association of Manufacturers (KAM)

The Kenya Association of Manufacturers (KAM) is the representative organization for manufacturing value-add industries in Kenya. Established in 1959 as a private sector body, KAM has evolved into a dynamic, vibrant, credible and respected business association that unites industrialists and offers a common voice for businesses. KAM provides an essential link for co-operation, dialogue and understanding with the Government by representing the views and concerns of its members to the relevant authorities. In pursuit of its core mandate of policy advocacy, KAM promotes trade and investment, upholds standards, encourages the formulation, enactment and administration of sound policies that facilitate a competitive business environment and reduce the cost of doing business.

1.3 Rationale of the Audit

In July 2005 the Kenya National Commission on Human Rights (KNCHR) carried out a public inquiry into allegations of human rights violations arising from the activities of salt manufacturing companies in Magarini Division of Malindi District as it then was, and released a report in 2006 with multiple recommendations. Specifically, the inquiry investigated complaints relating to:

- i. Evictions from land which the community perceived as belonging to it;

¹ The main salt companies operating in Magarini include; Krystalline Salt Ltd (Gongoni & Marereni), Kurawa Salt Ltd, Malindi Salt Ltd, Kensalt Ltd and Kurawa Salt Co. (order of largest to smallest in terms of production is as follows – Kensalt Ltd, Krystalline Salt Ltd (Gongoni & Marereni), Malindi Salt, Kurawa Salt and Kemu Salt)

- ii. Health complications arising from salt manufacturing;
- iii. Violations of workers' rights;
- iv. Role of Police and Provincial Administration in harassment of residents; and
- v. Environmental degradation.

The public inquiry was insightful and impactful to the stakeholders who were involved and participated. The report has been a point of reference in most of the initiatives undertaken in the salt sub-sector. It is now eleven years since this public inquiry was carried out and the recommendations shared with various stakeholders for implementation. A lot of consultative efforts have been undertaken towards resolving the human rights violation.

Kenya Association of Manufacturers (hereinafter referred to as KAM) reached out to KNCHR to carry out an audit on the salt manufacturing companies with reference to the compliance of the recommendations set out in the 2006 public inquiry report.

On the other hand, the Kenya Association of Manufacturers has implemented a raft of interventions over time based on the recommendations of the inquiry conducted by KNCHR. It is on this basis that KAM engaged the Commission in carrying out a status review and disseminate the findings. This request which the Commission accepted was communicated via letter referenced KAM/O7/41/em/PW/2016 dated 16th August 2016. KAM and KNCHR signed a consultancy service contract on 31st October 2016 for the purpose of this audit. On 19th December 2016 KNCHR and KAM management staff held an inception meeting in which both parties

agreed on the objectives, methodology and deliverables. The audit was conducted from the 9th -13th January 2017 by a team from KNCHR and KAM.

1.4 Parameters of the Audit

This audit was guided by the UN Guiding principles on Business and Human Rights. Great focus was placed on the legislative and policy frameworks that guarantee the promotion and protection of human rights. These frameworks are based on specific standards that are used as benchmarks for undertaking an audit for business entities. The history of these guiding principles can be traced to the year 2005 when the then UN Secretary-General appointed a Special Representative on the issue of human rights and transnational corporations and other business enterprises (Special Representative on Business and Human Rights), Professor John Ruggie, to address the lack of clarity on the roles of States and businesses with regard to human rights. This led to serious reflections and the urgency to identify and clarify the expectations and obligations of conducting business.

Professor Ruggie presented a framework for Business and Human Rights to the UN Human Rights Council in 2008. The 'Framework for Business and Human Rights' is now anchored in the (UN Protect, Respect and Remedy Framework). The Framework rests on three complementary and interrelated pillars relating to businesses. These are;

- i. The role of businesses in promoting and protecting human rights;
- ii. The role national human rights institutions can play in engaging with business and human rights issues so as to ensure that States, businesses and civil society uphold their respective duties and

- iii. Responsibilities with regard to business interaction with human rights and the impact Business activities can have on human rights.

In addition, it is important to note that the State has a duty to protect against human rights abuses by third parties, including business enterprises, through appropriate policies, regulation and adjudication. Business entities have a corporate responsibility to respect human rights, which means that they act with due diligence to avoid infringing on the rights of others and to address adverse impacts in which they are involved. Both the State and business entities must provide for greater access by victims to effective remedy, both judicial and non-judicial.

The core human rights principles that guided the audit process were;

- i. **Accountability:** This principle acknowledges that a human rights based approach identifies the “rights holders”, as well as “duty bearers” to highlight those accountable for ensuring the rights holders’ rights are realized;
- ii. **Non-discrimination:** This involves addressing discrimination and protecting vulnerable groups;
- iii. **Transparency:** This means that all public actions and decisions are clear and distinct;
- iv. **Empowerment:** This is the fundamental worth of the human being. It recognizes those most vulnerable to human deprivations – e.g. women, children, the elderly, persons living with disability and who need special protection to overcome their vulnerability and

- v. **Human dignity:** It acknowledges and respects people’s capacity to think and act freely for and on their own behalf so as to create solutions that address their problems, control their destinies and fulfill their potential.

1.5 Objectives of the Audit (Status Review)

The goal of the status review was to establish the extent to which KAM Salt Subsector and other duty bearers had implemented the recommendations of the public inquiry into human rights violations by the salt companies in the Magarini area in Malindi. The specific objectives were:

- i. Carry out an independent review of the milestones achieved since the 2006 inquiry on salt companies in Magarini;
- ii. Document the progress on implementation of the recommendations by various duty bearers including the salt companies;
- iii. Document testimonies of the communities in the area regarding the progress and benefits of the interventions by the duty bearers and the salt companies and
- iv. Provide recommendations for further interventions.

1.6 Technical Approach and Methodology

The aim of the human rights audit² was to measure and document the milestones achieved in the last eleven years since the Malindi inquiry report was launched. The review involved assessing the levels

² A human right audit means an official examination of human rights compliance in business and human rights.

attained on each recommendation of the public inquiry. A total of seventeen (17) recommendations were made in the inquiry report. This means the same efforts engaged in the public inquiry were employed in carrying out the assessment and documenting achievements attained so far. This was done through carrying a desktop review of reports on the work carried out on all the recommendations in the Malindi public inquiry. This included reviewing of reports, publication and documentation available; including government, the salt sub- sector and CSO reports.

The audit applied the triangulation technique which is a mix of both qualitative and quantitative methods. These methods allow respondents to share experiences, thus providing primary data that forms the basis for comprehensive recommendations and conclusions that can draw generalizations within a given context.

Methods of data collection included questionnaires that were both structured and unstructured, observations and focus group discussions. Target group and sample size included the senior management, board members, workers' union representatives, collaborating agencies and workers (both permanent and contract). Each salt company provided a sample of twenty (20) workers sampled on site by the audit teams with support from the management.

Based on the recommendations of the previous audit, the following organizations and institutions were targeted: National government (Administration), Salt companies, Police, Attorney General, Ministry of Health (National and county), Ministry of Labour, Social Security and Services, Ministry of Water and Irrigation,

NEMA, County government of Kilifi, CBOs and CSOs and KNCHR.

The findings were subjected to validation by key stakeholders to ascertain validity of information gathered and to deliberate over recommendation and remedial interventions still pending. The validation process involved the salt investors and other stakeholders. They were given the opportunity to interrogate the report and see whether it is valid, reliable, carries sufficient, current and authentic evidence of human rights compliance in business. After the validation presentation of the draft report the stakeholders were given two weeks to submit additional comments to the report.

Presentation of findings was itemized and analyzed to give an overview of the state of compliance to the recommendations of the 2006 public inquiry.

CHAPTER 02

Literature Review

2.1 Legal Review

The Commission conducted a legal review of the laws and regulations that affect the salt manufacturing industry. The focus was on;

- i. Environment and water;
- ii. Land and evictions;
- iii. Labour;
- iv. Mining;
- v. CSR and Community liaisons and
- vi. Environment and Water.

Article 42 of the Constitution of Kenya provides for the right to a clean and healthy environment. The activities of the salt companies conducted in Malindi ought to be environmentally friendly and any party that is afflicted by their activities has the right to make claim against such an activity. Additionally, the right to a clean environment and the safeguarding thereof is enshrined

under the Environment Management and Coordination Act¹, No. 8 of 1992. The Act establishes the right to a clean and healthy environment and enumerates the offences relating to this fundamental right. There is also an established National Environmental Management Authority (hereinafter referred to as NEMA) whose mandate is to exercise general supervision and coordination over all matters relating to the environment and to be the principal instrument of Government in the implementation of all policies relating to the environment.

NEMA acts as the principal government agency responsible for the inspection and assessment of all the activities relating to the environment of the salt manufactures within the country⁴. NEMA is aided by the Provincial and District Environment Committees (DEC) set up under section 29 of EMCA. The duties of the DEC is to ensure protection of all riverbanks and shores; assist local communities in conservation and sustainable utilization of the local resources; and report to the lead agency, in writing, in view of an activity

¹ Hereafter referred to as EMCA

² Kenya National Commission on Human Rights, *The Malindi Inquiry Report 2006*



The objective of the Convention is to protect and manage the marine environment and coastal areas of the Eastern African region.

likely to degrade the environment, river banks, lake shores or sea shores³.

While NEMA recognizes that the salt companies have been complying with the laws (e.g. obtaining licenses and filing reports), it was noted that the DEC on the other hand have not had any fruitful engagements to date. Consequently, the pivotal role in protection and conservation of the environment as played by the DEC⁴ has not been realized to date.

Worth noting is the fact that Kenya Forest Service (KFS) has partnered with NEMA to ensure the realization of the provisions of Part V of EMCA.

Companies have adopted activities that not only ensure the conservation of the biodiversity but also sustainability of the activities that they carry out. Salt companies such as Krystalline Salt Limited have begun afforestation programmes where they had earlier sourced wood for their fuel. The companies also manage their waste in a manner that would not degrade the natural resources e.g. land, mangroves and water⁵. The aforementioned efforts contribute towards preserving the environment.

The mandate of both NEMA and KFS is enshrined in the agreement by parties to the Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Eastern African Region⁶ which Kenya is a party to. The objective of the Convention is to protect and manage the marine environment and coastal areas of the Eastern African region. The Convention states that a party to it has a duty to prevent, reduce and combat pollution of the Convention area and to ensure sound environmental management of natural resources, using for this purpose the best practicable means at their disposal, and in accordance with their capabilities⁷. This mandates both NEMA and KFS to act as watchdogs for the State in safeguarding the environment at large.

There had been a concern that some of the Salt companies had been disposing waste to the ocean and thereby causing destruction to the aquatic environment. NEMA provides that no person shall deposit any substance in a wetland if that substance is likely to have adverse environmental effects on the wetlands without the prior written approval of the Director General⁸. It goes further to provide that no person should direct or

³ Section 20 of the EMCA

⁴ Section 30 of EMCA

⁵ Section 74(2) requires companies to establish a plant for the treatment of effluents.

⁶ Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Eastern African Region was ratified by Kenya on Sep 11, 1990 but came into force on 20th May, 1996.

⁷ Article 4 of the Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Eastern African Region.

⁸ Section 42 (1) of EMCA

block any river, lake or wetland from its natural and normal course without the Director General's approval and after an EIA has been conducted. It is out of these provisions that necessitated the Salt companies to make adjustments in their harvesting activities through removal of the dykes that had initially been constructed. Section 19 of the EMCA wetland regulations⁹, provides that where one intends to dispose of waste into the wetlands or block any river, lake or wetland, they should apply for a resource use permit from NEMA.

There is also a requirement set out under the Water Quality Regulations¹⁰ no person shall discharge any effluent from sewage treatment works, industry or other point sources into the aquatic environment without a valid effluent discharge license issued in accordance with the provisions of EMCA. Other than pollution of the aquatic environment, every person is required to refrain from any act which directly or indirectly causes, or may cause immediate or subsequent water pollution and it shall be immaterial whether or not the water resource was polluted before the enactment of the Act¹¹. This section should be aligned with the complaints raised as to the activities of the Salt companies working in Malindi and whether or not their activities have contaminated the fresh water sources in the area.

In order to monitor and ensure sustainability of the positive changes recorded and further improve on the status quo, NEMA is mandated to carry out annual environmental audits¹².

⁹ Legal Notice No. 19, *The Environmental Management And Coordination (Wetlands, River Banks, Lake Shores And Sea Shore Management) Regulations, 2009*

¹⁰ Section 6 of the *Environmental Management and Co-Ordination (Water Quality) Regulations, 2006*.

¹¹ Section 4 (1) the *Environmental Management and Co-Ordination (Water Quality) Regulations, 2006*

¹² Sections 67 and 69 of EMCA

There is however need for NEMA to consistently evaluate the companies' activities so as to track implementation of recommendations made by it. This would also ensure prompt interventions on issues relating to the environment. Furthermore, Section 117 and 118 of EMCA obligates an environmental inspector to monitor compliance with the environmental standards established under the Act and where necessary prosecute the violators of the law.

Moreover, Section 145 of EMCA provides for offences committed by body corporates and clearly stipulates under subsection (1) that when an offence against this Act, is committed by a body corporate, the body corporate and every director or officer of the body corporate who had knowledge of the commission of the offence and who did not exercise due diligence, efficiency and economy to ensure compliance with this Act, shall be guilty of an offence. The law lifts the corporate veil and requires employers and employees to be meticulous in the dispensation of their duties. Consequently, it is prudent to sensitize the companies¹³ to ensure that they abide by the existing legislations to avoid impending violations.

Land and Evictions

Land at the Magarini Salt belt is marred with lots of controversy that has led to violations on the core provisions of the Constitution that relate to land and ownership including Article 40 on the protection of the right to own property. The two prominent issues in relation to this theme include;

- i. Land ownership – Community vs salt companies.

¹³ Both employers and employees



“Most of the land which the communities claim to be ancestral is not true, the “communities” moved to the salt belt for employment at salt works either directly or indirectly

ii. Ownership of land along the mangrove area.

Section 30 (3) of the Land Registration Act provides that a certificate of title or certificate of lease shall be prima facie evidence of the matters shown in the certificate, and the land or lease shall be subject to all entries in the register. The companies own the requisite documents in relation to the land they occupy. However, communities have also stood their ground and maintained that they are the legitimate owners to the land as their ancestors have resided on the same since time immemorial.

“Most of the land which the communities claim to be ancestral is not true, the “communities” moved to the salt belt for employment at salt works either directly or indirectly” asserts Mohamed, Director of Kurawa industries.

Article 61(2) of the Constitution classifies land as public, community or private. The land which the salt companies occupy is public land, which has been granted by the Government, hence the nature of the title documents as leaseholds¹⁴. In view of the foregoing, Article 62 (4) provides that public land shall not be disposed or otherwise used except in terms of an Act of Parliament specifying the nature and terms of that disposal or use.

¹⁴ Leasehold titles are temporary to be renewed upon expiry of the term.

It is crystal clear that although the Government issued the titles to the Salt companies, there were indigenous communities that had occupied and settled on the land prior to the establishment of the companies. Although these communities do not have ownership status over the land¹⁵ It is imperative to note that evictions done need to be in line with the legislative provisions.

Housing involves more than having a roof over one’s head. It includes the need for minimum levels of security of tenure. Article 11(1) of the International Covenant on Economic, Social and Cultural Rights, provides for the right to adequate housing, the right to protection from arbitrary or unlawful interference with privacy, family or home and to legal security of tenure. Article 17 of the International Covenant on Civil and Political Rights provides for the right to protection of the law against arbitrary or unlawful interference with a person’s privacy, family or home¹⁶.

Kenya is party to both the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights. The rights envisioned under Article 11(1) and 17 of the two treaties named respectively mirror each other and they are related,

¹⁵ The community is not in possession of any title document to ascertain its ownership status over the salt companies that have managed to obtain lease titles.

¹⁶ Ministry of lands, Eviction and Resettlement Guideline, <http://urbanlex.unhabitat.org/sites/default/files/eviction_guidelines_final_july_2010_revised_sep_2010.pdf accessed> on 2/2/2017

hence the laws are interconnected. Forced evictions contravene the African Charter on Human and Peoples' Rights to which Kenya is also a party to in particular, Articles 14 and 16 on the right to property and the right to health, and Article 18(1) on the state's duty to protect the family¹⁷.

Evictions should only be carried out when appropriate procedural protections are in place. These protections are identified by the UN Committee on Economic, Social and Cultural Rights, in paragraph 15 of General Comment No.7, as follows¹⁸:

- i. An opportunity for genuine consultation with those affected;
- ii. Adequate and reasonable notice for affected people prior to the eviction;
- iii. Information on the proposed evictions and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected;
- iv. Government officials or their representatives to be present during an eviction;
- v. Anyone carrying out the eviction to be properly identified;
- vi. Evictions are not to take place in particularly bad weather or at night unless the affected people consent;
- vii. Provision of legal remedies and
- viii. Provision where possible, of legal aid to people who are in need of it to seek redress from the courts.
- ix. Governments must also ensure that no one is rendered homeless or vulnerable to the violation of other human rights as a consequence of eviction.

¹⁷ Ibid

¹⁸ Ibid

Adequate alternative housing and compensation for all losses must be made available to those affected prior to eviction, regardless of whether they rent, own, occupy or lease the land or housing in question (General Comment No.7, paragraph 16)

Following the large scale evictions that occurred in the Magarini Salt belt brought about by establishment of the Salt companies; there have been complaints on destruction of property, harassment and assault of persons. There is need for the government to take an inventory of the indigenous communities so as to humanely evict them from the occupied lands. It is however worth noting that the prohibition on forced evictions does not apply to evictions carried out by force in accordance with the law and in conformity with the provisions of the International Covenants on Human Rights.

There is also need for the community to be sensitized on the different land regimes in Kenya to understand the process of legally acquiring and owning land as well as the rights and obligations of the land owners and the public as a whole.

Additionally, the enactment of the Evictions and Resettlement Bill of 2014 needs to be fast-tracked for clear national guidelines on evictions to avert further violations. It would also be prudent to involve the National Land Commission in the resettlement process whose function includes amongst others to manage public land on behalf of the national and county governments¹⁹.

Some of the companies' land stretch into the mangrove areas. Beacons are found in the ocean. These are some of the evident anomalies that need to be rectified by the registrar of titles.

¹⁹ Section 5(1) of the National Land Commission Act

This has been elaborately provided for under Part VII of the Land Registration Act that covers rectification of titles and indemnity. This would solve imminent conflicts between the salt companies and the Kenya Forest Service²⁰ over the ownership of the mangrove areas.

Labour

The Salt companies have evidently provided job opportunities to the locals. Whereas the unemployment rates continue to dwindle, work relations and safety is now the topic of concern to the employees as well as the community. Article 41 of the Constitution emphasizes the right to fair labour practices which includes the right to fair remuneration and reasonable working conditions.

In a bid to ensure transparency and fairness in their engagements with the employees, employers are required to enter into contracts²¹. Section 9 (4) of the Employment Act stipulates that where an employee is illiterate or cannot understand the language in which the contract is written, or the provisions of the contract of service, the employer shall have the contract explained to the employee in a language that the employee understands. The contract is terminable upon either party giving sufficient notice as per the Act²². Section 15 of the Act further requires an employer to display a statement in the prescribed form of the employee's rights under this Act in a conspicuous place, which is accessible to all the employees.

²⁰ Section 42 (1) (h) of the Forest Conservation and Management Act requires the Kenya Forest Service to manage all indigenous forests and woodlands on a sustainable basis for purposes of habitat for wildlife in terrestrial forests and fisheries in mangrove forests.

²¹ The contract can either be oral or written as envisaged by Part III of the Employment Act

²² Section 35 of the Employment Act.

The Kenyan labour laws also require every employer to obtain and maintain an insurance policy, with an insurer approved by the Minister in respect of any liability that the employer may incur under the Work Injuries Benefits Act (WIBA) to any of his employees²³. In line with this, Section 10(2) provides that an employer is liable to pay compensation in accordance with the provisions of this Act to an employee injured while at work. It is however worth noting that the Act categorizes the injuries as disablement or death. Consequently, light injuries or burns are not subjected to this law hence the need for the review of this law.

The labour officer indicated that in respect to WIBA his office received a low number of reports and attributed this to either ignorance of the workers or proximity of his office to the Salt companies.

The Occupational Safety and Health Act (OSHA) elaborately covers health and safety of all workers at the workplace.

With reference to the Act, an employer²⁴ is obligated by the law to establish a safety and health committee at the workplace in accordance with regulations prescribed by the Minister if;

- (a) There are twenty or more persons employed at the workplace; or
- (b) The Director directs the establishment of such a committee at any other workplace²⁵.

Moreover, the law requires every employer to provide suitable latrines of a type and construction approved by a Medical Officer or a Labour Officer and that the

²³ Section 7 of WIBA

²⁴ Also referred to as an occupier in the OSHA

²⁵ Section 9(1) of OSHA

same should be maintained in a fit state of repair and cleanliness at all times²⁶.

Part III of OSHA establishes the office of the director of occupational safety and health services and further provides for the appointment of occupational safety and health officers.

Section 32 and 33 of OSHA spell out the powers of the officer which include conducting inspections as well as prosecuting violations under the Act. With reference to the foregoing, Section 11 of the Act requires the employer to carry out annual health and safety audits and keep a record of the same. Such record shall be preserved and be kept available for inspection by the occupational safety and health officer.

Article 41(2) (C) provides that every worker has the right to form, join or participate in the activities and programmes of a trade union. This provision is mirrored by Part II of the Labour Relations Act. With these positive provisions in place, the employees at the Salt companies seemed reluctant to exercise their right to freely associate themselves with a trade union. It is therefore essential that proper sensitization be carried out on the employee population so as to inform them of the importance and benefits of belonging to a trade union.

Mining

So far there has been established the Mining Act, No. 12 of 2016 which was enacted on 6th May, 2016. Before the Act came into operation, Salt activities were not regulated by a specific Act of Parliament other than the conditions on leases as to mining rights and environmental standards.

²⁶ Rules 2 and 3 of the Employment (Sanitation) Rules

Under the new Act, a person shall not search for, prospect or mine any mineral, mineral deposits or tailings in Kenya without a license or permit²⁷. The Act defines a mineral as a geological substance in solid, liquid or gaseous form occurring naturally in or on the earth, in or under water, in mine waste or tailing and includes the minerals specified in the First Schedule but does not include petroleum, hydrocarbon gases or groundwater²⁸. The First Schedule of the Act categorizes Salt as a Construction and Industrial mineral thus putting all Salt activities under the Mining Act.

The Mining Act specifies that all mining operations cannot be conducted without a mining license or permit issued by the Cabinet Secretary at the time being responsible for mining after recommendations issued by the Mineral Rights Board.

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The Mining Act specifies that all mining operations cannot be conducted without a mining license or permit issued by the Cabinet Secretary at the time being responsible for mining after recommendations issued by the Mineral Rights Board.

²⁷ Section 10 of the Mining Act

²⁸ Section 4 of the Mining Act No. 12 of 2016

There are however, transitional provisions in the Act that state that a holder of any mineral right in respect of large scale operations shall be required to update its mine plan with regard to conditions of employment and CSR not later than eighteen (18) months following the enactment of the Act²⁹ which was on 6th May, 2016. This legislation thus gave the Salt industries up to 5th November, 2017 to comply with these provisions.

Furthermore, a mineral right for prospecting, mining or dealing in minerals that was granted prior to this Act coming into force shall not be extended or renewed but where the granted mineral right provided a right to apply for a renewal or extension of the right, the holder of that mineral right may apply, in accordance with this Act, for a similar type of license or permit as provided for under this Act on a priority basis³⁰. With regard to the above, the new Act allows the Salt companies to

be in possession of the Salt belt so long as their application for renewal of their license is allowed.

The Act has gone further to recognize the importance of alternative dispute resolution mechanisms as enshrined in the Constitution³¹. Under Section 154 of the Act, any dispute arising as a result of a mineral right may be resolved by the Cabinet Secretary; through a mediation or arbitration; or through a court of competent jurisdiction.

Prior to the 2016 Mining Act, artisanal mining activities were not being recognized by any law or regulation and it was apparent that a dispute would arise between the Salt companies and

the artisanal miners working in Magarini Salt belt. The new Mining Act recognizes artisanal mining as traditional and customary mining operations using traditional or customary ways and means³². Section 95(3) however provides that no person shall conduct artisanal mining operations unless the person has been granted an artisanal mining permit under this Act. Of importance is the fact that where any mineral right has been granted over any parcel of land, an artisanal permit shall not be granted³³.

The Act further stipulates punishment for violation of its provisions as imprisonment for a term not exceeding three years, or payment of a fine of not less than one million shillings, or both the imprisonment term and a fine³⁴.

2.2 Conclusion

Most key stakeholders are oblivious of the existence of the legislative framework that relate to the Salt industry. Consequently, most of the obligations outlined in this chapter are yet to be realized. There is need for constant engagements between the key governmental and non-governmental institutions for a greater change to be recorded. So far, the Salt companies together with the corresponding government offices have demonstrated the willingness and ability to abide by the laws and adopt measures of ensuring that the Salt sector is a benefit to the investor as well as the community thereby contributing greatly towards the Sustainable Development Goals (SDGs).

²⁹ Section 225 (5) of the Mining Act

³⁰ Section 225 (6) of the Mining Act

³¹ Article 159(2) (c) of the Kenya Constitution, 2010

³² Section 4 of the Mining Act

³³ Section 95(2) of the Mining Act

³⁴ Section 207 of the Mining Act

CHAPTER 03

Findings

This chapter presents the findings of the audit. This presentation has considered individual Salt companies as separate business entities with unique operations and challenges.

3.1.0 Kensalt Limited

3.1.1 Land Adjudication and Titling

The land where Kensalt Limited carries out its operations was granted by the Government. From 1975 to 1991 the company was a parastatal, and was later on privatized. In 1975 a survey was done that documented the presence of only one family living on the land. The other families came later. Settlement schemes in Msumarini and Gongoni were established to settle the people who were within the salt harvesting land. Kensalt has a title deed (certificate of lease) with details of the land acreage standing at two thousand two hundred sixty three point nine (2263.9) hectares. The plot number is LR NO. 12333 and title number is C.R 15288. The rent payable per annum as per this lease is Kshs 10,000. The tenure is leasehold with a term of 99 years with effect from 1975.

The company has an inventory of the communities living within the land where salt harvesting is carried out. The company provided details of the compensation for the land initially occupied by the indigenous communities living in the area. The audit team accessed the documents with details of payments made. The beneficiaries were grouped and compensated accordingly. For instance, a payment schedule dated 7th May 2016 for 15th group of squatters was paid Ksh 1,119,300 to two families for their land and crops with a similar amount indicated as balance to be paid to them. Another payment schedule for 12th group dated 15th March 2016 was paid a total of Ksh. 3,034,575 with a balance of Ksh. 2,086,575. This balance was fully paid on 12th July 2016. It can be concluded that the company has made efforts to compensate the squatters and it appears from the records that the amounts paid were agreed on amicably.

Kensalt Limited has four (4) access roads to the ocean and are open to the public except the vehicles which are subjected to thorough security checks to protect the harvesting of the mangrove trees and company property.

It was alleged by the company that there exists artisanal miners who are not regulated. They syphon brine from the company ponds and make salt which is not subjected to quality checks. The artisanal miners sometimes use Kensalt Limited packages to sell their salt. They are producing counterfeit salt which affects the market. Kensalt Limited proposes that the artisanal miners should be subjected to compliance audit by NEMA, while KRA should reign in and ensure these miners are regulated and operate within the law. KEBS should also subject them to quality checks.

In early 2016, Kensalt Company was invited by the National Land Commission to participate in a land grant review inquiry. During the meeting Kensalt availed documents that were required. The NLC is yet to release the findings of the inquiry.

Before this, a survey was conducted by the Ministry of Lands on 26th February 2014 to determine the boundaries of the land owned by the company.

The report referenced MLD/TECH/7/VOL 11/45 confirmed that the parcel of land was found to lie on its correct ground position as per the datum used and the report is duly signed by the District Surveyor Malindi/Magarini Districts.

It is important to note that Kensalt Limited was not associated with the water dykes mentioned in the public inquiry report of 2006 published by KNCHR

3.1.2 Clean Healthy Environment and Right to Water

Kensalt Limited has supported the community to access clean water for domestic use. The water is free at

the point of access and available for domestic and livestock use. However, for purposes of regulating this service, the company has specified the time when the community can access the water. The water is obtained from Timboni water wells by trucks. The company retained Pollucon¹ Services Ltd to undertake water tests from the dams, Timboni & Kijandoni water wells to establish the safety of water for human consumption. Water sampling was also done by WRMA and they have not released a report of their findings up to date. Other reports available are by NEMA dated 14th October 2016, Noise Survey audit report, Health and Safety Risk assessment, Fire Safety audit report. All these were carried out in 2016 with positive results on compliance.

The company has taken measures to protect the mangrove forest. The measures are a commitment of not discharging the brine back to the ocean. They also report to KFS when they find people cutting trees. They impound vehicles passing through their access roads carrying mangrove and hand them over to the relevant authorities.

3.1.3 Labour Standards and Working Conditions

The company has three hundred and fifty (350) permanent employees in Gongoni, Mombasa and Nairobi. The company has policies in place to prevent unlawful labour practices. The records were accessed by the audit team as follows: Employment and management policy, health and safety policy, general policy statement, employee health policy and food safety policy displayed on the notice board. There is an open door policy (free communication) from the human resources for employees to report their

¹ Pollucon Services (K) Limited is a regional leading Inspection, Verification, Testing, Certification and Pest Control Company.

grievances. It was reported that workers are required to produce an identification card before they are contracted.

Employees sneak in through undesignated routes carrying babies. They also bring their siblings to babysit them. Despite the companies effort to control them this has been a major challenge attributed to high levels of poverty in the area. The cases also apply to workers who bring their partners to work in the farm. The company informed us that children found in the salt premises are babysitting and not providing child labor and the company doesn't approve the same.

Measures have been put in place to ensure that employment contracts are fair, transparent and understood by the workers.

The company availed files of Contracts for permanent employees. They receive house allowances, yearly increment, annual bonuses and annual leave. They have medical cover for the permanent workers and the audit team verified this with the workers who upon request produced the medical cards. The company encourages workers to develop a savings culture through a Sacco that is duly registered. However there are some workers who are still not members of the Sacco by choice.

The company increased staff housing units from 100 to 185. (This is at the time of carrying out this audit). They have also adopted a policy that the house allowance will not be withdrawn even if the employees will be housed.

The company has a Collective Bargaining Agreement (CBA) with Kenya Chemical and Allied Workers Union which runs for three years. The current CBA ended in

December 2016. The company embarked on a process of reviewing the CBA for the next three years.

The company has measures in place to ensure that workers perform their roles in an environment which does not expose them to “hazardous substances, agents or processes”. These include Provision of PPEs according to the nature of work done by workers. There was evidence of the PPEs purchased and issued to workers who acknowledged receipt by appending their signatures. The team also observed that the workers were using the protective gear save for the few who though issued with the gear did not have them on. Some of the reasons given were that they forgot them at home. The company raised concerns that some workers are fond of either selling the gears or leasing to their friends working in adjacent Salt companies. Strict supervision is recommended to end this practice in order to enhance safety of the workers.

Training on health and safety is carried out by first aiders within the company with a special first aid room. These efforts are supported by a health and safety prevention and remediation policy and procedures which comply with industry, national and international standards. This is displayed appropriately for workers and visitors. It is also important to note that the company has several health and safety audit reports. An example is one dated 28th August 2016 with clear recommendations. The company is advised to develop an action plan for implementation of such recommendations.

The audit team scrutinized workers contracts and determined that the Salt Company has observed the national minimum wage guidelines. The employees confirmed that there were no delays in

wage payments. The team managed to interview the workers who were on duty on 11th January 2017, and those sampled conformed to the minimum wage guidelines. For instance, a group of five loaders working on piece work basis as a team were taking home Kshs 850 each. They reported to work at 8.00 to 4.00pm.

The company has provided a conducive environment for the workers to exercise the freedom of association including participating in activities of labour organizations recognized by law for purposes of collective bargaining. The employees are members of the Kenya Chemicals Allied Union. The company has allowed one of the employees to be a shop steward. However, during focus group discussion for the workers, out of the fourteen (14) workers interviewed only one was a member of the trade union. He also seemed not to understand clearly the purpose of the union.

All he knew was that the union deducts some money from his salary. The company provides medical cover for the permanent staff and their families.

3.1.4 Compensation and Relocation

The company indicated that it has never been involved in evictions of squatters. They have never taken anybody to court or even to the chief over land disputes. Instead they have been engaging squatters on dialogue and negotiations. The company has an inventory of the individuals compensated and there are no petitions with regard to the compensation offered by the company. The determination of how much one was to receive as compensation was clearly outlined and made public. The process of compensation and relocation is ongoing.

3.1.5 Corporate Social Responsibility and Community Liaisons

Kensalt provides clean water to the community which is accessed from the company's gate. They have CSR committee for the community projects. They have the following Community negotiated projects:

- i. Education sponsorship program: Fifty five (55) students are currently in secondary schools, twenty eight (28) students have completed secondary school. Out of the twenty eight (28) students, nine (9) have joined university, three (3) have joined teaching colleges and the rest are waiting to be absorbed in colleges.
- ii. Construction of three (3) earth dams.
- iii. Assistant Chief's office at Kibaoni
- iv. Provision of roofing materials for four (4) classrooms at Magarini High School
- v. The Salt Company is in the process of constructing a dispensary within Kadzuhoni area,
- vi. Provision of free water to the community daily for both human and livestock consumption.
- vii. Offering industrial attachment for students preferably from the community who meet the qualifications and
- viii. Offering educational visits with guided support for student from the entire country to learn the process and science of manufacturing salt. From primary level - university level



Some of beneficiaries after receiving their cheques for sponsorship by Kensalt

Earth Dams at Kibaoni – Fundisa location and an Asst. Chief's office at Kibaoni Sub-location – Fundisa location.



3.1.6 Workers Focus Group Discussions.

The Focus Group Discussions comprised of fourteen (14) employees (5 females and 9 males). The workers were asked how long they have worked at the company. This helped the audit team engage them in a discussion with regard to observance of human rights at the company and the progress the company has made to address any violations. Below is summary of the details:

Gender	Number of years worked at the company			Terms of Employment	
	Below 3 years	4-9 years	Ten years and above	Permanent	Contract
Male	4	3	2	9	0
Female	2	2	1	5	0
Totals	6	5	3	14	0

The employees confirmed the following;

- i. The company has supported them on trainings in the health and safety, fire and safety and first aid. In addition the company has put in place a team of first aiders and a special first aid room is available with the necessary first aid kit.
- ii. They are issued with PPEs according to the nature of their work.
- iii. They have medical scheme with Jubilee insurance company, pension, annual leave and leave travelling allowance for the permanent employees which is a detailed with proper documentation.
- iv. They are members of trade union-Kenya Chemical and Allied Workers Union and
- v. They have a Sacco called Kensalt Sacco. Eight (8) male and four (4) female were members of the Sacco at the time of the audit. The Sacco gives them loans and measures are in place to protect their savings with the Sacco. Almost all the workers interviewed were members of the Sacco.

The workers requested for more training on health and safety for those who have not had a chance and updating skills on technology and human rights.

3.2.0 Krystalline Salt Limited

3.2.1 Introduction

Krystalline Salt Limited was established on 20th February 1984 as a salt manufacturer. Their head office is based in Nairobi. Krystalline Salt started its operations in the Magarini sub-town namely Marereni. In 2007, Krystalline Salt started is operations in Magarini sub-town namely Gongoni, after it acquired Mombasa Salt Works (formerly) called Fundisa Salt work, which was the oldest salt works in Kenya, started by Germans in 1920.

Their mission is to be the market leader and consumers' first choice of quality edible premium salt by striving to provide superior customer service, achieving management efficiency by employees empowerment and lowering cost of production by leveraging technology and use of best practices. They have

around seven hundred (700) permanent employees and fifteen (15) casuals; these are their greatest asset. Most of who are employed in Gongoni and Marereni sites.

They take pride in their commitment and support to the Ten Principles of the United Nations Global Compact in the areas of Human Rights, Labour, Environment and Anti-corruption.

Krystalline Salt Limited made a conscious decision to join the United Nations Global Compact as participants in 2013. It reinforces their long-term commitment to the U.N. Principles protecting human rights, labour, environment and combating corruption and fraud. The company understands that as a corporate citizen, they are encouraged to engage in the affairs of the local communities where they conduct business to ethically operate in methods that respect all human rights, employees and the environment.

Every year they deliberately commit to achieve goals through various planned activities and projects that are aimed at protecting human rights, labour, environment and combat corruption and fraud. At the end of the year they evaluate themselves based on the set goals.

They also pride themselves by giving back to the local communities and the less privileged through their Corporate Social Responsibility (CSR) Program. They recognize that their social, economic and environmental responsibilities to the community are integral to the business and this is demonstrated through their

actions. Their CSR activities and projects aspire to resolve challenges faced by community as well as meet the seventeen (17) Sustainable Development Goals (SDGs).

The company indicated that they practice Kaizen and train their employees to enhance efficiency, improve production and reduce waste.

3.2.2 Land Adjudication and Titling

The Krystalline Salt Company operates in two areas of Gongoni and Marereni

i. Marereni Operations:

In 1984, the Company was granted a lease for Marereni LR No. 13427 which has 2034.4 hectares.

The company has a lease certificate for the parcel of land and it pays annual rents and royalties as stipulated in the lease certificate.

The company had detailed inventory of the communities living in the area and the nature of compensation offered to them. Eight five (85) families who earlier lived on the land were compensated by the company for crops and houses. Compensation for the land was to be done by the national government which owns the lease.

At the time of the Audit, the company had squatters within its land at Marereni that included twenty one (21) families on the south-eastern side of its plot, two (2) families on the eastern side and also

They take pride in their commitment and support to the Ten Principles of the United Nations Global Compact in the areas of Human Rights, Labour, Environment and Anti-corruption.

thirty (30) fishermen who have pitched small huts for shelter on the same side. A Mr. Charles Charo Gohu is also claiming ownership of a section of the company's plot at the north eastern side. Some of these families had already been compensated but refused to vacate the land. The Salt Company notes that more squatters keep encroaching their land over time. Consequently Krystalline Salt informed the audit team of their intention to engage with the National Land Commission to sensitize the squatters on the status of the land ownership.

The company has provided access roads that cut across its land as follows:

From Marereni to Muyu wa Kae to Ocean between ponds;

From Marereni to Sudi area to Ocean between ponds;

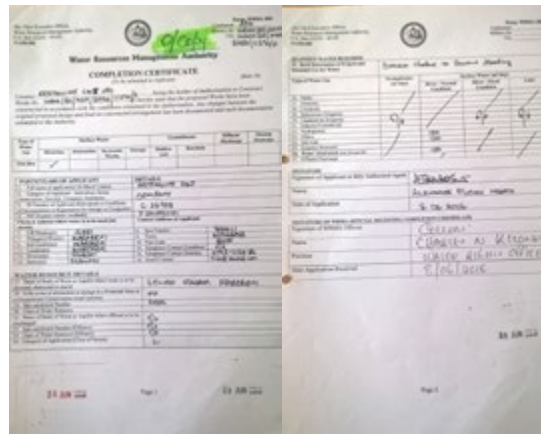
From Marereni to Muyu wa Kae to Ocean along the perimeters and

From Marereni to Robinson Island along the perimeters.

Public access roads at the perimeter fence and in-between the ponds. (Photo Courtesy: KNCHR, 2017)



Krystalline Salt Limited have since removed the dykes blocking Marereni Balesa stream, and a certificate of completion issued by WARMA. An Environmental Impact Assessment license was also issued for the purpose of undertaking this exercise. There is now a free flow of water along the stream along its natural and original course.



Completion certificate of the Marereni Balesa Stream (Photo: Courtesy)



Semi permanent houses erected by fishermen on the Krystalline Salt Ltd land in Marereni. (Photo Courtesy: KNCHR, 2017)

ii. **Gongoni Operations:**

In 2007, Krystalline Salt Ltd took over Mombasa Salt Works hence acquiring Gongoni land L.R 25725 measuring 217.6 hectares, Gongoni L.R 10755 measuring 1026.3 hectares, Gongoni L.R 24939/1 measuring 32.25 hectares, Gongoni L.R 24939/2 measuring 117.75 hectares and Gongoni L.R 25565 measuring 65.31 hectares. The total acreage being 1,458.91 hectares.

The company has a lease certificate for the five (5) parcels of land and the company pays annual rents as stipulated in each lease certificate. It is important to note that the company benefited from later allocations of land and the documents are available to that effect.

The access road to Ngomeni is open to the public. However the community had requested that the company relocates the road to its boundary and to make it an all-weather road but this has not been possible since there are squatters occupying the company's land at the point

and their eviction has been in vain. The company has also made efforts to keep an inventory of the squatters and this has been futile since the squatters keep encroaching the Salt Company's land. They erect structures in the hope of compensation in the future. These squatters are occupying LR 25565. There is an access road provided by the company within this plot.

On the same plot owned by Krystalline Salt Ltd are Magarini Aqua-farmers who have established their salt ponds on LR 10755. The company has informed the relevant Government Administrators of this invasion but all in vain.

Magarini Aquafarmers constructing salt evaporation ponds on part of the land owned by Krystalline Salt Ltd in Gongoni. (Photo Courtesy)



3.2.3 Clean Healthy Environment and Right to Water

The company has supported the community by giving free water supply for domestic use. The company has a water treatment plant located at its factory. The company has also constructed a dam for the community at Midodoni. It also provides alternative water supply to Marereni using water bowsers. Dam were constructed in 1988, 1990 and 2012, the Salt Company has three (3) water wells in Marereni at Muyu wa Kae. Currently the company has plans to construct a dam at the Farasi in Marereni but they are waiting for the community to provide land for construction of the dam.

Upon request by the community, the Salt Company agreed to provide pipes for supplying water from Kambicha to Marereni. The community was to take the initiative to kick-start the project. The Company is waiting for the community to give way leave for the pipeline.

The Audit team was able to scrutinize four (4) compliance reports by NEMA that covered the period from 2013 to 2016. Reference can be made to these reports vide references; NEMA/PR/5/2/12343, NEMA/KLF/PR/5/2/0629, NEMA/EIA/5/2/1208 and NEMA/PR/5/2/16327. These reports indicate that the company complies with NEMA standards with regard

to environment management. Hydrological assessments have been conducted to establish the safety of underground water for human consumption. Several assessments have being carried out and indicate compliance with the established standards. Hydrological assessments are conducted quarterly. The audit team was able to access other reports such as emergency response plan, noise survey audits, occupational medical examination reports, air quality assessments, fire safety audit reports, risk assessments, health and safety audits, Environmental Impact Assessment reports for their projects that include the reopening of Balesa Stream, completion report and certificate, Biomass Project Management plan, Communication on progress reports to United Nations Global Compact and CSR and Sustainability Goals achievement report.

A query was directed to the Salt Company management on how they protect the mangrove forests and their feedback indicated that their operations are not within the mangrove areas. However, said the management confirmed that they have planted some mangroves trees at the Robinson Island.

In addition the Salt Company has planted one million casuarina trees that act as a buffer zone between the mangroves and their operations site. The buffer zone protects the mangroves from invasion.



Mangroves planted by Krystalline Salt Ltd at the Robinson Island. (Photo Courtesy)

At the time of carrying out the Audit, the company was using firewood as their source of energy with the approval from Kenya Forest Services. The Salt Company has also contracted eighty five (85) local farmers to plant trees in their own farms for the company's usage. The Company plans by 2019 to be self-sufficient in energy source by utilizing biomass from their plantations and from the contracted farmers. KFS provide technical advice needed in tree planting and have carried out training in tree planting and maintenance.

The company received the Certificate of recognition for their efforts in Tree Growing and Forest Conservation from Kenya Forest Service. This was presented by Her Excellency the First Lady Margaret Kenyatta. They were awarded as 1st Runners-up in the category of Best Industry Players. The company was then honored to host the KFS Board of Management and other relevant stakeholders who visited their plantation.

They have Implemented improved treatment systems to ensure any wastewater produced during manufacturing is properly recycled back into the refinery and not released into the natural environment. They have also invested in rain water harvesting techniques that enable them to store rain water for use long after the rains have ended.

Their procurement process is very strict and they purchase equipment that reduces greenhouse gas. The company also uses Bio thermal boilers at its refinery hence reducing the carbon footprint.

A section of the biomass plantation at Krystalline Salt Ltd in Marereni. Right: An out-grower farmer in Mapimo showing a team from Krystalline Salt Ltd his biomass plantation. (Photo Courtesy: KNCHR, 2017)



In Collaboration with Joint Crediting Mechanism and Government of Japan, Krystalline Salt invested in the largest Solar Hybrid system in Kenya. The 991kWp system is a PV-diesel hybrid project that will produce 1.6GWh of clean electricity yearly. This power is used in the factory. The system will generate 1.6GWh of clean electricity annually, saving Krystalline around 22% of its electricity costs.

The solar component of the system allows for a fossil fuel reduction of around 24,000 litres of diesel each year and at the same time a low maintenance solution. It will displace 1,268 tonnes of carbon dioxide.

They still have plans to install 11 mini-solar farms with a total capacity of 866.6 kWp.

Houses provided for employees at Krystalline Salt Ltd. (Photo Courtesy: KNCHR, 2017)



The solar project enabled the company to host a team of experts on an exchange program. The team comprised various companies under the membership of KAM.

The Company has a compliance officer on full time basis who ensures the companies' actions are within the provisions of the law.

3.2.4. Labour Standards and Working Conditions

Krystalline Salt Ltd has seven hundred (700) permanent employees and fifteen (15) casuals. During the 2006 public inquiry, the Company had around five hundred (500) casuals. It provides free housing for staff and supplies free water and electricity.

There are policies in place to provide a conducive work environment. These include Employee's rights policy, sexual harassment policy which are strategically displayed in every departmental notice board. On matters concerning sexual harassment the Salt Company reported that it had received unverified complaints that casuals were vulnerable during the recruitment process. To mitigate on this situation, the management took decisive action of halting the hiring of staff at the gate and further appointed the casuals on permanent basis. The company also did sexual harassment awareness training to

employees as a preventive measure. This prompted the company to develop an open door policy (free communication) for employees to report their grievances to the human resource department.

They have made serious commitments to engage women. 15% of senior management is women: 30% of staff in the refinery are women.

In 2015 all staff went through health related training, example HIV awareness. Annually, for the community and staff, they make efforts to bring specialist medical clinics example Eye clinic from the Lions, jiggers clinic etc.

The company has put measures in place to ensure that employment contracts are fair, transparent, and understood by the workers. Contracts are given to the permanent employees. They receive house allowances, yearly increment, annual bonuses and annual leave. They are also provided with a medical clinic,

free water, electricity and some of the employees are members of a Sacco which provides them with loans and advances. On retirement they receive their retirement benefits including goodwill payments.

The workers are required to produce national identity cards before they are contracted.

Even the piece rate workers are required to produce the national identity cards before being issued with tickets to do a piece work. The company provides a variety of internal trainings to boost the capacity of its workforce in different skill needs through Kaizen workshops and projects.

The company has put measures in place to ensure that workers perform their roles in an environment which does not expose them to “hazardous substances, agents or processes”. These include an internal health and safety committee that does regular inspection and investigation of injuries and provide weekly reports on departmental health and safety related issues.

Health and Safety committee, fire marshals and first-aiders display their certificates after training at Krystalline Salt Ltd. (Photo Courtesy: KNCHR, 2017)



The injuries are monitored daily. They conduct annual health and safety audit and risk assessment while implementing the recommendations given. They do training to workers on health and safety in relation to the hazards they may be exposed to. The company provides *Personal Protection Gears* according to the risk hazards that one may be exposed to. The employees exposed to specific hazards are subjected to medical examinations annually and recommendations implemented as per the medical reports. The Company has trained first aiders and well equipped first aid boxes in every department to attend to minor injuries. They also have a dispensary within the company premises to deal with emergencies. On matters remuneration, the company complies with the national minimum wage guidelines.

Krystalline Salt Limited in-house clinic and equipped departmental first-aid station. (Photo Courtesy: KNCHR, 2017)



The audit team were informed that workers are not restricted from joining trade unions. The unions have not been active in recruiting members and they appear to be in conflict. They cited Kenya Food and Allied and Kenya Chemicals. Workers interviewed said they were reluctant to join trade unions since they will have to pay subscriptions fees to the Union.

The company indicated that they engaged a Risk Auditor to conduct an Employee Satisfaction Survey. The purpose of the Survey was to gauge the general satisfaction of our employees as well as gain a better understanding of their values and perceptions. The overall satisfaction index was at 75%.

3.2.5. Compensation and Relocation

Relocation and compensation process was consultative. A community committee was formed to deal with this. The company was not directly involved in the process. However its role remained that of availing the money for the compensation. A list of the squatters and compensation vouchers was availed to the audit team.

The company compensated 85 families for standing plants and property but they have not been resettled by the government hence had challenges to relocate and still up to date some of them are still on the land. It is understood that the government was to source for land and resettle the squatters, a commitment that was not performed. The company management informed the team that it was not involved in evictions.

3.2.6. Corporate Social Responsibility and Community Liaisons

With KAM Salt sub-sector they continue to engage and work with the community through project barazas and through the respective CSR committee. These are done through regular meetings with the CSR Committee Members as well as the Community Feedback Meetings and Stakeholders Meetings.

The company understands that as corporate citizen, they are encouraged to engage in the local communities where they conduct business to ethically operate in methods that respect all human rights, employees and the environment. This helps them promote peaceful and inclusive societies, build effective, accountable and strong institutions.

a) Provision of Water

The Company has a mineral water plant at Gongoni which provides water to all staff as well as the local community. The plant was established in 2013. The audit team observed members of the community fetching water. There is also a dam at Midodoni which was built in 2012 and serves 9 villages with a population of about 10,000 people. The company also dug 3 boreholes at Muyu wa Kae.

b) Provision of medical care

Before 1988, there was no dispensary in Magarini area. It's the company that established one. A ward was constructed in 2005 and a second block completed 2015. The facility provides a range of services to the local community, and it is now one of the highly recognized dispensaries in Kilifi County because of their facilities, achievements and commitment to improved healthcare in the County. The dispensary also has a maternity ward constructed in 1988, being the first maternity ward ever in Magarini. The company is currently constructing a modern outpatient Block at the dispensary. The company also has continued to stock the dispensary with drugs and medical kits on annual basis.



Eye screening services being offered to a community member in Gongoni during an Eye Camp. (Photo: Courtesy)

The company produces iodate edible table salt that helps in preventing goitre and improves brain development in children.

d) Care for the Environment

The company has planted over one million casuarina trees as well as bamboo trees within its premises to protect the environment. They have also signed contracts with 85 local farmers who are growing trees in their farms. The farmers engaged are able to sell the mature trees to the company as a source of income thereby creating new business markets.

The company has also planted trees within the compounds of Marereni Primary and Secondary schools. They have also participated in planting of mangroves at Robinson Island.



A team from Krystalline Salt Ltd showing an out-grower farmer how to intercrop his biomass plantation with maize and other fruit trees; a mother attending to her nursery in readiness to sell to the company (Photo: Courtesy)



e) Education

The Company has contributed to the construction of 15 classrooms in Marereni primary school which has an enrollment of 1780 learners. The company constructed the administration block and a water tank as well as fenced the school.

Students and teachers at Boyani Primary school receiving desks; and the 15 classrooms constructed at Marereni Primary School by Krystalline Salt Ltd. (Photo: Courtesy)



CSR Committee Community Representative; a guardian receiving a cheque for one of the sponsored students. (Photo: Courtesy)



Since December 2013 the company through its Chairman, contributes annually towards school furniture and stationery in the value of Kes 500,000/-. They have supported other schools with books, desks and other learning materials. These include Calvary academy, Midodoni, Hilltop, Boyani, Great Hope, Nzuri, Dhome, and Rama among others

Bright and needy students are beneficiaries of the company's bursary scheme. The audit team verified this support.

Since 2014, the company has also absorbed new graduates annually from Universities into its diverse departments through their Internship Program. This allows the students to gain practical working skills. They currently have partnership with 10 learning Institutions in the program. They have also absorbed interns through the KAM Technical Vocational Educational Training Program.

One of the interns working on a machine's control panel. (Photo: Courtesy)



Annually, over 3000 students from schools visit the company from Universities, Secondary and Primary Schools for educational experiences and learning opportunities.



Krystalline Salt Limited team getting ready to celebrate Christmas with the homeless children. They surprised the children with cakes. (Photo: Courtesy)

f) Games and Fun days

The company indicated that it has partnered with Talanta Kenya and organized a Christmas event for 3000 homeless children. This occasion has become an annual event for the company and they provide funds for organizing and securing the large venue.

On another occasion, they partnered with Therapies for Kids for a 'Watoto Pamoja Event' that brought together 350 families of Children with Disabilities. The kids were given an opportunity to play and express

themselves without being subjected to stigma.

The company indicated that it has supported various Football Clubs in Magarini through sponsoring tournaments and trophies. In December 2015, they funded Adu Ward Sports Committee and Gongoni sub-location football committee through sponsorship of the tournaments they had planned for the festive season.

Magarini and Adu Football teams with KSL Management during a tournament. (Photo: Courtesy)



3.2.7 Workers FGDs

A total of
**16 employees
 (13 male and
 3 female)** were
 interviewed. Below is
 detailed summary and
 responses.

The workers confirmed the following:

- i. They have been trained on health and safety, Kaizen (improving their working skills), and first aid. One of the employees was taken to Naivasha

for exchange program on usage of solar energy. They requested for a training on Human rights.

- ii. They are provided with healthy and safety gears and have been trained on how to use them.
- iii. There are structures put in place to enhance working relationship i.e work as team. Problems are solved within appropriate time. They did not indicate any cases of sexual harassment
- iv. They have not joined any trade union because they have no idea on which one to join. However they are members of Munyu Sacco.
- v. They described their work environment as conducive and that they are remunerated according to experience and nature of work.

Gender	Number of years worked at the company			Terms of employment	
	Below 3 years	4-9 years	Ten years and above	Permanent	Contract
Male	3	8	2	13	0
Female	0	2	1	3	0
Totals	3	10	3	16	0

Malindi Salt Company

3.3.0 Land Adjudication and Titling



50M leeway between Malindi and Krystalline Marereni. It was set aside for purpose of access roads to the ocean and reopening of Kambi ya waya river. However, the artisanal Miners have taken over the leeway and established their Ponds. (Photo: Courtesy)

The company has title deed LR No 13426 with a 99-year lease with effect from 1st February 1979 with an acreage of 665.0 ha. The land survey number is 123613 in Kilifi. On 16th April 1992, the plot number 13426 (noted above) received an extension at Kambi ya Waya with 40.28 hectares with a 99 year lease period. The annual rent due is Kshs 25,000 as per the details of title deed available in an allotment letter issued to the company vide Ref no. 105416/108 by the department of lands Nairobi and grant number CR 30974 giving the company a total of 705.3 ha of land.

Malindi Salt Company has a record of the indigenous communities living in the area and who were compensated. The compensation and settlement began in 2004 upto 2011. According the schedules, a total of five hundred and ninety two (592) individuals were compensated with varied amounts depending on the criteria set.

Malindi and Krystalline Salt companies contributed fifty (50) meters for a leeway between the two companies leading to the sea. This provided water passage and access road for the local community to access the coastline. This arrangement has been approved by NEMA vide license number NEMA/EIA/PSL/3321 and application reference number NEMA/EIA/PSR/4376 dated 17th June 2016. To date this the leeway has not been actualized because artisanal miners have blocked it and are currently conducting their activities there. The company is persuaded that it cannot be blamed for the blocked access since the local community is at times hostile to attempts to reopen the access road.

Fishermen are also freely allowed to come into the salt ponds to do their fishing. The audit team was able to see fishing gears fitted inside the salt ponds as shown below.

Fishermen fishing nets/ gears on the salt ponds. (Photo: Courtesy)



The company participated in a public inquiry on land grant review organized by the National Land Commission in Magarini and provided necessary documents required. The inquiry report is yet to be released.

3.3.1 Clean Healthy Environment and Right to Water:

In support of the community's right to access clean water, the company uses its trucks to obtain water from Timboni water wells and thereafter distribute the same for free to the community. The company has also dug dams at Sogorosa and Kambi ya Waya.

With regard to forest protection, the company has planted around three thousand (3000) casuarinas and around ten thousand (10,000) mangroves inside its salt works site. The mangroves and casuarinas have attracted flamingos, the Egyptian geese and other migratory bird species.

Hydrological assessments have been conducted to establish the safety of underground water for human consumption. Several assessments have been carried including risk assessments.

The company availed these assessment reports referred to as; NEMA/KLF/EA/0127.

3.3.2 Labour Standards and Working Conditions

Malindi Salt Company has fifty (50) permanent employees and forty five (45) contract workers. Between four hundred (400) and six hundred (600) casuals and harvesters are out-sourced from Ready Consultant. They issue contracts for one year. The contracts were sampled to confirm this during the audit.

The company has policy frameworks prohibiting unacceptable labour practices in its various forms. These include policy statements on forced labour (prohibition against forced and compulsory labour) and health and safety policy with an environmental management plan. Other guidelines include emergency response procedures in the event of fire outbreaks.

Other reports that indicate the company's compliance with regulatory processes include; Occupational safety and health noise survey for the years 2014 and 2016, risk assessment audit report for the years 2014 and 2016 and fire and safety report 2014.

The company provides transport for the workers starting at 6.30 am and 7.30 am from Gongoni.

The workers were not members of a union at the time of the audit. It is unclear which sector the Salt Companies belong. The unions too have not made attempts to sensitize the workers and the management. The company availed employment contracts which are fair, transparent and are understood by the workers. They meet the necessary standards as prescribed in the national minimum wage guidelines.

The company has put in place measures to ensure that workers perform their roles in an environment which does not expose them to “hazardous substances, agents or processes” by providing PPEs according to the nature of work. This is done annually. The team observed that the workers were using the gears issued. Training on health and safety is a priority and the company has first aiders fully trained and drawn from among the workforce. There is a special first aid room.

3.3.3 Compensation and Relocation.

The company has never forcefully evicted any squatters. It has never taken anybody to court or even to the chief over land disputes. Further it has never had any confrontation with squatters. The list of squatters in their land and the compensation offered is fully documented. There are no evictions since the company is not currently expanding. The challenge has been new squatters coming on board. The compensation was done through mutual understanding and the company paid off the dues agreed upon.

Agreements were signed by the area chief and this was verified by the audit team.

3.3.4 Corporate Social Responsibility and Community Liaisons

The Company provides water to the community via a dam at Sogorosa and Kambi ya Waya. Nearby schools, police stations and dispensaries are beneficiaries of this service. The company has three storage tanks and the community is allowed access to the water free of charge. Fetching time is regulated by the company. There are other charity works in Magarini initiated by the company such as; supply of relief food since 2016.

3.3.5 Education:

Support is given to Kambi ya waya Primary School where a storey building of eight (8) classrooms and two (2) offices have been constructed. Out of the eight (8) classrooms, four (4) are already completed. One office is in use and it is projected that the building will be completed as planned. The company pays salaries for three teachers based at Kambi ya waya, Kibaoni and Kinyaole Primary Schools. Needy students have been beneficiaries of a bursary scheme started by the company.



Storey building at Kami ya waya primary. (Photo: Courtesy)

3.3.6 Support to right to health care services:

A dispensary and a doctor's house have been constructed at Kambi ya waya. This facility is managed by the County government but the company provides guards who man the facility during day and night.

3.3.7 Security

The Company has constructed a police post to beef up security in the area.

3.3.8 FGDs for the workers

A total of ten (10) employees were interviewed. The company has fifty (50) permanent employees and forty-five (45) are on contract.

The Malindi Salt Company workers informed the Audit team the following;

- i. They are issued with PPEs depending on the nature of one's work;
- ii. Contracts are fairly given;
- iii. Staff have access to leave days, leave allowances and medical care;
- iv. There is a first aid room which is equipped and manned by a first aider;

A Doctor's House
(Photo: Courtesy)



Kambi ya waya dispensary.
(Photo: Courtesy)



Workers FGDs at Malindi Salt
(Photo: Courtesy)

- v. Staff members have been taken for health and safety training as well as first aid training;
- vi. The workers have a Sacco called Taifa Bahari Sacco which gives them loans and
- vii. They are not under any trade union; The workers proposed that they require training and capacity building on human rights to increase their understanding of labour rights.

Gender	Number of years worked at the company			Terms of employment	
	Below 3 years	4-9 years	Ten years and above	Permanent	Contract/ Casuals
Male	1	5	2	2	6
Female	0	2	0	1	1
Totals	1	7	2	3	7

► Heap of unrefined salt
(Photo: Courtesy KNCHR 2017)



3.4.0 Kurawa Industries Ltd

Prior to the year 1977, Kurawa area of Fundi-Issa location, was a vast swampy and muddy area. The flora and fauna (plant and wildlife) was relatively limited. The only vegetation was thorny bushes that were tolerant to the saline environment. The whole area was unsuitable for any meaningful agricultural activity. It was also prone to flooding during high tides through Mto-Kilifi. When the waters subsided it left traces of natural crust of crystal salt.

No one ventured, settled, visited, or thought of investing in a land with such unpleasant and arid conditions. The area was also known for bandit (Shifita) attacks. The Malindi-Lamu highways was earth/murram road and only passable during dry season and, in some areas, only during low tide, up to as recently as 1997, when the Chinese road construction company started building a tar road. Some of these Chinese road workers were killed at Marereni by the Shiftas. This fact can be verified with relevant authorities.

Since Kurawa Industries started their salt works, the area has changed with development of dykes and access roads.

3.4.1 Land Adjudication and Titling

Kurawa Industries Ltd is located at Kanagoni about 70 Km North of Malindi Town. It lies within the Kurawa area of Fundi-Issa Location, Magarini Sub-County. The salt works measures 595.2 hectares. The land was allocated to Kurawa Industries Limited with effect from 1977, vide LR No.13332 strictly for the purpose of salt extraction. The company has a lease title deed with a grant No. CR 17195 with a lease term of 63 years 3 months effect from 1st February 1977 and an annual rent of Ksh 16,000. This is according to survey No. 122442 deposited in survey records office in Nairobi.

3.4.2 Clean Healthy Environment and Right to Water

The company has the health and safety policy displayed for everyone to access. The Company is in the process of training the committee on health and safety issues.

The company supplies 1,000 litres of water daily to Kanangoni residents. It has also dug two wells, one at Nzai Katambo and another at Ngarite. Moreover, plans are underway to increase the supply to 5,000 litres. This has been necessitated by the persistent drought in the area. The company has also planted 62,000 mangrove trees with plans to plant more in future.



Members of community preparing the mangrove seedling for planting at Kurawa industries. (Photo: Courtesy)

3.4.3 Labour Standards and Working Conditions

Kurawa Industries Ltd has eighteen (18) permanent employees and hires casuals during salt harvesting time. They do not have a refinery but plans to put up one. Currently they harvest salt and sell to other companies for processing.

3.4.4 Relocation and Compensation

Kurawa Industries Ltd initially had no squatters save for their workers who were allowed to put up temporary shelters on the land. This was due to transport challenges occasioned by remoteness of the area. This number kept on growing as the salt works expanded. When the company wanted to expand its operations, they compensated the occupants on humanitarian grounds so as to facilitate their relocation. Upon compensation, all occupants relocated from the land with an exception of four (4) families who moved to court because they were not content

with the amounts awarded to them. The matter has since been resolved through the court process.

3.4.5 Corporate Social Responsibility and Community Liaisons

Kurawa Industries Ltd has constructed an access road to the fish market. It has built and furnished Kanagoni Kurawa Secondary School which consists of four (4) class rooms. Additionally, the company donated fifty (50) bags of cement for the construction of Mtoroni Primary School.

The salt company also indicated that it pays school fees for needy children through collaborating and supporting the community.

A CSR project under construction with funding from Kurawa Salt Industries. (Photo Courtesy: KNCHR, 2017)



▶ A section of Artisanal salt harvesters next to Malindi salt work (Photo courtesy of KNCHR)



3.5.0 Small Scale Miners

The Audit team held an interview with a Mr. Angore, a retired teacher. He is the first person to start small salt harvesting at Kambi ya Waya. The team was informed that salt artisanal harvesting started in 1996 in the 50 meters leeway² between Malindi Salt and Krystalline. Artisanal harvesting resulted from Brine released from the large companies to the leeway. Other brine come from ocean overflow during high tides. Mr. Angore started salt harvesting as a family business. His family members helped in the mining. Later on more people joined them after realizing that he was making some income. During that period, the small harvesters were selling the salt to traders who took it to Nairobi. The salt was mainly used for livestock consumption. However, it was later sold to pastoralists in Tana River- specifically to the Wardei and Ormas community for their livestock.

Other artisanal miners are found next to Krystalline Gongoni. They started as aquafarmers then turned to syphon brine from the company for salt harvesting.

According to Mr. Angore, there are approximately fifty (50) artisanal miners on the leeway between Malindi Salt and Krystalline Marereni. In addition, others have positioned their operations strategically next to large salt works so as to syphon brine from the crystallizers³ of the neighboring salt companies. This is because pumping water from the ocean is an expensive venture to them.

² Two companies' i.e Malindi salt and Krystalline secluded 50 meters from their parcels of land to create a leeway after the community raised concerns over access to the ocean.

³ The invention employs a solar crystallizer defining a shallow pond of salt solution the level of which is carefully monitored and controlled by withdrawing unsaturated solution from the upper stratum of the pond such as produced from rainfall and introducing substantially saturated brine into the pond at a lower stratum overlying the salt crop on the bottom thereof providing a continuous protective saturated brine layer and enhancing the efficiency of water evaporation by a comparatively shallow depth.

Challenges Associated with Artisanal Salt harvesters:

The Artisanal Salt Harvesters are associated with a myriad of challenges including;

- i. Unlike the large salt harvesters the artisanal harvesters are unregulated hence are unable to practice health and safety measures in their practice. I.e they do not use PPEs;
- ii. They don't own the land they operate their businesses hence encroach land belonging the established company;
- iii. They block the leeway made to give access road to the ocean and Robinson Island;
- iv. They interfere with the flow of rivers Kambi ya Waya and Balesa;
- v. They do not follow health and safety measures i.e. they work in their salt works without PPEs;
- vi. Their unregulated activities cause environmental degradation;
- vii. The salt produced is not certified as fit for human consumption, there are allegations that it ends up in the market as counterfeit
- viii. They sometime bring children and other relatives to work at their points as cheap labour.
- ix. There is lack of sanitation facilities i.e. no latrines and bathrooms in the salt works.

3.6.0 Action and Implementation by Duty Bearers

3.6.1 Kenya Forest Service:

The team had a meeting with the Kilifi County forest coordinator Mr. Christopher Maina who laid emphasis on two issues:

- i. Encroachment in the mangrove area and
- ii. Deforestation/ cutting down of indigenous trees by locals

Encroachment:

Mr. Maina noted that public participation was not addressed under the repealed Forest Act CAP 385 but this has changed after several amendments were made to the law that now appreciates participatory forest management. He pointed out that the salt companies, apart from Krystalline Salt Gongoni, have occupied at least 1,500 Hectares of mangrove area controlled by KFS. His other concern was on the level of attention given to terrestrial forests over aquatic forests. Following his appointment as the County Forest Coordinator, KFS has moved to protect the mangroves. KFS has had several negotiations with the salt companies on sustainable management of the mangroves which includes abstaining from use of mangroves as fuel. Of key importance, is the fact that out of the six

Above: Artisanal miners who are also squatters harvesting crystallized salt next to Krystalline Salt Ltd ponds in Gongoni. (Photo Courtesy: KNCHR, 2017)



(6) salt companies operating in Malindi, only Krystalline Salt Gongoni does not have mangrove on its parcel of land.

In a bid to protect the mangroves, KFS has embraced issuance of special use license to the companies amongst other investors in Malindi. Unfortunately, the salt companies have stood ground and emphasized that they are the legal owners of the land they possess including the mangrove area hence their objection to paying for the license.

KFS has Forest Service Rangers who are man the mangrove forests and ensure the mangrove trees are not cut down.

Deforestation:

As a result of the high poverty levels, most locals have resulted to cutting down trees and thereafter sell to some of the salt companies as fuel. Due to this, KFS had to intervene to protect the indigenous trees from being cut down by introducing licenses for the cutting down of trees. The basis behind it was to ensure that there is controlled cutting as well as protecting tree owners from theft. Another factor was to protect the uncontrolled cutting down of fruit trees such as cashew nuts and mangoes. However, the issuance of licenses⁴ has currently been suspended to encourage afforestation. They challenged companies to adopt afforestation and managed to persuade Krystalline Salt Company to partner with farmers who grow trees that would eventually be sold to them. The salt companies have also planted casuarina trees on the parcel of land.

Furthermore, Krystalline Salt Company has a compliance officer on a full time basis who ensure that the company's' actions are within the provisions of the law.

⁴ The KFS official indicated that they have recently suspended issuance of licenses for the cutting down of trees as well as movement permits to salt companies.

However, none of the salt companies have *special use license* from KFS since they all alleged that the land being claimed by KFS was legally acquired.

KFS has gone further to encourage the locals to come up with the Community Forest Association so as to have price control over the sale of the timber acquired for fuel by the salt companies.

KFS is also planning to undertake a project to profile mangroves and its occupant areas as an important natural resource so as to prevent further claims by private individuals owning mangrove areas. KFS has strategic partnership with relevant stakeholders including KAM. Mr. Maina pointed out that KAM has CSR committees that help mitigate on issues relating to the salt companies.

Some of the challenges identified include;

i. *Dispute on ownership between KFS and the salt companies with regard to the mangrove area.*

He alleged that the mangrove forest was gazetted as protected areas in 1932. However, over the years the area has been given to private individuals.

ii. *Unclear policies on who the salt companies should pay rent to.*

Mr. Maina noted that companies occupying the mangrove area are unsure of who to pay the requisite amount to i.e. the national government (land rent), county government (land rate) as well as the KFS (special use license). The existing policies need to be harmonized.

3.6.2 Department of Water, Environment and Natural Resources:

The team had a meeting with Mr. Andrew Makoti, Chief Officer. He stated that his role was to provide written approval to farmers to cut down trees. His office reaches out to the farmers to sensitize them on how to manage waste, water points and embrace afforestation.

3.6.3 Water Resources Management Authority (WRMA):

The audit team had a meeting with Eunice Bosibori. She shared the Authority's mandate which is to regulate water. They give permits to salt companies for use of water based on the quantity of consumption and use. The permits are classified as follows;

- Class A – household consumption
- Class B – medium scale. (There is use of machinery).
- Class C – large scale consumption.
- Class D – Industrial consumption

Salt companies are issued with class D permits. Water is billed at 50 cents per cubic meter after every 3 months. WRMA encourages the installation of meters to avoid disputes on water consumption.

In 2013, WRMA resorted to billing salt companies for harvesting water from the ocean. Kensalt Co. challenged this in court (WRMA v Kensalt LTD Malindi Civil Appeal No.9/2015), the matter is still ongoing.

The community has forwarded several complaints to WRMA alleging the salt companies they had licensed were

violating human rights. Some of the issues raised include lack of proper waste disposal management systems.

3.6.4 National Environmental Management Authority:

The team had a meeting with Isaac Kimitei, the Environmental Officer. In 2014 NEMA produced a compliance report related to the salt companies. In preparation of the report, NEMA visited six (6) salt companies (Krystalline Gongoni and Marereni, Kensalt, Malindi Salt, Kemu and Kurawa). The following recommendations were noted;

- i. That dykes and drainage from the companies be subjected to EIA so as to prevent leakage of brackish water to other fresh water sources;*
- ii. There is need to provide access roads to the sea;*
- iii. The salt companies should file annual audit reports to be in compliance with the environmental standards;*
- iv. The salt companies should enter into performance contracts with NEMA so as to be obligated to submit quarterly environmental sustainability reports;*
- v. Once EIAs are conducted, the licenses, with the conditions attached to the license, were to be made public. If the same are not displayed for the public to view, the public can apply to NEMA to peruse the license and*
- vi. Salt artisanal miners need to borrow from the small-scale sand harvesters in Machakos by forming and registering CBOs. This would allow them to be able to get licenses from NEMA.*

As a result of the current constitution, the District Environment Committee were replaced with the County Environmental

Committee which are yet to be set up. This has, to some extent, posed a challenge in managing environmental affairs. In the meantime, there is a temporary technical environmental committee which is supported by the County Commissioner.

3.6.5 District Lands Office:

The team had a meeting with Mr. Matheka, Senior Land Administration Officer. He stated that most squatters who had trespassed into the parcel of land leased to the salt companies were compensated to vacate the land. However, some squatters have started relocating back into the salt parcels. He acknowledged that the titles issued to the salt industries had encroached into the beachfront which is public land. The boundary is sixty (60) meters from the highest water mark. He further stated that having beacons that far into the beachfront is irregular and that the beacons should be moved back. He also confirmed that all the salt companies are issued with leasehold titles and are paying the annual rent to the State. However, it was not clear whether the salt companies were paying royalties for salt mining as per the mining regulations. Main complaints received by the lands office include mangrove cutting and resettlement of squatters.

He further recommended establishment of a buffer zone between the land controlled by KFS and the salt industries. This is because Mangrove trees have a tendency to grow wildly. This would act as a mitigating factor in the dispute on land ownership.

3.6.6 Directorate of Occupational Health and Safety:

The team had a meeting with Mr. Mwasambo. Mr. Mwasambo stated that when he was posted to the Malindi Office in 2009, it was hard to engage the salt sector industry as there was no labor office nearby. With persistence, he prompted the salt industries to start carrying out audits on occupational health and safety, fire, risk assessment and noise. He also instigated the need of having workers' health and safety committees. So far, all salt farms apart from Kurawa have established the committees.

He also trains committee members on health and safety. He went further to state that the salt companies conduct audits annually and send copies to his office. However, he stated that he would conduct inspection on need basis and at least twice a year. The inspections are comprised of; physical, mechanical, chemical, health, agronomic (these are hazards that cause deformities) inspections. The agronomic inspections have led to companies amending their policies to restrict pregnant women from getting employment due to the work station hazards.

Concerns:

- i. *Provisions of PPEs has been an issue. PPEs are provided by the salt companies but are not being used since they are not conducive for the weather conditions experienced in the region. The workers have basically refused to put them on. For example, body covering gear, gumboots and gloves are issued to harvesters but the workers would rather work bare-chested.*
- ii. *The illegal salt miners are packaging their salt and passing them off as the legitimately processed salt*

(Counterfeiting). The artisanal miners had alleged that the salt they were harvesting is for leather processing but the same is what is being used for human consumption.

Challenges:

- i. Most workers prefer to take their grievances to court as his office offers lower payments than expected.*
- ii. Not every injury is covered by the WIBA like industrial burns.*
- iii. There is also poor maintenance of sanitation facilities by the companies that are to be used by the workers.*
- iv. Materials get lost and the workers go on to sell them including the PPEs issued to them for their own safety.*
- v. He is the only occupational health and safety officer in charge of Kilifi, Tana River and Lamu Counties.*
- vi. Logistical challenges which include; lack of transport, understaffed office and financial constraints and*
- vii. Enforcing some of the safety regulations on artisanal miners is a challenge as they are self-employed or engage their own family members in the business. Furthermore, the miners are working illegally as they are not registered to conduct the business.*

Recommendations:

KEBS needs to monitor the standards of salt from Magarini.

Some workers have complained of skin irritation and cuts due to having direct contact with raw salt. He went further to express his fears of Magnesium Chloride being the root cause of this irritation.

KEBS should monitor the quality of salt from each level in the process of salt production

3.6.7 Deputy County Commissioner Magarini:

The team had a meeting with Mr. Lokorio. Since he reported in October 2016, he has not received cases over disputes or abuses from the salt companies. However his predecessors had reported that they had serious cases coming from the salt companies. Issues from hostilities and violence. For example there was confrontation between Krystalline and the community which led to burning down of some building. This had greatly affected the Marereni town economically. The people were affected because the income from the salt company was lost. Other salient issues were:

- i. Since the establishment of the liaison office of KAM it has created better relationship between the salt companies and the community and diffused tension among them;*
- ii. The artisanal miners are doing very dangerous salt work. It is unsafe for themselves and the consumers, there is need to regulate them. Most of the human rights violations emanate from the artisanal miners, people working without PPEs, child labour, environmental safety and they don't own the land;*
- iii. There is need for inputs of the departments of labour, land, NEMA and other regulatory bodies to look at the artisanal miners;*
- iv. The squatters are willing to leave the land when the same is negotiated but the politicians influence and incite them. Hence after compensation*

they keep coming back to occupy the salt company land;

- v. MRF at time have their own interest or are used by politicians to incite community against the salt companies;
- vi. According to him, negotiation is a good channel which he has seen work and can help resolve issues and
- vii. Currently the monthly stakeholders meeting is used to resolve issues around the salt works. The stakeholders involved are the communities at Marereni, Kurawa, Gongoni and Malindi Rights Forum.

CHAPTER 04

4.4.0 Community Focus Group Discussions (FGDs)

The communities focus group discussions were comprised of CSR members, employees from the salt companies, members of the community environmental committee, administration, village elders, Persons Living with Disabilities as well as youth and women groups' representatives

The FGDs were held at Kanagoni, Gongoni and Marereni areas of Kilifi County. They focused on issues relating to land ownership, clean healthy environment and right to water, labour standards and working conditions, relocation and compensation and corporate social responsibility

4.4.1 Land Ownership

The Focus group discussions on land ownership in Marereni, the Gongoni and Kanagoni community gave similar responses. The responses were as follows;

- i. Both community were aware that the salt companies acquired the land legally and have land title deeds;
- ii. They were also aware of the history of each company. For instance the community confirmed: that Krystalline Gongoni bought the company from Mombasa Salt and Kensalt was formerly owned by the Government of Kenya;
- iii. They were also able to identify other players in the salt industries who are not in operations for instance Solar salt, Tana salt, Munyu salt, and Kilifi salt;
- iv. They also identified artisanal miners who do not own land but operate along the established companies;
- v. However, the community was neither aware of the total acreage nor the actual boundaries of the salt companies;
- vi. The community was aware of the existence of leases but was not aware of the terms and conditions of the grants. They could not understand why they cannot be allowed to utilize the available land which the salt companies have not put into use;
- vii. On the contents of the National Land Commission public inquiry report as well as its recommendations, they noted that the National Land

¹

- Below are the specific areas where the companies are operating from; Kurawa Salt and Kemu salt (Kurawa)
Krystalline Salt Ltd Kensalt Ltd (Kazhuoni)
- Krystalline Salt Ltd (Gongoni)
- Malindi salt (Kambi ya waya – area between Marereni and Gongoni)

Commission is yet to release the report and are therefore not aware of the contents of the same and

- viii. On the status of relocation and compensation along the salt belt the community acknowledged that initially some companies' forcefully evicted squatters from their land however, in the recent past have taken it upon themselves to approach them through a community committee to negotiate and agree on the terms agreeable for compensation. Others have used government agricultural guidelines to compensate them. Some companies such Kurawa bought alternative land for all squatters to relocate and settle.

4.2 Clean Healthy Environment and Right to Water.

The community generally acknowledged that clean and safe water for drinking is not sufficient in the area along the salt belt. Notably there has been efforts by various salt companies to provide water to the community. For instance, the team was informed that in May 2016, World Vision had dug a borehole and Krystalline had offered to do the water piping for the community. However this water project has since been taken over by the County Government. Additionally in July 2016, the CSR Committee requested the salt companies to assist with water piping from Gongoni to Marereni. However, it was later discovered that the same project had been funded by CDF and therefore they could not continue with the project.

The community noted that salt companies have had different programs of providing safe water to the community. Unfortunately these efforts have not been able to adequately resolve water shortage problem in the area.

They also noted that in the water programs by the salt companies the idea of putting measure to protect vulnerable people like PWDs. children and the elderly, has been overlooked.



“Access to water was dependent on the physical strength of the person,” said a representative of PWDs.

In respect to management of waste water from the salt industries, the community stated that initially, the salt industries would dispose it back to the ocean and this killed the fish and affected the marine environment. In 2013, Dr. Bernerd Fulanda, a Marine Biology and Fisheries lecturer at Pwani University, conducted a research on the effects of high salinity on aquatic environment and how best to clean water to ensure that there is a safe aquatic environment. Consequently, the industries are now trying to make changes to this. The salt industries have constructed filtration ponds for cleaning the waste water that comes from their end process. The filtration method has ensured that the waste water generated is recycled back to the system.

On the conservation of mangrove the community reported that salt companies have programs and funding for planting mangrove forest. Notably, Krystalline salt which in 2014 planted 10,000 mangrove trees. Kurawa Salt in collaboration with the community have also managed to plant a total of 62,000 mangrove trees.

Krystalline dug up dykes for trapping ocean water which have since been moved further back from the ocean

shores. Initially the salt companies had constructed dykes on the ocean shores and this was killing the aquatic animals as well as the mangrove forests. During high tides, the dykes would take in a lot of water but restricted the free flow of the water back into the ocean. Once the companies learnt of the side effects of the waste disposal systems that they used, they resorted to building dykes further away from the shores.

Additionally the community noted that the Kenya Forest Service and Beach Management Units have been acting on a supervisory role to protect the mangrove forest from being cut down.

The community noted that they do not have access to NEMA environmental audit reports and they lacked knowledge of the existence of the reports.

4.2.0 Labour standards and Working Conditions:

The interviewed community members stated that there were not aware of policies set out by the companies prohibiting wrongful labour practices in its various forms including child labour, servitude and labour harassments. However, they clearly stated that there was no harassment or child labour at the salt companies.

The community was in agreement that the employees need to sign contracts on employment. However, they claim that majority are not privy to the content of the contracts.

Moreover the community noted that they were not aware of the national minimum wage guidelines and would therefore not know if their pay is just.

Though the community was not clear about the industrial, national and international standards on health and safety procedures, they confirmed that the salt companies try to comply and make sure that they meet some standards on health and safety procedures.

Protective gear such as overalls are normally given to the workers but the same is not used as a result of the harsh weather conditions.

Only Kensalt employees are members of a trade union (Kenya Chemical and Allied Workers Union). The employees however say that the union is dormant and ineffective as it is not in touch with its members

Since the rest of the workers were not unionized, the community was unable to describe the effectiveness of trade unions in addressing the workers' concerns.

4.3.0 Relocation and Compensation:

The community noted that at the time the investment companies were coming to harvest salt there were no consultations that were held with regards to the mining. No consultations were held with regard to compensation. The investors dictated the amounts to be paid.

Only genuine squatters have been resettled. Identification of the squatters was done through the local leadership. For instant, Malindi Salt was the main company that engaged the community prior to the evictions. They used local leaders to identify genuine squatters, engaged the squatters and asked them to identify an alternative area for resettlement, purchased the identified area and built houses for the squatters, assisted (offering transport) in relocating them and compensated their crops. Kensalt Co.

dealt directly with the community. The squatters were being given Kshs. 45,000 per acre. Once relocated the company gave the squatters building materials.

The number of squatters in some areas has increased after word on compensation of squatters went round.

Evictions are conducted in a humane way for those who accept compensation and relocation. For instance, prior to the eviction, Kurawa Salt Director, Mr. Mohamed Hussein Kaderdina met with the community from which evictions were to take place and requested them to look for a 24 hectares land for their relocation. Those that refuse to move are forced out by security agencies after the issuance of court orders. In 2016, four (4) families in Kurawa area were forcefully evicted after they had refused to do so on claims that the compensation was not adequate. In relation to Kensalt on 27th December, 2016 Abel Konde (0701847296) had to exhume seven (7) bodies at Kabeyu Nyungu – Kibaoni area for Kensalt to begin its operations. Members of the community are concerned about what happens to remains of their dead once they are relocated.

There were no consultations on the compensation to be awarded to the squatters. Notice is issued even to those who refuse to take compensation. Forceful evictions only happen when a squatter refuses to vacate the land and court orders are issued for them to be evicted. Security officers violate the rights of the squatters while executing the orders.

No reports of violations during forced evictions are lodged as a result of the expensive and tedious process involved in seeking legal redress. Evictions that were

only undertaken after court cases were concluded and eviction orders awarded

Complains relating to eviction cause emotional and a psychological turmoil. In some instances the salt companies frustrate the squatters by undertaking the salt works around the settlement areas thereby rendering the land inhabitable. Most complaints have been addressed through the courts and local Civil Society Organizations like MRF.

4.4.0 Corporate Social Responsibility

The communities acknowledged the importance of the KAM - CSR community members since they greatly assist the investors in identifying the needs of the community before undertaking any CSR projects. The communities acknowledged and confirmed that the companies have made a contribution towards improving their welfare as shown below.

Kurawa Salt Ltd:

- i. Bought land for Livestock Sale yard at Kshs, 100,000 and the construction of the market was undertaken by Kilifi County (Kanagoni Livestock Sale Yard);
- ii. Construction of Kurawa Secondary School (Ongoing);
- iii. Construction of an Administration Police Post at Kurawa;
- iv. Bought 60 tables and chairs for a nursery and lower-class school (Promise Academy) and
- v. Bought 25 bundles of cement for Mtoroni Primary School.

Kemu Salt:

- i. Constructed a shade for the students of Marereni Secondary School
- ii. Contributed ten (10) bags of cement for construction of Mtoroni Primary School and
- iii. Donated the land on which Kurawa Primary School is being built

Malindi Salt:

- i. Constructed Timboni wells and provided a water booster at Kambi ya Waya Primary School;
- ii. Built a dispensary at Kambi ya Waya and
- iii. Built some classes at Kambi ya Waya Primary School.

Krystalline Salt

- i. Provided material support for the construction of Marereni Primary School;
- ii. Built a dispensary at Marereni and also stocks the same with essential medicine;
- iii. Provision of clean water to the immediate villages;
- iv. Construction of classroom at Mapimo Primary School;
- v. Installation of electricity at Mapimo Primary School;
- vi. Offering scholarship opportunities for secondary school students. Currently providing scholarships to 4 students;
- vii. Provision of relief food in Mulunguni and Baricho which was a combined project by all salt companies in the region;
- viii. Providing transport to locals in times of medical emergencies;
- ix. Purchased text books and desks (worth more than Kshs. 1 Million)

to Boyani and Midodoni Primary Schools among other schools and

- x. Provided desks to Boyani and Midodoni Primary Schools (75 desks and 46 desks respectively).

Kensalt

- i. Provides scholarships to bright and needy students totaling to sixty one (61);
- ii. Supplies water to the community;
- iii. Provision of clean water to Kavuni Primary School;
- iv. Provision of relief food in Mulunguni and Baricho which was a combined project by all salt companies in the region;
- v. Provision of relief food in Ganze and
- vi. Construction of 3 classrooms at Magarini Primary School.

It was generally noted that most of the community members were aware of what is happening with the salt companies while others have no idea.

5.5.0 Conclusion and Recommendations

The audit team concluded the exercise successfully and submits this audit for further action. The following conclusions and recommendations provide the status of the salt sub sector against the findings of the public inquiry of 2006 with some specific additional recommendations.

i. Land Ownership

Land ownership remains a controversial matter along the salt sub sector. Efforts have been made to compensate and resettle the squatters, inventories of the squatters are available. The National Land Commission (NLC) through Section 14 of the National Land Act commenced a public inquiry in 2015- 2016 in an attempt to address issue of ownership, compensation, boundaries and access roads. At the time of this audit, the report was yet to be made public by NLC.

Recommendations:

1. The NLC and the national government must speed up the compensation and resettlement process. In addition the beacons and any other pending demarcation should be finalized to control any further encroachments by the squatters or salt companies;
2. Make boundaries, acreage, lease terms and conditions details known to community through the resource centers available like the KAM salt sub-sector office in Gongoni.
3. National Land Commission should carry out public forums to educate community on the basis of the

decisions taken in the gazette notice in regards to determination of review of grants and disposition of public land.

ii. Clean Healthy Environment and Right to Water

There has been allegations of contaminated water wells.

Recommendations:

1. Salt companies should jointly program or have a master plan on how to supply water in the area. For instance construction of a tank for storage of clean water and regularly fill it for consumption;
2. The companies should deliberate with the communities on how to provide water from access points to homes.
3. That the NEMA effluent discharge license should be limited to the companies that comply with set standards and that NEMA should conduct periodic inspections to ensure that the conditions agreed upon are met. NEMA and the salt companies need to carry out annual environmental audits to ensure conformity to the license;
4. Salt companies should grow plant cover in the sections of their land not being utilized
5. The salt companies should use eco-friendly materials when constructing to avoid wastage arising from corroding of metal sheet;
6. NEMA should educate the surrounding affected communities on environmental considerations and licensing conditions. This will

eradicate the misconception that the community's inputs aren't considered when NEMA licences investors

7. Invite Kenya Bureau of Standards to interrogate quality of products
8. The Salt companies should support baseline surveys and annual health reviews on occupational disease to evade speculation on salt harvesting related disease.

iii. Accountability for Human Rights Violations

The public inquiry had recommended that the Police and the Attorney General conduct investigations on all public officers who have violated human rights through evictions or destruction of property in Magarini, and that these persons should, as appropriate, be prosecuted. Based on the testimonies of the participants of the focus group discussions during the audit, it is evident that some community leaders have been victims of police harassment. Further to this, there is no conclusive evidence to point that the required actions by the Attorney General and the Police were acted upon.

Recommendations:

1. The Inspector General of police to investigate incidents of police brutality towards the local residents, especially community leaders who stand up for the rights of the community with the view to prosecute officers involved in such inhuman and degrading treatment of citizens and
2. Community members seeking compensation should use the judgment clearing them of any

offence from the criminal matter to institute a civil suit for compensation.

iv. Artisanal Mining

The audit team observed that there are artisanal miners operating adjacent to the salt companies. It was noted that these operators are not regulated and that they are not subjected to any statutory compliance audits.

Recommendations:

1. All government regulatory organs should develop modalities of regulating the operations of the small miners. This would include applying for mining license as per the mining act 95(3), obtaining single business permits, paying of cess from the source and land rates. Their products to be subjected to safety standards for domestic use;
2. Regulation to prevent child labour and ensure health and safety is adhered to and
3. The artisanal miners organize themselves in CBO that will allow them to apply for licenses from NEMA.

v. Fair Employment Practices:

There is evidence that some companies have workers who are also members of trade unions. However the audit team was alarmed by the low membership among the workers while some companies have no workers in the trade unions. The salt companies explained that they have not in any way hindered any trade union to recruit members. It was noted too that some companies have Collective Bargaining Agreements with the employees with clear

modalities of review. It was also noted that many workers do not know the benefits of membership trade unions.

Recommendations:

1. Trade unions should sensitize the workers on the benefits of membership and engage with salt companies where necessary;
2. The salt companies should have implementation guidelines for the provisions of the Disability Act and ensure 5% opportunity for people with disabilities during recruitment;
3. Educate all employees on the importance of using Personal Protective Equipment and train them on how to use the equipment by end of 2018
4. The salt companies should consider building a daycare center, to be managed and run by the locals where the workers can leave their children during the day knowing they are safe. (The Audit revealed that employees sneak in through “illegal routes” with small babies and also bring their siblings to babysit them.)

Magarini Salt Companies Public Inquiry Recommendations

The following findings and recommendations provide the status of the salt sub sector as per the recommendations of the public inquiry of 2006 and progress made until 2016.

The following are some of recommendation as per the public inquiry report 2006

2006 INQUIRY		2017 AUDIT		
Finding one	Recommendation Findings	Finding\milestone	Further Recommendations Responsible Bodies	
<p>Post-colonial government perpetuated colonial injustices against the community by leasing the land to salt manufacturing companies without ensuring that the people had recourse to alternative and equally valuable settlement. Inquiry found that the legal basis, which allowed the state not to compensate the people for land leased to the salt manufacturing companies, was an unjust law because the community had de facto ownership and use of the land in question for many generations. This law notwithstanding, the community was unaware that it was occupying the land in question illegally</p>	<ul style="list-style-type: none"> • That the Government should make an accurate inventory of communities or descendants thereof • That the process of adjudication under the Land Titles Act (now Cap. 282), be reopened to enable indigenous communities or descendants thereof to present their claims; • That as an alternative to the above recommendation, areas deemed to be government land under that Act, be redesignated as trust land and be subjected to systematic adjudication under the Land Adjudication Act (Cap 284). 	<p>The salt companies that participated in the audit hold leases from the Government of Kenya, although there still persist dispute from the communities claiming rights.</p>	<p>The National Land commission carried out a public inquiry, it should make public the resultant report on determination of review of grants and dispositions of public land.</p> <p>Community sensitization through the KAM office to understand the land ownership pattern at the salt belt.</p> <p>Application of the current land laws.</p> <p>Principle of Public participation as contained in constitution of 2010 should be adhered to.</p>	<p>National Land Commission</p> <p>KAM</p>

Finding Two	Recommendation	Finding 2017	Recommendation	Responsibility
<p>Some of the salt manufacturing companies have been breaching both the general and special conditions attached to their grants. These terms and conditions are, in many cases, far too generous to the salt companies, thereby giving them space to overstep their mandates. For example, Kurawa Salt Company sublet its land to another company in disregard of the terms of its lease. Other companies have built dykes, which have interfered with the free flow of water from the sea. The Inquiry also found out that most of these companies do not utilize all the land leased to them and land rates being charged are not commensurate with the current land value.</p>	<p>Recommendation</p> <ul style="list-style-type: none"> That salt manufacturing companies, which have breached the terms and conditions of their grants must be penalized according to the law. The leasehold of Kurawa Salt Company must be terminated since the company is in breach of its grant. All other companies should be investigated and penalized for grant breaches; and That the rates paid by salt companies must be revised to conform to the current value of land. The Inquiry recommends that the Government should renegotiate the terms and conditions of the leases held by salt companies, including revising the land sizes granted to levels necessary for their core business. 	<p>Finding 2017</p> <p>Salt companies consciously making efforts to abide by terms in the special conditions attached into their grants.</p> <p>For instant Dykes have been removed</p>	<p>Recommendation</p> <p>NLC to deal with the issue of grants.</p>	<p>Responsibility</p> <p>NLC</p>

Finding Three	Recommendation	Finding 2017	Recommendation	Responsibility
<p>Where the salt manufacturing companies sought to compensate the community, compensation covered only standing crops, permanent trees and houses and excluded land. However, the compensation was assessed at woefully inadequate levels.</p> <p>The Inquiry thus found the basis for the assessment of crops and property for purposes of compensation, grossly unjust. Many members of the community have, to date, not been compensated for crops or property that was destroyed or taken over</p>	<ul style="list-style-type: none"> • All persons or groups of people who have not been compensated for losses accruing on land from which they have been evicted, or otherwise removed, should be compensated; • That cases of persons who declined compensation or who contested levels of compensation for losses accruing on land from which they were evicted, or otherwise removed, should be reviewed and appropriate redress offered; and • That the Government, and in particular the Ministry of Agriculture, must review the framework which it uses to compensate crops. This should be aligned with the market value of such crops, which indeed is in consonance with the Constitution of Kenya, section 75, which provides for “full and prompt compensation” for property taken over by the state. 	<p>A good number of squatters compensated.</p> <p>Different companies used different procedures to compensate hence some did not pay at market rate. People felt short changed when they realized that their counterparts had received a better deal.</p> <p>Some of the squatters did not finally resettle.</p>	<p>Disputes on compensation should be solved amicably. This can be guided by the NLC report on those entitled to compensation.</p> <p>KNCHR recommends that this can be done through ADR</p> <p>Eviction guidelines should be adhered to by all companies during squatter relocation to create space for expansion.</p> <p>Streamline terms of compensation along the salt belt.</p> <p>Apply standardized compensation and relocation terms for all salt companies.</p> <p>Create awareness among the community on compensation and relocation.</p>	<p>NLC</p> <p>KNCHR, KAM</p> <p>Government and KAM</p> <p>KAM, CSO and NLC</p>

<p>Finding Five</p> <p>Both the Provincial Administration and Police breached fundamental human rights and violated individual and community rights by unnecessarily destroying property while evicting members of the community from the land, which was leased to salt manufacturing Companies.</p>	<p>Recommendation</p> <ul style="list-style-type: none"> That the Police and the Attorney General should conduct investigations on all public officers who have violated human rights through evictions or destruction of property in Magarini, and that these persons should, as appropriate, be prosecuted. 	<p>Finding 2017</p> <p>The audit revealed that this has not happened.</p>	<p>Recommendation</p> <p>The community and the salt companies need healing and building of relationship. Prosecution will break the relationship.</p> <p>Eviction guidelines should be followed in all situations and carried out in a humane manner.</p>	<p>Responsibility</p> <p>Administrators, National Police Service, National land Commission</p>
<p>Finding Six</p> <p>The Provincial Administration and the Police colluded with the salt manufacturing companies by misusing their powers to illegally harass, arrest, and/or incarcerate members of the community.</p> <p>People were arrested on spurious charges amounting to illegal detention and the police used to threaten those who chose not to leave certain land.</p>	<p>Recommendation</p> <ul style="list-style-type: none"> A peace and reconciliation initiative be undertaken to facilitate healing within the Magarini community. The community, (including victims and the violators), should conduct discussions with the aim of reconciling with one another. The salt manufacturing companies and the people must coexist, and this should be the aim of this initiative; The Attorney-General should investigate the criminal culpability of, and prosecute the public officials who might have abetted the injustice in Magarini; Individuals who have been arrested and incarcerated illegally should use judicial and quasi-judicial avenues to seek redress, including compensation; and That laws and codes of conduct (such as the Public Officer Ethics Act, 2003), should be enforced to ensure that public officers realize that they owe their allegiance to the people and not to specific interests, which undermine the general will or public good. 	<p>Finding 2017</p> <p>Several dialogue meetings were instituted by KAM.</p> <p>The local CSOs have not been able to spearhead this initiative.</p> <p>They still feel not satisfied.</p>	<p>Recommendation</p> <p>The local CSOs should have the good will and spearhead this initiative.</p>	<p>Responsibility</p> <p>County Administrator/ CSO's and OCS.</p>

Finding Seven:	Recommendation	Finding 2017	Recommendation	Responsibility
<p>Workers employed in salt manufacturing companies work under extremely poor conditions. Workers who harvest salt and those who work in the factories are not provided with appropriate work attire and equipment such as gloves, boots, helmets, overcoats, scrapers and basins.</p> <p>The transportation to and from the workplace is also inappropriate. For example, they have to travel by uninsured vehicles most of the time.</p>	<p>• That salt manufacturing companies must ensure that workers are provided with the appropriate clothing to mitigate the adversities in the work environment and that this should be accomplished within six months of this decision.</p> <p>• The appropriate type of clothing should be determined through consultations between workers, the salt companies and the Labour Department, with due regard to factors like weather, nature of work, personal hygiene and gender. In arriving at this decision, the Inquiry noted with appreciation, the fact that salt manufacturing companies by and large did not contest the veracity of claims for non-provision of clothes and equipment, and that they indeed agreed to provide their workers with the appropriate clothing and equipment;</p> <p>• That the salt companies must ensure they provide implements necessary for harvesting salt and that this should be done at no cost to the worker(s); and</p> <p>• That the Labour Department must ensure compliance with the above orders.</p>	<p>Some workers were not using the issued PPE. They claimed that the weather is not conducive, it slows them down. There were also allegations that some workers rent out the PPE to other salt harvesters.</p>	<p>It is a requirement under the National Safety and Health Act to use protective equipment /clothing and an offence to both the employee and employer if they default.</p>	<p>Employer Employees Occupational safety health officer.</p>

Finding Eight	Recommendation	Finding 2017	Recommendation	Responsibility
<p>The health and safety of workers in these companies is undermined by company practices and ineffective government inspection regimes.</p> <p>While it is the duty of the Ministry of labour and the Department of Occupational Health and Safety to check on working conditions, poor maintenance of machines has led to unacceptably high numbers of accidents in the factories. Toilet facilities for workers are also inadequate.</p>	<p>Recommendation</p> <ul style="list-style-type: none"> Malindi Salt Company and Krystaline Salt company, which were both operating without a certificate of registration from the Occupational Health and Safety Department, contrary to Section 9 of the Factories Act, should comply with the law within three months; Salt companies must provide sanitation facilities appropriate for both male and female workers. And that they must be placed at accessible locations, particularly for workers harvesting salt. Companies may consider using mobile toilets; but in any case, they must ensure that effluent from toilets does not contaminate the salt ponds; and The use of basins to transport salt must be reviewed with the aim of either replacing them with more appropriate modes of transport, or determining the maximum load, which may at any one time be safely carried in a basin. The Government through the Ministry of Labour must take the lead in this process. 	<p>At the time of the audit all the companies had health and safety certificates. The certificates are well displayed in the factory for everyone to read.</p> <p>Workers latrines and bathroom facilities were erected in every salt company. However their suitability could not be ascertained since some were constructed using iron sheet and no approval was obtained from the public health officer.</p> <p>During the audit process a study on appropriate PPEs was been carried out. Hopefully the right PPEs will be recommended and the companies will comply</p>	<p>Continuous (biannual) engagement and audits by labour officer/occupational health officer and the salt companies.</p> <p>Kurawa salt company should emulate the other companies and set up a workers health and safety committee.</p> <p>Salt companies to ensure the availability of suitable latrines and bathroom facilities for the workers, approved by environmental and public health officials. The facilities be maintained in an adequate state of repair and cleanliness at all times</p>	<p>Ministry of EAC department of labour.</p> <p>Salt manufacturing companies.</p> <p>Public health, labour office, NEMA and KAM</p>

Finding Nine	Recommendation	Finding 2017	Recommendation	Responsibility
<p>In many aspects, salt manufacturing is a seasonal business. For this reason, the salt manufacturing companies may not be able to employ all their workers on full time basis. Instead, they have sought to employ the minimum possible number(s) of workers on contract, with most being on casual terms. However, the companies continue to abuse piece rate employment by paying workers excessively low wages for specified work.</p>	<p>That the Department of Labour, in conjunction with stakeholders in the salt sector, must develop an acceptable common standard for measuring piece rate work for salt harvesters within one year; and</p> <ul style="list-style-type: none"> That the Labour Department must ensure that the terms of persons working on casual basis fall within the requirements of the law to prevent them from being exploited by the salt companies. These arrangements could even include the possibility of staggering payments to workers in such a manner that they would receive regular monthly emoluments instead of seasonal payments. 	<p>Most of the employees in the salt companies have absorbed the temporary staff to permanent employees.</p> <p>The piece rates shared with the audit team was impressive.</p> <p>Most of the companies were paying above the national minimum wage.</p> <p>Notably the employees lacked a lot of information about their rights as workers.</p>	<p>Review of minimum wage for the salt companies based on the density of work involved.</p> <p>KAM should make a deliberate effort to build capacity on workers' rights.</p>	<p>National Government and ministry of labour, County Government.</p> <p>KAM and labour office.</p>
<p>The workers have limited opportunity to participate in collective bargaining processes. The limitations are occasioned by the salt manufacturing companies, which discourage them from joining trade unions. The situation is exacerbated by the absence of or ineffective recruitment strategies of trade unions.</p>	<p>That salt manufacturing companies, as employers, must be bound by Kenyan laws, which require employers not to deny workers the right of association for purposes of collective bargaining.</p> <ul style="list-style-type: none"> That labour organization and trade unions should ensure that salt workers have the requisite information and education to determine to organize themselves for purposes of joining their chosen trade unions. This education should happen on a continuous basis. 	<p>There is lack of information on the importance of collective bargaining by the employees.</p> <p>It is still not clear which union is appropriate for workers in the salt industry.</p>	<p>Discourse on the trade union and potential benefits and membership should be held.</p>	<p>Trade unions and ministry of labour</p>

<p>Findings Eleven</p> <p>The Government departments responsible for labour matters do not have enough resources to carry out their duties effectively. A combined Labour and the Occupational Health and Safety Departments, had only two staff members assigned to serve three districts without basic infrastructural support resources like vehicles and functional offices. This meant the officers could not effectively supervise the salt companies.</p>	<p>Recommendation</p> <ul style="list-style-type: none"> • That the Ministry of Labour should rationalise its resources to enable it carry out its mandate(s) effectively (including those of addressing workers' grievances, inspecting salt companies and providing awareness/capacities to employees and employers); and • That the Government should factor in this rationalization into all subsequent national budgets. 	<p>Finding 2017</p> <p>Health and safety department have done commendable job in the salt industry, we urge similar efforts from the labour office.</p>	<p>Recommendation</p> <p>Labour office should replicate best practice from the health and safety office.</p> <p>Labour office should increase their inspection and training of workers in the salt industry.</p>	<p>Responsibility</p> <p>Administration (Ministry of interior), Labour office, Treasury, Parliamentary Budget Committee, Commission on Administrative Justice.</p>
<p>Finding Twelve</p> <p>Overall, the policy and legislative framework, which governs labour relations in Kenya is archaic and therefore an inadequate basis for protecting workers rights and facilitating good labour relations. It is for this reason that the salt companies have continued to engage in unfair labour practices while still remaining within the bounds of law.</p>	<p>Recommendation</p> <p>That the policy and legislative framework governing labour relations in Kenya should be overhauled as a matter of urgency. The proposals made by the Task Force on Labour Laws established by the government in 2001 should be scrutinized and consequently, enacted as a matter of urgency.</p>	<p>Finding 2017</p> <p>Kenya labour relations is governed by the Labour Relations Act of 2017. With Fair Labour practices enshrined in Constitution of Kenya 2010</p>	<p>Recommendation</p>	<p>Responsibility</p> <p>Labour Office, Administration, KNCHR</p>

Finding Thirteen	Recommendation	Finding 2017	Recommendation	Responsibility
<p>Fresh water sources from which the surrounding community traditionally drew its water have been contaminated by underground salt seepages and other activities resulting from the salt manufacturing companies' Actions. For example, agents of Krystalline Salt Company had on at least one instance, reportedly dumped salt into a fresh water source, Apparently to frustrate the community's inclination not to be removed from the land in question. As a result of the consequent salinization, the community's right to Access the only non-salty water source around was undermined, forcing them to ferry fresh water from long distances at a greater cost.</p>	<p>Recommendation</p> <ul style="list-style-type: none"> The Ministry of Water and Resource Management and the Malindi County Council should carry out a hydrological assessment to establish surface and ground water sources in the area. And that once established, such areas be secured and guarded by the community, salt companies and the Malindi County Council for the good of the people; NEMA and the Public Health office in Malindi should ensure that the companies implement an appropriate waste water treatment system in accordance with the Environmental management and Coordination Act; Further investigations should be undertaken by NEMA to identify salt manufacturing companies whose activities have despoiled fresh water sources. Such companies must be surcharged and involved in initiatives to provide alternative sources of fresh water to the community; and Salt manufacturing companies, which in breach of the law, discharge untreated effluent into the environment must be investigated and prosecuted. That the Malindi County Council, the Ministry of Water, the salt companies and the local communities pool their resources, including Constituency Development Funds and Local Authority Transfer funds, to support the provision of reliable and fresh water to the local centers through water pipelines. 	<p>Water samples taken by WRMA, however to date the result / feedback has never been availed.</p> <p>NEMA and Public health have made efforts to ensure that the salt companies do not dispose brine back into the ocean.</p> <p>EIA are done before commencement of any project and expansions.</p> <p>Most workers trained on health and safety.</p> <p>The County Commissioner called for all regulatory bodies to facilitate the salt companies to enable efficiency.</p>	<p>WRMA to avail results of the test and advice appropriately.</p> <p>The county government should enter into a public private partnership with the salt manufacturing companies to enhance access and deliver of piped fresh water for local residents.</p>	<p>WRMA</p> <p>County government of Kilifi</p> <p>Salt companies</p>

<p>Finding Fourteen</p> <p>Mangrove trees, coastal forests and woodlands were destroyed to pave way for the construction of salt-harvesting ponds. Some mangrove trees also died due to the high salinity in the locality. This was caused by the dykes restricting the free flow of water to and from the sea, thereby harming the habitats of many types of fish</p>	<p>Recommendation</p> <p>That the clearing of mangrove trees by both the salt manufacturing companies and the communities should stop and a set-back line from the mangrove forests to the salt ponds be established. That all salt ponds within the defined set-back line be decommissioned and rehabilitated; and</p> <p>That all dykes, which restrict the flow of water to and from the sea, be removed within six months of this decision.</p>	<p>Finding 2017</p> <p>Most of the salt companies have reforestation programs going on in the salt belt</p> <p>Those who cut down mangrove are fined.</p> <p>The dykes which restricted the free flow of the water into the sea have been removed.</p>	<p>Recommendation</p> <p>The community and Salt companies continue planting trees.</p>	<p>Responsibility</p> <p>Kenya Forest Services</p> <p>Community and Salt company. NEMA and Administration</p>
<p>Finding Fifteen</p> <p>While the salt companies had prepared annual environmental audit reports, the reports did not have useful metrics for measuring their environmental and social performance. No standards were available to measure adherence to environmental and social performance. Further, institutions such as the Malindi District Environment Committee, and community based environmental organizations, did not impact on the supervision and management of environmental issues due to lack of capacity.</p>	<p>Recommendation</p> <p>NEMA, in collaboration with the salt manufacturing companies, community based organizations and other relevant players, should within a period of one year, establish environmental quality standards for the salt manufacturing sector;</p> <p>NEMA, CBOs, the KNCHR and other interested players should strengthen the capacities of the various key players in environmental management;</p> <p>The salt companies should establish a salt manufacturing sector restoration fund for supporting the rehabilitation of degraded areas, in accordance with Section 25 of the Environment Management and Coordination Act.</p>	<p>Finding 2017</p> <p>This was not done but commensurate work had gone into establishing standards.</p> <p>Many CSO's working on this.</p>	<p>Recommendation</p> <p>KAM liaison office should be empowered to institute the process. It is recommended that all salt companies retain a full time compliance officer and subscribe to Global Compact to continuously monitor their compliance to business and human rights as well as report on their complementary efforts to sustain, improve and develop their areas of operation.</p>	<p>Responsibility</p> <p>KAM and NEMA</p> <p>Salt companies</p>

<p>Finding Sixteen</p> <p>The salt manufacturing companies have confused corporate citizenship with charity. Virtually, all the companies in question have at one point or another participated in ad hoc initiatives that support community projects like providing for schools and public institutions such as the Provincial Administration and the Police. They have also been contributing resources in support of national events like Madaraka Day Celebrations.</p>	<p>Recommendation</p> <p>That individual salt manufacturing companies, with the support of KESAMA, should liaise with communities on the nature of projects to be supported, and that this be incorporated into the companies' long-term plans.</p>	<p>Finding 2017</p> <p>This recommendation was adopted by the CSR committee through KAM salt subsector.</p>	<p>Recommendation</p> <p>There is need to strengthen the CSRs capacity to represent the interests of the community.</p> <p>The CSR committee should establish a transparent recruitment process with periodic review mechanism.</p>	<p>Responsibility</p> <p>Local organized community members.</p> <p>KAM salt subsector.</p>
<p>Finding Seventeen</p> <p>Salt manufacturing is an essential and important element in the Magarini's Economy. For example, it has enabled the employment of as many as 2,000 casual and contract employees from the area.</p>	<p>Recommendation</p> <p>That the Government should prepare resource plans and ensure that Magarini has a facilitative environment within which investors may operate effectively. Telecommunication and the supply of power should be prioritized; and</p> <p>That the Government and salt manufacturers should investigate and implement other resource-friendly options for salt harvesting and involve the community. One option could enable the community to become salt "out-growers" working within cooperative frameworks.</p>	<p>Finding 2017</p> <p>The government has not worked on this, however a good opportunity exist with the devolved government.</p>	<p>Recommendation</p> <p>The county government of Kilifi should fast-track and develop an engagement strategy.</p>	<p>Responsibility</p> <p>County government of Kilifi.</p> <p>KAM</p> <p>Salt companies</p>

Appendix 1

Interview Guide for KAM

This interview guide has been developed based on the recommendations made by the public inquiry report conducted by KNCHR eleven years ago.

Land Adjudication and Titling

- o Does KAM have a record or inventory of the indigenous communities living within the land area where salt mining is carried out?
- o What is the current acreage of land under salt mining?
- o Provide details of the current leases indicating the terms and conditions of such grants.

Clean Healthy Environment and Right to Water

- o How has KAM supported the community to access clean water for domestic use?
- o Are there any measures in place to protect vulnerable groups such as Children, Persons with Disabilities, and older persons with regard to (a) above
- o Provide details of the current waste water treatment system indicating its compliance to international standards with approval from NEMA
- o What measures are in place to protect the mangrove forests/trees?
- o A recommendation for the establishment of a salt manufacturing sector restoration fund was recommended. Is this in place and what is its impact in rehabilitating the degraded areas?
- o Some companies had constructed dykes that restricted the free flow of water from the ocean/sea thus impacting on the ecosystem. Briefly explain what measures have been put in place to protect the ecosystem

- o Has hydrological assessment been conducted to establish the safety of underground water for human consumption?
- o Provide details of environment audit reports by NEMA for the last five years.

Labour Standards and Working Conditions

- o Does KAM have a policy prohibiting forced labour in its various forms?
- o What measures has KAM put in place to ensure that employment contracts are fair, transparent, and understood by the workers.
- o What measures are in place to ensure that workers perform their roles in an environment which does not expose them to “hazardous substances, agents or processes?”
- o Confirm the existence of a valid Occupational Health and Safety Certificate and whether it is displayed appropriately.
- o Confirm Health and safety inspections are regularly conducted and that the workplace is safe, clean, comfortable and hygienic.
- o Does KAM have health and safety prevention and remediation policy and procedures in place which comply with industry, national and international standards?
- o Confirm that KAM wages/remuneration to its employees meets the national minimum wage guidelines and that these are promptly paid as per the employment terms and conditions.
- o Does KAM provide a conducive environment for the workers to exercise the freedom of association including participating in activities of labour organizations recognized by law for purposes of collective bargaining?
- o How would you describe the effectiveness of trade unions in addressing the concerns of the worker’s employed by the organization and working in the salt sub sector?

- o Evictions and Compensation
- o What was the nature of public participation with regard to compensation for the land where salt mining takes place?
- o Provide evidence that only genuine squatters were resettled
- o Are there petitions with regard to the compensation offered by the Salt companies?
- o How have the petitions in (b) been redressed?
- o How were evictions conducted?
- o Was there adequate compensation for the properties destroyed during the eviction process including compensation to individuals unlawfully arrested while protesting the evictions?
- o Were the evictions done in a humane manner that respected the dignity of the evictees?
- o What steps have been taken against those involved in the evictions that violated the rights of the evictees?

Corporate Social Responsibility and Community Liaisons

- o Provide an elaborate account of how KAM engages with the community on the salt mining area
- o Provide details of engagement with government departments, agencies and other partners with regard to environment conservation in the Magarini area.
- o How has the salt sub sector contributed to the improvement of the living standards of the people in the area?

Appendix 2

Interview guide for NEMA and Public Health Office Malindi

Clean Healthy Environment and Right to Water

- o How many times have you audited the Salt sub sector activities in the last five years?
- o Does the current waste water treatment system conform to the standards provided for in law?
- o What measures have you taken for a breach of the legislation regarding the disposal of untreated effluent into the environment?
- o Provide evidence of the existence of environmental quality standards for the salt manufacturing sector?
- o How would you rate compliance to the standards mentioned in (d) above?
- o Explain how the salt sub sector rehabilitates degraded areas as provided for in law

Capacity building and engagement with the community

- o What are the awareness and capacity building programs targeting the community and players within the salt sub sector?
- o What activities is NEMA involved in that target environment rehabilitation of the salt sub sector?
- o Has NEMA received any petitions concerning environmental degradation in the salt sub sector area? How has this been addressed?

Appendix 3

Interview guide for Ministry of EAC, Labour and Social Protection (Department of Labour)

- o How frequent does your department inspect the salt sub sector to ensure compliance with labour laws?

- o Do the wages paid to the workers at the salt sub sector conform to the national minimum wage?
- o Are the workers in the salt sub sector members of any trade union?
- o In your opinion, what are the key labour concerns at the salt sub sector?
- o Do the sanitation facilities provided for workers of the salt sub sector meet the prescribed standards?
- o Does the existing labour law adequately protect workers in the salt sub sector?

- o Do you think the work environment is culturally sensitive and non-discriminatory?
- o Are the health and safety standards made available to all employees in a language they understand?
- o Does the company provide employees with training or awareness creation on health and safety at the workplace?
- o Has any employee of this company been victim of workplace related accidents? If yes, do you think the company has put in place adequate preventive measures?

Appendix 4

Interview guide for National Land Commission

- o Does your office possess detailed inventory of the land where salt mining takes place?
- o Provide details of the current leases of the land currently under use by the salt sub sector
- o Did members of the community possess title deeds for the land before it was acquired for salt mining?
- o Were the indigenous communities adequately compensated for their land?
- o If these communities were resettled, do they own the land they currently occupy?
- o Is there any land related petitions launched in your office? If yes, how have they been redressed?

Appendix 5

Interview guide for Employees of the Salt Sub Sector

- o How long have you worked in this company?
- o Are you a member of any trade union and do you hold any position in the union?
- o How would you describe the work environment in the company?

Appendix 6 List of Participants

SALT SECTOR AUDIT REPORT VALIDATION MEETING: GONGONI YELLOW HOUSE HALL

21ST NOVEMBER 2017

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