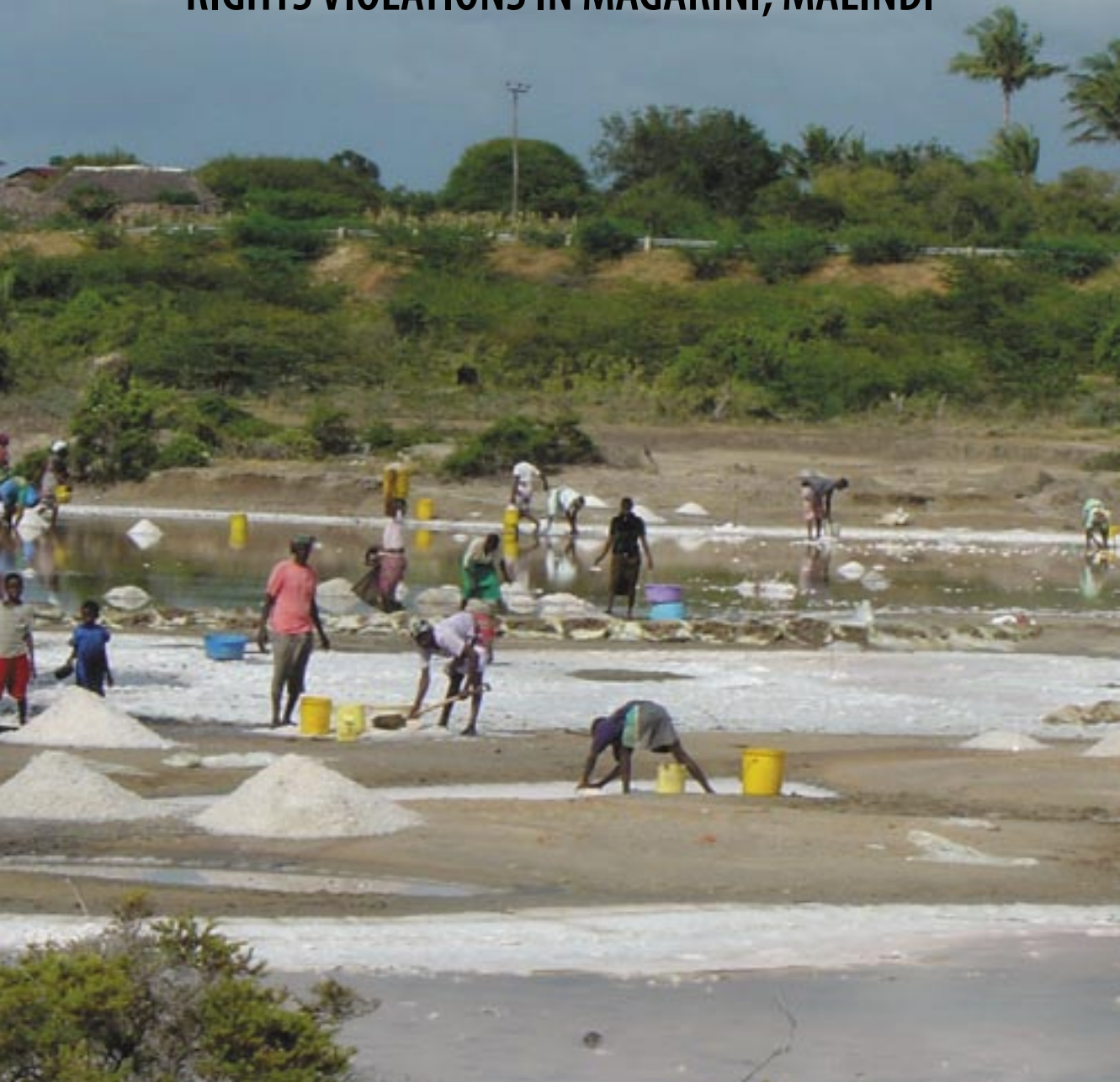




# THE MALINDI

## *Inquiry Report 2006*

**REPORT OF A PUBLIC INQUIRY INTO ALLEGATIONS OF HUMAN RIGHTS VIOLATIONS IN MAGARINI, MALINDI**





.....July 2006

Ref KNCHR/CRD/IQ/01/VOL.1

HIS EXCELLENCY, HON MWAI KIBAKI, C.G.H., M.P.  
PRESIDENT AND COMMANDER-IN CHIEF OF THE ARMED FORCES OF THE  
REPUBLIC OF KENYA  
STATE HOUSE  
NAIROBI

YOUR EXCELLENCY,

**RE: REPORT OF A PUBLIC INQUIRY INTO ALLEGATIONS OF HUMAN RIGHTS  
VIOLATIONS IN MAGARINI, MALINDI**

The Kenya National Commission of Human Rights undertook a public inquiry in July 2005 into allegations of human rights violations arising from the activities of salt manufacturing companies in Magarini Division of Malindi District.

The Inquiry arose in terms of Section 16(a) of the Kenya National Commission on Human Rights Act 2002 which establishes one of the Commissions functions as “to investigate, on its own initiative or upon complaint made by any person or group of persons, the violations of any human rights”.

The National Commission hereby submits the report of the inquiry as a special report under section 21 of the Kenya National Commission on Human Rights Act 2002.

I remain

Your Excellency’s most obedient servant,

A handwritten signature in black ink, appearing to read 'Violet Mavisi', written in a cursive style.

**Violet Mavisi**  
**Chair, Malindi Inquiry Panel**  
**Vice Chair, KNCHR**



**ECONOMIC INTERESTS VERSUS SOCIAL  
JUSTICE: PUBLIC INQUIRY INTO SALT  
MANUFACTURING IN MAGARINI,  
MALINDI DISTRICT**

A special report submitted to the President and the  
National Assembly under section 21 of the Kenya  
National Commission on Human Rights Act 2002.

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on Human Rights  
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## Foreword



**Human rights violations occur time and time again and call for urgent action. No country has a spotless track record regarding the protection and promotion of human rights. It is only in our common efforts that we can make lasting improvements to the human rights.**

The idea of instituting a public inquiry into claims of human rights violations by salt manufacturing firms in Malindi arose after the residents persistently petitioned the Kenya National Commission on Human Rights and other non-governmental organisations working at the Coast.

It was observed that an inquiry of this nature would help unravel the cause of the tensions between the salt manufacturing companies and the local community. For this reason, a five-day public inquiry was conducted at Marereni, in Malindi, and received both written and oral submissions from the public, salt companies, the local administration, line ministries and experts in the fields of the alleged abuses.

The Commission also visited some of the premises where the allegations were said to have occurred.

This report describes the work of the Commission and the grievances brought before it. In most cases, the alleged violations betray a flagrant disregard of labour laws by the accused companies. There were also allegations of environmental mismanagement and degradation of land resources, contrary to the Environmental Management and Coordination Act (1999).



The grievances and response(s) from some of the accused parties are expounded in this report. For every allegation, a comprehensive analysis and recommendation(s) vital in addressing and solving the problem, has been made.

The report notes that to ensure stability and cohesiveness in the region, positive community action that would empower the claimants and residents to actively engage with the Government and other actors in claiming their rights, should be encouraged.

Given that the allegations regarding labour law violations and environmental mismanagement are serious, organisations, including NEMA, the Regional Water Management Authority, the Department of Labour and the Provincial Administration, will be required to take direct positive action to ensure compliance and enforcement of legal standards and regulations.

The report recommends that private businesses be encouraged to attain ethical work standards by complying with the law while at the same time fulfilling their obligations of corporate citizenship. The case of Magadi Soda Company is explored as an illustration of good corporate citizenship.

Respect and promotion of human rights is an essential pillar to the achievement of sustainable socio-economic development. This outcome is a contribution of all the actors in development, including the communities. This is why the KNCHR appreciates all community action(s) that promote human rights education.



In publishing this report, the Commission is seeking to disseminate the work of the Malindi public inquiry as a way of inducing lasting partnerships to promote good human rights practices in work places and communities. We view this as an educative experience for businesses in this country and also a good way to further the human rights approach to development.

This publication should be a living embodiment of the commitment of the KNCHR to its intention of fostering a human rights culture. It should, therefore, not only be a reminder of the voices of victims of human rights breaches, but also an indication that private businesses are willing to change and embrace human rights practices.

**Violet Mavisi**

**Vice-Chair, KNCHR**



## ACKNOWLEDGEMENTS

We would like to thank the many individuals and organisations that helped make this inquiry possible. We are especially grateful to the community members and groups that were in constant communication with the National Commission by sharing with us their experiences prior to the inquiry, and thereby prompting it.

We very much appreciate their contribution. We thank the professionals who were involved in the inquiry and who gave us limitless access to their expertise either as expert witnesses or inquiry panelists. These include Prof. H.W. Ogendo, Dr. George Wamukoya and Mr. Mashengu wa Mwachofi. The Economic, Social and Cultural Rights Program and the Complaints and Redress Program also wishes to thank all the Commissioners who worked tirelessly as panellists during the inquiry, and their assisting counsels and staff.

Some members of staff were out on the ground for over three weeks working with the community members to plan for the Inquiry. We also thank the various government officers who participated, the police for providing security, and Mr. Salim Mohamed, a resident of Marereni, for his generosity and support.

We would also like to thank various individuals and organisations such as the Coast Rights Forum, who shared information and insights with us during this period. This report will shed new light on various aspects of business relations with host communities.

We offer special thanks to the management and officials of the salt manufacturing companies in Malindi who presented themselves to the Inquiry and gave their views. We are also grateful to the Magadi Soda





Company for according the KNCHR an opportunity to visit and discuss with them a number of issues pertaining to its activities on corporate social responsibility.

Finally, the National Commission gratefully acknowledges all those who, in one way or another, contributed to the preparation and publication of this report.

The Economic, Social and Cultural Rights Programme (ESC), expects that the official and civic actions taken as a result of this Inquiry will contribute to increased opportunities for the realization of economic, social and cultural rights for the Marereni community specifically and for Kenyans at large. The Program will continue to pursue this goal through various other strategies.

*Maina Mutuaruhii, Senior Human Rights Officer and Wambui Kimathi, Commissioner*

**KNCHR  
2006**



## LIST OF ABBREVIATIONS

Ags	Attorney General's Chambers
AIDS	Acquired Immune Deficiency Syndrome
CBOs	Community Based Organizations
CEDAW	Convention on Elimination of All Forms of Discrimination Against Women
CRC	Convention on the Rights of the Child
CRF	Coast Rights Forum
CSOs	Civil Society Organizations
CSR	Corporate Social Responsibility
DC	District Commissioner
DO	District Officer
EA	Environmental Audit
EIA	Environmental Impact Assessment
EMCA	Environment Management and Coordination Act
HIV	Human Immuno-deficiency Virus
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICZM	Integrated Coastal Zone Management Plan
ILO	International Labour Organisation
KEBS	Kenya Bureau of Standards
KEFRI	Kenya Forestry Research Institute
KESAMA	Kenya Salt Manufacturer's Association
KNCHR	Kenya National Commission on Human Rights
MCC	Malindi County Council
MENR	Ministry of Environment and Natural Resources
MOH	Ministry of Health
MOW	Ministry of Works
MOWI	Ministry of Water and Irrigation
NEMA	National Environment Management Authority
NHIF	National Hospital Insurance Fund
NSSF	National Social Security Fund
PCC	Public Complaints Committee
UN	United Nations
UDHR	Universal Declaration on Human Rights
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
WWF	World Wildlife Fund





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## EXECUTIVE SUMMARY

### *1. Terms of Reference for the Inquiry*

The Kenya National Commission on Human Rights (KNCHR) is a National Human Rights Institution established under the Kenya National Commission on Human Rights Act, 2002, to promote and protect the rights of people living in Kenya. As a National Human Rights Institution, the Commission's independence is guaranteed by statute such that it may offer advice to public and private bodies (including the Government) and adjudicate on complaints alleging human rights violations without fearing the possibility of direct or indirect influence or other pressure.

Inquiries such as the Malindi Public Inquiry into Human Rights Violations are provided for under Section 16(a) of the Kenya National Commission on Human Rights Act, which states that among other functions of the Commission is "to investigate, on its own initiative or upon a complaint made by any person or group of persons, the violations of any human rights."

**The Inquiry sat between July 4 and 8 of July 2005, at Marereni Sports Grounds, Malindi. The Inquiry's terms of reference were:**

- (a) To investigate the veracity or otherwise of allegations by the community of Magarini to the effect that salt manufacturing companies operating in the area had committed egregious human rights violations against the community; and that those violations were committed with the collusion of or as a result of inaction by a number of public institutions, including the Provincial



Administration, the Police, government ministries/ departments responsible for land, labour and environment, and the local government in the area. Specifically, the Inquiry was to investigate complaints relating to:

- Evictions from land which the community perceived as belonging to it;
  - Health complications arising from salt manufacturing;
  - Violations of workers rights;
  - Role of Police and Provincial Administration in harassment of residents; and
  - Environmental degradation.
- (b) To arrive at findings on the matters in question and to make such orders and/or recommendations as would be necessary to improve or remedy the human rights situation in this area.

According to the Kenya National Commission on Human Rights Act, the Inquiry could:

- Order compensation for persons whose rights were violated (Section 19(2)(b));
- Order the release of any unlawfully detained or restricted person (section 19(1)(a));
- Make such other orders deemed necessary for promoting or protecting the human rights of a complainant (section 16(i));



- Commence and prosecute appropriate proceedings in the High Court under section 84(1) of the Constitution for appropriate orders, writs or directions (section 25(b));
- Conciliate the parties in question where and to the extent that would be possible and appropriate (Section 16(h));
- Recommend that the Attorney General or other relevant authority should prosecute public servants suspected of negligence or found negligent in the violation of human rights (section 25(a)(i));
- Recommend to the petitioner, Government, or other body against which the complaint was made appropriate methods of settling the complaint(s) (Section 16(d));
- Recommend to Parliament provision of compensation to victims of human rights violations or their families (Section 16(d));
- Recommend to the President as appropriate on the matters in question (Section 25(f); and
- Recommend to the petitioner other judicial course(s) of action (Section 25(d)).

## *2. Findings, Decisions and Recommendations*

The findings, decisions and recommendations made by the Public Inquiry are summarised below. Decisions of the Inquiry amount to orders or imperatives, which the party to whom they are addressed **must comply** with in terms of the law. The recommendations also amount to advisories to institutions/individuals to which they should comply.





## 2.1 Land

### **First finding:**

Post-colonial governments of Kenya perpetuated colonial injustices against the community by leasing their land to salt manufacturing companies without ensuring that the people had recourse to alternative and equally valuable settlements. The 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 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 lands in question illegally.

### **Regarding this finding, the panel recommended:**

- That the Government should make an accurate inventory of communities or descendants thereof; and
- That the process of adjudication under the Land Titles Act (now Cap. 282), be re-opened to enable indigenous communities or descendants thereof to present their claims; or
- That as an alternative to the above recommendation, areas deemed to be government land under that Act, be re-designated as trust land and be subjected to systematic adjudication under the Land Adjudication Act (Cap 284).



### **Finding two:**

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 sub-let 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 utilise all the land leased to them, and land rates being charged are not commensurate with the current land value.

### **The Inquiry's decisions regarding this finding were:**

- That salt manufacturing companies, which have breached the terms and conditions of their grants must be penalised 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 penalised 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.



### **Finding three:**

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.

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.

### **The Inquiry's decisions regarding this finding:**

- 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.



However, where compensation was made in terms of the then existing law, no further action(s) should be taken.

**Finding four:**

The settlement schemes instituted by the Government as a way of redressing the land question were themselves fraught with corruption. For example, well-connected individuals were allocated this land. The process of setting up schemes and settling the landless should however be finalised.

**On this finding, the Inquiry recommends:**

- That only genuine squatters should be resettled on land schemes for persons removed from the land leased out to salt manufacturing companies. Allocation of land to persons suspected not to have been displaced should be investigated and such land repossessed and given to genuine squatters;
- That the Government should establish new settlement schemes strictly for the landless indigenous communities out of land recovered from salt manufacturing companies or elsewhere; and
- That the Government must ensure that settlement schemes designed to resettle such persons or groups will not instead be appropriated by well-connected individuals with no right to such resettlement.



## **2.2 Public Administration (Provincial Administration and Police)**

### **Finding five:**

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.

### **The Inquiry, therefore, reached the following decision:**

- 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.

### **Finding six:**

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.

People were arrested on spurious charges amounting to illegal detention and the police used to threaten those who chose not to leave certain land.



### **The Inquiry, therefore, recommended that:**

- 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 realise that they owe their allegiance to the people and not to specific interests, which undermine the general will or public good.

### **2.3 Labour**

#### **Finding seven:**

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.



The transportation to and from the workplace is also inappropriate. For example, they have to travel by uninsured vehicles most of the time.

**In view of this finding, the Inquiry decided:**

- 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. 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;
- 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
- That the Labour Department must ensure compliance with the above orders.



### **Finding eight:**

The health and safety of workers in these companies is undermined by company practices and ineffective government inspection regimes. 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.

### **The Inquiry's decisions in regard to the above finding were that:**

- 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.





Finding nine: 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 fulltime 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.

**Regarding this finding, the Inquiry made the following decisions:**

- 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
- 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.

**Further, the Inquiry recommended:**

- That for work not of seasonal nature, salt-manufacturing companies should employ workers on contractual and not casual basis. In the Inquiry's view, contracted employees will offer more value to the companies and, will in turn reap better benefits; and
- That in relation to salt harvesting, which has been stated as seasonal, the salt manufacturing companies should consider contracting some workers to perform the said work on a continuing basis.



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.

**Finding ten:**

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.

**The inquiry's decision regarding this finding was:**

- 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.

**The Inquiry recommended:**

That labour organisations 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.



### **Finding eleven:**

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.

### **The Inquiry, therefore, decided:**

- That the Department of Labour and the Occupational Health and Safety Department should prepare a district-wide inspection plan to be effected on a continuing basis. This plan should be funded on priority basis by the Ministry of Labour.

### **Further, the Inquiry recommended:**

- 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 rationalisation into all subsequent national budgets.



### **Finding twelve:**

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.

### **In this regard, the Inquiry recommended:**

- 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 scrutinised and consequently, enacted as a matter of urgency.

## ***2.4 The environment***

### **Finding thirteen:**

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 Krystaline 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 salinisation, 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.

**In view of this finding, the Inquiry decided that:**

- 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.





### **Further, The Inquiry recommended:**

- 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 centres through water pipelines.

### **Finding fourteen:**

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.

### **The Inquiry decided:**

- 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
- That all dykes, which restrict the flow of water to and from the sea, be removed within six months of this decision.



### **Finding fifteen:**

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 organisations, did not impact on the supervision and management of environmental issues due to lack of capacity.

### **The Inquiry recommended that:**

- NEMA, in collaboration with the salt manufacturing companies, community based organisations and other relevant players, should within a period of one year, establish environmental quality standards for the salt manufacturing sector;
- NEMA, CBOs, the KNCHR and other interested players should strengthen the capacities of the various key players in environmental management;
- 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.





## *2.5 Corporate citizenship*

### **Finding sixteen:**

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.

### **The Inquiry recommended:**

- 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.

### **Finding seventeen:**

Salt manufacturing is an essential and important element in the Magarini economy. For example, it has enabled the employment of as many as 2,000 casual and contract employees from the area.



**The Inquiry recommended:**

- 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 prioritised; and
- 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.





## CHAPTER ONE: BACKGROUND OF THE INQUIRY

### *1.1 Introduction*

A public inquiry is an investigation into a systemic human rights problem in which the public is invited to participate, and/or in which the greater part of the evidence is given in public and is open for public inspection. The hearings, meetings, submissions as well as the outcome are open to the public and to the media.<sup>1</sup>

A public inquiry is one of the methods that National Human Rights Institutions can use to examine human rights violations. The KNCHR held its first Public Inquiry at Marereni Township in Malindi District. The Inquiry related to allegations of human rights violations arising from the activities of salt manufacturing companies in the area. This report is a compilation of the Inquiry's findings, decisions and recommendations.

The report is divided into chapters tackling the key themes of the Inquiry – the land question; public administration; labour; and the environment. The report also includes a chapter contextualising corporate citizenship and assessing the initiatives which the community of Magarini has employed to resolve its problems. Finally, there is an after-word review of post-Inquiry events.

### *1.2 The Area*

Malindi is one of the seven districts in Coast Province. It borders Kilifi District to the south, Tana River District to the northwest and the Indian Ocean to the east. The district covers an area of 7605 square kilometres, and is divided into three divisions - Malindi, Marafa and Magarini. It has two constituencies - Magarini and Malindi.



The District's coastline stretches 155 km and runs from Mida to Ungawa. It has good beaches, which are suitable for tourism and fishing.

**The table below illustrates the district's land profile .<sup>2</sup>**

<b>Area</b>	<b>KM<sup>2</sup></b>
Total Area	7605
Arable Land	4193
Non arable Land	3411.8
Water Mass	1368.75
Gazetted forests	473.78
Gazetted Parks and Reserves	3188
Urban Areas	88.5

Population in the district varies from one division to another with an average density of 36 persons per square kilometre. The most densely populated division is Magarini with 92 persons per square Kilometre.<sup>3</sup>

#### **Demographic and Population Profile**

Population (2002)	305,143
Youthful population (15-25)	71,489
Population growth rate	3.9%
Total number of households	52,165
Average household size	5.8
Number of female headed households	7,511

Malindi District is famous for its palm-fringed silvery white sand beaches, Malindi Marine National Park, Watamu Marine National Park, Gede Ruins, the Vasco Da Gama Pillar and the Portuguese Chapel.



Other notable features include the Pillar Tombs, Kipepeo Butterfly Farm, snake and crocodile farms, Mida Creek and the canyons of Hell's Kitchen. They all serve as the District's major tourist attractions.

The plains running along the coastline form a major crop zone, with soil fertility ranging from moderate to high. Agriculture is a primary economic activity, with the main food crops being maize, cassava, cowpeas, green grams and mchicha. The main cash crops are coconuts, cashew nuts, cotton and simsim. Horticultural crops such as mangoes, citrus, pineapples, bananas, tomatoes and watermelon are also grown there.

Poverty levels in the District are relatively high. Approximately 66% of the population is considered to be living in absolute poverty,<sup>4</sup> i.e. they are unable to meet their basic food and non-food requirements. This is significantly above the national average of 56 %. Out of 210 constituencies in the country, Magarini Constituency is ranked 189 in the poverty index, while Malindi constituency is in position 139.<sup>5</sup>

#### **Poverty Levels by Division<sup>6</sup>**

<i><b>Division</b></i>	<i><b>No. of Poor</b></i>	<i><b>% of total population</b></i>
Malindi	113,201	66.7
Marafa	35,290	68.7
Magarini	49,629	62.5



The following further statistics illustrate the high levels of poverty in the District. The average distance to the nearest portable water point in the rural areas is 3 kilometres. Regarding primary school education, the total enrolment rate for boys is 84.6% and 67.7% for girls. Country levels stand at 95% for boys and 90 % for girls.

The primary school drop-out rate stands at a high of 44.7% for boys and 59.9% for girls. With an enrolment rate of 14.7 % for boys and 1.7 % for girls in secondary schools, the District has one of the lowest secondary school enrolment rates in the country.

The HIV prevalence rate is also very high, standing between 15% - 17%<sup>7</sup> far above to the national average of 6.7% as at 2003.<sup>8</sup>

**The main development challenges as outlined in the District Development Plan 2002-2008 (Ministry of Planning and National Development) are -**

- High numbers of landless people - 11.3% of households are landless;
- A population growth rate of 3.9 % which is significantly higher than the estimated 2.56 % nation wide.
- The scourge of HIV/AIDS, and
- A slump in tourism. Though the tourism sector has improved dramatically in the last few years, the sector had experienced serious declines in the recent past .The average bed occupancy in Malindi, for example, had declined from 62% in 1995 to 25 % in 2000.



- Some tourist hotels had to close down while those that remained continued to operate well below capacity. Tourism is one of the most important sectors in the district's economy and this downward trend had serious consequences in terms of employment and poverty alleviation. About 40 % of the district's working population is either directly or indirectly employed in the industry.

### *1.3 Background to salt manufacturing companies in Malindi*

**T**here are six salt manufacturing companies operating in Magarini Division, Malindi District. These are:

#### **Krystalline Salt Limited**

Krystalline Salt Limited got a leasehold land title deed of ninety-nine years in 1984 and commenced operations in 1985. The directors are Mr. Kanji Kunverji Patel, Mrs. Dhanbai Kanji Patel and Mr. Deepak Kanji Patel. It owns about 2034.4 hectares (ha) of land on L.R. No. 13427 in Marereni, Magarini Division, Malindi District, and has a capacity to employ 170 people.

#### **KEMU Salt Packers Production Limited**

KEMU S.P.P. Ltd. was incorporated in 1996 and started operations in 1997. It has about 3,835 ha (9,428.55 acres) of land in Marereni area, Magarini Division. Two salt works fall within KEMU S.P.P. Ltd. land.





These are Tana Salt Works (which has ceased operations) and Kurawa Salt Works (which is operational). Its directors are Mr. Mohammed Koriow Nur and Mr. Ibrahim Mohammed. The company employs 200 people.

### **Kurawa Industries Limited**

Kurawa Industries Limited was incorporated in 1976 and occupies 595.2 ha under a leasehold title acquired in 1977. The directors are Abdulkader Mohamedhussein Kaderdina, Adulhamid Mohamedhussein Kaderdina, Mohamedhussein Abdulkader Kaderdina and Abdulhaq Abdulkader Kaderdina. The land has been leased out to Mombasa Salt Works.

### **Malindi Salt Works**

The shareholders of Malindi Salt Works are Mr. Islam Ali Islam, Mr. Ahmed Bin Ali, and Bashmakh Limited. The directors are Mr. Ali Islam Ali, Mr. Ahmed Ali Islam and Mr. Mohamed Islam Ali, Mr. Omar Hamed Ali, Mr. Munir Hamed Ali and Mohamed Hamed Ali. It has leasehold title for about 665 ha and employs about 140 workers. It became operational around 1984.

### **KENSALT Limited**

KENSALT Limited, originally called Salt Manufacturers Limited, was formed in 1974 as a joint venture between the GoK and Saltec International. The GoK sold its shares to Saltec International in 1993. The current directors are Mr. M.S. Patel and Mrs P. K. Patel. It has about 2264.9 ha under L.R. number 12333, which it obtained in 1975. It employs about 400 workers, 55 percent of who are unionised.



## **Mombasa Salt Works Limited**

Established in 1928, the Mombasa Salt Works Limited has a leasehold title for about 1017 ha. It employs about 65 permanent employees and between 150 -300 casual workers, depending on the season. These workers have no union representation. Its directors are Mr. Dauda (Chairman) and Mr. Manish H. Dauda (Managing Director).

### ***1.3 The Complaint***

**I**n February 2004, the Presidential Commission of Inquiry into Illegal/Irregular Allocation of Public Land referred a complaint from Kubuka Farmers Association (KFA) to the KNCHR.

The petitioners had alleged that the Provincial Administration and Kurawa Industries were harassing KFA members, invading their homesteads and destroying their houses and other property. KNCHR wrote to the Malindi District Commissioner (DC) and the Coast Provincial Commissioner (PC), (letter reference: 33/PET/GEN/VOL.X dated 15th April 2004).

The administrators replied that KFA members had a grudge against Kurawa Industries because it was allocated land, which they claimed belonged to their ancestors. The PC further stated that the disputed land was Government land, which had been allocated to an investor and that his office was not aware of any case regarding destruction of property (letter reference: SF/L& O/15 VOL.1/3Z dated 20th July 2004).



Despite this communication and official response from the Provincial Administration, KNCHR continued to receive complaints from KFA, residents of Magarini Division of Malindi District and NGOs operating in the area such as the Coast Rights Forum (CRF).

#### *1.4 KNCHR and its Powers of Inquiry*

The KNCHR is an independent state organ established under the Kenya National Commission on Human Rights Act 2002, with the mandate of facilitating the protection and promotion of human rights for people living in Kenya.

One of the core mandates of the Commission enables it to investigate human rights violations either on its own motion or on receipt of complaints from private persons and groups. This also forms one of its major functions.

**Section 25 of the Act provides that the KNCHR may take any of the following steps after completing an inquiry:**

- a) Where the inquiry discloses a violation of human rights or negligence in the prevention of violation of human rights by a public servant, recommend to the Attorney General or any other relevant authority :
  - i) the prosecution of the person suspected of violating the human right(s) or being negligent in the prevention of the violation; or
  - ii) such other action as the Commission may deem fit against the concerned person(s); or



- b) In its own name, commence and prosecute appropriate proceedings in the High Court under Section 84(1) of the Constitution; or
- c) Recommend to the petitioner a course of other judicial redress, which does not warrant an application under section 84(1) of the Constitution; or
- d) Recommend to the petitioner and to the Government or any other body concerned in the alleged violation of human rights, other appropriate methods of settling the complaint or to obtain relief; or
- e) Provide a copy of the inquiry report to all interested parties; and
- f) Send a copy of its report with its recommendations to the President.

### *1.5 Methodology*

The National Commission in November 2004 made a three day fact-finding visit to Magarini and held meetings with the residents of Gongoni, Kambi ya Waya and Marereni areas, where various salt manufacturing companies operate.

The fact-finding team consisted of two Commissioners and programme staff. The team sought preliminary verification of reports relating to allegations of violations of human rights covering land, labour and the environment.



Following recommendations by the fact-finding team, KNCHR undertook a baseline survey in March 2005, to map out key issues and identify relevant stakeholders. The survey team had a staff consisting of a Commissioner, a Senior Human Rights Officer and four research assistants.

It visited the area between March 7-10, 2005, and heard grievances from various groups in Marereni, Gongoni and Ngomeni areas. The team also held meetings with the District Lands Adjudication and Settlement Officer, the District Environmental Officer, The District Labour Officer, managers of Krystalline Salt Company, the Malindi County Council and the Provincial Administration.

The purpose of the survey was to collect detailed information on the petition. Relevant information included the number of people affected; the nature of immediate violations, actions taken, property destroyed, livelihoods affected and alleged perpetrators. The survey team also visited the various sites at issue in the company of the District Environmental Officer.

The survey provided useful insights into the magnitude of the problem as well as its complexities. The nature of the findings suggests that a public inquiry was the more appropriate method for the National Commission to employ so as to get to the bottom of the issues.

The KNCHR conducted an Inquiry into the alleged violations of human rights from 4th - 8th July, 2005, at Marereni Sports Grounds, Marereni Township in Magarini Division. The suitability of a public inquiry as the strategy to investigate the alleged human rights violations was determined on a number of grounds.



Because the complaints related to a large number of people in the Marereni community, it was only prudent that the issues be publicly debated for purposes of ventilating them and to enable better understanding by involved parties.

Apart from providing equal opportunity for all stakeholders to be heard, a public inquiry is a suitable tool where a National Human Rights Institution is faced with situations involving systematic violations. It is also prudent in situations that might require public education, advice to the government and where the institution itself is faced with staff and other resource constraints.

**The Inquiry investigated the alleged human rights violations committed by salt manufacturing companies in Malindi District. The Inquiry was mandated to investigate the following key complaints:**

- Eviction of people from land, which the community perceived as belonging to it without provision of alternative settlement;
- Health complications arising from the manufacturing process;
- Violations of workers' rights;
- Harassment of the community by the Police and Provincial Administration; and
- Environmental degradation.

The commencement of the process was advertised on radio and newspapers so as to attract all interested parties. Efforts were also made to mobilise the Marereni community to participate through notices and other announcements.



The companies and public institutions that were adversely mentioned were furnished with details of allegations and asked to prepare responses.

Members of the Inquiry were selected on the basis of experience and competence on the issues at hand and sworn to undertake their work in a fair manner.

The five day hearings were allocated in such a manner as to allow the community, salt companies, experts on different subjects and the public administration to all present. Cross-examination of witnesses was disallowed, but panellists given room to interrogate the witnesses.

Evidence was given under oath, but rules relating to admissibility of evidence did not apply.

Parties were given an opportunity to put any other issues for consideration by the Inquiry in writing during and after the public sittings. Experts were also invited to provide evidence and clarify issues in specialised areas.

The proceedings of the hearings were recorded verbatim and a hansard report produced. The public also got the opportunity to file individual petitions at a side tent throughout the period.

In order to clarify some of the issues raised during the Inquiry, the commission wrote to parties involved to give further information.



A draft report was prepared and in December 2005, the panellists held discussions with representatives of key ministries. They also visited Malindi and had further discussions with representatives of affected persons and institutions to clarify the issues before finalising the report. These sessions enabled the Inquiry panel to validate the report.

**The Inquiry was guided in its operations by the following general principles -**

- Investigative but non-adversarial;
- Fairness to all parties;
- Protection of all stakeholders;
- Openness to the public and stakeholders; and
- Admissibility of in-camera testimonies and written submissions.

**The Inquiry collected data through -**

- Public testimonies;
- In-camera testimonies;
- Written submissions;
- Expert evidence;
- Facility visits;
- Fact-finding visits;
- Desk research; and
- Baseline surveys.





The Inquiry heard presentations from members of the local community, including the area Member of Parliament and Councillor, present and former employees of the salt companies, officials of the salt manufacturing companies, representatives from NGOs and CBOs, KESAMA representatives, officers from Malindi County Council and the Provincial Administration. Counsel for the Inquiry determined those who would give evidence through a participatory approach, which ensured that all stakeholders were given a fair chance to be heard.

### **The inquiry was led by the following panellists -**

#### **Commissioner Violet Mavisi:**

(Vice Chair, KNCHR) - has a law degree from the University of Nairobi and a Masters in the same from the University of Sussex. She has worked in the private and public sector as well as non-governmental organisations in advocacy, litigation in human rights and education, where she helped with both paralegal training and general human rights awareness programmes.

#### **Commissioner Lawrence Mute:**

Has a law degree from the University of Nairobi and Masters of Laws degree from Warwick University.

His area of expertise is research in constitutional related issues. He has published widely on constitutional issues and facilitated civic education work at both policy and implementation levels.



### **Commissioner Fatuma Ibrahim:**

Has a Masters degree in Agricultural Extension and Rural Development from the University of Reading and has worked with the Ministry of Agriculture in programmes targeting women and promoting environmental conservation.

She has also been involved in gender justice, supporting refugees and asylum seekers, and addressing needs and concerns of pastoralist women to ensure the eradication of negative cultural practises and traditions.

### **Commissioner Godana Doyo:**

A lawyer by profession; he has been involved in advocacy work in the North and North Eastern parts of Kenya. He has wide experience in issues affecting pastoralists, minorities, land and natural resources.

### **Professor H.W.O Okoth Obedo:**

A law expert; he is a Professor of Law who has taught at various colleges and schools of law, including New York University, University of Florida, Boston University and University of Nairobi. His areas of expertise include agrarian law and policy, constitutional politics and constitution making, development policy and law, human rights law, environmental law, labour law and relations, land use, natural resources law, and the law of property in land. His current areas of research include international environmental governance and land reform policy development in Africa.



### **George Wamukoya:**

An environmental expert, he has a Masters degree in Law from the University of South Africa and a Master of Science degree from the University of Dar-Es-Salaam. He has a wealth of experience in environmental conservation and management and has received awards for his outstanding research work in seaweed science. He has worked as a consultant, technical advisor and environmental lawyer for various national and international organisations and is widely published in environmental issues.

### **Mashengu wa Mwachofi:**

He has a Masters degree in Sociology from the University of Nairobi and has worked as a consultant sociologist and civic educator for many years. He has participated in the formation of community based organisations as well as civil society organisations. He is a former member of parliament of Wundanyi constituency. His areas of research include land reform, governance, power relations and poverty

### **Counsels assisting the inquiry**

- Mburu Gitu – (Lawyer and Secretary to the Commission)
- Erastus Etheke Edung – ( Lawyer- KNCHR)
- Abdul NoorMohamed – (Lawyer- KNCHR)



*The panellists were assisted by the following Commissioners and staff:*

### **Commissioners**

- Tirop Kitur, Commissioner, KNCHR
- Khelef Khalifa, Commissioner, KNCHR
- Wambui Kimathi, Commissioner, KNCHR
- Catherine Mumma- Commissioner KNCHR

### **Staff**

- Linda Ochiel- Senior Human Rights Officer, Media and Communications
- Rebecca Chege- Senior Human Rights Officer, Economic, Social and Cultural Rights
- Maina Mutuaruhii, Senior Human Rights Officer, Economic, Social and Cultural Rights
- Andrew Lanoha, Intern
- Nora Otieno, Intern
- Lilian Abishai, Intern
- Mary Mwangi, Executive Secretary
- Purity Githaiga, Transport Officer

### **Consultant**

- James Wamugo





## CHAPTER TWO: WHO OWNS THIS LAND? THE DOCUMENTED VERSUS UNDOCUMENTED OWNERSHIP AND RIGHTS ISSUES IN THE COASTAL LAND STRUGGLE

### 2.1 *Introduction*

As the primary factor in social production and reproduction, land issues are at the centre of the contemporary discourse on human rights in Africa. Numerous national and international instruments now recognise that proper land use is the key to poverty reduction and maintenance of sustainable livelihood systems in developing countries. Access to land is, therefore, now regarded as a fundamental human right. The provision in Section 75 of the Constitution on property rights of “any description”, whether documented or undocumented, against arbitrary expropriation or acquisition, is designed to ensure the enjoyment of this right. The land grievances presented to the Public Inquiry must, therefore, be evaluated with this perspective in mind.

### 2.2 *The nature of grievances on land*

The main alleged land grievances attributable to the establishment and operation of salt manufacturing companies were presented to the National Commission as follows:

- Loss of ancestral land;
- Mass eviction of residents;
- Widespread destruction (including seizure) of property comprising houses, standing crops and permanent trees;
- Fraudulent compensation;



- Encroachment onto land not part of leasehold grants;
- Destruction of fresh water sources and grazing fields;
- Increased tidal invasion and other forms of inclement sea surges;
- Closure of public access to the Ocean, and in particular, to Robinson Island;
- Loss of fishing rights; and
- Destruction of other environmental resources such as mangrove forests and cultural/religious facilities.

### **2.3**     *The historical context of the grievances*

The seriousness of these grievances cannot be fully appreciated unless they are placed in their proper historical context. Indeed, it is the history, not the allocation of land for salt manufacturing that explains these grievances. The history can be divided into three phases:

#### **2.3.1**     *The period before 1895*

The first phase is the period leading up to the declaration of protectorate status over East Africa on August 15, 1895. During this period, indigenous communities (mainly the Mijikenda) were driven out of their ancestral lands by Arab invaders rampaging through the area for slaves, or seeking to establish permanent settlements as a means of consolidating trade with Middle-Eastern and Asian countries.

When, in 1886, British and German imperial governments established the “Mwambao” and ceded control over it to the Sultanate of Zanzibar, the presumption was that the Sultan’s subjects within this Ten-Mile Coastal Strip would retain rights to land forcefully taken by them.



It was on this presumption that rights to land vested in the Imperial British East African Company and later, the British imperial government within Mwambao, were restricted to the so-called waste and unoccupied land.

The 1895 declaration affirmed that position. The effect of this, therefore, was that from the perspective of colonial law, indigenous communities within Mwambao, quite unbeknown to them, were already regarded as landless.

### *2.3.2 The period up to 1908*

The second phase is the period leading up to 1908 when British colonial authorities, anxious to establish the full extent of land appropriated to “private” ownership, promulgated an ordinance for the adjudication of claims within Mwambao.

**The Land Titles Ordinance provided, inter alia, that –**

15 (1) All persons being or claiming to be proprietors of or having or claiming to have any interest whatever in immovable property situated in any district, area or place to which this ordinance has been applied shall, before the expiration of six clear months from the date of application of this ordinance, make a claim in respect thereof....

17 (1) All land situated in any district, area or place to which this Act has been applied concerning which no claim... of ownership has been made... shall at the expiration of (the period provided) be deemed to be crown land, and the land and all things attached to it





or permanently fastened to any thing attached to it shall be subject only to a right or interest... evidenced by a certificate of title.

21 .... Every certificate of title duly authenticated under the hand and seal of the Recorder of Titles shall be conclusive evidence against all persons (including the Government) of several matters therein contained ..... that the person to whom the certificate is granted is the owner of the coconut trees, houses and buildings on the land... at the date of the certificate....

The Ordinance was immediately applied to Malindi, Lamu and Tana River Districts. Indeed, by 1914, the Ordinance had been applied to the whole of the Ten-Mile Coastal Strip. In the process of adjudication, only claims lodged before 1922 were accepted by the Recorder in a process that dragged on until 1975.

It is reported that many of these claims were fraudulent, undocumented and not fully verified. Because of that, 95 percent of all land within Mwambao was recorded in the name of Arab immigrants, while the remaining 5 percent was declared Crown land for lack of claims. In what is now Lamu District, where claims were lodged only in respect of the island, the entire mainland was declared Crown land.



### *2.3.3 The period up to 1963*

The third phase is the period leading up to independence in 1963 during which the fate of indigenous communities was sealed. Two significant developments occurred during this period.

First, in 1926, the colonial government was careful to ensure that “native resources” in this part of the country, were deliberately delineated “outside” Mwambao. The only exceptions were some thirteen pockets of land in what is now Kwale District.

Second, the independence Constitution confirmed and sanctified all land rights acquired before June 1, 1963, thus legitimising, with respect to Mwambao, a process of expropriation that was fraudulent, coercive, deceitful and clearly unjust.

## *2.4 Evidence Presented to the Inquiry*

### *2.4.1 Leases to salt manufacturing companies*

The Inquiry learnt that between 1974 and 1994, approximately 10,465 hectares of land were leased out by the Government to salt manufacturing companies as follows:

- Kensalt Ltd; 2264 hectares
- Kurawa Industries Ltd 595.2hectares;
- Malindi Salt Works 665 hectares;
- Krystalline Salt Ltd 2034.4 hectares;
- Kemu Salt Packers Production Ltd 3835 hectares; and
- Mombasa Salt Works Ltd 1017 hectares.



Except for Kurawa Industries Ltd, which has a 53 year lease, these grants were made for 99 years at extremely nominal rents. For example, Krystalline Salt Ltd is currently paying Ksh. 14 per hectare per annum.

**Attached to these grants were the following general and special conditions:**

- The land and buildings shall only be used for the extraction of salt and housing for essential staff;
- The grantee shall not sell or otherwise transfer the land or any part of it without the consent of the Commissioner for Lands;
- The grantee shall pay to the Commissioner for Lands on demand such proportion of the cost of maintaining all roads and drains serving or adjoining the land as the Commissioner may request; and
- The grantee shall not construct any dykes or other obstruction along (any river) and shall ensure throughout the duration of his operation that free flow of water from the sea is not interfered with.

Evidence presented by petitioners before the Inquiry stated that indigenous communities were indeed in effective occupation of the land in question long before the leases were granted. These communities were not aware that under state law, they were in fact squatters or tenants at will on what they regarded as their ancestral land or at any rate in respect of which historical claims could or ought to have been laid. Evidence given showed that the communities were never at any one time consulted or informed of the impending leases to be given out to the salt companies.



### *2.4.2 Securing possession of the land*

According to evidence adduced, the salt companies proceeded to lay claim to the land granted under lease through a number of mechanisms. These included persuasion, cajolement, violent eviction, vandalism and acts of trespass. They used state machinery, including the offices of the DC, DOs, Chiefs, the Police and Sub-Chiefs in the process.

Actual evictions were carried out by Police officers assisted by workers from the salt companies. In their evidence, salt companies stated that they had sought to compensate the evictees or people who had agreed to vacate for standing crops, permanent trees and buildings only. However, the complainants stated that such compensation was assessed at levels that were grossly inadequate.

#### **Evidence was received from expert witnesses indicating, for example, that –**

- Compensation figures proposed by the government were well below prevailing market rates;
- The stream of future income, which would be lost as a result of destruction of permanent trees was not taken into account when determining compensation;
- The cost of relocation outside the Ten-Mile Coastal Strip was not considered; and
- Non-material losses relating to the cultural, aesthetic and religious value of land and other artefacts were completely ignored.



The salt companies stated that they had spent various sums of monies to compensate displaced community members. Kensalt Ltd spent Kshs 7,000,000 while KEMU Salt Packers Production Ltd spent Kshs 5,000,000. The following table gives sample information on how different individuals were compensated for their properties:

<b>Cluster type</b>	<b>Amount of compensation in shillings</b>	<b>Company</b>	<b>Year of compensation</b>
Houses, 98 coconut trees and other items	34,500		
Houses, 233 coconut trees and other items	58,250	Kurawa	2002
39 coconut trees (in production) @70/= 36 coconut trees below production @40/= 2 houses (Giriama style) @2000/=	8,170	Krystalline	1988
388 cashew nuts yielding stage @ 60/= 6 mangoes at medium stage @ 80/=	20,260	Krystalline	1990



Below is a sample of the assessment made by the Ministry of Agriculture for compensation of crops. This compensation was valued in 1989 on behalf of Krystalline Salt Limited.

**Crop Condition:** The crop was in fair condition though the yields were low due to overcrowding and tapping

**Coconuts:**

Young 144 @ 20/= ..... 2,880/=  
Medium 89 @ 65/= ..... 5,340/=  
Mature 291 @ 110/= ..... 32,010/=

**Cashew nuts:**

Young 13 @ 15/= ..... 195/=  
Medium 20 @ 35/= ..... 700/=  
Mature 29 @ 60/= ..... 1,740/=

**Mangoes:**

Young 35 @ 30/= ..... 1,050/=  
Medium 17 @ 150/= ..... 2,550/=  
Mature 18 @ 215/= ..... 3,870/=

**Casuarina:**

Seedlings 8 @15/= ..... 120/=  
Mature 269 @ 60/= ..... 16,140/=

**Eucalyptus:**

Mature 7 @ 50/= ..... 350/=



**Kapok:**

Mature (not yield) 6 @ 30/= ..... 180/=

**Castard Apple:**

Mature 3 @ 60/= ..... 180/=

**Tamarind:**

1 mature @ 100/= ..... 100/=

**Tectona Crandis (Forest tree)**

Mature 2 @ 20/= .....40/=

**Grand Total .....67, 445/=**

In its evidence, KEMU Salt informed the Inquiry that it had paid over Ksh 5,000,000 to compensate over 450 families. In 2002, Kensalt Ltd opened discussions with some of the families over compensation, using guidelines from the Provincial Administration, Local Government and the Ministry of Agriculture.

Monies for compensation not collected by the community members had been deposited with the Provincial Administration. However, some members of the community told the Inquiry that they had declined to take up money offered as compensation, either because it was unacceptably low or because they did not wish to leave their land.



Evidence was given to the effect that the grants of leases were, in every case, not preceded by an accurate inventory of the indigenous, resident population and their assets. It was further shown that the land granted to the salt manufacturing companies was sometimes in excess of their needs or requirements, and some companies had sub-let some of their land or were using such land for non-salt manufacturing activities.

Mombasa Salt Ltd indicated that it was willing to let some people to continue occupying some of its fallow land. Kensalt Limited, in its evidence, informed the Inquiry that it had developed only about an eighth (1/8) of its land, which is about 750 hectares or about 1837.5 acres. About half of its land is occupied by squatters or illegal occupants while the rest is under mangrove forests, sand dunes, swamps and creeks. Kurawa Industries, on the other hand, gave written evidence that it is yet to utilise the land it was allocated and has instead, leased it out to Mombasa salt Works Limited. Previously, the land was leased to Kensalt Limited.

### *2.4.3 Non coordination between Government departments*

In giving out leases, Government departments and the Local Government lacked any systematic way of ensuring that the community still retained some of the amenities that they were entitled to. For example, the evidence indicated that there was no co-ordination or consultation between the Malindi County Council and the Department of Planning in the Ministry of Lands on access roads to the sea, and in particular, to Robinson Island.





The Inquiry's visit to the area showed a corridor of about 50 metres between Malindi Salt Works and Krystalline Co., which according to Malindi Salt, was an access road. However, further evidence showed that this corridor was where two seasonal rivers, River Kambi ya Waya and River Balesa, were diverted to discharge storm waters to the beach. This lack of co-ordination was also witnessed in the resettlement of the communities in Government settlement schemes. The documentation included names of companies, which were referred to as "genuine squatters", to be resettled on settlement schemes.

## **2.5 Assessment**

### **2.5.1 The International context**

Over the years, indigenous communities who lost their land as a result of conquest or forced expropriation have prosecuted successful claims against those who may have benefited from the resulting injustices. This has happened in the United States of America, Canada, Australia, Brazil, Chile and most recently, the Republic of South Africa.

In some of these cases, the success of claims has not depended on the interpretation of "treaties" or "agreements" entered into with representatives of indigenous communities. What these communities have been able to establish is the survival of their original (aboriginal) title despite conquest or forced expropriation. Redress in such cases has included restitution, reparation and compensation for value lost by reason of injustice.



### *2.5.2 State responses to the injustice*

Assessed in that context, the loss of ancestral land by the Mijikenda clearly constitute a historical injustice. The injustice was initiated by the Sultanate of Zanzibar, and perpetuated by the British colonial and independent Kenyan governments. It is an injustice, witnessed in all areas of land that were adjudicated or subsequently declared Crown land under the 1908 Land Titles Ordinance.

That much appears to have been conceded by the independent Kenya government. Indeed, in the last three decades, attempts have been made to review and recommend measures for the resolution of this injustice, although no substantial reparations have been made.

First, attempts to reactivate colonial settlement schemes such as Gedi and Shimba Hills and design new ones were made in the 1960s. Among the new schemes were:

- In Kilifi: Tezo-Roka, Mtwapa, Ngerenyi, Magarini, Mtondia, Matsangoni and Vipingo;
- In Kwale: Ukunda, Tembo Springs and Sabharwal; and
- In Lamu: Lake Kenyatta and Magogeni.

Available documentation indicates that many of the settlers in these schemes were brought from outside the Coastal region and that the truly landless among the Mijikenda may not have benefited.



The second attempt was in 1975 when the government set up an inter-ministerial committee to investigate the matter. That committee made several important recommendations, among them, the establishment of more settlement schemes to absorb landless people within the Strip. A number of schemes were indeed established in Lamu, Malindi and Kilifi Districts. The list availed to the Inquiry indicates, however, that many influential citizens from all over the country received land in these schemes.

Third was the appointment, in 1976, of a Parliamentary Select Committee to investigate the issue of land ownership within the strip. The committee made wide-ranging recommendations, including the need to facilitate purchase by local communities of land held by absentee landlords, enfranchisement of actual occupiers/users of land, compensation at market prices or reparations in respect of land lost either to the Government or to Arabs, and restitution of land where appropriate. However, these recommendations were never implemented.

This, then, is the context within which this Inquiry makes its recommendations.

## **2.6 Recommendations**

Land grievances of indigenous communities living within the Ten-Mile Coastal Strip, and especially that of people who have suffered further because of evictions by salt manufacturing companies should be resolved. Responsibility for ensuring that this is done rests essentially with the Government.



**The following measures would substantially redress these grievances:**

*2.6.1 In the short term*

- (a) The Government should re-negotiate the terms and conditions of leases granted to salt manufacturing companies with a view to:
  - Revising the size of land granted downwards to levels strictly necessary for their core businesses;
  - Compelling leaseholders to make direct contributions towards social rehabilitation of affected communities;
  - Ensuring that adequate health and safety measures are in place within and around the factories; and
  - Revising the amount of rates paid by the salt companies to reflect the current value of land.
- (c) The Government should reclassify all salt manufacturing operations as “mining” activities to enable appropriate provisions of the Mining Act (Cap 306) to apply to the companies. Gazette Notice No 247 of 1992 issued under Section 2 of the Mining Act should also be revised (Magadi Soda Company already falls within this category).
- (d) All Government agencies should ensure that the general and special conditions attached to salt manufacturing leases, and especially those relating to public access, environmental safety and the regulation of flooding, are vigorously enforced, and ensure proper co-ordination of government agencies’ work.
- (d) That all persons or groups who have not been compensated for losses accruing on land from which they have been evicted, or otherwise removed, should be compensated;



- (e) That cases of persons who declined compensation or who contested levels of compensation for losses accruing on land from which they had been evicted, or otherwise removed, should be reviewed and appropriate redress offered.
- (f) The Government and the Malindi County Council should complete the preparation, and ensure the enforcement of a physical development plan for the District, including the provision of access roads between any two salt companies to the sea and Robinson Island. Such road reserves should be constructed immediately.



- (g) The local community should be given access to use land not in use by the salt companies on agreed terms. Mombasa Salt Company should not evict the community members living on their land as indicated during the hearing.
- (h) No company or individual should take any actions, which would undermine the quiet enjoyment of any user(s) by undertaking business or other social activity on Robinson Island or any other place.

#### *2.6.2 In the medium term;*

- An accurate inventory of communities or descendants thereof, which can establish dispossession under any of the historical circumstances outlined in this chapter, or by reason of occupation by salt manufacturing companies, be undertaken;
- The process of adjudication under the Land Titles Act (Cap. 282) should be re-opened to enable indigenous communities or descendants thereof to present their claims;
- The Government should establish new settlement schemes strictly for landless indigenous communities out of land released from salt manufacturing companies, or from land deemed as belonging to the government under the Government Lands Act.



### 2.6.3 *In the long term:*

- (a) Indigenous communities, with the assistance of civil society organisations, should explore the possibility of seeking restitution through the courts, for land lost under any of the circumstances outlined in this chapter.
- (b) The Government should implement, in its entirety, the recommendations of the Report of the Select Committee on the Issue of Land Ownership Along the Ten-Mile Coastal strip of Kenya.
- (c) Legislation should be enacted to facilitate:
  - The establishment of a special fund to enable landless people in the Ten-Mile Coastal Strip and elsewhere in the country, to purchase abandoned or underutilised land.
  - The implementation of a structured programme of reparations in the area;
- (d) The Ministry of Agriculture should verify payments made to the community as compensation and where there was underpayment in breach of the law, order further compensation.
- (e) The Government, and in particular the Ministry of Agriculture, must review the framework which it uses to compensate crops. It should be aligned with the market value of such crops, in consonance with the Constitution of Kenya, section 75 provisions for “full and prompt compensation” for property taken over by the State. However, where compensation was made in terms of the then existing law, no further action(s) should be taken.







## CHAPTER THREE: PUBLIC ADMINISTRATION: IN WHOSE INTEREST?



### 3.1 *Community Grievances*

The community of Magarini presented the following grievances to the Inquiry against the public administration (the Provincial Administration, Government ministries/departments, local authorities, etc):

**(a) Government dispossessing them of community land, which it gave away to salt manufacturers.**

The petitioners argued that the lands now occupied by the salt manufacturers were the community's collective birth right as Mijikenda people. The British and the Arabs had previously interfered with their ownership of this land, but never entirely displaced them. The petitioners added that they remained in occupation of this land at independence as farmers, herders, fishermen and hunters. They stated that they were surprised when the provincial administrators, including lands officers and local authority officials, went round announcing that the lands had been allocated to investors and that they were required to vacate. Some of them were evicted forcefully as a result, became homeless and landless squatters.

**(b) Forceful evictions of residents from their community land.**

The petitioners explained that when notices for vacation of the land in question expired, provincial administrators deployed police officers who carried out forced evictions.



Many people vacated the land from fear, while others were forced out of the areas allocated to the salt farms. The actual evictions were effected violently by the police and/or with the support of salt company staff. The petitioners gave testimonies of how the police beat up and physically removed people resisting the evictions.

**(c) Destruction and theft of individual and community property.**

The petitioners further claimed that in the course of forceful evictions, the police destroyed lots of property and even looted from them. The property included houses, standing crops, permanent trees, livestock, farm tools and fishing gear.

**(d) Unfair compensation for destroyed property and other losses.**

The petitioners stated that after long periods of complaints by squatters, provincial administrators listed the evictees who had lost property for compensation. They alleged that the process of compensation (supervised by agricultural officers), assigned arbitrary values to their crops. The evictees were informed of the amounts of compensation available to them, but were not involved in deciding the values. Finally, only a fraction of the claimants were paid. Others were denied compensation, some refused to co-operate fearing it would amount to selling away their rights while others rejected the compensation because they felt it was too little. They also alleged that there was no proper accounting and that some officers retained part of the payments.



**(e) Destruction of environmental resources.**

The petitioners stated that Government officers did not heed their cries against environmental destruction meted by salt manufacturers. They also claimed that the Environment Department, NEMA, and the provincial administrators refused to take action against companies which violated conditions of their lease contracts. They insisted that the officials completely refused, or failed to take action on companies that were violating environmental laws. The violations resulted in the communities being denied fresh water, farmland, pasture, fishing zones and routes.

**(f) Complicity in the violation of workers' rights.**

Petitioners who worked in the salt farms testified that whenever they reported violations of their rights, labour officers and the provincial administration refused or completely failed to take action against the offending employer(s). They said they didn't see any serious follow up actions by the administrators.

**(g) Arrests, detentions, assaults and torture.**

Some petitioners said they were arrested, detained, assaulted and tortured by the Administration and regular police officers, allegedly on instructions from the provincial administration. They claimed that whenever they resorted to industrial action to demand their rights, the officers would arrest them, detain and then frame them on trump up charges.



**(h) Collusion with salt manufacturers and others in violating community rights.**

Petitioners alleged that the community continued to suffer violation of human rights facilitated by the Government. They were denied protection and the Government actually went out of its way to violate their rights by colluding with those violating them. They gave the following illustrations:

- The Government consistently insisted that salt manufacturers had rights to the land illegally acquired from the community;
- Government agents carried out evictions, destruction of property, assaults, arrests, detentions and torture of individuals so as to protect manufacturers' rights;
- Labour officers gave little or no attention to the workers' complaints;
- The Government had not taken action against salt manufacturers for open violations of property and environment laws;
- Government officers mishandled compensation claims to diminish, delay and deny benefits to community members, in the interests of the salt firms;
- Some government officers (including Police and Provincial administrators) were patronised by the salt firms, and provided with free facilities including accommodation, vehicles, office space and even handouts.



According to the petitioners, the Government had always sided with the investors against the community to the extent that their grievances were not considered genuine by Government officers.

### *3.2 Responses by Government Agencies in Malindi*

Having heard the community' claims and accusations, the Inquiry listened to the evidence given by the provincial administrators and other civil servants. Despite being invited to participate, all the high ranking Government officials, including, the Malindi D.C., D.O. and Chief, declined to give oral evidence. Instead, the Government and its agencies were represented by the following officials:

- District Land Registrar, Malindi;
- Land Officer, Malindi;
- District Physical Planning Officer, Malindi;
- Settlement Scheme Project Officer, Magarini;
- Works Officer, County Council of Malindi;
- Retired Chief, Magarini; and
- Councilor, Fundisa Ward.

#### **The Government's evidence was to the following effect:**

- (a) **On dispossession of the community**, it was explained that the Ten-mile Coastal Strip is state land. Claimants to that land are, therefore, illegal squatters without rights over it. The Government cannot be blamed for dispossessing them, and Government officers cannot be blamed for participating in the alleged dispossession.



It was further explained that the state had taken steps to re-settle a number of people who had no land, including some petitioners. The Government was still in the process of acquiring more land to settle more landless people.

- (b) **On illegal forceful evictions**, the retired Chief accepted evicting people through various means, including negotiations, threats, intimidation and use of force as a last resort. He, however, maintained that the evictions were not illegal, arguing that reluctance of the squatters to vacate the land, in spite of having been given enough notice, necessitated the evictions. He insisted the evictions were necessary and that Government officers were only performing their duty of defending the legal owners of the property.
  
- (c) **On destruction of property**, the retired Chief accepted there was destruction of property but insisted that this was not done with malice. He maintained that this happened while effecting legal evictions of those resisting. Other officers insisted that the destruction of property was unintended and occurred where squatters were refusing to leave land leased by the companies. Compensation might not have been appropriate, as they were based on old payment scales designed by the Ministry of Agriculture. They explained that some of the evictees had accepted compensation, and that money for those who declined compensation was still lodged with the D.C.'s office. The District Labour Officer, Malindi, accepted failing to enforce labour rights as required by the national laws, but blamed the failure on shortage of staff and facilities.



He is expected to oversee Lamu, Malindi and Tana River districts, although he doesn't have a vehicle or any other necessary equipment and has only one assistant in the office.

- (d) **On violation of personal freedoms**, the retired Chief argued that the petitioners had violated other people's rights in the first place. As such, he dismissed claims of violation of personal freedoms of the squatters resisting eviction.

### **3.3 Responses by salt manufacturing companies**

- (a) On dispossession of community, it was explained by the companies that they had valid genuine titles given to them for ownership of land. The apparent dispossession was, therefore, legal.
- (b) On illegal forceful evictions, the companies denied using force, but agreed they had forwarded their claims to the Government for assistance.
- (c) On destruction of property, the salt manufacturing companies denied they had participated in wanton destruction of property. Any such destruction, they said, was inadvertently occasioned in situations where squatters refused to leave land leased to the companies.

### **3.4 Responses of the experts**

The responses from experts gave insight into the various allegations. Their testimonies showed that most of the alleged violations were due to inadequacies in legal provisions.



It was noted that some of the country's legislation remains hostile to workers, and that land and environmental laws are archaic. Further insight given to the Inquiry confirmed:

- The existence of conflict between large scale fishing companies and small scale local fishermen;
- Financial constraints that hinder performance of Government officers;
- Incompetence of some officers;
- Powerlessness of Government officers in regulating salt manufacturing companies;
- Lack of physical development plans;
- Lack of synergy between various departments; and
- Lack of community participation in decision making. These issues are explored diversely in other sections of this report.

### *3.5 The Findings of the Inquiry*

Rights violations in Malindi are based on conflicts over two main resources- land and labour. There are conflicts over land ownership, control and use on one hand and on the other, conflict related to labour such as working conditions and wages in the salt manufacturing companies. The contestants are the local community (peasants, fishermen and workers) versus the Government and salt manufacturers.

On allegations of violations by the Government through the Provincial Administration, the Inquiry made the following findings:





- (a) The adduced evidence showed that the Government was involved in dispossessing the people of land<sup>11</sup> during all the four stages of occupation, including Arab occupation, British occupation, dispossession by the post independence government and granting of leases to salt manufacturers after independence. *The Inquiry found that in declaring these lands Government owned and later leasing them out to the salt manufacturers, the Government was perpetuating colonial injustices against the community. The Inquiry hence agreed that the Government had violated the community's rights by aggregating to itself land that had been taken from the latter by the preceding regimes. It aggravated this violation by leasing the lands to salt manufacturers without provision for adequate compensation and resettlement.*
- (b) Evidence that campaigns for evictions and actual evictions were planned and executed by the Provincial Administration was not denied. The salt companies actually admitted this and were corroborated by the retired Chief. The salt companies said they sought and received Government assistance to do this, and the retired Chief believed it was part of his duties. *Thus, the Inquiry concluded that by planning and executing the evictions, the Government violated the community's rights by forcefully evicting its members from their shambas.*
- (c) Claims of destruction of individual and communal property in the course of the evictions were not denied either. Indeed, they were confirmed by the retired Chief and the salt manufacturers.



The explanation that the destruction was incidental to the evictions and perpetrated without malice did not negate the fact that they happened. *The Inquiry found that the Government violated individual and community rights by destroying property in the course of the evictions.*

- (d) Allegations that the scale for determining losses and appropriate amounts of compensation were arbitrarily created, and extremely low, were not denied. Rather, Government officials defended them as being conventional and acceptable. It was confirmed that the complainants were not allowed to negotiate. Expert opinion, however, indicated that the rates were grossly low.

They were nonetheless applied because they had been determined by the Government. Procession of claims and payments were through Government officers and the complainants had either to take or reject them. Consequently, those who accepted the payments were short changed while others remained uncompensated. *The Inquiry, therefore, concluded that the process was unjust and that the Government violated individual and community rights by permitting public officers to participate in denying the people just compensation for damages.*

- (e) The accusations against the Labour Department and Provincial Administration of condoning and abetting violations of labour laws were confirmed by the relevant officer. He explained that his office was inadequately equipped for the tasks assigned him.



*Thus, the Inquiry found that violation of labour laws continued, partly because officers did not have adequate resources to undertake their work. At the same time, the Inquiry found that required inspections of salt manufacturing companies either happened irregularly or did not happen at all.*

- (f) The implicit admission by the salt manufacturers that they had violated conditions of their lease contracts, but had not been charged for it showed glaring omissions by the Government because it failed to enforce lease conditions. *The Inquiry found that the Government violated individual and community rights by condoning the violations of the terms of the leases by some salt companies. Kurawa Industries Ltd admitted that it had sub-let its land in breach of its lease's terms, and no caution or action was taken by the relevant Government department.*
- (g) Adequate evidence was given to support allegations of framed arrests, illegal detentions and assaults of workers by the salt companies. Admissions by the former Chief and the salt manufacturers confirmed that state force had been employed to effect evictions in favour of the salt companies. *The Inquiry thus concluded that the Government had violated the human rights of the complainants when police assaulted, arrested and wrongfully incarcerated community members whose only crime was to demand their rights.*



## **3.6 Recommendations**

### **3.6.1 Short term/immediate**

- (a) A peace and reconciliation process should be set in motion and be conducted in public in the manner this Inquiry was done. The forum will afford the aggrieved a forum to speak and give the accused opportunity to appear and defend or explain themselves, confess or apologise. Those refusing to appear should be charged for the alleged offences. The aim here is to enable for the healing of relationships between the community, salt manufacturers and the Government as a way of finding new means of working together to restore peaceful coexistence between area residents and the companies.
- (b) The Government should commission an independent consultant to establish the actual number of community members who have been rendered landless and recommend ways and means for their resettlement.
- (c) The Government should carry out thorough investigations on all individuals alleged to have violated the rights of persons and communities through evictions and destruction of property, with a view to prosecuting and punishing those found guilty of these criminal acts.
- (d) The Government should use qualified and experienced experts to quantify and determine the levels of compensation deserved by those whose properties were damaged during the evictions and compensate genuine claims adequately thereafter.



- (e) More labour officers should be hired, trained and made accountable to the workers. They should also ensure that the salt manufacturers are reviewing their employment conditions, wages and providing workers with sufficient tools.
- (f) To end collusion between salt manufacturers and Government officers, a new system of relations should be put in place to guide their relations and both parties be made accountable.

### *3.6.2 Long term*

- (a) The Constitution should be amended to ensure that local communities have a better and effective authority and control over resources such as land.

The civil society should be recognised as an important vehicle for democratisation and a human rights culture be encouraged to enable it function without interference.





## CHAPTER FOUR:

### DECENT BUSINESS, DIGNIFIED WORKERS: ADDRESSING WORKING CONDITIONS ON LABOUR, HEALTH AND SAFETY



#### 4.1 *Grievances from Petitioners*

The majority of those who petitioned the Inquiry were men and women who are either currently working, or had in the past worked for the salt manufacturing companies in Magarini.

##### 4.1.1 *Grievances on labour issues*

**The following complaints were presented to the Inquiry:**

- That the companies were keeping or retaining workers as casuals over a long period of time. As a result, many of the workers were not contracted or permanently employed. They were therefore not entitled to benefits such as medical cover and annual leave. Some of the workers claimed to have worked regularly in the same company doing the same job for as many as 10 years as casual workers. There were also complaints of low remuneration pegged on standards they claimed were not proportionate to their output(s).
- Discouragement or suppression of workers' attempts to join trade unions by companies. Thus, a majority of the workers were not unionised. Cases of termination of workers on unspecified grounds, without giving them opportunity to defend themselves or appeal, were also reported;



- Inadequate mechanisms for channelling grievances at the workplace and fear of victimisation by managers whenever workers attempted to do so;
- Irregular inspection of factories and other facilities by relevant Government departments, such as the Occupational Health and Safety and Labour Departments. This exposed workers to dangerous working conditions; and
- Companies non-compliance with general labour standards, thus forcing the workers to work under inhuman and hazardous conditions. They also had to contend with delayed wages.

#### *4.1.2 Grievances on health and safety issues*

Petitioners complained about working under poor and unsafe conditions, particularly in the factories and at salt harvesting points. They cited incidences where workers got injured in the course of duty. The following specific complaints were raised concerning health and safety of the workers:

- Failure by salt companies to provide workers with appropriate tools and other necessary equipment, including protective clothing for harvesting salt;
- Inadequate toilet and hygiene (cleaning) facilities;
- Failure to conduct regular medical check-ups for workers, thereby exposing them to physical injuries, skin and eye diseases;
- Complaints of non- payment or delay in compensation for injuries sustained in the workplace;









- Pollution and salination of fresh water sources, such as wells and dumping of salt by- products thus threatening the health of workers and that of the general public:
- Failure to maintain a general register and other important documentation on various aspects of work, thus making it difficult to examine records of inspection by Occupational Health and Safety Officers:
- Non-compliance with health and safety standards and failure to adhere to compensation laws, including insurance cover for employees. This was compounded by the companies' reluctance to provide first aid facilities as prescribed under the Factories Act; and
- Irregular health and safety inspections by institutions such as the Occupational Health and Safety Department.

#### ***4.2 International and National Standards: Linking Labour Conditions to Human Rights***

**T**he labour industry plays a vital role in the development of society. The importance of labour and industrial relations in shaping the local and national economy cannot be gainsaid. But for the labour industry to thrive and achieve sustainable development, laws and policies that entrench principles of human rights, social justice, equity and security must guide its operations. The constitutional and legal framework of such principles, should inform labour and industrial relations so as to lead to a social balance and harmony between the employers and workers.



Human rights are inherent and inalienable for all human beings, including workers and their employees. The preamble of the Charter of the United Nations reaffirms this and commits members to the protection of these rights for all people:

*'We the people of the United Nations [are] determined...to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, the equal rights of men and women...'*

Human rights are invoked to protect and promote human life and dignity as their violations often have ramifications that perpetuate exploitation of weaker members of society. The ILO's 1998 Declaration on Fundamental Principles and Rights at Work sets out four core labour standards that are binding on all ILO member states:

- Freedom of association and the right to collective bargaining;
- Elimination of all forms of forced or compulsory labour;
- Effective abolition of child labour; and
- Elimination of discrimination in respect of employment and occupation.

The four core labour standards are regarded as fundamental human rights and freedoms and are universally applicable. In addition, there is a wide range of other labour standards covering issues such as minimum wages, health and safety of workers, to enhance the livelihoods of employees.



#### *4.2.1 International standards and principles*

The subject of labour deals with the relationship between the employer and the worker, or put differently, it is a relationship between the user of labour and the supplier of labour. In many countries, this relationship is regulated by domestic employment laws, and guided by international labour relations, standards and practices. The regulations are effected both at the individual and collective levels.

**The sources of regulations are diverse and may include the following:**

- Primary and secondary legislation, initiated and formulated by the Government;
- The Government's national policy and labour relations guidelines;
- The decisions of the courts, including the High Court, Industrial courts and Tribunals;
- International law and standards;
- Internal codes of practice and guidelines; and
- The advisory, conciliation and arbitration services.

**International labour jurisprudence is fundamentally anchored on, and influenced by the following principles:**

- Just, fair and equitable remuneration;
- Social security and protection;
- Freedom of association and collective bargaining;
- Suitable living and working conditions;
- Effective communication, information and participation of workers;



- Health, protection and safety at the workplace;
- Equal treatment for men and women;
- Freedom of movement;
- Protection of vulnerable groups such as children, women and persons with disability ; and
- Protection of the family.

Labour standards are regarded as important benchmarks that enhance the realisation of rights, as they are capable of guiding all the players in the labour sector, and help workers and their representatives to claim freely on an equal basis, their fair share of generated wealth, and to exploit their full human potential. Labour standards and principles are adequately catered for in core international human rights instruments, such as the UDHR, ICCPR, CRC, CEDAW and ICESCR. Generally, labour standards are broad and so are the guiding principles, rules and procedures, which govern them. The ILO has gradually developed a number of labour conventions (over 180) forming the most comprehensive set of labour standards.

#### *4.2.2 National legal and policy framework*

Kenya's labour laws and practices were largely inherited from the colonial regime whose primary objective was to exploit local resources using cheap labour.

The statutes currently regulating broader labour relations in Kenya include the following:



**(a) The Employment Act (Cap 226).**

This Act was enacted to consolidate, with amendments, the law relating to employment in Kenya. It deals with the rights and obligations of both the employer and employee. It stipulates, among other provisions, when wages and salaries are due, the right to housing for employees, provisions for severance pay, and the lawful deductions that an employer may make from an employee's wages.

**(b) Regulation of wages and Conditions of Employment Act (Cap 229).**

This Act provides for the establishment of the Wages Advisory Boards and the Wages Councils for the regulation of remuneration and conditions of employment. It provides for basic minimum wages for different types of employment.

**(c) Workmen's Compensation Act (Cap 236).**

This Act provides for compensation to workers for injuries suffered in the course of employment, including provisions for medical examination and treatment for such injuries.

**(d) Trade Disputes Act (Cap 234).**

This Act provides for settlement of trade disputes generally and for settlement of trade disputes in essential services. It also provides for the establishment of Boards of Inquiry and a standing Industrial Court. It controls and regulates strikes and lock-outs, and makes provision regarding the collection of union dues.



**(e) Trade Unions Act (Cap 233).**

This Act gives a right to workers to form associations and/or to join trade unions. It also provides for the registration and control of these unions.

**(f) Factories Act (Cap 514).**

This Act provides for the health, safety and welfare of persons employed in factories and other places.

Kenya's post colonial governments had been reluctant to make radical changes on existing laws, until 2001 when a task force to review the country's labour laws was established. But the proposals put forward by the review team are yet to be implemented or enacted into comprehensive labour laws. As they stand now, the country's labour laws are minimalist in approach when dealing with workers and social security. Although a tripartite labour relations policy framework<sup>12</sup> was formulated to enhance better labour relations between the Government, employers and workers, its principles have not been clearly applied to ensure effectiveness of labour policies.

The Ministry of Labour and Human Resource Development plays an important role in maintaining industrial peace and promoting occupational health and safety at work places. The Ministry is also charged with formulation and implementation of employment policies and identification and creation of employment opportunities. It regulates and enhances labour laws and social security matters to facilitate fairness and social justice between and among employees and employers in the working environment.





These stated objectives and tasks are, in the long run, expected to ensure effective and sustainable social and economic development of the citizenry. More fundamentally, the Ministry of Labour is the most critical ministry in facilitating overall economic development of the country since it deals with the development and management of the country's human resources in fields as varied as agriculture, trade and employment.

The departments of Labour and Occupational Health and Safety are, in particular, central in reshaping industrial relations in tandem with global trends. They do this by embracing evolving technological opportunities for the benefit of workers and other key actors.

### *4.3 The Evidence*

#### *4.3.1 Defining the categories and scope of labour issues that were raised.*

**T**he Inquiry listened to evidence on the categories of employees who work in salt manufacturing companies and the problems they confronted.

##### *4.3.1.1 Permanent employees*

**T**hese employees are employed for long-term periods, usually until retirement. They earn monthly salaries subject to National Social Security Fund (NSSF), National Hospital Insurance Fund (NHIF) and Pay-as-You-Earn (PAYE) deductions. Their entitlements, such as leave days, are provided for in the Employment Act. They are also entitled to severance pay in case they are made redundant.



Their salaries are payable at the end of the month. The companies submitted the following figures of their permanent employees as at July, 2005:

- Malindi Salt Ltd - 40;
- Mombasa Salt Works Ltd - 65;
- Kensalt Ltd - 210 ( 65 are unionised workers);
- Krystalline - 39;
- Kemu – 140

The salt manufacturing companies employed very few permanent employees, preferring to keep most of them as casuals, largely because salt work is seasonal.

Some petitioners alleged that they had worked for a long time, in some cases for as long as ten years, continuously and were terminated without being paid terminal benefits (severance pay) and overtime dues by some of the companies. Krystalline Salt Ltd was singled out for laying-off employees without paying their dues. Evidence given by the Labour Department showed that some attempts had been made, especially in 2003 and 2004, to pay workers their dues.

#### *4.3.1.2 Casual workers*

**T**hese are non-permanent employees whose wages are often paid at the end of each day. They are not entitled to severance pay in case of termination by the employer because they are employed on a temporary basis. However, workers in this category are entitled to a safe working environment by the law.



Evidence suggests that these employees were employed on a non-permanent or seasonal basis. Casual employees were paid per day and did not contribute to either the NSSF or NHIF. In one case, an employee testified that he was being paid only Kshs 126/- per day, but had been in employment since 1984. This amount had been reduced from Kshs 230/- without notice or justification. The Inquiry also heard that attempts by the casual workers to join a trade union were put on hold for fear of reprisals from their employers. Some petitioners claimed that they were dismissed after joining a trade union.

Casuals were not provided with working tools and equipment and had to purchase their own for use in the salt fields. They were also required to bring their own hoes and basins to work.

The employers explained that they could not afford to buy such equipment for casual workers because they did not have systems to protect themselves against damage and theft of the equipment. They further argued that the workers had undertaken the work on their own free will for monetary reward and, therefore, should carry their own implements. They, argued the companies, were not working in a set up that needed to give them all facilities to carry out their work.

Due to the nature of their employment, casual workers were often discharged without notice or payment. According to some petitioners, the Labour Department either lacked resources to ensure effective compliance with labour laws and standards, or was reluctant to enforce its functions as required. Many petitioners felt they were entitled to benefits since they had worked in the companies for many years.



Another dominant complaint was the lack of workmen's compensation for injuries sustained in the workplace. Many workers got injured due to lack of protective clothing, and were never compensated for the injuries. Petitioners also lamented the inability of the Labour Department to follow up on this and their lack of resources to file such complaints in court.

Evidence from the Labour Department showed that some workers injured in the course of work had been compensated for injuries suffered, but some had not collected their dues from the Labour Office.

The companies tabled the following figures, being account of their current casual workers:

- Malindi Salt Ltd- 100;
- Mombasa Salt Works Ltd 150;
- Kensalt Ltd 70;
- Kemu 60;

#### *4.3.1.2 Piece rate workers*

**P**iece rate workers are employed for the purpose of undertaking a specific task and are paid on completion of that task. Piecework is any work in which the pay is estimated by the amount of work performed, irrespective of the time taken to complete it. The wages are either paid upon completion of work or at the end of the day, proportionate to the performed task.



Poor working conditions of the piece rate labourers was also raised at the Inquiry. Petitioners complained about lack of adequate protection in the salt harvesting ponds, and that the work-load was disproportionate to the paid wages, which they claimed was between Sh.40 to Sh60, for every square foot of salt harvested. The piece rate workers testified that they were not allowed to join unions. They also claimed that they could sometimes work for as long as between twelve and fourteen hours a day.

Some of the companies gave estimates of their piece rate workers as follows:

- Malindi Salt Ltd 200-300;
- Mombasa Salt works Ltd 300;
- Krystalline 300-400;

#### *4.3.1.3 Contract workers*

These workers are contracted to work for a specified period of time and are not permanent employees. Depending on the nature of their contract, some of them may enjoy the benefits of permanent employment such as leave days and severance pay in case of termination before the expiry of their contract. Many workers employed to work in the salt companies' offices fell in this category. For example, KEMU Salt employed workers like store clerks, drivers, panel beaters and machine operators on contract for periods of three (3) months.



### 4.3.2 Health

#### **Complaints made regarding health were as follows:**

(a) **Scarcity of drinking water.**

There were gripes that salt manufacturing companies interfered with the villager's natural source of drinking water from the wells by blocking their access to some of these wells. The wells accessible to the villagers had become saline because of company activity. Due to scarcity, the companies sold water to the villagers at Sh10 per 20-litre container.

(b) **Skin problems.**

Workers complained of skin irritation and wounds as a result of lack of safety gear at the companies.

(c) **Eyesight.**

Due to the fact that the salt is of is crystalline in nature, reflection of light was said to have caused discomfort and in some cases, damage to the eyes of the workers.

### 4.4 Assessment and Findings of the Inquiry

It was apparent that none of the salt companies operating in the area had adequately complied with the legal framework and international labour standards. The Inquiry arrived at the following conclusions:



(a) **Poor conditions of work.**

Workers who testified at the Inquiry strongly demonstrated how they work under inhuman and degrading conditions, without proper clothing and equipment. Some of the companies actually confirmed the absence of important facilities such as overcoats, helmets, boots, gloves, scrappers, basins and sunglasses. When the Inquiry made a site visit to Kemu Salt Packers Productions Ltd, most of the complaints in respect to poor working conditions of the employees were verified. The workers had no protective clothing. The Company's officials agreed to address the issue of delayed payment of wages, which coincidentally, was the cause of a workers' protest on the particular day. Kemu's Human Resource manager agreed to resolve the contentious issues.

(b) **Health and safety problems.**

Workers inside the factories were exposed to danger of injuries. A report from the District Occupational Health and Safety Officer clearly vindicated the assertions by the workers about their poor working conditions. The inspection report, which covered Krystalline, Mombasa Salt Works and Malindi Salt works companies, gave the firms very poor ratings as regards safety and health conditions in the factories. It indicated that between January and June 2005, Malindi and Krystalline alone reported a total of 55 accidents to the Labour Department. The report outlined areas where there were safety lapses, including guarding of machinery, stairways, hand rails, working platforms, appliances, ventilation and fire precaution.



It further alluded to the fact that there were no adequate toilet facilities for the workers, exposing them to risky health conditions. It also mentioned the shortage of clean water for domestic use as another major threat to the health of the workers because most water sources were polluted.

(c) **Prolonged employment of workers on casual terms.**

The companies generally retained workers on perpetual casual terms with no benefits, irrespective of how long one had worked. Some employees had worked on full-time basis for many years without contract and as a result, lost their benefits.

(d) **Unionisation.**

Only Kensalt was said to have made efforts to facilitate the unionisation of employees. Some workers had organised themselves in order to mitigate bad working conditions.

A number of petitioners complained about reactionary tendencies of companies that terminated employee-services once they joined unions. It was, for example, alleged that Mombasa Salt Works had sacked eight workers on suspicion of joining a trade union. They were said to have worked for the company for more than 10 years. Workers who find themselves in such a situation often move from one company to another in search of better working conditions.





(e) **Non-registration of companies.**

Some companies were operating without certificates of registration from the Occupational Health and Safety Services department, contrary to Section 9 of the Factories Act. The District Occupational Health and Safety Officer had written to two companies, Malindi and Krystalline, which had been inspected, asking them to comply with the law.

(f) **Failure to provide safe transport vehicles for employees.**

Some salt companies transported employees using open trucks that exposed them to various hazards. This is a traffic offence, as open trucks have no insurance, and can't be used for passenger transport.

(g) **Lack of reasonable housing for workers.**

Most companies had no housing units for the workers. Most workers commuted from their own homes or rental residences, often shanties. A few companies provided housing to the workers but the quality of housing was inadequate.



## 4.5 *Recommendations for action*

In light of the complaints brought before the Inquiry, the following recommendations are made:

### 4.5.1 *Short term*

- (a) The Labour Department should immediately undertake measures to ensure that existing labour laws and standards are enforced. The companies should immediately implement laws and policy standards to ensure workers' rights, in regard to wages, collective bargaining and freedom to join trade unions, are safeguarded and adhered to.
- (b) Labour organisations and trade unions should ensure that salt workers have the requisite education and capacities to determine whether they desire to join trade unions. This education should happen on a continuous basis.
- (c) Salt manufacturing companies must ensure that workers are provided with appropriate clothing to mitigate adversities in their working environment. The companies under discussion must provide the necessary clothing and equipment within six months of this decision. The appropriate clothing should be determined through consultations between workers, the salt companies and the Labour Department, with due regard to factors such as 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 agreed to provide their workers with them.

- (d) The companies must provide implements necessary for harvesting salt at no cost to the workers and the use of basins for transportation of salt be reviewed and either replace them with more appropriate modes of transport or determine the maximum load, which at any one time may be safely carried in a basin. The Government must take the lead in this process.
- (e) The Labour Department must ensure that the terms of casual labourers falls within the law and that they are not exploited.
- (f) The Labour Department must ensure compliance with the above orders.
- (g) The Labour and Occupational Health Departments should conduct inspections of all salt companies to determine the extent of non-compliance with labour laws and standards, in order to ensure that they all put in place the necessary mechanisms of addressing working conditions.
- (h) The Department of Occupational Health and Safety should take concrete steps to ensure the registration of the salt companies under the Factories Act, in order to align the health and safety conditions of these companies with the provisions of the law and regulations.



- (i) The companies must provide appropriate sanitation facilities, including washing areas adequate for all workers, and make them accessible. In this regard, these firms should consider providing mobile toilets for their workers.
- (j) The Labour Department should facilitate negotiations between the salt companies and the workers to ensure that contractual employment is adapted in future and during peak seasons to cater for the casual labourers. This will enable them to benefit from their work. The Inquiry was of the view that such contracted employees are better placed to offer more value to the companies and in turn, reap the benefits;

#### *4.5.2 Long term*

- (a) The Government should review the recommendations of the Labour Laws Task Force and accelerate legislation of an appropriate legal framework to ensure effective, credible and enforceable national labour policy and programmes. The Government (and specifically the Labour Department), should assist in improving the binding tripartite approach (workers, employers and government) and ensure a rights-based approach to labour matters that will take into account the workers rights, market needs and principles, based on best practises and international standards.



- (b) The Government, through the Ministry of Labour should make a conscious effort to provide both human and financial resources to the Labour Department in Malindi and other contiguous districts to facilitate its work and, help alleviate the poor industrial relations currently prevailing in the region. To this end, the Departments of Labour and Occupational Health and Safety should prepare a district-wide inspection plan to be effected on a continuing basis. This plan should be funded by the Ministry of Labour on a priority basis.
- (c) The Directorate of Personnel Management (DPM), in the Office of the President and Ministry of Finance, should immediately upscale the Ministry of Labour in regards to resource allocation, taking cognisance of the ministry's important role in the country's economic development. The Government, in its planning and financing processes, must increase the ministry's capacity to enhance its work.
- (d) The Government, through the Department of Labour, should undertake policy and legislative measures to facilitate the expansion of the tripartite representation to include emerging key players in the labour sector such as the Kenya National Commission on Human Rights, NGOs and other public and private bodies, to enhance the process of consultation, participation and good governance.



- (e) In view of the fast changing working environment, the Government needs to codify legislative, and policy frameworks to effectively respond to the emerging socio-economic environment, particularly in dealing with the ever changing global labour movements and market forces such as privatisation and liberalisation. Kenya needs to be in the fast track considering the competitiveness triggered by the global market and labour environment.
- (f) KESAMA should be strengthened to develop codes of conduct to enable the salt manufacturing companies meet international standards.
- (g) The Department of Labour should introduce piece rate wages pegged to productivity measures to safeguard both the workers and their employers. The Productivity Centre of Kenya should provide guidance in determining fair wages and piece rate payments for salt workers and common standards for measuring piece rate work for the sector developed.
- (h) The Government should upscale salt work and give it specific recognition as a type of work and provide specific coding and wage payments for it.
- (i) Salt manufacturing companies should adopt modern technology in the fields and factories to reduce dangerous and hazardous conditions, for example, the one that requires workers to carry heavy basins of salt on their heads.



- (j) Labour offices all over the country should be provided with adequate resources to handle labour disputes and grievances forwarded to them by workers to enable the departments to adjudicate the same adequately and in a timely manner.
- (k) The Occupational Health and Safety department should institute thorough investigations on the reports of issues of health and effects of salt harvesting on workers to ascertain whether the alleged workers' health conditions are a result of the salt manufacturing operations or not, and determine what action(s) to be taken to safeguard the workers' health.
- (l) Government bodies such as the NSSF and NHIF should visit the workers in the salt manufacturing companies to educate the workers on the importance and benefits of these statutory deductions.







## CHAPTER FIVE: SALT MANUFACTURING AND ENVIRONMENTAL SUSTAINABILITY



### 5.1 *The Community's Grievances on Environmental Destruction*

The main environmental-related grievances directly attributable to the establishment and operation of salt manufacturing in Gongoni, Marereni and Kurawa areas, were presented to the Inquiry in form of petitions, public (and in-camera) hearings, and site visits. The complaints were as follows:

- Mangrove destruction;
- Salinisation of freshwater wells and springs;
- Flooding as a result of dyke-building;
- Deforestation;
- Accelerated coastal erosion;
- Loss of biodiversity, evidence being declining fisheries and other marine resources dependent on mangroves; and
- Pollution on both coastal and marine ecosystems and soils, thus affecting their productivity.

### 5.2 *Human Rights and the Environment: The Interrelationship*

The link between human rights and the environment is undeniable. Many international human rights instruments are already in place to protect environmental rights. For example, the 1972 Stockholm Declaration, Principle 1, states:

*“Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being.”*



This link between human rights and environmental rights was also made by the World Commission on Environment and Development (WCED) in its 1987 report, where Principle 1 holds that:

*“All human beings have the fundamental right to an environment adequate for their health and well-being.”*

The relationship between human rights and environmental rights was affirmed by the International Court of Justice opinion in Gabcikovo-Nagymaros Case (Hungary – Slovakia) of 1997, in which Judge Weramantry stated that:

*“The protection of the environment is a vital part of contemporary human rights doctrine, for it is a sine qua non for numerous human rights such as the right to health and the right to life itself. It is scarcely necessary to elaborate on this, as damage to the environment can impair and undermine all the human rights spoken of in the Universal Declaration and other human rights instruments.”*

In Kenya, the Environmental Management and Coordination Act (EMCA) of 1999, recognises the right to a clean and healthy environment and obligates every person in Kenya to safeguard and enhance the environment.

### **5.3 The State of the Environment in Magarini**

The following environmental aspects are of special significance in relation to salt manufacturing operations in Gongoni, Marereni, Kurawa, Ngomeni and other areas within Magarini Division.



### 5.3.1 Coastal and marine ecosystem

#### 5.3.1.1 Mangroves

The area adjoining the salt pans has mangroves at the seafront. There are nine species of mangrove trees and shrubs found along the Kenyan Coast, namely, *Rhizophora mucronata* (Mkoko), *Ceriops tagal* (Mkandaa), *Bruguiera gymnorrhiza* (muia or Mshinzi), *Sonneratia alba* (Mlilana), *Xylocarpus granatum* (Mkomafi), *Xylocarpus moluccensis* (Mkomafi), *Avicennia marina* (Mchu), *Lumnitzera racemosa* (Mkandaa-Dume or Mkandaa Mwituu) and *Heritiera littoralis* (Mkungu or Msikundazi).

Generally, mangrove forests have a diverse flora. They are also an important, if not critical, habitat for a variety of terrestrial and aquatic animals, many of which are species of economic importance. For example, they are of critical importance for a number of shrimps (*Penaeus*), crabs (*Scylla* and *Uca*), Oysters (*Crassostrea*) and many marine fish species. Although these fish inhabit deeper waters when mature, many species of fish use mangrove areas to feed and as nursery for their young. Many of the species stay in the mangrove throughout their juvenile stages, benefiting from the shelter, protection and abundant food found there. Both commercial and subsistence fisheries rely on mangroves for a large part of their catch.



### 5.3.1.2 Coastal forests and grasslands

The natural vegetation of the area is isolated blocks of coastal forests and wooded grasslands. These forests have widespread species and are characterised by dense or moderately dense stands of tall trees. The scattered baobab trees also present a striking appearance. Many open areas have grass. Just like in other living things, human well-being is also closely linked to the well-being of the biodiversity.

### 5.3.1.3 Coral reefs

Coral reefs are found along the entire Kenyan Coast as fringing reef. The coral types include Poritidae (*Porites and Goniopora*), and Faviidae (*Meandrina and Favia*). Most of the fish, including aquarium fishes, are associated with coral reefs. Some fish such as the parrot fish (*Leptoscarus*) and the crown-of-thorns starfish (*Acanthaster*), feed on coral polyps. Other fish groups usually associated with coral include moray eels, damselfishes, wrasses, angelfish and scorpion fish. Other fauna found here include the long spined sea urchin (*Diadema*), a variety of molluscs, often anchored in the coral, the giant sea anemone, lobsters and marine turtles. The coral reefs are a tourist attraction.

### 5.3.1.4 Seagrass and algae

Seagrass is a marine flowering plant. It is predominant in sandy and muddy areas where their roots penetrate and provide easy anchorage. Seagrass beds, which include seaweed, provide a habitat for a variety of commercially important fish species.



Also found there are mature specimens of fish that spend their early stages in mangrove areas. Seagrass beds are important habitats for octopus, holothurians and are also crucial feeding grounds for endangered species such as the green and hawksbill turtles, and the sea cow, dugong (*Dugong dugon*).

#### *5.3.1.5 Beaches*

There are marine beaches in Kenya's coastline. They are important for recreation and as nesting beaches for marine turtles. The beaches of Giriama and Robinson Islands are important recreational areas for tourism, nesting of turtles and also act as landing sites for hundreds of fishermen.

#### *5.3.1.6 Rivers, Marshes and Wetland*

Most of the area is composed of marshes, isolated wetlands and river systems, which flow into the Ungwana Bay. All the river systems have flood plains. Vast areas of the low-lying plains include numerous permanent and seasonal wetlands, some of which are important freshwater sources. After the rains and as the floods recede, the exposed land is usually used for cultivation of maize, legumes and other crops.



### 5.3.2 *Species for conservation*

#### 5.3.1 *Marine turtles*

Five species of marine turtles have been recorded in Kenya's waters, namely, the green turtle (*Chelonia mydas*), the hawksbill (*Eretmochelys imbricata*), the Olive ridley turtle (*Lepidochelys olivacea*), the loggerhead turtle (*Caretta caretta*) and the giant leatherback turtle (*Dermochelys coriacea*). However, records in Ungwana Bay show the occurrence of both the green and hawksbill turtles in feeding grounds and nesting beaches. Marine turtles, over the years, have been of great value to the coastal people because of their nutritional, economic and cultural purposes. Their meat and eggs are used as food, while the tortoise shell is exported and some used to make ornaments.

It also produces oil, which the local community uses as medicine and protection against evil spirits.

#### 5.3.2 *Marine mammals*

Dugongs belong to the Order Sirenia, one of the major mammalian groups that live in water. The dugong is the only member of the order, Sirenia, found in Kenya's coastal waters. They are exclusive marine animals found close to the coastline's large bays and near shore archipelagos, where they feed on seagrass and seaweed. Recent surveys show that dugong has been localised in Ungwana Bay and the Lamu Archipelago. They usually inhabit depths of 1-20m and inhabit places where the water is murky, varying in temperatures of between 20°C and 30°C, and exhibiting seasonal salinity changes. But because of their limited distribution and movements, are vulnerable to direct exploitation and any changes in their habitat, such as pollution and siltation.



## *5.4 International and National Policy and Legal Frameworks*

### *5.4.1 International agreements*

Over the past ten years or so, the world has given greater attention to human rights and environmental sustainability. States that tolerate human rights and environmental abuses are increasingly brought under international sanction. This has been reflected in the policies of the UN and other international agencies, and in 1999, the UN Secretary General launched a Global Compact calling on industries to support and respect the protection of international human rights as well as the environment.

This has been critical in the involvement of the private sector in environmental conservation. Most companies now realise that they can't ignore environmental requirements in the countries where they operate, even in cases where such standards are non-existent.

International agreements in the form of conventions and protocols have been adopted in areas relevant to sustainable development. These instruments are intended to oblige governments to pass national legislation and implement their commitment(s) to clean environment and sustainable development. Kenya is a signatory to the key international, regional and sub-regional instruments regulating biodiversity conservation and sustainable environmental management.



**The principles underpinning these international instruments are:**

- *Integration*, which entails the management of competing uses in a given area. It requires that compatibilities and trade-offs between and amongst users be dealt with;
- *Public participation*, which highlights three ways in which the public can be facilitated to participate: access to information, participation in decision-making and access to justice;
- *Inter and intragenerational equity*, which is premised on fairness, thus obligating present generations not to leave future generations worse off by the choices they make today regarding development;
- *Polluter pays*, which essentially holds that the costs imposed on society and the environment by pollution must be borne by the polluter. Thus, it promotes the notion that those who burden or harm the environment are required to bear the costs of avoiding, eliminating or compensating for these injuries;
- *Precautionary principle*, which is premised on the fact that it is better to prevent pollution than to depend on costly control strategies or clean-ups later;
- *Duty to conduct an environmental impact assessment* obligates investors to introduce appropriate procedures requiring environmental impact assessment with a view to avoiding or minimising such effects; and
- *Subsidiarity*, which entails decentralisation and devolution of decision making to the grassroots level.





#### *5.4.2 National environmental policies, statutes and standards*

The Environmental Management and Coordination Act, 1999, is the principal regulatory instrument governing environmental management and natural resource use. It establishes the National Environment Management Authority (NEMA), as the principal regulatory authority and obligates it to ensure compliance and enforcement of environmental related legislations.

The following principles of sustainable development are the main underpinnings of this recent legislation:

- Public participation;
- Social and cultural concerns;
- Intra and intergenerational equity;<sup>13</sup>
- International cooperation;
- The polluter pays principle;<sup>14</sup> and
- Precautionary principle.

The legislation further provides for various environmental management tools, including planning, impact assessment, audit and monitoring, quality standards and good record keeping, as frameworks for sustainable environmental management. Unfortunately, NEMA is yet to promulgate any of these environmental quality standards.



Other national legislation relevant to the salt manufacturing sector includes:

- Local Government Act;
- Investment related policies and laws;
- Tax laws;
- Land laws;
- Labour laws;
- Physical Planning Act;
- Water Act; and
- Public Health Act.

### *5.5 Findings, Assessment and Observations*

Arising from the petitions, public testimonies, the hearings and site visits to some of the affected areas, the following findings were reached in respect of the impact of salt manufacturing on the environment.

#### *Issue 1: Mangrove destruction*

The petitioners raised the question of mangrove destruction that has taken place, and is still continuing because of the salt manufacturing process. From reports made available to the Inquiry, it was estimated that more than 500 hectares of mangroves have been felled to create room for the construction of salt ponds in the area. This destruction is exacerbated by the destruction of mangroves through salinisation. The salinisation occurred as a result of hypersalinity and blockage of water flushing due to construction of dykes.



It has affected the habitat for many fisheries that use the mangroves as breeding, nursery and feeding grounds. This has negated fish recruitment and might also contribute to decreased occurrence of adult fish in the near shore waters, as is already being reported by a number of fishermen. It has a net negative impact on their income and makes the poor more vulnerable.

### *Issue 2: Salinisation of freshwater sources*

The petitioners explained in great detail, the effect of salt manufacturing operations on the traditional freshwater sources in the area, which have become salty. The salinisation of surface and groundwater has been attributed to deliberate contamination of the water sources through dumping of salt and incidental contamination through underground leaching and discharge of hypersaline water.

As a result of the contamination of these traditional water sources, both area residents and workers have been deprived of their right to access water. They are also being impoverished more as they have to purchase water for domestic use from the same salt manufacturers who have contributed to the salinisation of the traditional waters, springs, wells and fresh water wetlands in the area.

Many of the water sources traditionally used by the communities have either been destroyed, occupied by salt lagoons or salinated by underground seepage of saline water from the lagoons. A majority of people who testified complained of debilitating shortages of fresh and portable water for domestic use. The complainants blamed the salt companies for the increased salination of water sources.



Some companies were blamed for having deliberately dumped salt in the sweet water wells as a strategy to force people out of the area. The firms, however, denied this, but informed the Inquiry of their willingness to help in digging bore holes for the community with the help of the Ministry of Water and the Malindi County Council. This, despite testimony that they were collecting water from a place called Timboni and selling it to the residents.

### *Issue 3: Pollution*

**D**irect discharge of hypersaline water into the environment and estuary without prior treatment affects marine life. This is because concentrated salt water when discharged into the environment increases salinity, thus impacting negatively on marine life such as juvenile fishes.

Salinisation also affects soil and has far reaching consequences on food security and livelihoods of the people.

According to some witnesses, Ngomeni was a thriving well-known harbour in the Indian Ocean trade route before the salt companies started diverting rivers and building dykes that destroyed almost all the 24 landing sites. Cases of fishing boats and trawlers colliding in the ocean due to interferences with water level in Ngomeni areas were cited. It was also reported that fish production in the area has considerably reduced over the last two decades.



#### *Issue 4: Deforestation*

Petitioners raised the issue of clearing large parts of coastal forests and woodland grasslands to create room for the establishment of saltpans and ponds. Indeed, the salt manufacturing area has been expanding over the years and if all the allocated land was to be put under salt manufacturing, then a vast area in excess of 10,000 hectares would be devoid of vegetation. This is likely to contribute to accelerated desertification in the area. Kenya is a party to the UN Convention on Combating Desertification (CCD).

#### *Issue 5: Accelerated coastal erosion*

The petitioners were concerned about accelerated erosion of the coastal area, especially Ngomeni. This has resulted into the loss of some property, including residential houses and a naval base. Whereas salt manufacturing may not be the proximate cause of the witnessed coastal erosion, some things that have arisen as a result of salt manufacturing, could have contributed to the problem. For example, the mangroves are important because they protect the coastline. But their expansive clearing to create room for salt operations exposes the shoreline to intense wave action, which in turn leads to accelerated coastal erosion. The erosion is as a result of the removal of mangroves, which weakens coastal defences thus exposing the area.



### *Issue 6: Loss of biodiversity*

It is evident that massive forest areas have been cleared. Traditionally, these forest areas are important sources of food, herbal medicine and also act as rangelands for pasture. In a way, the destruction of forests contributes to the loss of valuable biodiversity, which is important for local people's livelihoods. The deprivation resulting from loss of biodiversity without meaningful alternatives has contributed to the poverty and vulnerability witnessed among the local inhabitants of the area.

In addition, the impact of salt operations on the coastal and marine ecosystem has had a negative impact on species of conservation concern such as marine turtles and dugongs, which use the beaches and near shore waters as nesting and feeding grounds.

*Table 5.1: Summary of the impacts of salt manufacturing on the environment*

<b>Environmental Aspect</b>	<b>Impacts</b>
1. Mangroves.	<ul style="list-style-type: none"><li>• <i>Increased pressure on mangroves by local community due to increased poverty and high vulnerability.</i></li><li>• <i>Loss of mangrove areas due to conversion to salt ponds /pans.</i></li><li>• <i>Death of mangroves due to high salinity and blockage of flushing by constructed dykes.</i></li></ul>



Environmental Aspect	Impacts
	<ul style="list-style-type: none"> <li>• <i>Increased shoreline instability contributing to accelerated coastal erosion.</i></li> </ul>
<p>2. Fresh water sources (wetlands, springs and wells).</p>	<ul style="list-style-type: none"> <li>• <i>Reduced quality of water for domestic and agricultural use.</i></li> <li>• <i>Loss of freshwater sources contributing to serious chronic water scarcity.</i></li> <li>• <i>Lack of access to clean drinking water for the poor.</i></li> <li>• <i>Increased water-borne diseases.</i></li> <li>• <i>Salinisation of soils with reduced productivity.</i></li> </ul>
<p>3. Coastal forests and wooded grasslands.</p>	<ul style="list-style-type: none"> <li>• <i>Loss of biodiversity and habitat.</i></li> <li>• <i>Increased soil erosion.</i></li> <li>• <i>Siltation of rivers.</i></li> <li>• <i>Increased population in the area to exploit forests for charcoal and other unsustainable resource use practices.</i></li> </ul>
<p>4. Coral reefs and fisheries.</p>	<ul style="list-style-type: none"> <li>• <i>Loss of aquatic biodiversity, especially fish varieties.</i></li> <li>• <i>Coral reefs and seagrass beds in the area are increasingly becoming less productive due to invariable salinity.</i></li> </ul>



<b>Environmental Aspect</b>	<b>Impacts</b>
	<ul style="list-style-type: none"> <li>• <i>Loss of coral reefs due to exacerbated sediment runoff and severe storms.</i></li> </ul>
5. Estuarine environment.	<ul style="list-style-type: none"> <li>• <i>Sedimentation of the estuary.</i></li> <li>• <i>Estuarine ecosystem is increasingly losing its capacity to serve as nursery grounds for the fishes.</i></li> </ul>
6. Coastal defence and Beaches.	<ul style="list-style-type: none"> <li>• <i>Loss of property.</i></li> <li>• <i>Increased beach instability.</i></li> </ul>
7. Species for conservation esp. turtles and dugongs.	<ul style="list-style-type: none"> <li>• <i>Habitat alteration further threatening species of conservation concern.</i></li> </ul>

## 5.6 Recommendations

The Inquiry makes these recommendations in order to mitigate the adverse environmental impacts to enable measures, actions and processes that will enhance improved environmental performance to be put in place. In doing so, the challenge is to see that the salt manufacturing sector contributes to human welfare and well being without reducing the potential for future generations to do the same. The approach has to be both comprehensive – taking into account the current system in the sector, and forward looking-setting out short term as well as long term objectives.







Moving from the concept of sustainable development to action requires:

- A robust framework based on an agreed set of principles;
- An understanding of the key challenges and constraints facing the sector, actions needed to meet or overcome them, and the roles and responsibilities of actors in the sector;
- A process for responding to these challenges that respects the rights and interests of people involved, able to set priorities and ensure that action is taken at the appropriate level(s);
- An integrated set of institutions and policy instruments to ensure minimum standards of compliance and responsible voluntary actions; and
- Verifiable measures to evaluate progress and foster consistent improvement.

If the salt manufacturing sector is to contribute positively to sustainable development, it needs to demonstrate continuous improvement of not only its social and economic contributions, but also environmental performance. The sector needs a framework within which it will be able to judge and pursue development. For it to achieve that, the following short term and long term actions are recommended:



### 5.6.1 Short term actions

#### (a) Secure and safeguard sweet water springs, wells and wetlands.

Since water is a basic human right and given that the area is endowed with sweet water springs, wells and wetlands, it is critical that areas that have such waters are secured and safeguarded to allow easy access.

In this regard, the first step is to undertake a hydrological assessment to establish surface and ground water sources in the area.

Once these areas have been identified, the salt companies, in collaboration with relevant public agencies such as the Ministry of Water and Irrigation, Malindi County Council and the local community, should make deliberate effort(s) to secure and safeguard those areas for the common good of the locals, workers and other stakeholders.

***Key Actors:** Ministry of Water and Irrigation/Water Resources Management Authority and Malindi County Council.*

#### (b) Provide access to clean and safe drinking water.

Because some of the companies have directly contributed to the destruction of freshwater wells through deliberate dumping of salt into these wells or seepage, it is imperative that they be obligated to remedy the situation through the provision of clean water. This is necessary because of the acute shortage of water in the area.



All companies operating in Gongoni, Marereni and Kurawa, in collaboration with the Ministry of Water and Irrigation and Malindi County Council, should pool resources and support the provision of reliable freshwater to local community centres via a pipeline from Timboni area. The salt companies should also not be allowed to extend their activities to fresh water areas like Timboni

**Key Actors:** *Salt companies (or KEMSA), Ministry of Water and Irrigation, Malindi County Council, Constituency Development Fund, CSOs (including CBOs) and community leaders.*

- (c) **All salt manufacturing companies should be compelled to put in place an appropriate waste water treatment system and institute measures to ensure there is proper management and disposal of hypersaline water.**

The most serious and pervasive environmental problem related to salt manufacturing is the deliberate and/or incidental disposal of hypersaline water into the environment (surface and estuary). Where it occurs, it can have serious impact(s) on the productivity of ecosystems and saline freshwater sources. This can ultimately lead to a long-term problem if not addressed, and may result into the reduction of natural resources.

The Ministry of Environment, NEMA and Malindi County Council should ensure that the salt companies comply with the existing legal environmental requirements to “...install an appropriate plant for the treatment of such effluents before they are discharged into the environment {s.74 (2) EMCA}.

This should further be reinforced by requirements 87 (1) and (4) of the EMCA, which states that “No person shall discharge or dispose of any



*wastes, whether generated within or outside Kenya, in such manner as to cause pollution to the environment or ill health to any person”; and “Every person whose activities generate wastes shall employ measures essential to minimise wastes through treatment, reclamation and recycling,”* respectively. Salt companies that are in breach of the law in discharging untreated effluent into the environment, must be investigated and prosecuted.

**(d) Halt the clearing of mangroves and establish a setback line from the mangrove forests to the lowermost salt ponds/pans.**

Since mangroves are important inter alia in shoreline protection, it is suicidal to remove them because this exposes the shoreline to serious environmental hazards. The Forest Department, which has jurisdiction over mangroves, must not allow clear felling of mangroves, which is meant to create room for the establishment of salt ponds/pans. To ensure the protection of the mangroves, it is imperative that a clear setback line is defined. This means that salt pans have to be established behind mangroves or sand dunes.

In order to minimise the impact of hypersalinity on mangroves, it is imperative that a reasonable setback line is established between the lowest salt ponds/pans and the edge of the mangroves. This will ensure the microclimate by the salt ponds/pans, does not choke and/or kill the mangroves. The draft Wetlands Regulations to be promulgated under the EMCA has provisions for setback lines.

The consequence is that on one hand, where salt ponds/pans fall within the setback line as established, the respective salt companies will be required to decommission such salt ponds/pans and rehabilitate them. On the other hand, all new salt ponds/pans will have to be established in respect of the established setback line.



**Key Actors:** *Forest Department, Ministry of Environment, NEMA, Ministry of Lands and the salt companies.*

**(e) Remove obstructing dykes that have changed brackish water course.**

To ensure that there is a free flow of water from Mto Kilifi, Mto Fundisa and other streams that contribute to estuarine brackish waters, it is imperative that all dykes, which cause blockages are removed immediately and such areas rehabilitated.

**Key Actors:** *Salt companies, Ministry of Environment, NEMA and Forest Department.*

**(f) Identify high biodiversity hotspots and set them aside for protection and conservation:**

Not all areas are of equal biodiversity conservation concern. Thus, salt processors must be informed on the specific locations of zones of their leased land that is of greatest biodiversity value or most critical to conservation concern to allow for appropriate mitigation measures to be taken.

Biodiversity is a critical part of the natural capital endowment. This was overlooked while establishing the salt pans, yet biodiversity's most critical value lies in the choices or options that it supports such as alternative food sources, broad range of bio-chemicals and medicinal products. It also has a role to play in biosphere's natural processes, from pollination to watershed protection. The salt companies, in collaboration with conservation specialists and organisations representing local community interests, should work towards producing a series of guiding principles on salt processing and biodiversity and adopt biodiversity-friendly practices.





This could involve, among other things, multi-stakeholder reviews of better practices, workshops and lessons learnt from analyses of existing cases.

**Key Actors:** *Ministry of Environment, NEMA, National Museums of Kenya, Forest Department, Kenya Wildlife Service, Research Institutes-KEMFRI and KEFRI, KESAMA and CSOs.*

- (g) NEMA, in collaboration with the salt manufacturing sector and other relevant players, should as a matter of urgency establish environmental quality standards for salt manufacturing companies.**

Standards are an essential tool for a regulator, yet currently, there are no environmental quality standards for the salt manufacturing sector. This implies that there is no benchmark or threshold to determine adverse or positive impact(s) on the environment.

It would appear that the EIA and EAs are being undertaken without having a benchmark or threshold value to determine levels of significance, thus putting the efficacy of these reports into question. The best standards should be a product of local multi-stakeholder processes, with a degree of international comparability.

**Key Actors:** *Ministry of Environment, NEMA, relevant lead agencies, KESAMA and CSOs.*





**(h) Establish a framework for corporate environmental reporting for the salt manufacturing sector:**

Although salt manufacturing companies are preparing annual environmental audit reports, considerable attention needs to be given to how they define useful metrics for measurement of environmental and social performance. Although there are general guidelines on environmental audit reporting structures, evaluation of the EA reports prepared by the salt companies shows that there is no consistent or harmonised approach towards the format. In response, a harmonised and consistent sector specific system of corporate environmental reporting guidelines that promote comparability needs to be developed.

**Key Actors:** *Ministry of Environment, NEMA, CSOs, KESAMA and KNCHR*

**(i) Strengthen capacity of Malindi District Environment Committee and community based organisations dealing with environment at the grassroots.**

Many of the issues that led to the environmental degradation as discussed by the Inquiry relate to poor governance or the need to build the capacity to cope with the dynamics of increasingly complex and interdependent activities. Weak governance may be attributed to factors such as bureaucracy, power imbalance(s), and corruption. It may also occur as a result of lack of resources and capacity, specialised personnel, coordination and integration, political will, representation of stakeholders in decision-making, accountability and transparency.



The Malindi District Environment Committee and CBOs, if strengthened, will be able to act as watchdog for any human rights violations, including environmental degradation.

**Key Actors:** *Ministry of Environment, NEMA, KNCHR, CSOs, and other interested parties.*

### 5.6.2 Long term actions

- (a) **Develop an integrated land use plan that encompasses the environmental action plan for the area through an all-inclusive participatory process.**

NEMA, in collaboration with the District Environment Committee, District Physical Planner and Malindi County Council, should facilitate the development of an integrated land use plan for the area.

The process for developing the plan must be highly participatory, with extensive input from the local community. The necessity of resource use and sustainable development calls for the development of an integrated land use plan and an environmental action plan.

This is further reinforced by sections 38 and 40 as read with section 55 of the EMCA that provides a framework for the development of a district environment action plan (DEAP/NEAP) and an Integrated Coastal Zone Management Plan (ICZM), respectively. Such integrated land use planning will help in facilitating the trade-offs necessary for sustainable development of land, and will also ensure that the area is developed in a manner that will take into consideration its unique natural characteristics, respect it and reconcile all competing claims.

**Key Actors:** *Ministry of Environment, NEMA, District Environment Committee, Malindi County Council and District Physical Planner.*



**(b) Formulate and implement a policy (vision) and regulatory framework for the salt manufacturing sector.**

Currently, there is no clearly defined framework for investment in the salt manufacturing sector. Whereas investors have a legitimate interest in protection against arbitrary government action, the Government should not contract away essential elements of its sovereignty in a rush to attract investments because this is what has led to the current problems in the salt manufacturing sector.

As the Government continues to encourage investment(s) in the salt manufacturing sector, there is need to provide a clear policy and regulatory framework with appropriate principles to guide the sector.

**Key Actors:** *Ministry of Local Government, Ministry of Environment, Ministry of Trade and Industry and KESAMA.*

**(c) Mainstream environmental management system (including safety, health and environment systems) in salt manufacturing business operations.**

Preventing environmental degradation and pollution is more sensible than trying to address the consequences; thus the saying “prevention is better than cure”. EMS seeks to integrate environmental responsibilities into everyday management practices through changes to organisational structures, responsibilities, procedures, processes and resources. An EMS provides a structured method for company management and the regulating agencies to monitor and control environmental performance of the company’s operations.



EMS is also a tool that will ensure that environmental aspects are identified, their effects understood and measures taken to mitigate activities that have adverse effects on the environment. Responsibility for setting up and running an EMS lies with the company. With the mainstreaming of EMS, salt companies can now seek certification, such as ISO 14001, as an indication that their activities, products or services meet the requirements of a particular recognised standard.

**Key Actors:** *Ministry of Environment, NEMA, Kenya Bureau of standards and CEOs of the respective salt companies.*

**(d) Develop and implement appropriate Rehabilitation and Decommissioning Action Plans, especially for systematic rehabilitation of degraded areas.**

To ensure that appropriate measures are systematically taken to rehabilitate environmentally degraded areas, it is imperative that the salt companies put in place Rehabilitation and Decommissioning Action Plans (RDAP). RDAPs will define a vision for the rehabilitation and end result of the process should the company decide to close the operations, and set out objectives to implement the vision.

This will form an overall framework to guide all actions and decisions to be taken regarding rehabilitation and closure of a particular salt processing area. For example, an RDAP, which forms an integral part of the project cycle, will be designed to ensure inter alia that:



- Environmental resources are not subject to physical and chemical deterioration;
- The after-use of the site is beneficial and sustainable in the long term; and
- Any adverse socio-economic impacts are minimised.

**Key Actors:** *Salt companies, Ministry of Environment, NEMA and Malindi County Council.*

**(e) Establish a salt manufacturing sector Restoration Fund.**

To support the rehabilitation of degraded areas and other environmental issues, it is imperative that in the long term the companies should create a foundation or fund with an independent Board of Trustees, to be financed by them and other well wishers. The principal objective of such a fund would be to improve the environmental conditions of the area and its environs. Such a fund would have local communities involved in the decision making as well as in the implementation of the various activities as may be identified.

This could be anchored on section 25 of the EMCA, which establishes the National Environment Restoration Fund (The Restoration Fund) and which further states under s25(2) and (5) as follows: *“The Restoration Fund shall consist of (a) such proportion of fees or deposit bonds as may be determined by the Authority from time to time; (b) such sums as may be donated or levied from industries and other projects proponents as a contribution towards the Restoration Fund.*



*(5) The Minister may, by notice in the Gazette, issue orders for the levying of funds from project proponents towards the Restoration Fund.”*

**Key Actors:** KESAMA, Ministry of Environment, and NEMA.

**(f) Facilitate adoption of best practice, appropriate technologies and modern management techniques.**

The Government should operationalise the enabling provisions (s.57) under the EMCA designed to provide a framework to encourage manufacturers such as the salt manufacturing companies to adopt appropriate environmental friendly technologies.

**Key Actors:** Ministry of Environment, NEMA, KNCHR, KESAMA.

***Parliament should be encouraged to consider prompt adoption of the Public Complaints Committee reports, which is also part of the Annual State of Environment report:*** Under the EMCA, a Public Complaints Committee (PCC) established with powers “to investigate any allegations or complaints against any person or against NEMA, in relation to the condition of the environment...” or “on its own motion, any suspected case of environmental degradation,” may compile a report, which will form part of the annual report on the state of the environment. The minister responsible for environment is obligated to lay this report before the National Assembly every year.



PCC has in the past investigated matters relating to salt manufacturing and prepared a report, which has since been submitted to Parliament. It is two years since the report was presented to Parliament, however, it has not been discussed or adopted. Had Parliament discussed it, some of the issues in this chapter would have been addressed from its directions.

**Key Actors:** *MENR, NEMA, Parliamentary Committee on Agriculture, Lands and Natural Resources.*

**(g) Empower the National Environment Tribunal to have original jurisdiction over all environmental disputes.**

The EMCA establishes the National Environment Tribunal. The composition of the tribunal is highly technical as it includes environmental experts. Unfortunately, its jurisdiction is limited only to hearing appeals from decisions arising from NEMA. For example, if the tribunal had original jurisdiction, it would have handled this matter without delay because it has the requisite expertise. It is, therefore, recommended that the EMCA be amended to empower the tribunal to have original jurisdiction over all environmental matters.

**Key Actors:** *MENR, Attorney General's office and NET*



RESPONSE	AIM OF RESPONSE	RESPONSIBILITY
<p><b>SHORT TERM</b></p>		
<p>1. Secure and safeguard sweet water springs, wells and wetlands.</p>	<ul style="list-style-type: none"> <li>• Ensure that the poorest of the poor in the local community continue to get access and use water from these natural water points at no cost.</li> <li>• Enhance the protection of wetlands for ecological goods and services.</li> <li>• Reduce the extent of salinisation of soils.</li> </ul>	<ul style="list-style-type: none"> <li>• MoWI, MCC and KESAMA, MENR,</li> <li>• NEMA,</li> </ul>
<p>2. Provide water to local communities and workers.</p>	<ul style="list-style-type: none"> <li>• Ensure access to clean and safe drinking water to all.</li> </ul>	<ul style="list-style-type: none"> <li>• Salt companies (KESAMA), MCC and MoWI.</li> </ul>
<p>3. Establish an appropriate waste water treatment system and institute measures to</p>	<ul style="list-style-type: none"> <li>• Halt and reverse the trend of salinisation of soils caused by inappropriate disposal of hypersaline waste water.</li> </ul>	<ul style="list-style-type: none"> <li>• MENR, NEMA and MCC</li> </ul>





RESPONSE	AIM OF RESPONSE	RESPONSIBILITY
<p><b>SHORT TERM</b></p>		
<p>ensure there is proper management and disposal of hypersaline water.</p>		
<p>4. Establish a setback line from the mangrove forests.</p>	<ul style="list-style-type: none"> <li>• Halt the conversion of mangrove areas into salt ponds/pans.</li> <li>• Prevent loss of mangroves arising from hypersalinity.</li> </ul>	<ul style="list-style-type: none"> <li>• MENR, NEMA, Forest Department and Ministry of Lands</li> </ul>
<p>5. Remove constructed dykes that cause change of brackish water course.</p>	<ul style="list-style-type: none"> <li>• Unblock obstruction of channels such as Mto Kilifi, Mto Fundisa and others, to allow free flow of water.</li> <li>• Rehabilitation and restoration of the channels.</li> </ul>	<ul style="list-style-type: none"> <li>• Salt Companies and MENR, NEMA</li> </ul>
<p>6. Identify high biodiversity hotspots and set them aside for protection and conservation.</p>	<ul style="list-style-type: none"> <li>• Promote biodiversity conservation</li> <li>• Retain a natural capital for community access and use.</li> </ul>	<ul style="list-style-type: none"> <li>• NMK, KEFRI and KWS</li> </ul>



RESPONSE	AIM OF RESPONSE	RESPONSIBILITY
<p><b>SHORT TERM</b></p>		
<p>7. Establish and implement appropriate environmental quality standards for the salt manufacturing sector.</p>	<ul style="list-style-type: none"> <li>• Establish a benchmark or threshold on the emissions and wastes, which must be attained before disposal into the environment.</li> <li>• Clear, consistent, and realistic environmental protection reflected in environmental quality standards.</li> </ul>	<ul style="list-style-type: none"> <li>• MENR, NEMA, KEBS, KNCHR and KESAMA</li> </ul>
<p>8. Establish appropriate framework for corporate environmental reporting for salt manufacturing sector.</p>	<ul style="list-style-type: none"> <li>• Development of baseline environmental information, sector specific technical norms and guidelines.</li> <li>• Provide a standard framework for the salt manufacturing sector in reporting their environmental performance.</li> <li>• Ensure consistency and identify critical environmental aspects that have to form the basis of any environmental reporting for the sector.</li> </ul>	<ul style="list-style-type: none"> <li>• MENR, NEMA, KNCHR, UNEP, UNDP, WWF</li> </ul>



RESPONSE	AIM OF RESPONSE	RESPONSIBILITY
<b>SHORT TERM</b>		
9. Strengthen capacity of Malindi District Environment Committee and CBOs.	<ul style="list-style-type: none"> <li>• This will enhance CBOs ability to represent the views of local community and workers effectively at all levels.</li> <li>• Empower Malindi District Environment Committee with appropriate knowledge and skills that will enable it to effectively monitor environmental performance in the salt manufacturing sector.</li> <li>• Sensitise local community and workers on the effects of salt manufacturing on their livelihoods and health.</li> </ul>	<ul style="list-style-type: none"> <li>• MENR, NEMA, KNCHR, WWF and other CSOs</li> </ul>



RESPONSE	AIM OF RESPONSE	RESPONSIBILITY
<p><b>LONG TERM</b></p> <p>1. Develop integrated land use plan that encompasses an environmental action plan for the area.</p>	<ul style="list-style-type: none"> <li>• It is a highly participatory consultative process that guarantees inclusiveness, including of the local community.</li> <li>• Promote sustainable land use practices that recognise competing interests and attempts to negotiate the most appropriate course of action bearing in mind environmental and social limits of the area.</li> <li>• Stop current land use conflicts and evictions.</li> <li>• Have an in-built fair and neutral dispute resolution system.</li> </ul>	<ul style="list-style-type: none"> <li>• MENR, NEMA, District Physical Planner, MCC, KESAMA</li> </ul>
<p>2. Formulate and implement appropriate policy (vision) and regulatory framework for the salt manufacturing sector.</p>	<ul style="list-style-type: none"> <li>• Provide a vision for short and long term investment and performance of the sector</li> </ul>	<ul style="list-style-type: none"> <li>• KESAMA, MoTI, KNCHR, MCC</li> </ul>



RESPONSE	AIM OF RESPONSE	RESPONSIBILITY
<p><b>LONG TERM</b></p>		
<p>3. Mainstream Environment Management System (including Safety, Health and Environment systems) in salt manufacturing business operation.</p>	<ul style="list-style-type: none"> <li>• Prevention of environmental degradation and pollution.</li> <li>• Provide a clear, consistent and realistic framework for monitoring their activities on the environment.</li> <li>• Ensure commitment of the salt companies' top management in environment, health and safety matters.</li> <li>• A commitment to environment will enhance the company's profile and reputation.</li> </ul>	<ul style="list-style-type: none"> <li>• KESAMA, MENR, NEMA, Ministry of Labour, MoH</li> </ul>
<p>4. Develop and implement Rehabilitation and Decomm-issioning Action Plans especially for systematic rehabilitation of degraded areas.</p>	<ul style="list-style-type: none"> <li>• Provide a framework through research, clear long term, and post closure.</li> <li>• Lowers remediation and rehabilitation costs since preparation and addressing these concerns from the outset, allows the company to set aside the necessary funding for terminal liabilities when cash flow is strongest.</li> <li>• Environmental restoration</li> </ul>	<ul style="list-style-type: none"> <li>• KESAMA, MENR, NEMA and MCC</li> </ul>



RESPONSE	AIM OF RESPONSE	RESPONSIBILITY
<p><b>LONG TERM</b></p>		
<p>5. Establish a salt manufacturing sector Restoration Fund.</p>	<ul style="list-style-type: none"> <li>• As insurance for rehabilitation of environmentally degraded areas.</li> <li>• Provide resources to support community environmental initiatives such as planting of mangroves and other plant species in degraded areas.</li> </ul>	<ul style="list-style-type: none"> <li>• KESAMA, MENR, and NEMA</li> </ul>
<p>6. Facilitate adoption of best practice, appropriate technologies and modern management techniques.</p>	<ul style="list-style-type: none"> <li>• Promote the adoption of best practice, appropriate technologies and techniques in salt manufacturing process.</li> <li>• Technology has a key role in ensuring that current and future environmental costs of salt manufacturing are internalised.</li> <li>• Facilitate access to fiscal incentives.</li> <li>• Cost saving due to cleaner production methods.</li> <li>• Encourages innovation and technology development, which can introduce new processes and product efficiencies.</li> </ul>	<ul style="list-style-type: none"> <li>• KESAMA, MENR, NEMA, MoTI, MoF and KNCHR</li> </ul>



RESPONSE	AIM OF RESPONSE	RESPONSIBILITY
<p><b>LONG TERM</b></p>		
	<ul style="list-style-type: none"> <li>• Best practice can help establish credibility with regulators and aid the move to partnerships to develop realistic, science-based regulations.</li> <li>• Fiscal incentives to encourage adoption of environmentally friendly technologies.</li> </ul>	
<p>7. Parliament should be encouraged to consider prompt adoption of the Public Complaints Committee/ Annual State of Environment</p>	<ul style="list-style-type: none"> <li>• Parliament should take responsibility to check actions taken to arrest environmental degradation, reparation and restitution.</li> <li>• Raise awareness among members of parliament on environmental problems and challenges and give Parliament an opportunity to ensure that environment receives appropriate attention in budget allocation.</li> </ul>	<ul style="list-style-type: none"> <li>• MENR, NEMA and Parliamentary Committee on Agriculture, Lands and Natural Resources</li> </ul>



RESPONSE	AIM OF RESPONSE	RESPONSIBILITY
<p><b>LONG TERM</b></p> <p>8. Empower the National Environment Tribunal to have original jurisdiction over all environmental disputes:</p>	<ul style="list-style-type: none"> <li>• Give an opportunity to a quasi-judicial body with requisite technical expertise to hear disputes in a non-adversarial manner and seek solutions that are mutually acceptable to both parties, and more importantly, in the best interest of the environment (win-win scenario).</li> </ul>	<ul style="list-style-type: none"> <li>• MENR, AGs and NET</li> </ul>







## CHAPTER SIX: COMMUNITY ACTION AND CORPORATE CITIZENSHIP: HARNESSING COMMUNITY ACTIONS AND BUSINESS INTERESTS FOR THE COMMON NATIONAL GOOD

### *6.1 Introduction*

The aim of this chapter is to show how the community and the corporate sector can pool their energies and work towards a common national good. The Inquiry noted that the community of Magarini has employed certain strategies in its endeavours to settle its grievances. The only way to resolve human rights violations is to deploy multiple strategies. The Inquiry commends the concept of corporate citizenship as a means through which companies and other businesses can contribute to community and national wellbeing. This chapter includes illustrations of good practices happening in Kenya, from which the salt companies can seek example.



## 6.2 *Many Roads to Justice: An Assessment of Community Organisation in Magarini*

### 6.2.1 *Context of community participation*

**H**uman rights are shaped and informed by the people's own struggles to claim them. As such, human rights are also informed by the way the people understand what their rights are and how they have a duty to claim and realise them. While human rights may be designated as civil and political or economic and social, they in fact are understood by the ordinary people to encompass the regular struggles for dignity and food in normal life. The aim of effective community action is to address human rights violations where such rights are abused, and protect the community from further violations, whether stemming from public institutions or private businesses.

As other chapters have shown in this report, the community of Magarini has suffered from a history of land alienation, excesses of provincial administrators and poor labour conditions, for those working in salt manufacturing companies.

The right of individuals to participate in public affairs is expressly guaranteed in international human rights covenants, to which Kenya is a signatory. Article 25 of the International Covenant on Civil and Political Rights establishes the right of individuals to directly or indirectly take part in the conduct of public affairs. Elements that are relevant to the concerns of the Magarini community are the right to take part in the conduct of public affairs; and the right to have access to basic public services.



Other related rights in this context include the right to freedom of association (ICCPR Article. 22), which allows the people to organise themselves and associate with others, and freedom of expression (including the right to seek, receive and impart information under Article 19 of the ICCPR. These rights are also secured in the African Charter on Human and Peoples Rights. Kenya's Constitution, under the Bill of Rights, also emphasises the same rights in sections 79 and 80 on the freedom of expression and that of assembly and association, respectively.

Article one of the International Covenant on Economic, Social and Cultural Rights emphasises the right to self-determination, under which people can determine their political status as well as pursue their economic, social and cultural development. According to the Covenant, people should not be deprived of a means of subsistence. A community may secure the protection of their means of subsistence through the use of government structures and organs, as well as the judicial process. The need for a community to create alternative sites for settling disputes only arises when conventional methods are ineffectual or inefficient.

Many non-governmental organisations (NGOs), community based organisations (CBOs), and individuals are involved in the community's struggle against injustices in Magarini. The groups have been leading protests against alleged environmental degradation, land alienation, threats to health arising from work in the salt manufacturing firms, intimidation by the Provincial Administration and state collusion with the companies to oppress people from the community. The struggles are articulated by NGOs as human rights concerns, although the people still conceive them as day-to-day concerns and routine moral claims.



**Generally, the groups have evolved different strategies to pursue justice wherever it is felt that there is need to follow up on a violation. These strategies include the following:**

- Organising people under different interest groups, for example, farmers' associations, for more effective articulation and advocacy of specific concerns;
- Taking up individual action, either against government agencies/ministries, salt companies or the municipality. In some cases, people in the community worked together with government agencies to articulate community concerns. For example, in situations of conflict between farmers and pastoralists, community groups together with the local administration, formed Peace and Conflict Resolution Committees to attempt and resolve the differences. They also worked together to distribute land in settlement schemes.
- Some workers organised themselves and gave evidence to the National Commission and the Inquiry as a joint group and not individuals. It was evident that some workers had unsuccessfully attempted to join labour unions, while others had sought to organise themselves into a community based workers' union to promote their labour rights.

A number of organisations have been involved in the Magarini case and the following particularly stand out:



### *6.2.1.1 The Coast Rights Forum*

The Coast Rights Forum (CRF) is a community umbrella organisation bringing together some organised CBOs. Its members include NGOs like the Kubuka Farmers Association and Kakimu Farmers Union. The Forum has also worked with community organisations in Magarini on issues of rights and development for over two years. It has also helped to create awareness on land policy, mobilisation of the community around these struggles, and identification of appropriate operation strategies. The CRF has also helped by bringing to the attention of KNCHR, the plight of farmers and workers. Its evidence clearly demonstrates the need for the people of Magarini to continue to organise themselves and campaign to influence decisions affecting them.

### *6.2.1.2 Farmers Organisations*

Farmers organisations in Magarini are set up around issues like land ownership, access and compensation. These groups expand their mandate as need arises to cover other matters such as the environment and development. They are mostly registered under the Ministry of Culture and Social Services and include Kubuka Farmers Association, Kakimu Farmers Association, Marereni Township Residents Committee and Ngomeni Land Committee. Their activities include:

- Highlighting the problems faced by the people of Magarini by bringing them to the attention of Government through bodies like the Ndung'u Commission on Land Allocation and the KNCHR. As such, they often present memoranda to public hearings on issues affecting area residents;



- Dealing with allocation of land and issuance of title deeds, especially where land has been allocated to the community by the Government;
- Pursuing reconciliation and settlement of conflicts between farmers and pastoralists, especially as regards compensation for destroyed crops;
- Following-up on ownership of land matters through filing cases on behalf of farmers and organising them. They also collect funds to facilitate their legal services and pursues land matters with government departments like the Ministry of Lands;
- Trying to address the undesirable environmental impacts of some of the activities of the salt manufacturing companies in their areas with the relevant government agencies. The organisations have often pursued such matters with NEMA.
- Dealing with questions of compensation for property and land taken away by the salt companies, and the harassment, arrest and intimidation of their members. This is done through various government departments;
- Ensuring that residents benefit from land allocation(s) and implementation of town development plans. Settlement schemes such as Marereni/Msumarini Squatter Settlement Scheme also get input from a committee appointed by the people to help the Ministry of Lands in the distribution of lands under the scheme. The committee confirms/identifies people to get land, the acreage, and pursues the issuance of title documents and besides helping to solve cases where boundary disputes arise.



This kind of involvement has also been witnessed at the Marereni Township committee and the Marereni Land Adjudication committee.

### *6.2.1.3 Environmental Associations*

**D**estruction of the environment is one of the key areas of concern for the Magarini community. A clean environment will help promote their common good. For example, it will aid the fishing industry, and also help in the reclamation of land destroyed due to activities of the salt companies. Evidence from both the community and the companies themselves show the importance of addressing environmental issues and for this reason, all the parties concerned have been trying to do their best. The people of Magarini have organised themselves to facilitate the provision of clean water and environment.

#### **Evidence was adduced to the effect that:**

- The Magarini Environmental and Water Resources Protection Committee, together with the community, had carried out rehabilitation activities like removal of dykes, which affect the ocean;
- Mjanaheri Water Project is a community initiative for taking clean water to the Gongoni area;
- Ngomeni Beach Management Unit deals with both environmental and economic concerns of fishing in Ngomeni. This group has fronted the fight for the rights and better livelihoods for fishermen; and





- Friday's Arm is an environmental organisation working in the community to rehabilitate the environment and is also campaigning for an access road to Robinson Island. Its main areas of interest are the planting of mangroves and saving turtles.

#### *6.2.1.4 Workers' Organisations*

Some workers employed in the salt firms have tried to join labour unions. This has, however, been unsuccessful because no such union in this sector has made efforts to organise them. The salt companies testified that they had no objections to their workers joining the trade unions for their own good. A local CBO, the Kenya Salt Belt Rights Group (KESABE-RG), has been formed to agitate for better working conditions, clean environment and community development.

#### *6.2.1.5 Litigation*

Community groups in Magarini have employed several strategies to ensure that their rights are not undermined. They have made various presentations and memoranda to the Government to address the issues of land allocation and ownership. Some of them have even filed cases against the salt companies and agencies/departments of Government concerning land. Most of these cases are still pending.



**The cases and memoranda include:**

- Residents of Ngomeni sub-location who have been pursuing title deeds for land demarcated and allocated to them. This has been going on since the mid 1990s;
- Civil suit No. 264(O.S) of 2001, which was filed by about 90 residents suing Kemu Salt Packers and another;
- Civil Suit No 73 of 2004, in which 13 residents have sued Kurawa Industries Ltd seeking protection of their property and not to be evicted from their land.

*6.2.2 Achievements of the community's struggles.*

The Inquiry noted that the community's struggles had led to a number of achievements:

- The community has been able to highlight its plight to the Government and other stakeholders on important issues such as land. It is, therefore, clear that lack of solutions is not out of community inaction, but rather refusal and/or negligence to resolve problems by the concerned parties;
- The court cases filed indicate that the community is willing to use all legitimate processes available to try and address its problems; and
- The environmental issues raised have been slowly taken up by some salt companies who may have realised the need for better management of the environment.



A lot still needs to be done to alleviate the community's problems. Some of the challenges facing the community require dialogue between it and the salt companies, but this has not happened for various reasons, such as suspicions, lack of clear leadership and lack of proper stewardship.

### *7.2.3 Recommendations to the concerned parties*

The recommendations cited below have both short-term and long-term implications.

- The Magarini community needs to be encouraged and facilitated to establish genuinely democratic associations to articulate and represent their concerns. In this regard, the best legitimacy an association can get is drawn using the bottom-up approach. Care must be taken not to force such community organisations on the people. The facilitation envisaged under this recommendation could include explaining to the community the technicalities of how to establish and run CBOs;
- The Magarini community requires greater human rights education. They also need information on a wide range of human rights issues, including how to seek redress for violations. The KNCHR can partner with NGOs and CBOs to help achieve this. The Inquiry notes that the National Commission must, at least, maintain a medium term presence in Magarini to ensure that recommendations such as this one are effected holistically in line with the overall context of the Inquiry;



- The salt manufacturing companies should participate in community development activities such as environmental protection from a genuine concern for sustainable development. This participation should not be viewed as a token to the community. Because the people's means of subsistence here includes salt manufacturing, the practise should not be undermined in any way; and
- The people of Magarini have suffered great trauma due to the violations of their rights by a number of actors, as shown to the Inquiry. A process of encouraging reconciliation between the different actors in the community is necessary. People need to realise they can live with each other despite differences in race, status and political opinion. NGOs and CBOs should participate in this process. The KNCHR can provide technical support to facilitate the process.

### ***6.3 Adaptive and mitigative strategic options: A look at corporate citizenship***

#### ***6.3.1 Introduction***

The Inquiry was keen to look at the extent to which the salt manufacturers are fulfilling their obligations as corporate citizens in Magarini. While it is not a legal requirement, this is usually a good indicator against which respect for human rights by non-state actors may be assessed. Non-state actors are also duty bearers, and consequently, can be held accountable by those affected by their actions, as is the case with the Magarini community, which initiated this Inquiry.



As duty bearers, companies are obligated to protect, facilitate and even promote the realisation of certain basic rights of other citizens, especially that of their own workers and the host community.

There is an undeniable relationship between business and development. Investors are key drivers of a country's economy. They play a key role in creating employment, thus contributing to individual household incomes, government revenue, and poverty reduction. For developing countries like Kenya whose policies are mostly focussed on poverty reduction, the role of government in facilitating and creating an environment conducive to both domestic and foreign investors cannot be gainsaid. On its part, the community provides labour and plays host to the investor and is also key to maintaining harmonious relations between both parties.

Each of these actors, therefore, is both a duty bearer and a claim holder in certain respects. This complementary relationship between government, business and citizens, underline the mutual reliance of the three actors.

**This chapter discusses this relationship.**

For a long time, Government and business have held the third actor-community, as a proxy who does not have a direct role in the decisions they make. But the tripartite relationship has only gotten stronger because business has been growing in power and influence, leading to demands for greater accountability.



This has also encouraged formation of national watchdog groups such as human rights and anti-corruption bodies, and international bodies, such as the United Nations Organisation for Economic Cooperation and Development - OECD,<sup>15</sup> and consumer interest groups.

The influence that businesses wield as a result of the revenue they generate and the influence they have on the livelihoods of their employees and their families is enormous and they can use it to do both good and harm. This realisation has led to a proliferation of various laws, standards and guidelines, aimed at directing business to work for the greater good of all parties, hence the concept, good corporate citizenship.

### 6.3.2 *Community Grievances*

Certain grievances presented to the Inquiry, directly related to the level of corporate social responsibility of the salt manufacturers. They included the following:

- Poor community relations characterised by mutual suspicion between the salt companies and community members;
- Poor employee relations – poor pay, use of abusive language, lack of involvement in management, overwork and absence of employee development programs;
- Environmental degradation by salt works and salination of drinking water;
- Forceful evictions from ancestral land by salt manufacturers and inadequate compensation for evicted families;



- Poor hygiene and work conditions, which can likely affect the final products – e.g. no provision of toilets at the salt harvesting fields;
- Weak legal compliance by companies in as far as environmental and labour laws are concerned; and
- Unsatisfactory investment by companies in community development initiatives such as water, healthcare and education.

### 6.3.3 *Why Corporate citizenship?*

**B**oth local and multinational companies, like individual citizens, enjoy as a right, the various public services extended by the Government. The law states that companies are legal entities that can sue and be sued. Like individual citizens, therefore, companies have claims to entitlements that emanate from citizenship. Again, like individual citizens, they are expected to comply with the laws of the country of operation.

As such, they also bear other responsibilities, which go well beyond meeting legal obligations which may include requirements that they engage in ethical business practices, be respectful of local communities and extend positive practices around their spheres of influence.

Good corporate citizenship has been embraced by the human rights movement because it has great potential in transforming power relations between host communities and corporate actors.



Where it has been effective, it has had significant contribution to poverty reduction, enhanced corporate accountability and, therefore, upheld greater human dignity. The key dimensions of good corporate citizenship bring together issues of:

- Sustainable environment practices;
- Community relations—responding to real needs of the community by ensuring its involvement;
- Employee relations;
- Customer relations – quality of products and value addition (e.g. the case of iodization of salt);
- Supply chain management (management of the logistics of a business’s procurement of services and goods, asking questions of quality, standards and practices of suppliers – are their practices in line with human rights and good citizenship?); and
- Supplier and other service providers management

These principles ensure that any business that embraces the practices of good corporate citizenship does so in a wholesome manner.

It is this all encompassing nature of good corporate citizenship that makes it invaluable to any business intent on establishing harmonious relations with various citizenries. As Jack Welch, former Chairman and Chief Executive Officer of leading American company, General Electric said, “...these times...will not allow companies to remain aloof and prosperous while the surrounding communities decline and decay.”<sup>16</sup> Because businesses live off resources extracted from communities, they are bound to come into close, sometimes conflicting, relations with communities.





Managing these relations for purposes of running successful and reputable business is the key challenge for today's businesses.

#### *6.3.4 A matter of standards and best practices*

While the notion of corporate citizenship is relatively new, requirements for ethical conduct of business, responsible business practices and socially responsive production, has existed for many years. For example, to enable businesses move beyond the profit-making motive, various standards, best practices and laws have developed in the recent past. These include the OECD Guidelines for Multinational Enterprises,<sup>17</sup> the International Labour Organisation (ILO) Tripartite Declaration of Principles on Multinational Enterprises and Social Policy<sup>18</sup> and Amnesty International's Human Rights Guidelines for Companies and the UN Global Compact.

Respect for Kenya's human rights related laws and anti corruption legislation, among others, are also important criteria in assessing good corporate citizenship for firms in the country.

Overall, these guidelines and standards are aimed at encouraging voluntary compliance in matters broadly relating to treatment of workers, community and conduct of businesses by companies wishing to avoid bad publicity and pressure by incorporating such principles and standards into their policies and programmes.

Of particular relevance in human rights analysis is the Global Compact, which dwells on voluntary standards for corporations in the areas of labour, environment and human rights.



For example, it indicates the practices that could easily render companies complicit to human rights abuses. It provides three instances in which such complicity can occur:

- direct complicity – knowingly assisting a state in violating human rights,
- beneficial complicity – benefiting directly from human rights abuses committed by someone else; and
- silent complicity – the failure by a company to raise the question of human rights violations in its interactions with the appropriate authorities.

It further gives examples of accusations associated with complicity between companies and law enforcement officers who violate people's human rights while working to protect company interests, for example, by forcibly removing local communities from land to accommodate company operations. Others have included outright negligence to adhere to basic labour standards such as provision of full information of effects of chemical use, failure to ensure safety and health standards at the work place and use of child labour.

### *6.3.5 Findings of the Inquiry*

#### *6.3.5.1 Infrastructure*

A number of issues raised at the Inquiry could not be immediately authenticated or refuted. Some of the allegations the Inquiry heard about the salt manufacturers were borne out of inadequate information, especially those relating to health effects of salt harvesting.



Others were largely a reflection of the suspicion with which the community holds the manufacturers. However, the manufacturers were defensive and quick to dismiss the issues raised by the complainants.

Like any other new business in an area, salt works have opened up Magarini Division in terms of infrastructure development, new settlements, and shopping centres for the increasing workforce in the area. Equally important is the creation of employment. The manufacturers employ a total workforce of over 1,000 workers, both casual and permanent. Clearly, the salt works are important to the Magarini Community.

While this is an appreciable investment, the Government does not appear to have given the investors the facilitative environment that would make the investment reasonably sustainable. The submission by Kenya Salt Manufacturers Association (KESAMA) indicated that telecommunication services and supply of power are 'still very poor'. A report by the Malindi Saltworks Refinery, for example, indicated that *"the total downtime due to power cuts from January this year (2005) amounts to 661 hours 28 minutes", which is equivalent to one working month.*

This situation may probably explain the grudging disposition taken by some of the investors as far as practicing good corporate citizenship is concerned.

In his submission to the Inquiry, the chairman of KESAMA on behalf of his membership noted that they are:



*“..burdened with constant, unfair and often malicious accusations, which demand a lot of our working time to deal with, and which make us feel that the risk our members took in creating these investments is not appreciated.”*

Although all the salt manufacturers had been in business for at least ten years,<sup>19</sup> and while they have worked within deficient infrastructures, they have failed to counter some of the pressing accusations against them, thereby aggravating the constrained relationship between their companies and the community. The challenge for good business, however, is to continuously and genuinely deal with such difficulties. In doing so, the companies need to involve the government and other stakeholders in finding lasting solutions to the problems.

#### *6.3.5.2 Involvement of the salt firms in community development*

The Inquiry sought to understand the extent to which the salt manufacturers had made meaningful investment within the host communities. Unfortunately, none of the six companies has incorporated community work in its plans. Any work done was voluntary and was done without participation of the community.

What was presented as corporate social responsibility activities were largely token philanthropic acts that the companies could withhold if they chose to since they were not obligated to accomplish them. A witness at the Inquiry described these efforts as activities aimed at hoodwinking the community that the companies are assisting them. He cynically, described the efforts as ‘*...kuweka watu miwani ya mbao*’ (giving people wooden spectacles).



Krystalline Salt Limited cited the occasional financial support it made to fuel the District Officer's and police patrol vehicles,<sup>20</sup> contribution for purchase of sand for construction of a school, support for building a dispensary and a bore hole, and housing the local police station. Malindi Salt Limited also cited fuel support for government officials, contribution of materials towards the construction of classrooms in one of the local schools, support for building a health centre and water tanks. KEMU Salt Packers Production Limited reported having been involved in the supply of community water and relief food. Whichever way one looks at it, some of these activities seemed to have been more of patronisation of the local administration than corporate responsibility.

Mombasa Salt Works had the most elaborate list of such support, including assistance to flood victims in 2003, support to Madanoni School to build and renovate classes, donation of land for a market and cemetery, and plan to adopt a nursery and primary school and construct a water tank in Gongoni village.

The sporadic nature of the companies' community activities were summed up by one witness as activities done whenever '*tajiri anapenda*' (at the discretion of the master).

He may have captured the general feeling of the community by using the Swahili proverb '*...haki ya maskini ni tajiri kupenda*' (the rights of a poor person are at the discretion of the rich). This conclusion is reflected in the various complaints received at the Inquiry.



The women, for example, complained of water problems (“...*sisi wanawake wa Marereni, kilio chetu ni maji*” – “the cry of women here in Marereni is ‘water’”) because the KEMU Salt company had sealed off the local water point in contradiction of the Water Act.

It was, however, clear that the community still wanted the salt manufacturing companies around, but without the flagrant abuse of their rights and other community privileges. As one witness observed; “...*tuishi na yeye [sic] (the companies) lakini tuishi tukiwa hatuna shida*”, ‘All we are asking for is that we live together, but without conflicts.’

#### 6.4 *The Magadi Soda Company: A case study in corporate citizenship*<sup>21</sup>

*“Companies don’t become model citizens overnight...”*<sup>22</sup>

While it is not expected that companies should immediately and at once implement the best practices suggested by the various standards on good corporate governance, from the Inquiry, it was evident that urgent steps needed to be taken in the interest of business, to prevent any further hostilities between the companies and the community.

Similar companies working elsewhere in the country have managed to establish relatively harmonious relations with surrounding communities by incorporating corporate governance in their business plans.

Magadi Soda, which is a member of KESAMA, has provided some good practices that the salt manufacturers in Malindi could progressively take up.



#### *6.4.1 The Accomplishments of Magadi Soda Company*

**M**agadi Soda is a private company established in Kenya in 1924. The soda ash company realised their unique corporate obligations right from the onset and embarked on what is now a bench mark case in corporate citizenship. Its articles of association of 1924 provide for one of the directors to be appointed by the government. Further, the lease terms negotiated with the then pre-independence government stated that Magadi Company will provide housing and medical facilities to all their workers.

The Company is guided by a unique vision statement that recognises its role within the host community. The vision is to be the world's most respected leader in unique value creation for customers, shareholders, the community and other stakeholders. As such, it has a community relations policy, which requires frequent open communication and consultation with the community. The principles of its corporate social responsibility programmes make it an integral part of the business planning process. The projects must be sustainable and should engage the community in aspects of capacity building and empowerment. Key focus areas are education, water, health, infrastructure, micro business development and employment. For this, Magadi Company has received various recognitions from the Kenya Institute of Management and the International Finance Corporation.

The Company has a board member who pays particular attention to community relations. The Managing Director plays a complimentary role in the social responsibility programmes (CSR) and reports to the Board regularly.



The CSR activities are implemented by a Community Development Officer employed on a full-term basis. The company holds regular monthly consultations with the community. It is in such fora that community needs are identified, agreed upon and prioritised.

**In the Inquiry's view, salt manufacturing firms in Malindi should learn from some practices of the Magadi company, including:**

- Respect for, and equal treatment of employees (for example, seasonal workers in Magadi have lengthier contracts than is the case in Magarini);
- Seamless relationship with the community, for example, there is no fence around the whole of Magadi Company property, except the factory area for safety reasons. Donkeys, goats and cows belonging to the locals roam the property freely;
- Supporting the development of community projects, for example, the company has built four schools in Magadi and is maintaining them. It also provides solar power and learning materials in others.
- Contributing to the Kajiado District University and Tertiary Education Bursary Scheme;
- Provides solar powered community information centres and computers to schools and police;
- 55 bed capacity Magadi hospital open to community members. The number of both outpatient and inpatient cases for the local community exceed the number of employees.





The community members are charged a highly subsidised rate, but no one is denied treatment if they cannot afford;

- A HIV/AIDS policy that covers the community;
- Provision of water to schools and for domestic and livestock use. The goods train operated by the Company also carries water along the 100km railway to provide water to communities along the rail line;
- 40 percent of the business premises allocated to local community;
- 100 percent of the casuals are drawn from the local people (with 75 percent working in ash operations).
- Casuals, mostly community members, are provided with benefits like free housing, medicine, water and electricity;
- Passenger service train coach, which also acts as an ambulance service to carry sick people at any point;
- Maintenance of 86km Magadi- Kiserian road;
- Promotion of security in the area by supporting the local police through provision of vehicles, housing and other utilities;
- Safety, health and environment (SHE) policy in place and enforced. Company (SHE) standards are higher than is provided for in the statutes. There is evidence of compliance since 1997, even though the law was only passed in 2000. The Company was assessed on a worldwide five-star safety audit conducted by the British Safety Council;
- Currently, the Company is completing a global reporting initiative on sustainability reporting and stakeholder engagement with external auditors.



#### 6.4.2 *Recommendations for the Salt companies*

- KESAMA should be strengthened to undertake sectoral standard-setting and compliance, in liaison with NEMA and the KEBS. This is aimed at ensuring that it takes the leading role in the regulation of its membership to ensure adherence to issues agreed to. The KNCHR may assist in this role;
- The Ministries of Labour and Lands should ensure that at the minimum, the companies comply with existing legal requirements, including lease obligations, unionisation of workers, provision of protective clothing and working hours; and
- The salt companies should draw management plans detailing progressive movement towards full compliance with labour and environmental laws and standards. CSOs, KNCHR, KESAMA, relevant trade union and the local council should be involved in this process. The community groups can be strengthened to play a monitoring role in the implementation of the agreed plans.





## CHAPTER SEVEN: CONCLUSION

The picture of Magarini that emerges from the findings of the Inquiry is that of a divided society. On one hand are the salt manufacturers—six corporate organisations enjoying their rights as investors (often without fulfilling their responsibilities) with the support and protection of the Government and, on the other hand, a community of over 50,000 citizens whose rights are continually violated and livelihoods compromised.

Government officers had a symbiotic relationship with the manufacturers, where the latter sustain them with facilities like vehicles, accommodation, handouts etc, while the manufacturers benefited from protection by the Government at the expense of the rights of the rest of the community.

Communal land tenure systems operated alongside individualised land tenure; but the latter was upheld as supreme so the majority population was subjected to injustice(s). There was open public hatred and hostility against the investors, their support for local development projects notwithstanding. Similarly, there was open public hostility against the Provincial and company administrators and the police.

These violations have turned the citizens into landless, homeless beings, hawking their labour for wages that cannot sustain them. They toil in the salt ponds for most part of the year and when the salt harvesting season ends, they have no means of livelihood.



They have no land from which to eke out a living and when they sell their labour, the wages are too low to sustain them. They are condemned to hunger, poor health conditions, miserable shelter, lack of clean water and are unable to educate their children. As long as their right to ownership, access and use of land and just wages for their labour are violated, the entire community is condemned to perpetual poverty and underdevelopment.

Kenyan land laws emphasise the rights of landowners with titles at the expense of the majority peasants who may claim communal ownership as clans or ethnic groups. Labour laws are also biased in favour of manufacturers in respect to workers.<sup>23</sup> As a result, the violation of the rights of the working majorities has become the norm and state agents see the application of fiat in these violations as the required, legitimate, normal and expected practice. This reality, of state becoming the agent of the few in violating the rights of the majority, is the sad *defacto* national standard in Kenya.

The Ministry of Labour and Human Resource Development is an integral ministry in maintaining industrial peace and promoting occupation health and safety at the work places. It is also one of the most critical ministries in the facilitation of overall economic development of the country as it deals with the development and management of the country's human resources in various fields. It therefore needs to be capacitated in terms of human and financial resources, to enable it carry out its role effectively and efficiently.



One way of addressing not only the problems in Magarini as relates to the establishment of salt companies, but also the relationship between the salt manufacturers, community and the provincial administration, is to rethink the way development is brought to the people. The embracement and application of the rights based approach to development is one such way of negotiating and agreeing on what and how development is to work. This is a programmed approach informed by key human rights principles of participation, equality, non discrimination, accountability and the rule of law.

These principles guide and are expected to be self evident in the design, implementation and evaluation of all development work. It would therefore assist in removing suspicion, power struggles and war between the key players.

In the design of projects, the participation of the community is key in approval and design of the project. Equality and non discrimination will ensure that all persons in the community not only have a voice, but will also ensure that their needs are taken into account.

There is also the need to ensure a process of accountability and establish a complaints mechanism to ensure clear understanding of the processes and projects at all stages.

Lastly, this process will ensure that all participants are empowered to determine their own destiny. This approach thus ensures that development work is done and human rights are realised and protected, as they are interdependent and interrelated.



It is clear that if no interventions are made, corporate businesses will prosper and continue extracting wealth from the community while ploughing back negligible amounts to improve the lives of the community. The efforts of the larger community to improve their lot will therefore be hampered by powerful Government actors responsible for the retention and maintenance of the unjust status quo.

In *Palms, Wine and Witnesses*,<sup>24</sup> David Parkin has shown that prior to the Arab occupation of the Coastal Strip, Mijikenda society owned and worked these lands and prospered, becoming exporters of grain to the Middle East. The society was not divided into antagonising camps as it is today, but was egalitarian, with its people enjoying basic rights. Fearing enslavement by the Arabs, local communities retreated to the interior to avoid confrontation with the Arab governors, but did not surrender possession of their land. Under British rule, the area was brought within the competing interests of the British settlers and Arab landlords on one hand, and the locals on the other.

The colonial government protected the interests of the minority foreigners against those of the Mijikenda. This is the genesis of the current land conflict between the community and the Government. It should be noted that the colonial administration was specifically designed to serve Government interests. In the struggle for independence, the Mijikenda hoped that they would recover their land from the Arab landlords and the British settlers. These hopes were however shattered when even under the independence, or *Majimbo* Constitution,<sup>25</sup> the rights of these intruders were guaranteed protection. Thus, the colonial structures of governance were retained for the same purposes of sustaining the status quo.



How these endemic and complex problems may be resolved has been the subject of this Inquiry. In its view, in a society that is split on the basis of economic classes, a democratic government should be accountable to all and not just one group.

The enjoyment of rights becomes a culture out of the struggles of those whose rights are violated. Hence, the community land struggles in Malindi are part and parcel of the overall democratisation process in Kenya. The recommendations arising from the findings of this Inquiry aim to galvanise policy, legislative and administrative action by institutions to ensure that the community of Magarini can begin to effectively exercise its rights and improve its people's livelihoods.





## AFTERWORD

After the public hearings, the National Commission received reports from the District Commissioner, Malindi, that the inquiry had precipitated insecurity and that some companies had been invaded. On July 9, 2005, the Inquiry team visited KEMU Salt, Malindi Salt and Robinson Island, among others, and found work proceeding normally without any disruptions.

On July 10, 2005, the team visited Krystalline Company. It emerged that the factory had, in fact, been burgled. The team proceeded to the Krystalline police post where it established that security had not been threatened in any other way, other than the burglary, an indication that the process had not occasioned any unrest or disorder.

During the week following the hearings, the Assistant Chief, Marereni sub location, issued a notice for a public meeting, which took place on July 11, 2005 at the same venue where the Inquiry was held. The notice read in part “watakao hutubia ni watu kutoka kwa tume ya uchunguzi wa haki za kibinadamu na wengineo” – it purported that the meeting would be addressed by the National Commission on Human Rights. The National Commission, however, had no knowledge or role in this meeting and the notice, therefore, amounted to impersonation.

Reports received by the National Commission indicate that this meeting was addressed by the District Commissioner and was aimed at addressing the alleged insecurity.



Some comments uttered there, however, appear to have been aimed at downplaying the efforts of the Inquiry and intimidate the locals.

It also insinuated that it would be 'business as usual'. Some senior officials from the salt firms, had accompanied the DC to the meeting. The DC is said to have warned that he would deal ruthlessly with anybody who broke the law.

The National Commission has received other reports indicating positive developments in the area. In a letter to the National Commission, for example, the Kenya Salt Belt Rights Group noted that there had been "...noticeable positive change" and increased realisation that the local community has a say in matters that affect its people.

On its part, the Coast Rights Forum (CRF) congratulated the National Commission and described the Inquiry as a phenomenal success, saying ordinary people in Marereni had also lauded it as a "...wonderful seminar on human rights". The CRF suggested that a community group be formed to follow up on the issues raised at the Inquiry.

Feed back suggest that the community under discussion, is now more empowered and that the Inquiry had lent them legitimacy and voice. The Kenya Salt Manufacturers Association (KESAMA), for example, wrote to the National Commission on October 14, 2005, complaining about increased agitation for better remuneration and working conditions. We welcome such negotiations as healthy and appropriate.

One of the main complaints of people working in the farms was the lack of protective clothing and appliances at the factories. This was a violation of the Factories and Other Places of Work Act (Cap. 514).



The workers also alleged that they were risking their health as a result of exposure to salt.

Information later received by the National Commission from both the companies and locals, showed that some of the companies had started providing their workers with protective clothing and appliances, including gumboots, goggles and gloves, although there are still issues yet to be sorted.

Among the issues yet to be addressed include the question as to what is appropriate clothing in the kind of weather in which the companies operate. But indications of positive developments in this regard have been noted.

Other reports also indicate that the Ministry of Labour has taken a keener interest on labour matters in the salt companies. Senior officers in the Ministry of Labour and Provincial Administration, visited Mombasa Salt Works to follow up on labour related issues, particularly the unionisation of workers. Public Health Inspectors also visited Malindi Salt Works on July 17, 2005. There have also been staff changes and enhancement of capacity at the local labour office.

The National Environmental Management Authority (NEMA) has also sought to address the environmental issues in question. The Public Complaints Committee (established under section 31 of the Environmental Management and Coordination Act, as an independent and impartial entity to investigate environmental complaints against persons or authority) held a public hearing on September 16, 2005 in Gongoni.



The PCC received complaints, largely similar to those that the Inquiry dealt with, including: the destruction of fresh water sources, destruction of mangrove trees, foul emissions from salt manufacturing processes, and general environmental degradation. The parties involved were also largely the same, including members of the public, organisations like Kakimu Farmers Association, Mombasa Salt Works, Kensalt, Malindi Salt Works, Krystalline Salt Ltd and Kurawa Industries.

The National Commission attended the PCC hearing and recommended that a committee consisting of members from the companies and workers in the salt farms be formed, to arbitrate grievances. Such a committee would also help to resolve conflicts.

In a letter to the National Commission dated October 19, KESAMA indicated that it had taken this up and was in the process of recruiting a public relations officer whose job would include facilitation of the formation of this committee. The National Commission is encouraged by these developments and expects that the findings and recommendations by the Inquiry will yield better results and help the human rights situation in Magarini.

The National Commission made a draft report of the inquiry, which was made available to various parties and groups that were involved in the inquiry. Between December 5 and 8, 2005, it held four meetings during which it presented its findings to the groups.



On December 5, 2005, the National Commission met representatives of Permanent Secretaries, Ministries of Agriculture, Environment, Labour and Lands. During the meeting, it was suggested that further recommendations be made regarding the inclusion of customer surveys in performance contracts, upscaling of the Ministry of Labour, speedy enactment of proposed amendments to labour laws and involvement of the Productivity Centre of Kenya in providing guidance to determine fair wages and piece rates.

On December 17, 2005, the National Commission met representatives of various Government departments in Malindi, led by the District Commissioner. During the meeting, it was clarified that the DC had not refused to attend the Inquiry's hearings, but was unable and that a team of Government Officers had been dispatched to tour the companies following these hearings. The team found that the companies visited had initiated changes and were now providing gumboots and masks to the workers and had increased their hourly rates.

The meeting agreed that the *kipimo* (pay of between Sh250-Sh300 for casuals) is inhumane, and requested that the KNCHR assist in calling for special coding/rates for salt works. It also observed that although there are genuine squatters in this area, there are also speculative squatters who moved in after the land had been sold. For that matter, the National Commission was asked to also protect the rights of property buyers and acknowledge the developments brought to the area by the companies in its report.



Additional recommendations included: special treatment for workers in salt works, restoration of destroyed mangroves, council staff manning weighbridges to collect more revenue,<sup>26</sup> opening of all access roads to the sea, and development of drying ponds to produce low grade salt, instead of discharging brine.

Later that day, the National Commission met representatives of the salt companies who observed that the report did not reflect their views and made the following suggestions to make it balanced and fair:

- More intense investigation of the allegations.
- The existing legal framework should be clarified.
- Submissions of companies should be captured.
- Emphasise the long-term nature of some recommendations.

It was also suggested that the report be made available in Kiswahili and that the National Commission should facilitate reconciliation and provide a way forward.

The National Commission also held an open forum with representatives of community groups, community leaders, and members of the public at Gongoni on December 8, 2005. The following are highlights of their comments and suggestions:

- The CBOs and other stakeholders should be involved in resettlement efforts and renegotiation of leases.
- Recommendations on compensation should include livestock, personal property and cultural shrines.



- Recommendations regarding labour grievances should include:-
  - Wages, to be commensurate to work done.
  - Piece rate work, to be standardised across companies.
  - Poor transport, workers health, terms of compensation and benefits, to be addressed.
  
  - Negotiations, consultations and capacity building on workers rights, should involve Kesabe RG, Malindi Rights Forum and KNCHR.
  
- The proposed investigations should be conducted by KNCHR and KACC because the police cannot investigate themselves.
  
- A joint monitoring plan between the Government/CBOs/CSOs and the KNCHR should be developed to facilitate action on the recommendations.
  
- The National Commission should recommend that any offensive action(s) such as evictions should cease as the parties seek reconciliation.

The National Commission took note of the comments and suggestions and where not incorporated in this report, will endeavor to ensure that they form part of future joint activities and plans of action.







## Appendices

### *Petitioners from whom evidence was heard in Public*

1. Samuel Mwadoro Lewa
2. Daudi Lewa
3. Katana Fondo
4. Omar Ismael
5. David Kingi
6. Emmanuel Karisa
7. Kache William
8. Katimbo Katana
9. Jabriani Sharrif Shewe
10. Kassim Mungasa
11. John Mwenda
12. Christopher Kalu Kithi
13. Priscilla Kahe Rimba
14. Leonard Yaa
15. Jackson Fondo Gona
16. Kaschana Mongele Kenga
17. Sidi Rai
18. Kalume Kasuru
19. Raphael Katana Kenga
20. Guddy Brikg
21. Patrick Charo Kahindi



### *Salt mining companies' respondents -*

1. Ali Salim Kindy, Personnel Manager  
(Kurawa Salt Industries)
2. Rev. William Kalu Mwabonje, Human Resource Manager  
(KEMU Salt Works)
3. Belletto, Consultant Engineer  
(Kenya Salt Manufacturers Association)
4. Malindi Salt Limited  
(Represented by Mohamed Awath, Site Manager)
5. Krystalline Salt Works  
(Bimji Varsani, Site Manager)
6. Kensalt Limited  
(Caleb Kamute, Human Resource)
7. Mombasa Salt Limited  
(Ramaswami Venkitakrishnan, GM)





### *Expert witnesses*

1. **Dr. Gitonga Aritho, Land Economist**  
(University of Nairobi)
2. **Mwambi Mwasaru**  
(Coast Rights Forum)
3. **Harun Ndubi, Legal Expert,**  
(Kituo Cha Sheria)
4. **James Gitundu Kairo, Mangrove and  
Environmental Expert,**  
(Kenya Marine Forest Research Institute)



### *Expert witnesses from the Government -*

1. **Rufus Karima Kalama**  
(District Land Registrar, Malindi)
2. **Peter Opiyo Ngete**  
(Land Officer, Malindi)
3. **Godfrey Charago,**  
(Settlement Officer, Malindi)
4. **Fred Swada Wesike**  
(District Physical Planning Officer)
5. **Magarini Settlement Scheme Project Officer**
6. **Christopher Kalu Kithi**  
(Chairman, Marereni Squatter Scheme)
7. **Festus Nguma,**  
(Works Officer, Malindi)
8. **Zablon Matano,**  
(Retired Chief, Magarini)

### *Elected Leaders from the area -*

1. **Joseph Gunga, Councilor, (Fundisa Ward)**
2. **Hon. Harry Garama Kombe, MP Magarini**



## End Notes



<sup>1</sup>Model Guidelines on Planning Public Inquiries. Commonwealth National Human Rights Project,,British Council 2003,. p3

<sup>2</sup>Republic of Kenya- Ministry of Planning and National Development- Malindi District Development Plan 2002-2008. Government Printer p8

<sup>3</sup>Ibid.p9

<sup>4</sup>Ibid p23

<sup>5</sup>Republic of Kenya-Central Bureau of Statistics- Economic Survey 2005. Government Printer.2005. p222

<sup>6</sup>Note 5. p23

<sup>7</sup> Note 5. p23

<sup>8</sup> Kenya Data Profile- World Development Indicators Database 2006, The World Bank Group, 2006

<sup>9</sup>See appendices

<sup>10</sup>Including exposing land to increased tidal and other natural invasions and destruction by sea surges, including fresh water sources, mangrove forests, fish breeding grounds and grazing fields.

<sup>11</sup>Including exposing land to increased tidal and other natural invasions and destruction by sea surges, including fresh water sources, mangrove forests, fish breeding grounds and grazing fields.

<sup>12</sup>The Industrial Relations Charter, Kenya (revised in 1984).

<sup>13</sup>This is the principle of balancing use of all national resources for all the present as well as future generations.

<sup>14</sup>This means that the entity that pollutes or destroys the environment is liable for its rehabilitation and any other penalty.

<sup>15</sup>OECD is an international agency which supports programs designed to facilitate trade and development and plays an important role in promoting good governance in public service and corporate activity. For details, see [www.oecd.org](http://www.oecd.org)

<sup>16</sup>Business and Human Rights in a Time of Change ( Christopher L. Avery 1999\_)

<sup>17</sup>OECD guidelines relate to human rights, disclosure of information, anti-corruption, taxation, labour relations, environment, competition and consumer protection.



<sup>18</sup>Broadly, the ILO principles adopted in 1977 and amended in 2000, offer guidelines to multi-nationals (including other types of enterprises), governments, and employers and workers' organizations in areas such as employment, training, conditions of work and life and industrial relations enterprises to give the "best possible wages, benefits and conditions of work within the framework of government policies..."

<sup>19</sup>Mombasa Salt Works since 1928, Kensalt since 1976, Malindi Salt Works since 1983, Krystalline since 1994 and KEMU Salt since 1996.

<sup>20</sup>The fuel that these companies provided was on requests from the Provincial Administration or the Police. Letters of such requests were made available to the Inquiry.

<sup>21</sup>This case study was developed as a result of a visit to Magadi Soda by the National Commission on August 17, 2005. Prior to this visit, the Commission in its bi-annual publication, *Nguzo Za Haki*, Issue 2 of September 2004, which focused on Business and Human Rights, had invited the company to write about their corporate social responsibility program following recommendations by the Kenya Institute Management's Company of the Year Award (COYA) secretariat. Information about the company was also shared at a forum on Economic and Social Rights, which took place between June 27, 2005 and June 29, 2005 and in which the company's representative made a presentation on "The Role of Business in the Promotion of Economic and Social Rights".

<sup>22</sup>Simon Zadek, *Harvard Business Review*, December 2004.

<sup>23</sup>Land laws dating back to the colonial era were designed to favour foreign large scale landholders and harm natives. Natives, disposed of their birthright by the state, transformed into squatter-tenants at the will of the Crown - in what was dubbed native reserves. While whites were granted ownership of large tracts of land with lease certificates and freehold titles, natives' ownership and use systems were subordinated to the colonial laws. Similarly, labour laws evolving to serve the colonial economy were designed to protect the employer against the workers, to facilitate the exploitation of native labour in the interests of the foreign investor.

<sup>24</sup>David J Parkin Phd (1972), *Palms, Wine, and Witnesses: Public Spirit and Private Gain in an African Farming Community*, Intertext Books, London

<sup>25</sup>The Majimbo Constitution ushering Kenya into independence in 1963 had two contradicting features. On the one hand it sought to decentralise governance, transferring political authority to the communities at regions, districts and locations; but on the other hand retaining all authority over land in the national government and protecting the colonially based land ownership and control systems in favour of the minority large scale landowners.

<sup>26</sup>In response, the DC said there is a government weighbridge near Kilifi and the Council should arrange to second/attach an officer to get the correct tonnage.





The idea of instituting a public inquiry into claims of human rights violations by salt manufacturing firms in Malindi arose after the residents persistently petitioned the Kenya National Commission on Human Rights and other non-governmental organisations working at the Coast.

It was observed that an inquiry of this nature would help unravel the cause of the tensions between the salt manufacturing companies and the local community. For this reason, a five-day public inquiry was conducted at Marereni, in Malindi, and received both written and oral submissions from the public, salt companies, the local administration, line ministries and experts in the fields of the alleged abuses.

The Commission also visited some of the premises where the allegations were said to have occurred. This report describes the work of the Commission and the grievances brought before it. In most cases, the alleged violations betray a flagrant disregard of labour laws by the accused companies. There were also allegations of environmental mismanagement and degradation of land resources, contrary to the Environmental Management and Coordination Act (1999).

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