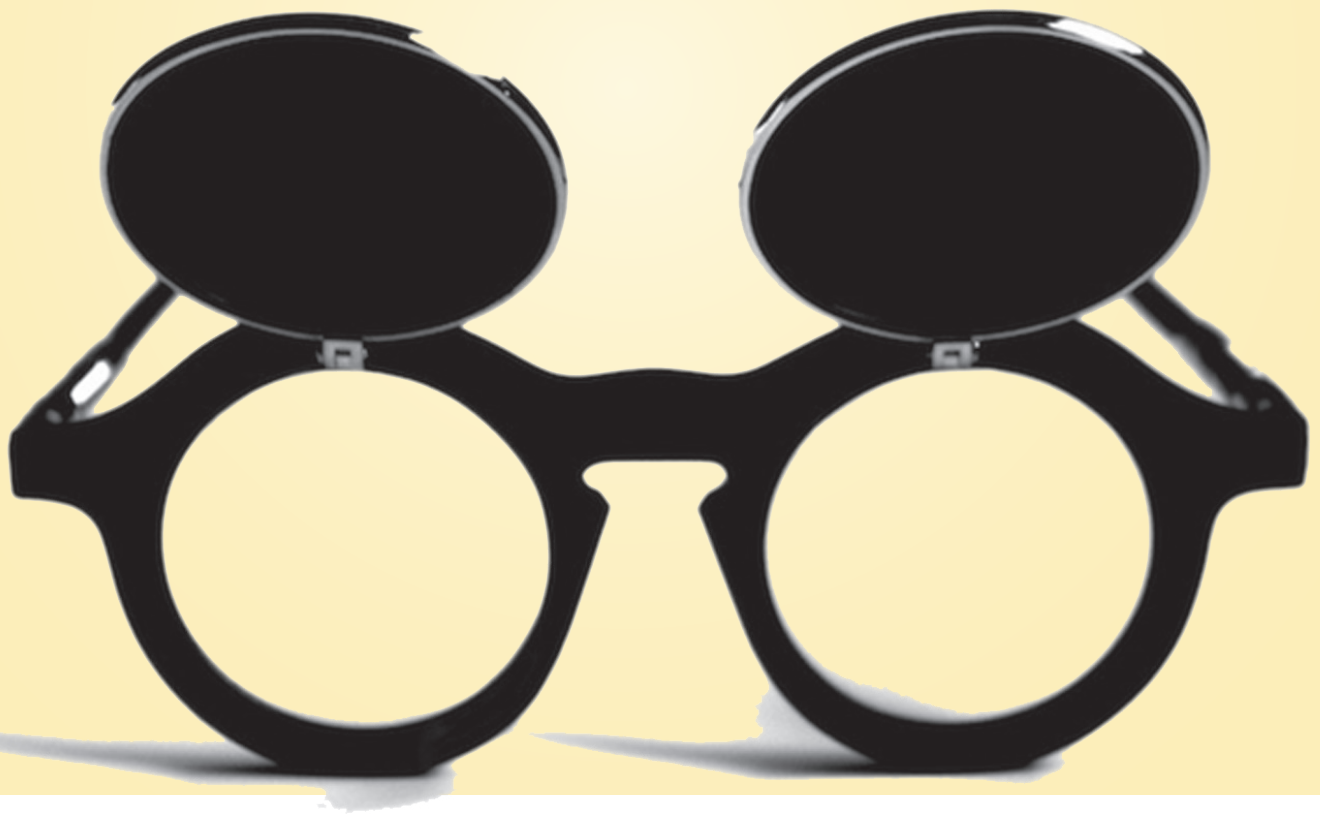




LIFTING

THE VEIL OF CORPORATE IMPUNITY!



SPECIAL REPORT

A Compilation and Summary of Study Reports, Court Cases, Media Reports and Analysis of the Impacts of ARM Cement Limited Operations on the Safety, Health and Environment of Communities living adjacent to the Company in Kaloleni and Rabai Constituencies.

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Table of Contents

List of Abbreviations and Acronyms	i	2.4.2	Commentary on investment promotion centre	10
Foreword	ii	2.5	HURIA’s Report on the Impact of ARM on Health, Environment and Safety	10
Acknowledgement	iii	5.1	Impacts Identified	11
Executive Summary	iv	5.2	Recommendations	13
		5.3	Comentary on poluted justice report	
Chapter 1	1	Chapter 3		15
1.0 Introduction	1	Court Cases against ARM Cement Ltd Operations		15
1.1 Brief Introduction and History of the Problem	1	Chapter 4		17
1.2 Structure and Purpose of Report	2	Media Reports		17
1.3 Objectives of Report		Chapter 5		19
Chapter 2		1. Parliamentary Petition to the Departmental Committee on the Environment and Natural Resources		19
Impact Study Reports	4	2. Arguments in relation to Petition by HURIA to Parliamentary Departmental Committee on the Environment and Natural Resources Regarding Environmental Harzards posed by The Athi River Mining Company Ltd in Kaloleni, Kilifi County By the Human Rights Agenda (HURIA)		21
2.1 The Community/ ARM Cement Ltd Task Force Committee Investigative Report on Environmental Concerns in Kaloleni	4	Chapter 6		26
2.1.1 Key Findings and Recommendations of the Taskforce	4	Call for Action		26
2.1.1.1 Human/Livestock Health	5	Chapter 7		29
2.1.1.2 Cracks or damage to housing	5	Way Forward and Conclusion		29
2.1.1.3 Environmental Pollution & impact on Agricultural production	6	Annex 1: Media Features on Impacts of ARM Cement Operations		31
2.1.1.4 Impact of Water Pollution	6			
2.1.2 Conclusion on the Taskforce Report	7			
2.1.3 Commentary on the Taskforce Report	7			
2.2 Public Complaints Committee (PCC) Investigative Report on Environmental Complaints in Kaloleni	7			
2.2.1 Findings and Recommendations	8			
2.2.2 Commentary on Public Complaints Committe investigative report on Environmental Complaints in kaloleni	8			
2.2.3 Recommendation to PCC	8			
2.3 Truth Justice and Reconciliation Commission (TJRC) Report on ARM Cement ltd Abuses on Human Rights in Kaloleni	9			
2.3.1 Recommendation from the Truth, Justice and Reconciliation Commission	9			
2.3.2 Commentary on TJRC Report on ARM Cement limited abuses on Human Rights in Kaloleni	9			
2.4 Report of the Investment Promotion Centre	10			
2.4.1 Recommendations				

List of Abbreviations and Acronyms

ACHPR	African Charter on Human and People’s Rights
ACHR	African Court on Human and People’s Rights
ARM	Athi River Mining
AU	African Union
CAJ	Commission on Administrative Justice
CSO	Civil Society Organization
DEC	District Environmental Committee
DOSHS	Directorate of Occupational Safety and Health Services
EMCA	Environmental Management Coordination Act
HURIA	Human Rights Agenda
KRRA	Kenya Rural Roads Authority
KNCHR	Kenya National Commission on Human Rights
MP	Member of Parliament
NA	National Assembly
NEMA	National Environmental Management Authority
NGO	Non-Governmental Organization
OAU	Organization of African Unity
PA	Provincial Administration
PBO	Public Benefit Organization
PCC	Public Complaints Committee
TJRC	Truth, Justice and Reconciliation Commission
UN	United Nations

Foreword

For over 12 months, HURIA “ a not for profit Public Benefits Organization ”, was engaged in an advocacy campaign that had sought to have ARM Cement Company Limited minimize its impacts to the environment, safety and health of residents living adjacent to the company’s manufacturing plant and quarrying site in Kaloleni and Rabai constituencies. The campaign was intended to assess the perennial outcry regarding environmental, safety and health impacts through a scientific research and raise community awareness on how to claim their right to a clean and healthy environment.

In its pursuit of the said goal, HURIA employed several strategies. These include lodging an official complaint with the Public Complaints Committee on Environment, Ombudsman’s Office, Petitioning the County Assembly of Kilifi as well as conducting an independent study on the impacts of the company’s operations. Above all the steps, HURIA also petitioned the National Assembly on 29th July 2014 seeking for their intervention on the matter.

A year later, the Departmental Committee on Environment and Natural Resources presented its report before the National assembly for discussions. This report did not live up to the expectation of the people with a view to addressing the real issues impinging on them.

By publishing this report, HURIA therefore aims at demonstrating the unrelenting struggle that the residents of Kaloleni and Rabai have withstood amidst threats and intimidations in their pursuit for their right to a clean and healthy environment. Further, this report also seeks to critique and present an analysis of the efficiency of several grievance mechanism that are available for communities with regards to environmental concerns.

With the burgeoning discovery of oil, gas and minerals in the country, the case of Kaloleni and Rabai presents a reflection of many eminent cases of conflicts and continued destruction of the environment if not well addressed. Incidentally, the publication of this report hence comes at an opportune moment when the country is reviewing important legislations governing the environmental and mining sector. This report therefore hopes to present important policy considerations in the pursuit for an improved legal and policy framework governing the environment and mining sector in the country.

We invite all stakeholders to read through and join us in the fight for environmental justice and corporate accountability at the Coast of Kenya and beyond.

Sincerely,
Yusuf Lule Mwatsefu

Executive Director

Acknowledgement

HURIA would like to express its gratitude to the people of Kaloleni and Rabai for inviting our organization to help advance and protect their right to a clean and healthy environment. The community has remained steadfast in seeking to extricate themselves from the restraints of environmental injustices and corporate impunity amidst greed politicians and corrupt public officials.

In addition, HURIA would like to thank Mr.Allan Muyesi Mwadena, Chairperson, Amani Hewa Community Based Organization and all the environmental champions for their support and cooperation throughout the struggles despite constant threats and humiliation from a divided community.

We also wish to salute Hon. Gunga Mwinga, Member of Parliament for Kaloleni for his unrelenting pursuit for justice for his people throughout our engagement albeit with a divided and non-committed political leadership in his backyard.

We would also like to extend a special thanks to Prof. Halimu Shauri and Ms. Michelle Samba Programme associate Huria who contributed significantly into putting up together this report.

We are indebted to all HURIA staff members who spent long hours and difficult times in implementing the Environmental Justice and Corporate Accountability Project that aimed at protecting the rights of the people of Kaloleni and Rabai.

Last, but not least this publication would not have been possible without the technical support and editorial work of Mr.Francis Kariuki and Harrison Otieno from Strathmore University and HURIA Board Member, Mr. Justus Munyithya who provided their legal expertise in finalizing this report.

Sincerely
Betty Sidi Mohamed
Programs Manager

Executive Summary

Lifting the Veil of Corporate Impunity is a compilation and summary of court cases, study and media reports and analysis on the environmental concerns and impacts of ARM Cement Ltd (formerly Athi River Mining Limited).

The impacts and concerns are with regard to the operations of the company with effects touching on Health, Environment, Safety and labour relations of communities living in or around Kaloleni and Rabai constituencies of Kilifi County.

This publication has been compiled and edited by Human Rights Agenda (HURIA). The report's objective is to present a clear and concise summary of important findings revealed over time and recommendations that need to be implemented by specific stakeholders in order to address the Health, Environmental and Safety challenges posed by ARM.

The publication gives a snippet and analysis of findings, recommendations and ruling of court cases filed against ARM Cement limited. The reports include a Task Force Committee (Kaloleni Constituency) formed in 2008, Truth Justice And Reconciliation Commission (TJRC), the Public Complaints Committee on Environment, Kilifi County Assembly Committees on Health and Environment, the Parliamentary Select Committee on

Environment and Natural Resources, media and an impact study report conducted by HURIA.

HURIA's purpose of collating and compiling this special report is to present a clear account of the struggles, challenges of the implementation of the reports and to identify key stakeholders who need to take action on the various recommendations made.

More importantly, the report provides a single harmonized document of the various findings and recommendations for action from stakeholders.

This can form the basis for a common platform of action among stakeholders in securing human rights in and around the factory and its quarrying sites.

The basis of common agenda and action is the fact that all the reviewed reports and court cases allude to environmental pollution by the company compromising health, environment and safety of residents in the neighborhood.

1.0. Introduction

This chapter provides a brief introduction to the genesis of the environmental catastrophe in Kaloleni and Rabai constituencies, Kilifi County. Section two of the chapter presents the structural framework of the report and purpose.

1.1 History of the Problem

ARM Cement Company Ltd (formerly Athi River Mining Ltd) is both a mining and manufacturing company operating in Kilifi County, Kenya. ARM was founded in 1974 by Mr H.J. Paurana. It was mainly doing Agricultural Lime, Processed Minerals for paint, rubber and glass. Mr H.J Paurana is considered to be the pioneer of the Industrial minerals industry in Kenya.

It has been stated that his vast experience in prospecting and commercialization of mineral resources has been the key factor behind the company's continuous growth. ARM Cement Company has been mining limestone for cement making since 1996 (19 years) in Kaloleni and Rabai constituencies of Kilifi County.

For over 15 years dating back to 1998, residents of Kambe and Bondora villages have been lamenting about the environmental pollution and impacts of ARM Cement Company through different mediums including community based groups such as Kambe Environmental Committee and Mbuyuni Welfare Association, members of the Kambe community submitted a list of memoranda to the administration of ARM Cement Company limited.

The memoranda highlighted the plight of the community members with regard to the activities of the company and also gave the company ultimatums on steps to be taken in order to alleviate the dust menace in the area.

Subsequently, HURIA noted that several meetings were held on 17th April 2013 and another on 7 October 2013 between the management of the company and the community groups. The meetings were held with a view to addressing the concerns raised in the memoranda.

In the meetings and forums, the company's management made promises to ensure good relations with the local community and to help in bettering the local area. Inasmuch as ARM Cement Company limited has tried to mitigate some of the negative impacts alleged to have been caused by their mining activities the results have been unsatisfactory at best and no substantive remedial measures have been forthcoming.

The community groups then felt compelled to seek means beyond the memoranda and meetings with the company in a bid to vindicate their fundamental rights and freedoms.

The community members through Mbuyuni Community Welfare sought assistance of Human Rights Agenda (HURIA) through a letter dated 10th February 2013.

This letter appealed for assistance from HURIA to help the community members get reprieve against

the environmental pollution in the area. From its engagement with the community, HURIA has tried through various means to get the company to comply with the set environmental laws, rules and regulations and address the communities grievances.

Some of the measures that HURIA has taken include: making a complaint with the Public Complaints Committee who subsequently gave a report and recommendations and lodging a Petition with the Parliamentary Select Committee on Environment, Water and Natural Resources.

The Parliamentary Committee visited the area of Kaloleni/Rabai confirmed writing its report and gave recommendations.

1.2 Structure and Purpose of Report

The methodological approach adopted in generating this report is review of relevant literature including reports by different bodies and agencies that have highlighted the adverse environmental impacts of the operations of ARM Cement Company limited in Kaloleni and Rabai areas.

It also reviews newspaper articles that have highlighted the sufferings of the local residents neighboring ARM. The literature review is done in line with the goals and objectives of HURIA which is the advancement of a culture of human rights and promoting capabilities with a view of enhancing greater realization and equal enjoyment of fundamental rights and freedoms as enshrined in the Constitution of Kenya 2010 and under international human rights instruments. In addition, therefore the report is an advocacy tool that aims at telling the story of the local residents and their suffering due to the work of ARM.

1.3 Objectives of Report

- a) To enumerate the steps undertaken by HURIA in the fight for the environmental rights of the residents of Rabai and Kaloleni constituency.
- b) To demonstrate that in order to guarantee the residents of Rabai and Kaloleni the right to a clean and healthy environment, a balance between the economic interests of investors and environmental protection has to be maintained.
- c) To invite and encourage other interested stakeholders to also join the fight for environmental justice in the area.
- d) To forecast and outline other measures, avenues and remedies that can be pursued in the fight for environmental justice in Rabai and Kaloleni.

1.4 Diagnosis: Current Report

Despite all allusion of the many findings and recommendations of the different reports discussed in the publication the fate of the residents of Kaloleni and Rabai still appears uncertain.

In pursuit to have the recommendations of the “polluted justice” report implemented HURIA met with the Chief Inspector of explosives in Nairobi. Non the less like many other government offices, the matter was again shelved. Other efforts to undertake a comparative study by Pwani University’s Department of

Environmental Science aborted midway as a result of non cooperation by ARM Cement Company limited.

At the moment ,their community is divided on either supporting the company or the environmental champions. With all non judicial avenues having been

executed this far, the only hope lies in the Departmental Committee on Health to conduct independent investigations and present favorable recommendations .Beyond this point ,the community will be compelled to pursue legal avenues in claiming environmental liability.

1.5: Key chronological timelines of events related to Environmental Concerns in Kaloleni

Date	Occurrence
1996	ARM establishes plant in Kaloleni
29th April – 30th May 2008	Report on Environmental concerns in Kaloleni by Community Task force
14th May 2009	Daniel Choga and 2 others file a civil suit against ARM Co. Ltd.
12th July 2010	ARM Co. Ltd appeals against ruling and order issued from civil suit no. 1332 of Mombasa.
	ARM conducts Internal Audit
11th June 2013	HURIA lodges complaint on ARM to PCC
4th July 2013	HURIA's Request for control Audit to NEMA
26th July 2013	PCC conducts site visit at ARM following lodging of a complaint against ARM by HURIA on behalf of the local residents.
29th July 2013	HURIA Files petition to the National Assembly
18th November 2013	NEMA and HURIA appears before Parliamentary Select Committee on Environment and Natural Resources
9th December 2013	Launch of Impact Study Report on ARM operations
30th January 2014	Parliamentary Select Committee on Environment and Natural Resources conducts a site visit to ARM Co. Ltd in Kaloleni
10th September 2014	National Assembly departmental committee on health conducts public hearing at mungoni ,kaloleni

2.0. Impact Study Reports

This chapter offers an overview of the various reports that have been presented after investigations on the activities of ARM.

The first part discusses a report by a Taskforce instituted by the then Kaloleni Constituency Member of Parliament Hon Kazungu Kambi. The second is by the Public Complaints Committee (PCC) established under the Environmental and Co-ordination Act, 1999 (EMCA).

The third is drawn from the Truth Justice and Reconciliation Commission (TJRC) report on the activities of ARM Cement Company limited and the fourth is a report by HURIA on the Impact of ARM on Health, Environment and Safety.

2.1.1 The Community/ ARM Cement Ltd Task Force Committee Investigative Report on Environmental Concerns in Kaloleni

This was a collaborative effort between the local communities, ARM Cement Ltd, the then Member of Parliament (MP), Honourable Samuel Kazungu Kambi in 2009 to create a taskforce to seek amicable solutions to the critical environmental issues raised by the residents. The environmental issues of concern frequently raised by the local communities included generation of high levels of noise/vibration, dust, water contamination and unfair treatment of workers by company management. The issues were raised through a community memorandum which was brought to the attention of

the area (then Kaloleni Constituency) MP who upon consultation with the then District Commissioner (DC) ordered formation of a task force to look into the grievances and to give appropriate recommendations on the issues raised by the local community.

The task force was composed of Members drawn from different sectors of the community and management of ARM Cement Ltd and its chairperson was Dr. E. Mwinga. The task force was divided into two sub-committees namely Human and Livestock Health committees.

The mandate of the taskforce was to find out and bring forward some of the salient and deep rooted community concerns that were leading to the dissatisfaction of the community with the ARM operations. Some of the issues had been brewing overtime and had not been addressed effectively. Reviewed documents revealed that where action was taken, it was done piece meal without addressing the root causes.

2.1.2 Key Findings & Recommendations of the Taskforce

The taskforce undertook consultative and participatory investigations which included direct observation, sample analysis and assessment of various environmental impact reports. The Taskforce eventually made its report, published it and presented it to the former Kaloleni MP Hon Samuel Kazungu Kambi.

2.1.3 Human / Livestock Health

From the report, Bondora residents in Kaloleni complained of the high level of dust emitted by the ARM Company limited, which expose them and their livestock to dust related diseases. The residents also claimed that several livestock had died due to dust and chemicals emanating from the factory.

The main air pollutants of concern emitted by ARM are particulate matter or dust. Long term exposure to particulates (dust) beyond a certain threshold is known to increase susceptibility to dust related diseases by weakening the immune system. Dust exposure also affects livestock directly through respiratory systems or indirectly through contaminated pastures.

Some of the recommendations from the Taskforce were that the Complainants should acquire documented medical proof from recognized health institutions providing basis of compensation and that ARM management should formulate or implement policies on health and safety.

2.1.4 Cracks or damage to housing

The committee observed that cracks have developed on the houses of the residents living near the quarry sites making it dangerous and uncomfortable for the local community to live in their own houses. This was one of the main complaints of the community members captured in the taskforce report.

The houses affected were within the radius of 1.5 km from the quarries which acted as the epicenter of the explosives. It was recommended that where the use of explosives is employed; precaution has to be observed to reduce the health and safety risks arising from excessive vibrations/noise. In fact, the task force emphasized it is the responsibility of the quarry operator to observe

good environmental practices as outlined in the Constitution of Kenya 2010, Acts of parliament and in environmental regulations and guidelines, among others.

It was also recommended that compensation arising out of damage to the houses should be agreed upon by the company management and the affected community members.

It is noted in the findings of the taskforce that ARM changed its technology from cortex to Nonel, which was quite encouraging. However, it was recommended that the company should take responsibility to the extent to which it is liable for the community complaints on housing.

2.1.5 Environmental Pollution & impact on Agricultural production

The main complaints raised by the local community were that most farms surrounding ARM were no longer fertile due to chemical deposits and ballast rolling out of the factory premises.

It was even reported that the ballast rocks have been rolling down from the limestone storage yard to one of the nearby farms. The adjacent farms were also contaminated with chemicals from overflows of dams located within the cement plant and nearby streams/dams full of chemicals emanating from the factory.

The contamination was seen to have an impact on agriculture in that the vegetation and the respective agricultural crops surrounding the ARM factory in Kaloleni exhibited high exposure to dust with most foliar being covered with dust. Coconut trees were the most affected. Indeed, findings further showed that the high content of sand in the sampled soil analysis indicated that the soils were mostly sandy, which is prone to nutrient leaching.

2.1.6 Recommendations:

The factory should continually monitor the levels of air pollutants, which have detrimental effects on agricultural production, livestock and human life. These include the key air pollutants produced in the factory such as; nitrogen dioxide, sulphur dioxide, carbon monoxide, lead fumes and particulate matter (dust).

Crop production surveys and tissue culture should also be conducted to check possible variations in crop yield and determine levels of dust exposure and its botanical impacts.

The ballast rocks which have reportedly been rolling down from the limestone storage yard to one of the nearby farms should be removed and measures put in place to mitigate the problem.

2.1.7 Impact of Water Pollution

From the review, it was found that the Biological Water Analysis Report (5/5/2008) for water taken from the dam located within the factory indicated contamination with Ecoli forms and was slightly hard.

2.1.8 Recommendations:

It is recommended that water should always be chlorinated before drinking and the factory should address the sources of high Ecoli form contamination. The factory should ensure that water from the dams does not overflow into the nearby stream or ensure water in the storage dams meet the standards of drinking water quality so that the nearby communities who are likely to consume the product downstream are not exposed to health risks. ARM should consider pumping the water from its dams to a central storage tank where the factory can chlorinate the water on behalf of the community.

2.1.9 Conclusion on the Taskforce Report

From the findings, a number of environmental issues have been highlighted. Accordingly, ARM has a duty to ensure that its operations are carried out within the framework of relevant national and international environmental laws, regulations and standards.

The factory should also ensure that ecological processes are protected, preserved or restored and put in place adequate measures to protect human health and associated livelihoods including taking responsibility and addressing all complaints arising out of its operations.

Athi River Mining Co. Ltd should take a leading role in resolving the respective environmental issues and public complaints or grievances raised severally and jointly against it. Legal action would definitely have to be undertaken in the event of failure in resolving the environmental issues of concern raised in this report.

2.1.10 Commentary on the Taskforce Report

This report was comprehensively undertaken. Nevertheless, its key recommendations were not implemented. Having been sanctioned by a politician immediately after the 2007 elections, the level of commitment in implementing the recommendations was unsatisfactory to the expectations of the affected community. It is also noted from the review that the final report was presented to the MP and the area DC instead of NEMA which is mandated to deal with environmental matters. This in itself contributed to the inaction leaving the community to continue suffering despite evidence of negative impacts caused by the operations of ARM.

2.2 Public Complaints Committee (PCC) Investigative Report on Environmental Complaints in Kaloleni

PCC is established under sections 31 - 36 of the Environmental Management and Coordination Act (No. 8 of 1999) with the mandate to investigate allegations and complaints regarding the condition of environment in Kenya, or even on its own motion, suspected cases of environmental degradation.

It is composed of seven members headed by a chairperson, and it prepares reports of its findings and recommendations thereon and submits the same to the National Environment Council, chaired by the Cabinet Secretary for Environment, Water and Natural Resources.

In 2009 a resident of Kaloleni lodged a complaint with the Public Complaints Committee on environmental pollution caused by ARM Cement Ltd.

The PCC then conducted a site visit and compiled a report on its findings and recommendations. Five years later, on 11th June 2013, HURIA lodged another complaint on behalf of the communities following continued outcry on the dangers caused by the company on the health, environment and safety of the local communities. Subsequently, on 26th July 2013, the PCC conducted an investigative site visit to ARM and its neighborhoods.

The following are the key findings and recommendations from their report.

2.2.1 Findings and Recommendations

- a) NEMA should ensure that the respondent completes the improvement of the company premises to comply with the stop order issued previously.
- b) NEMA and Ministry of Health and the County Government of Kilifi should conduct further medical investigations to ascertain the truth in the allegations regarding adverse effects of ARM operations on the area residents.
- c) NEMA, the county government of Kilifi, Ministry of Health and the respondent should carry out intensive awareness campaign to the local residents to ensure good environmental practices and a harmonious working relationship is established.

2.2.2 Commentary on the PCC Report

The investigation undertaken by the PCC was shallow and did not reveal any important findings with regard to the adversities posed by the company on plants, human and animal health.

It is further noted that while PCC is mandated to take public complaints on environmental concerns, it appears that there are no clear follow up mechanisms to ensure recommendations are implemented.

Accordingly, it is recommended that the PCC should improve its methodology of substantiating allegations to include thorough medical and environmental examinations. In fact, if earlier complaints were addressed effectively, the same issues would not have reoccurred five years later.

2.2.3 Recommendation to PCC

PCC should interrogate the company complaints and grievance mechanism to ensure that complaints are

communicated effectively and addressed in good time before they accumulate.

2.3.0 Truth Justice and Reconciliation Commission (TJRC) Report on ARM Cement Ltd Abuses on Human Rights in Kaloleni

On 5th of March 2013, the Truth Justice and Reconciliation Commission (TJRC), a body formed through an Act of Parliament undertook to collect statements on alleged violation of human rights by ARM Cement Ltd in Kaloleni.

According to the TJRC Report (TJRC/L/10/108/2013) Volume IV, the residents reported that the Company's mining activities have resulted in land degradation through loss of vegetative cover, soil erosion, contamination of water sources and severe dust and noise pollution in Bondora Village. As a result, the inhabitants have contracted respiratory ailments and other occupational lung diseases.

The report notes that blast activities within the quarry site have led to solid debris flying into the neighbouring residences, thereby endangering the lives of the inhabitants. Heavy vibrations from rock blasting have caused serious cracks in houses and pit latrines, some of which have crumbled.

The report further raises concerns that the necessary Environmental Impact Assessments were not conducted prior to the commencement of the mining and blasting activities.

The report further reiterates that following several complaints by the inhabitants against the Company, it has, in the past, promised to put in place measures to mitigate the said environmental concerns but later re-

neged on them. It has consistently failed, ignored and/or refused to comply with environmental requirements and specified directives from the Ministry of Environment and Natural Resources. The Company has illegally and/or irregularly expropriated land belonging to inhabitants of Kambe, destroyed trees and crops thereon, and converted the same to access roads for its exclusive usage.

2.3.1 Recommendation from TJRC, Report

- a) That the National Land Commission should investigate the circumstances of acquisition of the said parcels of land;
- b) That NEMA should undertake comprehensive Environmental Audits and provide sanctions for non-compliance by ARM Cement Company ; and
- c) The Ministry of Labour should address the concerns on the protection of labour rights.

2.3.2 Commentary on the TJRC Report

Delays experienced in formulating the TJRC Report Implementation Taskforce have seen everything put on hold. Pressure should be put on the implementation body, once formed, to ensure relevant stakeholders undertake their tasks as per the above recommendations.

2.4.0 Report of the Investment Promotion Centre

Following a request from the Chief Executive of the Permanent Presidential Commission and Afforestation, the Investment Promotion Centre visited the Athi River Mining Limited in Kaloleni division, Kambe location.

2.4.1 Findings

This report takes note of the fact that the dust emitted from the factory greatly devastated the cash crop, mostly coconuts which happen to be the main source of livelihood of the residents of the area. They reported that food crops on the other hand have also been adversely affected to the extent that the locals have to buy vegetables from the neighboring communities; something they would have otherwise produced locally.

The community members also complained of health implications such as respiratory diseases and eye problems. The health problems are mainly caused by the dust emitted from the manufacture of cement. Another noticeable thing in the report is that local leaders have been compromised and therefore they cannot do much to assist their people. Evidently, the factory was given a clean bill of health to operate despite nothing having been done to mitigate its adverse health, environmental and safety concerns.

It is further observed from the report that the management is notorious for switching off the machines emitting dust when they receive visitors and turning them on after visitors have left the site. The committee experienced this first hand when it visited the factory and what was more disturbing was the fact that workers were reluctant to speak to the committee as they had been ordered not to by the ARM management.

2.4.2 Recommendations

The committee recommended that the company should close for an unspecified period of time to allow the company to put up **dust arrestors**. They also recommended that the Kilifi District Development Committee should take note of the plight of the people of Kambe location and take the necessary action against the company.

2.4.3 Commentary on the Investment Promotion Centre

The recommendations by the IPC seemed to have been ignored and nothing substantial came out of it. It is probably that for this reason, to date local communities continue to suffer to due environmental injustices.

2.5.0 HURIA's Report on the Impact of ARM on Health, Environment and Safety

In July 2013 HURIA commissioned a study assess the impacts and risks of ARM activities on health, environment, and safety in Kaloleni and Rabai communities in Kilifi County. These was enclosed on the need to provide a scientific evidence of impacts that had been noted in all previous studies.

2.5.1 Impacts Identified

the study noted that Impacts arising from the activities of ARM Cement Company on environment, health and safety in the communities around the company's quarry and factory were -:

a) Air Pollution

Nearly (93.1%) of respondents reported that the company's operations have caused air pollution by emitting dust which has significantly impacted on both the environment and human health. The sources of the dust are quarrying (during blasting), transportation (road dust) and dust from the cement factory.

This is supported by medical examination on residents and on livestock. Dust is also affecting quality of roofing materials and covering up plant parts, resulting in poor plant health and productivity.

b) Noise Pollution

The Company's activities are generating noise that has resulted in hearing problems, sleep disturbances, caused fear and panic and has also affected learning in nearby schools. These effects were reported by 68.97% of the respondents.

c) Vibrations

The company's blasting activities in the quarries generate excessive vibration that is negatively impacting on people in terms of destruction of property for example cracks emerging from buildings or even complete collapse of buildings. Blasting has also instilled fear among residents and has been cited as a potential source of heart related illnesses amongst children and elders. These findings were reported by 41.38% of the respondents.

d) Landscape Degradation

Quarrying, like other forms of mining, generally causes destruction of the landscape by removal of trees. The digging of soil and creation of gullies has resulted in water logging that provides a breeding ground for mosquitoes. The excavation of raw materials, that is, limestone, exposes the land to agents of erosion. Of the sample, 13.79% of the respondents said that the operation of the company has negatively degraded the landscape in the area.

e) Impacts on Vegetation and Crops

ARM Company Limited operations are affecting vegetation cover and crops negatively. This finding was revealed by over one half (55.17%) of the respondents. This was reported to be due to direct removal of vegetation to pave way for quarrying resulting in vegetation loss and secondly, dust from the quarrying activity and cement factory that is settling on the vegetation. This in turn affects the plant's physiologi-

cal functions including respiration and photosynthesis hence reducing the output of farms mainly coconut, maize and mangoes.

f) Destruction of Habitat.

Quarrying as a form of mining removes vegetation and disturbs soil that is known to provide habitat to hundreds of species such as snakes. Indeed, snakes were reported by 31.01% of the respondents to have been driven from their habitat, pushing them to homesteads and farms at Chauringo quarrying site.

g) Destruction of Roads by Lorries.

The road linking the quarries and the factory has been affected. From the sample, 20.69% of the respondents attributed this to heavy trucks that ferry the raw materials to the factory.

h) Impacts on Hydrology.

Quarrying like any other form of mining can result in change of course or disappearance of rivers and lakes. It also results in exposure of soil moisture to evaporation, which in turn leads to lowering of the water table. The canyons or depression created from quarrying can form artificial ponds or dams which impacts on the areas hydrology. This finding was confirmed by over four fifths (82.76%) of the respondents who sited dust from the cement factory as the cause of contamination of rainwater, this has made water sources unsafe for people and animal consumption.

i) Water Pollution.

The Company's activities affect water sources negatively in two broad ways namely, disposal of the chemical waste from the factory on the surface of the water and the constant settling of dust from the factory on water. When the cement dust comes into contact with water, hydroxides are formed. This hydroxide

impairs the natural alkalinity that subsequently affects the hardness of water which is responsible for the respiratory and gastro-intestinal diseases.

j) Displacement of People.

Some of the activities of the company have caused displacement of people either from their homes or disrupted their activities during blasting. This was reported by slightly over one tenth (10.34%) of the respondents.

k) Corrosion and Discoloration of Roofs.

Physical observation of the roof houses in the area neighbouring Athi River Cement Company shows that most of the roofs are grayish in colour. In fact, it is difficult to tell the original colour of the roofing materials used. In addition, roofs of many houses made of iron sheets showed evidence of corrosion which is in keeping with the detection of sulphur dioxide that is responsible for acid rains. Deposition of dust on roofs not only affects the aesthetic feature of the building but also significantly reduces the life of roofs. This finding was corroborated by slightly over one fifth (20.69%) of the respondents.

l) Psychological Impacts

Dust, noise and vibration have adverse psychological impacts on people especially those immediately neighbouring the cement factory and quarries as they feel bothered by these issues. Residents were reported by an overwhelming majority (93.1%) to be living in perpetual fear of flying rocks, vibrations, dust and noise from blasts. The number of respondents was

m) Health and Safety Issues.

The Health and Safety impacts arising from the activities of Athi River Cement Company quarry and factory are falling rocks from lorries, noise, dust and

vibrations to workers and the community neighbouring the factory. Flying rock pieces from the quarry blastings, open quarry also posing risks to people and livestock as revealed by slightly over one fifth (20.69%) of the respondents. It was observed that the community is eating fruits or vegetable contaminated with cement dust/limestone posing as a health risk.

2.5.2 Recommendations

The report recommended that ARM Cement Company Limited needs to institute measures to mitigate the negative environmental, health and safety impacts of its operations specifically

- a) The company should undertake sufficient measures to mitigate the adverse impacts on the environment and the people, including but not limited to investments in modern eco-friendly technology, planting of vegetation (trees) to provide a buffer between the factory, quarry and the community.
- b) The affected community/population should be compensated through medical treatment, monetary compensation and other satisfactory forms of compensation.
- c) The Department of Mines and Geology should closely monitor ARM's compliance with the conditions of the mining license issued for the company quarries to ensure that the negative impacts are adequately mitigated.
- d) Athi River Cement Company to invest in corporate social responsibility by supporting the development of schools, hospitals, provision of clean water and improvement of roads among others.
- e) The company should undertake comprehensive environmental restoration programmes in the affected envi-

ronment, including but not limited to rehabilitation of the quarry areas.

f) The Company should borrow a leaf from other companies that implement best practices in the management of environment such company as Bamburi.

g) The company should carry out regular consultative meetings with the neighbouring community to ensure harmonious co-existence.

h) NEMA should fully implement the **polluter pays principle** with respect to generation of effluent, dust, noise and vibration.

i) NEMA should also apply and be guided by the precautionary principle because of the adverse human health, environmental and livestock health impacts of the operations of the company.

j) NEMA to conduct control environmental audit of the company to verify the information contained in the company's annual environmental audit, including the extent of impacts and the adequacy/efficiency of the company's environmental management plan.

2.5.3 Commentary On Polluted Justice Report

The report showed that indeed despite the fact that ARM seems to be complying with the various regulations peoples living adjacent to the factory and quarries suffer a great deal. People and animals suffer from respiratory diseases and plants have been rendered inedible. There is dire need to then review the standards set by the regulator to ensure that they are of international standards and that communities do not suffer any more than they already have

2.6.0 Kilifi County Assembly's Committee on Health Services and Agriculture, Environment and Natural Resources Hansard on Meeting with ARM

Following a motion that had been tabled in the Kilifi County Assembly about the Athi River Mining Ltd, the committee members of Health, Agriculture, Environment and Natural resources visited the company to get their response on issues that had been raised by the residents.

From the visit, the committee observed the following as impacts arising from the activities of ARM Cement Ltd on environment, health and safety in the communities around the company's quarry and factory:

2.6.1 Dust

This had caused serious respiratory diseases such as silicosis to the residents. It has also covered all the vegetation, making most of the farm products unconsumable hence affecting the food security.

Animals have also suffered as evidenced in the stool that had been collected earlier. Water harvesting was also a problem as roofs had been covered with dust. This had led to poor health and unfriendly environmental.

2.6.2 Blasting of stones

The vibrations produced during the blasting of stones caused heart attacks among other diseases. It was evident that some houses especially those adjacent to the factory did not have windows, leading to poor ventilation. This also has led to cracks on residents houses.

2.6.3 Poor roads

The road from the quarry to the plant was in bad shape and full of dust. The trucks are always overloaded and drivers were driving dangerously despite having the knowledge that the road was open to the users on foot, bikes and other road users.

The road was also full of dust and people residing along it suffered from dust too.

2.6.4 Reptiles from the mining sites

Before the mining commenced, the area had been home to reptiles and other animals but as the mining activities started e.g. blastings and quarrying; the creatures now started moving to where humans settle posing great danger to them.

2.6.5 Poor working conditions

The company pays its workers poorly and below the recommended minimum. The workers also lack safety gear that protects them against industrial hazards and accidents.

2.6.6 Commentary on the Kilifi

Committee on Health Services and Agriculture, Environment and Natural Resources

The Committee did not conclude much nor did it come up with a concrete way forward after the meeting they conducted. It would have been prudent if they had recommended sanctions as they acknowledged that inasmuch as ARM was seemingly comply with national regulations people were still complaining and that claims such as that of dust were very evident.

Court Cases against ARM Cement Ltd Operations

1. Daniel Choga, Nelson Yaa, Jacob Nyamawi & others v. Athi River Mining Limited (CIVIL SUIT NO. 1332 OF 2009)

In May 2008, three residents from Kaloleni filed a suit against ARM Cement Company limited through Munyao, Muthama & Kashindi Advocates. Acting on behalf of Daniel Mwalimu Choga and 300 others, the advocates filed a civil suit (No.1332 of 2009) against statutory breach and negligence for causing pollution

to the environment, failing to safeguard and enhance the environment.

By reason of the foregoing, the plaintiffs claimed to have suffered loss, damage, expense and injury and claimed from ARM, general and special damages, an order for restoration of the environment and costs of the civil suit plus interest.

Upon court hearing on the 13th day of August, 2009 before the Honorable M.K. Mwangi (Senior Resident Magistrate) the three plaintiffs were awarded general and special damages as shown in the table below:

Type of Damages	General damages	Special damages
Plaintiff 1	Kshs. 200,000.00	Kshs.2,000.00
Plaintiff 2	Kshs.210,000.00	Kshs.2,000.00
Plaintiff 3	Kshs.210,000.00	Kshs.2,000.00
Total	Kshs.620,000.00	Kshs.6,000.00

Aggrieved by the ruling on 12th July 2010, ARM cement company limited appealed through their lawyer Mogaka Omwenga and Mabeya Advocates on the ruling and order of the Senior Resident Magistrates court at Mombasa dated 25th June 2010 in the Chief Magistrate's Court civil suit No.1332 of 2009. The appellant (ARM) argued that the learned magistrate gravely erred in law in interpretation of the provisions of section 3(3)

of the Environmental Management and Coordination Act No.8 of 1999 of the laws of Kenya. The appellant also claimed that the magistrate erred in failing to hold that the subordinate court lacks jurisdiction to entertain the plaintiff/respondents suit therefore asking the court to set aside the ruling in CMCC 1332 OF 2009-Mombasa and substitute thereto an order dismissing the suit with costs.

The appellant also prayed that the appeal be allowed with costs and thereby the respondents' suit in the subordinate court being CMCC No.1332 be dismissed with costs. This appeal is still pending in court.

However, the fact that damages were awarded in the first instance is clear proof that indeed ARM has caused significant damage to the plaintiffs and probably many others in the area.

2. Milton Mwazani Mchombo (CHAIRMAN), Leonard Nyundo (SECRETARY) & GeraldKatana Mwanumba (TREASURER) (On behalf of the Kambe Community Development Association) v. The Attorney General & Athi River Mining Co Ltd (CIVIL SUIT NO. 133 of 2010)

The plaintiffs herein through a Plaint dated 26th April 2010 complained that Athi River Mining Co. Ltd was polluting the environment through its mining activities at Kinogani hills.

The plaintiffs engaged a Lead expert one Simon Nzuki, who carried out an Environmental Audit. The findings of the report were that mining has adverse effects on the environment such as water pollution, soil erosion, air pollution among others.

They prayed for an injunction against the company to stop its mining activities, compensation for loss, rehabilitation of damaged land and general damages. The Plaintiffs later filed Chamber Summons in court seeking an injunction order against mining activities of Athi River Mining Co.

The 2nd Defendant herein ARM in their Defence admitted to having obtained a mining license but vehemently denied causing environmental degradation. The company claims that the Plaintiffs had earlier on attempted to extort 17,000,000/= from them. They also claim to mine limestone and not lead. The 2nd Defendant raised a preliminary objection stating that the High Court lacked jurisdiction but such objection was thrown out by the court.

ARM claims to have conducted an EIA and subsequently acquired a valid EIA license. They allege to have taken sufficient measures in order to mitigate the effects of their activities on the environment. They prayed for dismissal of the case.

Both parties adduced evidence in the form of Environmental Audit Reports. Both show that there are open pits and that Chigangoni Secondary School is most affected due to its proximity to the dumps. The two reports also show that water is contaminated by lead content.

The case is still pending in court

Media Reports

The tag of war between ARM Ltd and the residents of Kaloleni/Rabai on the implementation of environmental rules and regulations by the company has continued since the year 1999. Since then there has been a myriad of media reports and newspaper articles that have captured the environmental pollution struggle by the residents against ARM Cement Company at Bondora.

An article done by the Daily Nation August 1999 exposed one Mr. Mathias Keah the then area MP of Kaloleni who was reported to have written a confidential letter to the company stating that the company should build a science laboratory at a local school in order to diffuse the tempers and tension of the community members.

This move by the local leader was highly criticized since it depicted that some of the leaders in the region were compromised. Similarly, in 2008, Kaloleni MP, Samuel Kazungu Kambi disbanded a team that had been formed to investigate pollution by the cement maker in Kaloleni because he feared that some of the members had been compromised and as a result they could not work independently.

Several newspaper articles have from time to time highlighted the efforts by lobby groups calling for action to be taken by the company to mitigate the effects caused by its manufacturing activities. Some articles called for action by the relevant authorities which have the mandate to compel ARM to comply with the laid down rules

or impose sanctions for the pollution already caused. Such lobby groups including HURIA made two Petitions; one to the Public Complaints Committee which wrote a report on their findings and recommendations and another to the Parliamentary Select Committee on Environment and Natural resources which also gave its report dismissed herein.

The press reports also clearly painted the picture of the residents' initiative to try and bring an end to a stubborn matter that has refused to go away. Through the continued complaints of the community members in the Kaloleni/Rabai area, NEMA sought to probe the factory over the pollution claims and even slapped the company with a stop order over the pollution in March 2012.

The ban was however lifted on the claim that the company had already begun to initiate mitigation measures, although as is seen to date, a lot is yet to be done. The media has also frequently pointed out and highlighted the plight of the people living within the factory and the quarries. The people experience severe health risks as well as loss of their livestock and reduced production of food crops.

In general, enough publicity and media coverage has been undertaken so as to make the environmental pollution taking place at Kaloleni public knowledge and also in a bid to make the company mitigate the effects of their mining activities as well as abide by the law. Annexed is a table of newspaper articles dealing with environmental pollution by ARM.

5.0 Parliamentary Petition to the Departmental Committee on the Environment and Natural Resources

Introduction

The right of Kenyan citizens to petition public authorities and Parliament is a right conferred by the Constitution under Articles 37 and Article 119 of the Constitution and by the petition to Parliament (Procedure) Act as well as the Standing Orders of the National Assembly.

The right to petition is an essential citizen participatory tool, as it provides an avenue for the Members of Parliament and citizens to deliberate on issues that concern citizens, and also demonstrates that Parliament is prepared to directly intervene on the issues of concern in order to promote and protect the rights of the citizens.

The petition was further filed under the provisions Articles 69 and 70 of the Constitution, where the petitioners decried violation of their right to a clean and healthy environment by the activities of the Athi River Mining Company Ltd.

5.1 Background to the Petition

On 1st August 2013, and pursuant to the National Assembly Standing Orders No. 220 (1) the Speaker of the National Assembly reported to the House a petition presented through the Clerk of the National Assembly by the Human Rights Agenda (HURIA), an NGO regarding the environmental hazards posed by the Athi River Mining Company Ltd to the residents of Rabai and Kaloleni Constituencies in Kilifi County.

The petitioners prayed that Parliament:

1. *Through its Committee on Environment and Natural Resources conducts an investigation on the operations of Athi River Mining Company over the communities' complaints.*
2. *Sanction the National Environment Management Authority (NEMA) to conduct a control environmental audit of the activities of the Athi River Cement Ltd in Kilifi County as provided for under Regulation 33 (1) and 39 of the Environmental (Impact Assessment and Audit) Regulations, 2003, Legal Notice No. 101 of 2003*
3. *Order the Ministry of Environment, Water and Natural Resources through NEMA to compel Athi River Cement Ltd to undertake satisfactory measures to mitigate the adverse impacts of its operations on the environment and on the safety and health of the residents of Rabai and Kaloleni who are affected by the company's factory and quarry operations*
4. *Compel the Public Complaints Committee through the National Environment Council to expedite on investigations on the complaints made to the committee on the impacts of the Athi River Cement Ltd on the environment and on the local communities, and share the findings and recommendations of the investigations to the public,*

including the affected area residents

5. Compel NEMA to make public all previous environmental impact assessment and audit reports, including reports of any control audits conducted since inception of the company

6. Compel the Athi River Cement Ltd to come up with a participatory mechanism of monitoring the implementation of its environmental management plan. The local community and other interested and affected parties must constitute part of the monitoring mechanism. Obligations in respect of the environment.

7. To provide compensation for any victim of a violation of the right to a clean and healthy environment

5.2 The Right to Environmental Protection

The Committee strongly believes that, it is the responsibility of every citizen to protect and guarantee the constitutional right to a clean and healthy environment, and more so the public institutions charged with that responsibility.

It is imperative that all activities that are detrimental to the environment, specifically anthropogenic activities are minimised or eliminated altogether.

The Committee has the exceptional responsibility of ensuring that biodiversity and the eco-systems are preserved and protected. Undeniably, the protection of the environment cannot be disassociated from the need for the country to develop and support industrialization. Internationally, accepted environmental protection practices such as polluter pay principle, public partici-

pation, precautionary principles and good governance must be actualized to ensure sustainable development.

The residents of Rabai and Kaloleni on their petition are concerned about the quarrying activities and the pollution of the environment by the activities of the company and the dangerous health risks it poses to their lives.

Therefore, the Departmental Committee on Environment and Natural Resources has to take the Constitutional right of Kenyans to a clean and healthy environment very seriously, and ensure that regulatory authorities check all activities, projects and programmes for compliance with impact assessments and subsequent environmental audits to minimise these risks.

It is for this reason that HURIA presented a petition to Parliament to vindicate the rights of the residents of Rabai and Kaloleni.

5.3 Arguments in relation to Petition by HURIA to Parliamentary Departmental Committee on the Environment and Natural Resources Regarding Environmental Harzards posed by The Athi River Mining Company Ltd in Kaloleni, Kilifi County By the Human Rights Agenda (HURIA)

These are arguments that HURIA articulated in response to a parliamentary (National Assembly) report that was made based on a petition HURIA has made to the National Assembly.

On Prayer # 1: Through its Committee on Environment and Natural Resources conducts an investigation on the operations of Athi River Mining Company over the communities' complaints.

Committee response: The Committee in respect of this prayer conducted the investigations into the environmental hazards posed by the Athi River Mining Company Limited.

Under Article 95 (2) of the Constitution of Kenya, 2010 the National Assembly has an oversight role to deliberate on and resolve issues of concern to the people. National Assembly Standing Orders 216 (1) establishes the Departmental Committee on the Environment and Natural Resources and its mandate and functions outlined in National Assembly Standing Orders No. 216 (5). The petitioners had anchored their petition on Article 37 read together with Article 119 of the Constitution of Kenya, 2010 which gives every person the right to present petitions to parliament to consider any matter within its authority.

5.3.1 Petition is anchored on the Constitution

This petition was grounded on constitutional principles and values, and therefore the Departmental Committee had to dispense with its mandate as provided in the Constitution. Article 10 of the Constitution provides that all state organs, state officers and public officers in governance should dispense their mandate in accordance with a set of national values and principles. Among the national values and principles are good governance, integrity, transparency and accountability.

5.3.2 The Committee did not Conduct Independent Investigations

The Committee conducted investigations into the matter but the investigations were not independent. They relied on externally supplied information without conducting their own independent investigations. The Committee only visited the site once which would not have given them adequate time to establish independently the claims raised in the petition. Moreover, the Petition raised issues of a technical and scientific nature which necessitated the need for independent investigations into the claims raised in the Petition.

On Prayer # 2: Sanction the National Environment Management Authority (NEMA) to conduct a control environmental audit of the activities of the Athi River Cement Ltd in Kilifi County as provided for under Regulation 33 (1) and 39 of the Environmental (Impact Assessment and Audit) Regulations, 2003, Legal Notice No. 101 of 2003.

Committee response: The Committee determined that the National Environment Management Authority was well versed with the issues raised by the petitioners and had taken steps to ensure that the company met its environmental conservation obligations. The company has also since 2004 submitted environmental self-audits to NEMA, therefore the committee found no need to order for NEMA to conduct a control environmental audit of the activities of the company.

5.3.3 The Committee erred by stating that there was no need for NEMA to conduct a controlled Environmental Audit.

According to Section 2 of the Environmental Management and Co-ordination Act (EMCA) an “environmental audit” is defined as a systematic, documented,

periodic and objective valuation of how well environmental organization, management and equipment are performing in conserving or preserving the environment.

Further, Regulation 2 of Legal Notice 101 (The Environmental (Impact Assessment and Audit) Regulations, 2003) goes on further to define an “environmental audit study” as a systematic evaluation of activities and processes of an ongoing project to determine how far these activities and programmes conform with the approved environmental management plan of the specific project and sound environmental management practices.

Regulation 33 of Legal Notice 101 requires a control audit to be carried out by NEMA to audit, whenever the Authority deems it necessary to check compliance with the environmental parameters set for the project or to verify self-auditing reports. Regulation 33(2) requires that the environmental management plan be confirmed as being adhered to.

Indeed, the Departmental Committee stated that NEMA had halted the activities of ARM in order that ARM could provide a comprehensive EMP in 2012. ARM provided a revised EMP on 16th May 2012. However, since then complaints about the adverse environmental impacts ARM is causing to the locals still abound. These assertions can be verified by independent reports from the Truth Justice and Reconciliation Commission (TJRC) which on 5th March 2013 conducted investigations in the area. The report indicates that Company’s mining activities have resulted in land degradation through loss of vegetative cover, soil erosion and contamination of water sources and severe dust and noise pollution in Bondora village.

The report further raises the issue of an Environmental Impact Assessment (EIA) which was never conducted prior to the commencement of the mining and blasting activities.

From the foregoing, the Departmental Committee should compel/sanction NEMA to conduct an Environmental Control Audit because since ARM submitted a revised Environmental Management Plan in 2012, activities detrimental to the environment are still taking place.

The Committee’s response that NEMA is well versed with the issues raised in the petition cannot dispense/alleviate the need for having an Environmental Control Audit.

On Prayer # 3: Order the Ministry of Environment, Water and Natural Resources through NEMA to compel Athi River Cement Ltd to undertake satisfactory measures to mitigate the adverse impacts of its operations on the environment and on the safety and health of the residents of Rabai and Kaloleni who are affected by the company’s factory and quarry operations

Committee response: In respect of this prayer, the committee determined that the Company has continued to invest in environmental conservation and management in its operations albeit gradually. The Committee agrees with this prayer of the petitioners and expect the company to invest more in ensuring its operations are environmentally friendly and mitigate any adverse impacts on the safety and health of the residents of Rabai and Kaloleni.

The Committee should compel the Ministry of Environment through NEMA to take immediate action by compelling ARM to take measures that will mitigate the environmental degradation taking place. Article 42 of the Constitution of Kenya, 2010 provides that every person has the right to a clean and healthy environment.

This right includes the right to have the environment protected for the benefit of present and future generations through legislative and other measures which are contemplated in Article 69. Article 69 outlines the obligations of the state in relation to the environment which includes the duty to ensure the sustainable exploitation, utilization, management and conservation of the environment and natural resources.

The state should also ensure equitable sharing of the accruing benefits. These provisions also require the state to encourage public participation in the management, protection and conservation of the environment.

The obligations that the state owes to every person under Article 42 is said to be double edged. In others words it applies both horizontally and vertically. In this case vertical application denotes obligations being owed to citizens by the State. The State through its organs like Parliament has a duty to respect, protect and promote the Constitution.

This extends to Parliamentary Committees, which are to ensure that the right to a clean and healthy environment is not violated by Multinational corporations.

Horizontal obligation denotes obligation being owed to citizens by other citizens, companies and multi-national corporations. Consequently, Athi River Mining

Company being a MNC has obligations to Kenyan citizens directly and should ensure that the environmental rights of all persons are upheld. ARM simultaneously has to be accountable to the State on the activities it undertakes that might be detrimental to the environment.

The Africa Commission of Human and People's Rights also had occasion to deal with case of similar environmental magnitude. In *Social and Economic Rights Action Centre (SERCA) and Another v. Nigeria*) (hereinafter referred to as the Ogoni case). In this case the military government of Nigeria had been involved in oil production through the state oil company, the Nigerian National Petroleum Company (NNPC), the majority shareholder in a consortium with Shell Petroleum Development Corporation (SPDC), and that these operations caused environmental degradation and health problems resulting from the contamination of the environment among the Ogoni people.

It was alleged that the consortium had exploited oil reserves in Ogoniland with no regard for health or environmental of the local communities, disposing toxic wastes into the environment and local waterways in violation of applicable international environmental standards.

This resulted in contamination of the water, soil and air. The said contamination has had serious short-and long-term health impacts, increased risk of cancers and neurological and reproductive problems.

In the Ogoni case the claimants alleged that the Nigerian government had violated the Ogoni peoples' right to health and the right to a clean environment in articles 16 and 24 of the African Charter on Human and Peoples' Rights. The claim was that the state had failed to fulfil the minimum duties required by these rights.

The commission was of the view that these rights recognize the importance of a clean and safe environment that is closely linked to economic and social rights in so far as the environment affects the quality of life and safety of the individual. The Commission quoted Alexander Kiss who stated that:

An environment degraded by pollution and defaced by the destruction of all beauty and variety is as contrary to satisfactory living conditions and the development of personality as the breakdown of the fundamental ecologic equilibria is harmful to physical and moral health.

The African Commission in the Ogoni case held that the state had clear obligations when it came to protecting the environment. The state is required to reasonable and other measures to prevent pollution and ecological degradation, to promote conservation and to secure ecological sustainable development and use of natural resources.

Article 12 of the International Covenant of Economic, Social and Cultural Rights (ICESCR) to which Nigeria was party and which Kenya is also party and which under the Constitution of Kenya, 2010 in article 2 (6) forms part of the law in Kenya requires governments to take necessary steps for the improvement of all aspects of environmental and industrial hygiene

The Commission held that compliance to the right of a clean and healthy environment must include ordering or at least permitting independent scientific monitoring of threatened environments, requiring and publicizing environmental and social impact studies prior to any major industrial development, undertaking appropriate monitoring and providing information to those communities exposed to hazardous materials and activities

and providing meaningful opportunities for individuals to be heard and to participate in the development decisions affecting their communities.

The Commission found the the Federal Republic of Nigeria in Contravention of the Ogoni peoples' rights to a clean and healthy environment and appealed to the government to ensure protection of the environment, health and livelihood of the people of Ogoniland by:

1. Ensuring that appropriate environmental and social impact assessment are prepared for any future oil development and that the safe operation of any further development is guaranteed through effective and independent oversight bodies for the petroleum industry, and
2. Providing information on health and environment risks and meaningful access to regulatory and decision-making bodies to communities likely to be affected by oil operations.

Environmental rights under the Constitution do not require progressive realization like other rights in the Bill of Rights. These rights including the right to a clean and healthy environment require immediate implementation. It is therefore erroneous for the Committee to state that ARM “has continued to invest in environmental conservation and management in its operations albeit gradually.”

The obligation that ARM has, that is to safeguard the residents' right to a clean and healthy environment cannot be achieved gradually as the Committee purports to be saying. This right is to be fulfilled immediately. (The right to a clean and healthy environment has even been equated with the right to life by courts- See Peter K Waweru v R Civil Application No. 118 of 2004).

The Committee also seems to have consciously refused to give due weight to the principle of sustainable development, which is among the national values and principles of governance under the Constitution. Article 42 read together with Articles 69 and 10 of the Constitution present a clear picture as to why the principle of sustainable development has become a core constitutional principle. Article 42 requires that the environment be protected for the benefit of present and future generations.

Article 69 (2) enjoins every person to cooperate with state organs and other persons to protect and conserve the environment and ensure ecologically sustainable development and use of natural resources. These provisions clearly cover the spirit of the principle of sustainable development as was elucidated by the Brundtland Commission as being “development that meets the needs of the present without compromising the ability of future generations to meet their own needs.”

Sustainable development, has without a doubt, developed to be the central pillar in environmental law. The principle has three pillars: environmental, social and economic pillar. Although, in its report the Committee emphasizes on the economic benefits of mining to the local residents and the economy, this has to be adequately counterbalanced with the need for environmental protection.

The Committee has therefore failed in its constitutional mandate by failing to order the Ministry of Environment, Water and Natural Resources through NEMA to compel ARM to immediately take action to mitigate the adverse impacts of its operations and activities on the environment and safety and health of present and future residents of Rabai and Kaloleni.

On Prayer # 4: Compel the Public Complaints Committee through the National Environment Council to expedite on investigations on the complaints made to the committee on the impacts of the Athi River Cement Ltd on the environment and on the local communities, and share the findings and recommendations of the investigations to the public, including the affected area residents

Committee response: The Committee determined that the Public Complaints Committee conducted an investigation on the complaints made to the committee on the impacts of the Athi River Mining Company Limited on the environment and the local communities. The PCC published its report on 3 October 2013. This report is public and can be accessed from the offices of the Public Complaints Committee. The petitioners are advised accordingly.

The Public Complaints Committee conducted an investigation on the complaints made and indeed showed that the activities of the company were and are still causing environmental degradation. The PCC recommended that NEMA takes steps to mitigate the environmental degradation that was occurring in the area. The question begging an answer is why the Committee in this report has failed to sanction NEMA to undertake an Environmental Audit so that the allegations that have emerged after the submission of the revised Environmental Management Plan of 2012 can be proved or disproved.

NB: The Report by PCC and all environmental audits and plans should be made easily available to the public on print and electronic media.

On Prayer # 5: Compel NEMA to make public all previous environmental impact assessment and audit reports, including reports of any control audits conducted since inception of the company.

Committee response: The Committee determined that all previous quarterly environmental audits are accessible to the public at the NEMA offices in Kilifi County or the authority's Headquarters in Nairobi. The petitioners can therefore access the documents from the NEMA offices in these two locations.

On Prayer # 6: Compel the Athi River Cement Ltd to come up with a participatory mechanism of monitoring the implementation of its environmental management plan. The local community and other interested and affected parties must constitute part of the monitoring mechanism. Obligations in respect of the environment.

Committee response: The Committee determined that the company made attempts to have participatory mechanism of monitoring the implementation of its environmental management plan. The committee further agrees with the petitioners on this prayers and urges the company to take steps to ensure it involves the residents in environmental management plan as stipulated in Article 69(1) (d) of the Constitution.

The response here is contradictory, there was no participation.

On Prayer # 7: To provide compensation for any victim of a violation of the right to a clean and healthy environment.

Committee response: The Committee determined that any compensation under the right to clean and healthy environment has to be pursued through the courts as clearly stipulated in Article 70 (2) (c) of the Constitution. The Committee advises the petitioners accordingly.

Response on the Observations/ Recommendations of the Committee

1. The Committee recommended that Dr. Kowino John Otieno be investigated on the purported medical examination of 21 sampled residents. This would be a violation of Dr. Kowino's rights under the Constitution of Kenya, 2010-Article 47 and 50. Dr. Kowino deserves to be given a right to a fair hearing which includes the right to be heard before an adverse decision is made against him. The Committee never gave Dr. Kowino an opportunity to be heard since he never made any submissions before the Committee yet it proceeds to make an adverse decision against him. Adverse references to Dr. Kowino in the report should be expunged from the report.

2. Recommendations No. 4 of the Committee states that ARM should continue to meet its obligations under the relevant statutes and obligations. Though the petitioners are not praying that the company be closed, this recommendations purports that the company has already started taking steps to mitigate the environmental degradation its causing yet there has been evidence that the company has continuously violated the environmental rights of the citizens in Rabai and Kalo- leni area.

3. On recommendation No. 5 the Committee recommends that ARM should in the long term invest in conveyer belts in order to mitigate on the air pollution. This is an admission by the Committee that indeed their investigations revealed that ARM was polluting the air.

4. The Committee observed that the vibrations and noise level were within the accepted international standards. Here the question is what are these international standards? Why didn't the committee refer to the na-

tional standards? And why hasn't the committee indicated the current levels in the plant.

5. The Committee also indicated that there is need to engage independent experts to verify the pollutants in the water or hydrological basin. The concern here is on the precautionary principle in environmental law. According to the precautionary principle in environmental law, "where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation." The precautionary principle is one of the principles of sustainable development under Section 3(5) (f) of EMCA, 1999. Consequently, the fact that there is no certainty about the adverse health, social and ecological impacts of the activities of ARM should not alleviate the need to undertake measures to prevent such adverse activities.

In addition, the fact that Dr. Kowino has found some residents to be showing signs of silicosis which is an irreversible and untreatable medical condition shows there is need for immediate measures to prevent environmental degradation. Even if another doctor were to give a contradictory report, that would not stop the need for preventive measures applying the precautionary principle.

6. The allegation by the Committee that HURIA is sponsored by a dominant competitor to disadvantage ARM is untrue and has no factual basis. HURIA is not praying for the closure of the company and is only pushing for the environmental challenges to be addressed. This cannot constitute unfair competition since NEMA directed the closure of the ARM on 2 March 2012. Further, efforts to address adverse environmental activities by ARM were not initiated by

HURIA alone because even the former MP Kazungu Kambi and the TJRC report have highlighted the same.

7. In observation No. 9 the committee indicates that ARM has undertaken Corporate Social Responsibility programmes by offering education sponsorships and has also employed more than 800 local residents. While these moves are commendable, they do not answer specifically to the environmental concerns that have been raised by the petitioners.

It is common knowledge globally that CSR programmes are philanthropic in nature and are not anchored in the law in Kenya. What the petitioner sought in this petition goes beyond the mere philanthropic gesture of a multinational corporation. The petitioner seeks the protection, respect and promotion of constitutionally enshrined rights to a clean and healthy environment and mitigation of adverse environmental activities.

8. The allegation by ARM that the committee investigate the motivation of HURIA and their sponsor Nickson Shaaban alias Kamlesh is completely unfounded both in law and facts. Mr Shaaban is the Coordinator of HURIA and pursuant to article 22 of the Constitution, every person has the right to claim violations of human rights in the bill of rights. Claims can also be made by a person acting on behalf of another person who cannot act on their own name. The allegation that Mr Shaaban is sponsored by ARM's competitors should be expunged from the report.

Call for Action

6.1 Call for Action

From the findings of the reports, the following are critical for the various stakeholders in the sector.

6.1.1 NEMA (National Environmental Management Authority)

- Make available to the public the Environmental Audit reports by ARM.
- Compel ARM to follow their Environmental Management Plan and do follow up on compliance
- Conduct random and regular inspections on the company

6.1.2 Kilifi County Ministry of Agriculture and Livestock

- To do an analysis on how the activities of ARM have affected the livestock and vegetation of the people living around ARM and to give a report on the analysis for action to various stakeholders in the sector;

6.1.3 Department of Mines and Geology

- To ensure ARM complies with the mining and use of explosives regulations in their quarries.

6.1.4 Parliamentary Select Committee (PSC)

- To redo a thorough investigation on the allegations against companies and come up with a good and objective reports.

6.1.5 Kilifi County Government

- To fully involve the members of the community who live adjacent to the company while they conduct investigations on the allegations of pollution against such companies.
- To come up with county laws and policies that will regulate environmental pollution especially noise etc.

6.1.6 Directorate of Occupational Safety and Health Services (DOSHS)

To do a Safety Audit on the company's employees and the operations of ARM as soon as possible

6.1.7 Ministry of Mining

- To review the activities of ARM Cement Ltd. to ensure that the Company complies with the mining license conditions including whether it complies environmental conservation and social responsible investment in the area

6.2 Important Policy Considerations

6.2.1 Access to information

The Constitution of Kenya provides in Article 35 states that every citizen has the right of access to information held by the State and information held by another person and required for the exercise or protection of any right or fundamental freedom. The Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters in Article 4(1) asserts that *“Each Party shall ensure that, subject to the follow-*

ing paragraphs of this article, public authorities, in response to a request for environmental information, make such information available to the public, within the framework of national legislation, including, where requested and subject to subparagraph (b) below, copies of the actual documentation containing or comprising such information:

(a) Without an interest having to be stated;

(b) In the form requested unless:

(i) It is reasonable for the public authority to make it available in another form, in which case reasons shall be given for making it available in that form; or

(ii) The information is already publicly available in another form.

2. The environmental information referred to in paragraph 1 above shall be made available as soon as possible and at the latest within one month after the request has been submitted, unless the volume and the complexity of the information justify an extension of this period up to two months after the request. The applicant shall be informed of any extension and of the reasons justifying it.”

Pursuant to Article 35, the National Assembly should enact legislation that specifically provides for access to public information so as to ensure such information is not withheld on the basis on technicalities. HURIA for instance experienced a serious challenge on requesting access to Environmental Audits of ARM Cement. Permission for access was denied on baseless grounds and unfathomable reasons were often given to prevent access to the same; something that by law should not happen.

If Kenya were a signatory to this Convention then it would be bound by provisions therein because they

would then complement the Constitutional right in Article 35. The Government of Kenya should become a member of this convention and that way we shall be able to achieve maximum/utmost access to information, public participation in decision-making and access to justice in environmental matters.

Further the provision of Access to Information by the public under Section 59 of the Environmental Management and Coordination Act Amendment Bill 2014 is a step in the right direction in terms of making available documents and information to the public.

6.2.2 Methodology of Investigations

Various country laws provide for investigations to be conducted by Parliamentary Select Committees and other Environmental Committees under EMCA on matters affecting the environment either because of Petitions or complaints presented to them or on their own motion.

These committees however are often at times comprised of laymen in the specific fields in which the act as committees on. E.g. the Parliamentary Select Committee on Environment and Natural Resources does not consist necessarily of environmental experts.

Therefore once they conduct a site visit, they can only act upon what they are told by complainant, party complained about and on what they can physically see. Subsequently when the report is concluded, it is many at times misleading and does not give concrete recommendations on what need to be done.

It therefore follows that, for these committees to be efficient and effective in their work, they should co-opt experts in the specific fields to provide technical expertise and know-how.

Likewise, for efficiency to be realized, time frames for carrying out investigations as well as release of investigative reports must be expressly defined. For instance, regulations should state that a minimum of specific hours should be employed in carrying out investigations and that a specific period that is expedite enough should be used to come up with a report.

6.2.3 Grievance Mechanisms

While EMCA 1999 and other related laws provide for grievance mechanisms or recourse for claiming environmental liability, there seems to be outright laxity in pursuing recommendations and enforcing compliance. There needs to be deliberate efforts to ensure that the available complaint mechanisms are efficient and responsive.

The grievance mechanisms in place in the country at the moment if effectively managed should be sufficient to ensure that there is sanity instilled in so far as access to justice on environmental issues and the realization of the right to a clean and healthy environment are concerned.

This is the case because Acts of Parliament as well as the Constitution have provided for numerous State institutions that can be used to access environmental justice. These institutions include: PCC, NEMA, Ombudsman the Land and Environment Court etc. they have however not been very effective in providing redress/restitution for those aggrieved.

There also need to be internal grievance mechanism systems within companies. These will help in solving local complaints and will also establish some mutual trust and relationship between the companies and communities.

Way Forward and Conclusion

The fight for Environmental Justice in Kaloleni/Rabai, Kilifi County dates back to 1998. It is a fact that Athi River Mining Ltd in its activities of manufacturing cement causes pollution to the environment causing detrimental effects on agricultural production, livestock and human life. Despite vigorous and frantic efforts by the community members to bring a stop to the environmental pollution, ARM has remained defiant and has constantly ignored the plights of the community members who are ignorant and poverty stricken.

This report acknowledges that indeed the company has taken certain steps to better the lives of the community. It has built some classrooms in a number of schools in the area, setting up a community health centre, creating employment for the locals among a few others. Although this is a positive move, the company needs to be compelled to do even more to alleviate poverty in the region. However, much remains undone and therefore the company needs to redouble its effort in Corporate Social Responsibility.

ARM Ltd seems to only be concerned with profit maximization and minimizing losses at the expense of the community members and their lives. It is a disgraceful thing that the management of the company does not value human health and life, or the livelihood of the community members neighbouring the factory and quarries. They also have total disregard to environmental conser-

vation and protection.

Whereas environmental rules and regulations are seriously breached, the stakeholders seem to take a back seat, as if waiting for the situation to play out to its full extent. Intervention by the relevant stakeholders who are custodians and watchdogs of the environment and environmental regulations including NEMA, the Ministry of Environment and Natural resources at the County Government as well as committees mandated by law, is wanting. For instance, it may be inferred that NEMA issued an Environmental Impact Assessment (EIA) license without examining the effects likely to arise from the mining and manufacturing activities of ARM or without being provided with sufficient strategies to be put in place to mitigate such adverse effects. Further, NEMA does not seem to be keen to follow up to ensure that conditions set in the EIA license are adhered to through the carrying out of Environmental Control Audits. Therefore, NEMA needs to be more vigilant in ensuring environmental regulations are complied with.

Various methodologies and tactics have been used in an attempt to make ARM tow the line but to no avail.

The local community initially tried to engage the ARM management in a dialogue through various meetings, they also tried to reach out to the various administrative officers whom they felt could perhaps intervene to salvage the situation but that as well was unsuccessful.

Several committees and taskforces have also carried out investigations and a good number of reports have been generated in which recommendations are made based on the findings of each report.

The recommendations given are all independent, distinct and have captured most of the complaints with regard to the situation at Kambe location and, if they could be taken into account and implemented then there would be no more roar about environmental pollution by ARM and that way the company could be able to continue with its business without any interruption.

Unfortunately, such findings and recommendations have often been dismissed by ARM as being false and malicious and therefore nothing has been done to right the wrongs. Given the gravity of the matter, perhaps a more radical measure such as instituting court process against ARM should be undertaken to either compel it to comply with the rule of law or if not, close shop.

Annex 1: Media articles on Impacts of ARM Cement Operations

1. Understanding ARM's battle in Kaloleni (The Standard, 18th February 2014) ARM was once a 'little horse' among cement manufacturers in the region. But it was a little horse with ambition.

This ambition has seen it overtake East Africa Portland Cement, the oldest cement manufacturer in the country, to become the second largest cement manufacturer in terms of the value of all its shares at the Nairobi Securities Exchange. In first position is Bamburi Cement. Success can have three effects depending on how you look at it. It can get to your head, it can attract detractors, or it can make you humble and propel you to greater heights. As ARM embarks on setting up Kenya's largest cement plant this year in Kitui County, it has to guard against losing one of its most important plants.

Human Rights Agenda (HURIA), an NGO, has engaged ARM in a war that has all the drama of corporate mudslinging. The fight to do with ARM's cement plant in Kaloleni at the Kenyan coast. The Kaloleni plant is important because ARM produces its own clinker. This gives it the advantage of having lower costs as it does not have to import this crucial material in the cement manufacturing process. In the easiest explanation of the process, limestone is mined from the earth. Clinker is produced by burning limestone. Clinker then ground and mixed with gypsum to produce cement.

Huria, in a report done late last year-titled polluted justice- wants ARM to compensate families for damages caused to their health as a result of pollution from the cement plant. The NGO also wants ARM to improve its technologies to reduce pollution, and for Na-

tional Environment Management Authority to carry out an audit of the manufacturer's activities. Huria said it found some adverse environmental, health and safety effects on humans and crops, including dust generation and noise pollution that it blamed on the plant.

The NGO, however, said it did not consult with ARM. The cement manufacturer would face financial and operational setbacks if the NGO's recommendations are followed to the letter. And in the neck-and-neck race to control the cement market, it would probably slow down ARM and hand the advantage to its competitors.

Last month, in a strong rebuttal ARM presented to MPs who sit on the committee of natural resources and environment, the manufacturer alleged the report could be the work of its competitors. "The allegations of HURIA against ARM are vexatious, non-scientific, frivolous, based on fabricated data aired for personal gain and geared to promote the selfish interests of our business rivals,

““ ARM said it its presentation to the MPs. Does Huria have an ulterior motive and is it being sponsored by misguided sponsors or cement industry competitors?”

If ARM were to lose out on the Kaloleni plant, it would have to import the clinker. ARM has a cement plant in Tanga, Tanzania, where it plans to begin producing clinker from June 2014. Business Beat tried to contact Huria through email and on the phone to get their com-

ments on these allegations. But by the time of going to press, the email had yet to be responded to, and calls to the numbers listed on their website were not going through. ARM defended itself by saying it carries out regular tests to ensure noise and air pollution do not rise above recommended levels.

2. Residents say plant poses health risks

(The Star, 17th February 2014)

A Kilifi county lobby has asked Governor Amason Kingi to ensure activities of Athi River Mining Company do not pose health risks to Rabai residents. The locals said the dust from the company's plant is a serious health hazard. Residents of Jibana, Kambe, Ribe and Kaloleni said Kingi should compel the company to observe the World Health Organization standards. Speaking to journalists in Mombasa town, they said the locals are being affected by dust and blast from the plant. Allan Mwadena, a resident, said they have issued a 14-day notice to the company.

3. Tackle cement pollution, minister told

(Daily Nation, 10th February 2014)

Kilifi County professionals have called on Environment Cabinet Secretary Judi Wakhungu to intervene over cement pollution in the area. Yesterday, the professionals from Kambe, Ribe, Jibana and Kaloleni raised the alarm, saying more than 30,000 residents living in the vicinity of the Athi River Mining factory and quarry sites have continued to bear the brunt of the firm's activities.

In a statement read by Mr. Morris Mae, the professionals said although the communities have complained about dust, smoke and blasts, the government has ignored them. "The secretary should intervene to ensure an amicable solution is reached between the company

and our aggrieved communities," they said. The professionals also called on Prof Wakhungu to investigate the National Environment Management Authority over enforcement of environmental regulations. "We feel the authority is not hard on the firm to comply with environmental regulations and this is compromising our lives," they said. Environmental activist Alan Mwadena said he fears the report by the Parliamentary Committee on Environment and Natural Resources would be skewed "because it did not seek views of the four communities "when it visited the factory recently.

4. ARM dismiss pollution allegations as false, malicious (The Standard, 3rd February 2014)

Cement manufacturer, Athi River Mining (ARM) has dismissed allegations that it is polluting the environment as false and malicious.

Human Rights Agenda (Huria), a Mombasa based lobby last month released a report detailing various allegations of environmental pollution by the company. But meeting parliament's Committee on Natural Resources and Environment at the plant in Bondora, Kaloleni County, ARM Chief Executive Mr. Pradeep Paunrana dismissed the report as unfounded and its contents as designed to hurt his business.

The committee's mandate covers matters relating to climate, change environmental management, water resources, wildlife, forestry, pollution and waste management. Member of Parliament for Emuhaya Constituency Wilbur Otichillo who stood in for committee's chairperson, Amina Abdalah said the visit sought to ascertain the true position regarding operations of the factory.

He said that Huria had filed a petition on allegations of excess emission of dust from mining and process-

ing activities, noise emission from factory and related operations, general vibrations that occur as a result of business of the factory. Accompanied by the firm's chairman, Mr. Rick Ashley, Paunrana said the allegations hold no water and should thus be dismissed.

“As a matter of fact, we have filed a counter-petition seeking clarifications on all matters raised in the report,”

he said. He added that Athi River Mining conducts regular audits and has satisfied all environmental minimums as defined by National Environmental Management Authority (NEMA).

“We have maintained our operations above board and within required parameters,” he said. Paunrana said Nema and other local and international agencies have been conducting periodic inspections for compliance.

In 2013, the company closed down its operations for two weeks to allow for investigations in the wake of protests organized by Huria. The firm was, however, allowed to resume operations after it satisfied all parameters. Paunrana said the adherence to audits and recommendations made by the various agencies has earned ARM the ISO certification on environmental management systems based on ISO 14001:2004 standards.

ARM was also the first cement maker to be awarded the ISO 9001:2008 in Quality Management Systems. The recent past has seen several firms suffer sporadic attacks from lobby groups through debatable reports.

Last year, a report by the same lobby group was questioned after it emerged that one of the officers who endorsed it had been suspended from office and had no such powers to do so. Hospitals that are reported to have examined the patients have also denounced the results in the reports.

5. House team visits cement factory to assess complaints of air pollution (Daily Nation, 1st February 2014)

A parliamentary committee has launched investigation into claims that a cement maker is polluting the environment in Kilifi County. The National Assembly's Committee on Environment and Natural Resources yesterday visited Athi River Mining Cement Ltd after Human Rights Agenda, a lobby group, petitioned parliament alleging that the firm was polluting the environment with dust thus affecting resident's health. Acting committee chairman, Dr. Wilbur Otichillo, said after touring the plant and its surrounding areas, they were able to experience of the gravity of the problem.

During the one-day visit, he said the team of seven MPs collected documents and information from stakeholders on the complaint raised. “We have carried out independent investigations and an impartial report will be compiled to be forwarded to the speaker when parliament resumes,” he said.

Recommendations made in the report would be discussed in Parliament and may be accepted or rejected. Speaking at Kambe chief's office, Dr. Otichillo urged the residents not to shy from approaching the committee with more information that the team may not have collected, to assist the team to recommend solutions to the problem. “If you feel that there are some facts that cannot be revealed in public, we shall take them in privacy.

We request you to write to us or call,” he said. However, he suggested that a long-term solution could be achieved through harmony and dialogue. The cement company’s managing director, Paradeep Paunrana refuted the allegations leveled at the factory. The manager said the lobby group’s report titled polluted justice was misleading and inaccurate and the medical reports submitted lacked evidence. The plant conformed to national and international standards on air quality, noise and vibration, he added.

6. Firm threatens to sue lobby (The Star, 1st February, 2014)

Athi River Mining Company in Kaloleni has threatened to sue a coast lobby group for defamation. Managing director Pradeep Paunrana accused the Human Rights Agenda of dividing the community living around the cement factory to frustrate its operations.

Speaking at the plant on Thursday, Paunrana said they have complied with all the laws governing the plant but HURIA has been spreading false information. “Our standards are better than those stipulated by NEMA and even international environmental organizations. We have been conducting environmental organizations. We have been conducting environmental audits through NEMA who have cleared us,” he said.

7. ARM blames rivals for woes in Kilifi (The Star, 20th January 2014)

Cement maker Athi River Mining has blamed rivals for funding non-governmental organizations who are pushing for the closure of its plant located in Kilifi over health concerns. Arm says it has complied with all the healthy and safety requirements as stipulated by the National Environment Management Authority.

But NGOs led by the Human Rights Agenda insist dust emissions from the cement plant are harmful to nearby residents and livestock and as such the plant which was shut down briefly last year, should be closed down completely. Various correspondences seen by the star shows the cement company has been given clearance by key government agencies including the ministries of Health, Mining, Livestock and even NEMA.

Kilifi county NEMA boss Godfrey Wafula said several improvement orders issued to ARM after the closure in March last year have been followed with an audit expected soon to determine the level of compliance.

Wafula said the company has installed dust arrestors to reduce the amount of dust and has also built pavements where trucks park to minimize dust emission.” They are required to undertake much more measures to eliminate dust completely,” said Wafula on phone. ARM’s safety, health and environment manager Douglas Miheso however said the company has fully complied with all the NEMA requirements and termed the claims by the NGOs as malicious and driven by rival companies.

Other cement companies operating at the coastal region include Mombasa Cement and Bamburi Cement but the two do not have cement plants in Kilifi County. “Basically there is nothing we have not done,” Miheso said adding that the company has build internal roads and concrete floors for loading vehicles to reduce dust emissions.

The company he said conducts regular servicing of dust arrestors as well as rehabilitation of mines. A letter from the Ministry of Health dated October 3, 2013 addressed to the Human Rights Restoration Forum said there has not been more than normal prevalence of chest infections in the areas alleged by some doctors who are said to have been hired by the NGOs.

‘There has not been any widespread prevalence of chest and lung infection as alleged in the local dailies of July 15, 2013 in Kaloleni area,’ says the letter in part. ARM said some of the residents confirmed to have been paid by the activists to go for chest examination. Human Rights Agenda says in a petition to the National Assembly dated November 18, 2013 that the Environment and Natural Resources committee of parliament should conduct investigations into the operations of the cement company.

8. Firm fights off allegations of pollution as battle with rights group heats up (The Standard, 20th January 2014)

A rights group in Coast Province has threatened to take Athi River Mining Company (ARM) to court over environmental pollution. This follows the release of a report by the Human Rights Agenda (HURIA) on what the group terms environmental pollution by the cement company. In Kilifi, where the factory is located, residents have aligned themselves with either the civil rights group or ARM. The report dubbed

9. Do not rush into mining rare earth ore, government (Business Daily, 27th July 2014)

The discovery of rare earth ore with an estimated value of Sh5.6 trillion in the coastal region has touched off mixed reactions from prospective miners, professionals and government agencies eyeing the natural resource.

This latest mineral find at Kwale County’s Mrima Hill is expected to raise Kenya’s profile as one of the few countries with such vast deposits of the mineral with myriad uses in the manufacture of electronic products.

But Dr Katana Ngala, a senior lecturer at the depart-

ment of Mining and Mineral Processing at Jomo Kenyatta University of Agriculture and Technology’s Taita Campus, is skeptical about the real worth of the deposits. “We are not sure of the value declared since the players are the ones prospecting,” he said, indicating that the company involved in exploration could undervalue the deposits to undercut the government’s share. The chemistry don cautioned that if international guidelines on mining and disposal of waste are not strictly followed, there was a danger mining activities could become a health hazard to people, animals and plants in the region.

Based on a speech given by Mining Secretary Najib Balala in London, Bloomberg Business week reported last month that Kenya would be repealing the rule that there be at least 35 per cent local ownership of mining projects, so as to, in Mr Balala’s words, “crowd investors in, and not out”. In his comments, Mr Balala clarified that the government would own 10 per cent of mining projects and that the allocation of royalties would vary depending on the mineral being mined. But for Dr Ngala, the evolving mining sector calls for regulation so decisions regarding ownership, deals with investors and revenue sharing are made public to avoid suspicion. There is also a need, he said, for government guidelines to curb the poor governance in compensation that delayed titanium exploration in Kwale for more than 15 years.

The don wants the National Environment Management Authority to involve other stakeholders and create a team to monitor mining activities and advise on issues of concern. “There is no need to rush the exploration of our natural resources that are intact in the ground. What needs to be done is to follow the legal procedures that the companies are aware of and not allow short cuts to take root at the expense of our political, social and economic wellbeing,” he said.

Prof Halimu Shauri, chairman of the Department of Social Sciences at Pwani University wants the rights of communities in mineral-rich areas made public. “What we are seeing is that the rich have made laws that favour miners while the local community is mistreated,” he said, adding that people all over the world remained poor because they were often short changed in the sharing of mineral revenues. He described as peanuts the compensation mining companies give to landowners to vacate their property and called for a review of mining laws to protect communities in future dealings. Human Rights Agenda Executive Director Yusuf Lule said mining companies need to address the environmental concerns of local residents.

10. Cement firm probed amidst disease fears

(Daily Nation, 17th July 2013)

Environmental experts have collected samples for testing from Kilifi following complaints that a cement factory in the area is polluting the environment. The experts will establish if the dust from Athi River Mining Cement mining factory was affecting the health of area residents after testing water, soil, air and foliage in the laboratory. The team led by a NEMA specialist James Thiaine visited the Bondora site over the weekend and observed plants among them cashewnuts, coconuts, grass and vegetables on farms near the factory.

The specialist carried out tests at the quarry and nearby the factory to determine air quality and noise levels. Mr. Thiaine said the team said that the iron sheet roofs of nearby houses were covered with dust, an indication that the pollution may even have greater impact on the people and animals in the area. If the plants can be white-coated with dust, how about the health of the residents? They also rely on the same

crops for food,” he said but added that the tests would give better results.

From his preliminary assessment, Mr. Thiaine said that the coconut trees were not as productive as they were before and the maize produced was not fit for human consumption. He said that the samples of the contaminated water collected from the stream could be analysed. Earlier the head of surveillance division at the Ministry of Labour, John Kowino, recommended that people living near the cement plant in Kaloleni to undergo medical tests.

11. Cement factory on the spot over lung disease

(Daily Nation, 15th July 2013)

A government official has recommended medical examinations for all people living in the vicinity of a cement plant in Kaloleni, Kilifi County. Initial tests on a sample population from Mwandodo, Maereni and Bondora villages showed that about 80 per cent of the people who live near the Athi River Mining quarry and factory suffer from chronic lung disease- silicosis- as a result of inhaling dust.

Dr. John Kowino, an occupational health specialist in the Labour ministry recommended medical examination for people who live around the plant. The officer in charge of medical surveillance said they conducted preliminary clinical, chest Xrays and spirometry (measurements of lung function) examinations on people within the vicinity of the factory following complaints about environmental pollution deaths and their livestock and diseases. Our mission is to find out whether they have been infected after inhaling silica dust.

Silica can be very harmful to people’s health. It affects both the eyes and lungs,” said Dr. Kowino. He said the biggest problem from silica is damage to the lung tissue. The lungs cannot perform their function of supplying

oxygen to the blood leading to lung cancer, he added. Dr. Owino said the symptoms of the silicosis develop over time as tissue becomes irreversibly damaged by fibrosis and is replaced by solid nodules of scar tissue.

““ The damage suffered by the lungs leaves a person susceptible to lung infections and TB,”

he said, Dr. Kowino said that from the 21 people examined, 17 had health problems that were directly attributed to silica dust. They included itchiness of the eyes and respiratory system problems. He said that the findings from the examinations conducted would be communicated to the company so that they can develop measures to stop or minimize the dust emissions. Those affected need to be paid compensation because their health problems resulted from the company's operations.

12. Group wants audit on factory (Daily Nation, 9th July 2013)

A lobby group has petitioned NEMA to conduct an environmental audit on the Athi River factory and quarries in Kaloleni. Human Rights Agenda has written to NEMA Director general Geoffrey Wahungu to complain of the environmental degradation the factory has caused in Kaloleni and Rabai.

13. Group to probe firm on pollution claims (The Star, 1st July 2013)

A lobby has commissioned a study to establish if the dust emitted by a mining company affected the health of local residents. Human Rights Agenda executive di-

rector Yusuf Lule said the residents had complained that a plant built by Athi River Mining Company in Kaloleni contaminated their water, leading to respiratory diseases and death of livestock. Contaminated, respiratory diseases

14. Group accuses firm of 'heavy pollution' (Daily Nation, 8th May 2013)

A human rights organisation has petitioned NEMA to probe a cement factory over heavy pollution in Kaloleni and Rabai constituencies. In a letter by Human Rights Agenda executive director Yusuf Lule, the organization alleges that the company operations had adverse effects on the environment. Mr. Lule said the locals suffer from excessive amounts of dust, high levels of noise from blastings and cement grinding, landscape degradation and road destructions.

15. Nema to probe cement factory over pollution claims (Business Daily, 25th February 2013)

The national environmental regulatory body has said it will this week investigate claims from residents that a cement factory in Kilifi County is polluting the environment.

National Environmental Management Authority (Nema) noted on Monday that it had written a letter to Kaloleni Athi River mining plant, asking them to respond for flouting the environmental regulations on pollution as stipulated by the law. NEMA Kilifi County director for environment Godfrey Wafula said the agency would immediately tour the firm and file a report on the pollution status. "We have received the concerns from the complainants.

Nema will send a team to carry out inspection and monitor the operations until the factory compile," he said. Mr Wafula said at the factory, Nema will also

conduct a control audit and depending on the findings a proper action will be taken according to the law. According to Johnstone Mazuri Yaa, a local resident who lives a few metres from the factory, the uncontrolled fine dust emissions from the factory had led him suffer from a respiratory disease.

“This pollution is making our lives unbearable; people are suffering from skin diseases, have lost their income from coconut plantations and livestock’s,” he said. Mr Yaa said despite raising their concerns to the management and government agencies many times, the dust problem had not been solved fully. Echoing the sentiments, a Coast region human rights lobby said the factory was putting the health of the community at risk and called for quick intervention to arrest the dust.

Human Rights Agenda (HURIA) executive director Yusuf Lule said it was a fundamental right for the locals to enjoy a pollution free environment and the factory should be enforced to adhere to all the environmental requirements. “We are concerned over the continued irresponsible and non-environmental friendly activities of the Athi River Mining (ARM) Company that has posed health risks and affected vegetation. Therefore, we want the violation to be ended,” he said. Mr Lule said despite intervention by NEMA last year to temporarily close the operations of the factory for failure to observe environmental laws and put an end to the gross health hazards and pollution, it seems there was laxity in enforcing the law.

“Maybe, the institutions mandated to enforce the law are reluctant, so there is need to take the officers to task to perform their duties,” he said. The Kaloleni factory that produces clinker, a key ingredient in cement manufacturing employs 1,103 staff and supports about 10000 more indirectly. According to the man-

agement, the plant has a production capacity of 1,500 tonne of clinker daily and a 300,000 tonne annual cement grinding capacity.

16. Nema lifts ban on ARM clinker plant (Business Daily, 21st March, 2012)

The national environmental watchdog has lifted the ban imposed on cement maker Athi River Mining (ARM’s) Kaloleni factory, allowing the company to resume operations. ARM said it had resumed production of clinker, a key raw material used in the manufacture of cement. The National Environment Management Authority (Nema) lifted the ban order after a plant inspection carried out on Saturday showed that ARM had taken steps to cut down on dust emissions, which the regulator said were affecting the neighbouring community and ecosystem.

“We will start the clinker manufacturing operations this afternoon,” said the ARM chief executive Pradeep Paunrana in a statement. Nema confirmed that Saturday’s inspection had shown ARM was taking measures to make sure it did not violate any laws. Factory inspection “Inspection was done and Nema notes that ARM’s plant has initiated mitigation measures to control and prevent recurrence of pollution,” said Nema chief communication manager, Jacqueline Marita. The plant, which employs more than 1,000 workers, produces 1,500 tons of clinker a day, and has an annual cement grinding capacity of 300,000 tones.

Nema has advised ARM to submit an environment management plan within two days, which is to be used as a rule book for the cement producer in mitigating pollution. Nema ordered ARM to stop all operations on March 9. The closure order came when the plant had already halted operations for regular maintenance, coinciding with Nema’s directive.

17. Environment Watchdog Inspects Athi River Mining Plant (Business Daily, 19th March 2012)

The National Environment Management Authority is expected to give a verdict on the recent closure of cement maker Athi River Mining's (ARM) Kaloleni-based plant after officials inspected the factory to establish whether it has complied with orders to reduce pollution. The authority ordered the factory to stop production a week ago citing a breach of clean environment guidelines. "We will inspect the plant to evaluate the level of compliance and advise accordingly," Nema chief communication manager Jacqueline Marita told the Business Daily as the inspection was carried out on Saturday. She said Nema would give its verdict this week. The ARM chief executive, Mr Pradeep Paunrana, declined to comment on the matter only saying that he had held meetings with the environmental watchdog "and other government officials". The Kaloleni-based plant produces 1,500 tons of clinker per day, a key ingredient used in the manufacture of cement. It has an annual cement grinding capacity of 300,000 tonnes.

Nema ordered ARM to stop all operations on March

9. The watchdog said the cement maker's operations in an open area were dispersing dust to adjacent communities.

ARM has, however, said that Nema went back following an agreement in which the cement maker was given 18 months, from June last year, to comply with the requirements. A letter from ARM says that the heavy rainstorms in the South Coast last year caused the roof of the clinker yard to collapse and repairs were under way. Construction to cover coal and other raw materials' storage facilities is also ongoing. Nema also required that quarry operations must be closed by

6 p.m. ARM was required to tarmac the route between the factory and the quarry and locate parking for trucks that ply the road. The cement maker was also required to sprinkle water daily to reduce dust, and the entire operation within the plant was to be paved.

Mr Paunrana had, in an earlier interview, said that Nema's directive came into effect when the Kaloleni based plant was already closed for regular maintenance and that operations were not affected. The re-opening was scheduled to take place tomorrow but is now dependent on Nema's ruling. Analysts do not expect the plant's re-opening to be delayed. ARM is also said to have reserves of clinker, which will save it from incurring high production costs for some time. Mr Renaldo DeSouza, a research analyst at Genghis Capital, said that prudence demands that ARM complies with Nema guidelines since a delay in re-opening could jeopardise revenues and add to costs. "This is temporary; the share does not appear to have been adversely affected.

The soon-to-be-released results may drive the share," said Mr DeSouza. ARM is expected to release its final year results soon. Investors will be looking at how the company fared in the fourth quarter of 2011 after it reported foreign exchange losses of Sh685 million due to the weakening of the shilling against the dollar in the previous quarter.

The loss made some investors uneasy. "ARM (share) lost 2.5 per cent to Sh156. The expected weak results coupled with the negative sentiments from the closure of the Kaloleni plant continue to draw caution on the counter," said a market report by Sterling Capital.

18. Athi River Mining says jobs at risk after Nema closes plant (Business Daily, 13th March 2012)

An order by the environment watchdog for closure of Athi River Mining (ARM) Kaloleni plant could see the firm lose hundreds of millions of shillings and put a thousand jobs in jeopardy, officials said yesterday. Listed ARM's management said that if the National Environment Management Authority (NEMA) does not lift its closure order the firm will be forced to let employees go home. The plant employs 1,103 staff and supports another 10,000, according to the management. Chief executive Pradeep Paurana, however, said the directive was yet to affect operations since the plant is temporarily shut down for pre-planned regular maintenance.

The exercise is however expected to end on March 20. "Right now we are under maintenance, but we do not know about next month and we may have to let people go," said Mr Paurana. The plant is one of the few manufacturing clinker, a key ingredient in the manufacture of cement.

If Nema's order is not lifted soon, it will put pressure on ARM's costs besides the country's imports bill. Kenya is a net clinker importer and only two other companies currently manufacture it locally. Francis Mwangi, a research analyst at Standard Investment Bank, said that in the absence of locally produced clinker ARM would have to join importers.

The Kaloleni-based plant has a 1,500 tonne clinker daily capacity and a 300,000 tonne annual cement

grinding capacity. Freight charges, prices on the international and source markets make pricing of imported clinker difficult. But on average it costs between 40 and 50 per cent more than the locally produced stuff.

Mr Mwangi said that like other manufacturers, ARM has clinker reserves and Nema's orders will begin to hurt once they are exhausted. "ARM has reserves of clinker and it comes down to how long it will last," said Mr Mwangi.

The Nema said that it gave the order due to materials used in manufacturing affecting neighbouring communities and the ecosystem but ARM accuses them of inconsistency. "The closure was occasioned by poor operations at the company that were resulting in air pollution as the plant undertook operations in an open area as opposed to an enclosed one," said regulator in a statement last week.

But Mr Paurana said that the Nema was going back on an agreement which had given them up to September 2013 to solve the problem which both parties realised and accepted would take about 24 months. The agreement, he said, was arrived at in June 2011 with the alleged pollution being one of the items on a long list of Nema demands some of which go beyond ARM's realm. For instance, Nema required that ARM tarmac or cabro tile a six kilometer road from the quarry to the factory but the road, said ARM's management, is classified under the Kenya Rural Roads Authority. ARM also sprinkles the road using a 20,000 litre water tanker, up from 10,000 and Mr Paurana said that

while the firm is trying to comply with the rules, the ad hoc manner in which they are popping is a concern.

19. Nema Slaps Cement Firm with Stop Order Over Pollution (Sunday Nation, 11th March 2012)

The official environment watchdog has ordered Athi River Mining to shut down its operations in the Kalo- leni factory over failure to comply with environmental laws.

In a statement sent to newsrooms on Friday, the National Environment Management Authority (Nema) said it was forced act after the factory's operations were found to have caused air pollution and exposed the nearby community to health risks.

The pollution also posed adverse effects to the ecosystem. The move to have the plant's operations stopped, Nema explained, followed several inspection tours to the firm by its officials, government representatives and local communities to try to engage the factory officials over the matter. "Nema has thus issued the stop order until the plant officials comply with the conditions issued in the stop orders," the statement said in part. Inspection to reassess the plant's compliance will be conducted before a possible reopening in the future, it said.

Nema said particulate matter of the materials used to manufacture cement was being dispersed by wind. "The closure was occasioned by poor operations in

the company that were resulting in air pollution as the plant undertook operations in an open area as opposed to being enclosed," said the statement signed by Nema's chief corporate communication manager Jacqueline Marita. The order will not affect the production of the company's Mavuno fertilizer brand which is done at the Athi River plant. In the first nine months of 2011, the company recorded an after-tax profit of Sh193 million while its turnover grew by 37 per cent from Sh4.4 billion recorded in the same period in 2010.

In 2010, the cement firm conducted one of the most successful bonds, which was subscribed by over 60 per cent in 24 hours. Through the bond, the company raised over Sh1.9 billion, Sh700 million more than what was expected. The bond was part of the company's Sh7.5 billion shilling fund-raising plan to finance expansion of its cement production capacity in Kenya and build a new plant in Tanzania.

The expansion plans are well underway with the construction of a grinding plant in Dar es Salaam and the Maweni Limestone Limited, a cement plant with an estimated daily output of 4,000 tons in Tanga, Tanzania underway. Both are to be commissioned this year. ARM expects to treble its income by 2014 upon completion of the project, with the operating profit rising by four times. Efforts by Business Sunday to reach ARM management for comment were fruitless.

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