

**SETTLEMENTS, EVICTIONS AND THEIR EFFECTS: THE CASE OF RESIDENTS
OF KWA VONZA IN KITUI COUNTY, KENYA**

BY:

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DECLARATION

This thesis is my original work and has not been submitted for an examination and award of a degree in any university.

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Signature.....

Date:.....

The thesis has been submitted for examination with our approval as university supervisors

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DEDICATION

This work is solely dedicated to all the victims of development induced displacements anywhere in the world and more so to the evictees of Mikuyuni, in B2- Kwa Vonza, Kitui County.

ACKNOWLEDGEMENT

I wish to acknowledge the wise guidance and healthy criticisms received from my two supervisors and thank them for painstakingly reading my thesis. I also wish to register my gratitude to my family, Linah, Rodney, Talisa and Helen for their support

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ACRONYMS

ACHPR- African Commission on Human and Peoples Rights
EDID-Ethics & Development Induced Displacement
CEMIRIDE- Centre for Minority Rights Development
CORE- Centre on Housing Rights and Evictions
DNC-Democratic National Committee
FMR- Forced Migration Review
GOK- Government of Kenya
GTZ- German Technical Cooperation Agency
H.C.C- Reference for Kenyan High Court Cases
HABITAT- United Nations Human Settlement
IAP -International Accountability Project
IEBC- Independent Electoral and Boundaries Commission
KFWA-Kamusi Farmers Welfare Association
KEFRI- Kenya Forest Research Institute
KNBS- Kenya National Bureau of Statistics
Kms- Kilometers
KSHs- Kenya Shillings
KU- Kenyatta University
LICADHO- French acronym for: Cambodian League for the Promotion and Defense of Human Rights
MRG-- Minority Rights Group International
OHCHR- Office of the United Nations High Commission for Human Rights
PCEA-Presbyterian Church of East Africa
P-KE-E00-009- Reference for Kenya Thwake Multi-Purpose Dam
PAP- Project Affected People
SEKU-South Eastern Kenya University
UKAI -Ukamba Agricultural Institute
UN- United Nations
RAP- Resettlement Action Plan

ABSTRACT

The physical and socio-economic developments taking place in Kenya both in the pre and post devolution period are laudable. In rural areas, however these developments have displaced poor people who were eking livelihoods in trust lands. The displacement of poor people is a major concern as they fail to take cognizance of the human rights of such people and in the process result in their further impoverishment.

In Kwa Vonza/Mikuyuni sub-ward, Kitui County, in an area covering over 15,000 acres, institutional developments have displaced about 4000 persons. These displacements rendered the people landless, homeless, and jobless and dispatched them back to join the rest of the region's Kamba people which suffer from shocking levels of poverty and lack of social facilities.

This study therefore examined the effects of the displacements and the mitigation measures taken in view of the protective guidelines stipulated by The United Nations (2007:6) and enshrined in the proposed Kenyan bill on Evictions and Settlement (2012) as well as the Kenyan Constitution on the bill of rights and land (GOK, 2010: Chapters 4 part 2(40) and 5 part 1963) which applied to all vulnerable and affected persons irrespective of whether they were holders of title to the land or not.

Literature concerning land ownership, evictions due to economic development, their impacts on those displaced was reviewed. Human rights and community based frameworks were consulted to inform the study.

Using nonprobability methods a sample of 70 household heads was drawn from the evictees of the study site. Key informants were also interviewed and case studies were conducted with some individuals who returned to their ancestral homes, those who were still in camps and/or renting facilities.

The data were analysed using frequency tables and other descriptive ways.

The study found that the evictees had not been consulted prior to evictions and that they were not given any compensation nor assistance in any way. As of the time of data collection, one third (37.2%) were still leaving in camps and rented facilities with the help of

their kinsmen. Half (57.1%) had lost permanent buildings made of baked bricks and iron sheets were. Over three quarters owned and lost livestock during the evictions. Evictees who had fruit trees were 68.6 % and a large proportion were mature income earning trees. Further, primary data from Court cases and County records showed that the evictees had at various time periods dating from the year 2003 presented their cases for arbitration and lost due to lack of appropriate legal representation. In the 2013 eviction which was the most recent, 74.3% had taken court action and the case was still going on.

Although the evictees had no legal land ownership documents, had they been given adequate technical and legal assistance as required by human rights guidelines they would have been compensated for their losses and resettled elsewhere. This act of omission amounted to violations of basic human rights..

The study recommends that a thorough social impact assessment of all accessible evictees be done to provide a framework for compensating them for their losses and restoring them to the status they had prior to evictions.

Findings revealed that although the evictees were aware of their human rights, they lacked facilitative mechanisms to pursue them aggressively. It was also found that the government and its agencies did not prepare the evictees adequately neither were measures put in place to cushion and alleviate the foreseeable sufferings of the evictees.

CHAPTER ONE: INTRODUCTION

1.1 Background

Eviction of people to pave way for socio-economic development was a world-wide practice that had left many residents destitute. Cernea, (1990:6) noted that in the 1970s and 1980s the magnitude of forced population displacements caused by development programs was in the order of 10 million people each year and that their frequency, size, and consequences of development-induced displacements had become a problem of worldwide proportions.

A glossary of terms of International Accountability Project (IAP) publications stated that: “development-induced displacements are part of forced displacements which can be due to conflict, economic forces or development projects such as dams, mines, as well power generation; urban development included hospitals, schools, universities and airports”. IAP explained that development-induced displacement encompassed both physical displacements, destruction of one’s home and land as well as economic displacement, destruction of your income and livelihood.

The United Nations (2014: 3) defined forced evictions as the permanent removal against the will of individuals, families and/or communities from the homes and/or lands which they occupy, without the provision of, and access to appropriate forms of legal or other protection. In such evictions compensation may or may not be paid to evicted households. Another form of displacement was refugee displacement which was caused by war and armed civil conflicts where populations fled from violence. It listed 25 types or situations that may result in forced evictions. These were urban and rural development projects including dams, roads, mining, zoning, urban and spatial planning; lack of legal security of tenure, protective legislation or implementation; living in informal settlements because of poverty or because of displacement owing to natural or human causes, rural-urban migration or other causes and political and ethnic conflicts using eviction, housing demolition and displacement as a weapon of war, for ethnic cleansing and population transfers.

The United Nations Basic Principles and Guidelines on Development-Based Evictions and Displacement-Annex 1 (2007:6) required that States be obligated to ensure that evictions only occur in exceptional circumstances and evictions require full justification given their adverse impact on a wide range of internationally recognized human rights.

The guidelines stipulated that any eviction had to be: (a) authorized by law; (b) carried out in accordance with international human rights law; (c) undertaken solely for the purpose of

promoting the general welfare of the most vulnerable; (d) reasonable and proportional; (e) regulated so as to ensure full and fair compensation and rehabilitation; and (f) carried out in accordance with the present guidelines. The protection provided by these procedural requirements applies to all vulnerable persons and affected groups, irrespective of whether they held a title deed to home and property under domestic law.

Despite the international law provisions, gross violations of human rights existed. In India, researchers found that the country's development programs had caused an aggregate displacement of more than 20 million people during roughly four decades, but that 75 percent of these people had not been "rehabilitated" (Fernandes 1991; Fernandes, Das, and Rao, 1989 in Cernea 2000:7). Behura and Nayak (1993, in Cernea 2000:26) found that forced displacements:

1. Tore apart the existing social fabric
2. Dispersed and fragmented communities
3. Dismantled patterns of social organization and interpersonal ties
4. Kinship groups became scattered as well loosening of intimate bonds.

They further argued that displacements were responsible for:

1. Growing alienation and anomie,
2. The weakening of control on interpersonal behaviour and
3. Lowered cohesion in family structures.

The problem of development induced displacement was so acute that it required ethical guidelines as suggested in an Ethics, Development and Displacement (EDID) workshop report edited by Hobbs and Pablo (2004:10).

Magigi (2013:133) observed that in Sub-Saharan African countries there were clear policies to protect and compensate those being evicted yet in the same countries there were overwhelming evidence of so many poorly managed evictions. Cotula and Toulmin (2004:12) noted that increasing number of land conflicts were due to the current land tenure systems in Africa which may not have been well-equipped to resolve such conflicts. Mburugu and Cook (1993) in Cernea, 2000:19) in their study of Kenya's Kiambere Hydropower project found that farmers' average land holdings after resettlement dropped from 13 to 6 hectares; their livestock was reduced by more than one-third and yields per hectare decreased by 68% for

maize and 75% for beans. Family income dropped from Kshs. 10,968 to Kshs. 1,976, a loss of 82%.

From the foregoing background, there was sufficient evidence to suggest that where projects are planned without full participation of the residents and with little regard to laws governing displacements and evictions, much suffering ensue. Hence it was necessary to explore facts surrounding all development-induced displacements to learn the social effects on the people. Some of the residents of Mikuyuni in Kwa Vonza were victims of development-induced displacements and their case formed the subject of this study.

1.2 Problem Statement

Kwa Vonza Ward is in Lower Yatta, Kitui Rural Constituency of Kitui County (GOK, 2013/2:7). It hosted South Eastern Kenya University and Kenyatta University, Kitui campus. Residents who were occupying four villages there namely Kamusi, Kikunguuni, Ndangani and Kitukuni allegedly through administrative allocations which were later revoked were violently evicted to give way to institutional developments without being given an alternative place for resettlement(Kitui County Council, 2004:Min. No.40)

Studies done in Kenya were clear that land tenure was at the centre of evictions and those evicted lose materially and psychologically {Yamano and Deininger (2005:5); Mwanzia (2006/2007:J13); Amnesty International (2007: 9, 10) and Syagga (2010:7)}. The issue of how the subject land was initially owned was not clear from the literature and no study had been done in the study area on the same. The current study therefore interrogated the two issues of land ownership and settlement thereof.

Joseph (1998 in Cernea, 2000:21) reported that 59% of the displaced people in an irrigation project in India were found living in temporary and semi-permanent dwellings 10 to 15 years after relocation. There was need to investigate the status of the Kwa Vonza Evictees as no official records were known to exist regarding how they were living following the eviction. Another issue the study explored was concerning the assistance extended to the evictees in Kwa Vonza to press for their alleged human rights violations. It was also considered necessary to understand the resistance measures the evictees employed against eviction and pursuit of compensation and resettlement.

These two aspects were informed by the case of the Endorois people who won a land mark ruling in their favour in 2010 after struggling for 40 years (ACHPR, 2010). The complaint is filed by the Centre for Minority Rights Development (CEMIRIDE) with the assistance of Minority Rights Group International (MRG) and the Centre on Housing Rights and Evictions (CORE). Some of the complaints were:

1. Violations resulting from the displacement
2. Denial to worship as before
3. Evictions without proper prior consultations, adequate and effective compensation.
4. Ownership of Lake Bogoria region

They prayed for:

- a. Recognition
- b. Permission to use Lake Bogoria and surrounding sites for religious and cultural rites and for grazing their cattle.
- c. compensation for all losses suffered
- d. share of proceeds from economic enterprises in the area

From this report arose several gaps that needed investigation in the current study. They ranged from whether any legal assistance and plans for compensation were availed to the evictees to understanding how the evictees mobilised themselves to resist the displacement, the losses incurred and determination of how Kitui County Council of the time dealt with the trust land it held on behalf of the residents of Kwa Vonza.

Therefore this was a basic research whose aim was to generate empirical knowledge where little if any existed concerning how people who expected to be settled in an expansive trust land adjacent to them and who alleged that they were actually settled by their political leadership of the 1990s ended up being squatters and later evictees without any cushioning compensation. From the knowledge gaps identified above, the following research questions were considered to guide the study

1.3 Research Questions

1. What were the profiles of the evictees?
2. How were the evictees settled in the land from where they were evicted?
3. What was the manner of evictions and what losses were incurred?
4. What measures were taken by the evictees to resist evictions and to seek compensation
5. How have the evictees coped with the evictions?

1.4 Research Objectives

The main objective of this study was to understand settlements, evictions and their effects on the evictees at Kwa Vonza in view of allocation of trust land for institutional development.

1.4.1 Specific objectives

The Specific objectives were to:

1. Determine the profiles of the evictees.
2. Examine the ways through which the evictees came to own and settle in the land.
3. Find out the manner of evictions and the losses incurred.
4. Understand the resistance strategies against evictions employed by the evictees.
5. Explore how the evictees have coped with life in the post-Mikuyuni eviction.

1.5 Justification

The study findings were expected to contribute to knowledge base on the complex human settlement and the resulting evictions where little was documented in Kwa Vonza, assist in understanding how the negative impacts of the displacement could be addressed to negate further impoverishment, fragmentation of families and delinquency among others. The findings would also highlight hidden violations of human rights during noble public institutional developments.

1.6 Scope

The main study subjects were actual evictees who had escaped to nearby shopping centres and villages identified through the help of local administration and thereafter through snowballing techniques. Households were visited and the head of the family was asked to provide the required information. Key Informants comprised of a chief and two former councillors who were there during the settlements and evictions as well a business person and former head teacher who had thorough knowledge of the study area and circumstances. A representative of the catholic diocese peace office was among the key informants as was the Deputy County Commissioner. The spatial boundaries were Mwita Syano River to the West, Kwa Vonza-Mikuyuni road to the South and Tiva River through Nyumbani Village to Mwakinhi to the North East.

The study examined in detail the history of settlement and the stakeholders' involvement with initial settlement of people in the study area. It also focussed on the law pertaining to evictions and assessed human rights violations in the process of eviction, including the nature of the court orders and how they were implemented. The study quantified losses incurred and looked at coping strategies used by evictees in resettling.

1.7 Limitations of the Study

A major limitation of the study was finding most of the evictees who had resettled in different parts of the country. Even those evictees known to be within the study area were spatially apart and most roads were not passable and where they were, public transport was scarce, expensive and prone to accidents, especially where motorcycle taxis (Bodaboda) were the main means of transportation. In the course of data collections some respondents peddled rumours that the researcher was a mole for the universities precipitating decline of participants. Since some of the cases were still in court, it was considered inopportune to solicit information from the university management, their advocates, or police stations, a situation that denied the study counter balancing information. This limitation was overcome by obtaining court records already published in court proceedings.

1.8 Definition of keywords

Settlement means the act of taking occupation and residence in the disputed land.

Evictions imply the act of displacing people forcefully.

Evictees refer to those victims of forceful displacement.

Effects include physical, psychological and any other loss as a result of evictions.

Compensation means restoration of evictees live to the state before evictions in terms of housing and livelihood

Human rights mean right to residence and other amenities as contained in international law and Kenya Constition 2010

CHAPTER TWO: LITERATURE REVIEW AND THEORETICAL FRAME WORK

2.1 Chapter Introduction

This chapter covered both review of related substantive literature in order to learn key aspects of evictions and discover knowledge gaps that need to be filled and a review of theories which were found to be relevant to the study. Global, Sub-Saharan and Kenyan literature concerning land ownership, nature of evictions, consequences of evictions and resettlement were reviewed to inform the study based on each of its variables. Theoretical frameworks based on community participation and organizing as well as human rights models informed the study.

2.2. Land Ownership and Evictions

2.2.1 The Global Situation of Land Ownership and Evictions

According to article 17 of the Universal Declaration of Human Rights, everyone has the right to own property alone as well as in association with others. Yet despite this declaration, countries like China led in land evictions due to developmental projects. Adams and Ryder (1999:1) reported that the tragedy of the Three Gorges dam in China went beyond the nearly two million people who were to be moved from their homes, villages, farms, temples, and work places to make way for it, beyond the 1,300 cultural and archeological sites and the 100,000 hectares of precious farmland. In many countries, indigenous people have been dispossessed or live at risk of being dispossessed due to either failure to recognize their rights to land or invalidation of those rights by the state, or through expropriation or privatization of their lands by the state (Wehrmann, 2008:3). Over 2.2 million hectares of Cambodian land were granted to large firms in the form of economic land concessions affecting more than 500,000 Cambodians since 2003 (LICADHO, 2014:1). On 10th March 2007, the Economist was quoted as saying: “Whatever the 1989 Cambodian land law says, the ill-educated poor are usually defeated by the well-connected rich in any legal battle” (Wehrmann, 2008:11). Everett (2001:453-471) reports that “Even though many governments in Latin America, including Colombia, have improved the legalization and regularization of peripheral settlements, recognized the right to housing, and acknowledged the United Nations’ position on evictions as violations of fundamental human rights, urban displacement continues.” From the foregoing the legality of land ownership should not be a sufficient reason to evict people without adequate alternatives and compensation.

2.2.2 Land Ownership and Evictions in Africa

The situation in Sub-Saharan Africa was not different. In 1996 the Ogoni of Nigeria went to the African Commission on Human and Peoples Rights complaining about evictions from their land among other human rights violations. The case was decided in their favour in 2001 (Coomans, 2003:749-760).

Magigi (2013:133) found that there was a commonality in land legal policy and framework when it came to land acquisition for public use and development and that in all the five Sub-Saharan African countries he studied (Kenya, Namibia, South Africa, Uganda and Tanzania), prompt, fair, equitable and full compensation was enshrined in their constitutions. Yet the most painful evictions were committed in some of these countries where people's lives and livelihoods were disrupted, their communities severed from their roots, their homes demolished and their families uprooted in the name of modernization and development.

2.2.3 Land Ownership and Evictions in Kenya

Syagga (2010:7) argued that there was serious issue of land ownership in Kenya and that the entrenchment of the colonial administration in Kenya led directly to inequality in land ownership and use, landlessness, squatting, land degradation, resultant poverty, and Africans' resentment of the white settlers.

The state- mandated Ndung'u Commission (Ndung'u, 2004: 9, 10) agreed that land woes in Kenya were closely tied with the colonial doctrine of public land trust tracing the woes from the Crown Lands Ordinance in 1902 with its subsequent versions in 1908, 1915 and 1954 and detailing how the Maasai, the Nandi and the Coast people in Kenya lost their most fertile lands to British Colonialists and later to wealthy and powerful Kenyans. Most atrocities occurred in connection with community or trust land which according to the Ndung'u Commission (2003:54) can only be removed from the communal ownership of local people through legally prescribed adjudication processes, whereby local communities were given ample notice and opportunity to claim their ownership in accordance with their customary law. However, despite all these legally strict safeguards, 'it is in the allocation process that most of the corruption and fraudulent practices relating to land have occurred'.

Sorrenson (1967: 231) found that evictions were due to what he termed the "big man's syndrome" where powerful entities are allocated huge chunks of land, leaving people to squeeze in small pieces of land. Some of it is given to institutions presumably to develop for

the sake of the people of Kenya in what according to Cernia (1990:46) is popularly hailed: “greater good for the greater numbers.” The questions to ask were whether there were sufficient justification for single institutions to hold so much land at the expense of the people, whether the community was sufficiently consulted and how much of the benefits accrue to the original residents. The case of Kwa Vonza was expected to answer some of these questions.

Though not many researchers have investigated Kamba land-related evictions, the case of Kibwezi stands out. Kibwezi residents suffered first in 1897 when the Presbyterian Church of East Africa (PCEA) negotiated a land purchase agreement with the British authorities in South Africa unbeknownst to about a hundred Akamba families already living on the site of the town (Mwanzia, 2006/2007:J13). Soon after thousands of local residents were evicted to give way to sisal plantations at the behest of the British colonial masters. In the early 1990s a large agricultural research farm in North of Kibwezi was granted to the University of Nairobi leading to seizure of 6480 Hectares from the residents. Another eviction facilitated a government land grant to the parastatal Tana and Athi Rivers Development Authority (Action Aid Kenya, 1997). Altogether, about 60,000 people were evicted from their farms during this 'land crisis' period and forced to search for land elsewhere in Kibwezi Division.

In view of the above arguments and observations, the knowledge gap in the Kwa Vonza land issues was “whether in all cases that led to allocation of the trust land which effectively belonged to the local people to institutions for development, the people had been adequately consulted, alternatives proposed and adequate compensation provided.” How huge chunks of land in the Kwa Vonza ended up being allocated to institutions has not attracted contemporary researchers and much information for this study was obtained from historical records as shown in section 2.2.4.

2.2.4. Historical Allocations of Trust Land and Their Contribution to Evictions in Kwa Vonza

The Trust Land Act Chapter 288, revised edition 2012 shows that trust land can be set apart at instance of Government and Local County Authorities as long as assessment and appeals for compensation to be paid are facilitated for those who may have occupied the land. The Act highlights the right to meet with people for whom the land is held in trust and work out compensation. In the study area the following information was gleaned:

2.2.4.1 Allocations to the local community in 1965

In 1965 the first portion of Trust Land in what was locally known as “Mukilo” (Kamba for outer, denoting trust-restricted land) but officially known as Block 2 or simply B-2 was allocated to people who had outgrown their ancestral land in a legal and well- coordinated manner with title deeds being prepared and issued soon after. The trust land so allocated stretched from the boundary between the then Yatta Location marked by a road from the barrier at the old, untarmacked Kitui-Machakos road, through Mikuyuni river drift to Mitasyano river and all the way to where the trust land bordered Nyanyaa village of Yatta location. The town central to the new settlement then came to be Kwa Vonza which grew at the foot of a hill known as Kwa Vonza. Eventually the entire area came to be known as Kwa Vonza with the local chief having jurisdiction stretching all the way to the boundary with Machakos to the North and West. Through indigenous population increase and in-migration from the larger Kitui district, notably Matinyani and Mutonguni areas which had politically dominated Yatta, people petitioned the national and local authorities through their then parliamentary and county representatives and were allowed to move in to the next trust land called Kitukuni between the years 1997 and 2002 with a promise of allotment letters and titles to follow. The new settlements were adjoining lands earmarked for educational and agricultural purposes. (Source: Key Informants)

2.2.4.2 Allocations to institutions from 1972

In 1972 the County Council of Kitui alienated 10,000 acres of the trust land to Ukamba Agricultural Institute (UKAI) for educational purposes where upon a leasehold status for a term of 99 years became effective from 1st October 1976. (HC No. 11 of 2010). The college had managerial problems, was officially closed in the year 2000 and reopened under a Board of Governors in October 2004. It was taken over by South Eastern Kenya University (SEKU) through legal notice No.108 of 2008 dated 15th July 2008. During the tenure ship of UKAI, people had settled in large portion of the land from 1997 according to a petition to the Minister of lands dated 14/10/2013 by Kamusi Farmers Association alleging that their 3215 members who had been settled there through a 1996/1997 “presidential directive” were facing eviction by the new owner, SEKU.

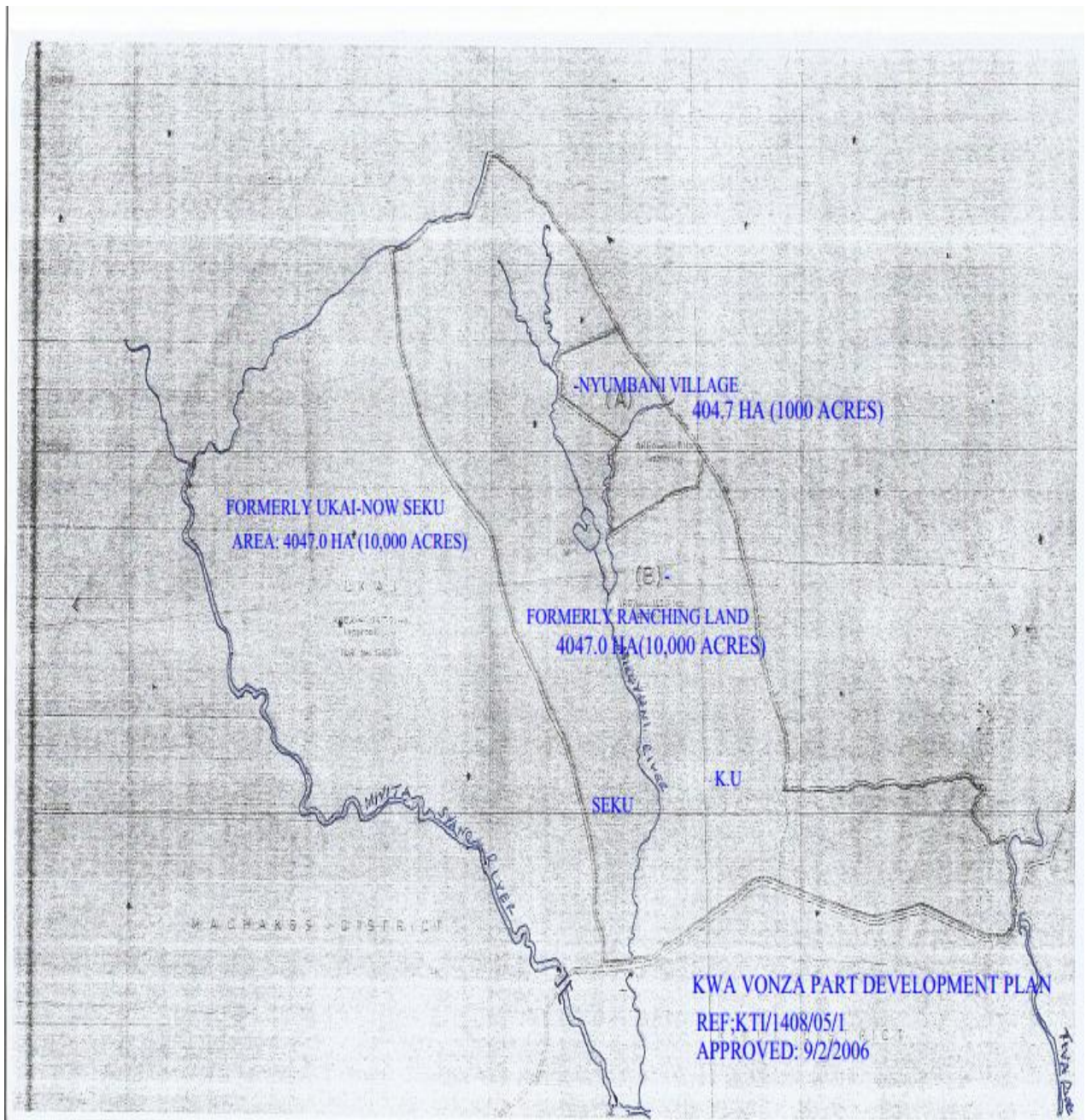
Information gathered from a legal suit Civil Case 123 of 2008 and which was decided in 2012 showed that 1980 local residents were given 500 acres of what was yet to be Mikuyuni Ranching Scheme. In 1985 and 1987 respectively the land was set apart from Mikuyuni

Ranching Scheme whose lease had expired and then earmarked for a Teachers Training College, a Secondary School, a Village Polytechnic and Government Forestry Project. Sometime in 1990s, 100 acres were repossessed by the Kitui County Council for purposes of construction of a Teachers' Training College. The Teachers' Training College project commenced in some unspecified dates thereafter and stalled in 2006. All the while local people were occupying the rest of the 400 acres without any disturbance. In 2007 Kenyatta University took over the stalled project and soon thereafter began legal proceedings to displace the local people (See map in Fig.1).

The Catholic Diocese of Kitui was also a beneficiary of Kwa Vonza Trust Land initially for a Goat and Sheep Project (GASP) and later for a Children's Home Nyumbani which later came to be known as Nyumbani Village. GASP was allocated extensive land for grazing goats and sheep since 1977. The acreage occupied by GASP was not established. Nyumbani Village was established there in 2005 and it occupied 1000 acres of land (See "A" in map in Fig.1).

The quest to provide land to these institutional entities namely Catholic Diocese of Kitui/ GASP/ Nyumbani Village; Teachers Training College, now Kenyatta University and UKAI, now South Eastern Kenya University had a great bearing on the wrangles of land ownership and subsequent evictions which precipitated long and protracted legal tussles on whether the proper procedures were followed giving rise to the need to research on the matter.

Fig. 1: Map showing how trust land was allocated to institutions



Source: Extracted from: Kwa-Vonza Approved Part Development Plan, Ref: GOK-KTI/1408/05/1 Dated 9/2/2006; Drawn to a Scale of 1:50,000 by Hon. Kimunya, Minister for Lands and Settlement

Note:

- Area marked (A): Proposed Site for Nyumbani Village
- Area marked (B): Ranching Land Kitui County Council

2.2.4.3 Allocations to the evictees in 1998

A letter by the evictees written soon after evictions in 2013 petitioning the president and his deputy to intervene and have them resettled contained the following statements:

1. That they occupied the then UKAI land after their landless widows, orphan children and the poor petitioned the then president in 1998 who then directed that they be settled in the UKAI land.
2. That they had developed a Teachers Service Commission recognised primary school with class 1 upto class 7 as evidenced by the posting of Government Teachers.
3. That they had also developed churches, shopping centres, and farms and had even buried their departed kin there with the approval of local administrators who had issued burial permits.
4. That there was even an IEBC polling station

Their petition listed the following prayers:

1. To allow the registered 3215 evictees to be reinstated in their portions in the contested land and be issued title deeds
2. To stop harassment by the institutions and withdrawal of charges of trespassing against them as they did not forcefully settle but were settled by a presidential directive.
3. To be assisted with funding to rebuild their lives following the evictions.

2.3 The Consequences or Effects of Evictions

Evictions had economic, social and psychological consequences.

Economically, joblessness among resettlers often surfaces after a time delay, rather than immediately, because in the short run resettlers may receive employment in project-related jobs. Such employment, however, is short-lived and not sustainable (Cernea, 1990:20). Joseph (1998 in Cernea, 2000:21) reported that 59% of the displaced people in an irrigation project in India were found living in temporary and semi-permanent dwellings 10 to 15 years after relocation.

Farming and food security was affected too due to the loss of off-farm income as found in the Nepal Kulekhani Hydroelectric project (Bjonnes, 1983 and Pockharel, 1995 in Cernea 2000:22) and in Sri Lanka's Kotmale project (Soefestad, 1990 in Cernea 2000:22).

Socially, Mahapatra (1999a in Cernea 2000:28) found that relocation often interrupts schooling and for some of these children it means that they never return to school.

Delinquency is always inevitable following evictions with the number of children in especially difficult circumstances being estimated to have increased from 80 million to 150 million between 1992 and 2000 (Salagaev, Chapter 7). Resettlers experience economic marginalization and this marginalization is often accompanied by social and psychological marginalization, expressed in a drop in social status, in resettlers' loss of confidence in society and in themselves, a feeling of injustice, and deepened vulnerability (Cernia, 1990:22).

From a psychological perspective, Behura and Nayak (1993 in Cernia 2000:27) found that Social disarticulation within the kinship system, such as the loosening of intimate bonds, growing alienation and anomie, the weakening of control on interpersonal behavior, and lower cohesion in family structures is another consequence of evictions. Downing observes: "The people may physically persist, but the community that was-is no more" (Downing, 1996a in Cernia 2000:27).

More vulnerable groups, such as the aged, suffer increased morbidity and mortality rates as a result of losing their prior homes (Borup, 1979 and Ferraro, 1982 in Cernia 1990:25). Mathur and Mahapatra reported that for poor people, particularly for the landless and assetless, loss of access to the common property assets that belonged to relocated communities (pastures, forested lands, water bodies, burial grounds, quarries and schools) resulted in significant deterioration in income and livelihood levels (Mathur, 1998 and Mahapatra, 1999 a & b in Cernia 2000:26). An impact assessment report on the Kenya Thwake Multi-Purpose Dam project showed that trauma was suffered due to the relocation of graves (P-KE-E00-009).

In summary, during displacement, people lose capital in all its forms-natural capital, man-made capital, human and social capital. The current research will make an attempt to assess whether all or some of the consequences documented above applied in Kwa Vonza, a record deemed necessary to address the issue of losses incurred and how they impacted on resettlement of the evictees.

2.4 Actions to Resist Evictions and Seek for Compensation

These are actions taken by evicted communities to resist evictions, reclaim their land or seek compensations in harmony with human rights laws (UN, 2007:6). As evidenced by cases of the Endorois and the cambodian people reported in section 1.2 and 2.2.1 respectively, victims of evictions made attempts to resist evictions but were defeated because of lack of

legal and technical assistance. Two other cases are considered, namely Ogiek's in Mau and twiga farm in Kiambu.

2.4.1 The Case of the Ogiek of East Mau

The Ogiek, who are one of the last remaining forest-dwelling communities and one of the most marginalised indigenous peoples in Kenya allege violation of their rights to life, property, natural resources, development, religion and culture in East Mau had not received adequate hearing from the Kenya government despite many efforts and had to seek justice under the African Charter on Human and Peoples' Rights, (Womakuyu, 2014:1). The following is a historical review of their struggle as detailed by: Ogiek Welfare Council and Towett J. Kimaiyo (2004) in Chapter 7 entitled "Dispossession" in their book: Ogiek Land Cases and Historical Injustices:

1970s- The land question is raised in parliament where they alleged being dishonoured by being forced to sell their land cheaply.

1995- The provincial administration refuses to recognize the Ogieks role in the demarcation exercise.

1996- The Ogiek started seeking help from human groups

May 1997 – A 14-day eviction notice is issued to the Ogiek and their appeal went unheeded and was frustrated.

On 25th June 1997, when the legislature mocked the Ogiek land claims, the Ogiek mapped out new strategies. They filed a HCCA No. 635/97 against the authorities and obtained a court order on 15th October 1997 stopping further allocation and demarcation of the disputed lands. Among the declarations sought in this case were:

1. They be recognized as a community
2. The evictions be treated as violations of their rights to a home
3. The evictions were discriminatory
4. Allocation of their land to outsiders was illegal
5. That they should be compensated and resettled to their land

On 22 October 1997, despite all their efforts, their land was gazetted as public land

2000- Relentless and unfruitfully the Ogiek sought the help of the Kenya Land Commission of Enquiry chaired by Hon. Charles Njonjo .

2001- The Ogiek families were promised to be resettled.

2013-As shown next, up to 2014, the cases had not been settled. The case was brought before ACHPR by the Ogiek peoples against the Kenyan government for consistent violations and denial of their land rights, violation of their rights to life, property, natural resources, development, religion and culture by the Kenyan government under the African Charter on Human and Peoples' Rights, to which Kenya is a signatory. The case was originally lodged with the African Commission and Human and Peoples' Rights, but was referred to the Court on the basis that it evinces serious and mass human rights violations. Other civil rights organizations helped

Forced evictions among the Ogiek started prior and continued during independence of Kenya where both colonial and Kenyan governments violated their religious, cultural and economic practices.

In March 2013, the African Court on Human and Peoples' Rights found the Kenyan authorities guilty of evicting an estimated 30,000 Ogiek who are the indigenous owners of the land, a decision that was lauded by their representatives

2.4.2 The Case of Twiga Farm in Kiambu

In the case of Twiga farm in Kiambu (Rinsum in Kenya Today, Sep 2014) however, the residents took to court in 2004 and the chief magistrate ruling declared the community as legal owners by right of adverse occupation. Thus depending on the persuasion of the Judge whose "equity campus" guides him/her well it is possible to make equitable rulings.

While commenting on what he called the Supremacy of Titles over Traditional Rights and Squatters' Rights as well as on Section 23 of the Registration of Titles Act Cap. 281 of the Laws of Kenya which provides that Certificate of Titles issued by the registrar to a purchaser of land shall be taken by all courts as conclusive evidence that the person named in it as the proprietor of land is the absolute and indivisible owner, Apiyo observed:
that squatters have no legal protection in Kenya" (Apiyo 1998, 2002:259).

Thus the literature has shown that in the particular cases reviewed, evictees suffered a lot of injustices especially due to the issue of title to land or land ownership. Resettlement thereafter has not been easy. The reviewed literature has however, not addressed the issue of how the victims first settled in the lands from where they were evicted and this aspect will be investigated in the current study. Also little is known about how the evictees of Mikuyuni in

Kwa Vonza have dealt with evictions in terms of affirmative actions. Their profiles and losses are not known such that even if compensation was possible such data will be missing, hence the study addresses itself to these factors as well.

2.5 Theoretical Frame Works

The study was informed by two theoretical frame works, namely a Human Rights and Community Participation-Based Approach to Development Framework as well as Saul Alinsky's Model of Community Organizing.

2.5.1 Human Rights and Community Participation-Based Approach to Development

Part of this framework was adapted from a seminar paper titled: "The role of social workers as human rights workers with Indigenous people and communities" delivered by Tom Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner, Human Rights and Equal Opportunity Commission at the Australian Catholic University on 12, February 2008. The other part was based on Saul Alinsky's model of community organizing.

Calma (2008) defined Social Workers as human rights workers who help individuals realize their rights every day and are ideally placed to help communities claim their collective rights. Social work is a profession that is built on, among other Australian Association of Social Workers (AASW) Code of Ethics: the pursuit and maintenance of human well-being; human dignity and worth; and social justice. Social justice encompasses the satisfaction of basic needs; fair access to services and benefits to achieve human potential; and recognition of individual and community rights.

Calma (2008) argued that human rights were categorized as first, second and third generations. First generation rights were civil and political rights, like the right to vote, freedom of speech, and freedom from discrimination, fair trial etc. Second generation rights were economic, social and cultural rights, like the right to health, housing, social security and education. Third generation rights were collective rights, such as the right to development and self-determination. A related point on these second generation rights is that unless services actually exist, these rights cannot be met.

Calma's paper discussed how social workers could move towards more empowering, rights based practice that developed individual and community capacity. It quoted Ife, J and Fiske, L (2006) who argued that the relationship between community development and human rights was so symbiotic that community development needed a human rights based framework if it was to be successful, and human rights needed a community development framework if they were to be realized (UN, 2006).

The marrying together of community development practices and human rights principles was being increasingly recognized at the United Nations level. The United Nations Common Understanding of a Human Rights Based Approach to Development Cooperation set out necessary elements of policy development and service delivery under human rights based approach as follows:

People were recognized as key actors in their own development, rather than passive recipients of commodities and services.

Participation was both a means and a goal. Strategies were empowering, not disempowering. Both outcomes and processes were monitored and evaluated. Analysis included all stakeholders. Programmes focused on marginalized, disadvantaged, and excluded groups. and addressed the following issues: Ownership, disparities, need for collaboration, prior assessment to identify real needs, clear objectives, sustainability and accountability in programme delivery. He went on to show that no matter how acute the problem may be, interventions must be participatory in the ir design and implementation. Otherwise other problems, social and health could immerge as found by Milroy and Parker (2007)

He further argued that observance of indivisible rights should be foremost and that public policy should be based on best models which had been tested by truly participatory exercises.

The current study investigated the level of involvement of evictees by the government and those who claimed ownership of the disputed land prior to their displacement as well as the extent to which their human rights were upheld or not. In so doing an assessment was to be made as to what extent the displacement of people in Kwa Vonza were consistent with the theoretical Human Rights and Community Participation Based Approach to Development framework.

2.5.2 Saul Alinsky's model of community organizing

The second theoretical framework was Saul Alinsky's model of community organizing.

In this framework community organizing was defined as the process where people who live in proximity to each other come together into an organization that acts in their shared self-interest. Community organizers generally assume that social change necessarily involves conflict and social struggle in order to generate collective power for the powerless. A core goal of community organizing is to generate durable power for an organization representing the community, allowing it to influence key decision-makers on a range of issues over time. In the ideal, for example, this can get community organizing groups a place at the table before important decisions are made (Kim, Kendall and Kimberley, 2001).

One of the key characteristics of community organizing is that of organizing community groups in an attempt to influence government, corporations and institutions, seeking to increase direct representation within decision-making bodies, and foster social reform more generally. Where negotiations fail, these organizations quickly seek to inform others outside of the organization of the issues being addressed and expose or pressure the decision-makers through a variety of means among them petitioning, and electoral politics. For Chambers (2003), organizing groups often seek out issues they know will generate controversy and conflict. This allows them to draw in and educate participants, build commitment, and establish a reputation for winning. Further protest actions designed to force powerful groups to respond to their demands, is used. Once a community establishes itself as a power to reckon with, they are often able to engage with and influence powerful groups through dialogue.

Similar to the way unions gain recognition as the representatives of workers for a particular business, community organizing groups can gain recognition as key representatives of particular communities. In this way, representatives of community organizing groups are

often able to bring key government officials or corporate leaders to the table without engaging in "actions" because of their reputation. As Alinsky said, "the first rule of power tactics" is that "power is not only what you have but what the enemy thinks you have."(Alinsky, 1972)

The community organizing model was developed by Saul Alinsky. It owes its inspirations to the communist theories of mass mobilization. Alinsky, on the lines of Marxist philosophy views the current capitalist economic and social systems as problematic and the cause for all social issues such as crime, unemployment, inequality, discrimination, declined morality and environmental degradation. He emphasizes working within the system to change the it.

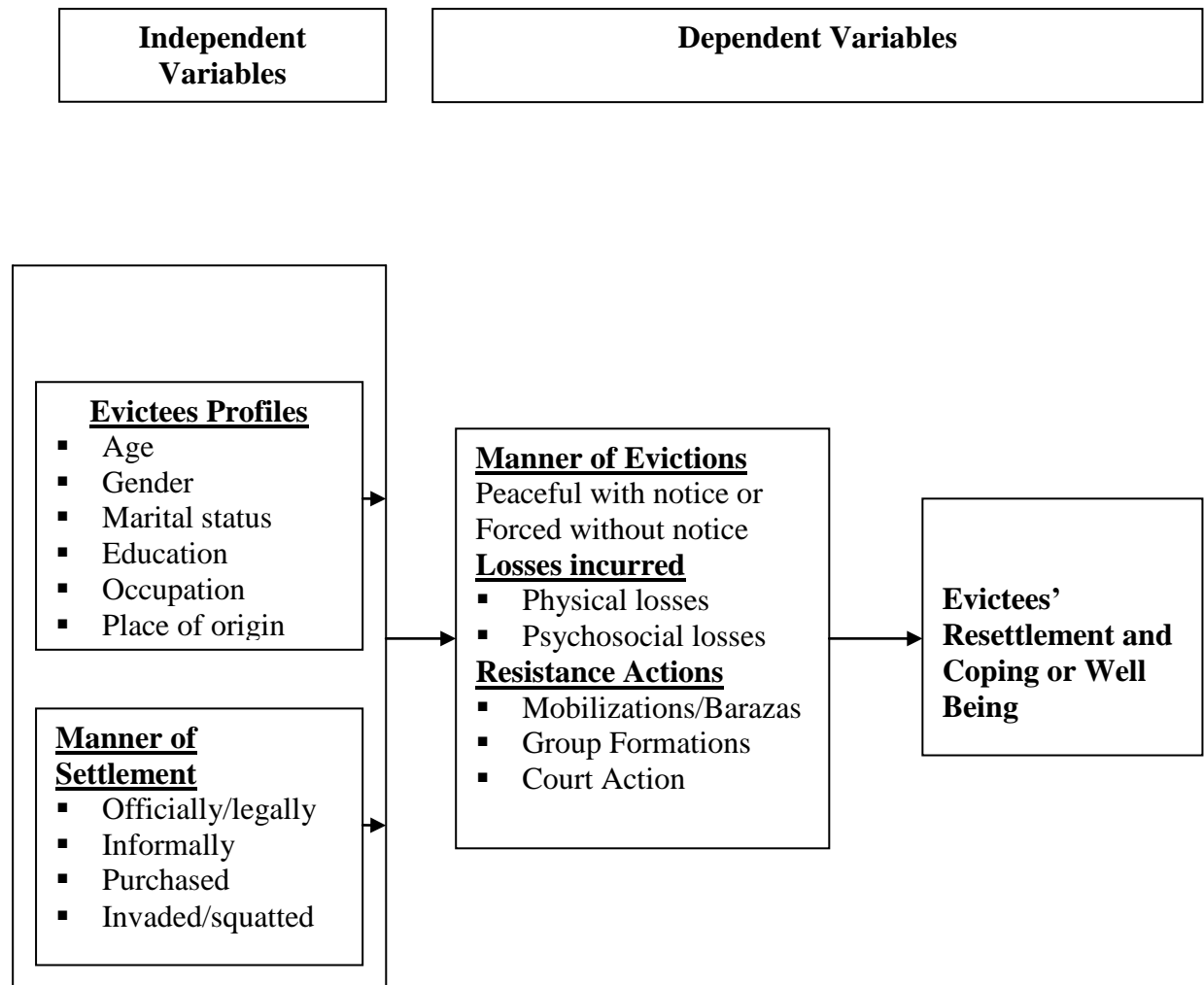
The model developed six propositions namely; class struggle; mobilizing the middle class; end as a justifier of means; infiltration and polarizing the enemy. Radical revolution was found relevant to this study .In radical revolution, social pathologies of a capitalist society are caused by the inherent problems of its economic, political and social structures and the ways they communicate with each other. Therefore the goal is to revolutionize these structures and relationships rather than chip away at the existing system with minor reforms (Mike, 2008). Government, developers and the community in whose area the proposed development is conceived must have a common understanding which adequately takes care of the interests of the most vulnerable in the triangle. Thus transparent and participatory social impact assessment must be carried out and its findings implemented before the conceived project is implemented. The current study investigated whether adequate social impact assessment was carried out in Kwa Vonza as conceived in the theoretical framework.

2.6 Conceptual Framework

This is diagrammatic representation which shows the interrelationships of various variables. Land may be owned through legal allocations by relevant authorities, through political grants or invasion/ grabbing. People are termed squatters depending on what legal documents they can produce. Evictions may be initiated by planned economic development, instigated by prominent people or authorities following governorship changes. In the current study, the main independent variables were land ownership and evictees' profiles. It was expected that the aged and female occupants would be given consideration during the evictions. Similarly it was expected that at least an effort would be made to assess how occupants came to own the the portions they claimed and those who proved that they were allocated were expected to receive more lenient treatment during the evictions.Hence the attributes of the independent

variables were seen as good criteria to assess how they influenced the dependent variables namely manner of evictions, the losses incurred, resistance actions taken and compensations awarded if any. The three dependent variables led to an evaluation on how the evictees coped with life afterwards. The conceptual framework in Figure 1 illustrates the variables along with their indicators.

Fig 2: Conceptual Framework



2.7. Operationalization of Variables

This is a means of explaining how objectives relate to variables and how variables are measured. Table 1 shows the operationalization of variables in this study.

Table 1. Operationalization of Variables

Objective	Variables	Measurable Indicators
To determine the profiles of the evictees	Evictees' profiles	Age -Years lived Gender -Male/ Female Marital status- Married/Single/Widowed occupation Education -Level of Education
To examine the ways through which the evictees came to own and settle in the land.	Manner of settlement in the study area	Place of origin Officially or legally allocated Informally through political utterances Purchased Invaded or squatted
Find out what resistance actions were taken by the evictees to counter the evictions.	Resistance Actions	Mobilizations/Barazas Group Formations Court Action Records of meeting e and nominal registers held by group officials
Assess the consequences of the evictions at the individual and households level	Losses and effects of evictions	Losses indicated by quantities where possible Acreage lost, farms & fruit trees lost Type of houses lost; Livestock lost Harvests lost and Businesses lost
Explore how the evictees have coped with life in the post-Mikuyuni eviction	Coping and Resettlement	Government aid; kin help; new homes; living in camps or renting in townships and schools found or not. All indicated by statements or records

CHAPTER THREE: RESEARCH METHODOLOGY

3.1 Chapter Introduction

This chapter describes the study site, the type of research being done, sampling design, methods of data collection and analysis. The site description in terms of location; physical and topographic features; position and size; climatic conditions, administrative and political units as well as economic activities are based on the Kitui Integrated Development Plan 2013-2017 (GOK, 2013) as well as the Kitui County Villages Bill (GOK, 2014).

3.2 Study Site Description

Kitui County is one of the 47 counties in the Kenya whose headquarters is Kitui town, 160 Kilometres South East of Nairobi City. It covers an area of 30,496.4 km² including 6,369 km² occupied by Tsavo East National Park. It is located between latitudes 0°10" and 3°0" south and longitudes 37°50" and 39°0" east. Figure 3 shows the position of the Kitui County on the map of Kenya. Kitui County's general landscape is flat with a plain that gently rolls down towards the east and northeast where altitude ranges between 400m and 1800m above sea level. The County falls under two climatic zones i.e., arid and semi-arid with most of the County being classified as arid. It experiences high temperatures throughout the year, ranging from 14°C to 34°C. The hot months are between September and October to January and February. The maximum mean annual temperature ranges between 26°C and 34°C whereas the minimum mean annual temperature ranges between 14°C and 22°C. July is the coldest month with temperatures falling to a low of 14°C while the month of September is normally the hottest with temperature rising to a high of 34°C. The rainfall pattern is bi-modal with two rainy seasons annually. The long rains fall in the months of March to May. These are usually very erratic and unreliable. The short rains fall between October and December and are more reliable.

According to Independent Electoral and Boundaries Commission (IEBC) Kitui Office (2013), Kwa-VonzaYatta Sub-County shown as Figure 4 is an administrative area in Kitui Rural Constituency of Kitui County whose headquarters is Kyusyani but the trading centre of the study area was Kwa-Vonza town which is 130 Kilometers South East of Nairobi on the Machakos- Kitui road. It is one of the eight (8) Sub-Counties of Kitui County. The others are Kitui Central, Kitui West, Kitui East, Kitui South, Mwingi North, Mwingi Central and Mwingi West. Kitui Rural has a population of 104,443 persons and a population density 67

persons per km² according to Kenya National Bureau of Statistics (KNBS) 2009 Census Report. Kwa Vonza/Yatta Sub-County is in the extreme western end of Kitui County. It is part of the Yatta Plateau, which stretches from the north to the south of the county and lies between Rivers Athi and Tiva.

The study area is specifically known as Mikuyuni Ward of Kwa Vonza/Yatta Sub-County (GOK, 2014). The area lies between two seasonal rivers namely Mwita Syano and Mikuyuni, the basins of which accounted for the agricultural productivity of the area (see Fig. 1). Its population was estimated to be less than 7,488 people. An assessment report for sand dam, rock and fish ponds at Mwita Syano-SEUCO (Kitheka, Mathu, Maithya, Otieno and Mutiso, 2011:45) stated that the settlement patterns were greatly influenced by water availability and soils' agricultural potential. The area had high proportion of females to males (112:100) and a dependency ratio of 100:1135. The Labour force was robust (47%) with youth comprising 21% of the population. The incidence of HIV/AIDS was estimated at 14% in 2001 with a life expectancy of 51 years as compared to 55 countrywide. More than 50% of the population lived below absolute poverty level.

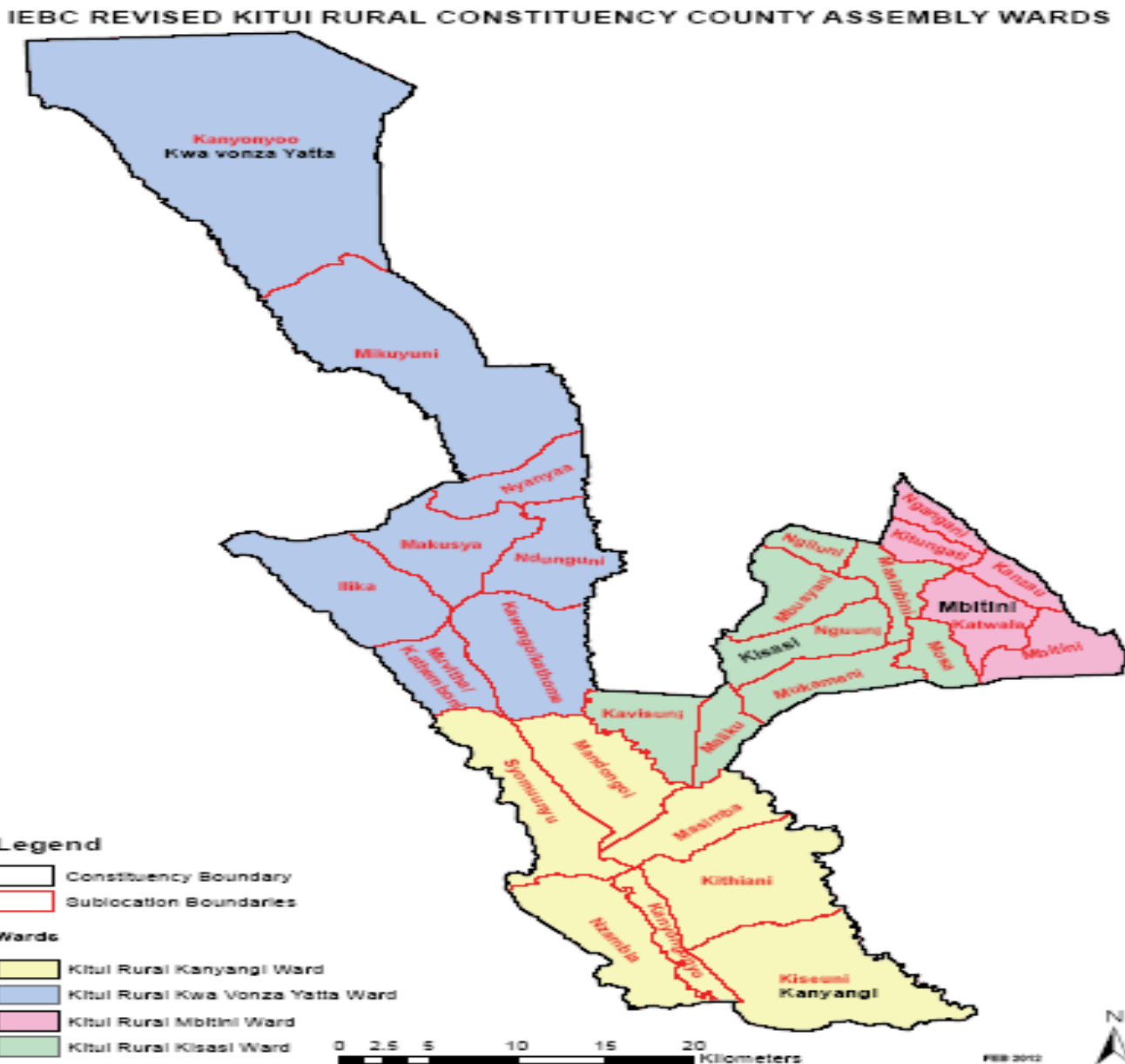


Fig. 4 Map of Kwa Vonza/Yatta Sub-County in Kitui

Up until the establishment of Kenyatta and South Eastern Kenya Universities from 2008, the only other economic activities were trading in Kwa Vonza Township. Small-scale entrepreneurs engaged in enterprises that included butcheries, hotels and restaurants, pubs, kiosks, long-shelf items like milk; auto mechanics and livestock and grocery trading. Due to the establishment of these universities investors from within and without the area were attracted to business opportunities, leading among these being purchasing of land and development of student hostels and residential facilities.

Kwa Vonza town in the study area was considered to be one of the fastest growing towns in Kitui County being placed among Kitui, Mwingi, Kabati, Mutomo, and Migwani towns which existed long before it. The Kitui Integrated Development Plan 2013-2017 stated that “rapid urbanization taking place in Kitui, Mwingi and Kwa Vonza towns portray serious urban sprawl, poverty, informality and environmental deterioration, among other negative attributes that needed to be checked. Thus it was considered opportune in the current study to worry about where the people being displaced from the rural areas were going.

3.3 Research Design

The study adopted mixed design methods. Qualitative methods were necessary to understand the phenomena and what the evictees experienced and quantitative methods enabled collection and analysis of data with respect to losses. A descriptive study which is part of a qualitative design research and fact-finding investigation aimed at providing adequate interpretation of phenomena was preferred in the study of the development-induced evictions and their consequences on resumption of normal life for the victims. The study attempted to identify the profiles of the evictees, how they originally occupied the land, losses incurred and affirmative action taken as well as how the evictees resettled.

Survey research technique on the other hand is a classification according to method and a fact finding study involving collecting data directly from a population or a sample thereof at a particular time and defined geographical area. Gay (1983) defined a survey as an “attempt to collect data from members of a population in order to determine the current status of that population with respect to one or more variables”.

3.4 Units of Analysis and Units of Observations

Units of analysis were considered to be households whether in whole or in part of those evicted from the study area and who were found in diverse places while household heads responsible for providing for the household whether male or female were treated as units of observations. Where both were providers one of them was chosen by consensus of the two.

3.5 Sampling Techniques and Sample Selection.

This section deals with the techniques used to identify and select respondents for the study.

Two non-probability procedures were found most suitable, namely purposive followed by snowball sampling. Purposive sampling allowed selection of respondents who possessed the required characteristics and therefore could provide in depth information. The main criterion for qualifying to be respondent evictees was that they had settled in the contested land for nearly ten (10) years in order to be able to provide original and historical facts concerning occupation and eviction. This criterion relied on information from few evictees known to and picked purposely by the researcher who thereafter through snowball techniques directed the researcher to others well known to them (Mugenda & Mugenda, 2003:50, 51). Local administrators were requested to provide names and addresses of evictees known to them.

3.5.1 Evictees Population and Sampling Frame

Population referred to the group of people who had similar characteristics of interest to the researcher (Amin, 2004). For the purpose of this study the target population consisted of all those households, who were evicted from the study area to give way to development of educational institutions. As no official records had been kept by the administration, the local area administrator (Senior Chief) who was active from the time of occupation to the time of eviction estimated the households to have been between 300 to 500 with an estimated population of 3000 to 4000 individuals. This population estimate was later confirmed by a petition letter by the evictees to the president and his deputy which claimed that the genuinely registered evictees were 3215 persons. Accessible or survey population were all available representatives of those evicted households within a radius of 40 kilometres from Mikuyuni in Kwa Vonza Sub-county of Kitui County. This formed the study's sampling frame as shown in Table 3.1.

Opinions differ on the optimum sample size for the kind of study undertaken. This study was guided by the views of Gupta (2010:80, 81) who argued that the sample size should depend on size of the universe; homogeneity versus heterogeneity of the universe; resources available; nature of respondents and nature of study. If the universe consisted of homogeneous units, rate of return from respondents was expected to be high and the nature of study was going to be continuous, then a small sample of at least 10% would serve the purpose. Mugenda and Mugenda (1983:42) state that for descriptive studies, 10% of accessible population is enough.

Though the population differed in demographic considerations they were considered homogeneous since the respondents were adults who went through similar experiences of settlement, worked together to establish homes and social amenities in the land and had similar experiences during the swift and brutal eviction. It was assumed that most respondents would cooperate since the study was of prime interest to them. The study was expected to be intensive and continuous since literature had shown the consequences of evictions to be life long and the researcher intended to follow up the evictees beyond the current study hence a small sample was considered most suitable. Based on the above criteria, a minimum sample size of sixty (60) evictee households representing 15% of the target population of 400 (mean of 300 and 500) was considered representatively sufficient. Eventually seventy (70) evictees participated due to the effectiveness of snowball technique.

The respondent evictees were chosen from those who had settled in four villages in the study area prior to the evictions namely Kamusi, Kikunguuni, Ndangani and Kitukuni. They were in various areas after evictions namely Kwa Vonza town, Kanzyeei, Kyua, Nzambia, Katangi, Mwakini, Tiva, Useng’yo, Kalima, Isevini, Kwa Mutonga, Kyamathyaka, Kalulini, Syongila, Matinyani and Kitui Town which were at the farthest about 40 Km. Though some evictees returned to their places of origin in nearby and far flung counties following the evictions, there were however known areas of concentration of evictees which were easily accessible. These areas provided the accessible or survey population. Based on information provided by the evictees’ former village heads that had kept track of their members, the new areas of settlement were radially clustered as shown in Table 3.1.

Table 3.1: Areas of evictees’ concentration

Cluster number and radial distance from contested land	Local name of the new town or village of settlement	Estimated households
Cluster No. 1 : 5-10 Kms	Kwa Vonza, Kyua, Kanzyeei and Nzambia	42
Cluster No. 2:11-20 Kms	Katangi, Mwakini, Tiva/Kalima, Kavuta, Kwa Mutonga, Kyamathyaka & Kalulini	21
Cluster No. 3: 21-40 Kms	Syongila, Matinyani, Kitui Town & others	37
Total		100

Source: Former Village Heads of: Kamusi, Kikunguuni, Ndangani and Kitukuni

3.5.2 Selection of Key Informants

Fourteen (14) key informants who knew the history of settlement in the area of study and who had come in contact with the evictees and who could provide independent information were chosen. They were drawn from stake holders representing county administration, educators, neighbouring institutions, business people and other opinion leaders to provide information concerning evictees, their settlement, investments and resettlement following the evictions. The deputy county commissioner, the area senior chief, two councillors who served at the time of settlement through to the time of eviction were purposely picked due to their administrative knowledge and experience.

3.5.3 Case Study Participants

Three case studies to provide experiences of life after evictions were documented based on one household of the evictees who returned to their ancestral land and two households of the evictees who were still in camps and rented facilities respectfully. They were chosen on the basis of accessibility. The aim here was to access how evictees were settling.

3.6 Data Collection

This sub-section gives of details instruments used for the study; techniques used to collect the information; issues of reliability and validity as well as ethical considerations. Data analysis is also dealt with in this section.

3.6.1 Instruments and Techniques Used

Two sets of researcher administered instruments were prepared. Both closed-ended questions with options as necessary and spaces to tick as well open-ended questions to afford flexibility and capture respondents' feeling were used. For the evictees, structured interview schedules with pre-formulated questions in a predetermined sequence were used. An interview guide allowing key informants to explain in depth their views were employed. For the case studies conversations with intermitted questions to clarify issues were held. Later and for ease of reporting the narratives were organised in form of questions and answers. One of the main advantages and suitability of interview schedules and guides in this research was that all the respondents used the same local first language as the researcher who administered the schedules. The researcher read the questions and recorded responses and narratives from the evictees directly. Initial analysis was done immediately thereafter to ensure minimal loss of

necessary details. The interviews took place in the homes of the interviewees, and in trading centres at their convenience.

3.6.2 Reliability and Validity

To ensure reliability of the data collecting instruments, an interview guide was administered to ten (10) evictees and corrections made before administering the same to the rest of the sixty (60) respondents. Validity was achieved by seeking not only the subjective views of the evictees but seeking the knowledge of key informant respondents. Also use of secondary sources namely county and court proceedings through published cases and minutes of meetings that were found by the researcher contributed to validity of the responses. Thus, the three sets of results indicated that the responses were valid.

3.6.3 Ethical Considerations

All respondents were clearly explained the purpose of the study which was to collect data to help in the academic study of the subject matter and that the information they gave was to be used for academic only and no other purposes. Participation was to be free and voluntary. They were assured that their identity would not be divulged to anybody else. Residential photographs taken to enrich reporting would be edited to remove images of persons.

3.6.4 Historical and Official Records

To complement the information collected from the respondents, historical records from county council meetings and court decisions were consulted to shed light on controversies of land ownership which were assumed to be at the centre of the evictions. Information was obtained from published records following the lead from key informants. Though initially it was intended to use a purposely prepared interview guide to obtain the views of the two universities' administrators, later it was considered inadvisable to administer it due to a court process which was on going during the field work.

3.6.5. Data Analysis

For data analysis, data were coded and Statistical Package for Social Scientists (SPSS) used for entering and analysis. Descriptive statistics assisted in reducing the mass of data into forms that was easier to work with and make sense out of.

CHAPTER FOUR: DATA PRESENTATION, ANALYSIS AND INTERPRETATION AND DISCUSSION OF FINDINGS

4.1 Chapter Introduction

This chapter presents findings of the study as obtained through interviews with seventy (70) evictees and fourteen (14) key informants, three (3) case studies and from secondary records. The presentation from interviews is according to the study objectives and distribution tables, narratives, descriptive and thematic methods are used to present the findings. The case studies are presented in form of questions and answers and finally information from secondary records, mainly court proceedings is presented in narrative form in section 4.5.3 of this thesis report. Finally the findings of the study are discussed in the light of literature and “human rights based approach to development” as well “community organizing” theoretical frameworks which guided the study.

4.2 Profiles of Evictees

The first objective was: “to determine the profiles of the evicted households”. The profiles were age, gender, marital status, number of children, level of education as well as occupation. The aim was to understand the kind of group of people who had occupied the land and shed light on the push factors for the occupation.

4.2.1 Age of Evictees

In this study we assumed that more older persons were likely to be allocated land having settled in the disputed land 15 years ago. When we distributed the evictees according to their ages, 30% were below 39 years of age with the youngest respondent being 23 years old while those in the age bracket 40-49 were 17.1% ; 20% were between 50-59 and those above 60 years of age were 32.9% with the oldest being 80 years old. It was clear from Table 4.1 that majority of evictees (a combined total of 70%) were above 40 years of age as expected.

Table 4.1: Distribution of respondents by age

Age in years	Number (n)	Percent (%)
Below 39	21	30
40-49	12	17.1
50-59	14	20
Over 60	23	32.9
Total	70	100.0

From the above data it was concluded that there was a mixed group of people and that the majority, 40 years and older were mature adults when they occupied the land over 15 years ago and that the younger ones may have inherited the land from their parents, were spouses of original evictees or had bought land at a later date.

4.2.2 Gender of the Respondents

Gender was considered an important attribute in this study and it had been assumed that more women than men would be found since they would be more affected by evictions given that they remained in the rural areas tilling the land while men sought for opportunities elsewhere. However fewer women than men turned up for the interviews which were held in Kwa Vonza town, Kanzyeei, Mwakini, Kivung'a, Kyua and Nzambia trading centres where most evictees had moved to. When the distribution of respondents was done as indicated in Table 4.2, 44.3% were females while 55.7 % were males.

Table 4.2: Distribution of respondents by gender

Gender	Number (n)	Percent (%)
Female	31	44.3
Male	39	55.7
Total	70	100.0

It was concluded that men were either more available and concerned with land issues than women or the women had moved far away from the disputed land to fend for their families elsewhere.

4.2.3 Marital Status

It was assumed that those who would occupy the disputed land would be needy persons driven to do so by the need to provide for their families. Their families would consist of married couples and children defined for the purpose of this study as functional families. The need to provide for their families was considered an indicator of genuineness of the occupation of the disputed land. Families rather than individuals would be in need of land. When we distributed the respondents it was found that the majority of the respondents

(72.9%) were married at the time of data collection and only 7.1% were single. The rest (20%) were either widowed or divorced. Table 4.3 shows the distribution of the respondents.

Table 4.3: Distribution of respondents by marital status

Marital status	Number (n)	Percent (%)
Single	5	7.1
Married	51	72.9
Widowed	12	17.1
Divorced	2	2.9
Total	70	100.0

The data suggests as expected that evictees were functional families who had occupied that land in search of a stable livelihood.

4.2.4 Number of Children

Literature of similar studies suggested that children were always vulnerable in all cases of evictions. It was therefore assumed that many children would be affected by the evictions. Finding out the number of children the evictees had at the time of eviction was considered a good indicator in this study. When the responses were distributed, 44.3% had less than 4 children while 45.7% had between 5 and 8 children and 10% had 9 or more children as shown in Table 4.4

Table 4.4: Distribution of respondents by dependent children

Number of children	Number(n)	Percent (%)
4 or Less	31	44.3
5-8	32	45.7
9 & More	7	10.0
Total	70	100.0

It became clear from the data that as expected the majority , nearly 56% of the evicted families had many children. It was therefore concluded that there was a need to be concerned with the welfare of the children after the evictions.

4.2.5 Level of Education

We had assumed that low level of education would be a good indicator of push factors for occupation of the disputed land. When the respondents were distributed, 2.9% had no education, 77.1% had primary level of education, 18.6% had attained secondary level of education and 1.4% had tertiary or college education. It was clear from Table 4.5 that the majority of evictees, a combined total of 80% had low education.

Table 4.5: Distribution of respondents by level of education

Level of education	Number (n)	Percent (%)
None	2	2.9
Primary	54	77.1
Secondary	13	18.6
Tertiary	1	1.4
Total	70	100.0

As assumed earlier, the data above suggests that lack of marketable education may have been the push factors for occupation of the disputed land in order to fight their otherwise vulnerable situation.

4.2.6 Occupation

To establish whether the occupied land was really needed by the evictees, we inquired about their occupations at the time of eviction. When the distribution of respondents was done, 61.4% were peasant farmers, 27.1% were in such businesses as shop keepers and shylocks while 11.4% had retired as laboratory and dispensary attendants, procurement assistants, masons, tailors, drivers and watchmen who were eking a living doing odd jobs. It is clear from Table 4.6 that the majority (61.4%) of respondents were peasant farmers .

Table 4.6: Distribution of respondents by occupation

Occupation	Number (n)	Percent (%)
Peasant Farmer	43	61.4
Business	19	27.1
Retiree	8	11.4
Total	70	100.0

The data on occupation suggests that the evictees needed the disputed land to earn a living as peasant farmers and do business related to farming.

The data on profiles, the first objective, led to the conclusion that majority of evictees (70%) had been adults with low education, 80% having primary level of education or none at all when they occupied the disputed land to fend for their families as peasant farmers (61.4%) and that they were functional families with 72.9% being married and had large families of 5 or more children (65.7%). From the above data, it was evident that the evictees were needy people who were attracted to the available land to genuinely earn a living.

4.3 Settlement in the Disputed Land by the Evictees

The second objective was: “to examine the ways through which the evictees came to own and settle in the land.” The indicators used to assess this objective were the year they occupied the disputed land, place of origin, the acreage they had owned before, how they had disposed it and the initial acreage they acquired in the disputed land. Key informants were also asked to explain what they knew about the settlement. Historical, county and court case records were also consulted. The following responses and information emerged.

4.3.1 Year of Occupation

The aim of this indicator was to establish for how long the evictees had occupied the disputed land. When we distributed the respondents, 51.4% said that they occupied the disputed land between 1997 and 2000, 35.7% between 2001 and 2004 and 12.9% after 2005 as seen in Table 4.7. Also majority of Key Informants, 78.6% stated that the evictees were there in the year 2000 and earlier.

Table 4.7: Year of Occupation

Year when evictees moved in	Number (n)	Percent (%)
1997-2000	36	51.4
2001-2004	25	35.7
After 2005	9	12.9
Total	70	100.0

From the data in Table 4.7 and the testimony of Key Informants, it is clear that the evictees occupied the disputed land for between 10 and 18 years.

4.3.2 Place of Origin

It was assumed that respondents and hence occupants of the disputed land would be people living in villages within the borders of the former Kitui West Constituency where the land was situated as well as the neighboring Machakos villages. These villages included those in Kwa Vonza, Lower Yatta, Matinyani and Mutonguni wards of the constituency. Those in Machakos were Kyua, Nzambia and Katangi. All these would have been within a maximum radial distance of 40Kms. When the respondents were distributed; those from the furthest came from Nairobi Kwa Njenga slums (130Kms). Others were from villages in Machakos, Makueni, Mwingi and Mutomo, 60 to 100Kms away. These accounted for 15.7%.

Those from nearby villages of Kwa Vonza, Kyua, Kanzyeei and Nzambia within 10 Kms radius were 14.3%. Another 28.6% came from Katangi, Mwakini, Tiva, Kalima, Kavuta, Kwa Mutonga, Kyamathyaka and Kalulini, all about 20Kms away. The majority, 41.4% hailed from villages between 21 and 40 Kms, namely Syongila, Matinyani, Mutonguni and Kitui Town. Table 4.8 shows the distribution of the respondents by their place of origin relative to the occupied land.

Table 4.8: Place of origin

Place of Origin	Number (n)	Percent (%)
Kwa Vonza, Kyua, Kanzyeei and Nzambia	10	14.3
Katangi, Mwakini, Tiva, Kalima, Kavuta, Kwa Mutonga, Kyamathyaka and Kalulini	20	28.6
Syongila, Matinyani, Mutonguni and Kitui Town	29	41.4
Nairobi ,Machakos, Makueni, Mwingi and Mutomo	11	15.7
Total	70	100.0

The data indicates that the availability of land attracted people from as far as over 40Kms away contrary to expectations. However those from 40Kms and less were the majority at 84.3%.

4.3.3 Size of Land Owned in the Place of Origin

To determine existence of the need for extra land, information on ownership of land in their places of origin was obtained and it is captured in Table 4.9. The Table shows that 74.3% of respondents had less than one (1) acre of land or none at all in their former home. When asked why they moved into the disputed land, all the evictees (100%) said that it was in search of land to cultivate and reside. Others were squeezing with the rest of their kin in small exhausted and unproductive pieces of land yet their families were growing.

Table 4.9: Acreage owned in their place of origin

Size of former land in acres	Number(n)	Percent (%)
None	37	52.9
1/4-1 Acres	15	21.4
2-3 Acres	10	14.3
More than 3 Acres	8	11.4
Total	70	100.0

The findings above were in agreement with the opinion of the Secretary General of the Kenya Squatters Social Forum who said during the interview that: “there were 75% genuine squatters in the disputed land”

4.3.4 Manner of Acquisition of Land in the Disputed Area

The manner of acquisition of land was also addressed to ascertain whether the evictees had forcefully and illegally occupied the contested land as the evictors had claimed in various forums including court representations. When asked how they acquired the land, 88.6 % of the evictees said that it was through allocation by a committee set up by the then (1997-2002) area leadership. The rest, 11.4% bought their pieces from those who had been allocated. There was concurrence with this position from 12 out of the 14 Key Informants. One of the Informants said that:

“The land was allocated by a committee set up by the then Kitui West Member of Parliament after appealing to and getting approval of the President following a severe drought in that region with allegations of people feeding on dogs.”

Most respondents (90%) said that they paid token amounts ranging from Kenya Shillings 300/= to 500/= per lot of 3 acres for the purpose of being shown their lots while those who purchased paid more than Kenya Shillings 11,000/= per lot. There were no ownership documents but security of ownership depended on one developing his or her land. They were however promised that land adjudication would follow which indeed did in some of the areas as discussed later.

When respondents were distributed according to how much initial land they acquired, 15.7 % had acquired 3 or fewer acres, the majority, 40% had between 4 and 6 acres. Those who had between 7 and 10 were 27.1% and 17.1% had more than 11 acres.

Table 4.10:Initial acreage acquired in the disputed land

Initial acreage acquired	Number (n)	Percent (%)
3 or Less	11	15.7
4-6	28	40.0
7-10	19	27.1
11 & More	12	17.1
Total	70	100.0

It is clear from Table 4.10 that a combined majority (84.3%) of evictees had acquired over four (4) acres of land. This also indicated that there was plenty of land in the disputed area. From the information gathered and presented above, it was concluded that evictees had been allocated land by committees instructed by their area Member of Parliament and had not forcefully entered the disputed area

4.3.5 Disposal of Land Owned in the Place of Origin

The study sought to understand how the evictees who had owned some parcels in their places of origin had disposed of them after acquiring the new land. Only 4.3% sold their parcels and one did so to finance the education of his children. Those who left their parcels to their kin or relatives were 42.9%. As shown in Table 4.11, 52.8% had no parcels of their own. They lived communally with their kin.

Table 4.11: How former land was disposed of

How former land was disposed of	Number(n)	Percent (%)
Never Had	37	52.8
Left to Kin	30	42.9
Sold	3	4.3
Total	70	100.0

It is clear from Table 4.11 that evictees needed land to earn a living as the few who owned parcels in their former places (42.9%) could not even sell it.

In conclusion of the second objective which was to examine the ways through which the evictees came to own and settle in the contested land, it has emerged from section 4.3.4 that occupation was through a well managed allocation process under the instruction of the then Member of Parliament, a transparent process that attracted Kenyans from other counties besides Kitui County as shown in Table 4.8. It was not through forceful action on their part. Giving further support to this position was the fact that even those who owned some parcels of land did not sell them as shown in Table 4.11.

4.4 Manner of Eviction and Losses Incurred

The third objective was “to find out the manner of evictions and the losses incurred”. We sought to understand from the evictees and Key Informants whether evictees had been served with notice, whether there were any preparations made for their welfare during and after the evictions and how the evictions were carried out. The study attempted to quantify the losses as well.

4.4.1 Notice of eviction

As required by eviction and settlement conventions, it was assumed that sufficient notice and preparations would have been made (UN (2007)/1, A/HRC/4/18 (2007). When respondents were asked for how long they had known of the impending eviction, 91.4% said that they knew in the early hours of same day, 5.7% said that they knew some weeks before while 2.9% said they had heard rumours several months before. The distribution is as shown in Table 4.12

Table 4.12: Distribution of respondents with regard to notice of eviction

When communication of eviction was announced	Number (n)	Percent (%)
Same or previous day	64	91.4
Weeks before	4	5.7
Several Months Before	2	2.9
Total	70	100.0

Further, when the same question was put to 14 Key Informants, 50% of them agreed with the the 91.4% evictees who maintained that there was no notice, 35.7% of the Key

Informants said that a notice of between one and three weeks was given agreeing with the 5.7% evictees. One Key Informant said there were notices but could not specify the length of notice. The area Deputy County Commissioner, who was among the Key Informants said:

“ a seven-day court notice was available but it was too short and executed hurriedly”.

4.4.2 Preparation for Post-Eviction Welfare

Regarding preparation for the evictees' welfare, all the respondents (100%) stated that they were never met with by the evictors or their representatives prior to evictions neither was any participatory environmental and social impact assesment (ESIA) done.

4.4.3 Manner of Eviction

Asked how the evictions were carried out, all the respondents (100%) stated that the evictions were carried out violently, brutally and in a very ruthless manner by hired people supervised by armed security officers . Houses were torched and demolished. Granaries with food stored in them were burned without being allowed time to salvage anything. Animals were scattered.

4.4.4 Losses Incurred as a Result of Evictions.

The study attempted to understand the magnitude and nature of losses incurred by the evictees. The findings are presented in three categories. The first deals with losses with respect to land, crop acreage, buildings and water wells lost. The second addressed farming losses of planted fruit trees and income lost there from and the last concerned loss of livestock.

4.4.4.1 Loss of Land

Evictees lost land ranging from 2 to 30 acres. Those who lost less than 3 acres were 14.3% , another 42.9% lost between 4 and 9 acres while losses of above 10 acres accounted for 42.9% The distribution is shown in Table 4.13.

Table 4.13: Acreage lost in the disputed land

Acreage lost	Number (n)	Percent (%)
Below 3 acres	10	14.3
4-6 acres	21	30
7-9 acres	9	12.9
Above 10 acres	30	42.9
Total	70	100.0

It is evident from Table 4.13 that evictees had acquired reasonable sizes of land which they lost after the eviction.

4.4.4.2 Loss of Buildings

To further assess the magnitude of loss, questions were asked about the type and estimated value of the buildings that may have been destroyed. These buildings were categorised as residential and business houses.

Those who had invested in permanent residences whose walls were built with baked bricks and iron sheets were 57.1% . Semi-permanent buildings were considered as those built with unbaked bricks and iron sheet and they accounted for 35.7% while the rest, 7.1% were local houses of mud and grass thatched. All the above were demolished and hence lost during the evictions. The tabulations are shown in Table 4.14

Table 4.14: Type of Residential Houses Lost

Type of residence lost	Number(n)	Percent (%)
Permanent- Built of baked brick and iron sheets	40	57.1
Semi-Permanent-Built of unbaked brick and iron sheets	25	35.7
Local-Mud and grass thatched	5	7.1
Total	70	100.0

It is clear from Table 4.14 that evictees suffered loss of residences.

Business buildings were mainly kiosks and shops and 25.7% incurred losses of Kenya shillings 100,000 or less while 10% lost in excess of Kenya shillings 100,000 worth of business buildings as deduced from Table 4.15

Table 4.15: Kiosks or Shops lost

Value of kiosks or shops lost	Number(n)	Percent(%)
Nil as respondents did not have any	45	64.3
Kenya shillings 100,000 or Less	18	25.7
More than Kenya shillings 100,000	7	10.0
Total	70	100.0

The information gathered and presented above clearly indicated that evictees were rendered homeless to the tune of 92.8% losing permanent and semi-permanent residences (Table 4.14) and that some of them (10%) lost kiosks or shops worth more than Kenya shillings 100,000 or more according to Table 4.15.

4.4.4.3 Loss of Crop Farms

All the respondents (100%) cultivated the main subsistence food crops namely maize, beans, peas and cow peas and had several acres of land in use as farms and the study sought to establish the number lost as an indication of loss of investment. When the data was distributed, 28.6% lost 3 or less acres, majority of 47.1% had lost between 4-6 acres of crop acreage, and 24.3% lost 7 or more acres as shown in Table 4.16.

Table 4.16: Crop acreage lost

Total crop acreage per season	Number(n)	Percent (%)
3 or Less Acres	20	28.6
4-6 Acres	33	47.1
7 & More Acres	17	24.3
Total	70	100.0

Regarding the loss of farms where they used to grow their staple food of maize, beans, peas and cow peas, respondents said that the loss rendered them destitute. These losses were

confirmed by 13 of the 14 Key Informants who gave independent information. One of the Key Informants said: “these people used to have plenty of food”

4.4.4.4 Loss of Water Wells and/or Bore Holes

The study investigated the extent to which evictees had invested in their farms and the losses incurred in terms of water wells and bore holes. The distribution showed that only 15.8% had invested in water and bore holes. Of these ,12.9 % lost Kshs 50,000 or less worth of water wells and/or bore holes while 2.9 % lost more than Kshs 50,000 worth of water wells and/or bore holes . The distribution is shown in Table 4.17

Table 4.17: Water well or bore hole lost

Cost of water well or bore hole lost	Number (n)	Percent (%)
Nil as respondent did not have any	59	84.3
Kenya Shillings 50,000 or Less	9	12.9
More than Kenya shillings 50,000	2	2.9
Total	70	100.0

The distributions shows that the majority of evictees did not invest in water wells or bore holes.

4.4.4.5 Loss of Trees and Income from Sale of Fruits

Respondents were asked whether they had invested in four main fruit trees namely mangos, oranges, bananas and pawpaws. When the responses were distributed, 68.6% of the evictees had invested in the trees while 31.4% had not. Table 4.18 shows the distribution.

Table 4.18: Main types of fruit trees

Households who had invested in these main types of fruit trees	Number (n)	Percent (%)
Mangos ,Oranges,Bananas and Pawpaw-Yes	48	68.6
Mangos ,Oranges,Bananas and Pawpaw-No	22	31.4
Total	70	100.0

Out of the 68.6 % of the evictees who had invested in fruit trees 29.2 % lost 10 or less mature trees, 10.4% lost between 11 and 20 while 35.4% lost more than 21 trees. Those whose trees had not matured were 25%. The distribution is shown in Table 4.19.

Table 4.19: Distribution of respondents who lost mature fruit trees

Number of mature fruit trees lost	Number (n)	Percent (%)
10 or Less	14	29.2
11-20	5	10.4
21 and more	17	35.4
None (Their trees had not matured)	12	25.0
Total	48	100.0

Majority, 75% of those who had trees lost mature trees as is evident from Table 4.19 above.

4.4.4.6 Loss of Income from Fruit Sales

The study attempted to assess the value of loss of earnings from fruit trees. Out of the 48 respondents who had mature trees, only 32 said that they used to sell some of the fruit yields, hence lost that income which was quantified per annum. Those who lost the highest annual incomes of over 40,000 Kshs were 25% and the lowest loss of between 1,000 and 10,000 Kshs was incurred by 3.1% of the 32 respondents. Majority of respondents lost 10,000 and 20,000 Kshs. The distribution is shown in Table 4.20.

Table 4.20: Annual income lost from fruit sales

Annual income lost from fruit sales	Number (n)	Percent (%)
Over Kenya shillings 41,000	8	25.0
Kenya shillings 21,000-40,000	5	15.6
Kenya shillings 10,000 - 20,000	18	56.3
Kenya shillings 1,000 -10,000	1	3.1
Total	32	100.0

It is evident from the data above that evictees lost livelihoods after they were forced to abandon their fruit trees which used to give them incomes as tabulated in Table 4.20 above.

4.4.4.7 Loss of Livestock

Another type of loss that the study sought to establish was that of livestock, mainly cattle, goats and sheep. Respondents were asked to indicate whether they owned and subsequently lost cattle. Those who answered in the affirmative were 74.3% while 25.7 % said that they did not own livestock. Table 4.21 shows the distribution.

Table 4.21: Ownership of livestock

Whether households owned livestock	Number(n)	Percent (%)
Yes	52	74.3
No	18	25.7
Total	70	100.0

Further, enquiries were made about how many lost their livestock and how many managed to escape with or sell their animals. Of the 74.3% who had livestock, 86.5% lost them while 13.5% did not lose theirs .Table 4.22 shows the distribution.

Table 4.22: Livestock lost

Livestock loss	Number (n)	Percent (%)
Those who lost	45	86.5
Those who did not lose	7	13.5
Total	52	100.0

It is evident that evictees lost livestock whose value is shown in the following section.

The study tried to appreciate the magnitude of loss of livestock in monetary terms.

Respondents who lost the highest amount of livestock valued above Kenya shillings 61,000 were 13.3% and those who lost lowest amount of livestock valued below Kenya shillings 30,000 were 57.8%. The distribution is given in Table 4.23.

Table 4.23: Distribution of respondents with respect to value of livestock lost

Total value of lost animals	Number (n)	Percent (%)
Above Kenya shillings 61,000	6	13.3
Kenya shillings 31,000-60,000	13	28.9
Below Kenya shillings 30,000	26	57.8
Total	45	100.0

With regard to the loss of livestock, it became clear that evictees lost livelihood gained through livestock as presented above and shown in Tables 4.21, 4.22 and 4.23.

In concluding the findings on losses, it became clear from the respondents that evictees lost developed farms, residences, farm produce, incomes from fruit trees and livestock. Key Informants in the ratio of 13 to 1 confirmed the losses as presented by the respondents who represented the evictees. The Kitui Deputy County Commissioner in whose jurisdiction the evictions and hence the losses took place said that the victims lost property worth Khs 200,000.00 on average.

4.5 Actions taken by the evictees to resist eviction and seek compensation

The fourth objective was : “To understand the actions taken by the evictees to resist eviction and seek compensation”. These were actions taken by evicted communities to resist evictions, reclaim their land or seek compensations in harmony with human rights laws (UN, 2007:6). In this study the indicators examined were: whether the evictees of the disputed land had mobilized themselves in groups in anticipation of evictions, whether they had taken legal actions to resist the eviction and whether there were reparations and compensation.

4.5.1 Reparation , compensation and reconstruction of life.

Respondents were asked how they would wish to be resettled and compensated and the analysis of responses recorded in Table 4.26 shows that 81.4% would like to be resettled in the same portion of land from where they were evicted. All the respondents stated that they would need holistic help to reconstruct their lives including being assisted to reunite with their dispersed family members whatever the final decision is. Thirteen (13) out of fourteen(14) Key Informants confirmed that the evictees were not compensated at all.

Table 4.24: Reparation and compensation

Reparation and compensation	Number(n)	Percent (%)
I would prefer to go back to the same portion of land I had developed	57	81.4
I would prefer monetary compensation to resettle elsewhere	9	12.9
I would prefer alternative land and money to reconstruct my family's life	4	5.7
Total	70	100.0

The data recorded in Table 4.24 shows clearly that the evictees were in genuine need of land to provide a livelihood for their families.

4.5.2 Mobilization and Group Membership

On group membership, 60% of respondents said that they belonged to Kamusi Farmers Welfare Association (KFWA). KFWA was in existence before the eviction and it served as a vehicle to mobilize evictees to seek redress following the eviction. It was predominantly an association of those in the villages of Kamusi which was adjacent to SEKU. The 40% who did not belong to KFWA came from another village called Kitukuni and they gave the following explanation:

“Our land had been demarcated with assistance of CDF (CDF 2007/2008: KF/Mutonga Land Demarcation) at a total cost of Kenya Shillings 6,600,000 and hence we were awaiting title documents and therefore had not seen the need to join KFWA”

The payment of Kenya Shillings 6,600,000.00 for demarcation was confirmed from a statement forwarded to a Task Force set up by the Kitui governor by a Key Informant who had been serving as chairman in B2-Yatta and Kwa Vonza Land Allocation Committee since 1966. The distribution on group membership is shown in Table 4.25.

Table 4.25: Group Membership

Mobilization/ Group Membership	Number(n)	Percent (%)
Yes, I was a member of Kamusi Farmers Welfare Association	42	60.0
No, I was not a member of Kamusi Farmers Welfare Association, I was in Kitukuni	28	40.0
Total	70	100.0

It is clear from the tabulations in Table 4.25 that there were two main camps of evictees, one belonging to those who had occupied land closest to SEKU campus and those who were in its outskirts, Kitukuni village who were hoping to have their occupation legalised as explained above.

4.5.3 Legal Actions Taken

A majority of 74.3% had mobilized and taken court actions to recover their land and/or compensation. The other 25.7% who did not go to court cited lack of money to meet the demanded dues. Table 4.26 gives the tabulations.

Table 4.26: Legal action taken

Legal action	Number (n)	Percent (%)
Yes, am among those who challenged the eviction in court	52	74.3
No, am not among those who challenged the eviction in court	18	25.7
Total	70	100.0

It is clear from the distribution that evictees took decisive legal action to address their contention of land ownership. The case was still in the court at the time of data collection. Other forms of legal actions involved seeking help from humanitarian organizations, The coordinator, Governance and Human Rights Programme-Justice and Peace Commission of Catholic Diocese of Kitui confirmed this by saying:

“Evictees had sought interventions of other actors including churches and the Centre for Human Rights & Civic Education (CHRCE) which was based in Mwingi County”

From the foregoing information, it became evident that the evictees were aware of the need to mobilize, had formed a group called Kamusi Farmers Welfare Association (KFWA) which they later used to seek court redress. It also emerged that the evictees were very clear that they wanted to be resettled in the same land along with any other compensation. Details of the court actions and outcomes form a substantial part of information from secondary sources and presented.

4.5.4 Administrative/ Legal Tussles and Evictions

From records of Kitui County Council which had been existence before the year 2003 (EHSS/28/2003) as well as various court records thereafter the study, carried out in 2015, was able to gather the following information from four cases, namely:

Kitukuni/Nduila versus County Council of Kitui

Mwakini/Nduiyu Self Help Group versus County Council of Kitui

Kitukuni/Kwale Village versus County Council of Kitui and Kenyatta University

Mbinzu versus County Council of Kitui and South Eastern University College (SEKU)

The findings were as follows:

Kitukuni/Nduila Community Land (Kwa Mutonga Settlement Scheme)

A 78-year old key informant who had been Chairman of the land allocation committee comprised of six (6) elders assisted by thirty (30) youth in or around the year 2000, related details concerning 1000 acres of land where people were settled with the full blessing of Kitui County Council and where Kshs. 3,200,000.00 from CDF funds was paid to complete the adjudication process and issue titles to beneficiaries. He showed the researcher a memorandum dated 27/01/2015 and addressed to the Land Commission Task Force, Kitui which visited the area in January 2015 to collect views of those it deemed as being on untitled trust land. He also referred to Minutes of the Kitui County Council Education, Housing and Social Services Committee dated 16/09/2003: EHSS/28/2003 where the 1000 acres to the community was one of the agenda items. The area was to accommodate a market and a primary school for the community. It was while people were moving to this area that they encroached on adjacent lands reserved for UKAI (later SEKU) and K.U. They were arrested and had several expensive cases before they could be released. They were yet to get titles to their portions and they lived in fear despite several letters to the Ministry of Land as well as constituency development funds (CDF) having been paid on their behalf for the purpose of completing the adjudication process.

Mwakini/Nduiyu Self Help Group versus County Council of Kitui

From Civil Suit No. 40 of 2005 pitting 1496 members of Mwakini/Nduiyu Plot Owners Self Help Group which was registered under the Ministry of Home Affairs, Heritage and Sports under the Department of Social Services against the County Council of Kitui it is evident that most of the evictions and hence suffering of the local residents had to do with the county council which held land in trust and which dished it at will. The following quotation bears this fact out:

“The Replying Affidavit as sworn by Edward Mwamburi, the defendant’s County Clerk. Mr. Mwamburi depones that the land allegedly known as Nduiyu Trust Land no longer exists and that none of the applicants had any piece/parcel of land in the alleged Trust Land. The reason for this, Mr. Mwamburi says is Minute No.40 of 2004 passed on 6/02/2004 which revoked all previous plot allocations of Nduiyu Council that had been done illegally.”

The question of concern was whether all the 1496 members of Mwakini/Nduiyu Plot Owners Self Help Group were part of the illegality or was the illegality orchestrated by the council officials? The second question was why the existing allottees, that is the 1496 members could not be reallocated the same land “legally” since it was going to be allotted to others anyway.

According to annexure marked “EM1” attached to Mr. Mwamburi’s affidavit, which is an Extract of “Minutes of Special Education Housing and Social Services Committee Meeting held on 6/02/2004 at 10.00 am”, the Council resolved to revoke the earlier allocations in favour of the Catholic Diocese of Kitui for their Goat and Sheep Project (GASP) at Nduiyu. Thus stakeholders whose land was held in trust for them were denied their right in favour of an institution whose project has never had any direct benefits to them.

Kitukuni/Kwale Village versus County Council of Kitui and Kenyatta University

In passing a ruling in Civil Case No.123 of 2008 pitting Kitukuni/Kwale village versus County Council of Kitui (1st Respondent) and Kenyatta University (2nd Respondent) at Machakos, on 16th January, 2012 Justice Asike-Makhandia was recorded as saying: “The suit premises having been trust land, it can only be dealt with in accordance with sections 115, 117 and 118 of the Constitution of Kenya and section 7, 8 and 12 of the Trust Land Act. Section 115(1) of the then Constitution of Kenya provided that: “All Trust Land shall vest in the County Council within whose area of jurisdiction it is situated...” And Section (2) thereof provided that: “Each county council shall hold the trust land vested in it for the benefit of persons ordinarily resident on that land and shall give effect to such rights, interests

or other benefits in respect of the land as may, under African Customary Law for the time being in force and applicable thereto be vested in any tribe, group, family or individual”.

Whether or not it was available for the 1st respondent to “re-set aside” for another purpose is an issue to be determined. They further argue that the recommendations were never adopted by a full council meeting of the 1st respondent. It therefore remained as such, a mere recommendation of the committee. This is all fine. However, have the applicants come to the court challenging the process of setting apart? No. They cannot be let to argue that no setting apart as required by law was done in this case, and therefore the suit premises remains Trust Land and still vests in the 1st respondent for the benefit of the applicants. That argument would have sold if the applicants had come to court to challenge the process of setting apart. The judge went on to pulverize the applicants by stating:

“Finally and as properly submitted by the 2nd respondent, the applicants have been indolent (lazy) in pursuing their rights if any for the reason that the setting apart of the suit premises was set in motion way back in 1987 and the applicants if at all were residing on the suit premises would have taken steps to protect their interests. Seeking equitable orders, the applicants ought to have come speedily enough to seek such protection as envisaged by the law. Equity does not aid the indolent thus having chosen to sleep on their rights for over twenty (20) years, equity cannot come to their aid.”

With that ruling, Kenyatta University went ahead and with the support of local administration and police evicted 1000 residents in July 2012 at Kwa Vonza destroying property whose value was not quantified.

Maingi Mbinzu & 214 Others versus County Council of Kitui and South Eastern University College (SEKU)

The Civil Case 107 of 2010 at Machakos High Court registered in the name of Maingi Mbinzu & 214 others versus SEKU referred to the legal tussle between those who had settled in the land formerly belonging to UKAI. Mbinzu and fellow occupants had filed a suit on 27/5/2010 against SEKU and the Kitui County Council in which they sought a declaration that they were the proprietors of their individual and distinct parcels of land comprising in aggregate approximately 9,500 acres which were part of the land comprised in land title number. LR.13627 at Kwa Vonza Location in Kitui District formerly belonging to UKAI.

They also sought a permanent injunction restraining SEKU, their agents, employees and/or whosoever else acting on their behalf from interfering with, or dealing in any way adverse to the use, occupation and possession of, and/or proprietary interests, rights and benefit in their respective parcels of land measuring in approximate aggregate area 9,500 acres. Their arguments were that: “In or about July, 1998 and upon presentations by the local leaders, the then President of the Republic of Kenya had directed that they be settled on 9,500 acres of the land leaving 500 acres for use by Ukamba Agricultural Institute and by extension its successor.”

SEKU filed an application in the same court on 19/11/2010 seeking the removal of the occupants on the grounds that they had no identifiable interest in the suit property and that they were trespassers who had been cultivating the suit land and had put up temporary structures on the land thereby hindering the university’s expansion. Further SEKU submitted that the suit property had been vested on the University by virtue of the Gazette Notice No. 102 of 2008 issued by the President.

In passing a ruling the Honorable Judge Beatrice Thuaranira Jaden on 25/09/2013 concurred with an earlier ruling by Honorable Judge H.P.G. Waweru J. on 21/10/2011 which stated that: *“At best, the Plaintiffs (occupants) are trespassers in the face of resistance from the owner (SEKU) of the suit property. They have not brought any claim in adverse possession. Their claim, based upon a Presidential (1998) directive of dubious legal effect, is tenuous (i.e. flimsy, weak and of little substance or strength) at best. I am not satisfied that they have demonstrated a prima facie case with a probability of success.”*

The ruling went on to state that the alleged Presidential directive (1998) was of no legal effect on the property already registered in the names of Ukamba Agricultural Institute Ltd, the predecessor of South Eastern University College. No proprietary interest exists on the part of the Plaintiffs in the suit property. None would be vested by the alleged Presidential directive. The Plaintiffs are therefore trespassers who have no *locus standi* to bring this suit.

She also stated that both parties have raised objections based on technicalities of procedure. However, Article 159 of the Constitution stipulates that “justice shall be administered without undue regard to procedural technicalities.” Having arrived at the determination herein on merits, I will not delve into the issues of technicalities raised. With those findings the

occupants lost their case and were swiftly evicted through an order by the same judge dated 25th September 2013.

4.6 Resettlement and Coping after the Evictions

The fifth objective of the study was: “To explore how the evictees were coping with life after evictions”. To get a complete picture on resettlement and how the evictees were coping, three case studies were recorded to supplement information from respondents and Key Informants. The following information is thus divided into three sections- from evictees directly using interview guides, from Key Informants using interview guides and from three case studies of evictees through narratives, observation and discussions. Two of the case studies involved those first in camps and later in rental facilities and one was with a respondent who returned to his place of origin.

4.6.1 Resettlement and coping- views of all the respondents

All the 70 respondents were unanimous that they were evicted within one day on 31st October 2013 and that none of them felt that they had resettled and all required some form of intervention to reconstruct their lives. About 39% of the households who had school going children, said that they had not found suitable schools for their children and some had been forced to repeat classes thus losing time of schooling. Other children were too traumatised to return to school. Some families were separated with some wives returning to their parents and leaving their husbands to eke a living while dwelling in rented facilities or dependent on good samaritans. Tables 4.27-4.29 demonstrate the trajectories some evictees used in an attempt to settle down.

When asked where they had found shelter after the evictions, 5.7 % of the evictees said that they were still in camps, 12.9 % were being helped by good samaritans and 18.6% were in rented facilities. Those who returned to their kin were 37.1% and 25.7% purchased land elsewhere. The tabulation is shown in Table 4.27

Table 4.27: Where They Found Shelter

Where they Found Shelter	Number (n)	Percent (%)
In a Camp	4	5.7
Helped by a Good Samaritan	9	12.9
Rented Facilities	13	18.6
Former Home with Kin	26	37.1
Purchased Land	18	25.7
Total	70	100.0

It is clear from Table 4.27 that 37.2% (aggregate of those in camps, those being helped by good samaritans and those in rented facilities) were still homeless and had not settled.

When asked how they raised the money for the purchase of land and rent, 51.4% said that they sold livestock and grains, 22.9% were helped by kin and 25.7% raised money from casual jobs. The distribution is shown in Table 4.28.

Table 4.28: How Money to Purchase Land and Pay Rent was Raised

How money was raised	Number (n)	Percent (%)
Sold livestock and grains	18	51.4
Helped by kin	8	22.9
Casual jobs	9	25.7
Total	35	100.0

It is evident from the sources of funds that some evictees had prospered during their stay in the disputed land to enable them move on and purchase land or pay rent as can be deduced from Table 4.28. However it is also clear from the same Table 4.28 that some of them became dependants following the evictions.

The study also attempted to find out how many acres those who purchased land obtained. Majority of 77.8% had less than 3 acres, 11.1% had between 4 and 6 acres while another 11.1% had more than seven (7) acres as shown in Table 4.29

Table 4.29: Size of Purchased New Land

Size in acres	Number(n)	Percent (%)
Less than 3 acres	14	77.8
Between 4 and 6 acres	2	11.1
More than 7 acres	2	11.1
Total	18	100

Thus according to the evictees' own information presented above, majority, 74.3% have not settled neither are they coping well. The past immediate Chairman of the Kamusi Farmers Welfare Association, himself an evictee but who had returned to his ancestral land summed the evictees' situation in these words: " they survived on burning charcoal clandestinely".

4.6.2 Resettlement and coping- the views of Key Informants

Responding to the question: "To the best of your knowledge, how were most evictees coping with life after evictions?", Twelve (12) Key Informants said that they were doing very poorly, one (1) said fairly and one (1) did not know. Asked to comment on whether evictees had settled, twelve (12) said no, one (1) said that they are settling fairly well and one (1) did not know. The following are sampled individual views from the Key Informants.

A woman village elder who had pleaded for land for her people of Yatta Location, Nyanyaa and Tiva as well as adjacent villages and was involved in the initial allocation of the portions of land said that:

"the evictees were suffering; some were squatting and others renting houses and gardens to cultivate."

A National Youth Leader conversant with the area said that:

"the evictees lived very poorly, some in two camps in Nzambia and Kitukuni within a radius of 5 Kilometers from the disputed land."

The Headmaster of the 100 pupil-strong Kamusi Primary School which was preparing children to sit their first national examination and which was closed prematurely said that:

"life was very hard for the evictees".

A former councillor whose term in office coincided with the occupation of the land singled out evictees from far flung areas of Matinyani and Mutongini (40 Kms and more) and explained that:

“They are suffering alot. This was because they had no place to go back to in their ancestral land , being some of the densely populated areas in Kitui County.They were also the pioneers and the majoriy in the disputed land since the Member of Parliament came from Mutonguni.”

The Deputy County Commissioner of the area said that:

“the evictees lived in poor infrastructures and were bitter.”

Appendix 5 gives details of the key informant interviews.

4.6.3 Case Studies on resettlement and coping

The following case studies show the plight of some of the evictees. They involved two evictees who were in camps but who now live in rented facilities and one who went back to his former home.

Case 1: Respondent initially in a camp then moved to rented residence

Name: Respondent #59

Age: 50s ; Gender: Female; Number of Children: 5

Narrative:

Question (Q): Please tell us about your background.

Answer (A): “I came from Mutonguni, 40 Kms North East of the disputed land where I was landless .I initially acquired 5 acres in the year 2000. This was through allocation by a committee selected and commissioned by my Member of Parliament. I later bought 5 more acres making a total of 10 acres. I eventually lost during the evictions. I had dug a water well and had grown 40 mango,30 orange,50 pawpaw and 10 banana fruit trees earning about Kenya shillings 20,000 per year from paw paw sales alone. Five acres were under subsistence cultivation and horticulture. Besides having sufficient food for my family of seven (7), I made a further Kenya shillings 20,000 from sales of tomatoes, onions, kales and cabbages grown through irrigation.”

Q When and how were you evicted?

A: “In October 2013 we were forcefully and brutally evicted without notice, our permanent buildings and granaries demolished and in ashes”

Q: Where did you go and how do you provide for your family?

A: “I escaped to a nearby camp in Kanzyeei in Kitukuni shopping centre. There I joined 30 other families. After three months, the camp was closed on the orders of the county health officer who claimed that it was a health hazard due to lack of sanitary facilities as well as the local administration advice that the Internally Displaced Persons were a security threat to the nearby communities. I later found habitat in rented facilities at the same place at a monthly rent of Kenya Shillings 700 which I raise from relatives and casual work”.

Q: Please tell us about what action you have taken following the evictions.

A: “I am among those actively following a court case, never missing hearings at Machakos High Court, 110 Kms away. I am hopeful that we will succeed and be restored to the only sustainable means of livelihood we had known since the year 2000.”

The remnant of the camp which housed two families as of the time of data collection is shown in the photograph shown as Figure 5.



Fig. 5: Photograph of Kitukuni/Kanzyeei camp

Case 2: Respondent initially in a camp then moved to a rented residence

Name: Respondent #33

Age: 48 ; Gender: Female; Number of Children: 12

Narrative:

Q: What is your background?

A: “We had migrated from Kavuta, 40 Km South East of the disputed land and settled at Kamusi, a village in the contested land in the year 2000. My aged grandparents and parents had lived in mud houses with shrubs as doors before we came. My father had been allocated seven (7 acres) and fell ill and died after two (2) months of their settlement and we buried his remains in the newly acquired land as was the case with my grand father who also died and was buried there as well. My Father had sold the former land at Kavuta to educate my siblings. When we were evicted my brother, I, and our children settled at a camp at Kanzyeei in Kitukuni shopping centre”

Q: What happened after evictions?

A: “My sister in-law died in a terrible road accident at Machakos/Mombasa road junction in the year 2011 leaving my brother with five children. She was buried at Kamusi. Then my brother started ailing one year after the eviction dying soon after in 2014. Following his death, I faced the challenge of where to bury his remains. Later we buried him in Kanyangi, over 60 Kms south of the disputed land where a distant relative and a Good Samaritan had offered a burial site.”

Q: What happened after the death of your brother?

A: “Needless to say, I adopted my brother’s five children and together with mine I faced another challenge of fending for the 12 children besides my aged and ailing mother. Another relative allowed us to put temporary tin sheds (see photograph in Fig.6.) in his business plot’s backyard in Kanzyeei shopping centre where we live and cultivate a 3-acre rented farm nearby. My aged mother and some of the children have been admitted in a nearby Nyumbani Children’s home”.

Q: Please tell us about what action you have taken following the evictions.

A: “I worked in South Eastern Kenya University (SEKU) from 2010 along with others but we were sacked when it was discovered that we were among the 315 residents who had gone to court to challenge SEKU’s threat to evict us. We lost the case to SEKU in what we believe was a collusion between SEKU and our advocate. We appealed through another advocate who was denied the file by our former advocate. In a twist we still do not comprehend, the

new lawyer declined to continue with our case because he had been retained by the Kitui County Government which was itself a respondent in the case”.



Fig. 6: Photograph of Rented Residence Housing a Family of 12

“Eventually we were advised to find a non-Kamba advocate and one who did not practice in Kitui or Machakos to push our case. A Nairobi advocate started representing us and I was one of the local officials holding a list of 222 bonafide evictees. I represent those who came from Mutonguni and Nyanyaa villages while two other officials hold lists for those who came from Kyua/Machakos and Matinyani. There is infighting among committee members because some are ill bend on corrupting the lists and interfering with the case as well as anticipated the compensation”.

Q: How do you provide for your large family?

A: “I do odd jobs and sell charcoal which I secretly obtain from nearby forests”

Q: What is your future hope?

A: “we are hopeful that we will be reinstated in Kamusi where three of my late kin are buried to continue making a descent living for my large family”.

Case 3: Respondent returned to ancestral land

Name: Respondent #2

Age: 56; Gender: Male; Number of Children: 9

Narrative:

Q: Please tell us your background?

A: “I and my family migrated from Tiva, 15 Kms South East to the disputed land in the year 2002 in search of adequate land because in Tiva, I and my family of 10 eked a living from one and a half (1.5) acres piece of land alongside my other 8 siblings. At the new land I acquired 12 acres through allocation and through hard work we prospered, becoming the owner of three permanent houses.”

Q: How was life at the disputed land?

A: “We had seven (7) acres under maize, beans, peas, and green grams. We had dug water well from which we engaged in very successful irrigation farming and had several other acres where we grew potatoes, tomatoes, cabbages and all types of horticultural crops. We had 16 mature mango trees , 3 orange, 85 pawpaw and 350 banana plants all earning my family Kshs 2 million per year. Besides this income, I worked for a contractor, who was among those putting up buildings for SEKU but lost the job after breaking a leg while on duty. I am pursuing a case of bodily harm but was sceptical that it will yield any compensation”.

Q: In what other way did the evictions affect your family?

A: “Besides losing our farm earnings, property and job, we have been affected psychologically. We now live in a tin shed in my exhausted and small ancestral land which I had left for my younger siblings. One of my daughters who was independent in the contested land returned to us with two of her children and she eked a living doing odd jobs. My son who was frustrated when he was forced out of school prematurely and found himself relocated to an unproductive environment attempted suicide. Four younger children had to be left with non-family members before we could resettle and hence lost years of schooling”.

Q: How do you provide for your family?

A: “I bake bricks assisted by my wife and children. We also do peasant farming depending on erratic and unreliable rainy seasons on farms given to us by kin.”

4.7 Discussion

The study found that the evictees moved into the disputed land between 1997 and 2004 through a well-coordinated process that had allocation committees with provisions set aside for universities and other public institutional developments and promises that the county authorities were to regularize the allocations. There was no need to doubt these promises since a similar process had been followed in a portion of the trust land in 1965 and as was stated by the Ndung'u Commission (2003:54), community or trust land could only be removed from the communal ownership of local people through legally prescribed adjudication processes, whereby local communities were given ample notice and opportunity to claim their ownership. However it turned out that the allocations were irregular because excessively large portions of the same land had, unbeknown to the people been allocated to institutions who found it easy through the courts to justify evictions and leave victims destitute. This harmonizes with what Sorenson, (1967: 231) found, that evictions were due to the "big man's syndrome" where powerful entities were allocated huge chunks of land, leaving people to squeeze in small pieces of land. According to Cernia (1990:46), giving huge chunks of land for institutional development was justified on the basis of "greater good for the greater numbers."

Following the evictions without notice to salvage their belongings and with no compensation and convinced that the institutions had unjustifiably large portions of the trust land and that they could still be accommodated, the evictees took actions to seek redress in courts. However the courts ruled in favour of the institutions, cashing in on technicalities and inability of evictees to afford independent, brilliant and expensive lawyers. These are some of the statements that indicate that the evictees could have had chances had they had the right representation and right arguments:

In passing a ruling in Civil Case No.123 of 2008 pitting Kitukuni/Kwale village versus County Council of Kitui and Kenyatta University at Machakos, on 16th January, 2012 the court was recorded as saying:

"However, have the applicants come to the court challenging the process of setting apart? Their argument would have sold if the applicants had come to court to challenge the process of setting apart; finally the applicants have been indolent (lazy) in pursuing their rights if any; the applicants ought to have come speedily enough to seek the protection as envisaged by the law."

While dismissing the case of Mbinzu versus SEKU, the court stated:

“They have not brought any claim in adverse possession”

A question that required an answer was how the cases would have been decided had the plaintiffs presented the right cases- challenging the setting a part of the trust land, doing it speedily or even arguing on the basis of adverse possession. It therefore becomes very clear that the vulnerable evictees of Kwa Vonza who could not afford to hire brilliant lawyers to exhaustively design their arguments had to lose and suffer evictions and the ensuing woes. Scudder (1981) reached a similar conclusion that the culture of suffering will continue as the legal system which lacked humane face or “equity compass” took its course (Cernea, 1986, 1988, 1996b; Mahapatra 1991 and Scudder 1981)

These were the issues envisaged in the Kenyan Eviction and Resettlement Bill 2012 which covers all persons occupying land including squatters and unlawful occupiers of private lands. The Act, borrowing heavily from the World Bank Policy on Resettlement (WB-OP/BP 4.12) requires the following:

- i. Before undertaking forced eviction, a landowner would consult affected households, seek a court order, and issue an eviction notice of at least three months.
- ii. Apart from providing compensation, it will be the land owners’ responsibility to conduct an environmental, social, and economic impact assessment to ensure that the alternative settlement is available.
- iii. No order for eviction shall be granted when it is clear to the court that it would render affected persons homeless.

The human rights theoretical framework (Calma, 2008) and the community organizing model Alinsky, S (1972, 1987) which informed the study too required that communities be consulted before displacements in order to avert ensuing sufferings.

The evictees were food sufficient as they did not rely on rain fed agriculture. Two major rivers, namely Mwitwa Syano and Mikuyuni Rivers (see Map Fig. 1.) which were at the extreme ends of their land afforded some of them to practice irrigation and horticulture. After the eviction these rivers were out of bounds rendering the evictees to be among those suffering food insecurity. This finding agreed with that of Bjonnes and Pockharel in the case of Nepal Kulekhani Hydroelectric Project displacements (Bjonnes, 1983 and Pockharel, 1995) as well as those of Soeftestad in Sri Lanka’s Kotmale project (Soeftestad, 1990) who found that in cases of evictions farming and food security were always affected.

Further the evictions caused unemployment and entrenched poverty. Some evictees lost employment in the universities that displaced them when it was discovered that they were affiliated to those fighting to be reinstated or adequately compensated. This amounted to discrimination based on one's belief and it is a human rights violation of freedom of thought and expression as enshrined in the Kenyan Constitution, Chapter 4(2)(32)(30 (GOK,2010) which states that:

“a person may not be denied access to any institution,employment or facility, or the enjoyment of any right, because of the person's belief or religion”.

They were not allowed to graze their cattle or collect firewood from the expansive lands which they did from time immemorial. This amounted to economic marginalization and went contrary to the very basic mission of the institutions which was to alleviate poverty and create employment opportunities. The situation had left them very demoralized. However this was not unexpected as was found by Cernia who wrote: “Resettlers experience economic marginalization and this marginalization is often accompanied by social and psychological marginalization, expressed in a drop in social status, in resettlers' loss of confidence in society and in themselves, a feeling of injustice, and deepened vulnerability (Cernea, 1990:22).” This would have been averted if the evictions were guided by the Human Rights Based Approach to Development Cooperation (Calma, 2008) which set out necessary elements of policy development and service delivery as among others the following:

“Recognition of affected people as being key actors in their own development, rather than passive recipients of commodities and services; participation of the people as both a means and a goal and employing strategies which were empowering, not disempowering”.

Although the study unveiled sufficient evidence of resistance to evictions, the affected community did muster enough power as envisaged by the community organizing model that:

“a core goal of community organizing is to generate durable power for an organization representing the community, allowing it to influence key decision-makers on a range of issues over time. In the ideal, for example, this can get community organizing groups a place at the table before important decisions are made (Kim, Kendall and Kimberley, 2001).”

Several respondents reported loss of family as they no longer were able to fend for them. Without a home to return to family members went different ways, causing serious social disarticulation. In separate studies of evictions, Behura, Nayak and Downing made the observations of lower cohesion in family structures as well as loss of community (Behura and Nayak (1993); Downing, 1996). The human rights theoretical framework

With respect to resettlement the findings showed that 74.4% were yet to find adequate places to settle and this situation could go on for a long time just as it did in India where according to Joseph (1998) 59% of the displaced people in an irrigation project were found living in temporary and semi-permanent dwellings 10 to 15 years after relocation.

The loss of livelihoods, food insecurity, unemployment and loss of family could have been avoided if effective social impact assessment was done. The problems would have been anticipated and mitigation measures taken.

4.8 Conclusion

The findings show that evictees had occupied the disputed land since 1997 through politically organized allocations. They had been evicted through court decrees which they fought against in vain though they had appealed and were awaiting the appeal process to start. They incurred loss of livelihoods in terms of residential property, farming proceeds as well as family and community breakdowns and separations. A survey of those accessible showed that they lived in hardships as no compensation had been arranged.

CHAPTER FIVE: SUMMARY OF FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

5.1 Summary

The following is a summary of the findings of the five research questions of the study namely: profiles of evictees, how they settled in the disputed land, manner of evictions, losses and resistance/compensation action taken along with resettlement and coping.

Nearly three quarters of the evictees were married people with more than five (5) children. The majority (77.1 %) of them were of primary school level who occupied the disputed land in search for livelihood as they did not have adequate land in their former homes. Over 51.4% of the respondents occupied the disputed land during the period of 1997-2000 during the tenure of the legislative area Member of Parliament of the time.

They were evicted in the years 2012 and 2013 without any attempt being made by the evictors to carry a social impact assessment (S.I.A) which would have assisted in providing corresponding resettlement action plans (RAPS) as required for all project affected peoples (PAPS). Though 74.3% of them went to court to challenge the eviction, an appeal case was still in court at the time of data collection. It was however noted during data collection that animosity and mistrust existed between groups and accusations of corruption among officials of their association which posed a danger of hampering establishment of genuine evictees which would in turn make it difficult to assess compensation should the court case be decided in their favour. The problem was not unexpected as similar challenges faced evictees from the Endorois community of Lake Bogoria whose case took 40 years to settle and where identification of original and genuine complainants was a key factor (ACHPR, 2010:80). An indicator of how determined the evictees were to return, was given by 81.4% stating that they preferred reinstatement to the same portion of land as the best form of reparation.

The greatest loss experienced was that of livelihoods in terms of food. Fruit trees, livestock and income thereof were also lost. On average and as estimated by the study area Deputy County Commissioner at the time of data collection, each evictee lost property worth Kshs 200,000.00 by 2013 excluding developed farms. Psychological losses were experienced by those who had to leave the graves of their kin and also those whose family members got separated. Some children lost years of school and a few left school altogether because of the trauma and hardship that followed the eviction

With regard to resettlement and coping the study found that 37.2% were either in camps, being assisted to rent facilities or accommodated by good Samaritans. There was consensus feeling from key informants that evictees were suffering and needed helping intervention County and court records indicated clearly that advantage was taken of the evictees' status as shown below:

In the Mwakini Case, the county clerk admitted that the council had allocated the plots illegally, thus occasioning the eviction and suffering of people out to search for better prospects. *Concluding the case against the evictees of K.U, the court suggested that had the evictees gone to court speedily to challenge the process of settling apart the trust land on the gorunds of sections 115, 117 and 118 of the Constitution of Kenya and section 7, 8 and 12 of the Trust Land Act. Section 115(1) of the then Constitution of Kenya and later giving it to K.U their case would have stood.* While granting the final order to evict occupants of land which formerly belonged to UKAI the court argued that a presidential directive issued at a time when 9,500 acres were lying idle was of no legal effect but *it hinted that had the evictees brought a case of adverse possession, the ruling would have been different.* Further and although admitting that the so called trespassers had put up structures there and were earning a living by cultivating the land for well over ten years, the court made no provision for compensation or assistance of any nature. There was evidence from the above cases that evictees did not invade the lands from where they were evicted. In each case responsible public officials were involved but the court decision faulted them for having delayed in regularizing their ownership or suing wrongly.

5.2 Conclusion

Based on the findings, the following conclusions were made.

1. The people who settled in the disputed land were mostly married adults of low level of education who were motivated by genuine search for land to settle their growing families and whose ancestral land was no longer adequate for any reasonable livelihood.
2. They were settled there through political rhetoric as summarized by the deputy county commissioner who echoed the views all the respondents and Key Informants.
3. They were evicted violently and the evictions had resulted in destitution, disarticulation and delinquency not only on the part of the evictees, their families and children but also their kin and the community in contact with them.

4. Using an existing welfare association as a vehicle, some of the evictees mobilized themselves and lodged cases in court although due to their financial status the process was slow and unfavourable to them and suffered at the hands of their powerful opponents who could afford better legal representations.
5. An appreciable 37.2 % of the evictees were homeless and suffering as there was no compensation extended to them.

The study has shown that in the wake of accelerated physical and institutional development in the study area and elsewhere in Kenya, there was room to ensure proper implementation of humanitarian procedures as enshrined in International Human Rights Laws regarding evictions, World Bank Policy on Resettlement and Kenyan Eviction and Resettlement Bill 2012 which cover all persons occupying land including squatters and unlawful occupiers of private lands. This would prevent unnecessary and severe suffering of citizens.

5.3 Recommendations

The following two recommendations for policy practice and improvement as well as further research are suggested based on the findings and conclusions.

5.3.1 Recommendations for policy, practice and improvement

- i. As there was no project affected peoples (PAPs) assessment which could have provided for resettlement action plans (RAPs), it is recommended that a thorough social impact assessment (SIA) of all accessible evictees be carried out by the county government and relevant institutions so as to provide data for humanitarian assistance.
- ii. The national government institutes mechanisms for reparation to avert any further destitution and delinquency and abuse of human rights in line with the spirit, letter and intent of World Bank Policy on Resettlement (WB- OP/BP 4.12) and the proposed Kenyan Bill 2012 on Evictions and Resettlement

5.3.2 Recommendations for further research

A longitudinal study is suggested especially on those:

- i. Who lost relatives and left graves in their former portions of land.
- ii. Whose families were separated
- iii. Children who were traumatized and left school

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APPENDICES

Appendix 1: Transmittal Letter

Simon Ikonze ndulu

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Tel: 0721 216 282/0202561332; Email: simon.ndulu@uonbi.ac.ke

SUBJECT: MASTER OF ARTS IN SOCIOLOGY

Thematic Area of Study: Development-Induced Displacements

Study Title: Settlements, Evictions and Their Effects: The Case Residents of Kwa Vonza In Kitui County, Kenya

Dear Sir/Madam

I am a final year Master of Arts Student in the University of Nairobi, Department of Sociology & Social Work. I am carrying out a research for the purpose of completing my thesis and award of a Master of Arts Degree. Beyond satisfying my degree requirements, an expected outcome of the study will be better formulation of policies to reduce negative impacts on residents due to economic and institutional development. The information you give me will solely be for the purposes of this study and will be confidential. Please answer the following questions as truthfully and completely as you can.

Thanking you in advance for your cooperation.

Yours faithfully,

Simon Ikonze Ndulu

Appendix 2: Interview Schedules for Administration to the Evictees

Introduction:

My name is Simon Ikonze Ndulu and I am a final year Master of Arts Student in the University of Nairobi, Department of Sociology & Social Work. I am carrying out a research for the purpose of completing my thesis and award of a Master of Arts Degree. The theme of my study is “development-Induced displacements” and how they have affected people in this area. Please allow me to interview you.

Date of Interview: -----

1. Profiles of the Evictees

- a) Name-----Ward -----Village -----
Age in years (tick one): 39 and below [] 40-49 [] 50-59 [] above 60
- b) Gender (tick one): Male M [] F []
- c) Marital Status (tick one): Single [] Married [] Windowed [] Separated/Divorced
- d) Number of children including adopted ones under your care at the time of eviction[]
- e) Level of formal education: None [] Primary [] Secondary []
Tertiary or Diploma College [] University []
- f) Occupation: Peasant farmer [] Business [] Formal employment(type)-----
Retiree (specify)

2. Manner of Settlement on the Disputed Land

- a) In which year did you move into the land from where you were evicted? -----
- b) Where were you residing before moving into the land from where you were evicted?

- c) How far was it from the land from where you were evicted? -----KMs.
- d) How many acres did you own there?-----Acres
- e) Why did you move into the land from where you were evicted? -----

- f) How many acres did you initially acquire? -----
- g) How did you acquire the acres? -----

- h) How much did you pay for it? Kshs.-----
- i) What was the purpose of the payment? Purchase [] Registration fee []
 To be shown my portion [] Other (Specify) -----
- j) Were you given any allocation letter/certificate and number of your land? Yes [] No []
- k) If yes state the number-----
- l) Who gave you the letter and/or number of allocation?
 Local Allocation Committee [] Local Chief [] County Council []
- m) Did you know that the ownership was temporary? Yes [] No []
- n) What did you do with your former land? -----

3. The Manner of Evictions and Affirmative Actions Taken by the Evictees

- a) When did you know that there were plans to evict people?
 One year before [] Three months to six months before [] One week to four weeks
 before [] the previous day [] same day []
- b) Were there any meetings between you (residents) on the one hand and the universities on
 the other? Yes [] No []
- c) If yes, how many meetings were held? One [] Two [] Three [] More than three []
- d) What were you told in the meetings? -----

- e) How were the meetings advertised? Newspaper Notice [] Public Meetings (Barazas)
 In the Locational Headquarters [] Individual Letters []
- f) To the best of your knowledge was any environmental and social impact assessment
 (ESIA) done prior to evictions? Yes [] No []
- g) If yes what arrangements were made concerning those to be evicted?

- h) Were you given notice to relocate Yes [] No []
- i) If yes, how many months was the notice? -----
- j) Please describe how you were evicted-----

- k) Following the evictions what action did you take?
 - i. We formed a group by registering ourselves []
 - ii. Held meetings to chart way forward []
 - iii. We took a court action []

l) If you formed a group

- i. What was its name? -----
- ii. Was it registered by the Department of Social Services? Yes [] No []
- iii. What were the goals of the group? -----

- iv. How many members did the group have? -----
- v. What measures or action did the group take? -----

- vi. Is the group still operating? Yes [] No []
- vii. If yes, what does it do? -----

m) What was the aim of the action you took?

- i. To seek reinstatement to my portion of land []
- ii. To seek reinstatement to my land and compensation of losses incurred []
- iii. To seek alternative resettlement and compensation []

n) Given a choice, how would you have liked to be compensated?

- i. Restoration to my former farm and money to reconstruct my former life []
- ii. Equivalent land with similar houses constructed on it []
- iii. Equivalent land and money to reconstruct my own houses []
- iv. Money to look for alternative settlement []

o) What other assistance would you like to reconstruct your life?

4. Effects of Evictions and Losses Incurred.

a) How many acres did you have by the time of eviction? -----

b) What type of house (s) did you loose? Please tick as appropriate.

- i. Permanent , built using stones/baked bricks and clad with iron sheets []
- ii. Semi-permanent , built using unbaked bricks and clad with grass []
- iii. Local, using mud and thatch []

c) Had you dug any water bore hole or water well in your portion of land? Yes [] No []

d). If yes how much money had you used to develop the:

i. Bore hole-----Kshs.

ii. Water Well -----Kshs.

e) What other built investment such as shops or rental houses did you have?-----

f) What was the approximate value? -----Kshs

g) Had you planted fruit and other trees? Yes [] No []

h) If yes please specify and fill the table below:

Type	Approximate Number	Approximate income per year in Kshs.
Mangos		
Oranges		
Pawpaws		
Bananas		

j. Which three main crops did you use to plant and what acreage?

Type of crop	Approximate acreage per planting period
i)	
ii)	
iii)	

g) In terms of food production, would you say your household was very self-sufficient []

Somewhat self-sufficient [] or Not sufficient ? [] Please tick one

k) Did you own any livestock? Yes [] No []

l) Did you lose any one of the livestock during the evictions? Yes [] No []

m) If yes, please indicate

Type	Approximate value in Kshs.
-----	-----
-----	-----
-----	-----

5. Resettlement and Coping With Life In The Post- Eviction

- a) When were you evicted from your homes?-----
- b) Where did you find shelter following the eviction? Please tick one
 - i. In a camp at----- where I live to date. []
 - ii. In rented facilities at----- where I live to date []
 - iii. I sought help from my relatives and kin who gave me land to settle []
 - iv. I returned to my ancestral land []
 - v. In a land I bought -----[]
- c) If you bought land, how large?------(acres)
- d) How much did you pay for it? -----(Kshs.)
- e) How did you raise the money-----

- f) Has the University which evicted you helped you in any way? Yes [] No[]
Please explain-----

- g) Have any dependent children found suitable schools? Yes [] No []
- h) Do you consider yourself as having settled? Yes [] No []
- i) Do you have any other comments or questions?-----

Appendix 3: Interview Guides for the Key Informants- Including County Administrators, Land Registrar and Other Local Leaders

Date of Interview: -----

a) Name-----Age----- (years) Gender: Male [] Female []

b) Office /Ward/Village represented -----

c) What position do you hold or held in this community? -----

d) For how many years have you held the position? From ----- to -- -----

e) Please comment on the profiles of the evictees-----

f) Please comment on the manner of settlement on the disputed land-----

g) Please comment on the effects of evictions and losses incurred-----

h) Please comment on evictees' resettlement and how they were coping-----

i) Do you have anything to add?-----

Thank you for your time, answers and cooperation.

Appendix 4: Summary of Key Informants' Profiles and Views

Informant No.	Age in Years	Gender	Organization or Entity Represented	Position Held	Years in Post	Year	Manner	Built Investment	Farm Investment	Notice of Eviction	Losses incurred	Compensation	Coping & Resettlement
						of Occupation by Evictees							
1	57	Female	Nyanyaa	Elder	21	2000	Allocated	Yes	Yes	None	Much	None	Poorly
2	55	Male	Kwa Vonza	Business	38	2000	Allocated	Yes	Yes	None	Much	None	Poorly
3	56	Male	Kwa Vonza	X-Councilor									
				2007-2013	5	1997	Allocated	Yes	Yes	21 Days	Much	None	Fairly
4	60	Male	Kwa Vonza	Chief	22	1997	Allocated	Yes	Yes	21 Days	Much	None	Poorly
5	80	Male	K-Mathiaka	Evictees									
				Chairman	5	2000	Allocated	Yes	Yes	14 Days	Much	None	Poorly
6	50	Male	Kamusi P.Sc	H/Master	5	1997	Allocated	Yes	Yes	None	Much	None	Poorly
7	36	Male	Yatta	DDC	3	2004	Allocated	Yes	Yes	7 Days	Much	None	Poorly
8	75	Male	Kwa Vonza	X-Councilor									
				1998-2008	10	2000	Allocated	Yes	Yes	None	Much	None	Poorly
9	40	Male	Kwa Vonza	Bodaboda									
				Transporter	4	2002	Allocated	Yes	Yes	None	Much	None	Poorly
10	78	Male	Kwa Vonza	Chairman									
				AllocationComm.	22	2000	Allocated	Yes	Yes	Yes	Much	None	Poorly
11	59	Male	Lands Office	Surveyor	9	His office had not been involved, so he did not have any information							
12	43	Female	Catholic Dioc	H/Rights Coordi	6	Don't Know	Invaded	Yes	Yes	None	Much	None	Poorly
13	36	Male	Yatta	Youth Leader	6	2000	Allocated	Yes	Yes	None	Much	None	Poorly
14	46	Male	Kenya Squatters Social Forum	Secretary General	6	1991	Allocated	Yes	Yes	Yes	Much	None	Poorly

Summary of Responses by Key Informants: N=14 , 2 Females and 12 Males

Attribute	Informants Views or Responses					
Year of Occupation by Evictees:	2000 and Earlier	11	2001-2004	1	Do not know	2
Manner of Occupation:	Allocated by Committee	12	Invaded	1	Do not know	1
Whether They Invested in Buildings and Farming (Fruit Trees):			Yes	13	Do not know	1
Whether There was Notice of Eviction:	None	7	1-3 Weeks	5	Yes (Unspecified)	2
Magnitude of Losses:	Much in terms of houses and fruit trees	13			Do not know	1
Whether There was Any Compensation:	None	13			Do not know	1
How Evictees are Coping:	Poorly, some still in camps and renting	12	Fairly	1	Do not know	1
Whether Evictees Have Settled:	No, they are still struggling	12	Fairly	1	Do not know	1

Appendix 5: Budget

For budget purposes, the Kwa Vonza market will be the centre where interviewing will take place with respondents coming from radial villages including Kwa Vonza suburbs, Kanzyeei, Kyua, Nzambia, Katangi and Mwakini all 5-10Km away with about 46 Respondents; Tiva, Usengy'o, Kalima, Isevini, Kyamathyaka, and Kalulini between 11-20Km with nearly 21 Respondents and finally Syongila, Matinyani and Kitui Town which are over 20 Km having 37 Respondents

No.	Description	Qty	Rate	Amount
1	Preparation of interview guides	20 Pages	30.00	60,000.00
2	Transport by motor cycle for respondents for 20 Km @ Kes 25.00 per Km return for 46 Persons	46	1000.00	46,000.00
	Transport by motor cycle for respondents for 40 Km @ Kes 25.00 per Km return for 21 Persons	21	2000.00	42,000.00
3	[a]Travel from Nairobi to and from Kwa Vonza by researcher and assistant, once for questionnaires pretest , thrice for data collection	4*300 Kms	35.00	42,000.00
5	Travel by car to interview the respondents, 10 Km a day for 7 days return.	140 Km	35.00	5,600.00
6	Subsistence allowance for researcher and Assistant for at least 10 days @ of Kes 3000/= and Kes 1500/= per day	10 days	4,500.00	45,000.00
7	Report preparation			
	a) Data Analysis with the help of a statistician	Lump sum	20,000.00	20,000.00
	b) Typing 100 pages x 3 times with corrections	300 pages	30.00	9000.00
	c) Photocopying 4 sets i.e. 100 pages x 4 sets	400 pages-	3.00	1,200.00
d) Binding 4 sets @ Kshs. 100 /=-	4 sets	100.00	400.00	
	Total			271,200.00

Appendix 6: Data Collection Authorization

Appendix 7: Board of Postgraduate Studies Proposal Approval