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FORCED EVICTIONS AND HUMAN RIGHTS VIOLATIONS: A CASE OF KWA VONZA WARD, KITUI COUNTY, KENYA

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Abstract: *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. The study's main objective was to examine the effects of the displacements and the mitigation measures taken in Kwa Vonza Ward in Kitui County, 130Km east of Nairobi City County. 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. Two non-probability procedures were found most suitable for the research, namely purposive followed by snowball sampling. For the evictees, structured interview schedules were used. An interview guide was used for the key informants. For the case studies conversations with intermitted questions to clarify issues were held. Data was analysed using Statistical Package for Social Scientists (SPSS).*

Key terms: *Forced evictions, Human rights, losses and coping*

1.1 Background of the Study

Since the promulgation of the Kenyan Constitution 2010, there has been accelerated focus and real physical developments centered in rural areas. However laudable as they may appear, unchecked the same developments can and have contributed to suffering of populations.

In Mikuyuni sub-ward, Kwa Vonza 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 (TJRC,

2013: P49.Paragraph 225).

1.2 Statement of the Problem

Kwa Vonza Ward is in Lower Yatta Sub county, 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. This study therefore interrogated the twin issues of land ownership and settlement

1.3 Study 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.

Specific objectives

- a) Determine the profiles of the evictees.
- b) Examine the ways through which the evictees came to own and settle in the land.
- c) Find out the manner of evictions and the losses incurred.
- d) Understand the resistance strategies against evictions employed by the evictees.
- e) Explore how the evictees have coped with life in the post-Mikuyuni eviction.

1.4 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.

1.5 Theoretical Framework

The study was informed by two theoretical frame works namely:

Human Rights and Community Participation-Based Approach to Development and Saul Alinsky's model of community organizing.

Human Rights and Community Participation-Based Approach to Development:

The Role of Social Workers as Human Rights Workers

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:

- a) The pursuit and maintenance of human well-being;
- b) Human dignity and worth;
- c) 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.

He 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. A related point on these second generation rights is that unless services actually exist, these rights cannot be met.

Third generation rights were collective rights, such as the right to development and self-determination. 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. In that understanding 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. The development process was locally owned. Programmes aimed to reduce disparity. Top-down and bottom-up approaches were used in synergy. Situation analysis was used to identify immediate, underlying, and basic causes of development problems. Measurable goals and targets were important in programming. Strategic partnerships are developed and sustained. Programmes supported accountability to all stakeholders.

He went on to argue that the case of Northern Territory (NT) intervention to protect women and children from violence and abuse intervention was a classic example of a top-down approach which missed crucial opportunities to actually ask communities what they wanted and how they thought problems could have been solved. Failure to consult the community would result according to Milroy and Parker (2007) in further dispossession or an extreme sense of powerlessness, this will constitute a 're-traumatisation' and negative effects on:

Mental health including possibly higher rates of depression, stress and anxiety; social and emotional wellbeing through increasing anxiety and uncertainty and hence this may precipitate family and community despair and dysfunction, poor or maladaptive coping and contribute to substance use and possible violence as well as loss of trust; and physical health as there is a strong relationship with chronic stress and poor health outcomes including

diabetes and cardiovascular disease.

These unintended consequences would contribute to the problems of community dysfunction rather than create an environment for meaningful change.

On policy Calma argued that one could not expect to create good policy that was in breach of human rights. Human rights were universal and indivisible. Or in other words, they applied to everyone equally and no human rights should be set above others. He further posited that human rights were not just lofty principles that get talked about at the United Nations. They were our everyday experiences of getting our needs met and an expression of our shared humanity. They gave social workers a framework for their advocacy, direct service and community development work.

He concluded by suggesting that public policy should be:

Evidence-based and informed by best practice models; consistent with human rights laws and principles; designed to meet targets and deliver measurable benefits over time and subject to rigorous and transparent monitoring, evaluation and review.

Application of the Framework to The study at Kwa Vonza

The study at Kwa Vonza 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.

Saul Alinsky's Model of Community Organizing

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 viewed the 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 it. 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 model developed six propositions which included class struggle; mobilizing the middle class; end as a justifier of means; infiltration; polarizing the enemy as well as radical revolution. 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 study investigated whether adequate social impact assessment was carried out in Kwa VONZA as conceived in Saul Alinsky's Model of Community Organizing theoretical framework.

1.6 Empirical Review of Literature

The study reviewed universal definitions of and reasons for forced evictions and looked at the global, regional, national and localized situation of evictions.

Definition of Forced Evictions

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 eviction was refugee displacement which was caused by war and armed civil conflicts where populations fled from violence.”

Reasons for Forced Evictions

There are several reasons that give rise to evictions. They include: creating room for urban and rural development projects such as dams, roads, mining, zoning, urban and spatial planning; lack of legal security of tenure, protective legislation or implementation, living in informal settlement because of poverty or because of displacement owing to natural or human causes, rural –urban migration; political and ethnic conflicts, ethnic cleansing and even using eviction, housing demolition and displacement as a weapon of war, and population transfers.

United Nations Protective Guidelines Regarding Evictions

These are the protective guidelines stipulated by The United Nations (2007:6); the proposed Kenyan Bill on Evictions and Settlement (2012) and the Kenyan Constitution on the Bill of Rights and Land (GOK, 2010: Chapters 4 part 2(40) and 5 part 1963). The guidelines apply to all vulnerable and affected persons irrespective of whether they were holders of title to the land or not and state as follows:

“Involuntary resettlement should be avoided where feasible, or minimized, exploring all viable alternative project designs; displaced persons should be meaningfully consulted and should have opportunities to participate in planning and implementing resettlement programs; displaced persons should be assisted in their efforts to improve their livelihoods and standards of living or at least to restore them, in real terms, to pre-displacement levels or to levels prevailing prior to the beginning of project implementation; safeguards were to be put in place to ensure that members of the same family were not separated and people and their property were protected and secured and psychological counseling and medical care was provided”.

Global, Regional, National and Localized Evictions

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). 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. 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).

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

Reasons for Evictions in Kenya

Colonialism, landownership, the “Big Man’s Syndrome and Greater Good for the Greater Numbers” were some of the reasons advanced in literature for evictions in Kenya. 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.

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.

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."

Evictions of the Endorois People of Lake Bogoria- Kenya

The case of the Endorois people who won a land mark ruling in their favour in 2010 after struggling for 40 years (ACHPR, 2010) is instructive. The complaint was 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).

"The African Commission found that the Respondent State was in violation of Articles 1, 8, 14, 17, 21 and 22 of the African Charter and recommended that the Respondent State:

- (a) Recognize rights of ownership to the Endorois and restitute Endorois ancestral land.
- (b) Ensure that the Endorois community has unrestricted access to Lake Bogoria and surrounding sites for religious and cultural rites and for grazing their cattle.
- (c) Pay adequate compensation to the community for all the loss suffered.
- (d) Pay royalties to the Endorois from existing economic activities and ensure that they benefit from employment possibilities within the Reserve."

Evictions of the Ogiek of Mau East –Kenya

The Ogiek, who are one of the last remaining forest-dwelling communities and one of the most marginalized 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). An historical review of their struggle was detailed by: Ogiek Welfare Council and Towett J. Kimaiyo (2004) in Chapter 7 entitled "Dispossession" in their book: Ogiek Land Cases and Historical Injustices.

In brief the case dates back to 1970s when the Ogiek land question was raised in Parliament. In 1995, the provincial administration refused to recognize the Ogiek land demarcation and allocation exercise and the Daily Nation of 26 November, 1995, covered the Ogiek plight using the theme: "The scramble for Dorobo (Ogiek) country."

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

Evictions in Ukambani-Kenya

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 one hundred 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.

Historical Allocations of Trust Land and Their Contribution to Evictions in Kwa Vonza – Kitui, Kenya

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:

Allocations to the Local Community in Kwa Vonza 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 Kwa Vonza 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. (Source: Key Informants)

Allocations of Kwa Vonza Trust Land 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, slowing down its operations until 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 a 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.

Allocation to Teachers Training College and Kenyatta University

In 1985 and 1987 respectively another adjacent 500 acres of land was set apart from Mikuyuni Ranching Scheme in Kwa Vonza 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 with full knowledge of the then County Council through their County representative who had allocated them the 500 acres in 1980. In 2007 Kenyatta University took over the stalled college project and soon thereafter began legal proceedings to displace the local people so as to acquire the entire 500 acres (See map in Fig.1).

Allocation to Goat and Sheep Project (GASP)

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 though the actual acreage occupied by GASP could not be established. Nyumbani Village was established there in 2005 and it occupied 1000 acres of land (See "A" in map in Fig.1).

1.7 Methodologies

Using non-probability methods, a sample of 70 household-heads was drawn from the evictees. Fourteen Key informants were interviewed and three case studies conducted with some individuals who returned to their ancestral homes, those who were still in camps and/or renting facilities. Quantitative and qualitative interview schedules and guides were administered and data was analyzed quantitatively assigning values to narrative responses to enable use of statistical package for social scientists methods.

1.8 Presentation of Findings

The majority (77.1 %) of settlers and later evictees 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).

The study found that the evictees had not been consulted prior to evictions and that they were not given any compensation or 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. 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. It was however noted 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. 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.

Losses

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

1.9 Conclusion

The 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. With regard to resettlement and coping the study found that 37.2% were either in, being assisted to rent facilities or accommodated by good Samaritans (see Figs. 2 and 3). There was consensus feeling from key informants that evictees were suffering and needed helping intervention.

The study concluded 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.

1.10 Recommendations for Policy, Practice and Improvement

- 1) As there was no project affected peoples (PAPs) assessment which could have provided for resettlement action plans (RAPs), it was 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. In this exercise social workers should be involved.
- 2) The National Government was urged to institute 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

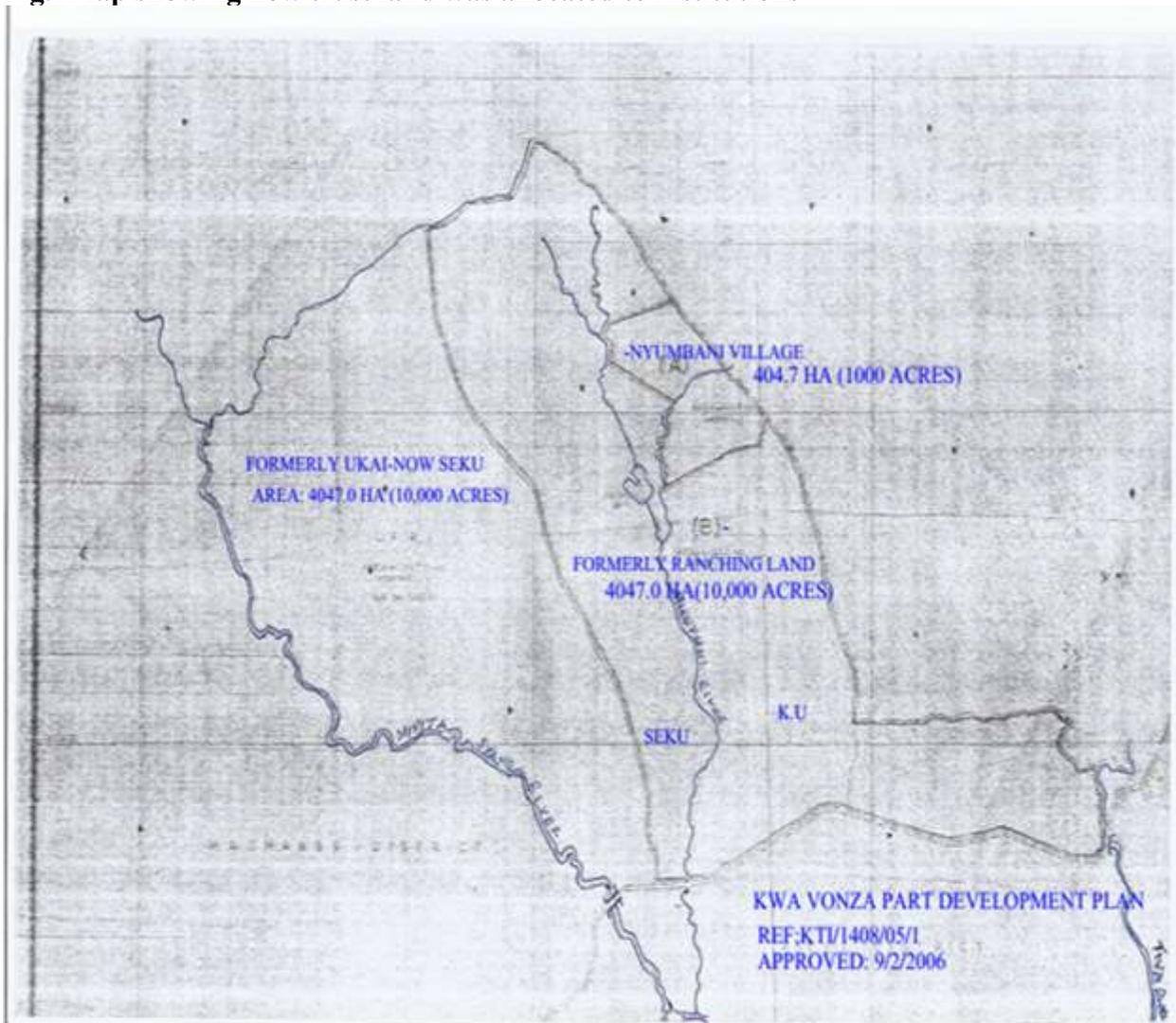
1.11 Recommendations for Further Research- Social Work Students

A longitudinal study was suggested especially on those:

- a) Who lost relatives and left graves in their former portions of land.
- b) Whose families were separated
- c) Children who were traumatized and left school

Appendices

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



Photograph of Kibukuni/Kanzyeei camp



Fig.1 Post- Eviction Squatter camp

Photograph of Rented Residence Housing a Family of 12



Fig.2 Makeshift Residence for an Evicted Family

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