

**QUEST FOR 'JUST TERMS OF COMPENSATION' IN INVOLUNTARY
RESETTLEMENT POLICY AND PRAXIS IN KENYA:**

A CASE STUDY OF NAIROBI-THIKA HIGHWAY

By

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DECLARATION

I hereby declare that this thesis is my original work and has not been presented at any other University.

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DEDICATION

I dedicate this work to my charming mother Gladys Apolo Munubi and late father Apollo Zeyazi Munubi who at an early age proclaimed to me *'our daughter, the sky is your ceiling, fly away to its reach with wings of an eagle'* and that is what life is proving to me; to my loving husband Sostenah Taracha whose patience, support and perseverance have seen this work to its final edit and made me the strong person I am today; a father model to our three children to whom we repeatedly remind *'education is the way of light, an enrichment to yourself and our society'*; to a loving family that endured my long periods of absence in dedication to work and making this study a reality.

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LIST OF ABBREVIATIONS AND TERMS

AAOV	-	Average Annual Output Value
AFDB	-	African Development Bank
CBA	-	Cost Benefit Analysis
CMP	-	Capitalist Mode of Production
CoL	-	Commissioner of Lands
COMESA	-	Common Markets of East and South Africa
COR	-	Certificate of Rights
DFID	-	Department for International Development
FAO	-	Food and Agriculture Organization
FPSG	-	Fixed Period State Grant
FTLRP	-	Fast Track Land Resettlement Agenda
GLA	-	Government Land Act Cap 280
GoK	-	Government of Kenya
GoZ	-	Government of Zimbabwe
HRBA	-	Human Rights Based Approach
ILA	-	Indian Land Acquisition Act
IRR	-	Internal Rate of Return
IFC	-	International Finance Corporation
ITPA	-	Indian Transfer of Property Act
KeNHA	-	Kenya National Highways Authority
JICA	-	Japan International Cooperation Agency
LAA	-	Land Acquisition Act Cap 295
LDGI	-	Land Development and Governance Institute
LUAC	-	Land Use Allocation Committee
LUR	-	Land-Use-Rights
LRRP	-	Land Reform and Resettlement Program
MBLR	-	Market Based Land Reform

MoL	-	Ministry of Lands
NLC	-	National Land Commission
NLP	-	National Land Policy
NMUTP	-	Nairobi Metropolitan Urban Transport Plan
NPV	-	Net Present Value
OHCHR	-	United Nation Office on Human Rights
PAP	-	Project Affected Person
PDP	-	Project displaced Person
PESTEL	-	political environmental, social, economic, technologic and legal
PRCLAL	-	People’s Republic of China Land Administration Law
PRoW	-	Public Rights of way
RAP	-	Resettlement Action Plan
RLA	-	Registered Land Act Cap 300
RTA	-	Registration of Titles Act Cap 281
SCBA	-	Social Cost-Benefit Analysis
SPSS	-	Statistical Package for Social Sciences
TLA	-	Trust Land Act Cap 295
UN	-	United Nations
UK	-	United Kingdom

ABSTRACT

Involuntary resettlement arising from government induced public purpose projects is a thorny policy issue to both the project displaced persons and governments in the associated compensation praxis. Empirical studies by various professionals identify a broad spectrum of socio-cultural and economic drivers that if considered in compensation, would ameliorate the pain so occasioned. In Kenya, the quest for just terms of compensation resonates in land reform ideals that necessitate paradigm shifts in socio-cultural and economic compensation praxis. This study evaluates policy and legal frameworks espoused in the National Land Policy of 2009 and Constitution 2010 with an aim of suggesting a just terms of compensation model in involuntary resettlement policy and praxis in Kenya. A review of policies and compensation praxis of involuntary resettlement in selected countries from Asia (China), Latin America (Brazil) and Africa (Nigeria, South Africa and Zimbabwe) was undertaken for comparison with the Kenyan praxis to assist in identifying attributes of just terms of compensation.

The research design was case study of Nairobi-Thika highway, chosen because of its proximity to cadastre records at the Ministry of Lands Registries at Nairobi and Thika towns. This will save on research time and costs as well as ease access of research assistants to the respondents. The research set up commenced with literature review on policy and compensation praxis contextualised within philosophical discourses on justice that assisted the study on the just terms of compensation phenomenon. This strategy satisfied the objectives of the study by establishing the level of awareness of the legal framework on involuntary resettlement. This assisted in confirming the satisfaction/justness gap in developing a just terms of compensation model for involuntary resettlement.

The population frame was informed by the Kenya gazette listings, prepared by the acquiring body that contain listing of registered land parcels affected by the highway. The registered proprietors were confirmed using records from the offices of Ministry of Lands at Nairobi and Thika registry offices. Listings for three categories were drawn from the population frame to form the strata categories comprising households, small and medium enterprises and institutions affected by the project. This formed the sampling frame from which the households and small and medium enterprises were randomly chosen on a 50% sample size while a survey was made for category with ≤ 50 elements comprising of institutions. A forth

category of respondents identified as the policy makers/implementers was drawn from implementing agencies to allow for a representative outcome of the study.

The data collection instrument was a semi-structured questionnaire that doubled as an interview guide having a section with open-ended questions for clarity and in-depth information. The questionnaire highlighted justice in the legal framework on compensation praxis in Kenya to satisfy objective one, the level of awareness of the legal framework on just compensation to satisfy objective two and a review of the human rights based approaches and Cernia's (1999) eight-tier social disarticulation model for a combined prism that developed a just terms of compensation model. Tests of construct validity and content reliability were undertaken on a pilot test and a Cronbach Alpha of 0.7% established reliability of the data collection instrument. The collected data was codified and analysed using SPSS Version 20 for subjection to mixed data analyses strategy comprising of Analysis of Variance, Multiple Regression and the Pearson Multivariate Correlation techniques. This enabled quantitative data to support the qualitative analysis using cross tabulation and triangulation for reliability of the findings.

The research findings indicated that the policy frameworks and compensation praxis in involuntary resettlement in Kenya fell short of Article 40 on Constitutional provision of 'prompt payment in full of just compensation'. The study highlights the need for inclusion of socio-cultural and economic attributes in compensation praxis suggest in the parameters of just terms of compensation in involuntary resettlement. These parameters recognized communal secondary derivative attributes dependent on land, shelter and shared natural resources anchored on familial socialization within the constitutional tenure classification of public, private and community lands. In conclusion, the null hypothesis was adopted that just terms of compensation are not adequate in policy framework on involuntary resettlement in Kenya. The study suggested a just terms of compensation conceptual model converging the legal framework applied by economist-valuation methods and sociological approaches as the tributary consummating the policy framework to support the model.

CHAPTER ONE

INTRODUCTION

1.0 Research Background and Context

Anthropological studies of indigenous communities have established that project displaced persons (PDPs) experience far reaching sociological effects in social disarticulation during involuntary resettlement. These studies have delved into philosophical discourses on justice in compensation theories from sociological perspectives and extended the same into policy and legal frameworks in the quest for just terms of compensation (Cernia, 2000; Syagga and Olima, 1996). Human rights proponents have undertaken studies that bring out perspectives on social disarticulation occasioned by displacement and resettlement that should be considered in compensation models. However, the vacuum in policy frameworks frustrate attempts to include socio-cultural and economic attributes that would converge development and displacement within a just terms of compensation framework.

Involuntary resettlement is the forced movement of people from one location for resettlement elsewhere with institutionalised displacement being acquisition of land for public-driven development projects. At this instance, compulsory acquisition is inferred as a component of involuntary resettlement with distinct administrative processes dependent on the diverse political ideologies that dictate the legislative frameworks and tenure systems. In Africa, involuntary resettlement was driven by the colonial government's objective to expropriate land for white settlement in high rain-fed fertile highlands with consequential displacement of indigenous people to marginal 'native reserves'. This was to advance a capitalist mode of production (CMP), as the financing model that promoted individual rewards in profit maximization as well as meeting the administration and management costs of the colonies (Kiamba, 1989). Administrative policies and instruments were adopted to achieve imperial political objectives at the expense of socio-cultural and economic tenets of the indigenous people; a legacy adopted by independent governments that pursued capitalistic ventures. According to Syagga (2009) and K'Akumu (2002), the Crown implemented involuntary resettlement in East Africa using the Indian Transfer of Property Act (ITPA) of 1882 and the Indian Land Acquisition Act (ILAA) of 1894 based on English law that focused on acquisition of land for the Protectorate and development of the Uganda railway line.

The State may administer involuntary resettlement even though not all resettlement cases deserve government compensation. In Kenya, the spirit of the Lancaster meeting of 1963 formed the road map on administration of land acquisition, a subset of involuntary resettlement, in respect to private land and trust land tenures as crystallized in the 1963 Constitution. The Land Acquisition Act (LAA) Cap 295 of 1969 later amended in 1990, guided the compensation praxis in involuntary resettlement. Subsequent land reforms resulted to The National Land Policy (NLP) of 2009, promulgation of Constitution 2010 of Kenya and enactment of the Land Act 2012 (repealed the LAA Cap 295), in paradigm shifts on compensation for involuntary resettlement.

Recognition of just terms of compensation in involuntary resettlement has transitioned into interactive projections of legal and administrative frameworks for a humane recompense model. The advent of globalization and regionalization has revolutionized traditional socio-cultural and economic perspectives to CMP principles as manifested in individualized tenure systems. Distinct in land reforms are the geo-specific variances and impacts of ‘just compensation’ as observed in on-going land reforms in Latin America, Asia and Africa. In Kenya, compulsory acquisition policy frameworks and compensation praxis hinged on a colonial legacy that appropriated and expropriated land using a CMP model predominantly predisposed on equivalent compensation blocks (GoK, 1934). The on-going land reforms in Kenya confirm the need to explore comprehensiveness in the compensation framework for involuntary resettlement to reflect the envisaged reform ideals for encapsulation in the legal frameworks. The NLP Section 3.6.1.3 (GoK, 2009) identified specific intervention issues on both rural and urban resettlement emerging from expanding populations, land conflicts, historical land injustices and disaster management by arguing for resettlement in a transparent and accountable manner. Though silent on compensation, the NLP emphasizes importance of humane resettlement as embedded in the Constitution (GoK, 2010).

Article 40 of Constitution 2010 provides for State protection of private property, however, deprivation in respect to private and community lands is specifically Articulated in 40 (3 (b) (i)) that provides for deprivation of land for public purpose or in the public interest, subject to ‘prompt payment in full of just compensation’. Article 40 (3b (ii)) provides for the right of access to a court of law to any person with interest. Article 40 (4) provides for compensation to be paid to occupants in good faith who may not hold title to the land being acquired. In a nutshell, involuntary resettlement encapsulates equitable, productive, sustainable use and

efficient management of land within an accessible and secure land tenure regime that assumes conservation and protection of ecologically sensitive areas juxtaposed in the social, economic and political pillars of government (GoK 2008, 2009, 2010). What is not specified in the laws are the measures of ‘prompt’ and ‘just terms of compensation’. Therefore, it is necessary to align compensatory measures with socio-cultural and economic attributes of justness gathered by participatory feedback mechanism as envisioned in the NLP and the Constitution.

Government induced involuntary resettlement for public purpose is within precincts of compulsory acquisition whereby funding is augmented by financiers. Development partners such as the World Bank, Japanese International Co-operation Agency (JICA) and African Development Bank (AfDB) realized inadequacies in institutional frameworks and lack of a resettlement policy framework (RPF) on compensation of project affected persons (PAPs) in involuntary resettlement. In pursuit of sustainable livelihoods for project displaced persons (PDPs), the development partners developed planning tools identified as resettlement action plans (RAPs) as pre-requisite for eligibility for project funding in endeavours to secure livelihood restoration. Despite land being the principal source of livelihood and material wealth to Kenyans (Harbeson, 1973), RAP frameworks are not anchored in legal frameworks thus prove to be non-implementable stopgap measures with non-scientific quantification of socio-cultural and economic factors. Therefore just compensation has been sacrificed at the expense of displaced individuals who involuntarily vacate with compensation interpreted at the whims of the valuer or acquiring body.

This study anchored on Cernia’s (1999) model on risk, impoverishment and reconstruction that informs the donor partners’ involuntary resettlement guidelines that redefine the terms of compensation in involuntary resettlement. It is an eight-tier social disarticulation model that has distinct variables projecting socio-cultural and economic attributes in involuntary resettlement. The impoverishment risk impacts are landlessness, joblessness, homelessness, marginalization, mortality and morbidity, food insecurity, loss of common resources and livelihood restoration to inform the ‘just terms of compensation’ attributes hinged on social formations. The extent of consideration of these attributes are objects under study reviews in human rights based approaches (HRBA) within the United Nations 1948 universal principles of justice. The Cernia (1999) and HRBA models provided the analytical framework of the study in capturing distinct socio-cultural and economic variables indicative of just terms of

compensation. Further to the sociological perspectives, the study examined the policy and legal provisions in involuntary resettlement policy and praxis in Kenya espoused in the constitution and compared the compensation with praxis from some selected countries to establish and suggest parameters of just terms of compensation.

1.1 Problem Statement

Development of public infrastructure and social amenities cause involuntary resettlement the world over, pitting public interest against individual interest described as private rights against public rights (Rwiza, 2010). The legal frameworks enable governments undertake public purpose projects thereby enhancing gross domestic economies. However, Kenyan Constitution and laws subject the process to prompt payment in full of just compensation (GoK, 2010; 2012). A review indicates that the legal frameworks have not specified the measures of 'prompt' and 'just terms of compensation', such that interpretation is left at the whims of the valuers and acquiring bodies. There are also instances where the Constitution and laws are silent on compensation in instances where displacement is by causes other than government driven public purpose projects (GoK, 2010, 2012). Kalabamu (2002) argues, in Africa displacement was occasioned by diverse factors yet the legal frameworks and compensation praxis continually ignored socio-cultural and economic issues that are the bedrock of family units threaded within specific cultures.

The laws have provided for compensable items, pegging on market values of physical assets mainly land, improvements and vegetation. However, in displacement, intangible variables such as social networks, access to infrastructure and social amenities including grazing rights and watering holes as well as family cohesion may not be included in the compensation settlement. This praxis is being questioned by project development partners, financiers and HRBA as to the extent to which involuntary resettlement restores livelihoods to previous or improved status. Over time, academic discourses indicate knowledge gaps in identifying and developing a just terms of compensation model (Cernia, 1996, 1999; Ng'ongola, 1992; Kothari, 1996; Syagga and Olima, 1996). Though tangible losses are compensated, this study seeks to establish the extent to which the compensation is adequate.

In a research by Syagga and Olima (1996) on impact of land acquisition on PDPs, the statutory compensation frameworks fell short in socio-economic expectancies of livelihood restoration resulting to morbidity and mortality. However, though Syagga and Olima (1996)

noted inadequacies in policy and compensation praxis of socio-cultural and economic disarticulation, they did not advance a mitigating and quantifiable compensation model. This argument is extended in the resettlement of communities displaced by the Three Gorges Dam along the Yangtze River in China, where the Asian Development Bank report of 2009 noted lack of a risk strategy for the prevention of impoverishment on livelihoods (Wilsen, 2011). Cernia (1999) noted that economic recovery in involuntary resettlement is the least addressed issue in research, analysis and financial planning of successful government projects. Project analyses models focus project success on returns on investment and least capital costs with highest yields within the shortest time possible.

Displacement and involuntary resettlement is always relegated to the project's tail end and appended as a dysfunctional by-product that is 'non-core to any project' in feasibility studies. Ng'ong'ola (1992), Menezes (1991) and Cernia (1999) argue that the omission in conventional project analyses models is due to focus on returns on investment at the expense of socio-cultural and economic recompense, resulting to inadequacies in compensation for resettlement. Kothari (1996) concludes that efforts to improve involuntary resettlement will remain marginal, palliative and temporary if not contextualized in a wider socio-cultural and economic context. Having noted that realtors, valuers and other practitioners limit compensation to legislated frameworks, scholarly discussions are focusing on inadequacies of policy frameworks and compensation principles in compulsory acquisition. In agitation for a modelled proposition that fills the policy gaps on just terms of compensation, Anthropologists are now bi-secting socio-cultural and economic issues through 360 degree compensation approaches for resettlement planning (Cernia, 1996).

The aim of this research is to enrich policy, legislation and compensation methodologies by suggesting parameters of a 'just terms of compensation' model that combines legal framework and the sociological perspectives.

1.2 Objectives of the Study

The main objective of this study is to evaluate the ‘quest for just terms of compensation for involuntary resettlement’ in Kenya in order to suggest a just terms of compensation model for policy and praxis. The specific objectives of the study are:-

- i. To evaluate the adequacy of policy frameworks and compensation praxis for just terms of compensation in involuntary resettlement.
- ii. To evaluate the level of awareness on policy frameworks on just terms of compensation in involuntary resettlement.
- iii. To suggest parameters to be included in the ‘just terms of compensation’ model for involuntary resettlement.

1.3 Research Questions

Research questions on the quest for just terms of compensation in involuntary resettlement in Kenya are:-

- i. To what extent are the terms of compensation for involuntary resettlement adequate in policy frameworks and compensation praxis?
- ii. What is the level of awareness of policy frameworks on just terms of compensation praxis in involuntary resettlement?
- iii. What parameters of valuation can attain a just terms of compensation model for involuntary resettlement?

1.4 Research Hypothesis

This study hypothesized that:-

Objective one H₁:- The null hypothesis (H₀); Terms of compensation are not adequate in policy frameworks and compensation praxis in involuntary resettlement in Kenya. The alternative hypothesis (H_u) is that terms of compensation are adequate in policy framework and compensation praxis in involuntary resettlement in Kenya.

Objective two H₂: The null hypothesis (H₀); There is no awareness of policy frameworks on just terms of compensation in involuntary resettlement. The alternative hypothesis (H_u) is that there is awareness of policy frameworks on just terms of compensation in involuntary resettlement.

1.5 The Study's Significance and Contribution to Knowledge

Management of involuntary resettlement and administration of compensation is central in development of public purpose infrastructure projects from social-scientific approaches. Having shifted focus from conventional project feasibility approaches, the development partners realized the adverse effects of displacement and relocation of PAPs resulting from mismanagement of socio-cultural and economic issues. This led to commissioning of consultancies for advice, however, the consultancy reports exist as topical papers whose dissemination is limited within academic debates. This informed the phenomenological study strategy that included interrogating the literature for interpretation of the gaps between institutional frameworks for collation with the policy frameworks in Kenya and PAP perceptions of just terms of compensation.

Compensation directly involves PAPs, who have continually raised issues on the comprehensiveness of the heads of compensation and the adequacy or quantum of compensation. These issues end in arduous litigation suits in pursuit to just terms of compensation. In a Land Economist's perspective, this study reviewed the policy frameworks by examining the adequacy of both the legal frameworks and compensation praxis and established the extent to which they were just. The study further evaluated the level of awareness of legal frameworks and compensation processes by PDPs and developed a conceptual model of just terms of compensation that will enrich policy in Kenya, in a period where laws and policies on compensation are being developed.

As compensation is practical, this study informs the development partners and private investors on optimum budgets and programmes for 'just terms of compensation' in their project-funding budgets. The general public will also be educated on existing policy frameworks and compensation praxis in collation with socio-cultural and economic considerations in involuntary resettlement within the Constitution and legislative frameworks. Finally, as this study examines the compensation framework within the Constitution, statutes and the international guidelines on praxis, the African concept of compensation will assist in

formulation of the theoretical model. This will contribute to academic debates that transform paradigms in the identification and computation of social disarticulation. The study's conceptual 'just terms of compensation' model contributed to the body of knowledge by synthesizing traditional perspectives and donor partner lenses within legal frameworks.

1.6 Scope of the Study

Studies by various scholars (Lawrence et al., 1976), Syagga (1994), Plimmer (2008) and Mangioni (2008) among others, explain compensation models for compulsory acquisition within legislative frameworks of different countries. This study extended the concept of compensation in compulsory acquisition as a sub-set of involuntary resettlement within precincts of the Power of Eminent Domain on an African concept of land ownership. Just terms of compensation for involuntary resettlement policy frameworks and the compensation praxis were evaluated from the post-independent period into the post-reform periods in Kenya. These periods are important because previous laws confined compensation to compulsory acquisition of land for projects that were of public interest. To this extent, consideration was detailed within a limited scope, in accordance with legal frameworks on compensation. However, the Constitution 2010 embraced 'just terms of compensation' in Article 40 (3 and 4) to include compensation arising '*out of deprivation of land or interest on land to occupants in good faith without title to land*' within planning Articulated in 60 and 66 in conservation and protection of ecologically fragile areas for sustainable management of land and land based resources. The study suggests parameters to be considered in such resettlement and compensation scenarios.

Kenya's post independent period has 1,404 projects under compulsory acquisition that resulted to displacement and involuntary resettlement. The Nairobi-Thika highway is one such project identified for study because, having been completed in 2012, the highway is among the most recent public purpose project transitioning with land reforms and promulgation of Constitution 2010. The PAPs envisaged reforms in policy frameworks during displacement and resettlement under just terms of compensation. This study therefore is limited to the Nairobi-Thika highway where access to information was easy and convenient, therefore saving on time and cost.

The study identified a respondents' framework to be house-holds, small and medium enterprises (SMEs) and institutions as representative to attributes for 'just terms of compensation' experienced by PAPs throughout Kenya. However, project impacts are

fundamentally unique in location and specific to PAPs because involuntary resettlement uniquely affects each household's familial composition. Though just terms of compensation parameters are suggested, specific traditional socio-cultural and economic attributes will require to be sourced for each specific project. Challenges encountered in the study included missing records at the lands registries, necessitating the study to rely on 94% of the population frame. The information was collected by way of structured questionnaires for the respondents, some of whom were semi-literate with difficulty in reading and writing. Language was also a barrier in communication and to overcome these limitations, research assistants from the dialect of the sampled PAPs were trained to administer the questionnaire in order to capture the responses accurately.

1.7 Definition of Key Terms

This section defines use of some of the key terms within the text of the study. Some terms are defined in tandem with the law but where not provided in statute, definition is in the context of the study. The aim is to ensure that all readers have a common referenced understanding and interpretation of the terms for ease of contextualizing in the study.

Compulsory acquisition is the take-over of a property using statutory power, to supersede private negotiations, for the benefit of the public. It is also referred to as eminent domain (United States), compulsory purchase (United Kingdom, New Zealand, and Ireland), resumption or compulsory acquisition (Australia) or expropriation (South Africa and Canada). Compulsory acquisition is the inherent power of the state to seize a citizen's private property, expropriate property, or seize rights in property without the owner's consent, and may be subject to compensation. This is also referred to as the Power of Eminent Domain.

Compensation Praxis refers to determination of interests and the administration of payment to PAPs arising from compulsory acquisition as provided in law. In this study, the Land Act 2012 and LAA Cap 295 (repealed) were the expropriatory laws. In this study, it also relates to traditional social formations that identified and sustained cultures vis-à-vis access to land within their social environment.

Involuntary resettlement is a by-product of coerced resettlement by factors exogenous to PDPs arising from political instability, environmental calamities or coerced displacement by government initiative to pave way for public infrastructure and social projects. In this study, it is a legally and officially coercive displacement act by the State.

Just Terms of Compensation is a win-win package bridging the gap between statutory frameworks and sociological perspectives gelled within customary praxis. It is comprehensively cognitive of social disarticulation (land, jobs, homes, marginalization, morbidity, food security and common property access) towards livelihood restoration. **Livelihood**, according to International Finance Corporation (IFC) Performance Standard 5 refers to a full range of means that individuals, families and communities utilize to make a living such as wage based income, agriculture, foraging and other natural based livelihoods. In contrast, **just compensation** is limited to legislated framework on tangible heads of compensation such as land and developments.

Land acquisition refers to whole or partial taking over of land. Whole takeover relates to excision of an entire land parcel for the infrastructure (e.g. road, rail or dam) resulting to total displacement of persons. Partial takeover relates to part-excision of land used for underground pipelines or overhead power lines that allow for limited loss of use of land by inhibiting some specified activities and may partially displace PAPs.

Social disarticulation refers to Cernia's (1999) risk, impoverishment and reconstruction exposure to a PDP arising from displacement from familiar familial sites to resettlement on unfamiliar sites that are disengaged from familiar social networks.

1.8 Organization of the Study

This study is organized into seven chapters as follows:

Chapter one, has the research background, the problem statement, research objectives and hypothesis, scope and significance of the study and finally, the definition of terms.

Chapter two has the literature discourses on philosophy and concepts of justice, property and compensation. It delves into legal frameworks on involuntary resettlement with a focus on level of awareness. The chapter discusses compensation praxis in land reforms for involuntary resettlement in selected countries that have undergone land reforms such as China, Brazil, Nigeria, Zimbabwe and South Africa. This is for comparative analysis with development partner resettlement guidelines to assist in formulation of the conceptual model.

Chapter three comprises the theoretical framework on just compensation. Project financing and compensation models are analysed to establish the social cost benefit in respect to

compensation of social disarticulation. Economist valuation approaches are compared to anthropological perspectives that rely on Cernia's (1999) impoverishment, risk and reconstruction model. The African concept of compensation is considered alongside conventional models in conceptualizing the 'just terms of compensation' model.

Chapter Four has the phenomenological research design of case study, population frame and sampling methodology. The data collection and processing using SPSS before subjection to mixed analyses techniques are discussed. Together with Cernia's (1999) eight-tier impoverishment model and variables of African concept of justice a definition of social disarticulation encountered in involuntary resettlement is suggested for compensation.

Chapter five evaluates the adequacy of the legal framework and compensation praxis on involuntary resettlement in Kenya to satisfy objective one of the study. Discussion is on historical development of expropriation and appropriation statutes in respect to compensation and concludes with the land reforms in policy and legal frameworks aligned to Constitutional 2010 provisions on compensation.

Chapter six discusses data analysis, presentation and interpretation of findings. The interpretation of analyses and hypothesis testing explain the phenomenon under study that assisted in identifying parameters of just terms of compensation.

Chapter seven is the final chapter presenting the conclusion of the research findings and suggests parameters to be considered in a 'just terms of compensation model. The study recommendations are given and areas for further research are also suggested.

CHAPTER TWO

JUST TERMS OF COMPENSATION IN INVOLUNTARY RESETTLEMENT

2.0 Introduction

Involuntary resettlement became an enigma within socio-political enclaves in endeavours to address political, environmental, socio-cultural, technological, legal, and economic (PESTEL) challenges in land reforms (Cernia, 1999). There have been sweeping land reforms in processes of acquisition, displacement, resettlement and compensation for involuntary resettlement. As displacement became synonymous with involuntary resettlement, so did compensation with compulsory acquisition of land (Asif, 2002). A Forum of Scientists, Engineers & Technologists report of 2010 indicated that population displacement is driven by either self-action of the beneficiaries, compulsion by poverty, natural calamities or by state coercion for development purposes. Therefore, there is need for paradigm shifts in land management policies and administrative praxis to institutionalize acceptable socio-cultural and economic drivers of involuntary resettlement attributed to development purposes (Cernia, 1996; De Wet, 2001).

According to Ndegwa (1985), development is not only for economic purposes but also for political and sociological benefits to individuals, requiring balance between socialism as human modules and capitalism as production modules. Rapid urbanization exerts pressure to increase public purpose projects that require land through compulsory acquisition, which is a component of involuntary resettlement. Hill (1976) noted that infrastructure was the highway to civility, without which, societies remain backward. Despite the States' legal instrumentation justifying coercive acquisition to actualize development, contentious statutory issues of compensation within ideologies of property rights, form the crux of justice both constitutionally and morally (Burrows, 1991; Elman, 1968; Braun, 2005). Therefore, development has to have a nationalistic character created by political ideologies to overcome ethnic, linguistic and cultural differences as a demonstration of justice (Ndegwa, 1985). Harbeson (1973) argues that though missionaries and colonial governments pursued the CMP, the nationalism advanced by post-independent African leaders further broke down the social-cultural traditions through exclusive land allocation praxis. In entrenching CMP, prognosis for compulsory acquisition became institutionalised displacement and involuntary

resettlement. This informed the quest for just terms of compensation to balance policy with social disarticulation perspectives.

2.1 Compulsory Acquisition as Power of Eminent Domain

Eminent Domain is the sovereign power of the state to exercise constitutional mandates using policy and legal frameworks of expropriation. Compulsory acquisition is the coercive take-over of private property by government in order to provide land for development of public purpose projects (Plimmer, 2008). Alienation presumes possession of the land is by government but compulsory acquisition presupposes possession to be private, and the acquisition against the proprietor's will (Harbeson, 1973; Okoth-Ogendo, 1991). However, instances may arise where compulsory acquisition can be negotiated by government to reflect purchase by will in a back ground of compulsion as a bypass of negative socio-cultural and economic effects experienced in compulsory purchase orders (Almond and Plimmer, 1997). Denyer-Green (1989) argues that compulsory purchase was analogous to private purchase with the expropriated owner as the 'vendor' conveying legal title to the 'acquiring authority'. The difference was the inverse requirement for the acquiring authority to prepare the deed of conveyance and possession against the owner's will. This was in regard to challenges in common matters such as conveyance costs, untraced owners, refusal to give possession and entry before conveyance in the midst of compensation disputes and other litigious claims that required policy intervention (Denyer-Green, 1989). Umeh (1973) argues that whatever the coating, the sale is under compulsion to give up ones' social security found in land. This makes the study relevant in establishing adequacy of compensation in policy frameworks and compensation praxis on forced displacement.

Compulsory acquisition is necessary for public purpose amenities and thoroughfares which otherwise would be considered illegal and a social disturbance occasioned by the noise, refuse dips and sewerage works. The acquiring body's activity would be trespass and the acquisition would be *ultra vires* and illegal. Therefore, constitutions, laws and policies enable acquisition or takeover, which would otherwise be un-lawful in the absence of legislation. Previously undertaken by royal or presidential pre-rogative orders in England, the British Parliament precluded these powers under constitutional and statutory safeguards for public use on condition to just compensation (Lawrence et al., 1976; Denyer-Green, 1989). The purchase could be by a private act of parliament enacted to authorize each specific acquisition

by a specific authority or the general applicability act of parliament with general acquisition powers granted to an acquiring authority within a legal framework. Kenya adapted the general applicability model whereby compulsory acquisition and compensation is embedded in the Constitution and statute. Any land so acquired became free from any encumbrances including easements and restrictive covenants and any resistance to give possession results to forceful eviction (Denyer-Green, 1989; Syagga, 1994). This coercive tendency was to allow for national development to take place but, subject to compensation guided by law.

According to Ndegwa (1985), development is achieved by incorporating participatory approaches for people to accept desirable changes through effective economic, social and physical planning termed as '*nationalism for development*'. Yahya (1976) supported participatory approaches in policy-making that allowed for a feedback mechanism that improved the outputs. This planning argument was possible through an organic open system management approach that enabled efficient and effective feedback mechanisms (Katz and Kahn, 1978). This meant that nation building, development and involuntary resettlement were ideally conjugal in nature. This ideology is boggling to the mind, as we question whether involuntary resettlement is the sacrilege for development, with the quest for justice being the atonement mirrored by various anthropological perspectives from a PESTEL platform. We cannot ignore arguments advanced by the economist De Soto (1994), that land titles apart from being collateral to borrowing, also increased land and property values and greater accessibility to capital thus calling for a policy cognizant to the premium associated with economic compensation in involuntary resettlement.

Ndegwa (1985) views development as global and argues that the benefits should spread to all from an economic perspective of integration between countries to increase per capita. Ndegwa's argument supports regional and national economic prosperity manifested in enhanced local and regional living standards, which is only achievable through displacement of people to create land sites for development. However, though being the panacea for national development and economic growth, land acquisition is in conflict with land reform ideals of equitable access to land, justice in land distribution and social security of dependents if just terms of compensation is not the goal (Kothari, 1996). The argument of regional economic prosperity for all should therefore be extended to sharing of impoverishment risks by all. Though this is mirrored by 'prompt payment in full of just compensation', the compensation praxis did not spread out the effects of dislocation and

resettlement nationally, exposing the PDPs to direct losses as sacrifice for the overall public gain. This guided the study towards Cernia's (1999) model on risk and impoverishment in recognition to the adverse effects of involuntary resettlement.

According to Cernia (1996) and De Wet (2001), proponents of inevitability of development should view displacement and resettlement in tandem with socio-cultural and economic expectations as paradigms shift towards secure policy frameworks on land tenure and just terms of compensation for involuntary resettlement.

2.2 Involuntary Resettlement as a Social Attribute

Social attributes of involuntary resettlement impact individual expectancies on restitutive recompense through social lenses in an arena of policy frameworks. Involuntary resettlement is the forced relocation from familiar areas of habitation and resettlement to other unfamiliar areas. The causes of involuntary relocation vary from natural calamities and disasters such as flooding and earthquakes, political instability and sustainable land use to preserve ecologically sensitive areas for economic development. Involuntary resettlement became an enigma within legal and ideological circles as competitive uses exerted pressure on land especially in the wake of traditional reconnaissance within emerging land reforms at the global arena (Cernia, 1999).

A High Commission on Human Rights report (OHCHR, 1996-2012) stated that whatever the reason, involuntary resettlement has negative socio-cultural and economic effects that force PDPs to leave familiar land-use and tenure systems in respect to the occupation, use, abuse or disposition of land (Famoriyo, 1978; Asif, 2002). Cernia (1996) and Croll (1999) describe involuntary resettlement as a social-economic process that displaces people who require reconstruction to mitigate impoverishment. Normally, the PDPs are excluded from social-economic networks and resettled in marginally resourceful areas (Woldemeskel, 1989; Das, 1996). Therefore, the associated socio-cultural-economic impoverishment, exacerbate the unwillingness to relocate (De Wet, 2001; Ng'ong'ola, 1992; IFC, 2007).

Problems of developing countries include increasing land shortage, unemployment, food shortage and balance of payment within a legacy of ethnic arithmetic from colonial orientation (Ndegwa, 1985). De Wet (2001) argues that resettlement makes the PDPs impoverished as reflected by Cernia's (1996, 1999) ethnographic observations that fit

Umeh's (1973) description of involuntary resettlement as coercive and inferior to open purchase. In their discussion, Agbola and Jinadu (1997) describe involuntary resettlement as an '*officially sanctioned act that has harmful consequences for the affected persons. It is usually violent and is either socially, economically or racially discriminatory in nature*'. Resettlement was therefore noted as being inherently disruptive, depriving individuals and communities' access to social-cultural and economic facilities like religious and cultural sites, social networks and common economic zones (Thomas, 2002; Mdolongwa, 1998).

Apart from the unwillingness to relocate, other contentious issues in involuntary resettlement include the compensation quantum appreciated under concepts of property rights (Kiamba 1989, Burrows 1991, Elman 1968, Braun 2005, Kothari 1996). Umeh (1973) observes that in traditional setups, compensation was not easily recognizable because the individual was conjoined in the public purpose, therefore, the alternative land given needed not measure in quantum or comparability. According to Rwiza (2010) and Kinoti (2013), the community contributed generously in recompense by clearing virgin land. This contrasts the formal praxis that introduced CMP accorded with nationalization by individualizing capitalistic approaches. According to Mabogunje (1992) and Okoth-Ogendo (1991), nationalization of unregistered land excluded customary tenets in the guise of social justice, equitable access to land and prevention of speculation. However, arising from land alienation praxis, PDPs faced external impacts of untitled replacement land, transition trauma, family disintegration and conflicts with host communities. Consequently, Kothari (1996) observes that uncertainty due to lack of information on property rights and obligations from project planning, coupled with compensation challenges and dependency expediency necessitate, clear policy frameworks on displacement and the consequential. The coerced relocation necessitates complementary research on both adequacy of policy frameworks and level of PDP awareness on compensation praxis. This will facilitate a balanced compensation matrix within policy frameworks that ameliorate PDPs to pre-project status (Syagga and Olima 1996).

The Constitution of Kenya provides for deprivation of property rights on grounds of public purpose or interest and '*requires prompt payment in full of just compensation Right of access to a court of law Compensation to be paid to occupants in good faith who may not hold title to land ...*' and the Land Act 2012 provides that '*the Commission shall make full inquiry into and determine who the persons are interested in the land and receive claims of compensation from those interested in the land*' (GoK, 2010, 2012 a).

In Kenya, the Constitution and statutory provisions on involuntary resettlement bring out socio-cultural and economic challenges that require in-depth understanding and appreciation. Important is first, the interpretation of ‘prompt payment in full of just compensation’ as provided in Article 40 (3b). Next is interpretation of occupants in good faith without title to the land versus the registered land owner as provided in Article 40 (4) and finally, interpretation of persons with interest as determined by the commission under part VIII sections 107-150 of the Land Act 2012 on compulsory acquisition of interests in land, creation of settlement schemes and acquisition of public rights of way (PRoW) and wayleaves. In this regard, we discuss the NLP that guided the Constitutional provisions in displacement, compensation and resettlement of PDPs. The NLP section 3.6.5 considers land rights of the vulnerable groups, Section 3.6.6, considers land rights of the minority and section 3.6.9 recognizes vulnerability of informal settlements in regard to compulsory acquisition and development control as expropriation and compensation tools (GoK, 2009). Since the concept of compensation is borne out of power of eminent domain, expropriation is therefore claimable if the acquisition process is under the law (Kiamba, 1989). Right of compensation for sustainable livelihoods in involuntary resettlement by the State is a fundamental human right as a pre-requisite for compulsory purchase (Nuhu and Aliyu, 2009; Mendie et. al., 2010). The socio-cultural and economic issues in involuntary resettlement hinge on conjectures of justice in converging policy and compensation praxis with sociological attributes. There is need to evaluate development of legal frameworks on adequacy of socio-cultural and economic principles of just terms of compensation on an institutionalised platform.

2.2.1 Justice as a Component of Involuntary Resettlement

Justice is the concept of rightness based on attributes of ethics, rationality, legislated law and natural law, religion and equity. The United Nations (UN) 1948 charter advances these human rights attributes to which Articles 10 and 27 of the Constitution of Kenya has aligned equality and freedoms under concepts of inalienable rights of all human beings. This is in respect to equal protection before the law on civil rights, non-discrimination on basis of race, colour, gender, ethnicity, religion disability, age, social standing or any other characteristics (OHCHR, 1996; GoK, 2010). However, though adapted as universal tenets of justice, these attributes should be perceived in relativism between the universal ‘just’ good and the individual ‘just’ good (GoK, 2010; Rwiza, 2010). The spirit of relativism interjects that

though individual justice and rights are upheld, universal good may supersede some of these rights.

Epistemology of justice is argued in philosophical dialogues by Plato on just practices in relation to happiness, wealth, politics and life. According to Sachs (2002), Socratic thinking idealized the cardinal virtues of society as being courage, temperance, 'justice' and piety. To rationalize these virtues, Aristotle added knowledge to create character that redefines the interdependency of the virtues. To this end, Sandel (2011) observes Aristotelian philosophical cognizance that naturally, man is political, part of a group that gathers common interests proportionally, yet individually strives for his well-being. We may argue that this is the conflict of desire between an individual and the State when analysing Aristotle's definition of justice as the bond of free men in States, with treatment of equals equally and the unequal unequally in effecting the common good (Davis, 2000). According to Rwiza (2010), community rights ranked above individual rights, however, African humanism did not dissect the individual as an economic being devolved from community characteristics, but rather as part of the whole.

Davis (2000) argues that Socratic thinking had both individual and social justice that conflicted between political constructs, social constructs and the individual. In this regard, Lockean theory espouses on rewards for effort exerted by an individual to be respected and protected under political constructs as a right to own property (Williams, 2000). In support, Coumoundouros (2006) notes Plato's espouse of Socratic belief in the virtue of justice as the natural aim of life by all beings as individuals in their pursuit of *eudemonia* or happiness. Therefore, governments were expected to make just laws that respected and avoided abrogating its people's rights (Davis, 2000; Williams, 2000). To this end, Kinoti (2013) advanced socialism of the individual where personal sacrifice of property was communally reciprocated in appreciation.

Justice is fundamental in social constructs and can be traced in involuntary resettlement from biblical times espousing unjust rulers like King Ahab who appropriated land from their subjects. We also discuss philosophical discourses from the 4th century perspectives of justice and property rights from ethical, moral and political platforms. By the 17th century, justice within social constructs had evolved with philosophical dictates from John Locke's advocacy

for social order and civil authority to protect social and political rights within peaceful co-existence free from danger, fear and civil conflict (Williams, 2006).

Aristotle crystallized 'justice' in the '*Nichomachean Ethics and Politics*'. This treatise advances man as an intelligent, communal and political being who establishes communities with greater good under the auspices of knowledge or character that differentiated his rationality from that of other beings (Davis, 2000; Sandel, 2011). In line with these arguments, Sachs (2002) advances Socratic reasoning for order in a political society under a constitutional rule that is just to the individual. Arguments for polity are seen through Plato's mirror for justice in society as achievable through authoritative power. This was through rule by a class of elite guardian rulers with common sharing of leadership position but living communally with no property ownership. There should be neither too much wealth nor too much poverty in the society since extremes caused social strife (Schofield 2006). This echoes the Marxist slogan '*from each according to his ability and for each according to his need*' (Uzgalis, 2012). This is a critique on capitalism as an unjust regime, since Marxist ideologies advocate for social progression with cultural-economic change achievable through a class struggle yet paradoxically argue for a classless society led by a guardian class.

A congruent point for pro-capitalist and pro-socialist philosophers was that justice was attainable in a socio-political construct through governance by a working class in a stateless and classless society (Uzgalis, 2012; Williams, 2000; Schofield, 2006). To this extent, the capitalist diverge towards CMP politic while socialists cling to an equal mode politic. Therefore Ndegwa (1985) advocates for capitalism where private interest are subordinate to government control and socialism where individual interests will be subordinate to the State, for exploitation for the common good. However, (Simkim, 1997) observes that socialism also has government-sponsored initiatives to promote and stimulate private activities like agriculture despite the high costs of socialism. Socialist elements are traceable in Plato's arguments on inequalities, totalitarianism of power to a small elite group, control of the citizen's lives, a strong military group to enforce laws and suppression of freedoms (Gerasimos, 2010). However, Sachs (2002) articulates Plato's ideology on unification of people to satisfy the ingrained human need for *eudemonia* within a political construct as divergent from socialistic ideologies on social constructs of a stateless society. Rawls (1971) advises against *pleonexia* meaning gaining undue advantage for one-self by seizing what

belongs to another by denying their entitlement that is attainable in a unified society of common interests.

Plato's social construct of a unified justice system (Coumoundouros, 2006), ploughs into Lockean theory on social construct that advocates for an authority to create order and protect interests within a society belaboured with equitable distribution of resources on a moral platform. According to Haddock (2005), political thought verges on organized society within social co-operation paradigms which argue that, not everybody will be entitled to the same sort of consideration. The central theme of political philosophy underlies securing of public justification and accountability of authority as an extension of social capitalism previously advanced by Ndegwa (1985). Therefore, there will be consensual persuasion of a few select while majority persuasion will be by coercion and manipulation.

In contrast, Lockean theory on property rights and political order advocates for people to instigate a revolution against a government that acts against the interests of its citizens even as the efforts of a hard worker are to be protected (Uzgalis, 2012). This compliments Socrates' argument that humans enter political life to supplement efficiencies, to which Davis (2000) supports the need for a civilized society under social contract, and Locke supports protection of property acquired by effort in a political construct. Rawls (1971) argues that people in a society are grounded in common socio-politic constructs of governance. Therefore from an economic perspective, De Soto (1994) supports the need for political protection in policy frameworks on conferred property rights, to precipitate an economic boom, since landed property is the primary collateral for any borrowing within predetermined policy frameworks.

Injustice is observed in the praxis of expropriation and appropriation of land that resulted in marginalization of indigenous people but deemed as necessary for advancement of economic growth through CMP (Kalabamu, 2000; Were, 1974). De Soto (1994) argues that being an economic factor of production that attracts investment, land tenure became transitory evolving from informal customary rights of avail to formal systems dictated by economic models of the colonial governments. Were (1974) supports this argument that appropriation of land in Africa at the Berlin Conference of 1894 was to advance colonial empirical interests based on economies of scale for raw materials and cheap labour. The subsequent tenure reforms involved transfer of land from individual peasant ownership in smallholdings to government-owned collective farms as practised in China and Nigeria (Kalabamu, 2000;

Ding, 2005), or the division of government-owned collective farms into smallholdings as practised in Kenya, Zimbabwe and S. Africa (Lodge, 2002). However, the lingering question is whether just compensation for the expropriation was made to the indigenous people before allocation for the capitalist ventures. Next is the question on adequacy of compensation in the legal framework on expropriation from individual ownership for public use.

To ancient philosophers, ethics and politics were linked with the ethos of social justice and individual justice, the focus being happiness and the good life within which, the political and community good could be either conducive or detrimental to one's happiness (Sandel, 2011). This supports arguments for individual quest for social, economic and political justice. In contrast, modern ethics focuses on the legally or illegality that is permissible to the extent that just laws are made and enforced equitably and political entities may enforce unjust laws or simply not enforce just laws (Sachs, 2002).

Discourses on justice indicate that value systems are reflections on policies of political communities within which individuals exist and so every society or political construct has citizen's perceptions on 'just' or 'unjust laws'. However, we observe that modern discussion on justice is in the context of social justice, distributive justice and retributive justice to satisfy an ingrained human desire to be unified (Rawls, 1971; Sachs, 2002). It supports Plato's argument that justice is primarily an innate individual moral issue before it is translated to the wider political matters that relate to the political justice concerning property, education, political classes and strife among other matters. It is this individual and social need for justice that has seen reforms by way of revolutions and civil wars for independence from perceived injustices anchored on socio-cultural and economic utilization of land through the centuries (Wilson 1980). Social reform hinging on property ownership, education, role of women and the family in the context of justice was encouraged by these philosophers (Davis, 2000; Coumoundouros, 2006).

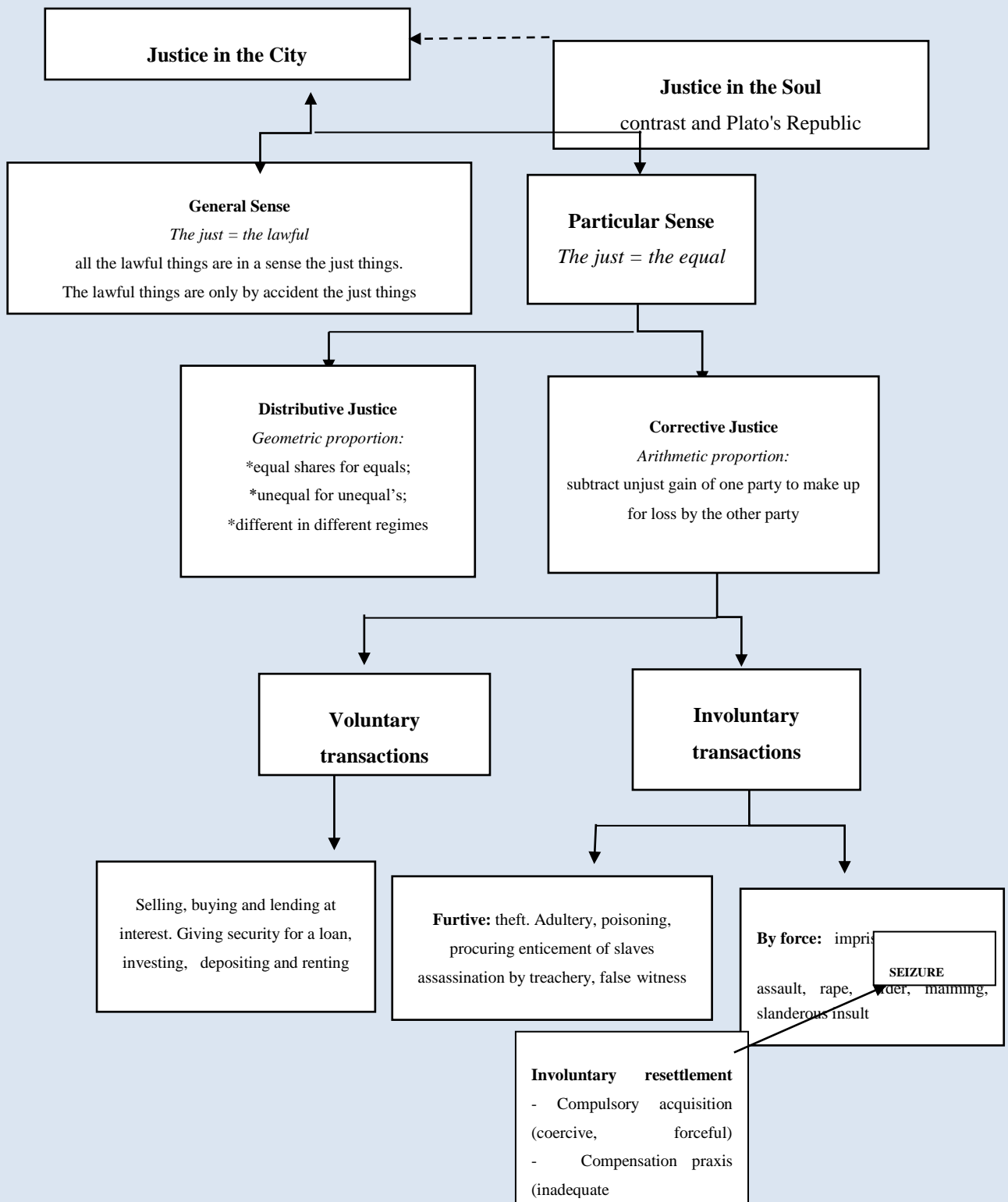
Though the philosophical treatises asserted that just laws never precluded the existence of unjust laws, Sachs (2002) brings into perspective the need for interpretation of the adequacy in computations of 'full' and 'just' terms of compensation in the realms of individual justice. We observe that the philosophers concurred that laws were made primarily for the benefit of the rulers and to the detriment of the subjects though they conclude that justice is a virtue sought by all. Burger (2008) denotes the Aristotelian argument of justice by interpreting

happiness as self-sufficiency (*autarkeia*) at an individual level within a framework of family and social networks in supporting arguments for just treatment in society.

Burger (2008) further collates concepts of ‘justice’ both in the city and in the soul by projecting a model of justice as a mean of social, individual and political constructs that exist within society. This is reflected in contrasting instances of voluntary and involuntary transactions, distributive and corrective justice, and finally the general (public) and particular (individual) senses.

Burger (2008) extrapolates the philosophical arguments that ‘general sense’ of justice subsumes the ‘particular sense’ as it precludes the ‘city’ or society versus ‘soul’ or individual. In as much as what benefits the society is accepted as ‘just’, it is not necessarily ‘unjust’ to the individual who perceives justice as being equal. Despite being postulated that voluntary transactions are at arms-length, it contradicts involuntary transactions as coercive with unjust gain of one party making up for loss by the other party. The crux of involuntary resettlement is the question of justness on coercive transactions within a just compensatory framework that weighs one form of injustice against another referred to as *pleonexia* (Rawls, 1971).

Figure 2.1: Justice as a Mean in Compensation



Source: Adapted from Burger (2008)

The foregoing is the context of involuntary resettlement policy and praxis besieged by the 'quest for just terms of compensation'. Aristotle's definition of justice as a 'social virtue' with both retributive and distributive virtues to correct imbalances in effecting the common good means that justice is a balance between what is good to society versus the individual. One side of the scale is involuntary resettlement mitigated by just terms of compensation, which should be the mean between the expected 'justices' or benefits to society and the 'solatium' for inconvenience caused to the individual. Therefore, since societies are political based, laws should be made and enforced equitably, to attain benefits to the general public on one hand and the individual benefit on the other hand. Lockean theories advance that for effort to be rewarded, there should exist prescribed systems in which society discards elements that are unjust in recompense. This is to the extent of overthrowing unjust governments as a protection of justice to protect factors of production pivoting around land. Therefore, the pursuit for justice and equity are the drivers for reforms in land tenure, redistribution of land rights, access and utilization, administration of ownership and transfer of land rights.

In African tradition, justice was manifested in the maintenance of peace and goodwill in society through a participatory process as opposed to Euro-centric inclinations that seek justice within a judicial process (Kinoti, 2013). Justice was attained through communal deliberations that corrected imbalances by recompense achieved through impartial systems administered by elders. Though communal interests superseded a family's interest, the recompense considered the rights of avail from the clan level that perforated through family to individual sharing levels. It was perceived that people lived in communities with solid common welfare whereby people with negative views were ostracized from Society (Rwiza, 2010). To this effect, Umeh (1973) intones traditional ethos by majority consensus was persuasive over a disconcerted minority availed with a recompense that maintained cognisance of individual effort in a social construct.

Justice and liberties were observed as fundamental freedoms that were equitable on organized principles whereby compensation was borne by the family or clan. Likewise traditional praxis also signified justice as rights enjoyed after exertion of labour. To promote effort, individual rewards were distinct from communal rewards indicating a tinge of capitalism. Despite exclusivity of ownership, land use was activated under trusteeship with wisps of individual claims denoted by boundary markings. Therefore, whatever appropriation was to be

undertaken, a reasonable recompense was adjudicated by elders to ensure contentment of an individual (Kinoti, 2013).

African concepts of justice were through customary lenses that adjudicated individual rights as subservience to community needs, though natural rights were respected by all in tandem with human rights as claims, entitlements and interests (Rwiza, 2010). The settings were constructs in which individuals had social contract by popular consent. Human rights and justice entwined in political democracy, economic egalitarians and social equity entrenched in family hood of African traditional organization. Justice was through deliberation not coercion, peace through compensation not retaliation and equity prevailed not codified law (Rwiza, 2010; Kinoti, 2013).

Therefore, perceptions of justice through the philosophical, capitalist, socialist and customary lenses foretell the superiority of public good over individual interests to whom ‘injustice’ was occasioned. To mitigate the sacrificial imposition, the ‘public’ should offer a recompense acceptable within the social familial formations within which individuals exist. Therefore, to resonate tenets of livelihood restoration, policy frameworks should institutionalize a just terms of compensation model that is sensitive to African familial and communal social constructs.

2.2.2 Concept of Justice in Land Reforms

The study sought to establish the parameters of just terms of compensation by evaluating the concept of justice in land reforms. The quest of justice has driven reforms within political regimes to change or improve on processes within existing structures by aligning policy frameworks with attributes of justice. This relies on a legal framework that casts ineligibility of compensation to informal ownership despite the displacement (Krieger et. Al; 1994; Goyal, 1996). In support, Payne (2002) defines land tenure as the mode by which land is held or owned or the set of relationships among people concerning land or its product and rights as ‘recognized interest in land or property vested to an individual or group’.

Since land is the epicentre of life, economic sustainability is inherent in the mode of use, access and disposition within a formal policy framework on tenure systems and compensation in the distribution of resources (GoK, 1955; Batty, 2005; Nabutola, 2009). Reforms in equitable access to land involving the upgrading of rights or introduction of new systems of

holdings and ownership to attain a sustainable tenure system thereby, transforming the legislative framework on involuntary resettlement (Kalabamu, 2000; Harbeson, 1973). Retrospectively, Ding (2005) concedes that land forms essential life support mechanisms to farmers as well as being an administrative tool in urbanization for economic growth, initiating policy debates on involuntary resettlement. The challenge is to introduce systems of distributing land holdings that embrace both justice and development (Kalabamu, 2000). In this case, Haddock (2005) views land reforms as driven by multi-sectoral interests that control existence of a constitutional state by exerting positive policies and praxis. In turn, Umeh (1973) sees land reforms as correcting gaps in legal and administrative praxis of expropriation and appropriation that were built on imperial assumptions that progressed the CMP tool of decolonizing states.

Sachs (2002) argues for a social, distributive and retributive recompense in involuntary resettlement. In this perspective, Lodge (2002) advances land reforms on the basis of restitution and redistribution as a just recompense for displacement. Such dispositions on land are relevant in Africa resulting from praxis on land alienation by the state allocating vacant government land to politically correct individuals, notwithstanding the indigenous people's interest (Kalabamu, 2000; Syagga, 2006). As a cure, land reforms have resulted to restitution by giving back appropriated land to indigenous owners after an identification process that allows for redistribution (Kalabamu, 2000). In Kenya, the NLP proposed restitution of land rights to those unjustly deprived by underscoring circumstances leading to the appropriation. Therefore, restitution challenges were mitigated by a compensation model for resettlement as applied in South Africa (Lodge, 2002).

Land redistribution is a compensation model involving the state acquiring large parcels from individual members for redistribution to the larger society through adjudication and settlement schemes on re-allocation processes (Okoth-Ogendo, 1991; Mdlongwa, 2002). Land redistribution is an open ended process that facilitates access to land by disadvantaged people (Kane, 1999). This has been implemented in countries like China where institutional change was by way of the 'open door' policy in 1998 to pave way for rapid urbanization (Ding, 2005), Land Use Act 1998 of Nigeria (Nuhu, 2008) and redistribution policies undertaken in Brazil and Kenya. Lodge (2002) notes that South Africa implemented both redistribution and restitution that involved giving indigenous people back their land. Post-colonial Kenya effected land redistribution by compensating the white settlers at market

value for redistribution under settlement schemes (Harbeson, 1973). The NLP (GoK, 2009) has advanced resettlement reforms towards re-organization of rural and urban settlements for urban expansion as well as settling PDPs to mitigate historical injustices.

As a global phenomenon, the advent of industrialization, infrastructure development and urban expansion has pressurized acquisition of land within changing compensation patterns (Ding, 2007). Therefore, land reforms are tuning legislative amendments towards sustainable approaches in alignment with ideologies of just compensation to achieve developmental needs (World Bank, 2011; GoK, 2012a). These reforms include constitutional amendments for eminent bargaining power as well as enabling statutes to guide the compensation praxis (McNulty, 1912; Plimmer, 2008). Croll (1999) observes that prior to policy reforms in land compensation praxis, resettlement was defined as a single event based on compensation of a one-off sum, but negative experiences in resettlement of PDPs and World Bank initiatives changed resettlement tenets. Conception is now on longer-term processes of ‘resettlement with socio-cultural and economic development’. This is a derivation of experiences from past relocation and resettlement praxis that established sites for highways and dam projects (Croll, 1999; Thomas, 2002; Ding, 2005). The donor partners have integrated participatory HRBA in building up consensus in development approaches with indigenes to avoid social disarticulation in overpopulated resettlement areas (Gabrielle, 2008).

The propagated CMP resulted to the overpopulated and marginalized ‘native reserves’ found in Brazil, South Africa, Zimbabwe and Kenya. A residual effect of the inherited legal frameworks of expropriation is the unequal distribution of land with minority elite controlling vast expanses of land at the expense of a majority landless peasant (Syagga, 2006).

In this regard, various approaches in policy frameworks and compensation praxis have been adopted by different countries to allow for public purpose projects under various tenure regimes discussed in this chapter. The ideological underpinnings of policy frameworks on socio-cultural and economic attributes of compensation were reviewed in some countries in Asia (China), Latin America (Brazil) and Africa (Nigeria, South Africa and Zimbabwe) to establish distinct compensation praxis with a view for comparison with the Kenyan praxis towards suggesting parameters of just terms of compensation.

i) **China**

In the 1970's, assisted with World Bank funds, The People's Republic of China undertook many infrastructure programmes that required massive displacement and relocation programmes. China undertook drastic land reforms that vested urban land to the State while rural land came under collective group ownership of farmers so as to allow easier access to development sites (Jing, 1997; Boxer, (1988). Land reform in China confirmed the 'open door policy' in 1978 that transformed rural collectives to state owned farms. This involved institutionalizing powers of local governments to expropriate land from farmers and sell it to developers at higher pricing (Hemming et. al, 2001). Chan (2003) concedes that success of land acquisition was achieved through the 'open door' policy that introduced changes in The People's Republic of China Land Administration Law (PRCLAL) of 1986 amended in 1998 where people use land and own the buildings and improvements on it, but the sovereignty of the land remains in the hands of the State in urban areas or farmer collectives in rural areas. In the study on *'Policy and Practice of Land acquisition in China'*, Ding (2005) observes that involuntary resettlement was undertaken under a Land-Use-Rights (LUR) policy in urban areas to improve land management and land use efficiency as well as provide revenue sources of local government to finance large projects. Expropriation of rural lands from communal collectives to the state was undertaken by local government who leased land from farmers to enable developers release finances for urban development.

Wilsen (2011) notes a positive practice in China is the continued improvement of policy and compensation standards at the national level. Resettlement is viewed as a development opportunity through the reinvestment of funds generated by the project and improved impact identification through monitoring and evaluation. This analysis borrowed from the World Bank assessment report of 2002 on China that advocated for just compensation as achievable through institutional strengthening by engaging social scientists to assess social impacts, resettlement planning and livelihood restoration strategies (Thomas, 2002). Ding (2005) observes that amendments within policy frameworks and comparative praxis included job placement, and a geographically bonded urban license status that enabled access to social benefits and public goods such as schools and food at subsidized levels for a license (*hakou*) holder.

Land reforms in PRCLAL were to ensure livelihood restorations in tandem with the government's development agenda. Familial formations and access to social amenities were upheld to retain the PAP's economic stature to mitigate social disarticulation of landlessness, joblessness, homelessness and livelihood restoration.

ii) Latin America

Land reforms in Latin America were outcomes of over 70 years' controversy surrounding governance and public policy in the changing patterns of access to land (Janvry and Sadoulet, 2002). Land redistribution underpinned the agitation to excise large parcels for redistribution to the landless people. Post-colonial nations such as Brazil, Chile, Mexico and Bolivia among others inherited an unequal land ownership pattern dominated by large *latifundios* established through expropriation of indigenous community lands. Involuntary resettlement of the indigenous peasants was reflected in large tracts of under-used land that co-existed with overpopulated, overused and small parcelled plots in a *latifundio - minifundio* dualism tenure system (Janvry and Sadoulet, 2002; Lambais, 2008).

Involuntary resettlement and inadequate compensation in expropriations resulted in dominant rural impoverished populations clamouring for restitution of ancestral territories allocated to *latifundios*. Inevitably, environmental stress of deforestation; subsidized non-sustainable livestock herds and forestry operations became indicators of poverty and lack of off-farm earnings in involuntary resettlement. Lambais (2008) notes that from the 1960's, land reform has been a policy issue mystified in socio-cultural and economic agendas by the Brazilian government, that promised reform ideologies of restitution to dilute social calls for compensation in involuntary resettlement. However, the government did not hinge these policy frameworks at a macro-economic level on institutionalized pendants, resulting to challenges in implementing compensation models.

Constitutional land reforms in Brazil empowered the government to excise parcels from large holdings with more than 500 acres for redistribution to the landless, who were to be further economically enabled with loans from government (Kane, 1999; Lambais, 2008). Lambais (2008) notes that land inequality placed 65% of the total land under a few owners while the majority of 80% languished in landlessness. This state contributed to Brazil's 1988 Constitution that introduced land reforms to include confiscation and payment of market value of underutilized large parcelled land for redistribution to landless families (Kane 1999).

The World Bank's introduction of the Market Based Land Reform (MBLR) programmes issued land purchase loans to landless peasants who expected the Government to avail them free land purchased from the endowed for redistribution and restitution to the landless (Frank, 2002).

However, Lambais (2008) observes that although the reforms advanced in the MBLR are relatively new in land policy approach, the programme failed to address the broad socio-cultural and economic issues at a macro-economic level. This was due to inadequate finances to address compensation issues on *latifundios* as well as finance the impoverished *minifundios* (Kane 1999). Therefore, both *latifundios* and *minifundio* owners did not benefit.

Land reforms in Brazil were mainly for political reasons. History proved that despite reforms agitating for secure and equitable access to land, it was easier said than securing the policy frameworks in law and praxis for competitive socio-cultural and economic motivations in resettlement (Janvry and Sadoulet, 2002). The lack of institutional frameworks on just compensation resulted to failure of small land owners to gain access to *latifundios*. The informal acquisition and compensation policies resulted in impoverishment risk and social disarticulation for both the *latifundio* and *minifundio* land owners. This emphasizes the need to formalize policy frameworks and define compensation parameters to actualize 'just terms of compensation' in involuntary resettlement.

iii) Africa

The advent of imperialism in African overturned traditional powers characterized by land governance structures of clan heads who exercised power through traditional procedures and rules that communicated essential elements either verbally or by praxis (Were, 1974; Wilson, 1980). The tenure system allowed 'right of avail' on land to all clan members from where they deduced the common and individual rights (Kalabamu, 2000). Everybody had a socio-cultural and economic function because as social constructs, suitable tenure practices were maintained while unsustainable practices died with time (Obeng-Odoom, 2012). Perpetuity of individual property rights was assumed but subject to communal access rights, as long as a member conformed to clan attributes of culture. Disposition was through recognized lineage in which the evolving social constructs allowed sustenance within African customary tenure systems (De Wet, 2001). Social structures catered for compensation of land acquired for communal activities by allocation of virgin lands.

Familiar traditional social set ups were broken down by privatizing specific land parcels to pave way for CMP that sustained the imperial governments. These colonial tenure systems influenced geo-specific differences in expropriation and appropriation of land through ordinances, treaties and agreements with clan heads to take over traditional land tenure (Kalabamu, 2000). Compensation was lacking as the various instruments expropriated and segregated white settlements from African 'reserves', with titling conferring the bundle of rights that included dispossessing others at will (Kiamba, 1989; Ng'ong'ola, 1992; Kalabamu, 2000). The deed registration and titling system replaced the traditional ownership practice without due compensation to those involuntarily displaced. These colonial laws proved static and instrumental to the socio-cultural and economic deprivation of Africans, resulting to Constitutional revolutions for land reforms in respect to involuntary resettlement (Okoth-Ogendo, 1991; GoK, 2009; Thomas, 2003). This is debatable to euro-centric proponents advocating for economic revolution by conferment of land rights and titling as security for a CMP model, that disregards compensation to indigenous people, however, there is transformation for compensation along familial lines (Kiamba, 1989).

In Africa, grievances against colonial agrarian policies of unequal land distribution and segregated agricultural practices contributed to struggles for independence (GoK, 1955; Ng'ong'ola, 1992; Njuguna and Baya, 1999). This was reflected in collectiveness of the nation as one community with unique characteristics that differentiated each national collective (Were, 1974; Rutto and Njoroge, 2001). Ndegwa (1985) views this as a partnership between government and private enterprises under ideologies of Pan-Africanism for political and economic development of the nation. However, in satisfying developmental ideologies, compensation was required to enable resettlement that ultimately compromised independence. This was due to conditionality to maintenance of colonial land policies for securing settler interests through legal and constitutional constraints on acquisition and re-distribution of settler lands. Kiamba (1989) blames the colonial administration policies that conferred territorial jurisdiction to expropriate land upon the High Commissioner of Protectorates as the panacea for involuntary resettlement in Africa. Customary rights were deemed inferior to the colony's legislated land rights (Umeh, 1973). Subsequently, political influence and ineffective institutional frameworks instigated the socio-cultural and economic land reform ideologies experienced in Africa in the 1980's (Shaw, 2003). The abuse of political privileges was manifested by suppression of fundamental freedoms that included

compensation for appropriation of land (Rutto and Njoroge, 2001). According to Thomas (2002), the state-society dual relationship of fairness and justice that defined property rights in the context of human value systems was unjust and abused by power of eminent domain using the ITPA of 1982 and the ILAA of 1894.

In compulsory acquisition, any transfer of resource ownership and means of production signifies control of the resources as well as socio-cultural and economic benefits interpreted on social orientations (GoK, 1955; Kiamba, 1989; Shaw, 2003). These economic value systems bore African renaissance movements that agitated for political, socio-cultural and economic liberation anchored on justice and equality, human rights and freedom of association, accountability and transparency in land reforms with focus on involuntary resettlement recompense (Geturah and Nyikuli, 2002; Cernia, 1999). In support, Deininger (2003) views land reform as the transfer of ownership from the powerful to the less privileged in society within the context of an equitable redistribution of resources for those previously displaced. Though access to land was enhanced, awareness on allocation criteria was downplayed in processes and praxis of resource distribution in policy (Shaw, 2003; Berry, 2002; GoK, 2010)

Reforms on land have greatest impact on the socio-cultural and economic platform as land is the pivot of life in Africa (Gitau Karirah, 2002; Umeh, 1973). In regard to this impact, Longo (1983) paints a background of traditional systems broken down by colonial ordinances, treaties and assertive power on land based resources. Berry (2002) argues that imperial imposition of a property law regime based on a CMP upon a pre-capitalist social formation of traditional tenets ignored the fact that land law, as an instrument of socio-cultural and economic transformation, had its limitation as a capitalist administrative tool. Post-independence socio-cultural and economic empowerment of Africa was to be achieved through the redistribution of agricultural land to small-scale farmers to allow the resettlement of those previously displaced by the colonial system (Were, 1974; Thomas, 2003). This was an assertive drive for democracy, sovereignty and independence exemplified in S. Africa, Zimbabwe, Nigeria and Kenya (Lodge, 2002; Shaw, 2003). Since attainment of independence, almost every country in Africa has introduced land reforms to reconcile the dual tenure systems of indigenous and colonial land tenures (GoK, 2009). These reforms center on modification of tenure rules on access, ownership, administration and transfer of

land rights on redistribution and restitution through a just recompense for resettlement (Kalabamu, 2000; GoK, 2010).

The pertinent socio-cultural and economic issues under involuntary resettlement in land reforms is how access to land is institutionalised in involuntary resettlement. Kiamba (1989) and Onalo (1986) note that the poor cannot access formal credit or adequate recompense in cases of land without title or other formal documentation of land assets especially when displacement occurs. Okoth-Ogendo (1975) argues that the poor are unable to secure formal property rights, such as land titles where they live or farm because of traditional practises, poor governance, corruption and complex bureaucracies. It is argued that land reforms are for the poor to access legal and economic systems that increase their ability to access credit and contribute to economic growth by poverty reduction through comprehensive policy frameworks (Lodge, 2002; Okello and Gitau, 2006). Braun (2005) observes that complexity of customary praxis and lengthy legal procedures complicate finality of unresolved family land boundary disputes attendant to involuntary resettlement. Additionally, Syagga's (2006) report on '*land ownership and uses in Kenya*', 2/3 of Kenyans had no titles over land which their family lineages had owned for decades

Since attainment of independence, most countries in Eastern and Southern Africa have introduced socio-cultural and economic reforms in land tenure evolving from political and agrarian platforms (Kalabamu, 2000; Nabutola, 2009; Lodge, 2002). Rutto and Njoroge (2001) view these reforms as the democratization of social and economic, political and cultural relations, thoughts and values systems. According to Berry (2002), value system on land usage was relegated to usufruct rights within the colonial land tenure system. To evaluate the compensation praxis in Africa, the study highlighted involuntary resettlement policy in some African countries namely Nigeria, South Africa, Zimbabwe and Kenya in respect to compensation as provided in the respective country laws in order to bring out the gaps focusing on 'the quest for just terms of compensation'.

a) Nigeria

Land reforms in Nigeria underpinned the concept of justice in displacement through government initiative for public purpose projects by advancing 'prompt and reasonable compensation'. The Nigerian praxis is different from Botswana in that compensation for socio-cultural and economic issues in Botswana is limited to COR that ignores both the un-

exhausted value of improvements and land compensation. In contrast, compensation in Nigeria is the replacement of un-exhausted value of both improvements and rent on land (see Umeh 1973 on computed analysis of unexhausted values). The Northern States of Nigeria became government lands having been declared as 'native lands' from 1901's British conquest of the Fulani (Umeh 1973). Subsequently, the 'Land and Native Rights Ordinance of 1910 and 1916 declared the colonial state to be the ultimate owner of all the lands (Swindell and Mamman, 1990). Both Umeh 1973 and Mabogunje (2009) note that declarations, treaties and administrative actions unified the contrasting land tenure systems, to enable alienation of land for public purposes. Mabogunje (2009) notes that in the north, land was under the control and disposition of the Governor while the south applied the traditional patrilineal system.

Therefore, the 1962 Land Tenure Laws, transferred the legal control and issuance of statutory occupation rights to the Permanent Secretary including consent for conveyance to aliens that could override and extinguish the existing customary occupancy rights. This meant that both rights merely entitled the holder to occupation and use of land that belonged to the State. Famoriyo (1978) interjects that the Nigerian Land Use Act (LUA) of 1978 transformed land policy by vesting powers to grant occupational rights on urban land to the Military Governor as advised by the Land Use Allocation Committee (LUAC), while the Local Government granted customary right of occupancy and limited grazing rights upon advice by the Land Allocation Advisory Committee (Nuhu, 2008). Mendie et, al. (2010) supports this initiative as it controlled land prices in government driven acquisitions and increased the nation's bank of agricultural land for exploitation purposes. Umeh (1973) argues that in addition to the Public Lands Acquisition Act, a military decree has requisition powers on land given the unavailability of land markets in adequate quantities and the desired locations at the desired time as the drivers for a market land value index. Methodology of valuation are left to the discretion of the acquiring bodies and government valuers (Umeh, 1973). Doubled with the military decree, compensation may not attain the values of 'promptness' and 'just terms of compensation' in relocation.

In democracies like Kenya, such reform action would be interpreted as abrogating private ownership rights and inconsistency with democratic practices and free market economies (Kiamba, 1984; Mabogunje, 2009). However, Umeh (1973) argues that compulsory acquisition in Nigeria was driven by need for town and country planning from as far back as

1863, necessitating entrenchment of eminent domain in the 1978 Constitution. Mendie et. al. (2010) adds that land acquisition for public interest is complex in both urban and rural areas due to the pre-existing communal tenure interests. According to Umeh (1973) on commercial land, *'as a lease runs out, so the amount of compensation for the un-exhausted term increases'* which in essence resulted to overcompensation of an expiring lease in comparison to one with a longer term due to the disregard of interest in land contingent upon future expectancy. A factor of 10% of the estimated value of interest is added on account of the compulsive acquisition, however in 1945, this statutory provision was abolished so that no allowance is made on account of acquisition.

Ogedengbe (2007) observes that the Oil and Pipeline Act of 1956 vests in the Minister of Petroleum Resources powers to acquire land for pipeline right of way, provided adequate compensation is paid. However, the Act gives pipeline license holders powers to use, abuse and exploit substances in the area covered or outside the license area on condition that compensation is paid. In turn, the license holders utilize services of non-professionals like damage clerks to compute payments which are grossly undervalued. The headmen also apportion vacated farmland among themselves leaving out peasant farmers with unregistered interest disillusioned by the uncontrolled compulsory purchases and compensation quantum.

The multiplicity of decrees make it difficult to apply the principles of compensation especially in regard to communal lands where the LUA empowers the LUACs to grant certificates of occupation yet informal transfers continue to be effected by headmen on the ground. Since the lands are not surveyed and mapped out due to the communal holdings, the compensation authorities use headmen to identify the compensable persons with interest. Ogedengbe (2007) and Nuhu (2008) note that the LUA stipulates the replacement cost of valuation is first, the current construction costs, second; the appropriate depreciation; third is the fixed pricing of crops and economic trees instead of expected yields and agricultural land compensation ranges from 3 to 5 time the Annual Average Output Value (AAOV), and last is the rental on land. This results to undervaluation in comparison with the ignored income or yield methods of valuation. This compensation model further ignores injurious affection, severance and disturbance that by contrast are provided for in the Kenyan institutional framework and compensation praxis of compulsory acquisition. Swindell and Mamman (1990) conclude that the Nigeria praxis has resulted in a landless and insecure PDP due to unregulated expropriation and private accumulation by elite headmen groups versus rural

people threatened by impoverishment risk. Nuhu and Aliya (2009) argue that payments have been delayed due to either slow government processes or delayed court settlements, increasing social disarticulation associated with involuntary resettlement.

Swindell and Mamman (1990) argue that while equity in land distribution and exploitation of landed resources were the euphemism of land reforms, they conclude that the LUA of 1978 increased the number of the landless aggravating rural poverty and food security in involuntary resettlement. Issues of socio-cultural and economic consideration in involuntary resettlement are prevalent in Nigeria with LUA justifying the reduction in compensation payable. According to Mendie et.al (2010), the LUA vested all land in the governor who replaced individual, family heads and clan heads' control over allocation. Whichever the case, the legal and administrative frameworks strip off the PDP right of compensation over land notwithstanding the certification held.

The Nigerian government reformed land acquisition by placing all land under the government to ease availability of development sites. However, livelihoods are restored on tangible compensable items as opposed to socio-cultural formations exacerbating the unwillingness to involuntary resettlement.

b) South Africa

South Africa is the only country where land reforms mitigated government induced displacement and involuntary resettlement by institutionalizing policies on alienation, redistribution and restitution. Land tenure in South Africa was mixed due to British and Dutch power and influence over the land. In the 1820s British influence had extended to Rhodesia with discovery of diamonds at Griqualand. The Anglo-Boer wars of 1899-1902 led to unification of South Africa in 1910 by white equals (Afrikaans and Europeans), with British ceding to Boer policies and activities that were based on race privileges and no guarantees for land ownership by blacks (Were, 1974; Beck (2000).

Syagga (2006) observes that territorial separation was not a new institution as there were the "reserves" created under the British government in the 19th century. Therefore, under apartheid, some 13% of the land was reserved for black homelands, a relatively small amount compared to the total population, and general location in predominantly unproductive areas of the country while 87% was under white ownership. De Wet (2001) and Beck (2000) notes

that from the 1930's, involuntary resettlement was forced on indigenous Africans by various policy instruments. Successive governments introduced the Native Trust Land Act in 1936 by proclaiming planned 'betterment areas' for economically viable agricultural-based communities, equated with households. However, experiences on betterment areas were negative as it was forced upon people against their objections. Forced movement in the 1960's aggravated socio-cultural and economic issues by moving people from common grazing lands and decreasing the arable land by fixing land use patterns. This inflexibility resulted in negative environmental, economic and social-cultural praxis influenced by gender conflict as most males relocated to towns. Were (1974) notes that more enactments had forced movement of people to designated "group areas" that included 600,000 Indian and Chinese people affected by the Group Areas Act, further perpetrating apartheid and limiting African land holdings.

Upon independence in 1984, land reforms in South Africa were multi-faceted adapting restitution, redistribution, alienation and expropriation (Lodge, 2002). De Wet (2001) notes that land restoration for indigenous communities was fraught with socio-cultural and economic challenges as noted in the National Land Committee 1993 policy report. Exemplified were the Mogopa people who had to start dealing with new questions on ownership of the land, utilization, and the form of agriculture to be re-established. The compensation challenges included what would happen to the land of those who choose not to move back but latter return and what type of instrument would be applied to those without title deeds.

Land redistribution on former white-owned land was challenged with lack of institutional frameworks and guidelines, nor was there historical precedence for sub-dividing up this new land among the indigenous settlers. Some attempts for restitution of Mfengu group became futile in the Tsisikama region because their land was still in the hands of white farmers who had bought from government after the Mfengu expropriation. Land alienation included spontaneous settlements and land occupation when people moved to vacant private or government owned land without formal permission, yet expecting formalization of the occupation. Such praxis reflects lack of a legal resettlement policy law that holistically provides for and affords an effective resettlement implementation programme (De Wet, 2001).

Major socio-cultural and economic injustices advanced by De Wet (2001) reflect Cernia's (1999) framework of social disarticulation with regard to South Africa. Awaiting restitution, the main challenge is establishing ownership rights; type of land use and the social formation to be adopted. Landlessness and food insecurity was experienced in betterment areas and trust settlements because of un-planned surplus migrants. People got less arable land and inadequate food leading to dependence on donations and migrant labour remittances. Economic marginalization resulted to morbidity and high mortality for the expropriates as the elites got the best irrigated and fertile farm lands.

Economic deprivation was enhanced when people lost their jobs upon movement to settlement areas and could not get back to the labour market. Accompanying homelessness was a result of break-down of social networks that depend on family fabric and domestic relationships. Conflict arose along gender lines and weakened community structures as social networks leaned towards kinship culminating to spontaneous occupation of land. De Wet (2001) concludes that unless there is established a socio-economic policy to guide the compensation and legal framework, then involuntary resettlement will remain an elusive undertaking by the South African government. Though reforms were driven by need for restitution of the people back to their lands, it allowed land for land resettlement and compensation for acquired land. Familial networks and social formation were reconstructed in the betterment schemes though joblessness remained a challenge.

c) Zimbabwe

In Zimbabwe, expropriation and land reforms was reactive to emergent issues, therefore changes in compensation legislation from the 1980's in redistribution and appropriation of land to cater for resettlement of the poor and access of land for government projects. Coldham (1993) traces land appropriation in Zimbabwe to the 1884 Berlin Conference when British colonists settled in Southern Rhodesia. The white supremacist agrarian policies practised by subsequent Rhodesian regimes worsened the problem of landless Africans and fuelled the guerrilla war for independence. Mdlongwa (1998) notes that by 1979, Europeans made up less than 1% of the population and owned more than 60% of the arable land out of a land mass of 33.2 million hectares, meaning that 15.5 million hectares had been expropriated. Despite the country's attainment of independence in 1980, control of farmland was either in the hands of the 4,500 white commercial farmers, multinational companies or organizations

such as churches aggravating calls by indigenous people for equitable access to land (Coldham, 1993; Mdlongwa, 1998).

In Zimbabwe land reforms redistributed land from white settlers to peasants without compensation as Government of Zimbabwe (GoZ) argued that the colonial government had freely appropriated the land from indigenous people and allocated it to white settlers (Berry, 2002; Shaw, 2003; Thomas, 2003). Coldham (1993) observes that the 1979 Lancashire declaration towards the independence of Zimbabwe had allowed white settlers to retain land for the next 10 years. Britain advanced to the GoZ aid to purchase land from whites willing to sell by funding ½ costs of black resettlement schemes. Compulsory acquisition was to be on underutilized farms at full market price and compensation allowed for foreign currency conversion (Thomas, 2003). Syagga (2006) notes that, the advent of majority rule in 1980 had resulted to the GoZ adopting the strategy of 'growth with equity'. Further land reforms called for redistribution of land ownership to allow for equity in redistribution of land ownership in addressing racial imbalance, promote access to land and stimulate the agricultural economy (Coldham, 1993). The first phase of the Land Reform and Resettlement Program (LRRP₁) began in 1980, which by 1997 had redistributed 3.5 million hectares to 71,000 families from communal areas on land purchased on a willing seller-buyer basis for model 'A' as individual farms and model 'B' under collectives (Thomas, 2003; Syagga, 2006). Berry (2002) notes that in the 1990s, the land policy shifted from redistribution to productivity for development by subjecting underutilized land to full production thereby, reducing the inequality in land holdings. Syagga, (2006) observes that the 1998 framework was to guide land acquisition and distribution of 5 million hectares based on agro-ecological zones aimed at redistribution and resettling of 150,000 families in five years.

According to the Food and Agriculture Organization's (FAO) 2008 report, the resettlement programme was ambitious and required more than the projected five years for implementation. Contention centred on the government's controversial 1992 Land Acquisition Act that empowered the state to forcibly buy farms and pay what it considered to be fair compensation. The programme was also unlikely to address poverty in the poor "communal" areas, where the majority of Zimbabwe's 12 million population lived and lastly there were no adequate checks against corruption in the implementation of the programme (Mdlongwa, 1998). The United Kingdom (UK) and most donors accepted the economic and political imperatives of land redistribution in Zimbabwe and in support, the Department for

International Department (DFID) report of 2000 pointed to neighbouring South Africa as a good example for Zimbabwe.

The DFID (2000) report notes the UK's belief that Zimbabwe needed land reforms to reduce poverty and therefore willingness to fund schemes under transparent acquisition of land for the poor. After Independence, the UK spent £44 million on land resettlement for the indigenous and compensation for white settlers with the UK's Department for International Development planning another £5 million for resettlement projects proposed by the private sector and non-governmental organisations (NGOs) to reduce poverty in communal areas. The Zimbabwe Constitution was amended in 2000 to include the Fast Track Land Resettlement Programme (FTLRP) to allow compensation for development but absolved the government from paying compensation for land in contrast to the British governments' expectation for land compensation (Syagga, 2006). The 'unjust' praxis was detrimental to the expropriates whose assets were not compensated during their displacement.

The second Phase of the LRRP₂ in 1997 saw acquisition of more white farms with absentee owners or those owning more than two parcels of land and land bordering communes therefore forcing donors to fund the compensation (Thomas, 2003). The FTLRP was accelerated in 2000, and ended land redistribution in 2002 (Chiremba and Masters, 2002). Consequently, between 1999 and 2000, the FTLRP compensation had changed from 'fair market' value to 'no compensation' due to lack of funds from Britain who instead imposed the structural adjustment programme with conditions that choked the GoZ's ability to compensate the 'purchased land'. Shaw (2003) observes that other institutions like the International Monetary Fund also withheld credit and investment grants with Britain citing no responsibility to assist in compensation of resettlement lands being acquired for redistribution to the indigenous people. In turn, President Mugabe cited that the government had no moral responsibility or obligation to pay for land, arguing that appropriation had been at no cost. Subsequently, by 2000, large scale commercial farms were invaded by indigenous people thereby adversely affecting the economic output.

In the case of Zimbabwe, rapid reforms outpaced the policy formulation process that anchors land reforms in institutional frameworks that address issues of access, equity and compensation comprehensively for planned rural transformation. Chiremba and Masters (2002) note that disparities existed between resettlement areas and communal areas after

farmers achieved marginal benefits of resettlement. We observe that the FTLRP Land reforms in Zimbabwe were a contrast to the success in South Africa. This is supported by DFID (2000) observation that South African government had opted to buy land for resettling blacks from willing white sellers. In contrast, the GoZ wanted to pay initially for improvements only and ignore compensation of land but later lost control and had white commercial farmers totally displaced from their land with no compensation.

In the case of Zimbabwe, the socio-cultural and economic issue arising from involuntary resettlement under colonial rule were the racial imbalances in land ownership between the settlers and indigenous people. The land reforms undertaken in 1980 after independence were to cure the social injustice of this inequitable distribution. However, Thomas (2003) observes that despite the 1990 Constitutional amendment providing for compulsory acquisition of land with 'little compensation' and 'limited right of appeal' for distribution to locals, unequal land redistribution in favour of a political elite class was propagated while compensation for compulsive takeovers was non-existent.

Generally, we note that the institutionalization of land reforms in some countries as exemplified by China's open door policy, the LUA of Nigeria and FTLRP in Zimbabwe that shifted control from individual ownership to the state or collectives under farmers. However, injustices are manifested in the compensation praxis that ignore socio-cultural issues in involuntary resettlement. Multiplicity of laws and decrees as seen in Zimbabwe do not guarantee compensation of the PAPs but open up an influx of the privileged to gain relevant advantage in resettlement at the expense of non-compensation of others. Compensation is elusive when not anchored in law and denies equitable access to land as observed in Brazil. This problem is aggravated by the colonial take over systems that resulted in large holdings for a few rich and congested small holdings for the indigenous who are exposed to challenges in proving user rights on specific titles in instances of involuntary resettlement. In South African, restitution, redistribution and alienation were faced with challenges at implementation because not all people desired resettlement in the rural homelands and gaps in the policy framework frustrated just terms of compensation.

The comparison of compensation praxis from the selected countries was pegged on different ideological underpinnings. However, the study highlighted good and unjust aspects of compensation in expropriation. Parameters for compensation include land, crops and

improvements, relocation costing and social-cultural and economic derivative interests on familial values that lack a resettlement framework. Pitted against human rights perspectives in involuntary resettlement, they peak with Cernia's (1999) build-up of 'just terms of compensation' attributes anchoring the study's conceptual model.

2.3 Human Rights' Perspective on Involuntary Resettlement

The livelihood restoration strategies advanced by funding agencies are a mitigating reaction to the social disarticulation experienced by PAPs in displacement and resettlement. According to the OHCHR Charter, everyone has the right to own property individually as well as in association with others and no one shall be arbitrarily deprived of his property (UN, 1948). Frankovits (2002) notes the irony by donor partners elaborating a body of standards and rules that have general application in praxis but are not enforceable due to vacuum in policy framework and missing compensation in appraisal of development projects. In 1948, the United Nations' Rome Universal Declaration of Human Rights prescribed inalienable rights that outline thematic and sectoral nature of the rights of vulnerable groups that are extended to involuntary resettlement. Prescriptions of state obligations for the realization of civil, cultural, economic, political and social rights are provided by the OHCHR (1996-2012). In 2006, The United Nations Inter-Agency Standing Committee crafted operational guidelines and field manuals on human rights protection in situations of involuntary resettlement with regard to basic necessities of life, economic, social and cultural protection needs as well as civil and political protection. However, Rwozi (2010) advances that these rights are not enforceable in certain situations, their inalienability circumspectly critiqued against universal public good that satisfies the rights to a claim for government to provide services towards the common good.

The OHCHR broadly categorized socio-cultural and economic variables to include dependants, informal settlements, income streams, proximity to educational and social facilities and a source of livelihood for the evicted inhabitants. In the 1948 United Nations Human Rights Charter, displacement occasioned by public purpose considers interests of all the evicted, irrespective of whether they hold title to property or not on the following terms:-

- Entitlement to compensation for the loss,
- The assessment of economic damage like land, houses and improvements.

- Accessibility to infrastructure
- Mortgage or other debt penalties;
- Interim housing; bureaucratic and legal fees;
- Alternative housing;
- Lost wages and incomes and lost educational opportunities;
- Health and medical care;
- Resettlement and transportation costs and
- Value of business losses

In analysing the World Bank report of 1980 on funded projects, Renaud (1984) notes environmental benefits and informal sector involvement as key indices in development programmes, yet compensation was inherently ignored. The report appreciates that though economic growth is necessary, relocation principles under the power of eminent domain result in violation of human rights by way of non-involvement of stakeholders and inadequate compensation (Zaman, 1996). The Three Gorges Dam project in China (Tan and Yao, 2006) and Jamuna Bridge Project in Bangladesh (Zaman, 1996) are indices of donor funded projects where PDP's predicament was sacrificed for the greater public benefit. According to Thomas (2002) and Wilsen (2011), the World Bank acknowledged that social disarticulation driven by displacement could be mitigated through policy frameworks which upheld and improved the principles of just terms of compensation.

The World Bank Operational Policy 4.30 of 1990, has been continually improving parameters for compensating involuntary resettlement with the latest guidelines being Chapter 5 of 2015. This guidelines define compensation to include informal settlements on public lands as provided in the Bank's policy on involuntary resettlement (IFC, 2015). However, Thomas (2002) points out the banks' praxis as lacking planning for socio-cultural and economic sustainability due to the bias towards the return on capital with short pay-back periods. He observes the bank's re-focus on involuntary resettlement through the IFC.OP. 4.12; (2010) to mitigate the banks' past failures that had ignored just compensation of projects with involuntary displacement. International resettlement policies by the AfDB and the World Bank include the principle of 'enabling the displaced share in project benefits' (World Bank, 1990, 2001; AfDB, 1995, 2003). The policies require that development projects are not only

economically viable but also socially and environmentally beneficial for their target population. The AfDB Operations Manual of 2006 requires handling of involuntary resettlement as development opportunity by managing impoverishment risks to turn the PDPs to project beneficiaries.

IFC OP.4.12 guidelines indicate that if unmitigated, involuntary resettlement results in economic, social and environmental risks that include dismantling of production systems, impoverished and relocation of PAPs to un-familiar environments prone to greater competition for resources. In addition, community and social networks are weakened; kin groups are dispersed while cultural identity and traditional authority are broken down, therefore requiring RAPs for each project to mitigate social disarticulation. Zaman (1996) notes that the IFC guidelines respect legal structures of respective countries concerning land consolidation, compensation, usage and social welfare issues. These guidelines appreciate the uniqueness of sociological issues and need for integration of compensation within project planning in RAP frameworks. Cernia (1996) notes that resettlement is a by-product of property and expropriation law, which regulate compensation frameworks for development induced resettlement. He awakens the need for modifications of the law for integration of social-economic perspectives on compensation matrices of public purpose developments.

Various studies by Cernia (1996, 1999, 2000) were funded by the World bank to evaluate the social-economic status of PDP in World bank funded projects. These studies reported resettlement risk on an impoverishment modelled matrix that indicated adverse effects of landlessness, joblessness, homelessness, mortality and morbidity, loss of common resource areas and social networks that confronted the PDPs. Interjecting the UN (1948) Declaration, World Bank and other international finance guidelines on resettlement, Cernia (1999) synthesizes the diverse socio-cultural and economic parameters of compensation in an eight-tier social disarticulation model that indicates just terms of compensation on policy and sociological platforms.

Together with the 2003 Stamford Common Understanding, the UN articulated broad principles on governance of human rights in compensation (Gabrielle, 2008). Development partners' cooperation anchors on realization of human rights as captured in institutional RAP frameworks for compensation. The development partner strategies pursue equity, fairness and justice in the distribution of burdens and benefits in development. Therefore, the HRBA

spearheaded by OHCHR (2006) seek to analyze inequalities at the heart of development problems and redress on discriminatory practices and unjust distribution of resources as impediments to development.

Table 2.1: Cernia’s Model on Social Disarticulation

Risk	Impoverishment	Reconstruction
Landlessness	Expropriation leads to reduction of land sizes. Interference with productive systems.	Resettle people in areas with similar economic production and provide development assistance.
Joblessness	Risk of loss of wage employment is high both in urban and rural activities	Consider PAPs in project-related jobs and offer self-employment services.
Homelessness	Loss of family dwelling unit and cultural space thus deprivation and alienation.	Assessment of market value rather than replacement value. Reconstruct for PAPs houses.
Marginalization	Downward mobility from middle to small sized parcels. Human capital is rendered inactive thus a drop in social status.	Psychological, economic and social marginalization. Build up sustainable income sources.
Morbidity and mortality	Decline in health and higher mortality. Impact on education and living standards.	Mitigate negative effects on health, hygiene and education
Food insecurity	Reduction in farming lands	Avail agricultural extension services.
Loss of common property assets	Land held under common property regimes (grazing lands, forest, water holes, social amenities)	Host population reception and social integration to avoid social conflict
Livelihood restoration (Cernia’s Social disarticulation)	Loss of social capital. Fragmented family cohesion and kinship groups	Relocate in neighbourhood for confidence in economic and social capital

Source: Cernia (1999)

The FAO 2008 report advocated for socio-cultural and economic benefits arising from land reforms to include food security, alleviation of rural poverty and enhancement of rural development. Shaw (2003) supports the FAO (2008) report and the DFID (2000) report on the underlying themes on resettlement schemes to benefit the rural poor, which is achievable through sound policies and compensation praxis. Secure and equitable rights to land and natural resources are basis of indigenous economies founded on religious, cultural and social

identities as core in compensation computations. Despite this, natural resource bases of indigenous peoples have been undermined by development projects (FAO, 2008).

The JICA report of 2004 has guidelines for environmental and social consideration for implementation of their project loans. JICA monitors social-economic impacts for mitigation throughout the project life cycle in accord to agreements made with recipient governments. Consideration is made for socially vulnerable groups in efforts to bridge the impoverishment gap by setting aside social costs in developmental budgets. Stakeholder participation, information transparency, accountability and efficiency and respect of human rights minimize adverse impacts of social disarticulation in social justice systems.

Social justice is the equilibrium convergence of diverse perspectives of social justice, social welfare and good governance. According to Gullaprawit (2011), just compensation will be the epicentre.

Figure 2.2: Social Justice



Source: Gullaprawit (2011), NESDP Thailand

Evidence of social disarticulation includes displacement and migration of populations, disruption of local economic activities and livelihoods, impoverishment in land utilisation, disruption of social institutions, services and infrastructure. Vulnerable groups are faced with poverty and dependency due to loss of jobs and non-economic empowerment in the resettlement process (OHCHR 1996-2012). Reforms in resettlement praxis are to correct

unjust legacies in expropriation, unequitable distribution and access to land, patriarchal customary practices and gender challenges fronted as social injustices (Syagga, 2006).

Since involuntary resettlement leads to social disarticulation, scholarly discourses on legislative framework are pivotal in reform agendas amidst calls for redistribution, restitution or new allocations as an equitable compensation model. Lodge (2002) and Mdolongwa (1998) surmise that successful land reform programmes reduce social inequalities, alleviate poverty and promote economic growth. The OHCHR and other institutional guidelines identify the vulnerable and marginalised groups, forming the structure of the HRBA that is responsive to societal values. Though the HRBA and donor agencies have institutional guidelines on project based involuntary resettlement, these policies are continually improved in search of a representative model. This is through HRBA on participatory, accountable, non-discriminative, transparent human rights based, equity and rule of law (PANTHER) frameworks. Literature review picked up socio-cultural and economic attributes summed up in Cernia's (1999) social disarticulation model to coagulate and crystalize institutional frameworks. However, just terms of compensation in involuntary resettlement can be actualized in the ambits of social orientations and customary values of the PDPs.

2.4 Summary

Table 2.2: Perspectives of Involuntary Resettlement Compensation

Perspectives	Involuntary resettlement	Just terms for compensation
Philosophical Perspectives	A balance between social justice, distributive justice and retributive justice in political and social construct against individual perspectives	Convergent point between ‘public justice and individual justice’. All individuals in a politic hold similar ideologies of justice.
Institutional Perspectives (UN, OHCHR, IFC, FAO, JICA, IfDB)	<p>-1948 UN Charter on Bill of rights</p> <p>- HRBA using the PANTHER framework (Public participation, Accountability, Non-discrimination, Transparency, Human rights, Equity and Rule of law)</p> <p>-Cernia’s 8-tier social disarticulation model (Landlessness, joblessness, homelessness, marginalization, morbidity and mortality, food security and livelihood restoration). Displacement and relocation plans based on poverty reduction, livelihood restoration and sustenance of living standards for PAPs.</p>	<p>PANTHER frameworks</p> <p>Socio-cultural and economic provisions in policy frameworks and legislation for equitable and sustainable livelihood restoration.</p> <p>Continual improvement of standards and guidelines on ‘just terms of compensation’ based on social-cultural and economic perspectives anchored on impoverishment, risk and reconstruction model addressing landlessness, joblessness, homelessness, marginalization, food insecurity, morbidity and mortality, loss of common property access and social disarticulation.</p>
Asia (China)	Open door policy transformed land ownership to state owned or farmer collectives therefore no compensation for land. Compensation is curvilinear	<p>Secure social networks and implementation of livelihood restoration strategies. Compensation is collective as communities. Government compensates for improvement and crop but ignores land compensation and the socio-cultural attachment.</p> <p>Social security <i>hakou</i> license granted to the vulnerable groups</p>
Latin America (Brazil)	Redistribution of <i>latifundios</i> to <i>minifundio</i> holders as direct compensation for displacement	<p>No institutional framework to secure compensation for land. Social disarticulation ignored while familial breakdown is the norm.</p> <p>Appropriation of land from large to mini-holdings</p>
Africa (Nigeria, S. Africa, Zimbabwe)	<p>Expropriation with minimal compensation to chieftaincies using treaties and ordinances. Power of eminent domain to displace families. Compensation curtailed to communities within legal frameworks.</p> <p>Compensation is linear limited to the dispossessed therefore socio-cultural and economic attributes are ignored</p>	<p>African concepts of justice: Participation, justness, inclusiveness, peacefulness, equity.</p> <p>Compensation based on legal framework that ignores non-title holders. Framework recognizes tangible items and ignores non-tangible assets as compensable.</p>

Source: Author (2015)

CHAPTER THREE

THEORETICAL PROJECT COMPENSATION MODELS

3.0 Introduction

This chapter discusses project compensation models against empirical economist-valuation approaches and theoretical sociological approaches that assisted in conceptualizing the just terms of compensation model. The model is operationalized by synthesizing the legal framework on compensation praxis with socio-cultural and economic perspectives. Concepts of inalienability and indefeasibility of titled land are countered by the concept of compensation in compulsory acquisition anchored in the institutions of property ownership (Longo 1983). These concepts are organic in nature with adaptation varying from country to country (McNulty 1912). Therefore, Longo (1983) argues for organic prescriptions towards just compensation in involuntary resettlement first, for the common good, and next as a praxis of equity fundamental in ‘good’ recompense values borne by a society that virtually benefits from an individual. This is reflective of justice which, philosophers contextualised in treatises on ‘justice within a city’ and ‘justice to a soul’ in a socio-politic contract (Gerasimos, 2006; McNulty, 1912). Lockean theories advance a unified predisposition balance of justice that benefits both an individual and the social contract.

Discourses of justice have been within political environments that enforce the rule of law as advanced in philosophic arguments. Political studies have proven that governments endorse systems of governance for subjection to the citizenry (Rawls, 1971; Sachs, 2000). To the extent of political constructs, governments become organizations of order to enforce laws on justice for the common good with strong motivations not to act unjustly (Simkim, 1997; Davis, 2000). Though Aristotle treats justice as inherently inadequate, there is a philosophical convergence on ‘just’ rulers and ‘just’ governments who made ‘just’ laws for the benefit and protection of the subjects. Gerasimos (2006) further argues for application of justice within a city and justice to an individual in a unified predisposition that is balanced between the administration of justice for benefit of individuals, society and political constructs. This leads us to the theoretical framework of the study that delves progressively through the evolving assessment of project compensation models that displace PAPs in involuntary resettlement.

3.1 Theoretical Project Choice Modelling

Theory is a system of interconnected ideas that evolve empirically over time leading to certain conclusions (Neuman, 2011). Development of theory is from analysis and comparison of existing empirical evidence borrowed from various specialties for adaptation to build up workable systems. The theoretical basis of this study borrowed from financial, management and anthropological studies to build the conceptual framework of just terms of compensation.

Due to social conflicts, the meaning of justice is subject to continuous challenges and (re)negotiations making it difficult to eliminate the gap between competing meanings of 'just' within different schools of thought and the diverse professional fields (Sikka et.al., 1998). Ojo (2006) argues that comparison between the extreme approaches is achievable by analyzing objectives for each school to conjure measures that address the expectation gap so created. Building from these arguments, the study aligned the externality and expectation gap perspectives to feed the sociological approaches and the economist approaches in the conceptual model

3.1.1 Project Financing Models

Compensation has never been part of mainstream project analyses models but instead, feasibility studies focus on project costing based on payback periods. Cernia's (1996) paper on *'Public Policy Responses to Development-Induced Population Displacements'* notes that despite displacement being sacrificial for development, the outcome is reflected by impoverishment and social disarticulation. In another study on *'why economic analysis is essential to resettlement – A Sociologist's View'*, Cernia (2000) acknowledges that economic research on displacement and resettlement is virtually missing since conventional project analyses ignore socio-cultural and economic costs within project budgets.

Cernia (2000) further notes that conceptualization of development projects is still anchored upon project economic analysis, risk analysis, and cost benefit analysis (CBA) as success determinants as opposed to impoverishment risk. Economic analyses comprise of internal rate of return (IRR), net present value (NPV) and the payback period of a project (Kothari, 2004). Risk analysis comprises identification of high and low risk areas for mitigation while CBA justifies projects economically when the sum of benefits outweighs the sum of project costs. We argue that CBA only assesses the 'total' effect of the project design relative to other investment alternatives and ignores harm caused to individual families in displacement. In

response to the risk analysis model, Cernia (1999) observes that conventional models evaluate risk levels (high or low) against the return to capital on investments. Therefore economic analysis and sensitivity tests are used to identify, measure and counteract risks.

In contrast, there is no tool that measures the risks posed on the PDPs and therefore, Cernia (1999) proposes the missing link as the non-integration of socio-cultural and economic variables that require embedment in policy instruments, the same way statutory acquisition processes are enumerated in law. Economists like De Soto (1994) and Menezes (1991) advance that compensation is incompatible with efficiency, despite legal assumptions that 'compensation must be paid'. Ndegwa (1985) argues the shortcomings in the IRR, NPV and risk analysis modules on investment appraisals focus on normative economist perspectives that optimize investment returns within the investment modules that minimize project costs. In support of social approaches, Burrows (1991) identifies this gap as the social efficiency properties of the acquisition process enumerated in the social cost-benefit analysis (SCBA). However, SCBA is still crippled in addressing compensation as benefits accrue to the public while individual pain is not ameliorated.

Economists developed the SCBA models to estimate project costs against future benefits but concealed the socio-cultural aspects of the projects (Neuman, 2011). However as a social science, involuntary resettlement goes beyond an economists' approach as it shifts concentration from project modules to human modules of PDPs. In '*China's Three Gorges Dam; questions and prospects*', Boxer's (1988) bisection on project costing noted that the non-quantifiable economic, social and psychological costs of resettlement are ignored in feasibility studies including uncertain land compensation costs and the potential decline in agricultural AAOV arising from land use changes. This arguments were built from studies by the PRCLAL.

The PRCLAL of 1998 compensation model consisted of three components. The first was land compensation followed by resettlement subsidies. There was next the compensation for crops and attachments on land and last was the labour resettlement. Predominant were the socio-cultural and economic considerations such as social welfare, retirement pensions and medical plan for the aged. An improved socio-cultural and economic policy is the post-reform PRCLAL 1998 amendments saw increased land compensation from 6 to 10 times but capped at 30 times the AAOV for the preceding 3 years to maintain the farmers' original living

standards (Chan, 2003). The resettlement subsidy increased from 3 times AAOV value to 10 times AAOV in addition to crop compensation and labour resettlement as part of compensation (Ding, 2005).

Chan (2003) summarizes the three modes of compensation in China as first, being acquisition in exchange for monetary land value assessment having regard to factors such as tenure, location and use; second is exchange of property title of the affected property with the property title of a replacement property. The acquiring authority also pays for tenants' removal and rental costs during the transition period with a temporary settlement subsidy. Third is job placement and urban license *hakou* status that includes access to social benefits as a sub-set of socio-cultural and economic costs. However, price control suppresses agricultural prices compared to industrial good pricing, making farmers discontent despite the increased compensation on 20-30 times AAOV. Ding (2005) observes this to be 0.25% capitalized rate after all input costs making it uncompetitive in any market in an economy where the government decides the crops grown and pricing based on the type of crops grown (Wilsen, 2011).

Jing (1997) takes an example of dam construction to raise four compensable areas ignored in the Three Gorges Dam project that relocated more than one million people. First was the government's miscalculation of the size of the target population by ignoring individual house heads per family, therefore under budget for resettlement, next was the government's coercive means of relocating the targeted population, third was the government's inadequate compensation for the resettled and finally, the enormous difficulties in economic recovery of the PDPs. The inadequacies emerged despite the project evaluation methods' continuum from CBA to SCBA perspectives illustrated by Chitre's (2010) model.

Table 3.1: Evaluating the Social Costs and Benefits

Costs	Benefits	Ignored Attributes (African Perspectives)
Change of use of land – if any	Employment generation	Landlessness and loss of right of avail.
De-forestation – if any (increased investment)	Taxes paid to government	Harvests from family land; tilling rights
Loss of livelihood for people whose land was acquired	Development of ancillary activities around the industry – e.g. restaurants, shops, etc.	Joblessness and loss of dependency support for vulnerable groups
Displacement of people	Infrastructure development	Landlessness and homelessness of vulnerable groups (women, minors and aged)
Damage to environment	Environmental compliance	Loss of natural common facilities: grazing grounds
Use of natural resources	Gross Domestic Product growth	Loss of ecological resources: forests, watering facilities

Source: Adapted from Chitre (2010)

Chitre’s (2010) SCBA model concentrates on the projects societal benefits at the expense of individual familial structures and therefore falls short of Cernia’s (1999) prism and HRBA on ‘quest for just terms of compensation’. Development partner frameworks call for HRBA under PANTHER approaches linking individual construct with the social one. This abyss is due to the missing feedback loop linking project planning and conceptualization of sociological effects expounded in the system management theory (SMT) by Katz and Khan (1978). Das (1996) calls for defining the socio-economic field for displacement and rehabilitation policies that conclusively address compensation. Wehrich and Kootz (1994) argue for management with global perspectives thereby enhancing the SMT. In this case, Umeh (1973) argues for compulsory acquisition on socio-economic justification as long as the social cost of not taking the land outweighs the individual benefit of keeping the land.

To expound on SCB and SCBA paradigms, contribution from the audit fields on the expectation gap theory were drawn to understand the externality concept contributing to the sociological angle of this study. The externality theory states that external effects emanate from goods that have an impact on welfare (positive or negative) but not taken into account

by the agent producing them (Keppler, 2007). Simpson (2003) notes that individuals bear some form of external cost which though imposed, is not compensated as an externality to the transaction. This means that PDPs bear the burden imposed by external factors or public benefit, at a cost ignored in the legislative frame-works. This is what Chitre (2010) refers to as benefits of ‘positive externalities’ to beneficiaries while the associated ignored costs are the ‘negative externality’ on individuals. Keppler (2007) argues that a feedback mechanism between the affected and those causing the negative externality is missing due to lack of a codified, reliable and measurable cause-response relationship. Just as Kamau (2013) argues that corporate failures and financial scandals result from audit failure to foresee and mitigate the expectation gap, the quest for just compensation is the failure in addressing socio-cultural and economic factors of compensation in the policy framework.

This means that internal and external factors affect perceptions of justice as dictated by externalities impinging on sociological, cultural and familial composition (Zikmud, 2009). The expectation gap in the audit field reflects a perceived difference between what one is expected to accomplish against what one personally believes he must accomplish (Ojo, 2006; Zikmud, 2009). When applied in compensation of involuntary resettlement, there is the policy and praxis on one hand and PAP’s perception of justice on the other hand. This is the crux in the praxis that forms the compensation gap under quest. The study related the ‘negative externality’ directly impacting the displaced as solatium to ameliorate the coercion (Chan, 2003).

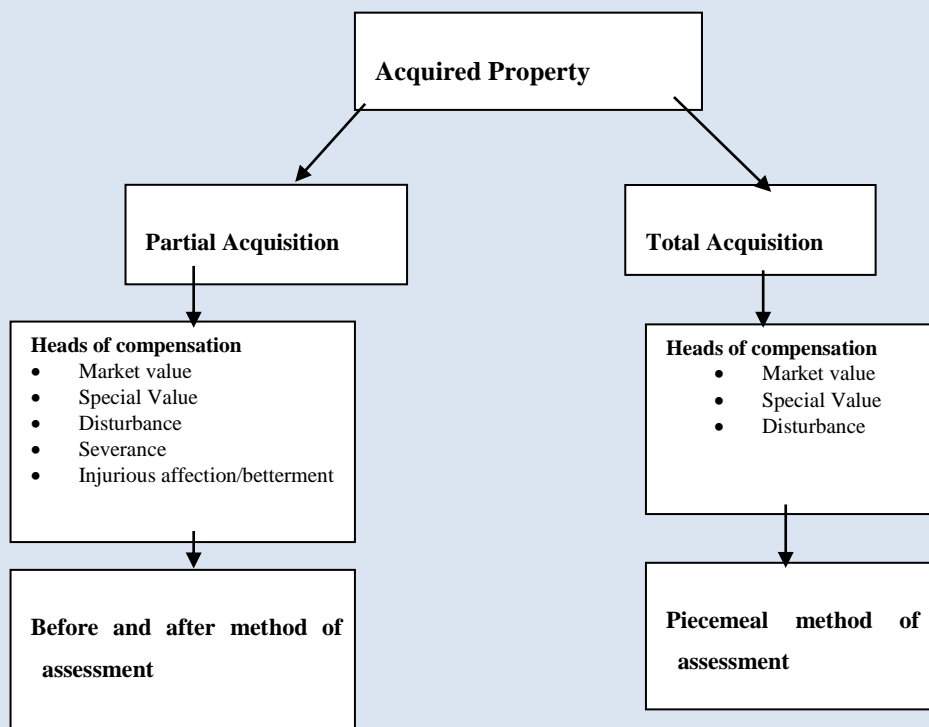
The principle of indemnification is the idea behind the rules of compensation and coercion to surrender land for reinstatement to the same economic position as if the compulsory purchase had never happened (Umeh, 1973). The rule is for the compensation to correspond to the *market value* of the property. When only part of the property is affected by compulsory purchase, the compensation must equal the *loss* of market value which the compulsory purchase entails. If this compensation does not fully cover the economic injury to the property owner, compensation shall also be paid for what is termed as *other damage* (Plimmer, 2008). However, there are socio-cultural and economic issues that are not covered in this argument due to challenges in quantifying their attributes (Cernia, 1999). According to Menezes (1991), energies exerted in project feasibility studies have relegated socio-cultural and economic issues as appendices, perpetrated by the economist-valuation approaches in

contrast to anthropological approaches in this study. The two schools of thought established the satisfaction gap and suggested parameters of just terms of compensation in resettlement.

3.1.2 Economist - Valuation Approaches

The economist valuation approaches are dictated by statutory frameworks and regulations on compensation praxis in compulsory acquisition. Among them is the Mangioni Total versus Partial Acquisition model that brings out salient principles in compulsory acquisition and compensation praxis. The approach hinges on the legal framework of acquisition in the commonwealth countries (Lawrence et. Al, 1976; Denyer-Green, 1989; Mangioni, 2008).

Figure 3.1: Total versus Partial Acquisition Approach



Source: Mangioni (2008)

The total valuation of land is synonymous with purchase. Total acquisition is upon the entire land parcel for amenities like schools or dams resulting to total displacement in a curvilinear pattern. This requires resettlement elsewhere and therefore the piecemeal method of assessment is used to compute compensation.

In partial acquisition, part of the land is excised for infrastructure like roads, underground pipelines or overhead power lines that inhibit some specified activities. Part of the land is

retained by the land owner but usage has a limited loss and the pattern is linear. The limitations imposed thereon may require the valuer to include severance, injurious affection and disturbance costs (Lawrences et. al, 1976; Syagga, 1994). The before and after valuation method conceptualizes judgement of the property's value before acquisition and the residual value after acquisition. The difference between the two values constitutes the impact of the acquisition on retained property (Lawrence et. al, 1976; Mangioni, 2008; Westbrook, 1977).

Severance is the effect on land by a takeover where land is cut or 'severed' into two parts thereby increasing the cost of continuing with the existing economic activities. An example is the cost of managing two parcels of a ranch separated by the infrastructure upon the excision.

Injurious affection is the undesirable impact on the remaining property after the acquisition, thereby diminishing the value of the remaining land. An example is a highway that blocks existing access to a property or associated nuisance like noise and dust.

Disturbance is the unexpected and forceful interruption of the existing lifestyle resulting to displacement and inconvenience. In Kenya, the law provides for an additional 15% of the compensation value as the allowance for disturbance.

Special value is the residual land value diminished due to the effect of the severance while the betterment value comprises the premium added to the market value by virtue of the positive effects of the project (see Umeh 1973 on betterment and worsement values). In Kenya, the compensation praxis disregards any special value assigned to the property due to need or urgency to acquire the land, the betterment value due to increase in property values and any illegal activity that would be voidable in law.

3.1.3 Sociological approaches

Sociologists critique the economist-valuation model by arguing that the household has conceptual issues that form the socio-cultural and economic lifelines (Ngau and Kumssa 2004). The authors define households in terms of extended families that live together as a shared community with both common resources and individual assets. This means that family size changes with new births, mortality and ageing. Therefore, elements of inter-dependence for sustainability by the vulnerable members from employment or from land based resources are shared assets supporting the family.

However, Mangioni (2008) argues that the missing link in assessing 'just terms of compensation' is the element of value on assumption that a non-willing seller is forced to sell. Longo (1983) supports this argument that property is fundamental to social construction of paradigms and customs representing a humane value system that is upset by displacement. The social disarticulation attributes emerging from involuntary resettlement have been ignored in the Mangioni (2008) model yet justice presupposes equity of these attributes that, if considered as financial datum, through a multi-faceted scientific approach, would address social disarticulation perceived by sociologists.

The sociologist school of thought looks at non-tangible and inferior interests ignored by administrative law on displacement and compensation. Cernia's (1999; 2000) eight-tier social disarticulation model illustrates the impoverishment risks and reconstruction elements as the basis of analysis of social-cultural and economic constructs of compensation in policy. The advantage of this model as an analytical tool for just compensation is that it is resultant from studies commissioned by the World Bank in monitoring of impacts by projects on social formations upon displacement. This is reinforced by the HRBA that define participatory levels for analysis in PANTHER frameworks. Therefore, the compensation for resettlement comprises variables under impoverishment from anthropological perspectives, in addition to direct economic attributes under the legal framework.

The HRBA's model distinctly includes the conventional tools of human rights and new tools of development co-operation (Fukuda-Parr, 2007). This model requires long term planning for projects to conceptualize the HRBA principles (OHCHR, 2006; Gabrielle, 2008). HRBA is cognitive of human rights and sustainability of livelihoods in involuntary resettlement. Braun (2005) argues that while material losses are typically compensated during resettlement, the non-material and psychosocial aspects of loss are not compensated. He further observes that complexity of customary laws; practices and lengthy procedures complicate dispute resolution on unresolved land boundary disputes. In support to this argument, Syagga's (2006) observed that by 2006, about 2/3 of Kenyans had no titles over land they owned yet compensation for land was tagged on title ownership. Therefore, in Cernia's eight-tier framework on involuntary resettlement is a component of societal values from an individual perspective adapting rationality in societal values under the concept of means in justice between political and social constructs introduced by Burger (2008). The study integrated

Cernia's (1999) framework of risk and impoverishment as the mean of social disarticulation between a valuer's perspective and sociologists' views on compensation.

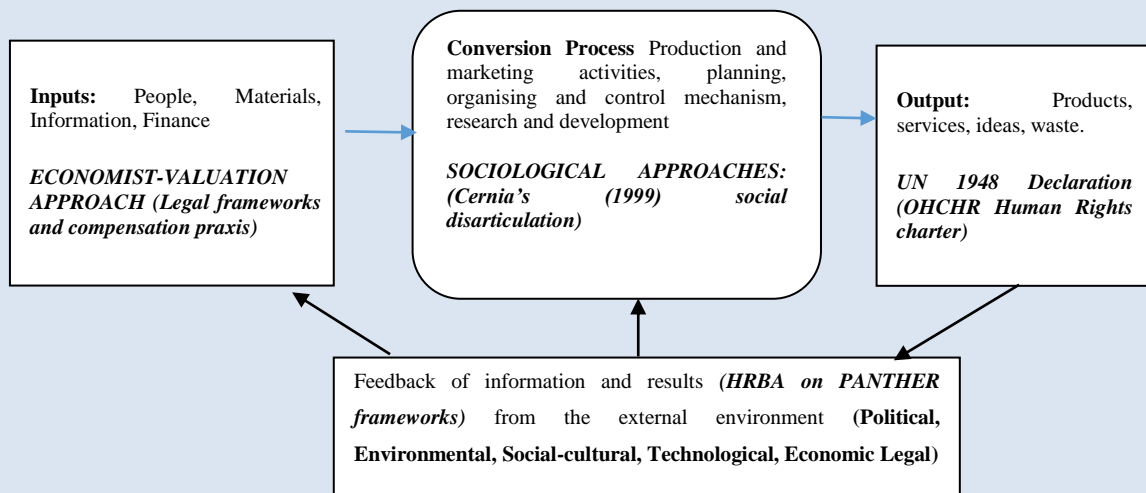
Mangioni (2008), Westbook (1977) and Syagga (1994) explain that it is the physical land being compensated and not derivative interests. Cernia's (1996, 1999, 2000) studies promote a just recompense model that transcends statutory provisions by enhancing need for standardized principles in valuation of social disarticulation.

Chan (2003) sees the solution being a special value considered as a financial hedge above the market value on use of the land as a consequential economic cushion or solatium. Forte (2005) also supports solatium in compensation to ameliorate the inconvenience and distress caused by compulsory takings. The ILAA of 1984, has a solatium component capped at 30% of the market value of land (Menezes, 1991).

3.1.4 Systems Management Theory

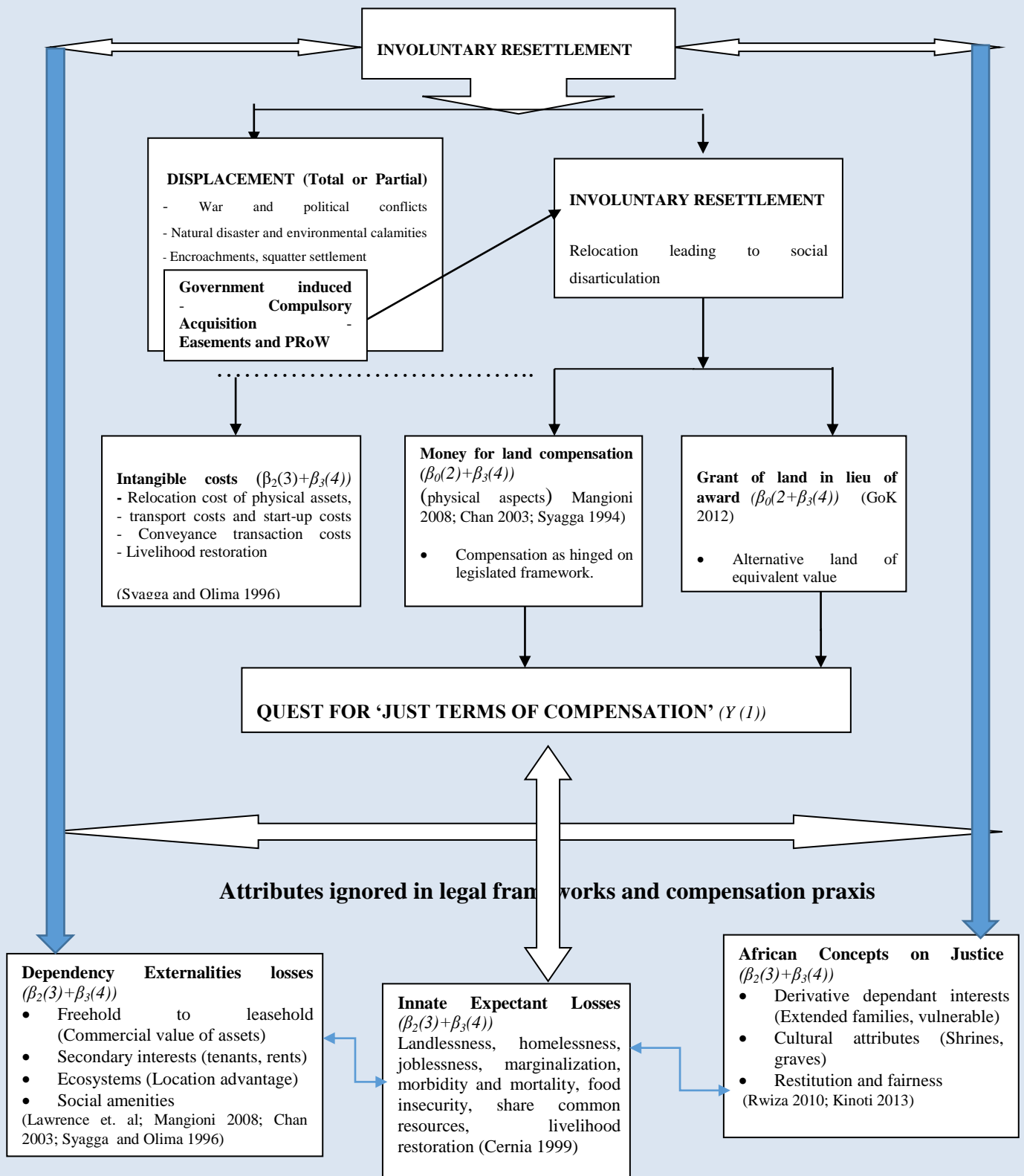
To crystalize the conceptualized model, the feedback loop is advanced in the SMT (Katz and Kahn, 1978). The SMT is appropriate for organizations to establish the feedback 'loop' process, fundamental in survival of an organization. Closed systems get no feedback to improve on delivery or sustainability, therefore attain positive entropy leading to death. Open systems have a feedback loop assisting in homeostasis and negative entropy through continued feedback on socio-cultural and economic compensation.

Figure 3.2: The Open System



Source: Adapted from Cole (1996)

Figure 3.3: The Conceptual Model of Just Terms of Compensation

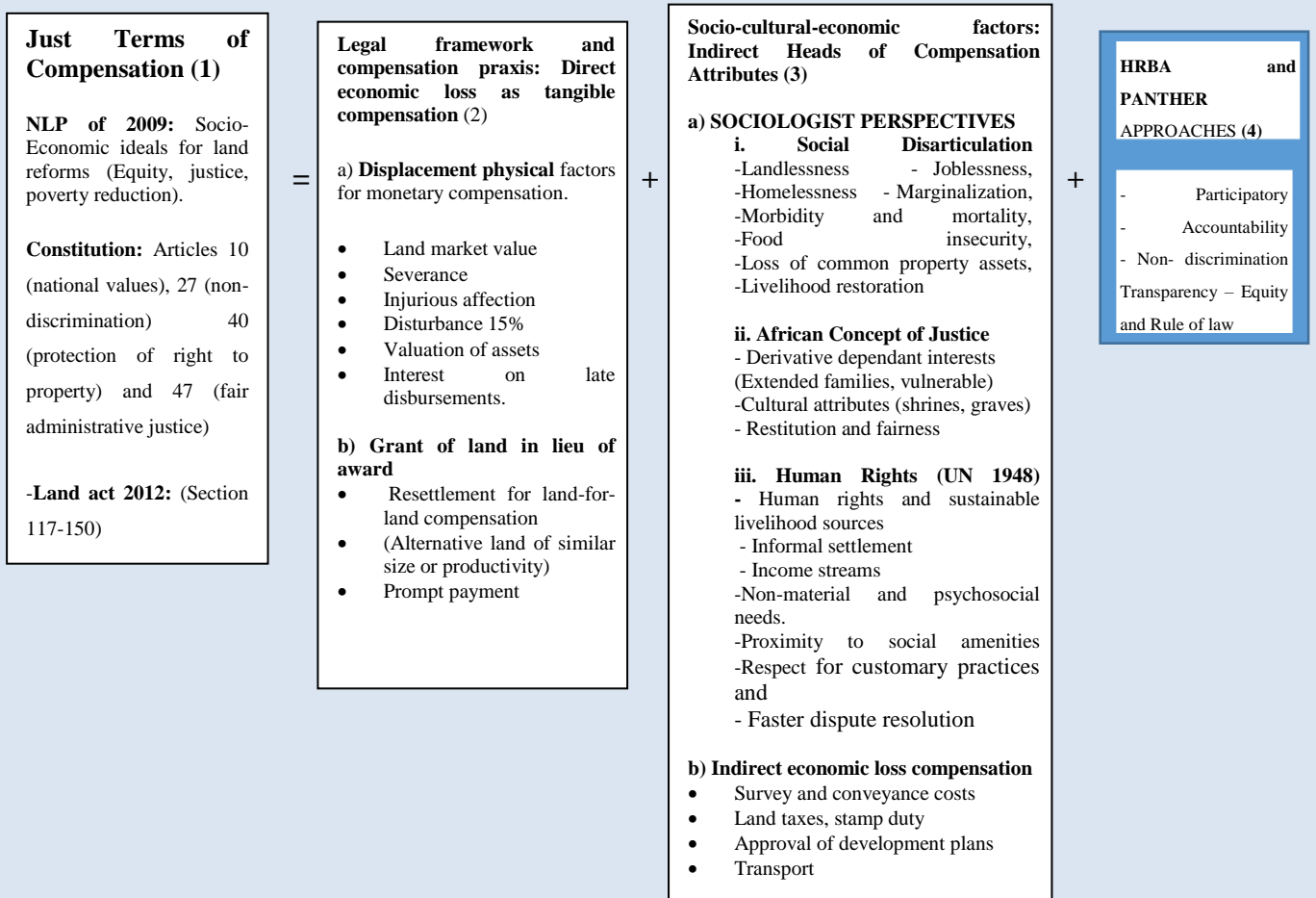


Source: Adapted from Cernia (1999)

The conceptual framework is a hybrid of legal frameworks enriched with socio-cultural and economic attributes within an open-system feed-back looped framework that suggests parameters of just terms of compensation. Fitted in the multiple regression equation, these parameters are expressed as follows:

$$Y(1) = \beta_0(\text{statutory (2)}) + \beta_1(\text{inclusion of socio-cultural and economic issues (3)})_1 + \beta_2(\text{Awareness/Participatory approaches 4})_2 + e$$

Figure 3.4: Operationalization of the conceptual model



Source: Author (2015)

CHAPTER FOUR

RESEARCH DESIGN AND METHODOLOGY

4.0 Introduction

This chapter discusses the research design and methodology of the study. It sets out the research strategy that extends to chapter five. Since the policy framework and compensation praxis are distinctly regulated by statute in Kenya, compensation principles are interpreted within Power of Eminent Domain and therefore a case study design was ideal in capturing detailed problem scenario and enabling meaningful conclusions to be drawn for the phenomenon under study. The case study was the Nairobi-Thika highway to satisfy the objectives of the study. Sequential organization of the chapter commenced with the case study design, research strategy, population frame, sampling methodology, data collection tools and analyses techniques.

4.1 Case Study Design

Research design is the strategy, outline or plan that is used to generate answers to research problems (Selltiz et. al. 1976; Saunders et. al. (2007). It is the conceptual structure within which research is conducted and constitutes the blueprint for the collection, measurement and analysis of data (Kothari, 2004). This research is a case study that utilized both secondary and primary information to evaluate the adequacy of policy frameworks and compensation using 28 prompts on awareness of the legal frameworks and inclusion of socio-cultural and economic issues to come up with just terms of compensation model. This was through an ethnographical approach that based the empirical evidence on the epistemology of justice. According to the Department of Anthropology at the University of Pennsylvania (2015), ethnography is a qualitative design, explaining patterns of values, behaviour, beliefs and language of a culture shared by a group of people. Peil (1995) observes that human behaviour is unpredictable and varies in contrast to the predictable plant and animal behaviour, meaning that though 'facts' are derived from empirical findings, they may be far from reality thereby validating need for case study designs for various phenomena. Neuman (2011) and Yin (2003) view case studies as useful for research on social science attributes that are relevant for policy orientation as opposed to physical or biological research.

A case study is a qualitative and quantitative analysis method that allows in-depth observations and analyses of interrelationships of social units such as individuals, family or

institutions (Kothari, 2008). It is an exploration of behavioral patterns to draw inferences and explanations that a study seeks to establish on a phenomenon's integrated totality (Yahya, 1976; Yin, 2003).

The case study approach is also suitable in analyzing inter-social relationships. Kothari (2008) argues that case study allows historical analysis and suggests measures for improvement based on the environment of the concerned social unit. Yahya (1976) used the case study approach in his thesis on *Urban Land Policy in Kenya* to establish causal relationships between variables. This study applied phenomenological approach in causal relationships between the dependent and independent variables using statistical tools that drew inferences and inter-relationships of the observed social unit (Selltiz et. al, 1976; Hinton et. al, 2011).

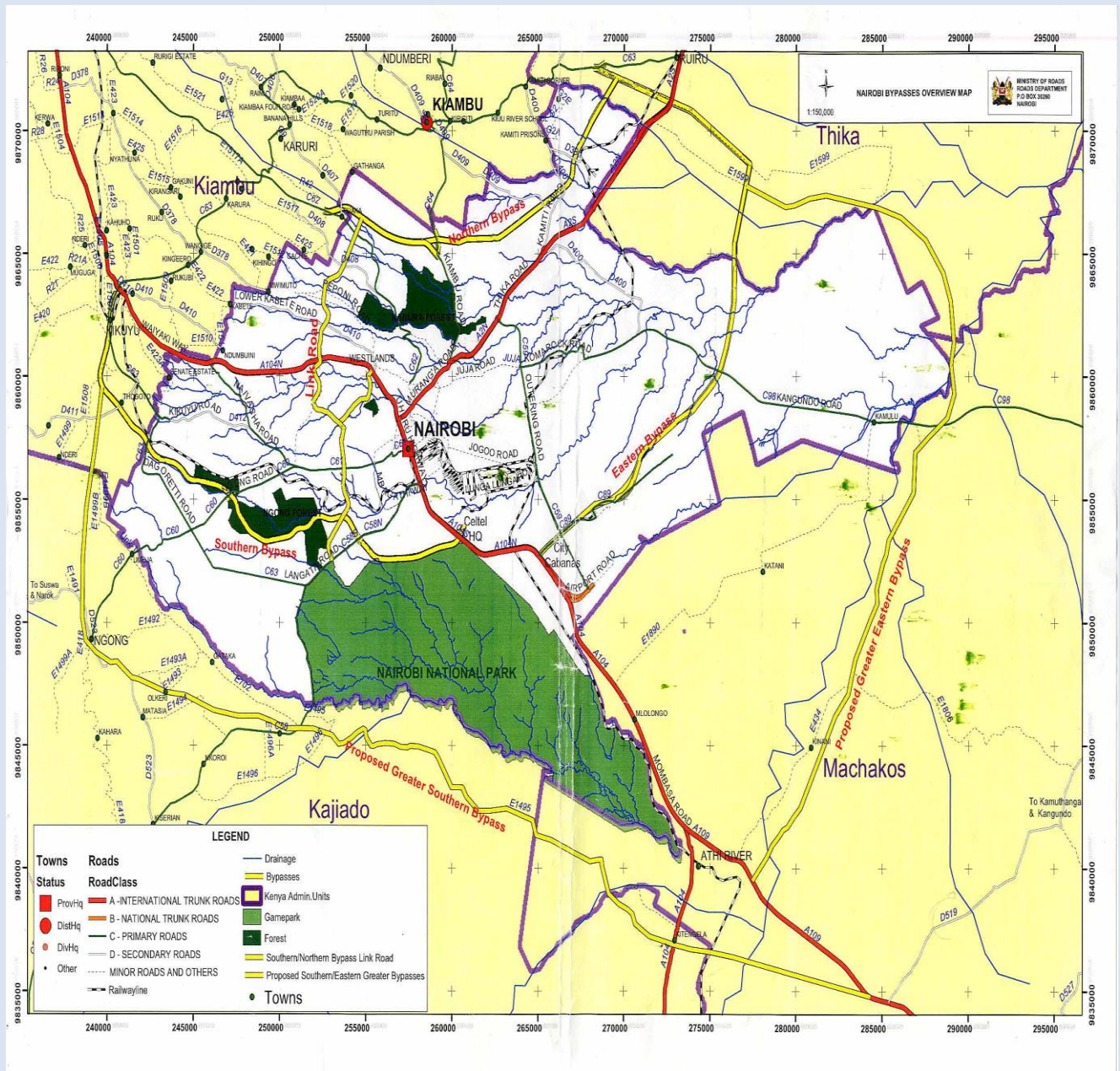
4.1.1 The Nairobi-Thika Highway Project

i. Introduction

The case study is the Nairobi-Thika highway, an on-going project under compulsory acquisition that resulted in displacement and involuntary resettlement of PAPs during a transformative land reform period. This project was chosen because of its magnitude spanning from Nairobi City to Thika town that brought out the diverse land uses that included commercial, industrial, institutional and agricultural that enriched the data findings. The projects' proximity to secondary information sources such as the Nairobi City hall and Ministry of Lands (MoL) registry records further proved ideal in making data collection convenient and affordable for the study.

The Nairobi-Thika highway is among the most recent public purpose projects undertaken in the land reforms period in Kenya, which though having been completed in 2012, issues of compensation are still outstanding. It involved the total or part relocation of PAPs due to excision of the land. The acquisition was undertaken using the LAA Cap 295 (repealed) of the laws of Kenya, transcending into the post-reform period when the highway was commissioned in 2012. This was after promulgation of Constitution 2010 and new enactments affecting land management and administration that included the Land Act 2012 on compulsory acquisition. Kenya National Highways Authority (KeNHA) was the acquiring body while the Commissioner of Lands (CoL) was the acquiring authority under the MoL.

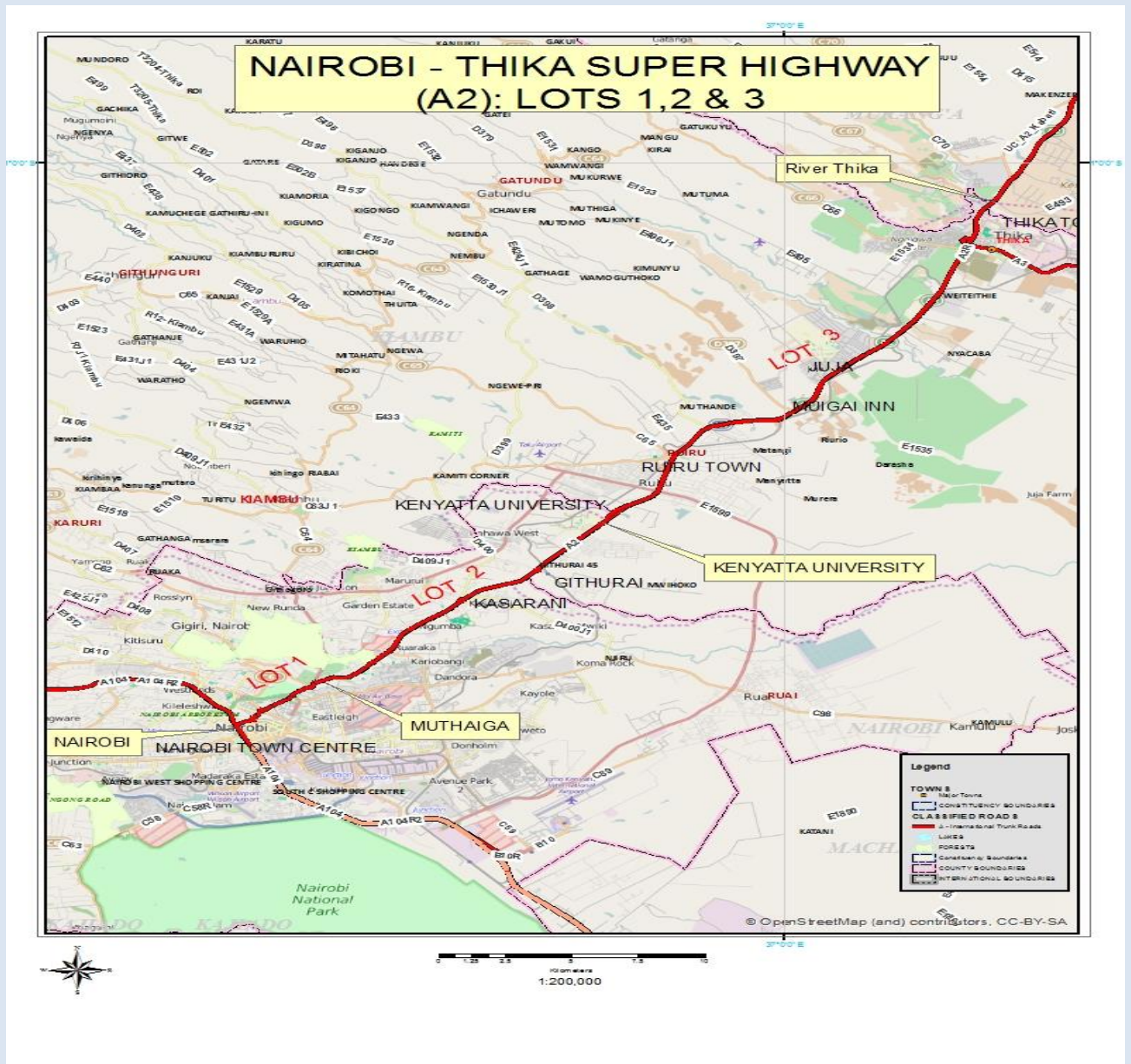
Figure 4.1: Nairobi County Trunk Road Network



Source: GoK (2015) Nairobi-Thika Road Upgrade Project Completion Report

Compulsory acquisition of land for the Nairobi-Thika highway had significant social-cultural and economic impacts relating to the road use and land use patterns in respect to settlements, institutional and commercial activities. This increased and decreased values of land and property belonging to institutions, businesses and private property along the road, thereby affecting the social-cultural and economic formations in affected areas.

Figure 4.2: The Nairobi-Thika highway



Source: GoK (2015) Nairobi-Thika Road Upgrade Project Completion Report

ii. Project Description

The Nairobi-Thika Superhighway is about 52.50 km long. It forms part of the international trunk road (A2) running from Nairobi City to Thika town, traversing through Nairobi and Kiambu Counties. The road is part of the larger Mombasa-to- Addis Ababa highway. The GoK embarked on a grand project to have the Nairobi-to-Thika road expanded from a four lane divided carriage way to an eight lane highway. This was to satisfy the ever increasing

traffic needs of the high density section by dispersing vehicular traffic into and out of Nairobi City through Muranga, Forest and Kariakor roads. The Nairobi-to-Addis Ababa highway extends from Moyale at the Ethiopian border and links the Great North Trans African highway that traverses from Cape Town in South Africa to Cairo in Egypt.

The road is a classified international trunk road A2 currently serving as a main cargo route and an important metropolitan, regional and international transit link. The road also acts as an artery for various satellite towns and economic hubs lying in proximity to the corridor. They include Ruaraka, Kasarani, Kiambu Town, Githurai, Ruiru, Juja and Thika. The economic activities range from manufacturing and entrepreneurial ventures and real estate developments to agricultural lands grown with coffee, tea, horticulture and flower farming, as well as a vibrant informal sector surround. Therefore, this highway is one of the most travelled corridors arterial to the Nairobi Metropolitan Urban Transport Plan (NMUTP).

According to a GoK study of 2004, the initial planning and diagnostic studies were for the improvement of the NMUPT as funded by JICA. The study findings had highlighted the inadequate urban transportation infrastructure system with extremely poor service level and shortage of capacity along the Nairobi-Thika corridor. The following are the before and after pictorial views of some sections of the highway



Plate 1: Highway status at Utalii College section



Plate 2: Upgrade to highway status of eight lanes



Plate 3: Roysambu Interchange



Plate 4: GSU under pass and overpass



Plate 5: Forest road interchange with overpass foot bridge



Plate 6: Shell Petrol station on Murang'a road with closed access.

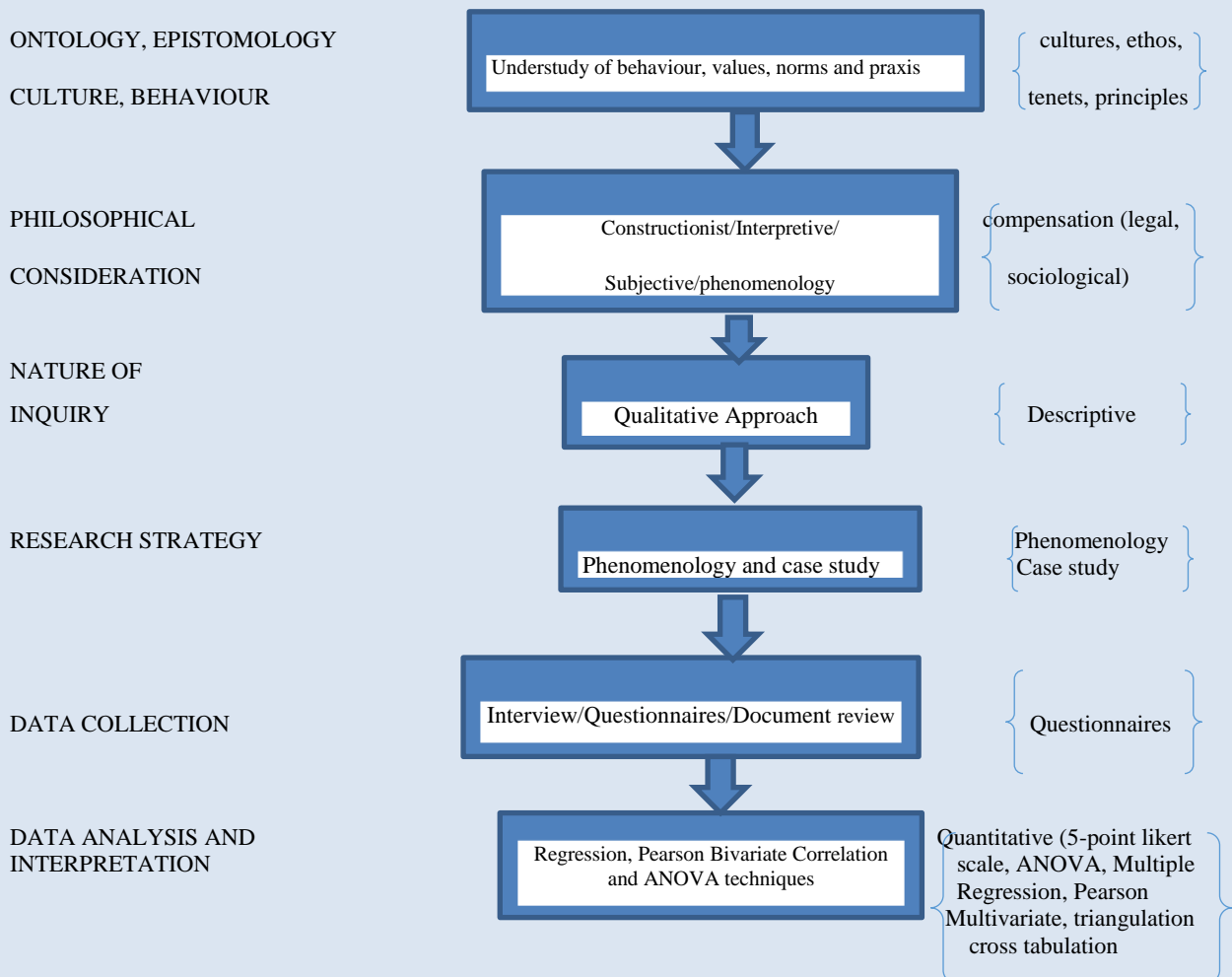
The Nairobi-Thika highway improved service levels by decreasing travel times and fuel costs through the improved traffic flow for the arterial towns. However, though some expropriettees were compensated, the above plates indicate that compensation ignored closure of business and the uneconomic use of remaining land in cases of part excision on business.

4.2 The Research Strategy

The study used a phenomenology strategy suitable in bringing out the knowledge gap between the traditional paradigms and legislated praxis, for an empirical interpretation of the study's objectives. According to Creswell (2003) and Saunders et. Al. (2007), social constructivism/interpretivism; positivist/post positivist; advocacy/participatory and pragmatism research paradigms are foundations for qualitative, quantitative and mixed methods approaches to research analysis. The philosophical theories that guided this research were social constructivism, interpretivism and pragmatism in interpretation of the findings.

This is a philosophical approach in research that describes events, experiences or concepts that have not been exhaustively explained (Kakulu et. al, 2009). The phenomenological strategy has philosophical orientation on constructionism and interpretivist to inquiry paradigm, an interpretive theory, a social science analysis or qualitative tradition that builds empirical evidence (Creswell, 2003; Kakulu et.al, 2009). This study relied on participants' views from which responses were interpreted to deduce suggestions on just terms of compensation for involuntary resettlement. The study appreciated that social constructivism critiques paradigms and norms as subjective, because knowledge is deemed historic and culture specific.

Figure 4.3: Phenomenological Research Design



Source: Adapted from Kakulu et.al (2009)

Phenomenology approach allowed parallel data collection whereby primary data responses supported secondary data whose information sources included review of the Constitution,

statutes, journals and manuals to satisfy part of objective one. Objective two was satisfied through primary data collected from field responses.

4.2.1 Data Sources and Data Capture of The Study Area

The population of study consisted of registered land parcels on both sides of the highway from Nairobi city to Thika town. A population is a large collection of individuals or objects that is the focus of a scientific query under study (Hyndman, 2008). According to Piel (1995), a population refers to all the cases or individuals that fit in a certain specification or category. Mugenda and Mugenda (2003) define a research population as a well-defined collection of individuals or objects known to have similar characteristics with common binding characteristics or traits. In this case, the population consisted the registered land parcels vide Kenya Gazette notices with confirmed registered proprietorship identified from searches conducted at the MoL Registries and enlisted in the population frame.

4.2.2 Population of the Study Area

The population list for the Nairobi-Thika Highway comprised the registered claimants on land parcels identified and compiled by KeNHA, representing the Ministry of Roads. These surveyed parcels were continually updated in seven gazette notice publications that formed the study's population frame. Cadastre information on parcellation was procured from the Office of the Director of Survey for identification of the parcel numbers. Thereafter, the MoL valuation department undertook searches to establish the registered ownership of the land. The population frame was thus published in accordance with the legal framework through:-

- Kenya Gazette notice no. 6034 and 6035 of 11th July 2008,
- Kenya Gazette notice no. 1396 of 20th February 2009
- Kenya Gazette notice no. 8748 of 21th August 2010
- Kenya Gazette notice no. 5902 of 28th May 2010
- Kenya Gazette notice no. 10904 of 17th September 2010
- Kenya Gazette notice no. 454 of 21st January 2011
- Kenya Gazette notice no. 16180 of 23rd December 2011

The population frame from the MoL's valuation department indicated 704 registered land parcels identified along the highway and listed in the above gazette notices. Implementers,

though not gazetted formed part of the sample to bring out policy implementation perspectives. Therefore, the total population had 714 elements from which the sample was categorized in four clusters as follows:

- Households representing residential homestead units that comprised 443 parcels in the population frame.
- SMEs represented light industrial and commercial businesses. They occupied 187 registered land parcels.
- Institutions representing social and public facilities such as schools, churches and universities. They occupied 30 registered parcels.
- Implementing institutions were not part of the gazetted population frame but comprised officers from the MoL and KeNHA who implemented the compulsory acquisition of land and compensation. Their contribution to the study gave an insight of policy implementer perspectives on compulsory acquisition. There were 12 officers.

Land parcels with unidentified ownership numbered forty four (44) and were not considered in the sampling frame. Together with PAPs with interest beyond precincts of this framework. The unascertainable proprietorship comprised 5.5% of the population that was considered negligible to affect the study outcomes. The remaining 94.5% elements represented the population of households, SMEs and institutions.

4.2.3 Sampling Frame

The sampling methodology first clustered the population into three categories for sampling in their respective strata. A sampling frame is a list, directory or index of cases from which a sample can be selected (Neuman, 2011; Mugenda and Mugenda, 2003). Sampling is the process of selecting units (people, organizations) from accessible population so as to fairly generalize results of the target population (Mugenda and Mugenda, 1999). Since it is expensive and time consuming to examine all items in the population, accurate results that represent the population attributes can still be obtained by studying the population sample (Kothari, 2008). A sample representing all attributes of the population saves on time and costs as well as optimizes available resources. This study adapted a sample size of 50% of

elements for each category and a survey for categories with less than 100 elements to ensure adequate representation of the population (Israel, 2002).

The next stage involved preparation of a sampling frame from the population frame that comprised the 704 registered parcels published vide the seven stated gazette notices. Kothari (2008) and Somekh and Lewin (2009), explain the two types of sampling techniques as the non-probabilistic and the probabilistic sampling techniques.

- i. Non-probabilistic procedure affords no basis of estimating the probability of each element being included in the sample by chance. It includes the deliberate sampling, purposive sampling and judgemental sampling methods.
- ii. Probabilistic sampling also known as chance or random sampling enables each element in the population to have an equal chance of inclusion in the sample. It includes systematic sampling, stratified sampling or area sampling. All involve an element of random sampling.

This study used probabilistic sampling to provide an equal chance for each element to be included in the sample (Kothari, 2008). According to Mugenda and Mugenda (1999), a sample is a subset of the population. Therefore, a good sample should be truly representative of the population, result in a small sampling error and be viable, economic and systematic to bring out results that are applicable to a universe within a reasonable level of confidence.

In this study, the degree of precision was sought at a 95% confidence level. This is in line with the central limit theorem, that means of samples drawn from a normal population are themselves evenly distributed and the larger the sample, the more the sampling distribution represents the normal distribution (Kothari, 2008). A large population will need higher precision and therefore, a large sample is best determined by a formula suitable for studies which the actual number of claimants is not exhaustively identifiable (Howitt and Cramer, 2011; Israel, 1992 Kothari, 2008). The sample size was determined by the level of precision this study preferred at 0.3. Thereafter, the sample size for each category was apportioned depending on its cluster size within the population frame. According to (Kothari, 2008), the sample size of the study was expressed as:

$$n = \frac{z^2 \cdot N \cdot \sigma^2}{[N-1]e^2 + z^2 \sigma^2} \dots\dots\dots (1.1)$$

Where: n= sample size;

z = the table value for the level of confidence, for instance 95% level of confidence =1.96, at 90% level of confidence =1.645, and at 99% level of confidence=2.576. This study assumed a 99% level of confidence.

q = margin of error also known as the desired level of precision preferred by the researcher. In this study, a 0.3 margin of precision was adapted.

σ = degree of variability/ standard variation of the population. In this study, a proportion of ± 3 was chosen to indicate the maximum variability of the population. Israel (1992) and Kothari (2008) derive the sample size of a known population (N) of the study as follows:-

- Total sample size
$$n = \frac{[2.57]^2 \cdot 0.672 \cdot 3^2}{671 \cdot 0.3^2 + [2.57]^2 [3^2]}$$
$$n = \frac{39946.4352}{119.8341}$$
$$n = 334$$

Mugenda and Mugenda (1999) indicate a sample size of 30% to be representative and reliable of large populations and allow for capture of non-responsive elements in the population. According to Somekh and Lewin (2009), survey samples should be sufficiently large so that major sub-groups contain at least 100 cases and smaller subgroups contain 20 to 50 samples. The study's sampling methodology borrowed from a study on *Urban Land Policy in Kenya* by Yahya (1976). First the population was categorized in clusters along the four homogenous categories namely households, SMEs, institution and implementers. In the above case, the sample size for households would have been 205 elements and SMES 87 elements both at a 46% population representation. However, the study adapted a 50% sample size for households and SMEs to be representative. This was done using lottery method in random sampling after regular intervals to identify the elements. A census survey was undertaken for institutions with 30 elements and policy makers/implementers with 12 elements. The sample size of the study therefore derived 356 elements to represent the population. The sample sizes enabled comprehensive capture of outcomes and allowed for non-responsive elements. The level of precision for each category was derived as follows:

- House hold
$$q = z \frac{\sigma}{\sqrt{n}} \times \sqrt{\frac{[N-n]}{[N-1]}} \dots\dots\dots (1.2)$$

$$q = 2.57 \frac{3}{\sqrt{221}} \times \sqrt{\frac{[443-221]}{[443-1]}}$$

$$q = 0.26$$

- SMEs
$$q = 2.57 \frac{3}{\sqrt{93}} \times \sqrt{\frac{[187-93]}{[187-1]}}$$

$$q = 0.4$$

Table 4.1: Population and Sample Size for the Nairobi-Thika Highway

Category	Population	Sample size	Percentage representation on the population
Land Owners	443	221	50%
SMEs	187	93	50%
Institutions	30	30 (survey)	100%
Implementers	12	12 (survey)	100%
Unidentified ownership*	44	–	–
Total	716	356	

Unidentified plot ownership though gazetted, they did not form part of the sampling frame due to missing proprietorship documentation.*

Source: Kenya Gazette notices of 2008, 2009, 2010, and 2011

4.2.4 Tools and Methods of Data Collection

Burns and Grove (2003) define data collection as the precise, systematic gathering of information relevant to the research problems using methods such as interviews, participant observations, focus group discussion, narratives and case histories. Two types of data collection methods applied in the study were the primary and secondary methods:-

i. Primary data collection method

The data collection tools for the study consisted of structured questionnaires with open ended questions to enhance clarity of the responses. Research assistants distributed the questionnaires to the identified PAPs who were given time to indicate their responses, on a drop and pick latter basis. As a data collection instrument, questionnaires are appropriate for social studies because they collect information that is not directly observable by inquiring about feelings, motivations, attitudes, accomplishments as well as experiences of individuals as applied in the study by Syagga and Olima (1999).

In addition, questionnaires presented an even stimulus to a potentially large population (Somekh and Lewin, 2009). Questionnaires have the added advantage of being less costly, using less time and useful in obtaining objective data by allowing the respondents greater confidence in anonymity (Kidder, 1981). While the close-ended questions guided the respondents' answers within the set choices, the open-ended questions were useful in detailed responses that enabled collation with the structured questionnaire. The structured questionnaire also doubled as an interview guide that the research assistants used to assist the semi-illiterate indicate their responses (Neuman, 2011).

The questionnaire was based on the direct and indirect variables of compensation structured to measure the satisfaction gap in compensation, the level of awareness of PAPs on the legal framework and inclusion of socio-cultural and economic issues in compensation. The questionnaire had 28 prompts that brought out the dependency relationship between the variables in evaluating the first two objectives. The questionnaire had three parts with indicators that explained the objectives under study:

- Part A comprised the demographics of the categories under study.
- Part B evaluated the level of awareness of legal framework on just terms of compensation in involuntary resettlement to satisfy objective two.
- Part C evaluated the adequacy of policy framework on just terms of compensation in involuntary resettlement to satisfy objective one.
- Part D focused on inclusion of socio-cultural and economic issues incorporating Cernia's (1999) eight-tier social disarticulation model to suggest parameters of just terms of compensation to satisfy objective three.

To enhance the response rate, the study put into consideration the research ethical issues of confidentiality and anonymity of identities and ensured voluntary participation. To confirm identity of the respondents, local administration assisted in the identification process and their offices doubled as collection centres. The researcher explained to the respondents importance of the study and confidentiality of information that would be used for academic purposes only.

i. Secondary Data Collection Methods

Literature reviewed was on compulsory acquisition policy and legal frameworks and donor partner guidelines on compensation. This included books, journals, periodicals, the constitution, statutes, regulations and working manuals to evaluate the policy frameworks and compensation praxis in Kenya. The internet also assisted in sourcing for relevant information on the study. In sourcing secondary data, reliability, validity and representation on the study objectives were important. Sources of information were:

- MoL being custodians of records ensured reliable land ownership documents. The Valuation department confirmed compensable interests, heads of compensation and quantum.
- Ministry of roads engineering and survey department together with KENHA ensured validity of the parceled land being acquired for the road.
- Nairobi County Council assisted in availing building plans within the County.
- Constitution 2010 and Land Act of 2012 with the transitory regulations.
- World Bank Reports and donor partner submissions and
- Kenya Gazette Notices nos. 6034 and 6035 of 11th July 2008; 1396 of 20th February 2009; 8748 of 21th August 2010; 5902 of 28th May 2010; 10904 of 17th September 2010; 454 of 21st January 2011 and 16180 of 23rd December 2011.

Information from secondary data assisted in responding to objectives one and two.

4.2.6 Pilot Testing

In order to minimize possible instrumentation error and increase the reliability of the data collected, a pilot study was conducted to measure the research instruments' reliability and

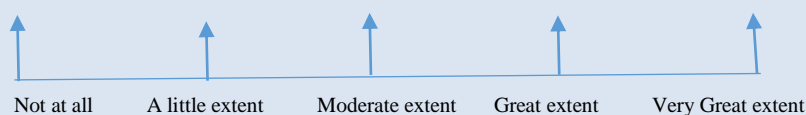
validity (Selltiz et. al, 1976). The pilot study was conducted on 5% of the sample population to detect any weakness in the questionnaire design, instrumentation and relevance of questions for subjection to the respondents. Responses were first codified in their respective clusters to identify each response within the 5-point likert scale. The questionnaire was subjected to overall reliability analysis using the Cronbach alpha as a coefficient of internal consistency. Internal consistency measured the correlations between different items on the same test (or the same subscale on a larger test) and whether several items that proposed to measure specific objectives generally produced similar scores. In addition, this study used both construct and content validity. For construct validity, the questionnaire was divided into several sections, not only for assessing information for a specific objective, but also ensuring that the questions focused on the conceptual framework.

4.3 Data Processing And Analyses Techniques

Data analysis is the codification, organizing and processing of data to make meaningful information for statistical analysis (Sounders et. al, 2009; Hyndman, 2008). Burns and Grove (2003) define data analysis as a mechanism for reducing and organizing data to produce findings that are interpretable by the researcher. The study's field data was qualitative and had to be coded to ease analysis. It was first editing to handle blank responses and categorization of the responses on the likert scale by keying information in respective categories in the Statistical Package for Social Sciences (SPSS) version 20 computer software (Bryman and Cramer, 2001). This is the latest version of statistical software at the time of study that is easier to programme for use than other statistical software in reference to output (Hinton et. al, 2004).

Data entry used the 5-likert scale model that produced interval data on a continuous scale for statistical analysis. These summated scales are suitable for qualitative data as they allow for a numerical score agreeing or disagreeing with a statement that is converted to descriptive statistics.

Figure 4.4 : 5-Point Likert Scale



(1 point)

(2 points)

(3 points)

(4 points)

(5 points)

Source: Kothari (2008)

Likert scaling technique therefore attaches a scale value to each of the responses. The technique produced descriptive and inferential statistics used to derive generalization and conclusions regarding the population. Descriptive statistics included frequencies and percentages while inferential statistics were Analysis of Variance (ANOVA), Multiple Regression Analysis and Pearson Bivariate Correlation that observed the casual relationships of different independent variables against the dependent variable. Application of the three techniques enhanced credibility of the outcomes as it allowed triangulation, thereby confirming the findings.

4.3.1 Tests of Significance

The data analyses assumed a linear correlation with homoscedasticity. The correlation with the random variables indicated a homogeneity of variance meaning existence of casual relationship between the dependent and independent variables being measured. This was established using the three techniques in allaying the data, for valid results. The analyses assisted in cross tabulation and triangulation for comparison and collation of findings in testing the hypothesis. The indicators of the analyses techniques are stated below:-

i. Analysis of Variance Technique (ANOVA)

The ANOVA technique compared responses to each questionnaire from ‘between’ the four categories and also ‘within’ each category namely households, SMEs, institutions and policy makers/implementers. ANOVA first established the sample means ‘within’ each category. The respective sample means were then compared ‘between’ the four sampled categories. Sum of total category means were then broken into component parts of each category from first, their own ‘within’ mean and secondly from the grand ‘between’ mean. Basically, the total deviation was partitioned into ‘within group variance’ and ‘between group variances’ and cross tabulation sorted the unit characteristics among the given variables. Each cell in the table represented different attributes of each variable and therefore, the entire table included all combinations of an attribute in each category (Hinton et. al, 2004; Kothari, 2008). The control group was the policy makers/implementers giving the baseline of statutory praxis while intervening groups were the households, SMEs and institutions. All categories were

subjected to the same treatment to establish variance from the legal framework and praxis. The variances were analysed for deviations from the standard mean.

The output of the ANOVA analysis were further subjected to the Multiple Regression analysis to test the influence or best fit of the independent or predictor variables on the dependent variable as the model of explaining the fit between awareness of the legal framework, the compensation praxis and inclusion of socio-cultural and economic issues in determining just terms of compensation.

ii. Multiple Linear Regression Analysis

This technique is used when the dependent variable is a function of two or more independent variables (Kothari, 2008). Regression analysis predicts the dependent variable based on covariance with all the independent variables. The analysis indicates the spread of the variables along the regression line for a best fit. The more the cluster along the line, the better the fit or correlation. A coefficient of determination (R Square) = or > 0.5 means the higher the coefficient, the stronger the relationship between the variables (Hinton et. al, 2004,; Neuman, 2011). The effect of an increase in awareness by 1 unit resulted to a corresponding increase in just compensation. According to Saunders et. al. (2009), the formula of an increase in ‘Y’ would lead to a corresponding increase in ‘X’ for the three independent variables expressed as:-

$$Y = \beta_0 + \beta_1 X_1 + \beta_2 X_2 + \dots + e \quad \dots \dots \dots (1.3)$$

Since we have three independent variables driving the dependent variable, the suitable model was multiple regression which describes such relationships where:

Y = is the dependent variable (just terms of compensation)

{ β_i ; $i=1,2,3$ } are the regression coefficients for the independent variables ($X_{i,\dots,n}$) to measure sensitivity of the dependent variable to unit change of the predictor variable

X_1 = Awareness of the legal framework and compensation praxis weighted₁

X_2 = Satisfaction gap with compensation praxis weighted₂

X_3 = Inclusion of socio-cultural and economic issues weighted₃

e = the error term normally distributed with mean zero and constant variance.

Therefore application on the conceptual model on just terms of compensation is as follows:

$$Y = \beta_0(\text{legal framework and compensation praxis}) + \beta_1(\text{level of awareness}) + \beta_2(\text{just compensation gap}) + \beta_3(\text{socio-cultural and economic issues}) + e$$

ii. Pearson's Bivariate Correlation

Pearson Bivariate Correlation is a test of association between two variables (Hinton et. al, 2004; Cooper & Schindler, 2011). It explains the strength and degree of variation by checking whether variables move in the same direction or in a different direction when exposed to a stimulant. According to Kothari (2008), bivariate correlation indicates the relationship between two variables. It ranges from +1 to -1 where 1 indicates a strong positive correlation, a -1 indicates a strong negative correlation, while a zero (0) indicates lack of relationship between the two variables. The correlation significance at 0.05 level is precise on a 2 tailed test and the precision and strength of the relationship decreases as one leans towards 0.01. Above 0.05 level then the correlation is stronger in precision and strength. The closer the correlation tends to zero the weaker it becomes due to lack of a pattern of association (Hinton et. al, 2004).

Karl Pearson formula is expressed as:-

$$\rho_{X,Y} = \frac{E[(X - \mu_X)(Y - \mu_Y)]}{\sigma_X \sigma_Y} \dots\dots\dots (1.3)$$

where:

- COV and σ_X are defined as above
- μ_X is the mean of X
- E as the expectation., i.e. $\frac{\sum}{n}$
- N = number of pairs of observations of X & Y
- σ_x = Standard Deviation X
- σ_Y = Standard Deviation Y

According to Cooper and Schindler (2011), if the probability (p) value is <0.05 , it is an indicator of significance. If p-value is >0.7 , there is no significance and the alternative

hypothesis holds. In interpreting the analysis, the rule of thumb is dictated by measure of significance as follows:-

4.3.2 Measures of Central Tendency

Measures of central tendency either indicate the spread of responses in the median, mode, or mean. This study adopted the mean as the average spread of responses on a likert scale. The statements expressed in the questionnaire on a 5-point likert scale indicated favorability or unfavorability on a continuum with a numerical value that measured the respondent's attitude. According to Kothari (2008), the scale ensures each item has a response with the respondent having latitude to express their independent opinion. The most favorable response had the highest mark of five (5) points with the least being one (1) mark.

a. The mean of each variable under study totalled to 15/5 in a 5-point likert scale giving the average mean as 3.0. Scores >3.0 indicated satisfaction or adequacy of compensation and <3.0 was dissatisfaction or inadequacy (Kothari, 2008; Somekh and Lewin, 2009). As a measure of dispersion, the **SD** indicated the unity of scores from the sample mean. The wider the spread, the further the SD from the mean while a SD=0 meant no variation from the sample mean

b) Cronbach alpha coefficient is used as a reliability test on the appropriateness of the question to measure what is desired. Bryman and Cramer, (2001) and Israel (1992), provide the following rules of thumb for Cronbach alpha where a P value of >0.9 – Excellent, >0.8 – Good, >0.7 – Acceptable, >0.6 – Questionable, >0.5 – Poor and <0.5 – Unacceptable. As one moves towards a P value of 0.00 then the results concur with the statement (prompt). Cronbach alpha as a coefficient of internal consistency indicates acceptable value of 0.7 as a cut-off for reliability for this study (Sekaran 2003). A recorded Cronbach alpha of 0.000 is interpreted as $p < 0.001$ (Hinton et. al, 2004)

c) The F statistic value compares the variance of two independent samples. In this study, the variance of interaction is between the sampled categories namely the households, SMEs, institutions and implementers against each independent variable indicates it is significant assuming sphericity or homogeneity of the samples. The F statistic is expressed as follow:

$$F - \text{ratio} = \frac{\text{mean squares between sample variance}}{\text{mean squares within sample variance}} \dots\dots\dots (1.4)$$

Degrees of freedom in this study is $n-1 = (k-1) + (n-k)$

Where n are total number of questions = 29

K is the number of categories =4

Therefore $df = 29-1=28$

The F-ratio or F-statistic is important in measuring the null hypothesis. The F values for given degrees of freedom at different levels of significance are worked against the critical statistical table values. According to Hinton et. al. (2008) and Kothari (2008), If table (critical) value (p) is > than the calculated value then the results are insignificant and the alternative hypothesis holds. If table (critical) value (p) is = or < than calculated value, then findings are significant and null hypothesis is upheld.

4.4 Data Presentation

The data needs for the three objectives of this study are presented in Table 4.2 below.

Table 4.2: Data analysis tools and presentation

Objective	Data needs	Source of data	Data collection method	Data analysis technique	Expected data output
1. To evaluate the adequacy of policy frameworks and compensation praxis for just terms of compensation in involuntary resettlement.	-Literature review on legal framework and compensation praxis - Review on institutional guidelines	Secondary data source	Semi-structure questionnaires Literature review	-Kolmogorov-Smirnov test -ANOVA --Multiple Regression Analysis Pearson Bivariate analysis	-Average Means of variance -Percentiles. -Regression equation (R ²) -Pearson Correlation Coefficient
2. To evaluate the level of awareness on policy frameworks on just compensation praxis in involuntary resettlement.	Field study on awareness of policy on involuntary resettlement frameworks	Primary data source Secondary data source	Semi-structure questionnaire	- ANOVA -Multiple Regression analysis -Pearson Bivariate analysis	-Average Means of variance - Percentage pie charts. -Regression equation (R ²) -Pearson Correlation
3. To suggest parameters to be included in the 'just terms of compensation' model for involuntary resettlement.	Questionnaires ANOVA and Multiple Regression analyses	Primary data source	Semi-structure questionnaire	-ANOVA -Multiple Regression analysis -Pearson Bivariate analysis	-Regression equation (R ²) -Pearson Correlation Coefficient

Source: Field Study (2015)

This chapter satisfied objectives one and two and the data findings and presentations are analysed and discussed in Chapter Six. The following Chapter five is an extension of the research methodology on secondary data information sources that reviews Kenya's legal framework in further support of objectives one and two of the study.

CHAPTER FIVE

KENYA'S INVOLUNTARY RESETTLEMENT LEGAL FRAMEWORK AND COMPENSATION PRAXIS

5.0 Introduction

This chapter is an extension of the research methodology from the previous chapter. Chapter five reviews the policy and legal frameworks by examining the adequacy of compensation in involuntary resettlement. The legal frameworks and patterns of economic development invoked to justify the forced eviction of people are often incompatible with reform ideals of equity and social security secured in constitutional mandates (Umeh, 1973). Kenya is no exception where, instances of national and regional development agendas have underscored the socio-cultural and economic interests of families when compensating for displacement and involuntary resettlement (Kothari, 1996; GoK, 2010). This emanated from colonial orientation in legislation and praxis. To understand the land reforms in Kenya, we borrow the World Bank, JICA and AfDB institutional guidelines modelled on a qualitative analysis of compensation that Cernia's (1999) summarises in the impoverishment, risk and reconstruction model. Ignorance of such analyses resulted to social-cultural and economic disarticulation prescribed in the NLP (GoK, 2009). These are administrative reforms on compulsory acquisition of land to achieve a rationalized, secure and equitable, transparent, efficient and non-discriminatory institutional framework that crystallizes ideals of justice in involuntary resettlement. A historical review of Kenya's appropriation and expropriation policy is necessary in understanding the policy frameworks on compensation praxis for involuntary resettlement.

5.1 Involuntary Resettlement Policy Framework

Theorization of policy frameworks commence with the expropriation and alienation of land in Kenya as a colonial legacy traceable to the Berlin Conference of 1884-1885 that drew up boundaries of European colonies and protectorates. The conference encouraged imperial spread of spheres of influence in Africa through treaties and agreements with chieftaincies (Wilson, 1980; Were, 1974). Land became the primary resource central in human life (Umeh, 1973), but gradual expropriation and appropriation resulted in a landless African class (Kalabamu, 2000). According to Dunning (1968), the law of eminent domain supersedes all other land rights once adapted in his legal framework.

In Kenya, the Imperial British East Africa Company ceded all property rights along the 10-mile coastal strip from Tanzania to the Somali boarder, excepting private property, to the Sultan of Zanzibar in 1888 (Okoth-Ogendo, 1991). In 1897, the East African Order of the Council applied the ITPA of 1882 and the ILAA of 1894 to the rest of the East African Protectorate to secure land for construction of the Uganda railway line and other public projects (Okoth-Ogendo (1991). This was after declaration of the protectorate as crown land and extension of the political jurisdiction in 1920. The 1896 Uganda Railway Act had provided for the construction of the railway line that initiated expropriation in Kenya in 1895 with the construction of the railway from the Kenyan coast line. Sir Elliot, the Commissioner to the Protectorate encouraged settlers to exploit and settle in the Kenyan highlands between 1900 and 1904 to help pay for the construction of the railway. Settlers came from Britain, S. Africa, Australia, Canada and other lands, clearing the bush to start their lives. Ultimately, Kenya was formally declared a British protectorate with all land vested in the Crown (K'Akumu, 2002).

To encourage investors, the 1898 East African Order of the Council vested in the Commissioner of the Protectorate power to grant 99 year leases in the railway zone. The 1901 East African (Lands) Order of the Council empowered the Commissioner to alienate all public lands gained through treaties, convections or agreements and land acquired by the ILAA of 1894. Concept of chieftaincies had assumed that chiefs held all the land rights of their subjects and these rights were obtainable by agreement.

The 1902 Crown Lands Ordinance clarified nature of title; The Land Titles Ordinance replaced the IBEACo. regulations on holding of certificates of occupancy by introducing registration of certificate of ownership as evidence of land ownership against all including the State. Licenses were surrendered in exchange for 99 year leases for town plots and 999 year leases for agricultural land though the settlers desired freeholds (Wilson, 1980). This meant that clan heads and members had no right to alienate land under their use as Africans became tenants-at-will of the crown with no legal rights over the land (Okoth-Ogendo, 1991). This led to displacement of indigenous tribes to unproductive margin 'reserve land' while their fertile land was split into large European farms (Wilson, 1980). This Ordinance was a precipitate of the Maasai 1902 and 1911 treaties that moved the community from native reserves in Laikipia to the Rift Valley, and the Nandi treaty of 1905 to enable Europeans

settle in the white highlands (Okoth-Ogendo, 1991). Fertile land belonging to Kikuyu, Maasai, Kamba, Nandi and other tribes was subsequently taken in the highlands and parts of the Rift Valley for European settlement (Kiamba, 1989; Syagga, 2006). Further expropriations to create European soldier schemes defined compensations to as low as 5 rupees for each hut in the forced evacuation (Harbeson, 1973). African farming was subsistence in the native reserves as settlers developed commercial farming with the available cheap African labour (Kiamba, 1989). The PDPs families from Central Kenya moved west through Kijabe and settled in the North Rift region of Uasin-Gishu, Trans Nzoia, Nandi and West Pokot Districts, former ancestral land of Maasai and Kalenjin (Gisemba, 2008).

In 1908, the Crown Lands bill allowed exclusive European settlement in the highland areas along segregation lines yet allowing Europeans unlimited amounts of land in low-land areas. In 1910, a uniform system of registering authenticity of transaction but not title, was developed as conclusive evidence against any other interests and non-registration meant the document was inadmissible. The 1915 Crown Lands Ordinance alienated all land including 'native reserves' and native tribal lands to the crown occasioning the greatest annexation of African land that gave settlers first claim on any land before the locals. The Registration of Titles Ordinance of 1919 superseded all other instruments by conferring certificate of title as conclusive evidence of absoluteness and indefeasibility of registered proprietorship unless on grounds of fraud or misrepresentation (Okoth-Ogendo, 1991).

The 1920 Kenya (annexation) Order-in-Council and 1921 Kenya (Colony) Order-in-Council, the Ordinances introduced racial segregation in Kenya by separating whites from other races in the highlands while stating that more land could be alienated from the reserves (Okoth-Ogendo, 1991). Such legislated frameworks finalised the disinheritance of Africans and to some extent, the Asiatic communities in perpetuation for a free though exclusive free enterprise. This was to crystalize the CMP where private tenure is assumed to ensure intense and efficient use of land for higher returns (Payne, 2002).

In 1932, the Carter Commission fixed boundaries of the white highlands, with the Native Trust Bill reserving certain areas for exclusive use by Africans though the Governor retained rights of alienation for use and benefit of non-natives. This was followed by the Crown Lands Amendment Ordinance of 1938 that removed native reserves from Crown land. The Highlands Order-in-Council of 1939 delineated the management and boundaries of highland

areas and the Native Lands Trust Ordinance of 1938 controlled land usage in trust lands including the northern frontier. The reserves became 'native lands' with additions from Crown land set aside as 'native reserves', 'temporary native reserves' or 'native leasehold areas'. In 1940, the Native Authority Ordinance and the Land Control Ordinance of 1944 empowered the Commissioner to inhibit natives from cultivating outside their reserve areas. Native reserves were under the Native Lands Tenure Rules of 1956 provided in the Native Lands Registration Ordinance that allowed adjudication and consolidation of private holdings in reserves and stopped litigation on such lands held in quietude of possession. This closed out the disposed together with the Land Control (Native Lands) of 1959. The mounting pressure on land in the reserves resulted to critical economic and political demands for restoration of 'stolen lands' by the displaced, and precipitated the *Mau-Mau* uprising of 1952 (Harbeson, 1973; Syagga, 2006). Okoth-Ogendo (1991) cites the Carter Commission of 1934 that organised the reserves, and compensated expropriation of native land based on community use and not equal or equivalent land as an injustice of social-cultural and economic magnitude. This was further aggravated by the Commission's 1958 report on absoluteness of title conferring registration up to a maximum of five proprietors.

The Governor could avail certain areas for native use when deemed necessary. Harbeson (1973) argues the role of administration was to shape customary land practises to suit the British common law based on justice and morality as long as it was not inconsistent with any other written law. This negatively affected the socio-cultural and economic dynamics in the resettlement programmes. In pursuance of economic growth according to the Swynnerton plan, the 1956 Native Lands Tenure rules empowered the Minister of African affairs to adjudicate, consolidate and issue non-challengeable titles on native lands. This was to allow individuals to secure development loans (Harbeson, 1973). Therefore, once out of detention, *Mau Mau* members were barred from challenging ownership, since land consolidation had extinguished customary rights (Syagga, 2006; Gisembe, 2008). Modification of tribal systems of tenure had to undergo evolution if full economic and development potential on land was to be realized. The land policy had to be in line with British system on CMP anchored on individualization of land ownership aligned on the Torrens System of titling (Kiamba, 1989). More settlement schemes were compulsorily acquired after 1945 to increase the settler population under defined agricultural policies. This was the *tabula rasa* that defined involuntary resettlement and compensation praxis in Kenya.

In 1954 the Swynnerton report on *'Plan to Intensify the Development of African Agriculture'* proposed effective commercialization of land-use for the Africans based on individualization of title under CMP as proposed by the Colonial Government. The report focused on creating agricultural elites as a stable middle-income class that would be politically conservative and economically concentrate on production (GoK, 1955). The 1953-1955 East African Royal Commission Report pursued a policy framework of land in Kenya based on British Imperial Policy and capitalist development framework. The focus was to individualize property to the exclusion of political agitators through land adjudication, to ascertain individual rights and consolidate scattered units and registration of title as legal confirmation on individual ownership (Harbeson, 1973).

The 1957 working paper on native lands tenure led to enactment of the Native Lands Registration Ordinance of 1959 (Registered Land Act of 1963) and the Land Control (Native Lands) Ordinance of 1960 (Land Control Act of 1967). In addition, the Land Adjudication Act of 1968 provided for adjudication of land to individuals without consolidating. Upon independence the Ordinances were converted to various registration instruments that conferred 'non-impeachable' and 'indefeasible' titles that transformed customary rights of access to individualised titles regulated by written law (Okoth-Ogendo, 1991). This transformed African social land modules to imperialistic commercial modules (Kiamba, 1989). This was perpetrated by post-colonial land policies on private property in accord with the Lancaster Constitution that protected the existing settler CMP on segregated agricultural policies.

Harbeson (1973) points outcomes of CMP as massive unemployment caused by population increase, landlessness from land consolidation, land pressure in native reserves, and the Mau-Mau insurgency. Displaced Africans provided cheap labour in white farms while the middle-income African elites got land through the "Million Acre Settlement Schemes" initiated in 1963 objectively to decolonize Kenya (Kiamba, 1989; Gisembe, 2008). This initiative relieved the political pressures exerted by the landless demanding for 'lost lands' and by enabling Africans to own land and participate in useful economic production (Syagga, 2006). The money for this purchase was by loan from the Commonwealth Development Corporation, The World Bank and the British Government to which, some nationalists resisted the justification for a people to buy back land that was forcefully wrenched from them (Harbeson, 1973; Gisembe, 2008). As the settlement scheme purchase extended beyond

the Million Acre projects, the Land Development and Settlement Board together with the Central Land Board were set up to ensure the land purchase, transfer and re-distribution allowed the independent government recoup the advanced loans they had underwritten on behalf of the settlers (Harbeson ,1973; Syagga, 2006). However, the effectiveness of the land redistribution programme was politically centralized. As Okoth-Ogendo (1991) observes that the law was crucial in implementation of the legislative process in public policy on land acquisition and this study contextualizes the socio-cultural and economic effects of government induced involuntary resettlement in the post-colonial period to evaluate the adequacy of compensation in expropriation policies.

5.1.1 Compensation for Involuntary Resettlement In Kenya

Longo (1983) succinctly explains the sacrosanctity of land rights in his arguments for the concept of compulsory acquisition and associated compensation praxis. The policy framework that accommodated compulsory acquisition of private and community land enshrined in the 1963 Constitution supported this concept. Since compulsory acquisition is on private property, the unalienable power of eminent domain extinguishes private ownership and rights (Umeh, 1973). Therefore, Njuguna and Baya (1999) argue that, the struggle for Kenya's independence from British colonial rule was a precipitate of socio-cultural and economic forces on land. An example, as Okoth-Ogendo (1991) argues, is that despite the discovery of gold in Kakamega in 1932, compensation for the natives was for buildings and crops, with resettlement on under-utilized un-alienated crown land. For natives, market value compensation for land and associated social disarticulation were ignored because alternative land compensation was not mandatory. Reforms in land tenure premised on landlessness, abuse of existing land laws and miss-use of state power of alienation. Power of eminent domain culminated to poor management practices of land and land based resources. The recognition of involuntary resettlement arising from political dislocation in post-independent Kenya got first recognition in the Akiwumi Commission with a follow-up in the Ndung'u Commission (GoK, 1999, 2004). Other subsequent commissions calling for reforms in land policy, power of eminent domain, police power and compensation praxis in the land administration and management, resulted to the Sessional Paper No. 3 of 2009 the NLP (GoK, 2009).

Expropriation in the NLP (GoK 2009) is the '*... eminent domain or compulsory acquisition as the power of the State to extinguish or acquire any title or other interest in land for a public*

purpose, subject to prompt payment of compensation'. Review of the pre-reform policy and practise against the post-reform policy is necessary in understanding socio-cultural and economic gaps in the policy framework and compensation practise on involuntary resettlement. The Constitution of Kenya (GoK, 2010) defines land to *'include, the surface of the earth and the subsurface rock, any body of water on or under the surface, marine waters in the territorial sea and exclusive economic zone, natural resources completely contained on or under the surface and the air space above the surface'*. Land is a solid mass whether or not covered with water, things attached thereon and the interest in or arising there from. Therefore, land is a bundle of rights consisting of estates, interests, easements and user rights despite its physical immobility (Umeh, 1973; Kalabamu, 2000).

The NLP Section 2 discourses on the political, economic and legal approaches that subsumed customary tenets in favour of formal systems in the existing dual tenure system and subsequent repeals and amendments to the laws that harmonized the CMP with land management. Consequently, the NLP section 3.3.1.3 streamlines doctrines of compulsory acquisition and development control with reforms ideals in mitigating social disarticulation in involuntary resettlement (GoK, 2009).

Enactment of the Land Act 2012 was to make operational Article 68 of the Constitution *'to revise, consolidate and rationalize existing land laws...'* including legislation bearing on allocation and use of land. This law repeals the Land Acquisition Act (LAA) Cap 295 and the Wayleaves Act Cap 292 that had provided a policy framework for involuntary resettlement under compulsory acquisition and compensation. On the other hand, The Trust Land Act (TLA) Cap 288 made operational *'setting apart'* of trust land with regard to involuntary resettlement. This law defined land under trust as the *'scheduled reserves'* and *'native lands'*, un-alienated lands outside townships but not deligned crown lands and lands shared by communities. However, land reforms have resulted to enactment of the Community Land Act that repealed the TLA Cap 288 under the Constitutional definition placing County Governments as trustees of community lands on behalf of the respective communities.

The Land Registration Act 2012 repealed five laws namely the ITPA of 1882, the Government Lands Act Cap 280; The Registration of Titles Act Cap 281; The Land Titles Act Cap 282; and the Registered Lands Act Cap 300. Other pre-reform laws that adversely affect social disarticulation in involuntary resettlement are the Land Consolidation Act Cap

283, the Land Adjudication Act Cap 284 and the Land (Group) representatives Act Cap 287. Under these laws there is no compulsion to compensate for non-regulated hardships occasioned by involuntary resettlement.

5.1.2 Socio-Cultural And Economic Reforms In Involuntary Resettlement

Emerging socio-cultural and economic issues saw constitutional reviews in 1969 and 2010 to enforce 'prompt', 'just' and 'full' payment of compensation in compulsory acquisitions among other Constitutional issues. Kiamba (1989) traces land as an economic resource to Okoth-Ogendo's (1975) precepts from the Colonial Office Report of 1955. This report suggested individual land tenure would enhance productivity levels and standards of living as well as develop a political and economic class of responsible citizens. This was to be achieved by individual titling for land to guarantee secure, accessible possession and disposition of land including the consolidation of fragmented uneconomic units to optimum productive use (Harbeson, 1973). Kiamba (1989) demonstrates that the CMP concentrated property rights in relatively few hands for optimal exploitation of resources as driven by industrialization on the global scene. As propagated in the 1960s through settlement scheme programmes, the CMP model was an economic process of decolonizing Kenya (Kiamba, 1989). Resettlement resources were financed by the World Bank and British Government similar to arrangements in the MBLR of Brazil but the contrast was that the settlement scheme projects were successful in alleviating poverty and to some extent, landlessness in Kenya within legislated frameworks as opposed to Brazil and the Zimbabwe which lacked institutionalized frameworks. Kingoriah (2002) denotes importance of political support for planning and land-use policy in respect of socio-cultural and economic compensatory approaches.

Post-independent governments perpetuated the land allocation practice by concentrating large tracts of land in the hands of a few elite (Kiamba, 1989; Syagga, 2009). The result was pursuit for just terms of compensation, allocation and re-distribution of land to indigenous communities as reported by the Ndungu and Akiwumi Commission on tribal clashes and irregular allocation on land (GoK, 1999; 2004). Gitau-Karirah (2002) noted that though land was the most valued natural resource in Kenya, there was inequity in land distribution and lack of access manifested by women having limited access to it due to customary practices. Syagga (2006) observes that discrimination against women in land ownership was proven by

the male dominance embedded in traditional ethos. The gender imbalance exhibited itself in subservient roles of women who worked on land but had no ownership or decision-making roles (Getura and Nyikuli, 2011).

Discrimination is manifestation when women who provide 85% of labour in crop production in Kenya have no ownership rights (Syagga, 2006). Concepts of unalienable rights and sanctity of first registration excluded agitators and favoured collaborators (Syagga, 2006). Registration practice of family land allowed five persons, normally male, to hold land on behalf of other family members. Since first registration was indefeasible under the RLA Cap 300, it resulted in disinheritance of many families who became negatively affected by landlessness, enhanced by the Land Control Act of 1967 that prevented fragmentation of land into un-economical units. Syagga and Olima (1996) note that such discrimination against members who, though with legitimate interest, could not be compensated for this land upon displacement because they were not registered on the title. This ignited the need to safeguard socio-cultural and economic interests of women and marginalized persons through Sect. 39 (h) of the NLP and Constitutional provisions in Article 27 (GoK, 2009; 2010). However, need for a wider perspective for policy frameworks is fundamental in mitigating against social disarticulation.

Okello and Gitau (2006) observe that despite institutional goodwill of governments to implement land reforms, elements of corruption led to elite capture of land ownership processes. In Kenya, land was used as patronage for political power and manipulation of land markets resulting to economic impoverishment and landlessness (Onalo, 1986; Syagga, 2006). According to Obeng-Odoom (2011), title ownership becomes a means of obtaining credit advancement by use of title as collateral, perceived as a panacea for poverty reduction. Generally, land became popular as an investment due to its benefit as a tangible asset (Mendie et. al., 2010).

A country's resettlement policy has to address equity, fairness, justice and human rights (Zaman, 1996). However, Shah (1995) notes that displacement has never been taken seriously and is deemed an appendix to development. Cernia (1999) sums up the social-economic objective of any involuntary resettlement process to be the prevention of impoverishment and ensure sustainable livelihood restoration. Furthermore, Onalo (1986)

concedes that limitations on property rights arising from acquisitions, easements or encumbrances and the associated inhibitions on usage reduce the perceived value of the land.

Berry (2002) argues that formal 'propriatorship' greatly imbalanced indigenous practices resulting in underlying challenges on land tenure, expropriation and compensation. Braun (2005) and Syagga and Olima (1996) observe that while material losses are compensated, the non-material and psycho-social aspects of loss are ignored. Kothari (1996) adds that artisanal skills are equally ignored as a source of livelihood while donor partners pursue compensation of economic livelihoods (IFC 2009). Hemin et. al., (2001) concludes that a recompense model that views displacement as integral in the project implementation process is necessary. In a research by Syagga and Olima (1996) on impact of land acquisition on PDPs, the statutory compensation frameworks fell short in socio-cultural and economic expectations by:

- Specific quantifiable economic concerns were ignored, including taxes in new settlement areas, conveyance costs, stamp duty and travelling expenses in search of purchase of alternative land, as well as alternative accommodation and transport for personal effects. General observations noted a decrease in economic viability for both agricultural and commercial land that was being acquired when compared to areas of resettlement.
- Network formations emanating from socio-cultural praxis including social-economic self-help costs for social amenities in new areas, educational cost of new schools and purchase of food before growth of new crops were not considered in compensation.
- Adverse changes in income levels upon relocation and negative economic effects on partly acquired land were ignored, resulting to morbidity and mortality.
- Cultural praxis in family land holdings were ignored especially where registered owners held land in trust for other family members. Syagga (2009) noted that not more than five members could be registered on any land holding yet the land had customary engagement of other family members. There was neither evaluation of land ownership, farming practices and familial composition nor assessment of intra and inter-household equity. This resulted to land compensation being given to 'heads of house-holds' at the expense of traditional access to land by each family member.
- Counselling of PAPs leaving cultural attachments such as burying grounds and shrines was not undertaken. Training and extension services for socio-economic rehabilitation were equally ignored even as familial set-ups broke down and living standards deteriorated.

- Bureaucratic court processes with no time limits of payment and non-availability of compensation money even after court determination. Protracted court cases contesting adequacy of compensation, with some cases taking ten (10) years' before determination.
- The cost of displacement and resettlement of ethnic minorities within hostile host communities was also ignored

However, though Syagga and Olima (1996) noted inadequacies in policy and compensation praxis in addressing inherent attributes of social disarticulation, they did not advance a mitigating and quantifiable compensation model. Given the praxis, the study resourced this gap from the compensation legacy for involuntary resettlement.

5.2 Legal Framework For Compulsory Acquisition In Kenya

Reforms on involuntary resettlement called for changes in policy and praxis of Compulsory acquisition in Kenya that had adapted the ITPA of 1882 and ILAA of 1895 that were used to acquire land for the Uganda railway line. Compulsory acquisition was embedded in the 1963 Constitution, amended in 1969 to accommodate emerging socio-cultural and economic issues on property rights. Subsequent reforms anchored on public and institutional participatory approaches encapsulated in the NLP and Constitution (GoK 2009, 2010). The repeals and new enactments were to capture socio-cultural and economic reform ideals in compulsory acquisition and police power focussing on expropriation constitutionally, legislatively and the technical processes.

5.2.1 The Constitutional Mandate

5.2.1.1 Constitution 1969

The power of eminent domain to acquire private property for public use despite the owner's discontent was entrenched in Article 75 of the post-independent Constitution. Compulsory acquisition of private land was conditional upon certification that the acquisition was in the interest of defence, public safety, order, morality, health and utilization that promoted public benefit. Hardship so caused on the interested persons had to be justified and necessitated 'prompt payment in full of just compensation'. An aggrieved person had direct appeal to the High Court for determination of his interest, the legality of the acquisition and the amount of compensation entitlement (GoK, 1969).

Commissions were set up to look at specific socio-cultural and economic issues emergent at the time, centered on land relocation and resettlement. The Njonjo Commission of Inquiry into Land Law systems recommended for a NLP framework, to guide the Constitutional position of land and formulation of a new institutional framework for land administration (LDGI, 2011). The Akiwumi Commission on tribal clashes established the causes to include land redistribution without adequate compensation to the host communities (GoK, 1999). The Ndung'u Land Commission of June 2003 was tasked with investigating the illegal/irregular allocation of public land. The Commissions' reports paved way for the current legal framework and reforms in the land sector (GoK, 2004). The subsequent formulation of the NLP session Paper No. 3 of 2009 was to define key measures critical to land administration, access to land, land use planning, restitution of historical injustices, environmental degradation, conflicts, unplanned proliferation of informal urban settlements, outdated legal framework, institutional framework and information management. The policy addressed constitutional issues on compulsory acquisition, development control, land tenure and involuntary resettlement resulting from government driven projects (GoK 2009).

The need for security of socio-cultural and economic interests in tenure for all Kenyans including non-discrimination of women, pastoral communities, informal settlement residents and other marginalized were recognized in the NLP statements. Reforms covered PESTEL including religious demands on governance. In regard to compensation of socio-cultural-economic issues, reform ideals were driven for equity in resource exploitation and equitable distribution of benefits that resulted to the constitution (LDGI, 2011). However, we cannot lose sight of facts on compulsory acquisition as a precipitate of the CMP on individualism and communalism of land interests as a fundamental presupposition to compensation, given the intricacy and multiplicity of interests that are un-economic, discouraging negotiation by the state in large projects that require vast lands (Umeh, 1973).

In this regard, Constitution 2010 required a legal framework to make operational the land reforms in regard to expropriation and equitable access to land as set out in Section 3 of NLP of Kenya (GoK, 2009). The socio-cultural and economic reforms strove for equity, justice and poverty eradication in land allocation and distribution with due cognizance for economic growth. Subsequently, the National Land Commission was constituted as the vehicle for such land reforms (GoK, 2010; GoK, 2012 b).

a) Trust Land Act Cap 288

Article 114 of the pre-reform Constitution defined areas under Trust as special areas and reserves. The 1963 Trust Land Act Cap 288 enumerated trust land as temporary special reserves, special leasehold areas, special settlement areas and special areas defined in the Crown Lands Ordinance in force by 1963 as well as freehold titles vested in the County Councils outside the Nairobi area. Title within a council registered under any other law other than in the name of the county council ceased to be trust land.

Article 115 of the pre-reform Constitution vested trust lands in the County Councils in whose area of jurisdiction it was situated. The Council was to hold the land for the benefit of the persons under customary law as vested in the tribe, family or individual. Article 117 provided for the Council to 'set apart' trust Land to a public body or authority for public purposes, prospecting for minerals and to persons beneficial to residents in the area on use of the land or by virtue of rent so generated. Prompt payment of full compensation was to be made to any persons with right to occupy that land or was prejudicially affected by the 'setting apart'.

Article 118 of the pre-reform Constitution set out entities for which land may be 'set apart' as being the Government of Kenya, a corporate body established by an Act of Parliament for public purposes, companies registered under the law in which the Government has shares and finally for purposes of prospecting for minerals. The subsisting rights upon such land 'set apart' were extinguished in Sect.117.

Socio-cultural and economic issues were completely ignored in the 'setting apart' process. This was aggravated by lack of formal registration of people for whom the land was held in trust by the county councils. Furthermore, payment for such relocation was channelled through the District Commissioner's office for disbursement to the PAPs. Since 'setting apart' of trust land alienated and allocated land to entities and persons outside the community, meaning that written law ceded customary rights and interest on this land leading to mass social disarticulation. Reforms ensured embedment for formulation of the Community Land Act in the Constitution of 2010 to secure community lands for its members.

b) The Community Land Act 2015

This is an Act of parliament formulated for recognition, protection and registration of community interests, administration and management of community lands and provision for role of County Governments on unregistered community lands. This law defines a community as a group of people with distinct common ancestry, similar culture, common interest or socio-economic mode of livelihood, ethnicity, geographical or ecological space. They occupy community land under the control of family, clan or community under customary land rights. Section 3 and 4 of the Act sets out dealings on community land to be guided by Constitutional Articles 10, 40, 60, 63 (5) and 66. Though Section 5 protects community land rights, compulsory acquisition is allowed under Article 40 of the constitution and the Land Act 2010 subject to prompt payment of just compensation in full or by negotiated settlement subject to upholding subsisting customary rights.

Section 6 provides for County Governments to hold unregistered community land in trust for the respective community including compensation payable for compulsory acquisition. Upon registration of this land, the County Government shall transfer the compensation to the respective community including interest so earned as may be prescribed.

This law in compensation is not clear on how the compensation will be apportioned to the compensates. Though compensation is ring fenced by County Governments, it allows for negotiated settlement and yet compulsory acquisition immediately displaces the expropriates rendering them homeless. To make room for just compensation, it will be prudent to allow express compensation for assets on acquired land be directly paid to the owner. It is equally important for the displaced person to be given alternative land for reconstruction of livelihoods, given that the compensation for community land will be transferred to the community by the County Government upon cessation of the trusteeship role. This questions compensation related to immediate needs of PAPs. Given that Community land may be held under communal, clan or family land or reserve land, it is imperative to clearly adjudicate and indicate which persons shall receive the compensation after registration. This law repeals the Trust land Act Cap 288. However, The Community Land Act 2015 has not clarified on issues of 'prompt, just and full' payment of compensation given the recipient of compensation to community land as the County Government. This raises issues of who will be paid, quantum of the compensation money and promptness of payment to PAPs.

5.2.1.2. Constitution 2010 of Kenya

The new Constitution was promulgated in the wake of the NLP of 2009 that informed the Bill of Rights of the people of Kenya. Article 27 (4) provides for equality of all persons and freedom from any form of discrimination. Article 40 sect (3 a, b) allows for compulsory acquisition of an interest or title in land while Chapter Five administers access to land and sustainable conservation of the environment. Regulation of land use is in Article 66 whereby *'The State may regulate the use of any land, or any interest in or right over any land, in the interest of defence, public safety, public order, public morality, public health, or land use planning'*. The acquisition should be for a public purpose or in the public interest executed in accordance with the new Constitution. New provisions related to involuntary resettlement include Article 40 (3 (bi) provided for 'prompt payment in full of just compensation and (3(b ii) which allows aggrieved parties the right of access to courts of law for justice and introduction of occupants in 'good faith' who may not hold title on land in Article 40(4). Chapter 5 of the Land Act 2012 takes cognizance of control and management of land and land based resources whose exploitation will inevitably result to displacement of persons.

Article 67 (e) of the Constitution mandates the National land Commission (NLC) with investigating and recommending appropriate redress in cases of present and historical land injustices that includes non-compensation of acquired land. Constitutional Articles 10 and 27 are the national values guided by principles of equity on access to land and security of land rights as well as elimination of gender discrimination in law, customs and practices and on land related issues in accordance with the NLP (GoK, 2009; 2010; 2012b).

Section 68 of the NLP protects legitimate private rights 'of spouses and children' and that all private land is held on terms that are clearly subordinate to the doctrines of compulsory acquisition and the police power of the State. The NLP sets out functions of the NLC to include compulsory acquisition and development control on behalf of the National and County governments. Generally, compensation for deprivation in government induced involuntary resettlement is provided in the Constitution and the extent of consideration for socio-cultural and economic issues in the legal frameworks and compensation praxis is to be established in this study.

a) The Land Act 2012

To make operational the Constitutional provision on deprivation of land rights, the LAA Cap 295 was enacted in 1969 as *'an act of parliament to make provision for the compulsory acquisition of land for the public benefit'*. The tides of land reforms resulted in the enactment of the Land Act, 2012 as *'An Act of Parliament to give effect to Article 68 of the Constitution 2010, 'to revise, consolidate and rationalize land laws; to provide for the sustainable administration and management of land and land based resources and for connected purposes'*. Section 5 of the Land Act 2012 recognizes four categories of tenure as freehold, leasehold, customary tenure and partial interests conferred in law. Section 7 of the Act describes how title to land is acquired through:- allocation, land adjudication process, compulsory acquisition, prescription, settlement programs, transmissions, transfers, long term leases exceeding twenty-one years created out of private land; or any other manner prescribed in an Act of Parliament.

The Land Act 2012 repealed the Wayleaves Act Cap 292 that had provided access for construction of utility mains such as sewer drains, pipelines and power lines upon, under or over private land without interfering with buildings, with recompense limited to vegetation. However, the repealed law had no provision for compensation of buildings or loss of use of the encumbered land, subsequently resulting to an impoverished populace, nor did this law have redress for non-compensated losses. If damage was assessed, compensation was by the acquiring bodies with no guarantee of professional valuers.

The Land Act (Sect. 143) has now provided for creation of PRow that includes wayleaves, easements and analogous rights that had not been previously expressly provided in law. Section 148 (1) provides for compensation based on the advice of a qualified valuer thereby legislating the compensation for involuntary resettlement so occasioned by creation of PRow.

The legal framework on compensation is enumerated in the procedure and principles of assessment.

i) The Displacement Procedure

The land acquisition procedure is divided into two processes namely; the publication of intention to acquire and inquiries into claims, the postponement of inquiries and revocation of the acquisition.

- **The Publication of Notice for Treat and Inquiries**

This is in respect to Part VIII on compulsory acquisition and compensation (sect. 107 to 133), Part IX is on establishment of settlement programmes (Sect. 134 to 135) and Part X on PRoW, easements and analogous rights (Sect. 136 to 149).

Section 107 (1): Request by the respective Cabinet Secretary or the County Executive Committee Member for acquisition of land by the Commission on behalf of the national or county government. Section 107 (3), the Commission has to establish the public need or otherwise reject the application.

In Section 112(1), at least thirty days after publishing the notice of intention to acquire land, a date is appointed by the Commission for publishing in the Gazette or County Gazette for inquiry into propriety and interest claims of compensation by persons interested in the land. The notice of the inquiry should be at least fifteen days before the inquiry. Service of a copy of the notice on every person who claims to be interested in the land, to submit a written claim not later than the date of the inquiry. Section 112 (2) allows persons interested in the land to lodge their claims before the inquiry date. This provision has opened the claims window to include occupants in good faith and is a positive shift in addressing the adequacy of policy framework and gaps in the compensation praxis pertaining to social disarticulation.

Section 113 provides for awards to each claimant that enumerates on the size of the land acquired, value and total compensation to be served to each person with an interest. Section 119 provides for additional compensation if area taken is greater than that in the original award. Section 121 guides on recording the acquisition in the register and surrender of title documents to the Registrar of Lands for final vesting after receiving compensation.

Of interest to this study is the level of awareness by the PAPs on procedures of land acquisition up to final vesting of the land to the acquiring body. To this extent, Umeh (1971) notes inadequate or missing claims on interests by the illiterate and lack of professional representation for the poor as some of the injustices arising from ignorance and poverty.

- **Postponement of Inquiry and Revocation of Acquisition**

Section 112 (4) allows for rescheduling of inquiries or adjournments of the hearing of an inquiry from time to time for sufficient cause by the Commission. A critique is on the

indefinite period of postponing an inquiry, since the notice of intent to Treat freezes activities on the land. The repealed LAA cap 295 provided for 24 months for an acquisition to efflux. However the process ignored pre-emptive rights of original owners

The Land Act 2012, sect.110 (2) provides that upon failure of the acquisition to take off, pre-emptive rights to re-acquire the land upon refund of paid compensation back to the acquiring authority will be offered to the original owners. This has a positive effect of restitution of PAPs as opposed to the repelled LAA Cap 295. Mendie et. al. (2010) and Dunning (1968) have noted that sometimes governments acquire land without reasonable justification. They also observe that when projects under compulsory acquisition are abandoned, then right of redemption should be offered to the expropriated owner at a price equal to the compensation received or less if the market value has dropped. In Kenya, The NLP (GoK, 2009) and Section 110 (2) of the Land Act 2012 (GoK, 2012) confer pre-emptive rights to the original owners or successors upon repaying back the compensation received. This has promoted justice by avoiding unnecessary displacement and related social disarticulation when the acquisition is abandoned.

ii. The Compensation Praxis

The principles for determining compensation are transitionally applied in Section 162 of the Land Act 2012, as prescribed in the repealed LAA Cap 295 rules and regulations that enumerated factors to be included in the compensation and those to be ignored. We note that reference to the Commissioner meant the COL who has now been replaced by the NLC in Constitution 2010 and the Land Act 2012. The Third Schedule enumerates compensable items.

- Market value in relation to land as at the date of gazettment of notice of intention to acquire that takes into account effect of existing restrictions on the title
- Damage sustained as a result of severance and injurious effect on the property, whether movable or immovable or the actual earnings at the date of taking possession by the Commissioner.
- Reasonable expenses incidental to change of residence or business premises occasioned by the acquisition

- Damage resulting from diminution of profits between the date of gazettment of notice of intention to acquire the land and the date of taking possession of the land by the Commissioner. It is a fact that notice of intention for treat freezes the economic value of the property, forcing the owner to stop further improvement. In addition, taking possession by Government is through formal notification. In practise, the time frame is not defined leaving compensation at the whims of the government valuer yet compensation is determined from the time of intention to treat.
- An additional 15% disturbance to be added on the market value

While a PDP would like all items to be considered in computation, we will focus on those items enumerated to be ignored by law.

- The urgency of the acquisition and the disinclination of the person interested to part with the land.
- Damage which if caused by a private person would not be actionable in law.
- Any increase on market value caused by improvements undertaken two years prior to the gazettelement of the notice on intention to acquire unless proven they were bona fide with no contemplation of the acquisition. The Kenyan situation is administratively compensable if the proprietor proves the improvements were not speculative. However, Umeh (1973) argues the Nigerian public Land Acquisition Act seeks proof of beneficial user continuously for six months during seven years prior to the publication on the intent as a statutory extinguishment of rights to claims.
- Damage caused to the land after date of gazettment of notice of treat or consequential to the use the land will be put to or increase in value of land accruing from use of land occasioned by the acquisition.
- An increase by reason of use of the premises that can be restrained in court or is contrary to law or is detrimental to health of occupiers or public health
- Any improvements made after date of gazettment of intention to acquire unless proven as necessary for maintenance of the building to be in proper state of repair.

- An award by the Commissioner should not exceed more than what a person has claimed. This is unjust since most of the PDPs are illiterate, others falling in the vulnerable group of the old and minority clans that could not afford professional services. Tenets of justice dictate for equal treatment for all and therefore an award should be impartial and consider socio-cultural and economic status of the expropriatees notwithstanding the under claim of compensation.

iii. The Principles of Assessment

The basic principle of assessment is market value of land as at the date of gazettment of notice to treat. Other than land and improvement, focus has been drawn to compensation of plant and machinery, grant of land in lieu of money and uneconomic remainder of land.

- **Effect on Severing of Plant and Machinery**

The Land Act 2012 Section 110 (3) provides for acquisition of a going concern *‘If any plant or machinery is attached or permanently fastened to the land, the person interested in that plant or machinery may serve on the Commission a notice in writing that such person desires to sever and remove the plant or machinery after receipt of intent to acquire the land and not later than 15 days before day of inquiry’*.

This provision is passive on how the acquiring authority will allocate ‘just’ compensation and associated costs of severing and relocation of the facility but focuses on compensation of land provided in Sect. 111. According to Lawrence et. al., (1976), people invest on land for economic returns based on location, availability of raw material and proximity to clients. This is a gap in economic arguments in the policy framework because relocation of plant and machinery results to social disarticulation. According to Umeh (1973), in Nigeria, land compensation for urban area is based on values 12 months prior to the date the land is declared a planning area. This proves unjust in compensation to the land owner because land is developed subject to market demands as it is a capital investment conforming to the laws.

The compensation gap probes the relocation of plant and machinery expenses implicitly to the injured person during acquisition of the property. From a socio-economic platform, lack of provisions on alternative land to transfer the machinery and equipment, suitability of the new location in respect to equivalent size and availability of raw materials requires research

on what would be just compensation of forced relocation of going businesses from financial perspectives.

- **Grant Of Land In Lieu Of Notice And Urgent Possession Of Land**

The Land Act 2012 in Sect. 114 (2) provides for grant of land in lieu of monetary compensation upon the Commissioner agreeing with the proprietor of the land to receive land in exchange for money award. Such land should not exceed the value of the amount of compensation so awarded in this option. The law concludes that if granted land, the person shall be deemed to have been awarded and received full compensation entitlement in respect to his interest and an agreement to this effect shall be recorded as the award. Of interest, we require to establish applicability of such compensation option that mitigates adverse effects of landlessness and homelessness experienced in involuntary resettlement. The other focus of the evaluation of just compensation in involuntary resettlement is to establish the extent of impoverishment risk which otherwise abrogates the Constitutional Articles 27 and 40 (GoK, 2010). These clauses seek to ameliorate landlessness in the study's quest for just terms of compensation.

Land Act 2012 provides for a 15 day notice in Section 120 (2) for urgent takeover of uncultivated or pasture or arable land from date of gazette notice on intention to acquire. The Commissioner shall vest the land in the government free from any encumbrances notwithstanding that no award has been given for land. This is contrary to Constitutional provisions requiring 'just, fair and prompt and compensation' as measures of 'prompt' payment are not clarified.

- **Uneconomic Remainder Of Land**

Section 122 (3) of the Land Act 2012 allows the Commission to instruct the acquiring body to acquire the remaining land if it establishes that partial acquisition will render the remaining land inadequate for its intended use or will severely and disproportionately reduce its value. This also allows the owner of a building to request for entire acquisition if part of the building being acquired will render use of the remaining part uneconomic (sect.122 (1a)). In Nigeria, Umeh (1973) points out the Public Land Acquisition Act allows for full acquisition of entire parcels of less than 0.25 acres in townships and less than an acre outside

townships as rendered awkward and valueless. The study will establish the level of adequacy of compensation of such land in determining the satisfaction gap.

iv) Grievance Redress Mechanism

Economics of land confirm that land values appreciate with time and therefore, faster determination of court cases is required for justice in compulsory acquisition (Lawrence et. al, 1976; Syagga, 1994). The 1990 amendments provided a tier missing in the pre-1990 LAA Cap 295 by introducing the Land Acquisition Compensation Tribunal as the court of first instance with the High Court as an Appeal Court in Section 29 (2). Denyer-Green (1989) argues that even if no one can predict the outcome of court action due to uniqueness of each case, litigants merely predict favourable outcomes and certainty is when a tribunal or court has given a ruling.

The Land Act 2012 sections 128 and 150 refer land disputes to the Environment and Land Court with exclusive jurisdiction to hear and determine disputes, actions and proceedings on land thereby extinguishing the previous provision for a tribunal. The repealed LLA Cap 295 had provided for a land acquisition and compensation tribunal as the court of first instance to speed determination of disputes. However, appeal to the high court on matters of process challenges effectiveness of ‘promptness’ of compensation. To attain promptness, introduction of alternative dispute resolution mechanisms and traditional dispute resolution mechanisms in policy will allow expediency of disputes under PANTHER frameworks before proceeding to the Land Compensation Tribunal that should be re-introduced. The tribunal should advise on technical matters for equitable compensation praxis, before litigants proceed to the Environment and Land court.

Section 115 of the Land Act 2012 allows the Commission to deposit compensation in a special account in cases where there is no competent person to receive the award or discontent with the amount payable or in disputes in respect to rights of persons entitled for the compensation. In practise, these money have been held in abeyance for long periods of time with no urgency in establishing trusteeship of competent persons to assist the incompetent compensates. Neither have disputes been resolved thereby consequentially hoarding of compensation funds. This raises issues of ‘justness’ and ‘promptness’ in compensation. Though Sect. 117 (1) provides for interest at prevailing bank rates on accrued monies on unpaid awards upon possession of the land, we argue that justice anchors on

‘prompt’ compensation to allow for relocation. In Nigeria, Umeh (1973) denotes prompt as being 14 days after the award has been notified to the recipient. Failure to agree on compensation empowers the Permanent Secretary to assess and order the compensation allowing for further arbitration before approach to the court of appeal. The Land Act 2012 has mandated the NLC to disburse compensation, however, subject to funds availed from Treasury.

Penalty charge for obstruction of project is provided in the Land Act 2012 Section 130. This penalty is either imprisonment for a term not exceeding five years or a fine not exceeding three million shillings, or to both. This penalty indicates power of eminent domain for public good against individual interest with negative implications on obstruction. However, we need to be sensitive that the same government has provisions allowing for urgent taking possession of arable, vacant land without having paid the compensation which is a contradiction of justice.

Many scholars have undertaken studies on compulsory acquisition and compensation yet the socio-cultural and economic variables under quest of just terms compensation have neither been adequately addressed nor quantification specified in law. This leaves the methodology of arriving to ‘just and reasonable’ at the whims of the valuer (Burrows, 1991; Blair, 1980; Plimmer, 2008; Syagga, 1994). Consequently, the compensation is dependent on the valuers’ discretion, calling for reform ideals towards just terms of compensation model that addresses the social disarticulation arising from un-compensated issues not provided in legal frameworks.

This means lack of a standardized valuation approach on compulsory acquisition and different valuers will attach different values on a similar property based on their preferred methodology. This provides an opportunity for leverage towards compensation of socio-cultural and economic factors in involuntary resettlement. However, though socio-cultural and economic issues are articulated in the NLP, they were not considered in the new enactments with due regard to involuntary resettlement. An extensive law on land reforms is the Land Laws (Amendment) Act 2016, enacted to ease operations of several land laws.

b) The Land Laws (Amendment) Act 2016

This act of parliament includes the eviction on unlawful occupation of land. It defines eviction as the act of depriving or removing a person from possession of land or property they hold unlawfully upon a successfully executed law suit. This is on private, community or public land. It includes public notification by the NLC and County governments three months before the eviction. This means that compensation is not warranted for the evictees.

5.3 Summary of Issues

Table 5.1: Legal Framework Reform Evaluation Matrix in Kenya

Resettlement Issue	Pre-reform Legal Provision	Post-reform Legal provision	Simulation Impacts in the Land Act 2012
1.The Authority to compulsory acquire land	Constitution (1969) Article 75 Land Acquisition Act Cap 295-repealed (1969, 1990) Authority vested in COL	Constitution (2010) Land Act 2012 Authority vested in the NLC	Positive: Power for compulsory acquisition transferred from COL (single decision maker) to the NLC (consultative process). Positive: Introduction of occupants in good faith to be included in compensation.
2.Assets	LAA cap 295 (1990) amendment introduced Section 6A allowing an owner to remove their plant and machinery	Land Act 2010 Section 110 (3) allowing owner to remove plant and machinery from site	No change: Refers to plant and machinery and ignores other assets. It places responsibility of owner to relocate plant and machinery
3.Postponement of Inquiry and revocation of acquisition	Section 9 (4A) Non-holding of inquiry within 2 years was deemed as revocation of intention to acquire. Pre-emptive rights open to all if compensation had been paid	Section 112 (4) Allows postponement over an undefined period. Pre-emptive rights reserved for original owners	Negative: Exclusion of time limit in postponement exposes PAPs to uncertainty of when they will be evicted. Proposed re-introduction of the time duration before cancellation of the acquisition Positive: Pre-emptive rights given to original owners.
4.Grant Of land In Lieu of Cash	Section 12: Provided for land in lieu of monetary compensation of equivalent value	Section 114 (2): Provides for land in lieu of monetary compensation of equivalent value	Positive: This is an alternative method of compensation that does not elaborate on process of resettlement in land in lieu of monetary compensation of equivalent value of land. However challenges in getting alternative land in the vicinity leaves no option to money-for-land option
5.Notice of possession periods and urgent takeover on arable vacant pasture land	Section 19 (2) urgent takeover of arable land in case of urgency after 30 days' notice without payment.	Section 120 (2) allows urgent takeover notice on arable land after 15 days' notice despite no payment.	Positive: Allowing government projects to proceed awaiting compensation. Negative: Coercive and negates Constitutional provision on 'prompt payment in full of just compensation'.
6.Interest on delayed payments	Constitution 1969 Article 75 (1c) for prompt payment LAA 295 provided at 6%	Constitution 2010 (40 (3)) on prompt payment Land Act section 117 (1) provides interest on delayed payment at prevailing bank rates	Positive: Interest on delayed payments to earn prevailing bank rates. A shift from the previous 6%.
7.Grievance redress mechanism	LAA Cap 295 Section 29 (2) introduced The Land Acquisition Tribunal as the	Tribunal not provided and the Land and Environment Court as a	Negative: Removal of tribunal has adverse effect on expediency of cases, negating principle of

	court of first instance and the High court as the Court of appeal	court of first instance.	'promptness of just compensation' as provided for direct application to the Environment and Land court. Policy should allow for traditional dispute resolution and alternative dispute resolutions whose values can be verified by the Tribunal before proceeding to court
8.Re-settlement	Not provided	Section 134 and 135 provides for resettlement.	Positive: PAPs can be resettled under re-settlement programmes
9.Social disarticulation	Not provided	Not provided	Gap the research seeks to address as 'just terms of compensation' model. Landlessness, homelessness, joblessness, marginalization, morbidity, food insecurity, loss of access to common property. Through participatory, accountable, non-discriminating, transparent, equitable and rule-of-law approaches
10. Wayleaves and easements	The wayleaves Act Cap 292 (Repealed by the Land Act 2012) Authority vested in the acquiring body	Authority vested in the NLC	Positive: mandate with the NLC assures centralization of process at one point. Equitable and fair application of compensation as opposed to subjectivity by the acquiring bodies
11. Community Land Act 2016	'Setting apart of Land by District Commissioner'	Community land (former trust land) vested in County Governments.	Positive. Land is secure from wanton allocation Negative: Compensation money for involuntary resettlement held in trust by County Government. Issues of promptness not addressed

Source: Author (2015)

Historically, the CMP model introduced land tenure that deviated from traditional praxis in ownership, usage and disposition of land. The land compensation hinged on the economic-valuation of compensatory land block models that with time, proved inadequate in addressing social-cultural and economic impoverishment highlighted in sociological approaches. In this regard, Cernia's eight-tier model spans over these issues compressing them to a prism reflecting just terms of compensation. The next Chapter identifies the compensation gap, and discusses the research findings.

CHAPTER SIX

RESEARCH FINDINGS AND ANALYSIS

6.0 Introduction

The previous chapter evaluated the adequacy of policy frameworks and compensation praxis for just terms of compensation in involuntary resettlement. This chapter discusses the empirical findings from the data analyses of the case study. The evaluation of the level of awareness on policy frameworks on just terms of compensation in involuntary resettlement was also analysed to enable interpretation of the data findings that were presented using frequency tables, bar graphs and pie-charts.

6.1 Reliability Of The Main Study Results

The data collection instrument was initially subjected to a test of reliability to ensure suitability in measuring the objectives of the study. The test for reliability and validity used in many related studies is the Cronbach alpha that measures whether the questions answered the objectives (Hinton et. al 2004). According to Kothari (2008) and Cooper and Schindler (2011), Cronbach alpha is based on a number of items (questions) to establish the correlation that measures the true score with a random error. In this technique, a high correlation between the different items indicates that the questions measure the same attributes while a low correlation indicates that the questions do not measure the same attributes.

The reliability results were noted for all the four constructs namely; Households, SMEs, Institutions and Implementers. The findings established the reliability of the questionnaire in examining independent and dependent variables as it attracted a Cronbach alpha statistic of 0.7. This indicates that the data collection instrument was reliable as previously explained in chapter four. The reliability statistics are presented in table 6.1 below.

Table 6.1: Reliability of the Main Study

Respondent (1)	Construct (2)	Number of Statements (3)	Cronbach alpha (4)	Comment (5)
Households	Level of awareness	10	0.953	Reliable
	Satisfaction with compensation praxis	10	0.694	Reliable
	Socio-economic praxis	9	0.685	Reliable
Implementers	Level of awareness	10	0.817	Reliable
	Satisfaction with compensation praxis	10	0.821	Reliable
	Socio-economic praxis	8	0.891	Reliable
Institution	Level of awareness	10	0.938	Reliable
	Satisfaction with compensation praxis	10	0.856	Reliable
	Socio-economic praxis	8	0.939	Reliable
SMEs	Level of awareness	10	0.895	Reliable
	Satisfaction with compensation praxis	10	0.841	Reliable
	Socio-economic praxis	8	0.884	Reliable
Overall		112	0.851	Reliable

Source: Field Survey (2015)

The results in table 6.1 above indicate a high level of awareness for the households signified by Cronbach alpha of 0.953, satisfaction with compensation praxis had a Cronbach alpha of 0.694 and inclusion of socio-cultural and economic issues a Cronbach alpha of 0.685.

The Cronbach alpha on level of awareness for SMEs was 0.895, satisfaction with compensation praxis at 0.841, while the Cronbach alpha for inclusion of socio-cultural and economic issues was 0.884. Institutions had a Cronbach alpha of 0.938 for the level of awareness, satisfaction with compensation practices 0.856 and the Cronbach alpha for socio economic issues 0.939.

Implementers attracted a Cronbach alpha for the level of awareness at 0.817; satisfaction with compensation praxis at 0.821, while the Cronbach alpha for inclusion of socio-cultural and economic issues was 0.891. The total average Cronbach alpha was 0.851 indicating reliability of the questionnaires in addressing objectives one and two of the study that sought to establish the satisfaction/justness gap.

6.2 Data Description

The data collected was descriptive and the output of the analyzed data consisted of quantitative information that drew inferential statistical relationships between the independent and dependent variables. Data analyses commenced with the response rates of the samples, followed by descriptive statistics of the demographics of the four categories. Though preliminary data was descriptive, it was converted to qualitative data using the 5-point likert scale as the basis for quantitative analyses. The data analyses techniques were the Analysis of Variance (ANOVA), the Multiple Linear Regression and Pearson's Bivariate Correlation. These techniques independently confirmed the outcomes of each analysis and cross tabulation and triangulation collated findings that added credibility in testing the hypothesis.

6.2.1 Response Rate

The questionnaires were administered to 356 respondents who comprised of households, SMEs institutions and implementers. The response rate is tabulated in 6.2 below.

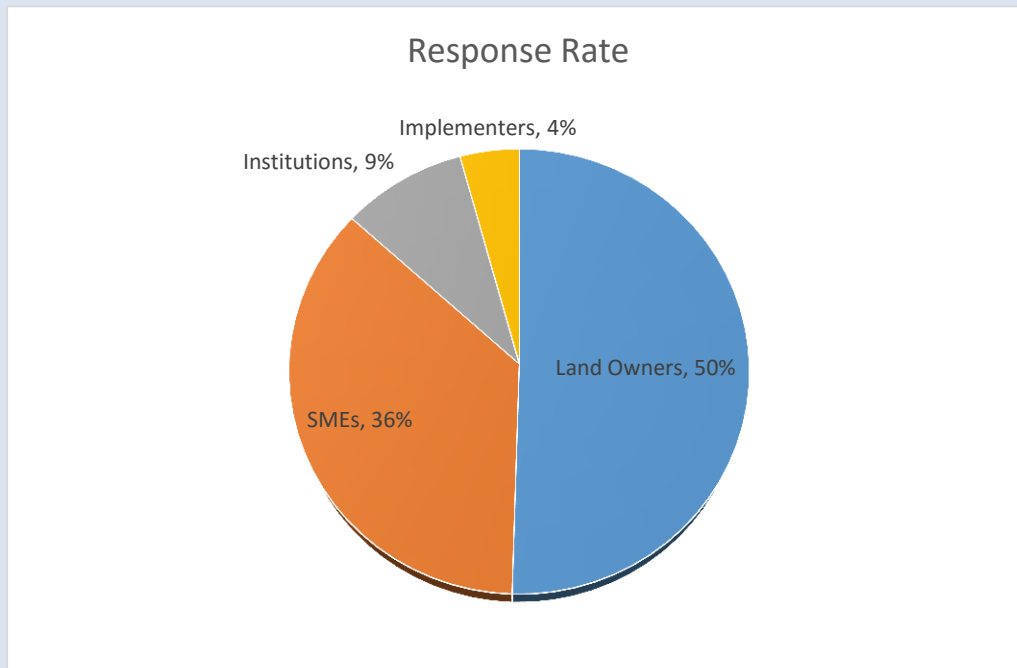
Table 6.2: The Sample Size and Response Rate

Category	Sample size	Response	Percentage Response
House holds	221	106	86.89
Large and Small Business	93	76	81.72
Institutions	30	19	63.33
Implementers	12	9	75.00
Total	356	210	58.98

Source: Field Study (2015)

The results indicate the highest response rate was by land owners at 86.89% while the least response rate was from Institutions at 63.33%. Mugenda and Mugenda (1999) and Israel (1992), reassure us that a sample response rate of 30% is representative of the sample. In this case, the response rates exceed 63%, indicating that the results were credible and representative to the population attributes.

Chart 6.1: Sample Response Rate



Source: Field Study (2015)

6.2.2. Demographic Data For Households

The registered owner-occupied houses were 84%, indicating that displacement directly affected their familial habitation. On the other hand, tenants were 16%, indicating need to compensate for startup rental upon their displacement. This also meant that property owners would lose rental income on the remainder of the lease term. Ages 36-50 years were 64% that projected young family PAPs with school going children because 77% indicated they were married. These findings indicate there is a category of vulnerable household headed group that was aged above 66 years representing 14% of the PDPs who faced the risk of social disarticulation arising from break up of familial formations.

Displacement would affect 79% under casual or self-employment and 18% were under formal employment therefore, displacement would result to joblessness and long distance travel to places of employment.

Table 6.3: Characteristics for the Households

	Gender	Frequency	Percent%
Gender of the head of the household	Male	71	67
	Female	35	33
	Total	106	100
Registered landowner	No	17	16
	Yes	89	84
	Total	106	100
Age of the Household Head	0- 35 years	0	0
	36-50 years	67	64
	51-65 years	24	22
	66-80 years	15	14
	Total	106	100
Marital status of Head of Household	Married	81	77
	Single	4	3
	Have family	21	20
	Total	106	100
Occupation of the Head of Household	Employed	19	18
	Casual Worker	13	12
	Self employed	70	67
	Unemployed	4	3
	Total	106	100

Source: Field Study (2015)

6.2.3 Demographic Data for Institutions

The institutions were educational, meaning that 84% of services offered were open to the general public. Religious and charitable institutions formed 11% and 6% of respondents respectively, thereby giving services to specific public confines. The Institutions affected by the project indicated that 95% had existed in the area for over 10 years. The study noted that 74% of the institutions had branches in the neighbourhood and 32% served over 1,000 people. These projections meant that institutions served people in the neighbourhood and their relocation would interfere with social and academic programmes over the resettlement period.

Table 6.4 Characteristics for the Institutions

	Age of the institution	Frequency	Percent
Age of business	2 to 5 years	1	5
	Over 10 years	18	95
	Total	19	100
Nature of the institution	Religious	2	11
	Charitable	1	5
	Governmental	9	47
	Educational	7	37
	Total	19	100
Branch of the institution	No	5	26
	Yes	14	74
	Total	19	100
Population served	Over 100	12	68
	Over 1,000	3	11
	Over 5,000	4	21
	Total	19	100
Period of existence of the institution in the present site	Over 10 years	19	100
	Total	19	100

Source: Field Survey (2015)

In relocating institutions, the social networks were interfered with as well as loss in revenue incomes to the institutions during their reconstruction periods. This includes the least affected religious and charitable institutions at 17%, who would lose existing social networks and neighbourhood infrastructure upon relocation.

6.2.4 Demographic Data for Large and Small Businesses

All respondent indicated they had been in business for over 10 years with 48% indicating having 11 to 50 employees and 32% indicated over 50 employees while 20% indicated 1 to 10 employees. All the respondents (100%) indicated they had been in the area for over 10 years and 72% had no branches of their businesses in the vicinity. This meant closure of some businesses and subsequent joblessness.

Table 6.5: Characteristics for the Large and Small Business

		Frequency	Percent
Age of the business	Over 10 years	76	100
	Total	76	100
Number of employees	1 to 10 employees	16	20
	11 to 50 employees	36	48
	Over 50 employees	24	32
	Total	76	100
Type of legal registration	Limited Company	76	100
	Total	76	100
Branches in other areas within the country	No	54	72
	Yes	22	28
	Total	76	100
Headquarters of the firm	No	45	60
	Yes	31	40
	Total	76	100

Source: Field Study (2015)

The results mean that the SMEs will be adversely affected having built good will to survive the competitive environment for more than 10 years. The non-compensation for plant and machinery and unavailability of similar land in the proximity resulted to loss of employment and disruption of livelihoods of employees. The extent of the socio-cultural and economic losses is evaluated in response to objective one.

6.3 Data Analyses

The collected data was subjected to various analyses techniques that enabled drawing inferences and empirical testing of the objectives.

6.3.1 Tests for Normality for Objective One

Tests of normality were undertaken to establish suitability of the sample distribution prior to subjection of the independent variables to parametric tests. According to Hinton et. al. (2011), ANOVA relies on random sampling where data collected must be interval or ratio from continuous and normally distributed populations particularly for large sample sizes of over 30 items and therefore the need to confirm normality of distribution.

Objective one evaluated the adequacy of policy frameworks and compensation praxis for just terms of compensation in involuntary resettlement. This objective had two drivers to be tested

for normality. These were the satisfaction/justness gap and inclusion of socio-cultural-economic attributes measuring the adequacy of policy frameworks and compensation praxis for just terms of compensation for involuntary resettlement.

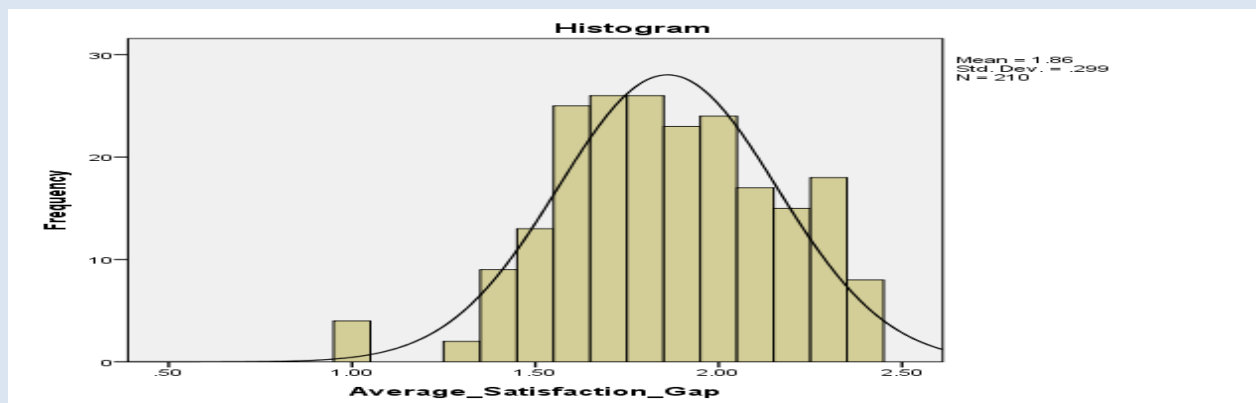
a) Analyses of satisfaction/justness gap

The satisfaction/justness gap was to identify the vacuum in just terms of compensation. To subject this variable to parametric tests, further analysis on normality of distribution was required.

i) Normality for Satisfaction/Justness Gap

The test for normality on satisfaction/justness gap used the graphical method as shown in the Figure 6.1 below. The results in the Figure indicate that variables on satisfaction with the legal framework on compensation in involuntary resettlement are normally distributed.

Figure 6.1: Normality for Satisfaction/Justness Gap



Source: Field Survey (2015)

The test further established that the means on satisfaction with the legal framework were normally distributed using the Kolmogorov-Smirnov Test as an enumerative technique to support the graphical method. The Table 6.6 below indicates the enumerative normality distribution of the satisfaction/justness gap.

Table 6.6: Test for Normality for Satisfaction/Justness Gap

		Satisfaction Gap
N		210
Normal Parameters a,b	Mean	1.8605
	Std. Deviation	0.29882
Most Extreme Differences	Absolute	0.081
	Positive	0.081
	Negative	-0.07
Kolmogorov-Smirnov Z		1.168
Asymp. Sig. (2-tailed)		0.131

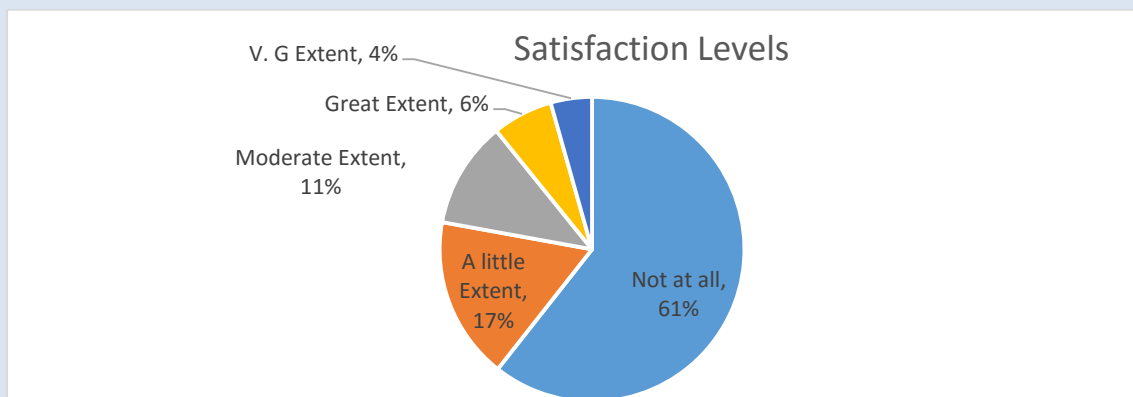
a Test distribution is Normal.

b Calculated from data.

Source: Field Survey (2015)

The graphical method and the Kolmogorov-Smirnov Test for normality analyses established the gap in satisfaction/justness with the compensation praxis as normally distributed [M=1.8605, SD=0.2988] therefore, allowing for further parametric tests.

Chart 6.2: Satisfaction/Justness Levels



Source: Field Survey (2015)

Findings in chart 6.2 above indicate that the satisfaction/justness gap had 78% dissenting while 21% accented with the compensation. The majority dissention was by households and SMEs indicating that a gap exists in policy frameworks and compensation praxis that can be mitigated by establishing parameters of just terms of compensation. This is because those satisfied with compensation praxis were less than 50% of the respondents. This

satisfaction/justness gap was established by the satisfaction with economist-valuation compensation provided in the legal framework.

ii) ANOVA for satisfaction/justness gap

Objective one was partly addressed by evaluating satisfaction/justness of the legal framework on the level of the adequacy of compensation praxis in involuntary resettlement. The questionnaire had 10 prompts that were subjected to the ANOVA technique and the results are shown in Table 6.7 below.

Table 6.7: Satisfaction/Justness Gap in Legal Framework

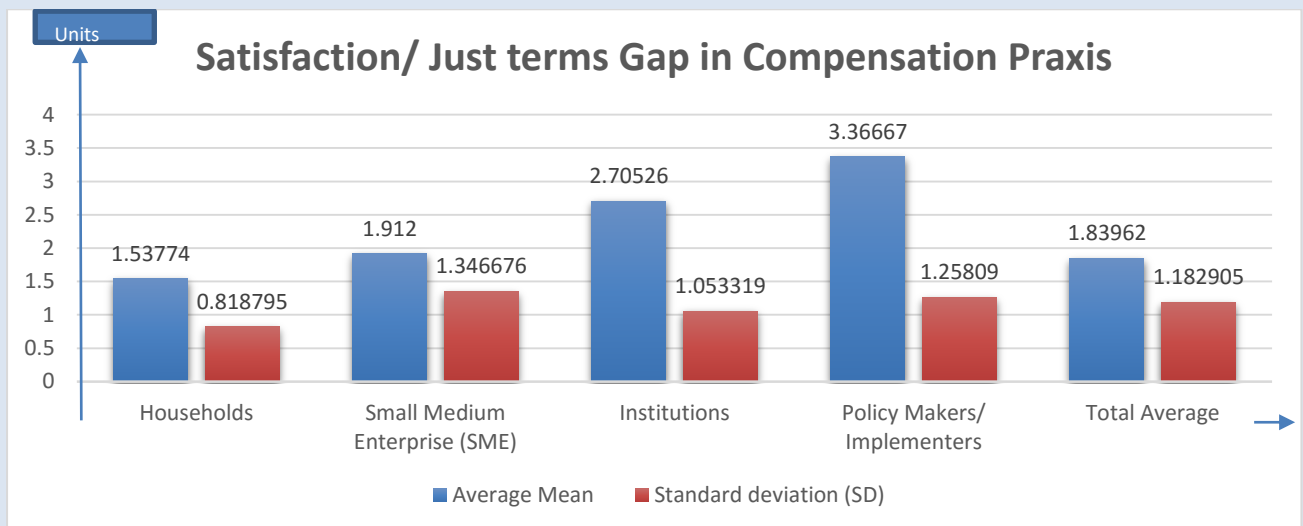
C	Statutory Authority	House holds		SMEs		Institutions		Implementers		F-Value	(P-Value)
		a	b	a	b	a	b	a	b		
		Mean	SD	Mean	SD	Mean	SD	Mean	SD		
1	To what extent is it just for the Government to compulsory acquire land	1.87	1.33	2.20	1.41	3.21	1.32	4.67	0.5	16.424	0.000
2	To what extent is it just to take possession of uncultivated, pasture or arable land out of urgency of the project before payment?	1.55	1.32	1.4	0.91	2.84	1.46	2.00	1.22	6.196	0.001
3	To what extent is the monetary compensation for acquired land 'just'?	1.31	0.46	1.68	1.22	2.95	0.85	4.00	1.22	57.906	0.000
4	To what extent is the compensation for developments on land 'just'?	1.50	0.66	1.52	0.82	2.79	0.85	3.22	1.56	25.971	0.000
5	To what extent is compensation paid for damage caused during survey 'just'?	1.38	0.65	1.64	1.35	2.79	0.85	3.67	1.32	30.53	0.000
6	To what extent is compensation paid for relocation of plant and machinery 'just'?	1.80	0.96	2.12	1.48	2.37	0.96	3.44	1.42	7.334	0.000
7	To what extent is compensation to relocate paid to the land owner 'promptly'?	1.19	0.39	2.16	1.60	2.21	1.08	2.89	1.61	20.535	0.000
8	To what extent do you feel that the legal redress system in hearing for claims of interests is 'just'?	1.19	0.39	1.96	1.40	2.58	0.90	3.33	1.41	36.579	0.000
9	To what extent is the legal redress system 'just' in settlement of disputes arising out of relocation?	1.06	0.23	2.24	1.61	2.53	1.07	2.56	1.51	31.126	0.000
10	Do you think it is 'just' for the court to determine who to pay litigation costs when seeking justice?	2.54	2.53	2.20	1.66	2.79	1.18	3.89	3.89	2.439	0.067
	MEAN OF MEANS	1.539		1.912		2.706		3.367			

Source: Field Survey (2015)

The responses were subjected to the 5-scale likert chart that had a mean calculated as $3=15/5$. The determinant of just terms of compensation was an average mean of 3.0. Responses below this mean would be the gap under quest between the adequacy of the compensation and the legal frameworks on the compensation praxis.

This information was condensed for further analysis into a bar graph showing the average means for ‘within’ the four categories against the total average mean ‘between’. All the categories indicated as (M=1.839, SD=1.182). This established the gap between adequacy of compensation with statutory praxis against just terms of compensation as shown in Figure 6.2 below.

Figure 6.2: Satisfaction/Justness Gap In Legal Framework



Source: Field Study (2015)

The above results indicate the average mean in satisfaction/justness with adequacy of compensation for households [M=1.53, SD=0.818]. This revealed a just compensation gap of 1.5 below the mean of 3.0 as explained by the percentage responses on the independent variables. In turn, SMEs had an average mean [M=1.912, SD=1.3466] indicating a just compensation gap of 1.1 while institutions had an average mean [M=2.705, SD=1.0533] indicating a compensation gap of 0.3. Implementers had [M=3.366, SD=1.258] being high is explained by their orientation of compensation praxis guided by the legal framework.

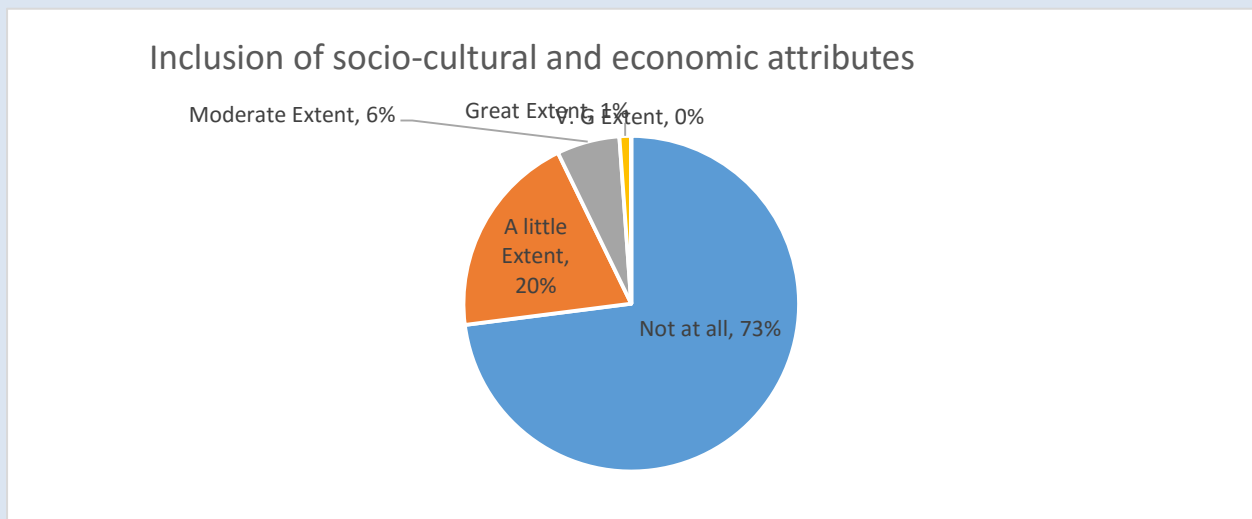
The average means of households, SMEs and institutions totaled the average mean [M=2.052] that indicated existence of a satisfaction/justness gap of 1.0 below the statutory

mean of 3.0. However, upon inclusion of implementers, the total average mean for all the four categories reduced to 1.82. This implied that inclusion of the implementers eroded the sociological approach by 0.17 considered by the legal structure of the compensation praxis. In spite of this, acceptance of the legal provision on takeovers of uncultivated pasture land upon notice of 15 days notwithstanding non-payment, was below the mean by all the categories. The ANOVA findings corroborated information on Chart 6.2 that indicates the inadequacy of compensation gap by 78%.

b) Analysis for Inclusion of Socio-Cultural and Economic Factors

This leads to the second variable in objective one on inclusion of socio-cultural and economic issues in the compensation praxis. These were compared against determinants espoused by Cernia’s (1999) eight-tier model as the prism for ‘just terms of compensation’.

Chart 6.3: Socio-Cultural and Economic Attributes



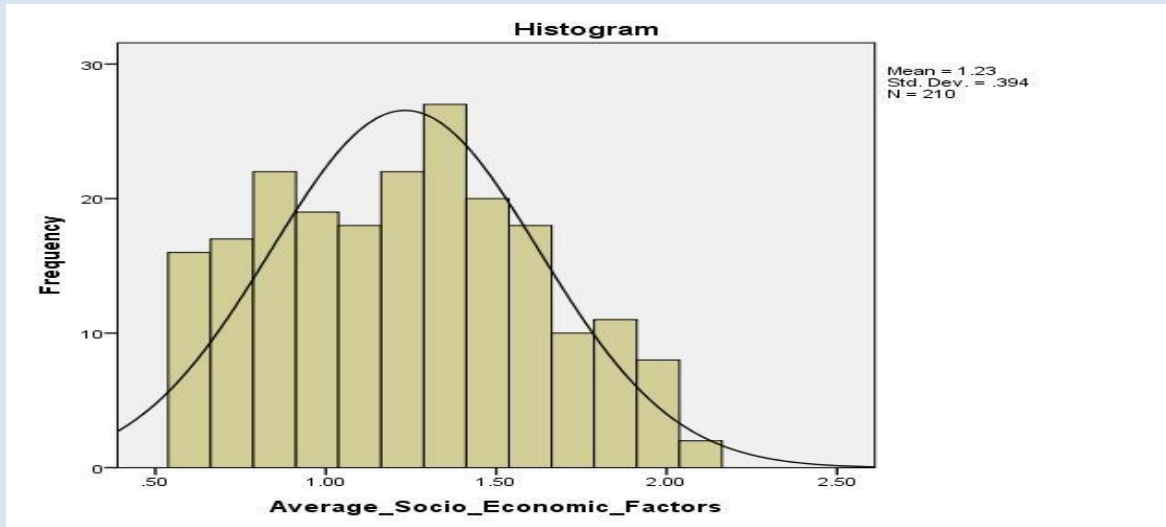
Source: Field Survey (2015)

The findings indicate sociological attributes of disarticulation as ignored in praxis by 93%. This was interpreted as respondents’ acquiesce to provision of Cernia’s (1999) eight-tier model attributes were only 7% attributed to institutions and policy makers who are detached from secondary derivative interest of dependents.

i) Normality for Socio-Cultural and Economic Factors

The test for normality using the graphical method confirmed the means for socio-economic factors in compensation praxis were normally distributed as shown in Figure 6.3 below.

Figure 6.3: Socio-Cultural and Economic Factors



Source: Field Survey (2015)

Kolmogorov-Smirnov Test normatively confirmed the graphical method in Figure. 6.3 above. The Table 6.8 below indicates the results of the Kolmogorov-Smirnov Test.

Table 6.8: Test for Normality for Socio-Cultural and Economic Factors

		Socio-Cultural and Economic Factors
N		210
Normal Parameters a,b	Mean	1.2323
	Std. Deviation	0.39434
Most Extreme Differences	Absolute	0.08
	Positive	0.074
	Negative	-0.08
Kolmogorov-Smirnov Z		1.159
Asymp. Sig. (2-tailed)		0.136

a Test distribution is Normal.

b Calculated from data.

Source: Field Survey (2015)

Both the graphical method and Kolmogorov-Smirnov Test for normality showed that the data on socio-economic factors in compensation praxis was normally distributed (M=1.2323,

SD=0.3943). This implied that parametric analysis of ANOVA and The Multiple Regression Analysis could be applied to this variable.

ii) ANOVA for Socio-Cultural and Economic Factors

The ANOVA technique evaluated the socio-cultural and economic attributes on just compensation. The technique came up with means and SD both ‘between’ categories and ‘within’ the categories as indicated in Table 6.9 here under.

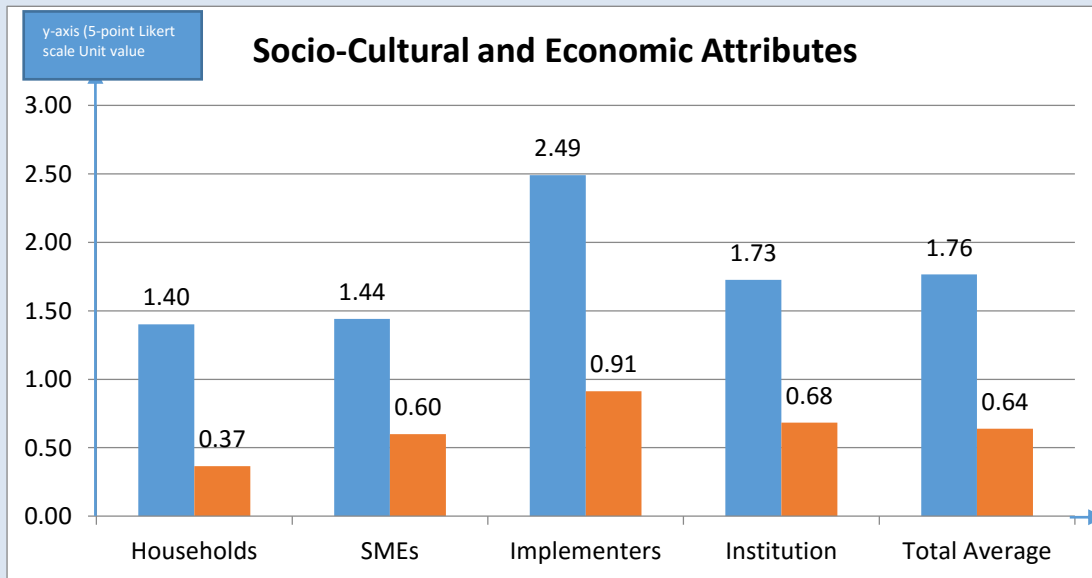
Table 6.9: ANOVA on Social –Cultural and Economic Factors

	Statement	Households		SMEs		Implementers		Institutions	
		Mean (a)	Std Dev (b)	Mean (a)	Std Dev (b)	Mean (a)	Std Dev (b)	Mean (a)	Std Dev (b)
1	Does the law consider whether the requirement to relocate from land is acceptable by other household dependents other than the household head?	1.02	0.44	1.52	0.74	1.11	0.33		
2	To what extent has, the law considered the interests of family dependents (wives, children and the aged) in the compensation awards.	1.2	0.27	1.24	0.35	2.30	0.44		
3	Does the law adequately addresses socio-economic issues of landlessness	1.24	0.25	1.48	0.46	3.20	1.27	1.5	0.65
4	Does the law adequately addresses socio-economic issues of homelessness	1.01	0.25	1.52	0.35	2.80	1.27	0.8	0.65
5	Does the law adequately addresses socio-economic issues of marginalization	1.64	0.54	1.03	0.35	3.16	0.93	2.69	0.91
6	Does the law adequately addresses socio-economic issues of food insecurity	1.4	0.46	1.6	0.74	2.89	1.05	1.21	0.77
7	Does the law adequately addresses socio-economic issues of loss of access to common property resources	2.46	0.36	1.61	0.74	3.44	1.13	1.96	0.65
8	Does the law adequately addresses socio-economic issues of community separation	1.24	0.35	1.52	1.06	1.02	0.87	2.2	0.47
	MEAN OF MEANS	1.40	0.37	1.44	0.60	2.49	0.91	1.73	0.68

Source: Field Study (2015)

The results indicated that sociological approaches were neither considered in policy frameworks nor compensation praxis on involuntary resettlement in Kenya. From the table 6.10 above, all the means ‘between’ the categories scored below the average mean of 3.0.

Figure 6.4: Socio-Cultural and Economic Attributes



Source: Field Study (2015)

Results in Figure 6.4 above indicate a high consensus that socio-cultural and economic attributes were ignored in the compensation praxis. Though implementers were the category with the highest mean of 2.49, it still fell short of the average mean by 0.5. Households had the lowest mean of 1.40 indicating that they were the most affected by social disarticulation.

iii) Interpretation of findings for objective one

The ANOVA allowed the comparison of variances of independent variables within the groups (Hinton et. al, 2004). According to Cooper and Schindler (2011), if the probability (p) value is less than 0.05, it is an indicator of significance. If p-value is >0.7, the model is not suitable as explained in chapter four. In this study, the $F_{\text{calculated}} F(1,22.207) > f_{\text{critical}} F(3.08)$ in the F distribution table. This deduces that the independent variables are significant in determining just terms of compensation (Hinton et. al, 2004; Kothari, 2008).

Table 6.10: ANOVA

Attributes	Sum of Squares	Df	Mean Square	F	Sig. (p)
------------	----------------	----	-------------	---	----------

Between Groups	42.091	2	12.982	22.207	0.000
Within Groups	25.965	215	0.585		
Total	68.055	217			

Source: Field Study (2015)

Table 6.10 above indicates that the combined effect of the independent variables was significant in explaining satisfaction with compensation practices with an $F_{\text{calculated}}=22.207 > F_{\text{critical}}=3.038$ at $\alpha 0.05$. This indicated need for a just terms of compensation model for the inadequacy in policy framework termed as the satisfaction/justness gap indicated in objective one in the regression model

Regression analysis empirically determines whether satisfaction/just compensation has a correlation with inclusion of social-cultural and economic attributes in the just terms of compensation. Regression results in table 6.11 below indicated the goodness of fit. An R squared of 0.077 indicated that 7.7% of the variations in satisfaction/just compensation were explained by the inclusion of social-cultural and economic issues in just terms of compensation.

According to Cooper and Schindler (2011), if the probability (p) value is less than 0.05, it is an indicator of significance. If p-value is >0.7 , the model is not suitable. In this study, a p-value of 0.05 was realized. The overall model significance is also presented in table 6.11 below. A critical F statistic of 17.278 is less than the calculated statistic of $F(1, 208)=17.278$; $p<0.05$ meaning the findings are significant as explained by rule of thumb principles in Chapter Four. This is supported by a probability value of 0.00. Since $F_{\text{calculated}} > f_{\text{critical}}$ and the reported probability of 0.00 ($p<0.001$) is less than the calculated probability of 0.05 ($p_{\text{value calculated}} < p_{\text{value critical}}$). The overall model was significant since the independent variable inclusion of social-cultural and economic factors do predict just terms of compensation therefore, an indication to accept the null hypothesis (Hinton et. al, 2004; Kothari, 2008).

The relationship between social-cultural and economic issues and compensation praxis for just terms of compensation is positive and significant ($b_1=0.210$, p value, 0.000). This

implies that a 1 unit increase in inclusion of social-cultural and economic factors decreases the satisfaction gap by 0.210 units.

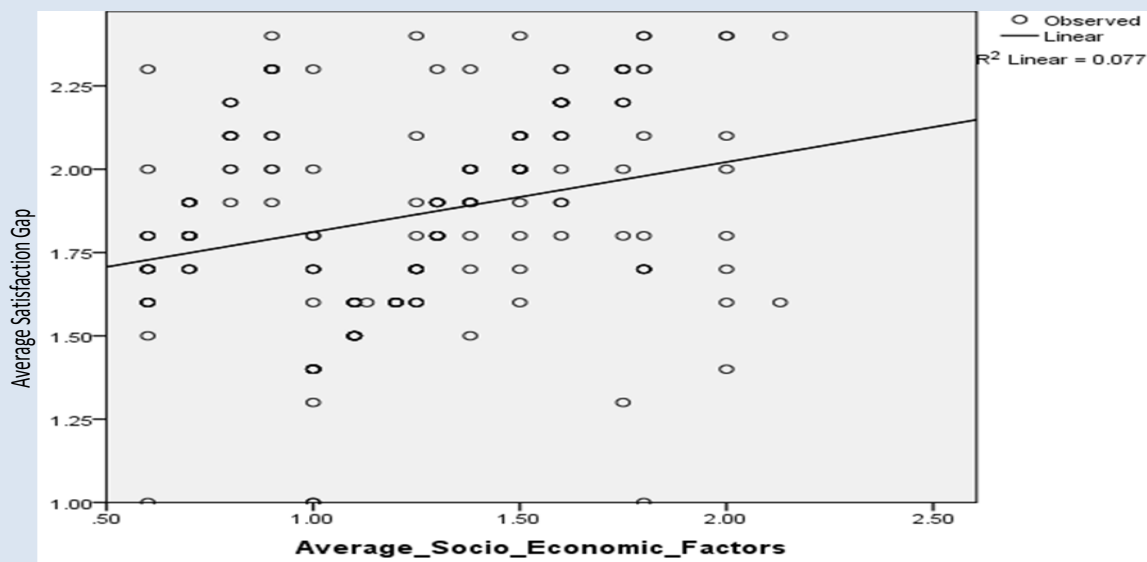
Table 6.11: Regression Analysis of Socio-Economic Factors

Parameter estimate	Coefficient	P value
Constant	1.602	0.000
Inclusion of Socio-Cultural-Economic Factors	0.210	0.000
R Squared	0.077	
F statistic (ANOVA)(df ; 1;208; 0.05)	17.278	0.00

Source: Field Study (2015)

Figure 6.5 below is the scatter diagram representation of the relationship between inclusion of social-cultural and economic issues with the level of satisfaction with the compensation praxis. The Figure indicated a positive correlation between the two variables. Therefore, an increase in the inclusion of social-cultural and economic issues increases just terms of compensation.

Figure 6.5: Regression Model for Socio-Cultural and Economic Factors



Source: Field Survey (2015) The regression equation is expressed as:-

$$Y_1 = \beta_0 + \beta_2 X_2 + \beta_3 X_3 + e$$

Where

$Y_1 = \beta_0(\text{legal framework and compensation praxis}) + \beta_2(\text{satisfaction/justness gap}) + \beta_3(\text{socio-cultural and economic issues}) + e(\text{margin of error occasioned by factors exogenous to the scope of study})$

$$Y_1 = 1.602 + 0.78 + 0.210$$

Meaning Socio-cultural and economic issues comprised 21% while the satisfaction/justness gap with the legal framework was established at 78%.

The findings indicate the economist-valuers' approach as based on policy frameworks and praxis hinged on colonial CMP approaches. The CMP administered by LAA Cap that ignored social disarticulation emanating from involuntary resettlement.

Despite inclusion of plant and machinery in the Land Act 2012, the onus of severing and relocation remains with the expropriatee, with cases shifting to the Land and Environment Court from 2011 after the Land Compensation Tribunal was ignored in the Land Act 2012. It leaves no doubt that the increasing number of cases related to general land and environment issues will result to abrogation of the 'prompt payment in full of just compensation' sought by expropriatees in compulsory acquisition, but previously effectuated by the Land Compensation Tribunal. Furthermore, these cases arise due to subjective nature on valuation methodology applied by the valuer when comparing the vibrant land market vis-à-vis stamp duty declaration on transfers derived from comparative analysis of proximate land. This provides the variance between the valuation Figures by different valuers within a wide array of values. This confuses the public seeking for a 'just' threshold in compensation thereby justifying reintroduction of the Land Compensation Tribunal.

The right of appeal on adequacy is contentious in interpretation of 'adequacy', 'just equivalent', 'fair market value', 'fair, reasonable and just market values' among other terminologies in the praxis by professionals (Umeh 1973). A highlight of some cases of judgment on valuation quantum resulting from dissatisfaction with the compensation amounts and compensable item heads are illustrated by tribunal and court rulings in the case study.

Table 6.11: Litigation Cases							
No	Registered Owner/Claimant	L.R. Number	Acreage (Ha)	MOL Valuation	Date of MOL Award	Tribunal/Court Determination	Date of Determination
1	Mama Ngina Kenyatta & Mrs. Kristine Wambui Pratt	L.R. No. 13562/29 L.R. No. 13562/30	0.1738 0.637	3,852,500.00	6/01/2009	3,852,500.00	10/03/2010
2	Kenya Clay Products	L.R. No. 13562/34 L.R. No. 13562/35	0.0344 0.02	1,775,225.00	7/01/2009	1,775,225.00	10/03/2010
3	Royal Delta Foods	Plot No. 15562/27		621,000.00	29/09/2008	621,000.00	25/11/2009
4	Samwel Wainaina Muiruri	L.R. No. 209/1534	0.0716	16,525,500.00	7/01/2009	16,525,500.00	18/05/2011
5	Mohamed Salim Fazal	L.R. No. 8707/1	0.1639	27,597,815.00	13/01/2009	30,086,990.00	8/06/2011
6	Kenafric Bakeries Ltd	L.R. No. 13562/28	0.174	3,898,640.00	14/05/2010	4,549,607.00	27/10/2010
7	Satellite Aviation & Telecommunication Systems Ltd	L.R. No. 337/675	0.46	3,447,600.00	9/03/ 2009	3,481,400.00	26/05/2010
8	Josephat Ndungu Gachichio	L.R. No. 24052/2	0.0272	656,880.00	22/04/2009	656,880.00	18/05/2011
9	Lydia Wanjiku Gathecha	L.R. No. 24053/3	0.0272	345,000.00	12/05/ 2010	345,000.00	15/06/2011
10	Petty Wanjiku Kigwe	L.R. No. 178881	0.0274	339,250.00	12/05/2010	339,250.00	15/06/2011
11	Michael M. Njuguna & Margaret N. Mugo	L.R. No. 17903	0.0272	345,000.00	12/05/ 2010	345,000.00	15/06/2011
12	Josephat Njoroge Mwangi	L.R. No. 98/7	4.589	20,430,820.00	20/07/2010	22,172,630.00	4/08/2011
13	Nagib Suleman & Naznin Suleman,	Subplot 1	0.1332	23,097,520.00	15/10/2008	26,820,220.00	28/08/2010
14	Chillington Investments Ltd	Subplot 2	0.1567	19,464,900.00	15/10/2008	23,856,625.00	28/08/2010
15	Sadrudin K. Suleman	Subplot 3	0.2396	27,077,900.00	15/10/2008	32,239,462.00	28/08/2010
16	Iqbal A.R Mohamed & Sajid A.R Mohamed	Subplot 4	0.1937	24,938,900.00	15/10/2008	29,496,235.00	28/08/2010
17	Iqbal A.R Mohamed & Sajid A.R Mohamed	Subplot 5	0.4895	61,874,600.00	15/10/2008	67,287,346.00	28/08/2010
18	John Kariuki Macharia	Ruiru/Mugutha Block 1?T.555	0.1008	10,870,000.00	8/12/2008	18,223,480.00	ELC no 251 Of 2013 (John Kariuki Macharia vs CoL) Determined on 14/12/2014

Source: MoLUD Tribunal Records 2015

Miangoni (2008) provided the theoretical framework and Syagga (1994) highlighted compensable items accorded in the legal framework. However, though related to displacement, secondary non-tangible interests and indirect conveyance costs of travel, alternative accommodation and transaction costs are ignored in compensation. Philosophical arguments on justice seek a balance between the individual good (compensation) and the

societal good (benefit) explained by Chitre (2010). Despite conventional project analyses models of IRR, NPV and payback periods seeking to maximize the public good at minimal costs, there is need for an optimum balance bridging the public good with individual livelihood sustenance (Cernia 1999; Burger 2008).

The satisfaction gap is in respect to adequacy of compensation quantum and ignoring impoverishment and social disarticulation reflected by non-inclusion of socio-cultural and economic issues in compensation praxis. To close the satisfaction gap, this study suggests socio-cultural and economic parameters for inclusion in policy and legal frameworks. To satisfy objective one, the findings indicate rejection of alternative hypothesis (H_1) and adoption of null (H_0) hypothesis that ‘terms of compensation are not just in the policy frameworks and compensation praxis in involuntary resettlement in Kenya.

6.3.2 Tests for Normality for Objective Two

This objective evaluated the level of awareness of the legal framework by the respondents in contributing towards just terms of compensation.

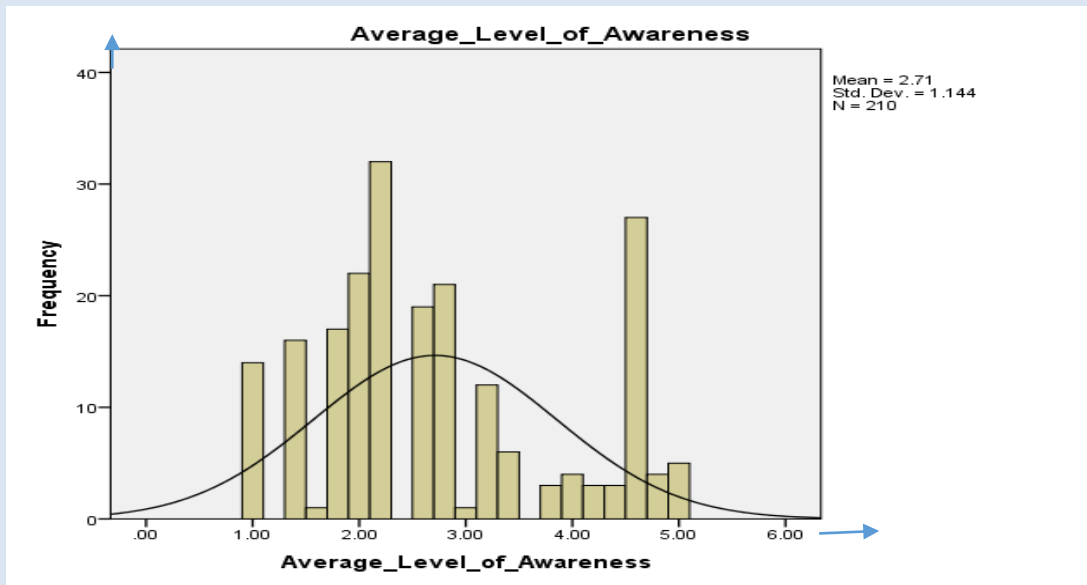
a) Level of Awareness of Just Compensation Praxis

Measurement for this variable was subjected to three categories namely households, SMEs and institutions. The level of awareness measured the understanding of the legal framework on compensation. The test for normality of distribution was undertaken to establish whether the samples could be subjected to parametric analyses.

i) Normality for Level of Awareness

The test for normality was examined using the graphical method approach as shown in the Figure 6.6 below. The results in the Figure indicated that the means for level of awareness on the legal framework are normally distributed using the Kolmogorov-Smirnov Test.

Figure 6.6: Level of Awareness



Source: Field Survey (2015)

This test indicates that the means for level of awareness for just compensation are not significantly different from a normal distribution, an essential condition before subjecting data to parametric tests. The Table 6.12 below indicates the results on normality of distribution.

Table 6.12: Test for Normality for Level of Awareness

		Level of Awareness
N		210
Normal Parameters a,b	Mean	2.711
	Std. Deviation	1.14371
Most Extreme Differences	Absolute	0.158
	Positive	0.158
	Negative	-0.122
Kolmogorov-Smirnov Z		2.292
Asymp. Sig. (2-tailed)		0

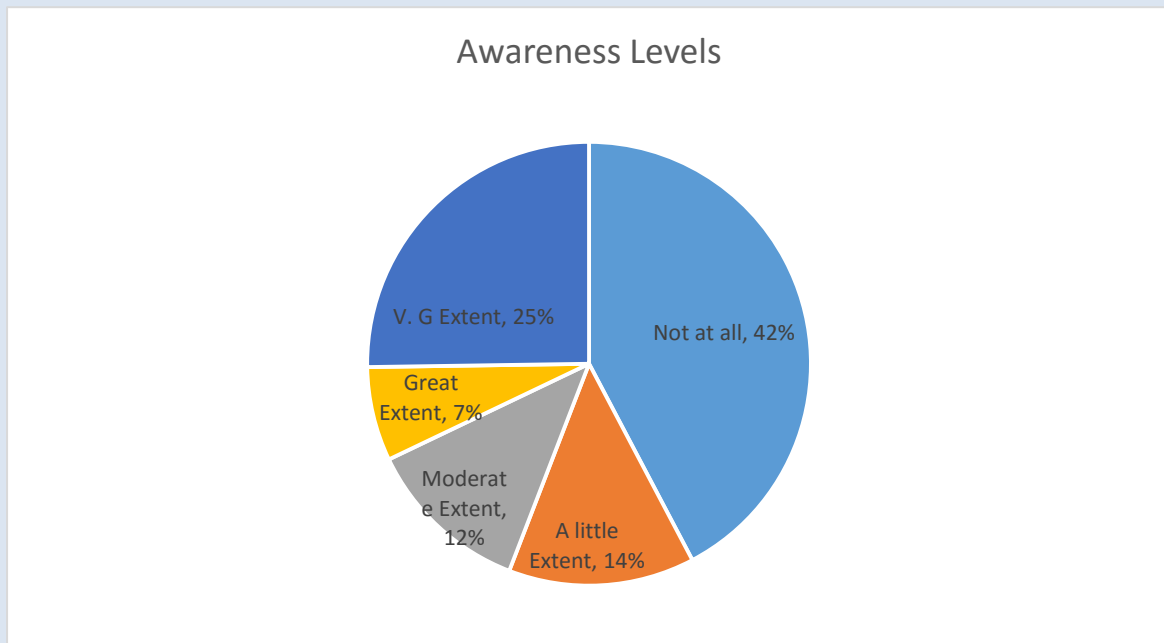
a Test distribution is Normal.

b Calculated from data.

Source: Field Survey (2015)

The graphical method approach and Kolmogorov-Smirnov Test for normality show that the data on level of awareness of the legal framework was normally distributed. This implied that parametric analysis could be applied for this variable. The parametric tests for this variable were ANOVA and Multiple Regression Analysis.

Chart 6.4: Level of Awareness of Legal Framework



Source: Field Survey (2015)

The chart 6.4 above indicates an average of 44% knowledge of the statutory provisions for involuntary resettlement through compulsory acquisition. The knowledge gap of 56% was resultant from households and SME responses as directly affected by issues of social disarticulation in the legal framework.

ii) ANOVA for Level of Awareness

The questionnaire had 10 prompts that examined the level of awareness of legal frameworks and compensation praxis against socio-cultural and economic expectations of just compensation. ANOVA analysed means and SD of responses on level of awareness of legal frameworks within each category and compared with between the categories. Illustration of the ANOVA outcomes are in table 6.13 below:

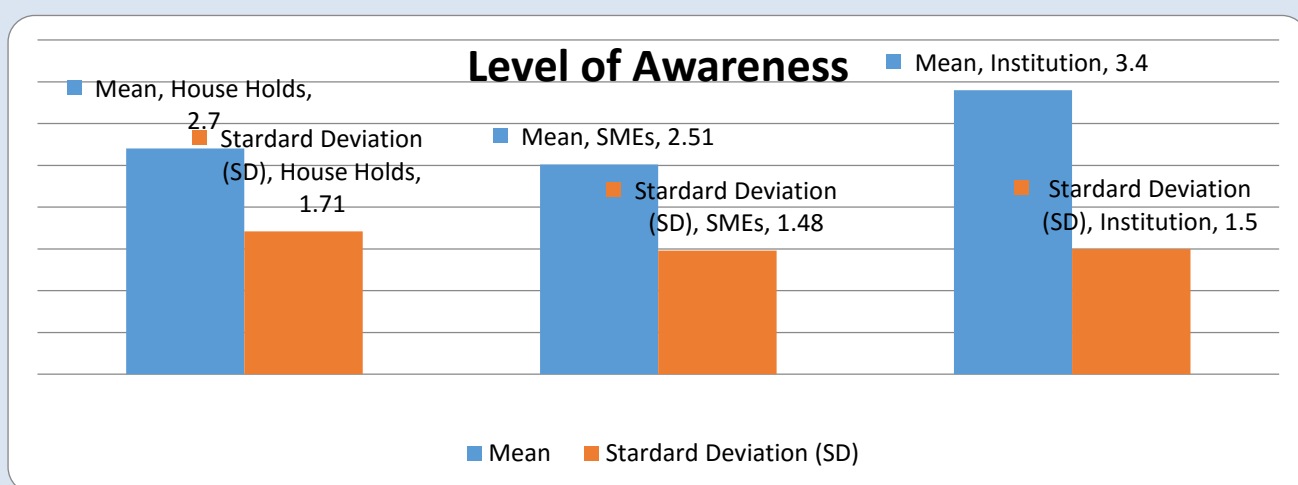
Table 6.13: Level of Awareness on Compensation Praxis

B	Statutory Authority	House Holds		SMEs		Institution	
		Mean (a)	SD (b)	Mean (a)	SD (b)	Mean (a)	SD (b)
1	I am aware that the Constitution provides for compulsory acquisition of land for public purposes	2.90	1.46	2.80	1.66	4.0	1.00
2	I am aware that the parcels to be acquired are published in a gazette notice	3.36	1.55	3.08	1.68	4.0	1.00
3	I am aware that I should receive compensation resulting from involuntary relocation under compulsory acquisition.	3.36	1.78	3.16	1.70	4.00	1.00
4	I am aware that persons with interest including the acquiring entity are to present their claims at a gazetted inquiry.	2.82	1.83	1.44	0.96	3.00	2.00
5	I am aware that the statutes have not provided for how the values on 'just' are arrived at.	2.40	1.72	1.96	1.51	4.00	1.00
6	I am aware that there is a law that provides for compensation under compulsory acquisition	2.27	1.77	2.64	1.63	3.00	2.00
7	I am aware that damage caused by survey should be compensated	2.87	1.78	3.04	1.57	3.00	2.00
8	I am aware that Compulsory acquisition in Kenya considers severance in costing for relocation	2.49	1.74	2.80	1.50	3.00	2.00
9	I am aware that Compulsory acquisition in Kenya considers injurious affection in costing of relocation	2.26	1.79	2.52	1.56	3.00	2.00
10	I am aware that Compulsory acquisition in Kenya considers disturbance in costing for relocation	2.23	1.64	1.68	0.99	3.00	2.00
	MEAN OF MEANS	2.70	1.71	2.51	1.48	3.40	1.50

Source: Field Study (2015)

This information was condensed for further analysis into a bar graph showing the average means for all the three categories. This was for establishing the level of awareness of the legal framework and compensation praxis as an indicator of just terms of compensation.

Figure 6.7: Level of Awareness of Compensation Praxis



Source: Field Study (2015)

b) Interpretations of findings on Level of Awareness

The awareness of the policy framework and compensation praxis was fundamental in establishing the deviation from individual perceptions on determinants of just terms of compensation.

- **ANOVA analysis**

The results in Figure 6.7 above indicated that the average mean on level of awareness for households [M=2.7, SD=1.71]. This revealed a knowledge gap on awareness of 0.3 below the mean of 3.0. SMES had an average mean [M=2.51, SD=1.48] indicating a knowledge gap of 0.49 while Institutions had an average mean [M=3.4, SD=1.5] indicating adequate awareness. Though the margin from the mean of households and SMES is marginal, it indicates adequate awareness of statutory provisions of the compulsory acquisition and compensation praxis for public purpose projects by the three categories.

According to Cooper and Schindler (2011), if the probability (p) value is less than 0.05, it is an indicator of significance. If p-value is >0.7, the model is not suitable. The findings indicate (p<0.001) is less than the conventional probability of 0.05 (p value_{calculated} < p value_{critical}), p value <0.05 supported by a probability value of 0.00 means the model is significant. The calculated F statistic of 25.322 was greater than the critical F statistic in the F distribution table of 2.99 (Hinton et. al 2004; Kothari, 2008). This means that the results were significant and the alternative hypothesis is rejected and null hypothesis adapted.

An $F_{\text{calculated}}=25.322 > F_{\text{critical}}=2.99$. This was indicated as $F(1,208)=25.322$. The awareness of legal framework on just compensation, influenced parameters of just terms of compensation. The relationship between awareness of legal framework on compensation praxis for just terms of compensation is positive and significant ($b_1=0.086$, p value=0.000). This implies that an increase in the level of awareness of legal framework and sociological attributes of compensation by 1 unit marginally increases satisfaction/justness by 0.086 units.

- **Regression Analysis**

Regression analysis was conducted to empirically determine the awareness of the respondents with the legal framework and compensation praxis on just terms of compensation. Regression results in table 6.15 indicates the goodness of fit for the equation as satisfactory. An R^2 of

0.109 indicated that 10.9% of the variations in satisfaction were explained by the level of awareness of legal framework on compensation and attributes of social disarticulation pursuant to just terms of compensation.

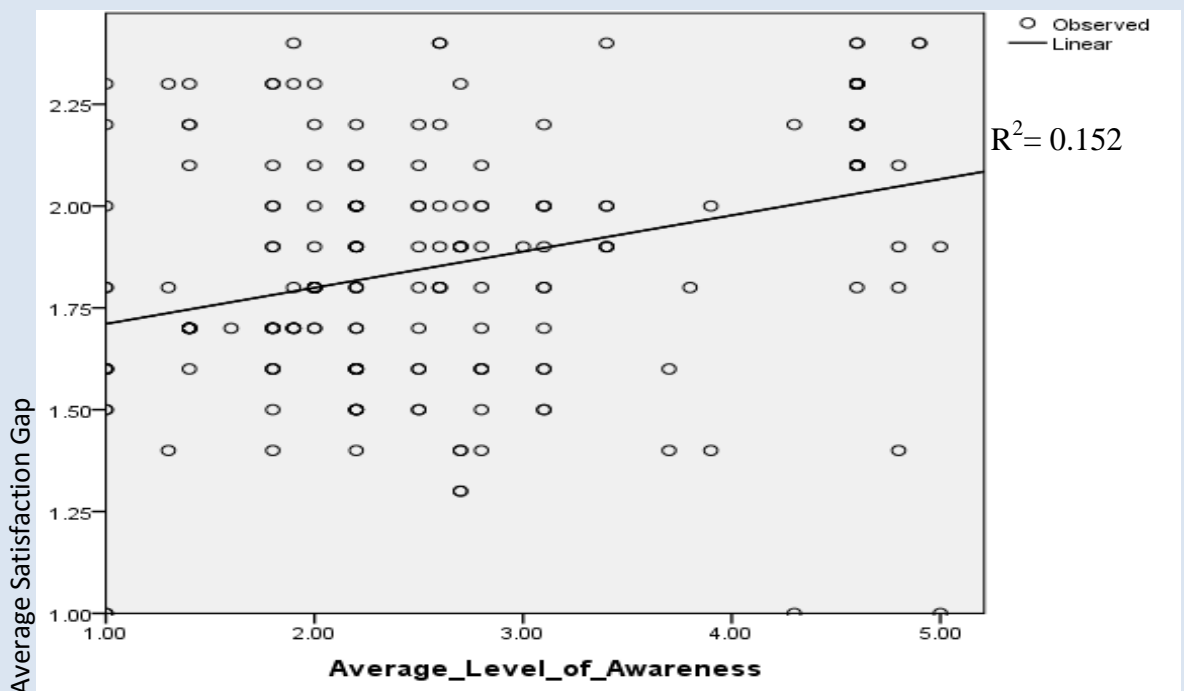
Table 6.14: Level of Awareness and Satisfaction

Parameter estimate	Coefficient	P value
Constant	1.063	0.000
Level of Awareness	0.092	0.000
R Squared	0.152	
F statistic (ANOVA)(df ; 1;208; 0.05)	30.416	0.00

Source: Field Study (2015)

Figure 6.8 below is a diagrammatic representation of the relationship between awareness of legal framework and just terms of compensation. The Figure indicates that a positive relationship exists using the scatter gram data in its graphical form (Hinton et. al, 2004). It also checked the degree of outliers and the cluster areas to provide the line of best fit affirming the casual relationship of R^2 at 10.9%.

Figure 6.8: Regression on Level of Awareness of Legal Framework



Source: Field Survey (2015)

$$Y_2 = \beta_0(\text{legal framework and compensation praxis}) + \beta_1(\text{level of awareness})_1$$

$Y_2 = 1.063 + 0.092$ Meaning that the effect of awareness of the legal framework is marginal by 9.2% influence on just terms of compensation.

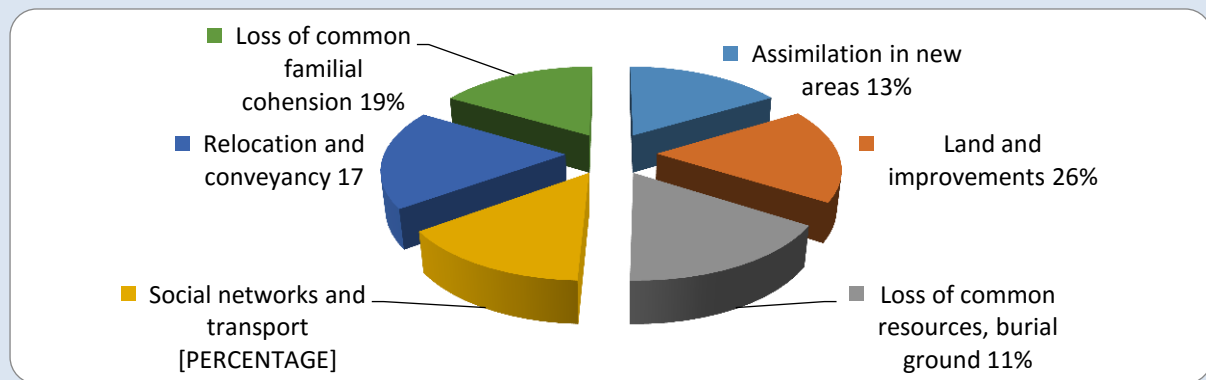
6.3.3 Test of Significance for Objective 3

The tests of significance suggest parameters to be included in just terms of compensation for involuntary resettlement. The analyses comprised percentages, Multiple Regression analysis and Pearson Bivariate Correlation.

a) Analyses of Sociological Attributes

Though the law compensates money-for-land or land-for-land at the market value of acquired land the study sought to establish the comparable importance of the attributes on a ranking scale. Chart 6.5 below indicates the ranking of importance of socio-cultural and economic attributes considered in compensation of involuntary resettlement.

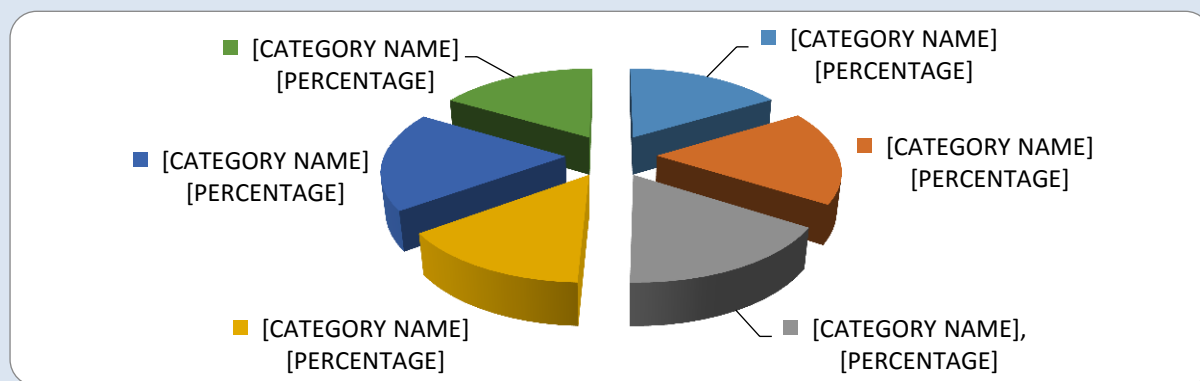
Chart 6.5: Allocation for African concepts on just Compensation



Source: Field Survey 2015

The ranking indicated land and improvements to be of highest value at 26%, while relocation and conveyance costs were significantly rated. Assimilation in new areas, loss of familial cohesion and social networks were moderate. Loss of common resources was ranked least at 11%. The above analysis can be compared against socio-cultural and economic factors advanced by Cernia' (1999) social disarticulation model.

Chart 6.6: Allocation for Social Disarticulation



Source: Field Survey (2015)

The pie chart is a comparative analysis weighting the socio-cultural and economic attributes of just terms of compensation. The weights range between 14% on food security being the lowest and 18% on joblessness as the highest.

i) Multiple Regression Analysis

The Multiple Regression Analysis was undertaken on this variable to establish the coefficients

Figure: 6.9: Just Terms of Compensation Regression Model

Parameter estimate	Coefficient	P value
Constant	1.409	0.000
Level of Awareness	0.080	0.000
Socio Cultural and Economic Factors	0.090	0.000
R Squared	0.413	
F statistic (ANOVA)(df ; 1;208; 0.05)	21.309	0.000

Source: Field Survey (2015)

The Multiple Regression model was based on predictor variables on the lowest scale rate of not at all on compensation in measuring the satisfaction gap expressed as follows:-

$$Y = 1.409(\text{Legal framework}) + 0.090 (\text{Socio-Cultural and Economic Factors}) + 0.080 (\text{Level of Awareness}).$$

$$Y = 1.579$$

The results were further subjected to tests of significance as follows:-

ii) Pearson Bivariate Coefficient Of Correlation

The Pearson Coefficient of Correlation looks at the association between two independent variables by lumping together the four categories of respondents; households, institutions, SMEs and implementers. The technique combines the general results of the likert scale that established correlation interrelationships of the study.

- Level of awareness with satisfaction gap of just terms of compensation. This measurement confirmed influence of awareness of legal frameworks contributing 21.9% of on just terms of compensation.
- Socio-economic factors with satisfaction gap of compensation. This factor established the influence of inclusion of socio-cultural and economic factors on just terms of compensation at a 51.6% contribution.
- Level of awareness with inclusion of socio-cultural and economic factors. This measured effects of awareness of statutory provisions versus socio-cultural and economic factors indication a 26.5% influence.

Table 6.15: Pearson’s Bivariate Correlation

Variable		Satisfacti on	Level of awareness	Social economic factors
Satisfaction with compensation practices	Pearson Correlation	1		
	Sig. (2-tailed)			
Level of awareness	Pearson Correlation	0.219	1	
	Sig. (2-tailed)			
Social Economic Factors	Pearson Correlation	0.516	0.265	1
	Sig. (2-tailed)		0.014	
** Correlation is significant at the 0.01 level (2-tailed).				
* Correlation is significant at the 0.05 level (2-tailed).				

Source: Field Survey (2015)

iii) Interpretation of findings

Results in the table 6.15 above indicate a positive correlation between the satisfaction gap with awareness of compensation practices at $R^2=0.219$ and the inclusion of social-cultural and economic factors $R^2=0.516$ in compensation praxis as significant and positive $p<0.001$ at $p<0.05$. This indicates satisfaction with compensation practices has positive correlation with inclusion of social-cultural and economic factors as they all shift in the same direction. The findings indicated an $R^2=1$ value in satisfaction against itself meaning perfect correlation of 1.

Level of awareness is an enabler in understanding the legal and policy frameworks and compensation praxis against socio-cultural and economic parameters of just terms of compensation influence of 26.5%. The socio-cultural and economic attributes in totality therefore contain 51.6% of the satisfaction/justness gap. Each attribute is to be divided proportionately as empirically weighted in Figure 6.9 above anchored on market values guided in policy frameworks.

6.4 Hypothesis Testing

The hypothesis (H_1) examined adequacy of policy framework and compensation praxis for just terms of compensation in involuntary resettlement in Kenya. The results showed the probability of adopting the null hypothesis at (p value = 0.000) as significant at $p_{value}<0.001$. The $F_{calculated}(2,215)=22.207$; $p<0.05$ against $F_{critical}(3.038)$ meant the calculated F statistic was greater than the critical F statistic in the F distribution table and therefore significant (Kothari, 2008). This means that the policy and legal frameworks do not include social disarticulation associated with involuntary resettlement.

The study concludes that **there is a compensation gap between statutory compensation and just terms of compensation** for involuntary resettlement in Kenya. This is reflected in the analyses and findings on first, the level of awareness of the statutory compensation. Secondly is the exclusion of socio-cultural and economic variables in compensation praxis attested by a variance between the statutory economist-valuation approaches and Cernia's (1999) sociological approaches that define the social disarticulation model.

Therefore, the study findings for objective one reject the alternative hypothesis and validate the **null hypothesis (H_0) that just terms of compensation are not adequate in policy frameworks and compensation praxis of involuntary resettlement.**

The study findings for objective two reject the null hypothesis and validate the **alternative hypothesis (H_u) that there is a level of awareness of the policy frameworks compensation in involuntary resettlement.**

6.4.2 Summary of Analyses

The ANOVA and Regression analyses indicate that three categories were aware of the legal frameworks on compulsory acquisition and compensation praxis, the fourth category being policy makers/implementers. This highlights the socio-cultural and economic attributes of compensation ignored in policy frameworks in ameliorating social disarticulation consequential to involuntary resettlement. Review of the World Bank and donor partner guidelines indicated that socio-cultural issues of recompense are fundamental in project funding (Wilsen, 2011). The UN 1948 Declaration of Human Rights has a continuum improvement approach through the OHCHR on resettlement guidelines and the HRBA through the PANTHER framework to broaden participatory feedback systems for project sustainability and livelihood restoration (Katz and Kahn 1978).

Aristotelian discourses on application of unjust laws for political good were to be balanced with a practice of virtue (Sachs 2002). This supports Cernia's (1999) social disarticulation model providing for livelihood reconstruction frameworks. The NLP and Constitution 2010 envisioned sustainable development and poverty eradication through participatory approaches. This was through the NLP, the Constitution and the Land Act 2010 on 'prompt payment in full of just compensation' for all persons with interest on the land (GoK 2009, 2010, 2012). Observations from the study indicate that apart from tangible direct compensable items, the non-tangible secondary interest and indirect transaction costs should be considered in the compensation. The study findings indicate that despite the land reforms, the policy frameworks and compensation praxis have not yet reflected sociologist perspectives, and therefore continue to reflect the colonial approaches that ignored social disarticulation.

This chapter satisfied objective one on evaluating the adequacy of policy framework on just terms of compensation by confirming lack of policy and inadequate legal frameworks on compensation. Objective two confirmed awareness of the statutory praxis that enabled respondents communicate the satisfaction/justness gap. Triangulation and collation of the data revealed social disarticulation as ignored in the compensation praxis. This affirmed African concepts with sociological approaches summarized in Cernia's (1999) eight-tier impoverishment model as the quest for just terms of compensation in policy and legal frameworks on involuntarily resettlement in Kenya. Therefore, Chapter seven recommends a just terms of compensation model that integrates the economic-valuers' approach and the sociological approaches to satisfy the third objective of the study.

CHAPTER SEVEN

SUMMARY, CONCLUSIONS AND RECCOMENDATIONS

7.0 Introduction

The preceding chapters outlined the involuntary resettlement policy frameworks and compensation praxis in Kenya, with comparative interjections on praxis of some countries in the region. This developed the discussions and arguments for inclusion of sociological approaches in compensation for displacement occasioned by public purpose projects. It therefore behoves us to recapitulate in this chapter the main objective of the study as quest for just terms of compensation in policy framework and compensation praxis for involuntary resettlement. This chapter presents the summary of findings, conclusion and recommendations.

7.1 Summary of Findings

The study evaluated the adequacy of policy frameworks and compensation praxis for just terms of compensation in involuntary resettlement in Kenya. The review of the legal framework and compensation praxis for just terms of compensation for involuntary resettlement indicated that colonial legacies contradicted indigene traditional land access and management structures. Colonial statutory precincts pursuant to CMP ideologies ignored salient socio-cultural and economic attributes pitting formality against African social formations. In contrast, development partners pursue human rights on traditional platform. Land reforms recognized cultural embodiments in the NLP of 2009 and the Constitution 2010 of Kenya in respect to involuntary resettlement. The study confirmed that apart from the legal framework on compulsory acquisition upon which compensation praxis is anchored, there are no policy frameworks for involuntary resettlement in Kenya. The study further confirmed that social-cultural and economic attributes advanced in Cernia's (1999) eight-tier impoverishment model are not considered for compensation.

The study also evaluated the level of awareness on policy frameworks on just terms of compensation in involuntary resettlement. The study indulged into the background on expropriation and highlighted major ordinances enacted to formalize expropriation and the related compensatory frameworks in Kenya. The promulgation of Constitution 2010, repealed the land acquisition and compensation laws and the new enactments have integrated

PANTHER frameworks. The introduction of occupiers on good faith without title as well as PROW and wayleaves necessitate formulation of Resettlement Policy Framework that incorporates attributes of just terms of compensation in involuntary resettlement. Apart from enhancing the level of awareness of the legal frameworks and compensation praxis, it will manage expropriatee perceptions of justice and bridge the satisfaction/justness gap in the compensation methodology.

The shortfall in policy and legal frameworks impinging the compensation praxis has resulted to modelling a preposition that suggests parameters that if considered will resonate justness in involuntary resettlement. This model will also apply in instances where government is desirous to compensate socio-cultural and economic attributes from traditional perspectives.

7.2 Conclusions

Traditional social formations enabled all people to extract livelihood from land. Therefore, land became the pivot of life and socio-economic orientation of wealth not only for social capital but also for political constructs of governments. The derivative primary and secondary interests thereon are the backbone of both individual and national well-being without which, the socio-cultural and political imbalances arise. The advent of industrialization propelled land as the only social security available to people in both rural and urban areas. Therefore, the emotive nature of land ownership, occupation, use and access necessitated formulation of a comprehensive involuntary resettlement policy framework and compensation methodology that absorbs emerging sociological attributes. Advancement of resettlement models by donor agencies credit contributions by Cernia's (1999) eight-tier framework that broadly recognizes socio-cultural and economic attributes on restoration of livelihoods that if formalized, represent just terms of compensation.

Compulsory acquisition is the obvious tributary for development within a CMP model in Kenya. Acquisition demands for land in particular locations, optimum quantum and specific time frames to allow penetration of public projects into individual or communal land holdings, but on condition to prompt payment in full of just compensation. Traditionally, in spite of overriding communal use over family interests, the right of avail by all over specific lands allowed for compensation on mutual agreement between the tribe and family. In contrast, annexation was administratively provided by treaties, ordinances and laws on an ignorant indigenous populace to whom the compensation and financial legacies ignored

social formations. Therefore the study included philosophical and anthropological perspectives to validate the traditional familial values of society in mitigating social disarticulation.

The inelastic supply of land due to population increase and the advent of urbanization has made the land in lieu of money compensation an ignored option, further exposing vulnerable dependents to social disarticulation. The quest for justness in compensation quantum and compensable items reflect inadequacy of compensation for consequential losses arising from the coercive displacement considering the traditional social formations, thereby affirming the satisfaction/just gap existing between the statutory compensation praxis and sociological recompense approaches that would bridge just terms of compensation. In addition, exogenous factors such as floods and political instability resulting to displacement were seen as outside the policy frameworks yet the NLP requires simulation of socio-cultural and economic factors in policy frameworks. These arguments shift focus from statutory compensation praxis to sociological approaches on policy and compensatory frameworks.

The Constitution is hinged on social, political and economic pillars of development for economic growth through poverty alleviation. Just terms of compensation in involuntary resettlement is therefore not only an integral part of this object, but anchors on universal tenets of justice. The inherent inadequacies in policy frameworks, lack of a standardised valuation methodology for compensation praxis and exclusive compensation frameworks manifest a policy abyss that should converge development with sustainable livelihood restoration through a just terms of compensation model for involuntary resettlement.

7.3 Recommendations

In line with the study objectives, a just terms of compensation gap arising from lack of policy framework on involuntary resettlement was established. Lack of a Resettlement Policy Framework conceived as the satisfaction/justness gap in the quest for just terms of compensation in involuntary resettlement in Kenya. The operational laws have continually ignored socio-cultural and economic issues in the legal framework that directs the compensation praxis. In satisfying objective one of the study, just terms of compensation can be achieved through multi-disciplinary participatory contributions that project principles of justice that may be uniquely interpreted within different communities on a policy framework.

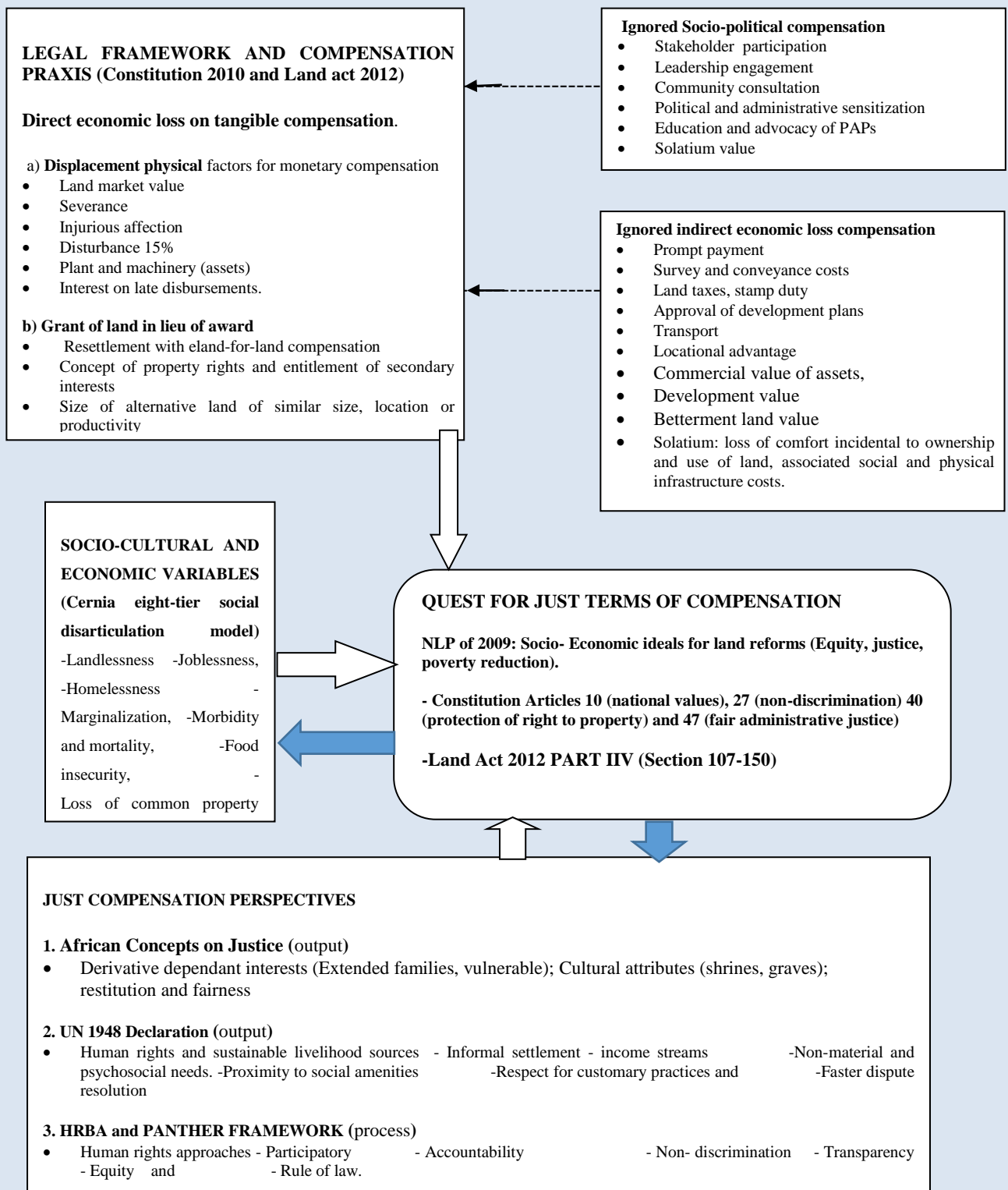
It is important to crystalize the economic-valuation approach and the sociological perspectives in both policy and legal frameworks aligned to the Constitution and laws.

Lack of awareness of the resettlement and compensation process as well as effective communication feedback mechanism into policy formulation creates a perceived gap in satisfaction/justness gap in the legal framework. To satisfy objective two of the study, an effective feedback system that collates socio-cultural and economic perspectives with a policy guideline will enhance just terms of compensation. Legal frameworks and compensation praxis that accommodate the non-tangible variables on a socio-cultural and economic platform along the PANTHER framework will assist satisfy the quest for just compensation in mitigating the social disarticulation experienced in involuntary resettlement.

A representative compensation model mitigating impoverishment of livelihoods is established in the quest under study. In satisfying objective three of the study, the statutory provisions integrate Cernia's (1999) eight-tier social disarticulation model that represents the socio-cultural and economic attributes for assessing and ascertaining heads of compensation.

The model introduces two sets of recompense to achieve the 'just terms of compensation'. The first was the Constitutional and legal framework, while the second are the non-tangible social considerations and indirect economic losses referred to in Cernia's eight-tier social disarticulation model. Together the sociological approaches and the international praxis articulated by the UN (1948) declarations and HRBA embracing PANTHER frameworks offering the dual feedback inter-flow in-between variables. However, this model has not been subjected to sensitivity analysis and it will be of interest for further studies to establish the extent to which the model confirms the empirical findings as highlighted in Figure 7.1 below.

Figure 7.1: The Proposed Just Terms of Compensation Model



Source: Field Study (2015)

Finally, a national resettlement policy framework can mitigate social disarticulation by defining the rights and entitlements of different categories of PAPs. This should interest the

policy formulators to delve into compensable levels for deliberate and concise computations on variables that encapsulate social disarticulation. The study recommends a 50% solatium for socio-cultural and economic attributes, proportionated on importance of each variable as empirically highlighted, be added to the statutory compensation in the legal framework.

7.4 Areas for Further Study

As a Land Economist, the study focused on *quest for just terms of compensation for involuntary resettlement policy and praxis in Kenya: The Case Study of Nairobi-Thika highway*. However, having dealt with the conventional provision in the National Land Policy of 2009 and the Constitution 2010, there is need to carry out studies in order to develop a National Resettlement Policy Framework in Kenya. This is especially due to inclusion of occupants in good faith without title, acquisition of PRow and wayleaves in the Land Act 2012, and the need to promote equity and justice in compensation all over the country. Such a study will enhance equity in just terms of compensation in displacement and involuntary resettlement.

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APPENDICES

Appendix I: Confirmation Letters

23rd June 2013

Salome Ludenyi Munubi

P.O. Box 28853 – 00200

Nairobi

TO WHOM IT MAY CONCERN

I am a Post Graduate student at the University of Nairobi pursuing a Degree of Doctor of Philosophy in the School of the Built Environment

I am undertaking a research on ‘Quest for Just Terms of Compensation’ In Involuntary Resettlement Policy and Praxis in Kenya’. To enable the completion of this course am humbly requesting you to respond to the interview questions. This letter is to reassure you that utmost confidence will be observed to ensure that your anonymity is withheld and the information you give shall be held in the greatest confidence. This research is for academic purposes

Your positive support will be highly appreciated towards fulfilment of my academic aspirations

Yours sincerely

Salome L. Munubi

Appendix II: Questionnaire

Questionnaire 1: Household Demographics

HOUSE HOLD 'JUST TERMS OF COMPENSATION'

PART A. Household Demographics					
1	Gender of the respondent for house hold _____ 1 = Male () 2 = Female ()				
2	Gender of Head of the Household	1 = Male 1 =Yes	2 = Female 2 = No		
3	Are you the registered landowner	1 = Yes	2 = No		
4	Age of Head of Household	Age in years: _ _			
5	No of children in the house hold				
6	Marital status of Head of Household	1 = Married		3 = Divorced	
		2 = Single		4 = Have family	
7	What is the highest education level of Head of Household?	1 = None	2 = Primary	3 = Secondary	4 = Tertiary
8	What is the Occupation of the Head of Household?	1 = Employed (permanent)	2 = Causal worker	3 = Others	
9	How many children are in the nucleus family	Males _ _ Female _ _			
10	Total Number of People Living in the Household (Other dependents)	<i>Number of Males</i>	0 to 17: _ _ 18-30: _ _ 31-59: _ _ 60+ _ _		
		<i>Number of Females()</i>	0 to 17: _ _ 18-30: _ _ 31-59: _ _ 60+ _ _		

SECTION B: AWARENESS OF LEGAL FRAMEWORK ON ‘JUST COMPENSATION’

To what extent has awareness been created on legal frameworks of involuntary resettlement?

B	Statutory Authority	Not at all	A little extent	Moderate extent	Great extent	Very great extent
1	I am aware that the Constitution provides for compulsory acquisition of land for public purposes					
2	I am aware that the parcels to be acquired are published in a gazette notice.					
3	I am aware that I should receive compensation resulting from involuntary relocation under compulsory acquisition.					
4	I am aware that persons with interest including the acquiring entity are to present their claims at a gazetted inquiry.					
5	I am aware that the statutes have not provided for how the values on ‘just’ are arrived at.					
6	I am aware that there is a law that provides for compensation under compulsory acquisition					
7	I am aware that damage caused by survey should be compensated					
8	I am aware that Compulsory acquisition in Kenya considers severance in costing for relocation					
9	I am aware that Compulsory acquisition in Kenya considers injurious affection in costing of relocation					
10	I am aware that Compulsory acquisition in Kenya considers disturbance in costing for relocation					

- Do you know what compulsory acquisition is about in involuntary resettlement?
(Yes.....) (No.....)
- Do you know issues that are considered for compensation in compulsory acquisition?
(Yes.....) (No.....) If yes, name them
- Do you know what an inquiry into claims in compulsory acquisition means?
(Yes.....) (No.....)
- Are you aware of the guiding principles of law in determination of just compensation?
(Yes.....) (No.....)
- Are you aware of the legal redress provided in compulsory acquisition?
(Yes.....) (No.....)

SECTION C: COMPENSATION PRACTICE FOR JUST TERMS OF COMPENSATION

To what extent is the compensation practice just? Please answer the question to the best of your knowledge by ticking () in the box appropriately.

C	Statutory Authority	Not at all	A little extent	Moderate extent	Great extent	Very great extent
1	To what extent is it just for the Government to compulsory acquire your land					
2	To what extent is it just to take possession of uncultivated, pasture or arable land out of urgency of the project before payment?					
3	To what extent is the monetary compensation for acquired land 'just'?					
4	To what extent is the compensation for developments on land 'just'?					
5	To what extent is compensation paid for damage caused during survey 'just'?					
6	To what extent is compensation paid for relocation of plant and machinery 'just'?					
7	To what extent is compensation to relocate paid to the land owner 'promptly'?					
8	To what extent do you feel that the legal redress system in hearing for claims of interests is 'just'?					
9	To what extent is the legal redress system just in settlement of disputes arising out of relocation?					
10	Do you think it is just for the court to determine who to pay litigation costs when seeking justice?					

Please comment on what you consider to be 'just' in involuntary resettlement caused by public purpose projects.

.....

.....

.....

.....

.....

.....

SECTION D: THE INCLUSION OF SOCIAL-CULTURAL AND ECONOMIC ISSUES IN JUST COMPENSATION

To what extent are socio-cultural and economic issues considered in the compensation practice? Please answer the question to the best of your knowledge by ticking () in the box appropriately.

D	To what extent	Not at all	A little extent	Moderate extent	Great extent	Very great extent
1	Is the requirement to relocate from your land acceptable by other house hold dependents on the land?					
2	Have the interests of family dependents (wives, children and the aged) been considered in the compensation awards?					
3	Does the law address the issue of landlessness					
4	Does the law address the issue of homelessness					
5	Does the law address the issue of joblessness					
6	Does the law address the issue of marginalization in host communities?					
7	Does the law address the issue of food insecurity					
8	Does the law address the issue of loss of access to common property resources?					
9	Do you think socio-cultural and economic issues are considered in the compensation practise?					

1. What notice period was given for you to vacate?
2. By the time of moving had you found another relocation site?
3. How long did it take you to vacate?
4. Was there relocation assistance given?

5. Were counselling services provided during the displacement process? (Yes.....)
(No.....)

6. List in order of importance the socio-cultural and economic issues to be considered for Compensation (No. 1 will be the least important, no. 3 of moderate importance and no. 5 as the most important):-

Landlessness Homelessness Marginalization
Food security Joblessness..... Family fragmentation
Loss of common property resources

7. List other factors you think should be considered in compensation?
.....
.....

8. What distance were the following amenities close to your homestead before the resettlement?

Water supply Electricity..... Churches
Schools Any other.....

9. Have you found an alternative resettlement area in proximity to similar social amenities?
(Yes.....) (No.....)

QUESTIONNAIRE 2: IMPLEMENTING AGENCY/POLICY MAKERS

Name of Respondent (optional) _____

Implementing Agency _____ Work Station _____

Designation _____ Phone number _____

SECTION A: DEMOGRAPHICS

1. Gender: Male Female

2. Age Bracket

- i. 18-30
- ii. 31-50
- iii. Above 50

3. Highest Level of education

- i. Primary
- ii. Secondary
- iii. Tertiary
- iv. University

4. Type of Implementing Agency

- a. Contractor
- b. Parastatal
- c. Government/

Local Administration

5. How many years have you been in the profession?

- i. 1- 5
- ii. 5-10
- iii. 10-15
- iv. Above 15

QUESTIONNAIRE 3: LARGE AND SMALL BUSSINESS OWNERS

1. How long has your business been in existence?

- a. less than 1 year
- b. 2 to 5 years
- c. 6 to 10 years
- d. Over 10 years

2. How many employees do you have?

- a. Self
- b. 1 to 10 employees
- c. 11 to 50 employees
- d. over 50 employees

3. Which of the following best describes the form of legal registration for your business?

- a. Sole proprietorship
- b. Partnership
- c. Limited Company

4. Does the business have branches in other areas within the country?

Yes No

5. If yes is the affected business the headquarters of the firm?

Yes No

QUESTIONNAIRE 4: INSTITUTIONS

1. How long has this institution been in existence?

- a. less than 1 year
- b. 2 to 5 years
- c. 6 to 10 years
- d. Over 10 years

2. What is the nature of the institution?

- a. Religious
- b. Charitable
- c. Educational
- d. Government/Parastatal

3. Approximately how many people does the institution serve?

.....

4. Is there a branch of the institution in the neighbouring constituency?

Yes No

5. What is the population of members in the acquired location?

- a. Over 100
- b. Over 1,000
- c. Over 5,000
- d. Over 10,000

6. For how long has this institution been located at its present site?

- a. less than 1 year
- b. 2 to 5 years
- c. 6 to 10 years
- d. Over 10 years

Appendix III: Cross Tabulation

a). Compensation Praxis for Just Terms of Compensation

Categorygroup * To what extent are you satisfied with the right of government to compulsory acquire land Crosstabulation

% within Categorygroup

		To what extent are you satisfied with the right of government to compulsory acquire land					Total
		Not at all	A little extent	Moderate extent	Great extent	Very great extent	
Categorygroup	Household	84.0%	8.5%	0.9%		6.6%	100.0%
	Smes	43.4%	14.5%	42.1%			100.0%
	Institution	10.5%	10.5%	10.5%	57.9%	10.5%	100.0%
	Implementers				44.4%	55.6%	100.0%
Total		59.0%	10.5%	16.7%	7.1%	6.7%	100.0%

Categorygroup * Are you satisfied with the Commission taking possession of uncultivated, pasture or arable land before payment due to urgency of the project? Crosstabulation

% within Categorygroup

		Are you satisfied with the Commission taking possession of uncultivated, pasture or arable land before payment due to urgency of the project?					Total
		Not at all	A little extent	Moderate extent	Great extent	Very great extent	
Categorygroup	Household	75.5%	23.6%			0.9%	100.0%
	Smes	56.6%	28.9%	14.5%			100.0%
	Institution	26.3%	31.6%	10.5%	10.5%	21.1%	100.0%
	Implementers	55.6%		33.3%	11.1%		100.0%
Total		63.3%	25.2%	7.6%	1.4%	2.4%	100.0%

Categorygroup * To what extent is the monetary compensation for acquired land adequate?

Crosstabulation

% within Categorygroup

		To what extent is the monetary compensation for acquired land adequate?					Total
		Not at all	A little extent	Moderate extent	Great extent	Very great extent	
Categorygroup	Household	67.9%	26.4%	5.7%			100.0%
	Smes	43.4%	42.1%			14.5%	100.0%
	Institution		31.6%	36.8%	31.6%		100.0%
	Implementers		22.2%		44.4%	33.3%	100.0%
Total		50.0%	32.4%	6.2%	4.8%	6.7%	100.0%

Categorygroup * To what extent is the compensation for developments on land adequate?

Crosstabulation

% within Categorygroup

		To what extent is the compensation for developments on land adequate?					Total
		Not at all	A little extent	Moderate extent	Great extent	Very great extent	
Categorygroup	Household	72.6%	20.8%	6.6%			100.0%
	Smes	43.4%	42.1%		14.5%		100.0%
	Institution		42.1%	21.1%	36.8%		100.0%
	Implementers		22.2%		44.4%	33.3%	100.0%
Total		52.4%	30.5%	5.2%	10.5%	1.4%	100.0%

Categorygroup * To what extent is compensation paid for damage caused during preliminary survey adequate? Crosstabulation

% within Categorygroup

		To what extent is compensation paid for damage caused during preliminary survey adequate?					Total
		Not at all	A little extent	Moderate extent	Great extent	Very great extent	
Categorygroup	Household	56.6%	19.8%	17.9%	5.7%		100.0%
	Smes	71.1%	14.5%			14.5%	100.0%
	Institution		42.1%	36.8%	21.1%		100.0%
	Implementers		44.4%		44.4%	11.1%	100.0%
Total		54.3%	21.0%	12.4%	6.7%	5.7%	100.0%

Categorygroup * To what extent is compensation paid for severance and removal of plant and machinery adequate? Crosstabulation

Categorygroup * To what extent do you feel that the legal redress system in prompt settlement of disputes and relocation fair ? Crosstabulation

% within Categorygroup

		To what extent is compensation paid for severance and removal of plant and machinery adequate?					Total
		Not at all	A little extent	Moderate extent	Great extent	Very great extent	
Categorygroup	Household	76.4%	19.8%	2.8%	0.9%		100.0%
	Smes	56.6%	14.5%	14.5%	14.5%		100.0%
	Institution	10.5%	52.6%	15.8%	21.1%		100.0%
	Implementers	22.2%		44.4%	11.1%	22.2%	100.0%
Total		61.0%	20.0%	10.0%	8.1%	1.0%	100.0%

Categorygroup * To what extent is compensation to relocate paid to the land owner promptly? Crosstabulation

% within Categorygroup

		To what extent is compensation to relocate paid to the land owner promptly?				Total
		Not at all	A little extent	Moderate extent	Great extent	
Categorygroup	Household	80.2%	19.8%			100.0%
	Smes	71.1%		14.5%	14.5%	100.0%
	Institution	42.1%		42.1%	15.8%	100.0%
	Implementers	55.6%			44.4%	100.0%
Total		72.4%	10.0%	9.0%	8.6%	100.0%

Categorygroup * To what extent do you feel that the legal redress system in hearing for claims of interests is fair? Crosstabulation

% within Categorygroup

		To what extent do you feel that the legal redress system in hearing for claims of interests is fair?				Total
		Not at all	A little extent	Moderate extent	Great extent	
Categorygroup	Household	91.5%	8.5%			100.0%
	Smes	71.1%	14.5%	14.5%		100.0%
	Institution	10.5%	31.6%	47.4%	10.5%	100.0%
	Implementers	22.2%		22.2%	55.6%	100.0%
Total		73.8%	12.4%	10.5%	3.3%	100.0%

% within Categorygroup

		To what extent do you feel that the legal redress system in prompt settlement of disputes and relocation fair ?					Total
		Not at all	A little extent	Moderate extent	Great extent	Very great extent	
Categorygroup	Household	59.4%	6.6%	5.7%	5.7%	22.6%	100.0%
	Smes	71.1%		28.9%			100.0%
	Institution	21.1%	10.5%	57.9%	10.5%		100.0%
	Implementers	44.4%		11.1%	44.4%		100.0%
Total		59.5%	4.3%	19.0%	5.7%	11.4%	100.0%

Categorygroup * To what extent do you feel it fair for the court to determine who to pay for costs otherwise incurred due to the compulsory acquisition process? Crosstabulation

% within Categorygroup

		To what extent do you feel it fair for the court to determine who to pay for costs otherwise incurred due to the compulsory acquisition process?					Total
		Not at all	A little extent	Moderate extent	Great extent	Very great extent	
Categorygroup	Household	76.4%	12.3%	0.9%	6.6%	3.8%	100.0%
	Smes	56.6%		28.9%		14.5%	100.0%
	Institution	21.1%		47.4%	31.6%		100.0%
	Implementers			33.3%	44.4%	22.2%	100.0%
Total		61.0%	6.2%	16.7%	8.1%	8.1%	100.0%

b). Level of Awareness of Legal Framework on 'Just Compensation'

Categorygroup * To what extent do you feel it fair for the court to determine who to pay for costs otherwise incurred due to the compulsory acquisition process? Crosstabulation

% within Categorygroup

		To what extent do you feel it fair for the court to determine who to pay for costs otherwise incurred due to the compulsory acquisition process?					Total
		Not at all	A little extent	Moderate extent	Great extent	Very great extent	
Categorygroup	Household	76.4%	12.3%	0.9%	6.6%	3.8%	100.0%
	Smes	56.6%		28.9%		14.5%	100.0%
	Institution	21.1%		47.4%	31.6%		100.0%
	Implementers			33.3%	44.4%	22.2%	100.0%
Total		61.0%	6.2%	16.7%	8.1%	8.1%	100.0%

Categorygroup * I am aware that the parcels to be acquired are published in a gazette notice

Crosstabulation

% within Categorygroup

		I am aware that the parcels to be acquired are published in a gazette notice					Total
		Not at all	A little extent	Moderate extent	Great extent	Very great extent	
Categorygroup	Household	18.9%	26.4%	1.9%	0.9%	51.9%	100.0%
	Smes			27.6%	28.9%	43.4%	100.0%
	Institution		10.5%	10.5%	21.1%	57.9%	100.0%
	Implementers					100.0%	100.0%
Total		9.5%	14.3%	11.9%	12.9%	51.4%	100.0%

Categorygroup * I am aware that I should receive compensation resulting from involuntary relocation under compulsory acquisition Crosstabulation

% within Categorygroup

		I am aware that I should receive compensation resulting from involuntary relocation under compulsory acquisition					Total
		Not at all	A little extent	Moderate extent	Great extent	Very great extent	
Categorygroup	Household	49.1%	3.8%		11.3%	35.8%	100.0%
	Smes		27.6%	14.5%	14.5%	43.4%	100.0%
	Institution		10.5%	10.5%	31.6%	47.4%	100.0%
	Implementers					100.0%	100.0%
Total		24.8%	12.9%	6.2%	13.8%	42.4%	100.0%

Categorygroup * Are you aware there is a commission of inquiry to hear all cases by persons with interest including the acquiring entity? Crosstabulation

% within Categorygroup

		Are you aware there is a commission of inquiry to hear all cases by persons with interest including the acquiring entity?					Total
		Not at all	A little extent	Moderate extent	Great extent	Very great extent	
Categorygroup	Household	53.8%	11.3%	5.7%	1.9%	27.4%	100.0%
	Smes	71.1%	14.5%		14.5%		100.0%
	Institution	31.6%		21.1%		47.4%	100.0%
	Implementers				11.1%	88.9%	100.0%
Total		55.7%	11.0%	4.8%	6.7%	21.9%	100.0%

Categorygroup * I am aware that the statutes have not provided the valuation methodology to be used for compulsory purchase in computation for 'full compensation' Crosstabulation

% within Categorygroup

		I am aware that the statutes have not provided the valuation methodology to be used for compulsory purchase in computation for "full compensation"					Total
		Not at all	A little extent	Moderate extent	Great extent	Very great extent	
Categorygroup	Household	59.4%	7.5%	6.6%		26.4%	100.0%
	Smes	56.6%	28.9%			14.5%	100.0%
	Institution	10.5%		21.1%	31.6%	36.8%	100.0%
	Implementers	22.2%	11.1%	33.3%		33.3%	100.0%
Total		52.4%	14.8%	6.7%	2.9%	23.3%	100.0%

Categorygroup * I am aware that the Land Act provides the guiding principles to determine compensation Crosstabulation

% within Categorygroup

		I am aware that the Land Act provides the guiding principles to determine compensation					Total
		Not at all	A little extent	Moderate extent	Great extent	Very great extent	
Categorygroup	Household	37.7%	23.6%	0.9%		37.7%	100.0%
	Smes	57.9%		27.6%	14.5%		100.0%
	Institution	21.1%	21.1%		10.5%	47.4%	100.0%
	Implementers				55.6%	44.4%	100.0%
Total		41.9%	13.8%	10.5%	8.6%	25.2%	100.0%

Categorygroup * I am aware that damage caused by preliminary survey should be compensated Crosstabulation

% within Categorygroup

		I am aware that damage caused by preliminary survey should be compensated					Total
		Not at all	A little extent	Moderate extent	Great extent	Very great extent	
Categorygroup	Household	45.3%	15.1%	5.7%		34.0%	100.0%
	Smes	28.9%	28.9%	14.5%	13.2%	14.5%	100.0%
	Institution	21.1%	21.1%	26.3%		31.6%	100.0%
	Implementers			33.3%	33.3%	33.3%	100.0%
Total		35.2%	20.0%	11.9%	6.2%	26.7%	100.0%

Categorygroup * I am aware that Compulsory acquisition in Kenya considers severance in costing for relocation Crosstabulation

% within Categorygroup

		I am aware that Compulsory acquisition in Kenya considers severance in costing for relocation					Total
		Not at all	A little extent	Moderate extent	Great extent	Very great extent	
Categorygroup	Household	52.8%	13.2%	0.9%		33.0%	100.0%
	Smes	43.4%	14.5%	42.1%			100.0%
	Institution	21.1%	10.5%	21.1%	10.5%	36.8%	100.0%
	Implementers				55.6%	44.4%	100.0%
Total		44.3%	12.9%	17.6%	3.3%	21.9%	100.0%

Categorygroup * I am aware that Compulsory acquisition in Kenya considers injurious affection in costing of relocation Crosstabulation

% within Categorygroup

		I am aware that Compulsory acquisition in Kenya considers injurious affection in costing of relocation					Total
		Not at all	A little extent	Moderate extent	Great extent	Very great extent	
Categorygroup	Household	48.1%	13.2%	5.7%		33.0%	100.0%
	Smes	56.6%	14.5%	28.9%			100.0%
	Institution	21.1%	10.5%	31.6%	10.5%	26.3%	100.0%
	Implementers				66.7%	33.3%	100.0%
Total		46.7%	12.9%	16.2%	3.8%	20.5%	100.0%

Categorygroup * I am aware that Compulsory acquisition in Kenya considers disturbance in costing for relocation Crosstabulation

% within Categorygroup

		I am aware that Compulsory acquisition in Kenya considers disturbance in costing for relocation					Total
		Not at all	A little extent	Moderate extent	Great extent	Very great extent	
Categorygroup	Household	64.2%	18.9%	6.6%		10.4%	100.0%
	Smes	42.1%	14.5%	43.4%			100.0%
	Institution	31.6%	10.5%	21.1%	10.5%	26.3%	100.0%
	Implementers		22.2%		44.4%	33.3%	100.0%
Total		50.5%	16.7%	21.0%	2.9%	9.0%	100.0%

c) Inclusion of Social-Cultural and Economic Issues in Just Compensation

Categorygroup * Does the law consider whether the requirement to relocate from land is acceptable by other house hold dependants other than the household head? Crosstabulation

% within Categorygroup

	Does the law consider whether the requirement to relocate from land is acceptable by other house hold dependants other than the household head?				Total
	Not at all	A little extent	Moderate extent	Great extent	
Household	85.8%	13.2%		0.9%	100.0%
Smes	56.6%	28.9%	14.5%		100.0%
Institution	21.1%	47.4%	31.6%		100.0%
Implementers	88.9%	11.1%			100.0%
Total	69.5%	21.9%	8.1%	0.5%	100.0%

Categorygroup * To what extent has the law considered the interests of family dependents (wives, children and the aged) in the compensation awards? Crosstabulation

% within Categorygroup

	To what extent has the law considered the interests of family dependents (wives, children and the aged) in the compensation awards?			Total
	Not at all	A little extent	Moderate extent	
Household	92.5%	7.5%		100.0%
Smes	85.5%	14.5%		100.0%
Institution	42.1%	47.4%	10.5%	100.0%
Implementers	77.8%	22.2%		100.0%
Total	84.8%	14.3%	1.0%	100.0%

Categorygroup * Does the law adequately addresses socio-economic issues of landlessness Crosstabulation

% within Categorygroup

	Does the law adequately addresses socio-economic issues of landlessness				Total
	Not at all	A little extent	Moderate extent	Great extent	
Household	93.4%	6.6%			100.0%
Smes	71.1%	28.9%			100.0%
Institution	10.5%	52.6%	36.8%		100.0%
Implementers	44.4%	22.2%	11.1%	22.2%	100.0%
Total	75.7%	19.5%	3.8%	1.0%	100.0%

Categorygroup * Does the law adequately addresses socio-economic issues of homelessness

Crosstabulation

% within Categorygroup

		Does the law adequately addresses socio-economic issues of homelessness				Total
		Not at all	A little extent	Moderate extent	Great extent	
Categorygroup	Household	93.4%	6.6%			100.0%
	Smes	85.5%	14.5%			100.0%
	Institution	10.5%	52.6%	36.8%		100.0%
	Implementers	44.4%	22.2%	11.1%	22.2%	100.0%
Total		81.0%	14.3%	3.8%	1.0%	100.0%

Categorygroup * Does the law adequately addresses socio-economic issues of marginalization

Crosstabulation

% within Categorygroup

		Does the law adequately addresses socio-economic issues of marginalization				Total
		Not at all	A little extent	Moderate extent	Great extent	
Categorygroup	Household	82.1%	12.3%	5.7%		100.0%
	Smes	85.5%	14.5%			100.0%
	Institution	10.5%	42.1%	31.6%	15.8%	100.0%
	Implementers	44.4%	22.2%	33.3%		100.0%
Total		75.2%	16.2%	7.1%	1.4%	100.0%

Categorygroup * Does the law adequately addresses socio-economic issues of food insecurity

Crosstabulation

% within Categorygroup

		Does the law adequately addresses socio-economic issues of food insecurity			Total
		Not at all	A little extent	Moderate extent	
Categorygroup	Household	74.5%	24.5%	0.9%	100.0%
	Smes	57.9%	27.6%	14.5%	100.0%
	Institution	21.1%	42.1%	36.8%	100.0%
	Implementers	44.4%		55.6%	100.0%
Total		62.4%	26.2%	11.4%	100.0%

Categorygroup * Does the law adequately addresses socio-economic issues of food insecurity

Crosstabulation

% within Categorygroup

		Does the law adequately addresses socio-economic issues of food insecurity			Total
		Not at all	A little extent	Moderate extent	
Categorygroup	Household	74.5%	24.5%	0.9%	100.0%
	Smes	57.9%	27.6%	14.5%	100.0%
	Institution	21.1%	42.1%	36.8%	100.0%
	Implementers	44.4%		55.6%	100.0%
Total		62.4%	26.2%	11.4%	100.0%

Categorygroup * Does the law adequately addresses socio-economic issues of loss of access to common resources Crosstabulation

% within Categorygroup

		Does the law adequately addresses socio-economic issues of loss of access to common resources				Total
		Not at all	A little extent	Moderate extent	Great extent	
Categorygroup	Household	85.8%	14.2%			100.0%
	Smes	72.4%	13.2%		14.5%	100.0%
	Institution	10.5%	78.9%	10.5%		100.0%
	Implementers	55.6%	22.2%	22.2%		100.0%
Total		72.9%	20.0%	1.9%	5.2%	100.0%

Categorygroup * Does the law adequately addresses socio-economic issues of joblessness Crosstabulation

% within Categorygroup

		Does the law adequately addresses socio-economic issues of joblessness				Total
		Not at all	A little extent	Moderate extent	Great extent	
Categorygroup	Household	93.5%	6.6%			100.0%
	Smes	87.5%	14.5%			100.0%
	Institution	11.5%	53.6%	34.8%		100.0%
	Implementers	49.5%	23.2%	12.0%	15.1%	100.0%
Total		87.0%	16.2%	2.8%	1.0%	100.0%

Categorygroup * Ranking of socio-cultural and economic Issues Crosstabulation

% within Categorygroup

	Ranking of socio-cultural and economic issues				Total
	Not at all	A little extent	Moderate extent	Great extent	
Landlessness	75.7%	19.5%	3.8%	1.0%	100.0%
Homelessness	81.0%	14.3%	3.8%	1.0%	100.0%
Marginalization	75.2%	16.2%	7.1%	1.4%	100.0%
Food insecurity	62.4%	26.2%	11.4%	0.0%	100.0%
Joblessness	87.0%	16.2%	2.8%	1.7%	100.0%
Fragmentation	69.5%	21.9%	8.1%	0.5%	100.0%
Resources	72.9%	20.0%	1.9%	5.2%	100.0%
Total					100.0%