

Social Exclusion, Urban Poverty and the Vulnerability to Forced Evictions

A Case Study of Kibera, Nairobi

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Master thesis
Department of Political Science
University of Oslo
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Abstract

This thesis analyses the broader social, economic and political processes that may enhance the vulnerability to forced evictions in urban settlements in the developing world. The first part of the thesis therefore discusses the impact that regional urbanisation and unequal economic growth have on people living in urban areas. Over-urbanisation and a skewed distribution of resources are here argued to be underlying causes of extreme poverty, which exposes slum-dwellers to sudden evictions as part of urban development schemes. Direct causes of evictions (e.g. urban development and major events) thus only capture the end of a longer causal chain whereby the urban poor are disproportionately subjected to forced evictions. Economic and political marginalisation of the urban poor, in the form of unemployment and exclusion from participating in decision-making processes, leave residents of informal settlements in a more precarious situation of living, and tenure security. The argument is substantiated through a case study of the Kibera slum of Nairobi, Kenya. Overall, the thesis offers a theoretical perspective on the dynamic behind forced evictions. It thereby aims at giving a better understanding of how poverty is reproduced, and the policy implications that derive from this. As based on these observations, the thesis concludes by exploring the merits and shortcomings of ‘Legal Empowerment of the Poor’, as a strategy towards poverty alleviation and the reduction of forced evictions.

Key words: *forced evictions, Kenya, Kibera, legal empowerment, social exclusion, tenure security, and urbanisation.*

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Any faults or errors in this thesis are, of course, my own.

LIST OF ABBREVIATIONS / ACRONYMS

CENTRE ON HOUSING RIGHTS & EVICTIONS	COHRE
COMMISSION ON LEGAL EMPOWER OF THE POOR	CLEP
CONVENTION ON THE ELIMINATION OF ALL DISCRIMINATION AGAINST WOMEN	CEDAW
CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION	CERD
CONVENTION OF THE RIGHTS OF THE CHILD	CRC
EAST AFRICAN COMMUNITY	EAC
EAST AFRICA	EA
EVICCTIONS AND RESETTLEMENT BILL	ERB
GOVERNMENT OF KENYA	GOK
INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS	ICCPR
INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS	ICESCR
KENYA AFRICAN NATIONAL UNION	KANU
KENYA SLUM UPGRADING PROJECT	KENSUP
KENYA NATIONAL BUREAU OF STATISTICS	KNBS
LEGAL EMPOWERMENT OF THE POOR	LEP
MILLENNIUM DEVELOPMENT GOALS	MDG
ORANGE DEMOCRATIC MOVEMENT	ODM
SOCIETY FOR INTERNATIONAL DEVELOPMENT	SID
STATE OF EAST AFRICA REPORT	SOEAR
THE NATIONAL ALLIANCE	TNA
UNITED DECLARATION OF HUMAN RIGHTS	UDHR
UNITED NATIONS DEVELOPMENT PROGRAMME	UNDP
UNITED NATIONS HOUSING HUMAN SETTLEMENT PROGRAMME	UN-HABITAT

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1.0 Introduction

The prevalence of extreme poverty continues to be one of the more pressing challenges faced not only by the international community, but more importantly the communities experiencing these realities on a daily basis. Poverty exposes the affected to many dangers, among which are forced evictions from land or dwellings where government or commercial interests require the land.

This thesis focuses on the socio-economic and political processes that may enhance the vulnerability to forced evictions among the urban poor. While the literature at hand rightly emphasises the importance of economic incentives, corruption and major events as instigating causes of involuntary displacement, it fails to explain the social dynamics behind these evictions. In this study, the processes relating extreme poverty to forced evictions are therefore approached through an analysis of historical events and changes in the political economy of Kenya. The case of Kibera in Nairobi, demonstrates how the intensified competition over land in many African major cities has its roots in urban colonial planning laws, but also in the failure of post-independence governments to address the challenges of rapid urbanisation. Moreover, unemployment and exclusion from political participation, forces poor people to remain in informal settlements. Social exclusion in this form, prevents people from bettering their own socio-economic situation, and effectively denies political mobilisation to alter the status quo. This leaves slum dwellers in a more precarious situation, where their tenure security is frequently contested. Other factors that may enhance the vulnerability to forced evictions include high rental market prices, the politics of land allocation, land ownership, and the often-conflicting interests of urban developers and the people living in slums. This thesis therefore offers a more holistic and in-depth argument, by examining the convergence of a set of different factors that make up the social dynamics of forced evictions.

Kibera is an interesting point in case for studying forced evictions, and this can be traced back to the British colonisation of Kenya. The fragmented nature of the city of Nairobi, as in many other African societies, is deeply embedded in historical events

(e.g. colonialism), and the sharp inequalities that have defined its political history. In consequence, the natives have often been relegated to the poorer quarters of the city with no legal rights to the land.

After independence was gained in 1963, many of the privileges previously held by the colonisers were inherited by the new political elites. Therefore, I argue that both over-urbanisation and economic growth excluding a significant part of the population have led to the growth of slums. In the case of slum proliferation in Nairobi, these trends built on the foundations of a colonial past separating its population through spatial fragmentation. In 2006, the estimated slum population was at 924 million people, and in the following year, the one billion mark had been surpassed.¹ According to UN-Habitat, with the current rate of urbanisation, the global slum population will reach approximately a total of 1.4 billion people by 2020.² It is therefore important to discuss why such a large proportion of the population in Nairobi continue to live within informal settlements, and how these inequalities are continually affecting the urban poor today. As Kenya continues to be at the heart of economic development in its region, being the largest economy in East Africa, this gives rise to the question of why the country continues to display high levels of inequality, precisely by analysing the reasons why forced evictions continue to affect so many of its urban inhabitants.

As the urban population increases, so does the commodification and competition over land and housing; giving a renewed importance to problems associated with extreme poverty. The lack of tenure security, and the uprooting of informal settlements reduce the barriers to forced evictions in the future. In the event of an eviction, the consequences for the people affected by it, reaches far beyond the fact of having their homes demolished. It also entails destroying intricate system of informality, social networks, employment opportunities, and access to basic services, health and education. While forced evictions are a violation of international standards of human

¹ Mike Davis, *Planet of Slums* (Verso, 2006).

² UN-HABITAT, "State of the World's Cities 2006/2007 - the Millennium Development Goals and Urban Sustainability: 30 Years of Shaping the Habitat Agenda," (Earthscan, UN-HABITAT2006), vi

rights law, and despite the fact that Kenya's Constitution of 2010 recognises the right to housing; there is still no de facto ban on forced evictions. Directing our attention to forced evictions is not only a matter of addressing a violation of international human rights law, but also a way of coming to terms with issues relating to poverty. Slums are often described as sites of "multiple forms of deprivation", including the lack of access to basic services, education, infrastructure and more. Arguably, people living in slums experience forced evictions to a disproportionate extent, which makes evictions another form of vulnerability that derives from living in conditions of extreme poverty. This thesis therefore deals with forced evictions from the perspective of inequality, and the challenges faced by slum-dwellers that are often part and parcel of enhancing their risk of being evicted.

1.1 Research Question

Finding a precise angle from which to study of forced evictions in Kibera has been a process of learning, unfolding along the way. During the initial work with the thesis, I took an interest in developing a cross-case comparison of marginalisation, so as to explain the similarities as well as the differences of forced evictions. Given the limited time-span and the costs this would entail, I decided to focus more specifically on the case of Kibera. In addition, this made sense, since I had better access to relevant data material through primary and secondary sources, as well as contacts with expertise on this case. A final reason for this choice of case study is the interesting dynamics of urban conflict, emerging under informal tenure and the intersecting processes of urbanisation, uneven economic growth, and an intensified competition over urban land.

When familiarising myself with the topic of forced evictions, I realised that the predominant focus of the current literature has been on the direct, or precipitating causes of evictions. As forced evictions generally tend to affect the most marginalised groups in society, this triggered an interest in exploring the underlying reasons why this is so. In this regard, the concept of social exclusion serves to highlight some of the main social mechanisms through which forced evictions disproportionately affect

urban poor. Based on emergent themes within the literature, but also due to the lack of attention devoted to the social aspects of evictions, I decided upon the following **research question**:

In what way do social processes enhance the vulnerability to forced evictions among the urban poor? What are the prevalent causes that make marginalised groups disproportionately exposed to evictions?

The two-fold composition of the research question can be justified in the following manner: While commercial interests are key to understanding the *direct* or precipitating causes of forced evictions, these evictions can also be understood as the result of a longer chain of events. This raised a set of tentative questions proving useful to the further structuring of the thesis: ‘What are the main causes of forced evictions as it has been identified in the already existing literature?’ (Chapter 2); How does social exclusion contribute to our understanding of tenure security and forced evictions? (Chapter 3); ‘What research design and methods can best explore the causal relationship of interest?’ (Chapter 4); ‘How does urbanisation and economic growth affect life in urban slums?’ (Chapter 5); ‘In what ways are people in Kibera socially excluded, and how does this impact on their security of tenure?’ (Chapter 6); and finally, ‘To what extent can legal empowerment decrease vulnerability to forced evictions among the urban poor?’ (Chapter 7) While these questions do not exhaustively represent the questions dealt with in this thesis, they helped organising the argument as a whole.

Further, the research question can be seen as a way to highlight the social dimensions of poverty – often downplayed at the expense of economically oriented approaches. In his book *Poverty and Elusive Development*, Banik (2010) argues that the development agenda has become ever more elusive, and driven by buzzwords that are only rhetorically fashionable for a short period of time. According to Banik, there exists “an unwillingness to understand and focus adequate attention on the factors that explain

the resilience and *production* of poverty and inequality.”³ Indeed, since the emergence of development studies as a field of study, approaches to development have largely been characterised by “grand narratives” or solutions. Indeed, Escobar (1995) has argued that development studies is better be understood as a *discourse*, or mode of thought. This helps explain the failure of aid agencies, donor government, and civil society to address the underlying causes of extreme poverty.⁴ In consequence, this thesis looks at the enhanced risk of forced evictions among the urban poor, to better understand the social mechanisms through which extreme poverty and social vulnerabilities are reproduced.

1.2 Thesis Outline

In *Chapter 2*, I begin by discussing forced evictions in view of the Millennium Development Goals (MDGs), and the overall focus on extreme poverty in absolute terms, rather than an emphasis on inequality. Next, I briefly address the standing of forced evictions in international human rights law, and a discussion of the major trends behind forced evictions on a global scale. In the literature on forced evictions, it is possible to identify three broad categories of evictions: evictions related urban development projects, mega-events, natural disasters and climate change. As I discuss, the choice to forcefully evict people, is generally conducted by governments and urban developers, as a short-term solution to further commercial interests. These evictions tend to affect already marginalised groups more often than not. In *Chapter 3*, I outline the theoretical framework of social exclusion, and how this contributes to understanding the enhanced vulnerability to forced evictions among the urban poor. This approach thus resembles previous social theories of development, including the capability approach, participatory perspectives, social capital theory and more. In *Chapter 4*, I discuss the case study approach taken in this thesis, and the methodological challenges associated with it. The empirical data that supports the analytical chapters is therefore mainly grounded in the use of primary and secondary

³ Dan Banik, *Poverty and Elusive Development* (Oslo: Universitetsforlaget, 2010), 11

⁴ Arturo Escobar, *Encountering Development : The Making and Unmaking of the Third World : With a New Preface by the Author* (Princeton, N.J.: Princeton University Press, 2012, 1995), 66

sources, as well as elite interviews with experts on the topic at hand.

In *Chapter 5*, I assess the dynamics of urbanisation and economic growth in East Africa, and how this impacts on the life in urban slum such as Kibera, in the sense of increased competition over land, high levels of density, unemployment and more. In *Chapter 6*, I present the main argument, that is, that the socio-economic and political exclusion of urban slum-dwellers has the instrumental effect of enhancing their vulnerability to forced evictions. Factors such as exclusion from the formal work market, inaccessible education and formal training, and the lack of input over political decisions concerning slum-dwellers tenure security, helps explains why they are more prone to evictions than others. In *Chapter 7*, I therefore address the issue of legal empowerment, and the extent to which legal tools can decrease extreme poverty and inequality, and thereby social vulnerability such as forced evictions.

2.0 Background: Forced Evictions

With the signing of the Millennium Declaration on the 8th February 2000, the world's leaders committed themselves to addressing the issue of extreme poverty. Since then, significant progress has been made in terms of reducing the *absolute* number of people living in poverty.⁵

However, critics have pointed out that the overriding goal of poverty-reduction has come at the expense of closing the inequality gap. Kabeer (2011) for instance, writes that the decision to measure progress in terms of national and international averages, and proportions alone, has led to an immediate focus on overall economic growth, rather than closing the gap between the wealthy and the poor. This has meant, that “the unequal pace of this progress across groups - as well as indeed the systematic exclusion of some of them - [has] been ignored.”⁶ This stands in contrast to the fact “almost in every region of the world, certain groups of people face systematic social exclusion as the result of multiple inequalities that *constrict* their life chances.”⁷

According to international human rights law, forced evictions can be understood as, ***“the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of or access to appropriate forms of legal protection.”***⁸ Evictions are therefore contrary to international law, and specifically so by violating the right to adequate housing, as enshrined in numerous treaties. In the International Covenant on Economic, Social and Cultural Rights (ICESCR), Article 11 states that:

The State parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and for his family, including adequate food, clothing and

⁵ In the annual report, *The Millennium Development Goals Report 2013*, it has been estimated that around 700 million fewer people in 2010 lived in extreme poverty as compared to 1990.

⁶ Kabeer Naila, "Mdgs, Social Justice and the Challenge of Intersecting Inequalities," *MDG Achievement Fund* (2011), 1

⁷ Ibid.

⁸ CESCR, "The Right to Adequate Housing (Art. 11.1): Forced Evictions: . . 20.05.1997. Cescr General Comment 7. Office of the High Commissioner for Human Rights," (1997).

housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.⁹

In essence, the ICESCR explicitly recognises the right to an adequate standard of living, and the responsibility to ensure this right resides with the State in question.¹⁰ Furthermore, this right is also well established in the Universal Declaration of Human Rights (UDHR) Article 25, but also the International Covenant of Civil and Political Rights (ICCPR), stating that:

No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.¹¹

Despite the extensive provisions of housing rights found in international human rights law,¹² the problem of forced evictions concerns the discrepancy between formal rights and effective implementation. This will be discussed further in Chapter 7 on legal empowerment and its impact on slum dwellers tenure security in Nairobi.

Forced evictions tend to disproportionately impact on different groups of society, depending on their social standing in society. In a comprehensive survey, COHRE concluded that forced evictions “most often affect those who are already disadvantaged, including the poor, women, indigenous groups, ethnic, religious and racial minorities, occupied peoples and others lacking security of tenure.”¹³ In the context of the case studied here, Kibera, and for the region of East Africa at large, disadvantaged urban youth is a group that continue to face marginalisation and

⁹ Assembly United Nations. General, *International Covenant on Economic, Social and Cultural Rights and International Covenant on Civil and Political Rights with Optional Protocol. Adopted by the General Assembly of the United Nations and Opened for Signature at New York on 16 December 1966, Etc* (London, 1967).

¹⁰ CESCR, "The Right to Adequate Housing (Art. 11.1): Forced Evictions: . 20.05.1997. Cescr General Comment 7. Office of the High Commissioner for Human Rights."

¹¹ Assembly United Nations. General, *International Covenant on Civil and Political Rights* (1976)., Article 17

¹² For other legal sources on housing rights and evictions see: UDHR (1948) Article 25; CERD (1969), Article 5(e)(iii); CEDAW (1981) Article 14(2)(h), and CRC (year) Article 27(3).

¹³ COHRE, "Forced Evictions: Violations of Human Rights - Global Survey 10," (Geneva, Switzerland 2006).

unemployment. Viewing exclusion in terms of occupational opportunities is therefore crucial to understanding who are likely to live under secure tenure, and who do not. Unemployment among marginalised groups is therefore a central variable in mapping the reasons why some social groups face conditions “constricting their life chances”.

In *The State of African Cities* (2010), UN-Habitat concludes that evictions have a biased impact on already marginalised groups. The consequences can be particularly detrimental to people living in extreme poverty, and thereby worsening their situation for example in terms of housing, employment, education, physical and mental health, family life, culture and well-being. As a result, “forced evictions deepens poverty, destroy communities, and irrevocably adversely impacts the future of millions of people.”¹⁴ In the section below, I therefore discuss both the global incidence of evictions and the major trends that characterise these evictions.

2.1 Dispersion and Scope of Forced Evictions

In recent decades, the exponential growth in the size and number of slums across the world, has added to the importance of housing rights and land conflicts. Urbanisation and uneven economic growth led to a massive demand for housing (and access to basic services), and especially so in the region of East Africa.¹⁵ During the 1980s and 1990s, large scale development was responsible for the displacement of around 10 million people per year, and in the decade after this number rose to 15 million people annually.¹⁶ Moreover, COHRE have estimated that in the period between 1998 and 20006, around 18.59 people were affected by evictions. In the period between 2007 and 2008 alone, it has been estimated that approximately 1.5 million people were evicted. By looking at the geographical occurrence, it showed a dispersion whereby 55 percent of these evictions took place in Asia, 27 percent in Latin America, 17 percent

¹⁴ Leilani Farha, *Forced Evictions: Global Crisis, Global Solutions: A Review of the Status of Forced Evictions Globally through the Work of the Advisory Group on Forced Evictions, Un-Habitat and Other International Actors* (UN-Habitat, 2011), viii

¹⁵ Louisa Vogiazides, "'Legal Empowerment of the Poor' Versus 'Right to the City': Implications for Access to Housing in Urban Africa, Policy Dialogue No. 6," in *Nordic Africa Institute*, ed. Nordic Africa Institute (2012).

¹⁶ Farha, *Forced Evictions: Global Crisis, Global Solutions: A Review of the Status of Forced Evictions Globally through the Work of the Advisory Group on Forced Evictions, Un-Habitat and Other International Actors*.

in Africa, and only 0.85 percent in Europe.¹⁷ While these numbers are indicative of forced evictions as a global phenomenon, they say less about the general causes of why these evictions occur. In the next section, I will therefore discuss some of the major patterns of evictions across different instances.

2.2 Major Causes of Forced Evictions

Forced evictions are a highly complex, and multi-faceted problem on a global scale. However, the literature on forced evictions generally tends to distinguish between three main causes of evictions: *urban development*, *natural disasters and climate change*, and *mega-events*. Among these, the most commonly occurring precipitating cause of evictions is urban development, which in 2007-08 has been estimated to account for about 40 percent of all recorded evictions. The common denominator, regardless of the circumstances of evictions, is commercial interests typically linked to economic motives of profit. Moreover, these evictions often leave people worse off than prior to the eviction, including consequences such as the loss of income, employment opportunities, a place to live, social ties and informal networks, interruption of education, discrimination and difficulties of re-establishing themselves in a new community, and more. The failure of government officials, developers, slumlords and others involved in the evictions process, is often linked to the presumption that there is not a system inside the slum.

2.2.1 Urban Development

There is substantial empirical evidence showing that urban development and commercial interests are a major driving force behind forced evictions. In this regard, the case of Kibera is no exception, and also illustrative of the frequently opposing goals of developers and the slum-dwellers themselves. As one of the biggest slum in Africa, and also in the world, the system of land ownership in Kibera creates an environment of uncertainty for its residents: most of the land belongs to the government itself, and only about 10 percent of the people living there are shack-

¹⁷ Ibid., 17

owners – some of these owners also hold possession over multiple shacks that they sub-let to others at a higher price. Living on public lands, “can be deemed dangerous to health and safety, [because] without legal title, these residents are extremely susceptible to forced evictions.”¹⁸ In 2004 for example, the Government of Kenya (GOK) announced plans for a series of mass evictions that would threaten the homes of over 300 000 residents in Nairobi, including thousands of people in Kibera. The official justification was that these informal settlements were located in dangerous public areas, including rail reserves, electrical power lines and land reserved for road construction. Raila Village was the first village to be affected, where 400 structures were destroyed (including schools, clinics and churches) which left approximately 2000 people homeless.¹⁹ Further evictions however, were halted due to the massive criticism voiced from the international community and local advocacy organisations comprised of residents in these slum-areas.

Sceptics, however, have argued that it is only a matter of time before these evictions proceed. Indeed, as a cargo-train derailed in the Soweto area of Kibera in December 2013 on its way to Uganda, the threat of evictions of railway-dwellers was recast once again. However, in this instance, planned evictions especially in Kibera and Mukuru were halted due to a court injunction and agreement with the World Bank dating back to 2005.²⁰ This is illustrative of the threat of evictions emerging from commercial interests linked to urban development, and how this sustains the vulnerability to evictions that many slum-dwellers repeatedly experience. (These processes of socio-economic and political marginalisation will be discussed further in Chapter 6).

The threat of forced evictions in the Dominican Republic (DR) illustrates the precariousness of tenure for the many people living in informal settlements. For decades, the people of DR have been facing the imminent threat of evictions as a result of development projects linked to urbanisation, road-construction and highways, or the

¹⁸ Ibid., 36

¹⁹ COHRE, "Forced Evictions: Violations of Human Rights - Global Survey 10.", 23-24

²⁰ Vincent Achuka, "Why Government Cannot Just Evict Railway Dwellers," *Daily Nation* 4th January, 2014.

development of land for purposes of tourism. In some respects, the DR is comparable to the situation of slum-dwellers in Kenya in terms of land ownership. About 50 percent of the population in DR possess neither deeds nor title to the land they live on, making them especially exposed to the threat of forced evictions.²¹ In the period between 1985 and 1995 over 200 000 slum-dwellers in DR have been forcibly evicted as a consequence of “urban beautification” programs.

In many Asian countries, urban development-based evictions manifest themselves as an increasing problem, due to from the intensified competition in the market to attract global capital investments. As part of this strategy, large sums of money are therefore sifted into various renewal and “city beautification” projects. A prominent example of this is the Philippines, who have a long history of forced evictions, despite the legal protection of the right to housing, as stated in the Philippines Constitution of the Urban Development and Housing Act of 1992 (UDHA).²² In Manila, the Metro Manila Development Authority (MMDA) have repeatedly used forced evictions as “a tool for dealing with crime”, by clearing settlements to make room for public schools, infrastructure and so on. This is exemplified by the forced evictions carried out by the National Highways Authority (NHA), as part of the implementation strategy of the Northrail-Southrail Linkage Project.²³ The aim of the project is to widen the Philippine National Railway in the South of Manila to revive the railway in the north, and in 2007, close to 30 000 families or 145 000 people had been removed from their homes.²⁴

In the US, profits have been in many cases been reaped by converting public or social housing into private market accommodation, such as evictions in New Orleans and New York that have predominantly affected black neighbourhoods. For example, it

²¹ Farha, *Forced Evictions: Global Crisis, Global Solutions: A Review of the Status of Forced Evictions Globally through the Work of the Advisory Group on Forced Evictions, Un-Habitat and Other International Actors.*, 40

²² COHRE, "Global Forced Evictions Survey – 2007-2008," (Geneva, Switzerland 2009), 92

²³ *Ibid.*, 10

²⁴ Farha, *Forced Evictions: Global Crisis, Global Solutions: A Review of the Status of Forced Evictions Globally through the Work of the Advisory Group on Forced Evictions, Un-Habitat and Other International Actors.*

has been estimated that, “[p]ublic housing in the US is being demolished and only replaced on a 3:1 ratio ... in 2002, the federal government demolished over 78,000 public housing units and replaced them with just under 34,000 units.”²⁵

To summarise, urban development-based evictions are often justified as being “in the public interest”. Ocheje (2007) has argued that evictions out on grounds of being in the public good, is a myth, and instead he suggests three alternative explanations with particular reference to Africa: First, antiquated planning laws of colonial origin continue to affect tenure security and disregard human development. This is illustrated by the UK of the Town and Country Planning Act of 1947 that had a profound impact life in Commonwealth Africa. As he puts it, “[the] central philosophy of the 1947 act was control of development.”²⁶ Urban planners have continued this policy of containment, which was so central to the British colonisers, and it serves much the same purpose today; “the conclusion is inescapable that the fear of the urban poor has become a defining feature of urban governance in Africa.”²⁷ Secondly, forced evictions are the result of widespread corruption, and thirdly, the failure to development and implement effective land reforms. This concerns not only the major cities, but the rural countryside as well. As a result, Ocheje argues that thousands of rural dwellers in Africa have been forced off their land, in order to accommodate for development projects, including hydroelectric generation or state-sponsored agricultural development. Moreover, he concludes that these “evictions have, thus, been driven by both economic development considerations as well as the imperatives of globalization.”²⁸ The case of exploiting of oil resources in Nigeria, exemplifies this as it has resulted in a massive destruction of both the land and the ecology.

²⁵ Ibid.

²⁶ Paul D. Ocheje, ““In the Public Interest”: Forced Evictions, Land Rights and Human Development in Africa,” *Journal of African Law* 51, no. 2 (2007), 182

²⁷ Ibid., 184-85

²⁸ Ibid., 191-92

2.2.2 Natural Disasters and Climate Change

Natural disasters are one of the biggest causes of displacement of people worldwide, resulting from tsunamis, earthquakes, mudslides or droughts, erosion and river flooding, are all disasters that may cause the displacement of huge number of people. While the natural disasters themselves are outside the control of governments, the responsibility to take steps to prevent the massive displacement of people is an obligation that resides with the state. However, in some instances, preventive measures to mitigate the future effects of natural disasters have actually contributed to the eviction of thousands of people. In 2004 after the tsunami in Sri Lanka for example, a costal buffer zone was created leaving over 100 000 people displaced. This did not only render a vast number of people homeless, but also affected the livelihoods of the same people displace, as fishermen dependent on the sea were not allowed to reconstruct their homes. However, while the buffer zone prevented residential reconstruction, exemptions were made for tourist-oriented establishments, pointing to the priority placed on commercial interests of over the right of the local communities.

Another example of evictions is linked to Hurricane Katrina that hit the US in 2005, which displaced over two million people. In July 2009, the Advisory Group on Forced Evictions (AGFE) Mission Report on New Orleans, reported that over 1000 well-structured public housing units had been demolished without providing for alternative housing for the people that lived in the affected areas before the hurricane struck.²⁹ Farha (2011) writes that natural disasters that affect the lowest income communities “are often used opportunistically by governments to further a development agenda that conflicts with human rights obligations.”³⁰ After Hurricane Katrina, evictions took place as a result of public housing being converted into private accommodation for the middle class, which meant raising the rents, and pushing out the previous tenants.³¹

²⁹ AGFE, "Mission Report to New Orleans, U.S. - 26-31 July 2009," (2009).

³⁰ Farha, *Forced Evictions: Global Crisis, Global Solutions: A Review of the Status of Forced Evictions Globally through the Work of the Advisory Group on Forced Evictions, Un-Habitat and Other International Actors.*, 43

³¹ Associated Press, "Low-Income Katrina Victims Face Eviction," http://www.nbcnews.com/id/12375321/ns/us_news-katrina_the_long_road_back/t/low-income-katrina-victims-face-eviction/#.UyGsw15YonI.

2.2.3 Mega-events

The hosting of mega-events such as the Olympics, the Commonwealth Games, the World Expo and other events have threatened the housing rights of hundreds of thousands of people. As COHRE (2009) report, clearing up informal settlements are not only conducted prior to mega-events to make room for venues; the events themselves are also “seen as opportunities to increase tourism and commerce, [and] become convenient excuses to push through massive infrastructure upgrading or city beautification plans causing evictions and displacement.”³²

Examples of forced evictions prior to mega-events are many, as tragically illustrated by the hosting of the Olympic Games: In 1988 in Seoul 720 000 people were evicted in preparation of the Olympic Games; in the Games subsequently held in Barcelona in 1992, the housing prices became too expensive for many low-income earners, thus forcing them to move out of the city; in Beijing 2008, a massive 1.25 million people were affected by evictions and involuntary displacement in preparation to a games; a number that is estimated to go up to 1.5 million by August 2008. Through a fact-finding mission, COHRE also established that the Beijing authorities had used propaganda, harassment, repression, imprisonment and violence against those who opposed or protested against the involuntary displacement. During the recent Winter Games in Sochi, Human Rights Watch (HRW) reported that around 2000 families have been displaced. Although most received compensation (some did not), HRW found that many families were under-compensated in terms of the loss of their home or the income they previously earned.³³

2.3 The Case of Kibera

These global trends of forced evictions identify some of the main underlying, and precipitating causes of the problem. However, an enhanced susceptibility to forced evictions can be better understood, if viewed as a *dynamic* process – that is, as

³² COHRE, "Global Forced Evictions Survey – 2007-2008.", 10

³³ Alec Luhn, "The Hidden Environmental and Human Costs of the Sochi Olympics," *The Nation*, January 22 2014.

resulting from a convergence of different factors (e.g. urbanisation, economic growth, social exclusion, informal land tenure). For this reason, I will briefly describe some of the historical developments that have made Kibera what it is today, and which factors continue to place its inhabitants at risk of forced evictions. This overview is useful, since other cases sharing comparable historical trajectories may also display similar patterns of forced evictions.

In 2006, it was estimated that the city of Nairobi contained 199 informal settlements, comprising a population of over two million people. This increase in slum settlements can be traced back to the 1920s, and the repeated failures of both the colonial administration and governments post-independence, to adequately address the issue of land allocation. Specifically, the near non-existence of land entitlements among the urban poor in the city, have continued to exacerbate insecurity of tenure for people in informal settlements, and the uncertainty about the future this bring about, particularly among low-income groups. In Nairobi, it has been estimated that around 60 percent of the population are living in informal settlements, yet these urban residents only occupy about six percent of the land. This fragmentation of the city, or what X calls the “spatial logic of exclusion”, is well illustrated by the disparity is well illustrated by different levels of density across the urban landscape of Nairobi. In the wealthy area of Muthaiga, four kilometres north of the city, the density level is at 481 persons per square kilometre. In the geographical area of study here, Kibera, by contrast, displays a much higher level of density with an estimated 49 228 persons per square kilometre.³⁴ With a permanent population of around 700 000 people, comprised of ethnic and social diversity owing to policies of colonial origin, conflict, and labour migration, the access to land is a commodity of scarcity and power in the urban context. It is therefore of interest to give a brief account of how Kibera has developed over the years, and how this has its roots in the political economy of Kenya after independence.

³⁴ Fernando da Cruz, Kerstin Sommer, and Ombretta Tempra, *Nairobi Urban Sector Profile* (Nairobi: United Nations Human Settlements Programme, 2006).

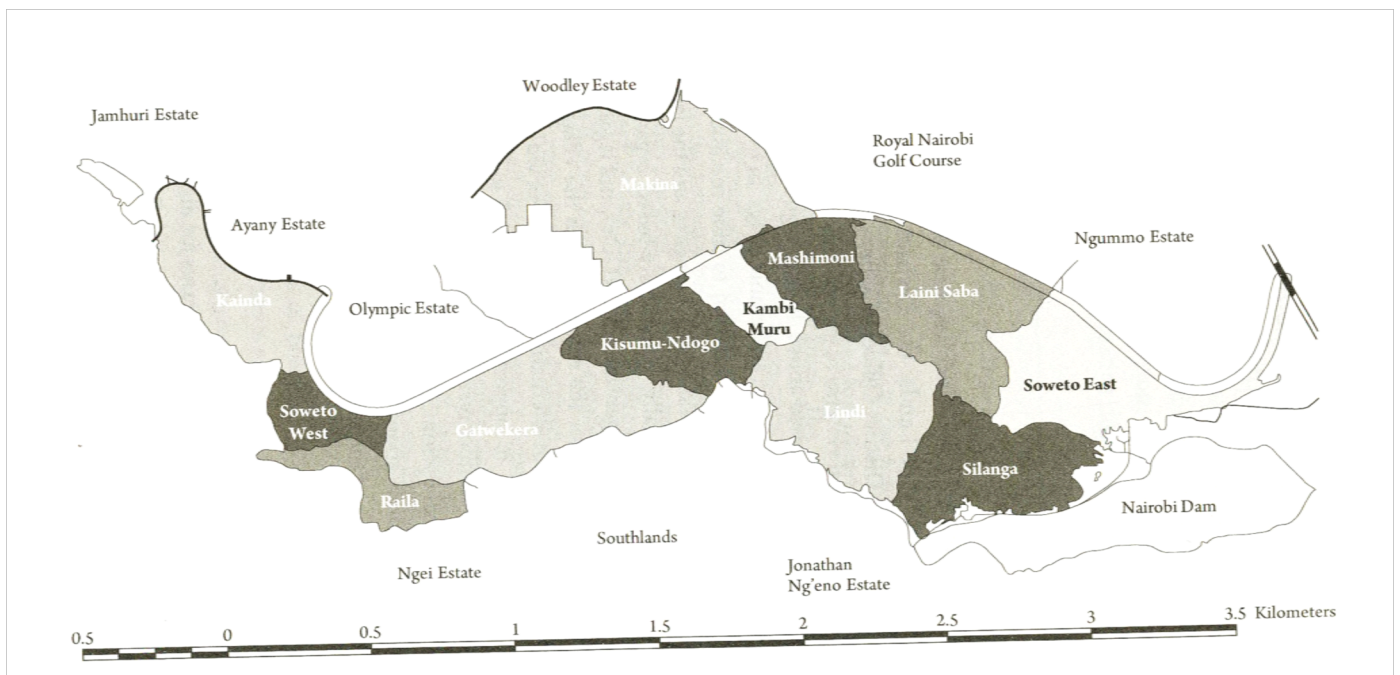


Figure 1: Map of Kibera, Nairobi (Joireman, 2011).

In 1912, the first settlers arrived in Kibera, when the colonial government awarded Nubian soldiers land for their efforts, in fighting for the British during the First World War. Although the Nubian settlers were permitted to build their homes in Kibera, the actual ownership of the land remained the property of the Crowns Land Ordinances. In the wake of independence in 1963, Kibera became a site of residence for many migrant workers seeking employment and an affordable place to live. In 1969 however, the GOK retracted previously granted Nubian claims to the land, as part of its “slum-clearance” policy, and thereby again becoming the property of the government. In the subsequent event of the assassination of Luo cabinet minister and KANU Secretary General, Tom Mboya, and people fleeing from violence in rural areas, Kibera experienced an influx of Luo tenants. With the government cut in social expenditure and a more lax attitude to informal settlements, more residents arrived in the 1980s.³⁵

³⁵ Sandra Fullerton Joireman, *Where There Is No Government : Enforcing Property Rights in Common Law Africa* (New York ; Oxford: Oxford University Press, 2011)., 132-3

Alongside these patterns of an increasingly more heterogeneous population in Kibera, this has continued to run parallel to living under conditions of informal tenure. Traditional views of property rights and statehood have often underlined “the idea that judicial and administrative capacities decline the farther an area is from the center of power in a country.”³⁶ Instead, as Joireman argues, increasing patterns of urbanisation in Africa has resulted in “pockets of statelessness developing in capital cities; informal communities with higher population densities that lack formal structures for conflict resolution, police presence, and law enforcement.”³⁷ In the absence of formal tenure, the threat of evictions have continued to characterise life in slums such as Kibera, Mathare and elsewhere around the informal settlements of Nairobi. The residents in Kibera are mostly tenants, renting their home from local slumlords, or government official who own the land. Many of these landlords have no legal entitlement to the land, yet they are often called “structure owners” as they own the shacks themselves. This highlights the potential source of tension that often arises from conflict interests in slums between residents, commercial developers, and landlords. In a survey of 120 structure owners from 2002, “the majority (80-90 percent) were absentee landlords living in middle-class housing estates outside of Kibera who hired agents to collect rent on their behalf. Fifty-seven percent of the structure owners were public officials.” Indeed, of the most common sources of dispute in slums, is over payments of rent and the threat of eviction.

In many developing countries the most pressing issue is not necessarily homelessness, but rather the issue of overcrowded houses, and the detachment from access to basic services and amenities. As such, the housing problem can be seen of as “a multifaceted problem that can only be helped through raising living standards, improving employment opportunities and applying sensible urban regulations.”³⁸ The implications of this demonstrates the dual, often and reinforcing nature of the housing problem: On the one hand, the poor opportunities available to slum-dwellers, in terms

³⁶ Ibid., 129

³⁷ Ibid., 133

³⁸ Alan Gilbert, "Housing the Urban Poor," in *The Companion to Development Studies*, ed. V. and Potter Desai, B. R. (Hodder Education, 2008), 258

of education, employment, and participation prevents them from attaining a more secure housing situation. On the other hand, housing under informal tenure can undermine social and political stability, and hinder economic growth in slum areas. The case for Kibera thus sheds light on the importance of both socio-economic and political processes at large, yet also how the social exclusion of slum-residents accentuates the problem of forced evictions. The next chapter addresses the theoretical framework through which social exclusion can aid our understanding of forced evictions, and how it helps explaining recurring patterns of extreme poverty.

3.0 Theoretical Framework

In this chapter, I give an overview of the theoretical concepts informing this thesis through the study of forced evictions. While the concept of social exclusion is central to the study of extreme poverty in this thesis, it did not originate within the field of development as such. In fact, it originally emerged from the French society where it constituted a group of socially disadvantaged people, denoted as “the excluded”.³⁹ Its subsequent application and transfer to the context of development studies, therefore merits a brief historical view of development theories after the Second World War. This better equips us with an understanding of how “development” has been conceptualised in the past – emphasising a shift from not only the “grand narratives” of political and economic perspectives, but also supplemented by social, ethnic, cultural, and ecological dimensions.

First, I begin by briefly discussing the point of origin of development theories, as they were conceived to be tools of human betterment through economic and political changes. Secondly, with an expanded definition of poverty, encompassing not only economic well being, but also levels of education, access to basic services, health, sanitary conditions and more, so has there been an increasing recognition of the socio-economic mechanisms of recurring patterns of poverty. I therefore address the relevance of ideas such as participatory and grassroots perspectives, the capability approach, social capital and more. Thirdly, I discuss the concept of social exclusion, and the merits of this approach in explaining exposure to forced evictions. Finally, I discuss the role of Legal Empowerment of the Poor, as a means to decrease social exclusion to forced evictions, amongst other things.

3.1 Literature Review: Development Theories Post-1945

After the Second World War, Europe underwent a reconstruction project of a previously unprecedented scale. The impetus behind the Marshall Plan, launched by the US Government on 5th June 1947, was not only to rebuild the devastated

³⁹ Amartya Sen, "Social Exclusion: Concept, Application, and Scrutiny," *Social Development Papers* No. 1, June (2000).

economies and infrastructure on the European continent. It was also “designed to stimulate markets for America’s burgeoning manufacturing sector.”⁴⁰ The idea of large capital investments in stagnant economies, coupled with the Keynesian inspire notion of the active state, became the central theme of the theoretical discourse of the *modernisation theorists*. The main point of departure was therefore the question of ‘how to achieve rapid economic growth’. In the 1950s, scholars such as Rosenstein-Rodan, Ragnar Nurkse and Albert O. Hirschman, therefore argued that the principle barrier to economic growth in developing countries, was the size of the traditional (or “backward”) sector. A rapid structural shift from an agriculturally based economy to an industrial one was therefore argued to remedy the problem of low economic growth. The modernisation theorists therefore advocated what they called the “Big Push” strategy, which involved injecting large sums of money into the principle industries of a country. These ideas were also informed by the Ricardian thesis of “the comparative advantage”, whereby capital investments in key industries was assumed to have a rippling effect; that is, economic growth in one sector would automatically positively affect others, thereby ending the “vicious cycles of poverty”.⁴¹

In the 1960-70s, structural and dependency theories of development emerged as a response to what they perceived as a very narrow conception of development. In his theory of unequal development, Raul Prebisch argued that the much higher prices on industrial good, and in relative terms, the low cost of agricultural goods, placed developing countries in a disfavoured position of economic trade. Prebisch, along with Hans Singer, therefore argued that this had to be remedied through state interventions to fuel the industrial sector. Dependency theorists argued that this could be done through the so-called Import-Substitution-Industrialisation (ISI) strategy, advocating the need to replace foreign imports with domestic production. This was particularly popular in “the Global South”, specifically in Latin American countries such as Argentina, Brazil, Mexico, Chile, Uruguay and Venezuela. However, the proposed ISI

⁴⁰ Tony Binns, "Dualistic and Unilinear Concepts of Development," in *The Companion to Development Studies*, ed. V. and Potter Desai, B. R. (Hodder Education, 2008), 81

⁴¹ John Martinussen, *Samfund, Stat Og Marked : En Kritisk Gennemgang Af Teorier Om Udvikling I Den 3. Verden* (København: Mellempøkeligt Samvirke, 1994), 80

policy prescriptions brought problems of its own, as Conway and Heynen writes: “Multinational corporate power and authority over technology transfer and capital emerged as a new form of dependency.”⁴²

In the 1980s, development studies were heavily influenced by the neoliberal turn of policy in many Western societies. As Cheryl McEwan explains: “Neoliberalism became hegemonic precisely because the impasse in development theory coincided a crisis in the political economy.”⁴³ The actual policy changes in development closely mirrored that of the Washington Consensus, meaning policies in favour of the free market, privatisation and liberalisation of international trade. The reason for this, McEwan writes, can be interpreted to be the result of a weakened US economy due to inflationary spending on the Vietnam War, which also precipitated the decoupling of the dollar from the gold standard, and the sustained global recession between 1978 and 1982. While these factors testified to a significant structural shift in the global economy, Schurmann has argued that there were three primary factors for this change: First, the failure of previous attempts in the South and a growing diversity of experiences of with development, second, the postmodernists critique of the social sciences’ “grand narratives”, and third, the rise of globalisation meant a decreasing importance of the state, in favour of the role of the global financial market.⁴⁴ Perhaps most well known, were the infamous “structural adjustment programs” (SAPs) as advocated by the IMF and WB. For developing countries to receive loans, this meant complying with the demands of liberalisation, privatisation and the abandonment of state-led development. In *The Challenge of Slums*, the authors argue that the “main single cause of increases in poverty and inequality during the 1980s and 1990s was the retreat of the state.”⁴⁵

⁴² Conway and Heynen, "Dependency Theories," in *The Companion to Development Studies*, ed. V. and Potter Desai, B. R. (Hodder Education, 2008)., 93

⁴³ Cheryl McEwan, *Postcolonialism and Development* (London: Routledge, 2009)., 99

⁴⁴ Frans J Schuurman, "The Impasse in Development Studies," in *The Companion to Development Studies*, ed. V. and Potter Desai, B. R. (London: Hodder Education, 2008)., 13-14

⁴⁵ Quoted in Davis, *Planet of Slums* , 154

3.2 Capability Approach and Participatory Development

In the field of development studies, it has been an increasing realisation over the last two decades, that grand narratives of development are unable to address issues of extreme poverty and inequality. In this section, I discuss two distinct approaches to development that focus on the factors that enable individuals to improve their own socio-economic mobility, and participation.

In his classic work, *Commodities and Capabilities*, Amartya Sen provides an economic theory to development. The point of departure of his argument is to view poverty as a multidimensional concept, and especially so with regards to what constitutes human well being; and the factors that either enable or constrain a person's capabilities. This is further explained through his notion of a *functioning*, that is, "an achievement of a person: what he or she manages to do or to be. It reflects, as it were, a part of the 'state' of that person. It has to be distinguished from the commodities which are used to achieve those functionings." In addition, he underlines that a single commodity may indeed have many different functionings, or put differently, different effects. A commodity such as bread, for instance, may have a multiple set of characteristics in addition to just providing different types of nutrition. Additional purposes may thus provide an opportunity for helping get-togethers, and meeting the demands of social conventions and festivities. This is illustrative the argument at large, namely that "conversion of commodity-characteristics into personal achievements of functionings depends on a variety of factors – personal and social."⁴⁶ By the same token, the non-participation in "normal activities" in a society, such as employment, political involvement and so on, may have instrumental importance beyond its immediate uses. The loss of economic input due to socio-economic marginalisation may therefore have the negative impact of preventing people from acquiring certain commodities that would otherwise enable them to guarantee their security of tenure.

⁴⁶ Amartya Sen, *Commodities and Capabilities* (New Delhi: Oxford University Press, 1999), 17

Informal tenure, or landlessness, is another point Sen highlights, which illustrates both the constitutive and instrumental aspect of social exclusion.⁴⁷ In this perspective, Sen argues that the concept of social exclusion can be seen as a sub-category of the capability approach for two main reasons: On the one hand, he argued that we may have good reasons to value not being excluded for intrinsic reasons. This is what he calls the *constitutive* relevance of exclusion. On the other hand, and perhaps more importantly, is the *instrumental* aspect of exclusion, which highlights that although significant exclusions may not be impoverishing in themselves, “they can lead to impoverishment of human life through their *causal consequences* (such as the denial of social and economic opportunities that would be helpful for the persons involved).” In either case, the causal consequences of either landlessness, unemployment, or lack of political participation may have the instrumental effect of maintaining existing patterns of extreme poverty, and in some cases exacerbate these forms of exclusion.

For instance, Sommers (2010) shows how traditional understanding of manhood in many African communities are “associated with having a house, being married and having children.” Along the lines of Sen’s argument, the inability of meeting the social requirements of manhood can be a constitutive form of exclusion, but more importantly, it can entail the socio-economic and political exclusion from participation in society. Making the move to cities, and in this case particularly for men, can be seen as a proving ground for making the transition into adulthood. This illustrates the potential risks of moving to the city, since the risk of failure may mean “social death” if unable to make it. As Sommers explains:

Being unable to gain the urban foothold sufficient to becoming socially accepted as a man is a much deeper form of marginalization than arises merely from being unable to complete one’s schooling or become a wage earner in town. Becoming a “youthman” is a permanent social punishment.⁴⁸

⁴⁷ "Social Exclusion: Concept, Application, and Scrutiny."

⁴⁸ Marc Sommers, "Urban Youth in Africa," *Environment and Urbanization* 22, no. 2 (2010), 11

As Sen points out, certain capabilities (or lack thereof) may be matter of choice whilst others are not. The lack of availability of well paid jobs, education and so on, can be regarded as a lack of capabilities resulting the structural conditions.

Participatory approaches start from the point of departure that the role of civil society is vital to achieve socio-economic development, which then benefits all strata of a society. The UN defines participation as the “sharing by people in the benefits of development, active contribution by people to development and involvement of people in decision making at all levels of society.”⁴⁹ As Desai writes on the topic Community Participation (CP), “[the] arguments on participation seem to converge on the relationship between three key concepts in CP, namely taking part, influence and power.”⁵⁰ While these ideas are novel in and over themselves, the problem is when elites among the poor participate, which may not representative for the group as a whole. This can be seen as a reason why a shift within participatory approaches has taken place, with an emphasis on the empowerment of the less powerful. In essence, Desai argue that “since [the poor] neither have socio-economic nor political power, [they] do not generally gain access to the decision-making processes and hence are unable to influence them. Therefore, the poor have not benefited from economic growth, but in fact have become worse off.”⁵¹ In sum, both these approaches contribute to the understanding of poverty as highly complex phenomenon, illustrating that escaping poverty requires participation and an ability to convert resources into de facto influence on political processes. In theory, the concept of social exclusion could therefore provide us with useful insights as to why marginalised groups are unable to take part in processes that could improve their livelihoods. To conclude, these approaches to poverty share the same assumption that economic growth cannot necessarily be equated to that of economic development. In the section that follows, I will discuss what social exclusion is and how it relates to forced evictions.

⁴⁹ United Nations, "1978 Report on the World Social Situation," (New York, United Nations 1979), 225

⁵⁰ Vandana Desai, "Community Participation in Development," in *The Companion to Development Studies*, ed. V. and Potter Desai, B. R. (Hodder Education, 2008), 116

⁵¹ Ibid.

3.3 Concept of Social Exclusion

Della Giusta (2008) has pointed out that the definition of social exclusion is not necessarily fixed and often varies from one context to another, since “each society defines what participation entails, and the conditions for individuals to be able to participate.”⁵² Not surprisingly, a common criticism raised is that the concept of social exclusion has a limited theoretical foundation and that it has been applied too broadly.⁵³ In spite of these limitations, the term has come to signify a lack of participation in society with an emphasis on the multi-dimensional, multi-layered, and dynamic character of the problem.⁵⁴

However, in relation to poverty studies it has been objected that it is now already common practice to view poverty as a multi-dimensional problem. De Haan and Maxwell (1998) therefore argue that for the concept to be useful we must ask ourselves: “What is the value added?” To this, it has been argued that social exclusion directs our attention to the relational and processual aspects of poverty, which can be seen as part and parcel of the condition of deprivation. In other words, social exclusion forces us to look beyond the mere economic aspects of poverty with the added perspective of looking to the terms of participating in a society. The ramifications of unequal access and participation can be seen as key to understanding why certain groups are more vulnerable to evictions, and their chances of improving their situation. Another criticism is that social exclusion is inherently a European concept with French origins. It is therefore useful to discuss the historical roots and development of the concept itself.

It is now generally acknowledged that René Lenoir was the first to coin the term social exclusion. However, at the time the term signified a range of social categories of people considered to be excluded in the French society, such as single parents, multi-

⁵² Marina Della Giusta, "Social Exclusion and Development," *ibid.*, 136

⁵³ E.g. Else Oyen (1997); Amartya Sen (2000).

⁵⁴ Iain McLean and Alistair McMillan, *The Concise Oxford Dictionary of Politics* 2nd ed. (Oxford: Oxford University Press, 2003), 495-496

problem households, delinquents and so on.⁵⁵ The term has since also come to denote the exclusion from a livelihood, secure and permanent employment, education, housing, democratic participation and so on.⁵⁶ In essence, this expanded meaning of the term, shows the development of a more nuanced and comprehensive understanding of what is required, in order to participate in a society. It is within this framework that social exclusion should be understood in this thesis.

Definitions of social exclusion typically vary according to context of application. In an article by Hilary Silver (2007), the concept is understood within an institutional framework, and defined as,

[...] a multidimensional process of progressive social rupture, detaching groups and individuals from social relations and institutions and preventing them from full participation in the normal, normatively prescribed activities of the society in which they live.⁵⁷

The institutional perspective implied here logically draws our attention how individuals or certain groups of people are systematically excluded participating in society. Through a case study perspective, this can be beneficial to the analysis of social vulnerability since it focuses on the causal processes that lead to forced evictions. In other words, this approach focuses on the *relational* and *multi-dimensional* social processes that lead to extreme poverty. This is useful to our understanding of forced evictions, since it entails not just analysing poverty through average measures of income and GDP, but also the social mechanisms behind it.

Furthermore, Sen (2000) argues that the concept of social exclusion can be distinguished between *intrinsic* and *instrumental* exclusion. While intrinsic exclusion here refers to exclusion as constituting a form of deprivation in itself, instrumental

⁵⁵ Historically, there has been a philosophical divide in the understanding of social exclusion as a concept. For instance, the Anglo-Saxon tradition has placed emphasis on individual forms of exclusion with policy advocacy in favour of market-oriented means towards inclusion. The French discourse on the other hand, has viewed welfarist measures as more appropriate towards the aim of integrating the “excluded.”

⁵⁶ Sen, "Social Exclusion: Concept, Application, and Scrutiny.", 1

⁵⁷ Hilary Silver, "Social Exclusion: Comparative Analysis of Europe and Middle East Youth Initiative. Working Paper 1," (2007)., 15

exclusion means that not being able to part-take in certain activities can in turn lead to the denial of socio-economic and political opportunities beneficial to a person. For instance, unemployment (or unfavourable conditions of working) can be seen as an impediment to future possibilities in terms of land ownership or entitlements to land. In other words, social exclusion can limit a person's capabilities in terms of income, which in turn makes it difficult to escape poverty. Evidently, the lack of a decent income is a substantial hindrance to better the conditions of living. Social exclusion can therefore have the effect of *accentuating* inequalities and the risk associated with living in poverty. If this is so, what are the ways in which people are excluded, and what are the "normal activities" of participation?

In defining these "normal activities", it is possible to identify *three forms of social exclusion*: that is, economic, political, and socio-cultural exclusion. While participation may be dependent on the case under scrutiny, Bhalla and Lapeyere (1997) have suggested the following indicators of exclusion: the lack of access to the labour market (rate of unemployment, vulnerability and insecurity of employment), access to health and educational services, participation in the social activities, and so on. Political exclusion can take the form of lacking voting rights, low rates of participation and degrees of political freedom, corruption and more.⁵⁸ In what follows, I discuss economic and political exclusion as it is operationalized in this thesis.

3.3.1 Economic Exclusion and Employment

The economics of exclusion can be studied both in terms of how income is distributed in a country, but also in terms of what the conditions for accessing the labour market are. This can for example be seen in relation to the divide between skilled and unskilled labour, or as one scholar puts it: "Economic processes include both the way in which modes of production determine a division of labour between forms of work that are highly valued and from which status and income are derived, and those which are not." This is particularly important to take into account, since skilled versus

⁵⁸ A and Lapeyere Bhalla, F, "Social Exclusion: Towards an Analytical and Operational Framework," *Development and Change* 28 (1997), 424-426

unskilled labour “is a very significant factor in explaining observed poverty and vulnerability patterns (including violence).”⁵⁹

Moreover, being able to participate in the work market is key to understanding the dynamics of inclusion and exclusion. As Sen (2000) explains: “in contemporary Europe, the extraordinary prevalence of unemployment and worklessness is perhaps the single most important contributor to the persistence of social exclusion in a large and momentous scale.”⁶⁰

Social policies aimed at improving occupational opportunities therefore have a direct impact on socio-economic levels of equality in the immediate circumstances, but also in the future. In any case, the effects of being excluded from the work market, or conversely, by participating on unequal terms in terms of income, may lead to patterns of vulnerability. Sen (2000) notes that exclusion may lead to the loss of current output (wasting productive power), loss of freedom, and further exclusion, ill-health, motivational loss and future work, gender and racial inequality and so on.

In essence, the instrumental effects of economic exclusion can be a key cause in the reproduction of extreme poverty; the loss of income resulting from this, may have the extended effect of leaving certain groups in a more vulnerable position for instance in terms of access to basic services, health, education, or the risk of forced evictions. When looking at employment as an important indicator of social vulnerability of particular groups, it is also necessary to address the distinction between the formal and informal sector. In slums such as Kibera, the unavailability of jobs in the formal sector is also linked to the high costs of education and formal training. The informal sector therefore employs a substantial number of people living in slums, and it is important to look into what the effects of this are. In other words, the income generated from unskilled and low-paid work constrains socio-economic mobility, and enhances the risk of forced evictions. This is because low economic input forces people to remain in

⁵⁹ Della Giusta, "Social Exclusion and Development.", 138

⁶⁰ Sen, "Social Exclusion: Concept, Application, and Scrutiny.", 19-23

the slums, living under informal tenure, where commercial interests often come before those of the slum-dwellers.

3.3.2 Political Exclusion and Participation

As discussed, marginalised groups may be more vulnerable to evictions due to being excluded from economic opportunities that can advance socio-economic mobility and the possibility of acquiring secure tenure. At the same time, employment is not the only factor that can significantly impact on the housing situation of an individual or a group of people. Political participation is often key to the very same end, precisely because such processes impact on issues such as land allocation, tenure and housing rights to mention a few. However, when discussing political participation and influence it is necessary to conceptualise what this entails in the case studied. This is important in its own right since political processes often “define both the conditions for being part of a society (citizenship rights) and participating in activities such as voting (which include restrictions that can be based on age, gender, citizenship status, etc.)”.⁶¹

Political exclusion from processes determining land allocation, ownership rights and so on are therefore key to understanding that are likely to be evicted, and who are not. Furthermore, this can also be seen as closely linked to socio-cultural forms of exclusion, for example in terms of discrimination and unequal treatment. Fraser (1997), for example, has argued that systematic, group-based disadvantage can be understood according to what he calls “bivalent collectivities”; that is, when “social groups for whom economic disadvantage is bound up with cultural-valuational disadvantage” (e.g. gender, ethnicity, age or other indicator that may negatively impact one’s conditions of living). For example, in looking the risk of evictions in poor black neighbourhoods in Milwaukee, US, Matthew Desmond (2012) found that women were twice as likely to be evicted as men. Ethnographic studies showed that *structural constraints* having to do with work, welfare and housing costs, and *interactional patterns* such as gendered reactions to receiving an eviction note placed women from

⁶¹ Ibid.

poor black neighbourhoods particularly at risk of being evicted.⁶² By the same token, it can be argued that marginalised groups in Kibera are in a more vulnerable position, and if unable to have influence over the political processes that lead to evictions. This is problematic for instance in view of institutional theory, that describes how “norms and customs regulating socio-economic life - which, over time, are becoming enshrined in formal institutions such as the law, and they then together determine each individual's positioning in relation to others, as well as their ability to access resources.”⁶³ If systematically excluded over time, certain groups will remain more vulnerable to evictions since they are unable to improve their situation in a long-term perspective. The inclusion in political processes is therefore essential to avoid the systematic and repeated evictions of particular groups.

The philosophy behind participatory development (PD) gained popular acceptance in the mid 1970s and onwards, as international organisations began “putting the last first”. This meant engaging local people by making them an integral part of their development strategies. In essence, PD can fundamentally be said to be about power, which means addressing the privileges of the powerful through the involvement of civil society.⁶⁴

3.4 Legal Empowerment of the Poor

In the past two decades, empowerment has emerged as a central concept on the development agenda – as a way of giving identity and voice to the poor.⁶⁵ Particularly in the mid-1990s, development agencies, practitioners and others alike began adopting the term, although different connotations were assigned to it. To begin with, mainstream institutions and practitioners saw empowerment as a means to enhance the efficiency and productivity within the status quo, rather than as a tool for social

⁶² Matthew Desmond, "Eviction and the Reproduction of Urban Poverty," *American Journal of Sociology* 118 (2012), 91

⁶³ Sen, "Social Exclusion: Concept, Application, and Scrutiny."

⁶⁴ Giles Mohan, "Participatory Development," in *The Companion to Development Studies*, ed. Vandana Desai and Robert B. Potter (London: Hodder Education, 2008), 45

⁶⁵ Dan Banik, "Legal Empowerment as a Conceptual and Operational Tool in Fighting Poverty," *Hague Journal on the Rule of Law* 1, no. 1 (2009), 127

transformation.⁶⁶ Since then, it has come to encompass issues such as gender and empowerment, equal participation, and so on. With the added prefix of *legal* empowerment, it has been argued that the goal of empowerment is not simply confined to the transfer of resources to the poor,

[...] it entails the creation of sound legal and political frameworks which specifically address the needs of poor and vulnerable groups in the population and hold political and administrative leaders to account for policy failures.⁶⁷

In 2005, the LEP approach gained increased attention in the UN arena, through the establishment and work of the Commission of Legal Empowerment of the Poor (CLEP).⁶⁸ Until then, as Banik asserts, the connection between law and development in the international development discourse had narrowly focused on “law, lawyers and state institutions”. The CLEP report was therefore influential in expanding the scope of legal empowerment; from formalised property rights to empowerment “as a global social contract involving a so-called ‘bundle-of-rights’.”⁶⁹ To this end, the Report outlined four main pillars through which to promote legal empowerment, including the access to justice and the rule of law, ownership of property, labour rights, and business rights. According to the CLEP, the main goal of legal empowerment was thus to expand protection and opportunities for all, by protecting people “from injustices – such as wrongful eviction, expropriation, extortion, and exploitation – and offering them equal opportunity to access local, national, and international markets.”⁷⁰

Legal empowerment offers a perspective that highlights the interconnectedness between the development discourse and human rights based approaches. Slum

⁶⁶ Jane Parpart, "Rethinking Gender and Empowerment," in *The Companion to Development Studies*, ed. V. and Potter Desai, B. R. (London: Hodder Education, 2008), 355-6

⁶⁷ Banik, "Legal Empowerment as a Conceptual and Operational Tool in Fighting Poverty.", 118

⁶⁸ Vogiazides, "'Legal Empowerment of the Poor' Versus 'Right to the City': Implications for Access to Housing in Urban Africa, Policy Dialogue No. 6.", 11

⁶⁹ Banik, "Legal Empowerment as a Conceptual and Operational Tool in Fighting Poverty.", 118-9

⁷⁰ Commission on Legal Empowerment of the Poor. and United Nations Development Programme., *Making the Law Work for Everyone*, 2 vols. (New York: Commission on Legal Empowerment of the Poor ; United Nations Development Programme, 2008), 28

dwellers' security of tenure may therefore positively benefit from a closer look at how socio-economic and political inclusion depends on the effective implementation of rights, and vice-versa. Naila Kabeer views empowerment as an "expansion in people's ability to make strategic life choices in a context where this ability was previously denied to them." As Vogiazides explains, the LEP approach seeks to expand the benefits of the rule of law for all its citizens. This implies that disadvantaged populations can use of legal services and related development activities to increase control over their lives.⁷¹ In this thesis, I draw on CLEP's definition of legal empowerment as, "a process of systemic change through which the poor and excluded become able to use the law, the legal system, and legal services to protect and advance their rights and interests as citizens and economic actors."⁷²

There are many *benefits* to legal approaches such as LEP, including the normative force of law, the equal application of legal standards to all actors, the ability to advocate, publicise and practically apply human rights protections standards, as well as using internationally recognised human rights standards to criticise governments who do not fulfil their obligations. However, there are also important *limitations* to legal empowerment, such as the inadequate attention paid to moral disputes, characterising the implementation of human rights principles, and "the ability of actors to ignore, bypass or selectively implement judicial recommendations and verdicts."⁷³

Since the 1980s, Banik writes, Indian courts have conducted several investigations that confirm the incidence of starvation-related deaths in many parts of the country. Despite significant media attention drawn to the issue on a regional and national level, "successive government and senior administrators in India have paid little attention to court rulings", by questioning the credibility of the cases brought before them.⁷⁴

⁷¹ Vogiazides, "'Legal Empowerment of the Poor' Versus 'Right to the City': Implications for Access to Housing in Urban Africa, Policy Dialogue No. 6.", 11

⁷² Commission on Legal Empowerment of the Poor. and United Nations Development Programme., *Making the Law Work for Everyone.*, 120

⁷³ Banik, "Legal Empowerment as a Conceptual and Operational Tool in Fighting Poverty.", 128

⁷⁴ *Ibid.*, 128-9

Decreasing the risk of forced evictions among urban slum-dwellers, through legal instruments depends on a range of factors including: institutional capacity, the creation and implementation of legal tools, political culture and more. Political changes and constitutional developments in post-independence Kenya, therefore offers a window of opportunity to analyse the extent to which this benefits the urban poor.

4.0 Research Design and Methodology

The role of a research design can be characterised as *the structure of an enquiry*, where the intent and purpose is “to minimize the chance of drawing incorrect causal inferences from the data.”⁷⁵ Moreover, de Vaus (2001) notes that the logical task of structuring a design is “to ensure that the evidence collected enables us to answer questions or to test theories as unambiguously as possible.”⁷⁶ To appreciate the link between the data, the research problem, the methods and causal inferences, it is therefore useful to recapture how the information was obtained, and why it has been thought to be of relevance to the research question at hand.

The purpose of this chapter is to explain the link between the research question, the choice of methods, and the empirical evidence presented throughout the study. First, I discuss the inherent qualities of the case study approach and outline the strengths and weaknesses of this design in relation to the research question, selected case and state of theory in the field. Thereafter, I address how challenges and shortcomings are sought and minimised through a combination of secondary sources and interviews: I discuss how the analysis has been conducted and how the chosen design and methods contribute to the overall goal of the thesis.

4.1 Case Study Approach

The research design taken here, situates the study of forced evictions through a single case study. Defining what a case study is however, as Gerring writes, can prove to be somewhat of a definitional morass since the literature often brings about multiple and overlapping terms that blur the boundaries between them (e.g. qualitative and ethnographic studies, process-tracing, triangulation and so on).⁷⁷ In the 1960-70s, Gerring and Bennett (2005) argued, “definitions of case studies relied on [a] distinction between the study of a small versus a large number of instances of a

⁷⁵ David A. De Vaus, *Research Design in Social Research* (London: SAGE, 2001), 16

⁷⁶ Ibid.

⁷⁷ John Gerring, *Case Study Research: Principles and Practices* (Cambridge University Press, 2009), 17

phenomenon.”⁷⁸ This profusion of meanings applied to case study research therefore necessitate an explanation of how a case study is conceptualised here, and what *type* or typology of cases it belongs to.

In particular, two commonly used definitions of a case study can help explain the advantages pertaining to this research design. Gerring, for instance, defines a case study as “the intensive study of a single case where the purpose of that study is – at least in part – to shed light on a larger class of cases (a population).”⁷⁹ Furthermore, he argues that a case connotes “a spatially delimited phenomenon (a unit) observed at a single point in time or over some period of time.” On a similar note, George and Bennett (2005) define a case as “an instance of a class of events” signifying events such as revolutions, types of governmental regimes and economic systems, with the aim of developing a theory of these phenomena.⁸⁰ Both these definitions point to the benefit of the in-depth insights gained from single case studies, and the aim of extracting certain lessons that can apply to a larger population of cases. By the same token, Levy (2008) regards a case study as the attempt to understand and interpret “a spatially and temporally bounded set of events”, and a case “as an *instance* of something else, of a theoretically defined class of events.”⁸¹ With this in mind, it is reasonable to argue that the latent possibility of generalising based on a case study depends on how the study is developed, the choice of methods, and certain limitations to what kind of generalisations can be made.

An important question pertaining case study research entails defining what the case in question is a case of. This entails delimiting what population or universe the selected case is taken to represent. Such a population could be defined theoretically (e.g. post-colonial societies with clientelist political structures) as well as empirically (e.g. sub-

⁷⁸ Alexander L. George and Andrew Bennett, *Case Studies and Theory Development in the Social Sciences* (Cambridge, Mass. ; London: MIT, 2005)., 17

⁷⁹ Gerring, *Case Study Research: Principles and Practices* , 20

⁸⁰ George and Bennett, *Case Studies and Theory Development in the Social Sciences*.

⁸¹ Jack S. Levy, "Case Studies: Types, Designs, and Logics of Inference," *Conflict Management and Peace Science* 25, no. 2 (March 2008)., 2

Saharan African states). Thus, the study of Kibera could potentially belong to a number of different populations depending on the research question and theory in question. In this thesis, Kibera is considered as a case of forced evictions in informal settlements. George and Bennett (2005) have argued that case study researchers typically are more interested in “finding the conditions under which specified outcomes occur, and the mechanisms through which they occur, rather than uncovering the frequency with which those conditions and their outcomes arise.”⁸² A case study is therefore well suited to the task of explaining a *particular* outcome, given the presence of a set of preconditions and causes, (or chain of events) likely to produce this result. Even though a single case may not adequately capture the frequency of evictions or the statistical probability of a larger population of cases, it can still provide us with useful insights.

This thesis is primarily conducted as a *theory-informed* case study. In consequence, the key concepts outlined in the previous chapter tentatively guide the analysis in Chapter 5 (on urbanisation and economic growth), and Chapter 6 (on social exclusion and forced evictions). While the focus on social processes may help explain, “the conditions under which a specified outcome occurs”, exclusion from key activities such as occupational opportunities and political participation grants us a better understanding of why the urban poor are frequently at risk of evictions. These arguments however should not be viewed in a deterministic sense, and the conclusions drawn from case study research can be summarised as follows:

Most causal thinking in the social sciences is *probabilistic* rather than deterministic. That is, we work at a level that a given factor increases (or decreases) the probability of a particular outcome, for example: being female increases the probability of working part time; race affects the probability of having a high status job.⁸³

As stated previously, group-based disadvantages that are bound up with “bivalent collectivities” (in Chapter 3) such as gender, ethnicity, and youth groups can be seen

⁸² George and Bennett, *Case Studies and Theory Development in the Social Sciences.*, 31

⁸³ De Vaus, *Research Design in Social Research* , 5

as useful “theoretical hinges” in explaining “the probability of a particular outcome” such as forced evictions. In the next section, I will discuss the potential for generalisation, and related concepts such as validity and reliability.

4.2 Advantages and Limitations of the Case Study

In their influential book *Designing Social Inquiry*, King, Keohane and Verba (1994) argue that the goal of scientific inquiry is to make valid causal inferences. The potential for generalisation from case studies can be distinguished between two main categories, namely that of internal and external validity.⁸⁴ Internal validity mainly refers to extent to which the causal inferences drawn from the case study as warranted, as based on the data used. For instance, since a primary concern of case studies is to focus on the mechanisms that are likely to produce a certain outcome; the omission of key variables would consequently decrease the validity of the causal relationship explained. Due to the in-depth nature of the case study approach, it is generally considered to display a high level of internal validity. By tracing both underlying and immediate processes that lead to evictions, this thesis aims at explaining the specific mechanisms at play in the context of Kibera. Transferring these lessons to other cases, however, is a common problem faced by researchers in case study research, and specifically so concerning their representativity.

External validity, or “analytical generalization” as Yin (2010) calls it, can be defined as “the logic whereby case study findings can extend to situations outside of the original case study, based on the relevance of similar theoretical concepts or principles.”⁸⁵ By way of contrast, statistical generalisation aims at producing results from a larger sample that may apply to the larger population of cases. Analytic generalisation can be defined as a two-step process:

⁸⁴ See for example, George and Bennett (2005) *Case Studies and Theory Development in the Social Sciences*; Gerring (2009) *Case Study Research: Principles and Practices*; Yin (2014) *Case Study Research: Design and Methods*.

⁸⁵ Robert K. Yin, *Case Study Research : Design and Methods*, 5th ed. ed. (Thousand Oaks, Calif. ; London: SAGE, 2014), 237

The first involves a conceptual claim whereby investigators show how their case study findings bear upon a particular theory, theoretical construct, or theoretical (not just actual) sequence of events. The second involves applying the same theory to implicate other, similar situations where analogous events also might occur.⁸⁶

As a result, the inferences drawn here can prove useful in *refining* already existing theories of why forced evictions occur. Furthermore, other case studies sharing similar social patterns of mobility in terms of urbanization, increased urban slum populations or social exclusion of marginalised groups can therefore be hypothesised to display similar causes for evictions. However, since this study only considers a single case study, such generalisations should at best be tentative and further explored in each case.

Another concern of case study research is that of the reliability of findings, that is, whether or not they could easily be replicated. Addressing the issue of non-representativity could be remedied, as Tarrow (2010) suggests, by increasing the *methodological plurality* of the research project.⁸⁷ Therefore, I will now turn to discussing the methods used to obtain the data here.

4.3 Secondary Literature, Document Analysis and Reports

The data used to write this thesis draws on a range of sources, but is mainly based on access to secondary literature, documents and up-to-date reports, but also qualitative interviews. In addition to this, I use country-specific statistics, and various publications by international organisations, NGOs or others working specifically on the case of extreme poverty in Eastern Africa. A significant part of the information used in this thesis is based on secondary articles, as found in journals, magazines, newspapers and so on. It has therefore been important to survey the literature to identify the most important contributions to answer my research question.

⁸⁶ Inc Sage Publications, "Analytic Generalization. Encyclopedia of Case Study Research. Sage Publications, Inc," <http://dx.doi.org/10.4135/9781412957397>.

⁸⁷ Sidney Tarrow, "The Strategy of Paired Comparison: Toward a Theory of Practice," *Comparative Political Studies* 43 (2010), 247

The nature of this inquiry is therefore mainly deductive in kind. In addition, I supplement the analysis with qualitative interviews, with people possessing particular knowledge on the topic, among them NGO workers, volunteers and others. This approach therefore provides a way to increase both the validity and reliability of the findings, while offering a renewed insight to the study of forced evictions. A primary goal in this thesis is to situate the findings in the broader literature of how extreme poverty is reproduced, why inequality persists, and what the task of policy should be in order to remedy these problems.

4.4 Elite Interviews

Within a case study research design, the researcher may make use of a multitude of methods to establish the causal relationship of interest. While statistical methods are more concerned with the “effects-of-causes”, the emphasis of qualitative studies is to thoroughly explain the outcome of individual cases, or what is called the “causes-of-effects” approach.⁸⁸ Supplementing the analysis with interviews is therefore well suited to identify the social, and intermediate processes through which forced evictions occur. In a similar fashion to process tracing, using interviews alongside other methods (i.e. secondary sources, documents, reports), this can help explain a specified causal process where “the researcher looks for a series of theoretically predicted intermediate steps.”⁸⁹

Due to the particular attention devoted to how social processes, as well as socio-economic and political marginalisation enhance vulnerability to evictions, I considered elite interviews to be most appropriate to make clear this causal relationship. The participants were chosen on the basis of their expertise on the topic, as well their availability through contacts, and most of the people interviewed are therefore either working in NGOs, civil society organisations, community workers and volunteers who

⁸⁸ James and Goertz Mahoney, Gary, "A Tale of Two Cultures: Contrasting Quantitative and Qualitative Research," *Political Analysis*, no. 14:3 (2006), 230-4

⁸⁹ Jeffrey T. Checkel, "It's the Process Stupid! Tracing Causal Mechanisms in European and International Politics," in *Qualitative Methods in International Relations: A Pluralist Guide*, ed. Audie Klotz (New York: Palgrave Mcmillan, 2008), 5

have first-hand experience with Kibera and the topic of study.

While it would have been preferable to include data based on survey, personal testimonies, and participant observation through fieldwork, I was not able to do so due to the cost of travel and limited time-span. As a result, there may be certain limitations that apply to the empirical data obtained through interviews in this thesis. Since these interviews were conducted via e-mail, this left me with less of an opportunity to assess the potential issues bias related to subjective and normative interpretations of the situation. This can be illustrated by the epistemological difference between a *constructivist* and an *objectivist* approach to data collection. Charmaz (2003) argues that what she calls grounded theory, constituting of studying social and psychological processes, and through a direct method of data collection, aids the researcher in establishing emergent themes, and basic social processes within the data. The objectivist view, on the other hand, considers the data as real, and that the meaning inheres in the data.⁹⁰ Although these distinct are analytical ideal types, it serves to illustrate that since I conducted interviews through e-mail, this made it difficult to pursue an interpretive approach.

The interviews were structured through open-ended questions, which are preferable since it allows for “[finding] out what others think and know, and avoid dominating your interviewees by imposing your world on theirs.”⁹¹ However, since I was not able to travel to Kenya and interview people in person, this ruled out follow-up question to find out more about the particular motivations or research behind the answers. Another concern, Berry (2002) notes, is that the paradox of elite interviews is that “the valuable flexibility of open-ended questioning exacerbates the validity and reliability issues that are part and parcel of this approach.”⁹² In order to overcome these challenges related

⁹⁰ Kathy Charmaz, "Qualitative Interviewing and Grounded Theory Analysis," in *Inside Interviewing : New Lenses, New Concerns*, ed. James A. Holstein and Jaber F. Gubrium (Thousand Oaks, Calif. ; London: SAGE, 2003).

⁹¹ Herbert J. Rubin and Irene Rubin, *Qualitative Interviewing : The Art of Hearing Data* (Thousand Oaks, Calif. ; London: Sage, 1995), 5

⁹² J. M. Berry, "Validity and Reliability Issues in Elite Interviewing," *Political Science and Politics* 35, no. 4 (2002), 679

to the data collection, I have sought compare the answers to the conclusions drawn in other studies on forced evictions, and specifically in Kenya. The primary role of the interviewee's has been to provide their views on the factors they consider being the most relevant, how it relates to social vulnerabilities and forced evictions, and how they assess the potential impact of legal empowerment. In brief, I believe that the methodological steps taken here have contributed to increasing the inferential validity of the conclusion drawn, or put differently, that we are more likely to be "measuring what we think we are measuring."⁹³ The potential for analytical generalisation based on the case of Kibera, relies in part on the extent to which they share similar characteristics yielding the same results.

In short, to meet the challenges related to validity and reliability of the case study approach, I have sought to widen the scope of my empirical evidence, by increasing the methodological plurality. This resembles what Tarrow calls the method of triangulation, which involves the use of several different methods applied to the same problem: "Triangulation is particularly appropriate in cases in which quantitative data are partial and qualitative investigation is obstructed by political conditions."⁹⁴ To assess the extent to which social processes at large, and socio-economic and political marginalisation of people in Kibera enhances their susceptibility to evictions, the preferred choice is to conduct a strategy of data collection, embodying several different methods.

⁹³ Gary King, Robert O. Keohane, and Sidney Verba, *Designing Social Inquiry Scientific Inference in Qualitative Research*, (Princeton, N.J. ; Chichester: Princeton University Press., 1994)., 25

⁹⁴ Sidney Tarrow, "Bridging the Quantitative-Qualitative Divide in Political Science," *The American Political Science Review* 89, no. 2 (1995)., 473

5.0 Urban Migration and Growth in East Africa

The current housing situation in Nairobi is the result of several factors, among them, over-urbanisation, high-density levels and competition over urban land, and extreme poverty. As a result, this chapter discusses forced evictions in Kibera, by looking at each of these issues in turn. That is, the study of how patterns of urban migration and uneven of economic growth has impacted on the housing situation of slum residents.

First, I begin by discussing the increased demand placed on urban housing, as a direct result of rural to urban migration. *Second*, I argue that the economic growth experienced within the East African context as a whole, has largely been defined by a concentration of wealth among a very small segment of the population. This supports the notion that economic growth is not necessarily to be juxtaposed to economic development, and the consequence is that the majority of the population is left out of the equation. The implications of this polarisation of wealth, is clearly observed within the urban context of Nairobi. In the following chapter, I therefore begin by discussing how uneven economic growth and urban migration has impacted on the development of informal settlements in Nairobi. More specifically, this is also related to the consistent “policy” of informal tenure, exercised by both the colonial administration and post-independence governments. This serves to illustrate the insecurity of tenure and history of slum clearances that residents in slums have lived under in the past, and continue to do so.

5.1 The Dynamics of Urbanisation in East Africa.

In his book *Planet of Slums*, Mike Davis (2006) notes that the pace of urbanization witnessed today bears little resemblance to that of the past, and in comparison, it utterly dwarfs that of Victorian Europe.⁹⁵ The rapid growth of cities world-wide testifies to this: “In 1950 there were 86 cities in the world with a population of more than one million; today there are 400, and by 2015 there will be at least 550”.⁹⁶ Alongside these developments, urban areas have also experienced a rapid growth in

⁹⁵ Davis, *Planet of Slums*, 2

⁹⁶ *Ibid.*, 1

the number and size of slums. The Centre of Housing Rights & Evictions (COHRE) argues that the expansion in the number of slums should be seen in connection with. Further, in 2007 the one billion mark of people living in slums had been surpassed, and in 2008, over half of the world's population were recorded as living in urban areas.⁹⁷ More specifically, developing countries have been estimated a growth in their urban populations amounting to an additional 3 million people per week.⁹⁸

In their book, Castles and Millar have characterized the end of the twentieth and the beginning of the twenty-first centuries as “the age of migration,” which covers both national, regional and continental population dynamics. While the reasons why people choose to migrate may vary (e.g. economic, political, psycho-social or other reasons), Kane and Leedy argue that urban and rural have become “an integral part of the community fabric, making it difficult to understand phenomena without taking into account the constant flows between rural villages and their “satellites” in African cities or abroad.”⁹⁹

Living in slums is often associated with a multitude of risks and forms of deprivation, such as the lack of access to basic services, schooling and opportunities. Adding to this, legal entitlements are usually either the property of the government or private actors, which makes slum-dwellers susceptible to evictions. While the urban poor consists is a vastly heterogeneous group of people, the lack of ownership to land is a problem commonly shared by people living in informal settlements. Regional trends of urbanisation in East Africa are also key to explaining the proliferation of slums, and I will now turn to discussing this.

In many African cities, the urban population growth has resulted in an increased demand in housing and services, as seen from the significant expansion in informal

⁹⁷ COHRE, "Forced Evictions: Violations of Human Rights - Global Survey 10.", 42-43

⁹⁸ Vogiazides, "'Legal Empowerment of the Poor' Versus 'Right to the City': Implications for Access to Housing in Urban Africa, Policy Dialogue No. 6.", 7

⁹⁹ Abdoulaye and Leedy Kane, Todd H., "African Patterns of Migration in a Global Era," in *African Migrations: Patterns and Perspectives*, ed. Abdoulaye Kane and Todd H. Leedy (Bloomington and Indianapolis: Indiana University Press, 2013)., 2

settlements. This structural shift of people gravitating towards urban centres has therefore also resulted in an increased competition over urban land, and therefore also the risk of forced evictions. In a recent report, *The State of East Africa* (SOEAR, 2013), it has been estimated that the annual rate of urbanisation in Africa amounts to an increase of the urban population somewhere between four or five per cent. Furthermore, the report states that with the current growth rates in mind, the number of people living in the East Africa's cities will double by 2013, with most of its inhabitants living in unplanned urban areas.¹⁰⁰ As Davis points out, "Africa's slums are growing at twice the speed of the continent's exploding cities. Indeed, an 85 per cent of Kenya's population growth between 1989 and 1999 was absorbed in the fetid, densely packed slums of Nairobi and Mombasa."¹⁰¹ In *The State of African Cities*, UN-Habitat reports that the experienced average growth rates in both Nairobi in Kenya and Dar-es Salaam in Tanzania is at an annual four per cent. However, "[rather] than rural migration, these increases largely reflect natural demographic growth, with the balance resulting from displacement induced by conflict."¹⁰² The importance of seeing poverty in view of urbanization is evident in the long-term perspective: "Eastern Africa's future is unquestionably urban, although it is to take another 40 years before a majority of the population lives in towns and cities."¹⁰³ Another trend coinciding with urbanisation is that of economic growth across many countries in East Africa. However, economic growth often conceals how these resources are distributed among the inhabitants of a country.

5.2 Inequalities and Employment in Urban East Africa

In the UN-Habitat report of 2006, *State of the World's Cities*, the authors point out that the possibility of cities playing a role in reducing poverty and coming closer to achieving the MDGs, have not been realised. As it seems, "recent evidence shows that

¹⁰⁰ SID, "The State of East Africa: One People, One Destiny? The Future of Inequality in East Africa," (Nairobi, Kenya: Society for International Development, 2013),. 1

¹⁰¹ Davis, *Planet of Slums* : 18

¹⁰² UN-HABITAT, *The State of African Cities 2010: Governance, Inequality and Urban Land Markets* (Nairobi, Kenya 2010):. 8

¹⁰³ Ibid.

the wealth generated by cities does not automatically lead to poverty reduction; on the contrary, intra-city inequalities are on the rise, particularly in the cities of Africa and Latin America.”¹⁰⁴ The report also notes that many governments seem to be of the opinion that urban poverty is the natural result of rural-to-urban migration, and that inequality therefore is a transient problem that in time will solve itself:

This view is reflected in most national poverty reduction strategies, which remain rural-focused, and in international donor assistance to cities, which continues to be modest in scale and impact, with the result that both national and international interventions during the last two decades have had the net effect of increasing poverty, exclusion and inequality in cities.¹⁰⁵

Furthermore, the report states that urbanisation in developing countries (and particularly so in sub-Saharan Africa), has not necessarily been accompanied by economic growth, industrialisation or development per se. As the report states,

...the population of some African cities has grown despite poor economic growth; the region as a whole has the highest urban growth rate in the world, at 4.58 per cent per year. This phenomenon, combined with inequitable distribution of resources and anti-poor policies, has led to rising urban poverty, which impedes the sustainability of cities and impacts their economic viability.¹⁰⁶

In the preceding years, East Africa has continued to experience economic growth at an impressive rate, which amounted to 6 per cent in 2011 and a GDP of \$83 billion that year. Despite this economic upturn, it says little about inter-regional differences in per capita income, nor the distributional effects at the domestic level. Moreover, measuring economic inequalities in averages blurs our vision of what happens at the local level, or as the authors of SOEAR (2013) put it:

[...] the 'average' East African, who monopolizes the attention and affection of researchers, policymakers and marketers, exists only as a statistically being created by an arithmetic

¹⁰⁴ "State of the World's Cities 2006/2007."

¹⁰⁵ Ibid., 32

¹⁰⁶ Ibid., 50

combination of millions of vastly different life experiences.¹⁰⁷

In SOEAR (2013), two concepts are highlighted as particularly central in addressing the inequalities within the region, that is, *inclusiveness* and *equity*. Inclusiveness, which here refers to how much disadvantaged East Africans are participating in the process of economic growth, and equity, which describes what the distribution of this income, looks like to different economic strata of society. Based on variables including wage differentials, access to health and education services, nutrition indicators and the prevalence of birth registration, the report identifies three main socio-economic groups in East Africa in 2011. First, the richest 10 percent or around 14 million people, commanded \$29 billion of the region's total income with an average of \$2100 each. Second, East Africa's middle majority, numbering 41.5 million people (or half the region's population), possessed 12.7 billion among themselves, or an average income of \$586 each. The poorest 40 per cent however, that is 56 million people, shared only \$12.7 billion among themselves. This left each on average with \$225 for the year, and this part of the population are typically found in rural areas, and in the slums in or around the peripheries of towns and cities. While these numbers are crude indicators of differences in wealth, they provide us with a general impression of inequality in East Africa.¹⁰⁸

The combination of a growing urban population, unequal economic growth and a mismatch between the supply and demand for liveable urban spaces and housing particularly affects the urban poor, as in the case of Nairobi. Since the spatial confinements of certain social groups in competitive in nature, these inequalities usually follow a similar pattern of consequences:

[...] the persistence of illegal housing and the proliferation of urban slums, informal settlements and land squatting are mostly the outcome of competition for space. Formal urban land markets systematically serve the wealthy who can afford the best land and housing

¹⁰⁷ SID, "The State of East Africa: One People, One Destiny? The Future of Inequality in East Africa.", 45

¹⁰⁸ Ibid., 10

options, while driving out the poor.¹⁰⁹

In the next chapter, I will therefore discuss how socio-economic and political forms of exclusion perpetuates a status quo where slum-dwellers are confined to living in poor areas under informal tenure.

¹⁰⁹ UN-HABITAT, *The State of African Cities 2010: Governance, Inequality and Urban Land Markets.*, 109

6.0 Social Exclusion and Forced Evictions in Kibera

In the previous chapter, I discussed how socio-economic processes of urbanisation and economic growth are crucial to understanding the way in which competition over land in East Africa exposes the urban poor forced evictions. As most structures in slums are built on land plots under informal tenure, this makes for an environment of uncertainty, discouraging slum-dwellers to make improvements to their homes. In other words, among the many negative effects of informal tenure, is the fact that it prevents slum-dwellers from using land and housing ownership as an economic asset for example in backing up bank loans. According to Werlin, “until more progress is made in providing land tenure, the fear of slum clearance will continue, discouraging efforts to improve squatter dwellings.”¹¹⁰ This chapter therefore deals with different socio-economic causes of marginalisation, and the effect this has on the tenure security among the urban poor in Kibera.

First, I discuss how inequalities in Kenya are largely reflected by way of unemployment rates, and the substantial number of people working within the informal sector. This is the result of multiple inequalities affecting poor people in slums, one being the inaccessibility to formal education and training. Acquiring work in the formal sector usually requires expensive education, which tends to be beyond the economic capacity of residents in informal settlements. Their occupational opportunities are thus confined to low-skilled, low-paid jobs in the informal sector. I argue that these inequalities maintain and enhance patterns of vulnerability stemming from their socio-economic position, whereby forced evictions is one such risk.

The second, and related argument is, that the exclusion of the urban poor from participation in political processes, and the lack of influence over outcomes have a very similar result to that of economic exclusion. This is often bound up with an economic dimension, associated with the political economy of land tenure in urban areas. For the actors involved, and as a result of the economic interests that so often

¹¹⁰ Herbert Werlin, "The Slums of Nairobi: Explaining Urban Misery," *World Affairs* 169, no. 1 (2006).

defines the rationale behind evictions, the interests of slum-dwellers tend to be on collision course with the interests of developers, government officials and landowners. In addition, factors such as corruption and ethnicity politicise the process further, especially in view of elections. The net result, I argue, is that the potential participation of slum-dwellers in political processes that could alter the status quo comes at the expense of stakeholder's interest. This will be discussed further in view of the difficulties related to implementing legal tools to remedy the risk of evictions, notably the Evictions and Resettlement Bill of 2012 (ERB) that has yet to pass through Parliament. The chapter mainly draws on three empirical sources of information, that is, the use of primary and secondary sources, supplemented by elite interviews conducted with experts on the topic of study.

6.1 Informal Tenure and Evictions in Kibera

The causes behind slum clearances in informal settlements in Nairobi have their roots in the political history of Kenya itself. As with many major African cities, Nairobi was also a product of British colonisation, established in 1899, and “created from scratch first and foremost, in order to meet the economic needs of colonial development to serve as a resting point during the construction of the Uganda Railway linking Mombasa and Lake Victoria.”¹¹¹ The colonial presence had a profound impact on the spatial fragmentation of the city; Africans residents, who comprised the majority of its population, were relegated to Nairobi's poorer quarters. This was partly due to a policy disallowing Africans to own urban land pre-empted by the Crown, but also directly resulting from a set of policies intended to main racial divides. These practices of colonisation resulted in urban migrants having to settle illegally, or informally on unoccupied land elsewhere in the city “with an ever-present threat of expulsion hanging over their heads.”¹¹²

¹¹¹ Hélène Charton-Bigot, "Preface," in *Nairobi Today: The Paradox of a Fragmented City*, ed. H. and Rodriguez-Torres Charton-Bigot, D. (Dar es Salam, Tanzania: Mkuki na Nyota Publishers ; Nairobi, Kenya : French Institute for Research in Africa, 2010).

¹¹² Ibid.

The slum settlement of Kibera is illustrative of how socio-economic, political and legal marginalisation has placed the urban poor at risk of slum clearance in the past and present. In 1912, the first settlers of Kibera were Nubian soldiers, who had been allocated plots of land in return for fighting for the British during the First World War. While the Nubian soldiers in effect were permitted to build their homes on the land allocated to them, property rights over Kiberan land remained with the Crowns Land of Ordinance. This paradoxical situation, of land tenure without entitlement, has continued although the Nubian community at times have sought title deeds by arguing that it is their ancestral land. Indeed, the absence of legal entitlements to land in Kibera has been accompanied by the threat of forced evictions. In example, the colonial government made an attempt in 1932 to remove the Nubian communities living in Kibera, by asserting that they had no *legal* claims to the land. While the government at the time failed to remove these communities, they did not repeat the effort as they eventually expected the residents there to die out, with no new settlers to follow. After independence, the opposite occurred when “Kibera became an entry point for rural migrants and railway workers employed by the British.”¹¹³ Before Kenya gained its independence, the city of Nairobi had essentially remained a capital for Europeans, and not the African majority residing in it, or as Kinuthia Macharia explains:

Like other capitals in Africa – for example, Harare in Zimbabwe and Lusaka in Zambia – Nairobi began as a European city and may be said to have ‘officially’ remained so until the policy of unrestricted urban migration was adopted after Kenya’s independence in 1963.¹¹⁴

In the search of better employment opportunities or as a consequence of fleeing from violent conflict in the rural countryside, wave of landless people began moving to the major cities in Kenya. Even though the new political leadership under presidency of Jomo Kenyatta abolished colonial practices of racial segregation, Charton-Bigot notes, a more subtle form of *social* segregation replaced this.¹¹⁵ For example, the government of

¹¹³ Joireman, *Where There Is No Government : Enforcing Property Rights in Common Law Africa.*, 132

¹¹⁴ Kinuthia Macharia, "Slum Clearance and the Informal Economy in Nairobi," *The Journal of Modern African Studies* 30, no. 2 (1992), 6

¹¹⁵ Charton-Bigot, "Preface."

Jomo Kenyatta opted to retain “the land policies of the colonial regime, and inhabitants of Kibera did not receive property rights to the land they occupied.”¹¹⁶ Moreover, between 1948 and 1962, the urban population of Nairobi grew exponentially by 174 percent. This was partly due to the abolishment of a previously harsh system of colonial origin, notably the ‘pass system’, which limited the influx of Africans to the cities.¹¹⁷ In essence, this was a system of African labour surveillance, requiring Africans to possess a certificate indicating if they were working, or if their contract had expired, which determined if they were permitted to reside in the city. In 1971, the Kenyatta government returning to colonial policies of slum clearance, when the population had grown to 500 000 of whom one-third were living in unauthorised housing. The government thus made use of the former colonial policy, the Public Health Act, in order to justify the clearances, whereby the “first victims were the traditional houses in Pumwani and in Grogan Road, as well as a number of shanty dwellings near the centre of Nairobi”.¹¹⁸ These examples testify to the fact that remarkably little has changed in terms of land tenure and security for residents in informal settlements. This is particularly puzzling, considering the rapid growth of the urban population not only in Nairobi, but also in major cities such as Mombasa. In consequence, a substantial proportion of Nairobi’s population do still not have formal property rights, and their lives are largely characterised by virtually illegal or insecure conditions.¹¹⁹

The uneven distribution of land resources, density and levels of poverty in Nairobi, is also reflected on a national scale. As stated by the government of Kenya, the number of people living in poverty has grown between 1973 and 2000 from 3.7 million to 15 million.¹²⁰ This is also represented by levels of inequality, as Kenya has among the

¹¹⁶ Joireman, *Where There Is No Government : Enforcing Property Rights in Common Law Africa*.

¹¹⁷ Macharia, "Slum Clearance and the Informal Economy in Nairobi.", 228

¹¹⁸ Ibid.

¹¹⁹ Charton-Bigot, "Preface.", x

¹²⁰ Matthias Basedau, Gero Erdmann, and Andreas Mehler, *Votes, Money and Violence : Political Parties and Elections in Sub-Saharan Africa* (Uppsala: Nordiska Afrikainstitutet ; Scottsville, South Africa : University of KwaZulu-Natal Press, 2007)., 230

highest level of income concentration.¹²¹ In example, during the Moi era, the proportion of people living below the national poverty line in Nairobi increased from 26 percent to that of 50 percent between 1992 and 1997.

In sum, informal tenure and the immense levels of inequalities in Kenya continue to both maintain and reproduce patterns of extreme poverty. This is perhaps most evident through the fragmented nature of Nairobi's population, as defined by socio-economic and political boundaries. While the informal settlements in Nairobi have been estimated to comprise around 60 percent of the city's population, this urban majority only occupy about six percent of the land in question. Similarly to major Western African cities like Lagos, Dakar, Abidjan and more, the competition over land sparked by growing urban populations and the disparities between rich and poor, Nairobi also have high levels of "[u]rban poverty, social polarization and slum proliferation have distinct spatial dimensions, as people with comparable socio-economic characteristics tend to converge on the same locations."¹²² Although this is partly due to a form of self-segregation, as specified by socially defined criteria such as language, ethnicity, or profession – the spatial confinement of people living in slums, is no longer entirely voluntary. This highlights the fact that "particular urban areas [are] highly susceptible to political, social, economic and life-chances inequalities",¹²³ exposes the people living there to the adverse risks of poverty, among them, which is forced evictions. In the next section, I therefore discuss the economic marginalization of people in Kibera, by looking at unemployment rates and inaccessibility to education, which has the instrumental effect of reproducing extreme poverty, and enhancing vulnerability to evictions.

¹²¹ See for example UNDP (1999) and SID (2013).

¹²² UN-HABITAT, *The State of African Cities 2010: Governance, Inequality and Urban Land Markets.*, 108-109

¹²³ Ibid.

6.2 Economic Exclusion: Employment, Education and Housing

This section discusses how inequality in slums like Kibera manifests itself through marginalisation from employment opportunities and education, and the way this institutional detachment has the instrumental reproduces patterns of poverty and enhances vulnerability to forced evictions.

In later years, Kenya has been the most potent economic driving force in its region, as based on a market-oriented system, and is therefore considered “the regional hub for trade, finance, communication, and transportation linkages.”¹²⁴ More recently, the political stability of the country was severely tested in the elections of 2007, when violence broke out a result of long-standing frustration over corruption among the political leadership. The political turbulence also had an immediate impact on the economic situation in Kenya, with growth rates drastically plummeting from 7 percent at the end of 2007 to less than 2 percent in the first quarter of 2008.¹²⁵ The response from the international community was swift, as former General Secretary of the UN, Kofi Annan, mediated the agreement bringing an end to the violence shortly thereafter. In some ways, “the political crisis turned economic”, demonstrated some of the major underlying inequalities that were the instigating cause of the violence to begin with. With the signing of the National Accord in 2008, and the ensuing coalition government bringing an end to the violence, the agreement expressed a recognition of the fact the “poverty, the inequitable distribution of resources and perceptions of historical injustices and exclusion on the part of segments of Kenyan society constituted the underlying causes of the prevailing social tensions, instability and cycle of violence.”¹²⁶ This was particularly so with Agenda Item 4 of the agreement stating that:

¹²⁴ Ronald K. Hope, *The Political Economy of Development in Kenya* (Continuum International Publishing Group, 2012), 1

¹²⁵ K. Kanyinga and J. D. Long, "The Political Economy of Reforms in Kenya: The Post-2007 Election Violence and a New Constitution," *African Studies Review* 55, no. 1 (2012), 32

¹²⁶ Kenya National Dialogue and Reconciliation (KNDR), "Statement of Principles on Long-Term Issues and Solutions: The Kenya National Dialogue and Reconciliation, Mediated by Kofi Annan, Chair, Panel of Eminent African Personalities," (2008).

We agree that unemployment in Kenya, particularly among the youth, is a serious concern that must urgently be addressed. We acknowledge that the lack of effective opportunities that integrate the majority of Kenya's youth into mainstream economic activities contributed to the destructive role played by the youth during the post-election violence.¹²⁷

The issue of forced evictions can be understood against this backdrop of a structural deficit in employment opportunities among young people in Kenya. Work towards a adopting a new national housing policy occurred in 2005, when the government incorporated the right to housing for all its citizens as a Constitutional right. In 2006, this work continued through pledging to issue a national set of guidelines for forced evictions, although a draft of these guidelines has yet to be approved. In addition the government has refused to put a moratorium on forced evictions until these provisions are in place, and also failed to fulfil the promise of providing accessible housing to millions of people.¹²⁸ In interviews conducted with NGO workers and volunteers involved with the issue of housing rights in Nairobi, several of the respondents I interviewed that the lack of a proper legal framework was one of the main obstacles to decreasing forced evictions. The ERB, proposing a ban on forced evictions, which was open for public input, but has yet to be accepted in the parliament. Despite recognition that the post-election violence was the result of unemployment and corruption, little has changed in terms of addressing these issues. The Kenya has continued to experience a sustained economic growth, with an increase in GDP of 4.4 percent in 2011 to 5.1 percent in 2012, this has done little to help the majority of the population, especially given that the country's annual population growth is close to 3 percent.¹²⁹

Since the violent elections in 2008, little has changed in terms of addressing the key reasons that triggered these events. In a recent report, it is concluded that high levels of inequality and unemployment are still an enduring feature of the Kenyan society at large. In terms of gendered differences of unemployment in urban areas between men and women (in the age group of 20-24 years), there are about 274 000 unemployed

¹²⁷ Ibid.

¹²⁸ COHRE. "Kenya," accessed February 11th, <http://www.cohre.org/regions/kenya>.

¹²⁹ "The Europa World of Learning 2014," ed. Europa Publications (Routledge, 2014).

women compared to 73 000 men of the same age group. Intra-city inequalities are also high with 44 percent of the Nairobi population living beneath the poverty line, whereby poverty levels range from 8 percent in Nairobi West, Kibera Division to 77 percent in Makongeni Makadara Division.¹³⁰ This polarisation of wealth and opportunities is also found in Kibera, where estimates of unemployment are as high as 50 percent, and with a high proportion of the people working in the informal sector. Indeed, as the slum populations in Nairobi have grown, so has the informal sector, and currently employing more than 80 percent of Kenyans.¹³¹ Nairobi alone, accounts for 24 percent of the country's informal workers, and the informal sector is expected to grow fast in the coming years; generating nine out of every ten new jobs. In the KNBS' recent survey, the report states: "while informal jobs can offer a chance at upward mobility, especially for women and other groups that typically face higher barriers to entry into the formal economy [...] the vast inequality separating the formal and informal worlds is exacerbating the city's already-deep economic incongruity."¹³² An Oxfam study of urban poverty suggests that the richest 10 percent of the population in Nairobi accrues 45.2 percent of income, while the poorest 10 percent only possess 1.6 percent of the income. The effects of this economic marginalization is clear-cut: "While some urban dwellers have seen their position improve due to impressive levels of economic growth in recent years, poverty has been deepening for the majority of the urban poor who have become trapped in downward spirals of deprivation and vulnerability."¹³³

These economic inequalities often sustain or enhance vulnerability to evictions, since slum-dwellers have few opportunities to either own land, or acquire secure tenure outside the slums. One of the main barriers to people in slums is the ability of acquiring secure jobs within the formal sector. Most of these jobs require skills

¹³⁰ KNBS & SID, "Exploring Kenya's Inequality: Pulling Apart or Pooling Together?," (Nairobi, Kenya 2013).

¹³¹ Kenya National Bureau of Statistics, "Economic Survey 2013," (Ministry of Devolution and Planning, 2013).

¹³² Sam Sturgis, "In Nairobi's Slums, Problems and Potential as Big as Africa Itself," The Rockefeller Foundation: Informal city dialogues, <http://nextcity.org/informalcity/entry/in-nairobis-slums-potential-and-problems-as-big-as-africa-itself>.

¹³³ Taylor Wendy Goodfellow Tim, "Urban Poverty and Vulnerability in Kenya," in *Oxfam Briefing Notes* (Oxfam, 10. September 2009), 2

acquired through educational training, which is often expensive and therefore inaccessible to many people in slums. As a housing rights campaigner, Phanice Akinyi, explains: “Education is expensive, and with poverty, it increasingly becomes difficult to afford good education, leading to the lack of the ability to compete favourably for the jobs in the market.”¹³⁴ In other words, the lack of education, connections within key institutions, and platforms of opportunities for employment for slum-dwellers to show their talents, makes it hard to get into the formal work market. All these factors, as legal aid worker in KITUO I interviewed said, “contribute to extreme poverty, increasing crime rate and a situation of hopelessness.”¹³⁵ This lack of skills required for jobs in the market, as a volunteer community trainer in Kibera expressed it, results from low levels of education, which “forces them [slum-dwellers] to always remain in slums and not be able to give their children good education so they will also remain in poverty and live in the slums.”¹³⁶ This institutional detachment from work in the formal sector means that many are excluded from jobs that could better the long-term situation of many slum-dwellers.

Another consequence of working in the informal sector is that many residents in Kibera are mostly confined to renting a place to live, as opposed to being “shack-owners” themselves. This helps explain how economic marginalisation has the added negative effect of creating a “vicious cycle of poverty”, as many development theorists have pointed to in the past, making it difficult to escape life under informal tenure. The housing market is a clear illustration of this, and as Mike Davis (2006) writes, Nairobi is a “city of rack-rented poor tenants” where large commercialisation took off in the early 1970s. Accordingly, this occurred as developers realised that the sudden influx of people from the rural countryside to informal settlements in the cities was creating a new land market, with huge windfalls from legalisation. This commodification of housing in slums, have made the rental market the most common situation of tenure for slum-dwellers in Kibera and other slums in Nairobi alike. During Daniel arap

¹³⁴ Phanice Akinyi, *interview* (15th April, 2014)

¹³⁵ Faith Ochieng, *interview* (11th April, 2014)

¹³⁶ George, *interview* (7th April, 2014)

Moi's presidency, Nairobi's political bosses and slumlords were permitted to build rental tenements on public land earmarked for roads, including a 60-meter strip right through the heart of Kibera. More recently, in 2002, then-President Mwai Kibaki issued the desire to "restore order" by way of clearing out more than one third of a million tenants and squatters in Kibera. This illustrates the particularly volatile situation of many slum-dwellers, in the sense that the lack of economic opportunities prevents acquiring housing outside the informal settlements. The difficulty of accumulating enough money to do so is also exacerbated by informal tenure, which creates the necessity to renting a shack within the slums, often at disproportionately high rates. The result of Mwai Kibaki's effort to address the Moi legacy, under whose rule large tracts of land were illegally grabbed for private profit, is that "the attempt to reclaim public land has hit some of Kenya's poorest people hardest."¹³⁷

The informal settlements in Nairobi, Davis (2006) argues, can be seen as vast "rent plantations" owned by the politicians and upper-middle class. In spite the fact that most of the rental-market in Nairobi "has no formal legal basis ... property relations and ownership [thanks to a corrupt political system] exist in a de facto sense."¹³⁸ As a result, many politicians alongside traditional chiefs are among the large-scale speculators in slum housing, and as one interview subject put, this is because slum housing is considered a major source of income.¹³⁹ In 2002, it was estimated that it would take 34 years for an average poor household in Nairobi to have saved enough to purchase a house costing around \$4000. This has meant that less than 20 percent of houses in the city were owner-occupied (compared to almost 80 percent in urban areas of Latin America). In slums like Kibera, and elsewhere around Nairobi, this has deep-seated consequences for the poorer segments of society, working in the informal sector in low-skilled jobs with low wages.¹⁴⁰ As Werlin notes, "affordability is not the only thing that keeps Nairobi's population from access to decent housing, as "mortgages

¹³⁷ Jeevan Vasagar, "Bulldozers Go in to Clear Kenya's Slum City," *The Guardian*, April 20th 2004.

¹³⁸ Amis (1988) in Davis, *Planet of Slums*, 87, sic

¹³⁹ Phanice Akinyi, *interview* (15th April, 2014)

¹⁴⁰ Werlin, "The Slums of Nairobi: Explaining Urban Misery.", 41

range from 15 to 25 percent, with repayment periods averaging about ten years.”¹⁴¹

The shortage or inaccessibility of acquiring a job in the formal sector must therefore be seen in conjunction with the privatisation of the housing market in slums, and how this affects slum-dwellers security of tenure. In Kibera, the chances of accumulating enough money for such purposes is difficult, as the socio-economic conditions and opportunities for betterment are severely limited. In response to these harsh conditions, Kiberans therefore have to construct “a flexible portfolio of multiple livelihood activities”¹⁴² which means engaging in what Meagher (2006) calls *pluri-activity strategies*.¹⁴³ This is closely associated with the function of networks in slums, which “include not only money and food, but also protection, shelter and housing; they are not economic in a narrow sense.”¹⁴⁴ In the absence of the provision of basic services from the State, the reliance on networks is crucial to the survival of people in slums, for several reasons. As Deacon (2012) notes, Kibera’s socio-economic structures resemble those studied by Adato et al., where “a legacy of ineffective social capital and blocked pathways of upward mobility that [leave] large numbers of people trapped in poverty.” The lack of financial capital and access to education therefore confines the scope of employment to low-skilled positions. This self-reinforcing effect, as Deacon explains, can be understood as follows:

The levels of education required to work in Kenya’s lucrative, globalised, middle-class sector (financial services, insurance, real estate and telecommunications, for example) are unaffordable to Kiberans. Many are therefore engaged in casual work or wage work in the informal sector, both even less secure than regular wage work, as the employment is often short term and employers may negotiate their way out of paying the wages due.

¹⁴¹ Ibid.

¹⁴² Gregory Deacon, "Pentecostalism and Development in Kibera Informal Settlement, Nairobi," *Development in Practice* 22, no. 5/6 (2012).

¹⁴³ Kate Meagher, "Social Capital, Social Liabilities, and Political Capital: Social Networks and Informal Manufacturing in Nigeria," *African Affairs* 105, no. 421 (2006).

¹⁴⁴ Deacon, "Pentecostalism and Development in Kibera Informal Settlement, Nairobi.", 666

In sum, the mechanisms through which the possibilities for employment is present in Kibera, is therefore a product of both external and internal factors. Economic inequalities at large certainly restrict the life chances of the people living in slums, which in turn impact the social mechanisms that develop within informal settlements. This sheds light on how patterns of urban poverty are reproduced, and as Deacon notes, networks of survival “facilitate adaption but not transformation of everyday circumstances”. In a study by UN-Habitat, they argue that Central Africa’s wealth of oil resources, hydro-electric potential, and employment opportunities are significant, but that they benefits must be shared more equitably, if the current symptoms of over-urbanisation are to be dealt with. The findings of the report therefore summarised as follows:

When *demographic* outpaces *economic* momentum, poverty and slums proliferate. Upgraded and expanded infrastructures would improve the productivity of cities, create jobs and improve the living conditions of the poor, who represent the vast majority of Central Africa’s urban populations.¹⁴⁵

The case of Central Africa shares many of the same features as those of the urban poor in Nairobi. Slum proliferation, poor infrastructure and low employment rates in slums like Kibera are therefore issues to be addressed, if slum dwellers’ conditions of living and exposure to forced evictions are to improve.

6.3 The Politics of Exclusion and Evictions in Kibera

Besides the limited socio-economic opportunities available to people in slums, is the problem of political marginalisation. This not only prevents effective mobilisation in voicing concerns for a lack of access to basic services, but it also hinder political influence over decision-making processes affecting their security of tenure. To this point, as David Odhiambo, a volunteer activist working on housing rights argued, influence over housing issues in Kibera suffer from a lack of sustainability and ownership to the entire process.¹⁴⁶ In sum, the implications of political marginalisation

¹⁴⁵ UN-HABITAT, *The State of African Cities 2010: Governance, Inequality and Urban Land Markets.*, 23

¹⁴⁶ David Odhiambo, interview (2nd April, 2014)

are in this regard two-fold: One, non-participation prevents slum-dwellers from mobilising effective political support against forced evictions, and two, this political constraint entails the potential neglect of slum-dwellers interests, for example in favour of economic or commercial interests linked to development projects.

This section discusses the effect of political exclusion on forced evictions by way of arguing three interrelated points: First, the political exclusion of people in Kibera follows from Fraser's concept of *bivalent collectivities*, defined as "social groups for whom economic disadvantage is bound up with cultural-valuational disadvantage." Second, this exclusion from participating in political processes means that they have little sway over the outcome of interest. Thirdly, these unequal power relations between slum-dwellers, and commercial developers, government officials, and slum-lords, means that the former are likely to have their interests neglected, making them more susceptible to forced evictions. In what follows, I discuss two recent examples showing the effects of political exclusion on forced evictions.

6.3.1 KENSUP and Slum Clearance in Kibera

In 2001, the single largest housing relocation-scheme of slum-dwellers, the Kenya Slum Upgrading Project (KENSUP), was initiated, with the goal of improving the livelihood of 5.3 million slum-dwellers in Kenya by 2020. The partners of the project were the Government of Kenya, the Local Authorities, and UN-Habitat, whereby the latter was also the financial backer of the project at an estimate cost of implementation at 884 billion Kenyan shillings, or 13 billion USD. Since the beginning, the stated goal of the project has been to address the challenges associated with the housing situation in Nairobi, by replacing shacks and shanties with decent housing for the urban poor. Despite the novel intentions behind KENSUP, it has suffered from both issues of corruption and the failure to properly include the slum-dwellers in the different phases of the project.

In 2002, contrary to previous governments, the new administration under the leadership of president Mwai Kibaki seemed to accept the informal settlements in

Nairobi. Policy announcements also indicated a shift of attitudes towards slum-dwellers, with the government having committed itself to slum upgrading schemes such as KENSUP, in partnership with UN-Habitat. These initial developments indicated a new attitude towards slum-dwellers, especially as compared to previous governments, notably with the legacy of former president Daniel arap Moi the use of forced evictions. However, as COHRE writes, “it soon became apparent that evictions in Kenya under the new government would continue and even intensify.” In late January 2004, several Kenyan Ministries announced their plans for an unprecedented series of mass-evictions, threatening up to 300 000 residents in Kibera.¹⁴⁷ The justifications for the planned evictions, the government argued, was that the informal settlements were located on either dangerous public land (rail reserves or areas under electrical power lines), or on land earmarked for future road construction. Raila Village in Kibera was the first to be evicted on 8th February 2004, whereby 2000 people were affected, 400 structures demolished, also including schools, churches and a clinic. Due to the massive criticism and outcry invoked by the planned evictions, the government did however temporarily stop its plans to carry out the rest of the evictions. However, critics have argued that it was merely a matter of time before the planned evictions were to proceed.¹⁴⁸ Indeed, in September 2009, the Kenyan government began its long-term relocation of slum-dwellers, with an estimated time frame of two to five years, resulting in a new wave of forced evictions.

In March 2010, almost 50 000 residents in Kibera, and parts of the Mukuru slums received a 30 day eviction notice by the Kenya Railway Corporation (KRC), who had no plans to resettle any of the residents facing evictions. However, in April 2010, these plans were suspended when the KRC agreed to develop and implement the Relocation Action Plan (RAP), developed by the Pamoja Trust, which is an NGO working with affected communities, as a pilot project for the KRC. In another instance, on 28th of January 2014, an eviction took place in Mukuru Kwa N’Jenga leading to the deaths of three people. Later in May 2012, the residents affected of the eviction applied to the

¹⁴⁷ COHRE, "Forced Evictions: Violations of Human Rights - Global Survey 10.", 23

¹⁴⁸ Ibid.

High Court of Kenya, asking for the KRC to treat them in the same manner as the residents benefiting from the RAP. As of June 2011, however, the Court's decision was still pending.¹⁴⁹ Nevertheless, since then, the overhanging threat of evictions has continued to affect communities in slums like Kibera, Mukuru, and Deep Sea. Recently, in December 2013, slum dwellers in the Soweto area of Kibera were again facing the threat of evictions by Transport Secretary, Michael Kamau. After negotiations between the World Bank and the Ministry of Transport however, they agreed on a Relocation and Action Plan.¹⁵⁰

While KENSUP serve to illustrate that the threat of forced evictions still persist, against the stated aim of the government of dealing with the housing problem in, the project itself has brought into view a set of consequence of its own. One such problem is that many of the relocated Kiberan residents, have faced evictions from the new housing estate itself, thus fuelling initial fears that the slum-upgrading scheme would become unaffordable for the slum-dwellers having moved there. This has resulted on several occasions where the tenants have failed to pay outstanding rent arrears. For instance, at the current rate in 2011, all "the tenants of the 632 houses were supposed to pay Sh. 1000 monthly, including Sh. 500 for water and electricity. As this was beyond the financial reach of many of the residents, they have either been evicted or forced to move out, whereby most tenants "believe the eviction is done so that the officials can bring in wealthy tenants."¹⁵¹ This favours the argument that it is not necessarily housing nor informal tenure being the underlying problem alone, but rather inequality and the poor socio-economic opportunities available to slum-dwellers. In addition, this sustains the argument that forced evictions tend to worsen the livelihoods of the urban poor.

¹⁴⁹ Amnesty, "Submission to the United Nations Human Rights Committee: For the 105th Session of He Human Rights Committee (9-27 July 2012)," (2012).

¹⁵⁰ Achuka, "Why Government Cannot Just Evict Railway Dwellers."

¹⁵¹ Alex Kiprotich, "It's Back to the Slums for Kibera Residents," *Standard Digital* 28th May, 2011.

6.3.2 “Politics runs the nation”: Evictions and Resettlements Procedures

The political marginalisation of the urban poor can also be discussed in terms of the legal processes affecting slum-dwellers’ security of tenure. Several of the interviewees in this study, argued that one of the main problems of forced evictions concerned the lack of a proper land tenure system, and a legislative framework prohibiting such evictions. In 2012, the ERB was proposed, in order to “guide the process of evictions in a more human way and adhere to human rights standards as well.” Indeed, while the new Constitution in 2010 promulgated the right to housing, as provided for in Kenya’s expansive Bill of Rights, progress “in the realization of this right continues to be shaped by a diversity of socio-political, economic and policy dimensions.”¹⁵² Moreover, it has been argued that “[c]onditions of poverty have a direct bearing on the realization of the right to housing in a country like Kenya where developments and provisions remain in the hands of the private sector,”¹⁵³ including wide-spread corruption linked to vested interests of land allocation. Organisations like Amnesty International and other have argued that the root of the problem resides in the lack of a proper legislative framework. However, the ERB of 2012, effectively proposing a legal ban on the use of forced evictions has yet to pass through parliament. The process surrounding the Bill is indicative of the recurring problem of slum-dwellers’ politically marginalised position in Kenyan politics.

Since the 1970s, the government has reclaimed all the land previously allocated to people in slums; informal settlements like Kibera have been often been seen as an important economic source of income among political elites, commercial developers, or “structure owners”. In fact, many “politicians, along with traditional chiefs, have been prominent amongst the larger-scale speculators in slum housing.”¹⁵⁴ Indeed, Joireman argues that property disputes are frequently a source of conflict in slums, between structure owners and tenants, which “often serve as proxies for wider, national, political conflicts, exploding when political leaders see the opportunity for

¹⁵² Hakijamii, "Assessment of the Realization of the Right to Housing in Kenya 2009-2010," (Nairobi: Hakijamii, January 2011), 2

¹⁵³ Ibid., 3

¹⁵⁴ Achuka, "Why Government Cannot Just Evict Railway Dwellers."

gain from civil unrest.”¹⁵⁵ This occurred in 2001, when Raila Odinga, now Prime Minister, declared that tenants should reduce monthly payments by 50 percent as a result of inadequate housing standards. This subsequently led to violence breaking out between Luo tenants and Nubian structure owners, resulting in at least 25 deaths. These instances testify to how ethnic identities in slums sometimes are subjected to politicisation, and in this case, “Raila Odinga’s statement mobilized his Luo base of support and shifted political power in Kibera significantly.”¹⁵⁶ Moreover, the instance diverted attention from the underlying and more pressing inequalities in Kibera, especially considering the ownership structures that define it. In a 2002 UN Survey, that “sampled 120 of the landlords [in Kibera] and found that 41 percent were government officers, 16 percent politicians and 42 percent absentee owners “who visited Kibera occasionally.”¹⁵⁷ In the interviews I conducted, several of the respondents considered corruption to be one of the main reasons behind forced evictions. As Phanice aptly puts it, “Politics runs the nation”, or put differently:

All decisions are made on the basis of politics, therefore if slum dwellers are politically excluded, it means that they are excluded from participating in any form of decision making regarding their lives. These includes and is not limited to matters housing such as the security of tenure and much more.¹⁵⁸

In short, residents in Kibera are often excluded from political processes that may affect their security of tenure, especially when economic interests are involved. For instance, Phanice Akinyi argues that these political processes have been marred with corruption.

As much of the government seems to be consulting the residents of Kibera, behind the scenes, there are government officials who look at the housing situation as a source of income; asking for bribes before they ascertain that one is a resident of Kibera eligible for the new houses in the slum upgrade project.¹⁵⁹

¹⁵⁵ Joireman, *Where There Is No Government : Enforcing Property Rights in Common Law Africa.*, 134

¹⁵⁶ *Ibid.*, 135

¹⁵⁷ Mike Mwanki, "1,500 to Move into Modern Houses," *Daily Nation* 20th February 2009.

¹⁵⁸ Phanice Akinyi, 15th April, 2014., sic

¹⁵⁹ *Ibid.*, sic

While this certainly is problematic of unjust allocation of land or housing, as in the case of KENSUP, Faith Ochieng points to the deeper consequences of not including slum-dwellers decision-making process: “When slum dwellers are not part of political decision[s], it becomes very difficult for [their] needs to be prioritized by legislators.”¹⁶⁰ This is congruent what Phanice Akinyi notes on the political processes concerning slum-dwellers’ housing-situation and resettlement schemes:

Sometimes even after extensively consulting the residents, the residents opinions are not included in the final decisions, especially if the suggestions of the residents increase the cost of whatever is implemented or have the government in a disadvantaged position.¹⁶¹

In 2013, the ERB was open for public input, where some residents in Kibera took part in its formulation. However, as Phanice states, “even after extensively consulting the residents, the residents opinions are not included in the final decisions.” One reason for this, David Odhiambo explains, is that “the people are always involved at an advanced stage as a formality but not in the planning stages as it is required.”

In sum, the process surrounding the ERB illustrates the political environment in which forced evictions take place. Establishing a legal ban of forced evictions often proves difficult, since slum-dwellers tend to be excluded from the final stages of the decision-making processes. In addition, the problem of economic interests or politicians eager to divert attention from the more pressing issue of inequality, is often overshadowed when ethnicity is used as a way of mobilising popular support and to politicise these identities. In any case, the political influence of slum dwellers over security of tenure, seem to be lost in translation, as they are excluded from the final stages of the decision-making process.

¹⁶⁰ Faith Ochieng, *interview* (11th April, 2014)

¹⁶¹ Phanice Akinyi, *interview* (15th April, 2014)

7.0 Legal Empowerment of the Poor and Evictions in Kibera

In this chapter, I evaluate the merits and shortcomings of LEP, as a strategy towards poverty alleviation, and as a tool to reduce the risk of forced evictions among slum-dwellers. Given the impact of social exclusion on slum-dwellers' vulnerability to forced evictions, I begin by giving a brief overview of the overall argument as it has been presented so far. Moreover, legal empowerment has commonly been seen to provide marginalised groups with an opportunity to voice their concerns, and increase their capacity to influence and make choices about their own lives. Following from the thesis synopsis, I review some of the most important provisions in international and domestic law on the right to housing. This follows from the stated goal of empowerment and analysing the extent to which legal provisions are able to protect people from “from injustices such – as wrongful evictions, expropriation, extortion and exploitation, but also by offering equal opportunities.¹⁶²” The final part of this chapter therefore assesses the extent to which legal empowerment can prevent social exclusion, and how this relates to housing and property rights, and tenure security among slum-dwellers.

7.1 Synopsis: Overview of the Argument

In the Chapter 2, I discussed forced evictions as a global phenomenon, indicated by its wide-reaching occurrence, and as a symptom of multiple inequalities constricting people's life chances. This is aptly illustrated by the MDGs, in the predominant focus on measuring overall economic growth in national and international averages, at the expense of addressing underlying socio-economic and political inequalities. Forced evictions typically affect already marginalised groups, to a disproportionate extent, including social groups such as the poor, women, and indigenous groups, ethnic, religious and racial minorities. In a global perspective, there are typically three main causes associated with forced evictions: Firstly, urban development projects linked to “city beautification”, building and improvements infrastructure accounts for around 40 percent of all evictions. Secondly, while natural disasters and climate change often

¹⁶² Commission on Legal Empowerment of the Poor. and United Nations Development Programme., *Making the Law Work for Everyone.*, 28

lead to the displacement of huge numbers of people, such instances have frequently been taken advantage of by governments seeking to further a development agenda at odds with their human rights obligations (e.g. the Tsunami hitting the Philippines in 2004 and Hurricane Katrina in 2005). Finally, the hosting of mega-events have typically displaced large numbers of people such as recently witnessed in the Sochi Olympics, but also in the Games previously held in Beijing and Barcelona.

In Chapter 5, I argued that demographic changes related to urbanisation in East Africa, but also uneven economic growth and concentration of wealth, have led to a massive demand placed on housing, infrastructure, and access to basic services in urban areas. This has resulted in a vast growth in the number and size of informal settlements, increasing the competition over land and resources. The convergence of over-urbanisation and the skewed distribution of resources, I argue, have been contributed to extreme poverty and inequality in among slum-dwellers. This has forced many to remain in slums, under informal tenure, making them more susceptible to commercial interests and forced evictions.

In Chapter 6, I analysed how socio-economic and political forms of exclusion contributed to an enhanced susceptibility to forced evictions in Kibera. Notably, the high rates of unemployment and non-participation in political processes are both constitutive factors of extreme poverty, and responsible for constricting people's life chances and making it difficult to escape the risks associated with informal tenure by moving outside the slums. Further, I argued that this is frequently linked to factors such as the politics of land allocation, corruption, and the absence of formal training and education – which would otherwise make it easier for slum-dwellers to be included in the “normal activities” of a society, conducive to bettering their situation of living (including security of tenure).

7.2 Between International and Domestic Law: Constitutionalism and the Right to Housing

This section addresses the role of international law, recent changes of Constitutional practices in Kenya, and the impact this has on slum-dwellers tenure security, the right to housing, and the risk of forced evictions. Before discussing this in-depth, it is worth noting the distinction between *Constitutionalism* and *the Rule of Law*, and how this applies to evaluating the role of legal empowerment in Kenya. Ten (2007) states that:

[C]onstitutionalism usually refers to specific constitutional devices and procedures, such as the separation of powers between the legislature, the executive and the judiciary, the independence of the judiciary, due process or fair hearings for those charged with criminal offences, and respect for individual rights, which are partly constitutive of a liberal democratic system of government.¹⁶³

In other words, the requirements of constitutionalism has its origins in “a political morality ... [seeking] to promote individual rights and freedom, and not directly from values that are supposed to be implicit in the very idea of law itself.”¹⁶⁴ This is different from the notion of *the Rule of Law* that “embodies certain standards which define the characteristic virtues of a legal system.” In the *Oxford English Dictionary*, the Rule of Law is therefore defined as: “The authority and influence of law in society, esp. when viewed as a constraint on individual and institutional behaviour; (hence) the principle whereby all members of a society (including those in government) are considered equally subject to publicly disclosed legal codes and processes.”

These are of course not two distinctly separate components of law, and it is precisely through the interaction between specific constitutional or other legal practices, and the authority and influence of law in a particular society, that we may evaluate the role of legal empowerment. The conflicting nature of this relationship, between constitutionalism and the Rule of Law, therefore appears either in the absence of

¹⁶³ Chien L. Ten, "Constitutionalism and the Rule of Law," in *A Companion to Contemporary Political Philosophy*, ed. Robert E. Goodin, Philip Pettit, and Thomas Pogge (Oxford: Blackwell, 2007), 394

¹⁶⁴ Ibid.

specific rights for a wider part of the population, or through the lack of implementation of already existing laws. This can for example be due to a political culture of corruption, absence of an effective legal framework, socio-economic inequalities, and commercial interests, amongst other things.

Politically speaking, Kenya is a very young democratic nation. Both the introduction of the multi-party system in 1992, and the Constitutional referendum held in 2005, speaks to this. The ethnic tensions and violence after the 2007-08 elections, was a result of widespread corruption amongst the political elite, and their inability to deal with this culture of corruption. Traditionally, the view that “the law is only for the powerful” has been a commonplace perception amongst ordinary Kenyans, although this is slowly changing. Particularly, the International Criminal Court’s investigation into the post-election violence, and their decision to indict the key suspects thought to be responsible, has possessed some sense of symbolic value of accountability.¹⁶⁵

According to international human rights law, Kenya is a signatory of several international treaties, including the ICESCR whereby Article 11 (1) of the Covenant states the right to “an adequate standard of living” which also encompasses the right to housing.¹⁶⁶ Moreover, Article 17 of the ICCPR, states the right not to be subjected to arbitrary or unlawful interference on a person’s privacy, and the right to protection of the law against such interference.¹⁶⁷ These provisions of international law can be seen as relevant to the right to housing and the right to protection against unlawful interference in the private sphere, such as against forced evictions. The crux of the matter is, however, that National Law in Kenya is superior to International Law. This means, that in cases of legal dispute, the former applies. However, as I will discuss below, progress has been made in terms of court verdicts in favour of slum-dwellers,

¹⁶⁵ This included the indictment of six suspects of the group of people known as the “Ocampo Six,” which included Major General Mohammed Hussein Ali, former Deputy Prime Minister and now President Uhuru M. Kenyatta, Minister for Industrialisation Henry K. Kosgey, Head of Public Services, Cabinet Secretary Francis K. Muthaura, and Minister for Higher Education, Science and Technology, William S. Ruto.

¹⁶⁶ United Nations. General, *International Covenant on Economic, Social and Cultural Rights and International Covenant on Civil and Political Rights with Optional Protocol*. Adopted by the General Assembly of the United Nations and Opened for Signature at New York on 16 December 1966, Etc.

¹⁶⁷ *International Covenant on Civil and Political Rights*.

as in 2005 when a Court deemed evictions of slum-dwellers to be illegal and contrary to human rights.

While the Kenyan Constitution of 2010 has been seen as a crucial turning point, and a matter of national pride, there is still no de facto legal ban on forced evictions in Kenya. It is therefore useful to look at the process surrounding the 2005 Constitutional referendum. In 2005, the Kenyan population decided to turn down the proposed constitutional changes, with a 58 percent majority. The president at the time, Mwai Kibaki, and other officials had been in the forefront of the campaign in favour of the Constitutional referendum to pass. One critical issue in the Constitutional referendum had been the issue of how much power that was to be vested in the Head of State. Another prevalent issue of dispute in the draft constitution, and of particular interest in view of this thesis was the proposed changes in an extensive land reform. This included suggestions such as prohibiting foreigners from owning land, women would for the first time be allowed to own land (albeit only through inheritance), and the proposition to establish a land commission to manage and oversee the distribution of land. Notably this last issue was a prevalent cause of dispute, especially in view of the legal provision that would allow the commission to redistribute either idle land or land not being used to its fullest potential to the landless and squatters. This suggestion met heavy resistance, specifically among absentee landowners.

The post-electoral violence in 2007-08 had left around 1300 people dead and around 300 000 homeless. The negotiated peace agreement, the National Accord, signed by then-President Mwai Kibaki of the Party of National Unity (PNU) and Raila Odinga of the Orange Democratic Movement (ODM), had mandated that the constitutional question to be revised in order to prevent future political violence. On 4th August 2010, the new Constitution of Kenya was approved with a 66 percent vote in favour, as released by the Interim Independent Electoral Commission. Of particular interest to us here, were the new legal provisions of the Constitution concerning the right to housing.

For example, Article 43 1 (b) states that: “Every person has a right to accessible and adequate housing and to reasonable standards of sanitation.” Moreover, the responsibility to guarantee the effectiveness of this right is stated in Article 21, as it expressed that the State, “shall take legislative, policy and other measures, to achieve the progressive realisation of the rights guaranteed under Article 43.” In this perspective, it is interesting to note that Article 184 provides for national legislation to be passed, amongst other things, which will “enable the residents to participate in the governance of urban areas and cities.” With the decision of power devolution, through decentralisation in the County Governments Act of 2012, which “sets out the functions and power of the country structures, by providing for citizen participation through, timely access to information and the right to petition and challenge any matter under the responsibility of the county.”¹⁶⁸

The impact of Constitution of 2010 can be discussed for example with reference to the ERB, but also legal cases where the High Court of Kenya has addressed the issue of forced evictions. In the latter case, the Kenyan Constitution has been seen to guarantee the right to accessible and adequate housing, and in three separate cases, “the High Court of Kenya has affirmed that this right includes the right not to be forcibly evicted from one’s home.”¹⁶⁹ In 2011, the Ministry of Land developed a draft Eviction and Resettlement Guidelines Bill in consultation with civil society organisations. Since then, however, the ERB has not passed through parliament, nor has a moratorium been imposed on forced evictions.

Legal aid organisations such as KITUO, have been providing legal advice to people living in slums, in order for the urban poor to be better able to voice their opinions on matters pertaining to their conditions of living, and tenure security. However, as several of the people I interviewed, emphasised that legal empowerment relies not only on the State as such, but also the active participation of slum-dwellers. The

¹⁶⁸ Amnesty, “‘We Are Like Rubbish in This Country’: Forced Evictions in Nairobi, Kenya,” (London 2013), 10

¹⁶⁹ “Submission to the United Nations Human Rights Committee: For the 105th Session of He Human Rights Committee (9-27 July 2012).”, 29

importance of participation to ensure accountability was perhaps best illustrated by the threat of evictions in December 2013 in the Soweto area of Kibera, as mentioned previously. Aided by NGOs, the railway dwellers achieved a temporary halt to the evictions, led to an attempt by the KRC to include them in the process.

7.3 Property Rights, Land Rights and Tenure Security

The discussion above can be also be seen in relation to property rights, land rights, and how this affects slum-dwellers tenure security. The concern for illegality of informal settlements, and land entitlements, is not entirely new within the field of development studies. In his renowned book *The Mystery of Capitalism* (2000) Hernando de Soto argues rigorously that the persistence and reproduction of extreme poverty can be ascribed to political systems lacking effective property rights. As he expresses it:

Imagine a country, where nobody can identify who owns what, addresses cannot be verified, people cannot be made to pay their debts, resources cannot be conveniently turned into money, ownership cannot be divided into shares, descriptions of assets are not standardised and cannot be easily compared, and the rules that govern property vary from neighbourhood to neighbourhood or even from street to street.¹⁷⁰

The fundamental premise of his analysis, is precisely the point that for capital to be useful, in an expanded market, it must first be represented via a property document that can further be assigned a status that allows it to produce additional value. This paperised system of value, as he argues, is what allowed people in the West to leverage property into wealth.¹⁷¹ Despite the initial optimism concerning de Soto's advocacy of property rights to alleviate poverty, research has since shown that there is less cause for optimism, since credit will still remain a source of scarcity among the poorer strata of society. In addition, Gilbert (2006) notes that the authorities often lack the capacity to support poor neighbourhoods, and also that de Soto "ignores the fact that the offer of a legal title does not come free and brings with it additional costs, like

¹⁷⁰ Hernando de Soto, "Why Capitalism Works in the West but Not Elsewhere," International Herald Tribune, <http://www.cato.org/publications/commentary/why-capitalism-works-west-not-elsewhere>.

¹⁷¹ Ibid.

the need to pay city land taxes.”¹⁷² In a study of the Guatemalan system of land redistribution, Grobakken (2006) finds that there are also many problems associated with the actual claiming of property rights. For instance, the unclear legal status of married women in relation to accessing land, “weakens the effect of their formal legal rights and their physical access to land” and the ability to gain control of their lives, and obtaining respect and influence in the community.¹⁷³ In other words, legal entitlements also need to consider already vulnerable groups, so as not to undermine the initial purpose of legal empowerment.

In short, these arguments lend their support to the argument I presented in Chapter 6. While legal empowerment may be seen as an important stepping-stone towards decreasing the risks of forced evictions, there is also a need to address underlying issues of inequality, and the socio-economic and political marginalisation that sustains it. This is important since social exclusion enhances the risk of forced evictions, and is accentuated by factors such as urbanisation, informal tenure, and the politics of land allocation in Kibera.

¹⁷² Gilbert, "Housing the Urban Poor.", 259

¹⁷³ Ida Annette Grobakken, "Gender, Poverty and the Empowering Impact of Land Rights," in *Poverty, Politics and Development : Interdisciplinary Perspectives*, ed. D. Banik (Bergen: Fagbokforlaget, 2006)., 226

8.0 Conclusion

In this thesis, I have argued that forced evictions in Kibera can be seen as the outcome of a longer causal chain of events. Within the existing literature, the predominant focus has centred on the *direct* or *precipitating* causes of forced evictions, including urban development projects, mega-events, and opportune actions on behalf of government officials in the wake of natural disasters. The common denominator defining these evictions, can typically be linked to economic motivations, and is usually carried out under the guise of being “in the public interest”. In the present thesis, I have moved backwards through the causal chain, to explore what factors make specific groups particularly vulnerable to forced evictions, once this option is on the table.

Despite the recognition that forced evictions disproportionately affect the most vulnerable groups of society, there has been a distinct lack of systematic explanations as to why this is so. In the *first* part of my research question, I discuss underlying *social processes* that enhance vulnerability to forced evictions among the urban poor. In sum, I have argued that the relationship between urbanisation and uneven economic growth negatively impacts on the security of tenure for people living in slums. This is because the *densification of urban slums* leads to an increased competition over urban land, where commercial interests play an important role. Moreover, economic development in East Africa continues to be characterised by a very high concentration of wealth. The convergence of these factors therefore negatively affects living conditions in slums, the tenure security of the people residing there, and the possibility of affording housing outside of these areas.

In the *second* part of my research question, I discussed the prevalent causes that expose marginalised groups disproportionately to evictions. I have argued that this can be understood through the concept of social exclusion, but for several reasons. One such reason, as I have argued, is that people in Kibera are *economically excluded* from participating in society. Unemployment and low-paid jobs in the informal sector makes it difficult for people to improve upon their own conditions of living. Since training and education is often expensive and inaccessible to people in slums, the

better-paid jobs in the formal sector are reserved for the wealthier people in Kenya. Kiberans therefore largely rely on “networks of survival” for obtaining work. These networks are, as Deacon (2012) puts it, “characterized by actions and alignments that facilitate ‘adaption’ but not transformation of everyday circumstances.”¹⁷⁴ In consequence, people are forced to remain within slums, where they live under informal tenure, and the uncertainties associated with the threat of evictions. Another reason, as shown, is that the people in Kibera are *politically excluded* from important decision-making processes affecting their security of tenure. Both the processes surrounding KENSUP, but also ERB, testify to this. In both these instances, slum dwellers have not been included in the decision-making processes; therefore their influence has been constrained within the final stages. As several of the people I interviewed argued, this can be attributed to the diverging interests of the people living in slums and government officials, who have economic stakes in the slums housing market.

In the final part of this thesis, I have explored the merits and shortcomings of a legalistic approach to extreme poverty and forced evictions. Lessons learnt from the case of Kibera, in terms of legal empowerment, points towards the multi-faceted nature of forced evictions. While provisions in international and domestic law do safeguard the right to housing, and unlawful interference, the effect of these regulations rely on both the effective implementation of the law, but also the extent to which slum dwellers make use of their rights. This latter point was underlined by several of the people I interviewed in this study. For instance, it was pointed out that “the rights holders have responsibility of holding the government accountable in providing services and protecting rights as provided for by the Constitution.”¹⁷⁵ In another interview, it was stated, “the law will only help Kiberan residents in the long run if they are able to actively participate.”¹⁷⁶ In sum, the role of legal empowerment illustrates the *dual* nature of rights; that is, the responsibility and accountability of

¹⁷⁴ Deacon, "Pentecostalism and Development in Kibera Informal Settlement, Nairobi.", 667

¹⁷⁵ Faith Ochieng, *interview* (11th April, 2014)

¹⁷⁶ Phanice, *interview* (15th April, 2014)

government officials, but also with regards to the active participation of ‘rights holders’. However, as shown, issues associated with the social exclusion of the urban poor also needs to be addressed, if forced evictions are to be reduced. Indeed, social exclusion can be seen as contributing to the weak capacity of sustaining, and supporting one’s legal rights in conflicts over land.

The case of Kibera can provide us with useful insights into the complex dynamics behind forced evictions in Kenya, but may also be applicable to East Africa and elsewhere. In countries like Uganda, Tanzania and Rwanda, the annual economic growth rates have over the last five years been between 6.5 to 8 percent, and in Kenya and Burundi, it has been at around 4 percent.¹⁷⁷ These developments, which combine similar patterns of urbanisation, point towards the importance of analysing how this affects the conditions of living for the urban poor, and their security of tenure. As a recent report concludes, the state of inequality in East Africa depends on the extent to which disadvantaged groups are participating in the region’s economic growth, and how these benefits are shared among its citizens.¹⁷⁸ In addition, foreign direct investment in East Africa will play an increasingly important role in the future, as seen through various investment and development projects. Chinese investments in Africa have soared over the last decade, and it is therefore pertinent to ask how this will affect East Africans in the near future. Most recently, in May 2014, China and the East African Community, agreed upon the building of a new railway line between Kenya, Uganda, Rwanda, and Tanzania.¹⁷⁹ Furthermore, in recent years, large-scale agricultural investments in Ethiopia have come from Saudi-Arabia and India. This has in some instances resulted in the displacement of people in rural areas. In order to understand how urban conflict and competition over land will develop in the future ahead, it is therefore necessary to take into account the impact of external influence and investments in East Africa.

¹⁷⁷ Sigurd Bjørnstad, "Jobber for Union I Øst-Afrika," *Aftenposten* August 2013.

¹⁷⁸ SID, "The State of East Africa: One People, One Destiny? The Future of Inequality in East Africa.", 7

¹⁷⁹ Reidun J. Samuelsen, "Kina Bygger Jernbane Gjennom Øst-Afrika," *Aftenposten* 13th May 2014.

As this study has shown, the concept of social exclusion is important to make visible, not only economic measures of extreme poverty and deprivation, but also the social processes that lead to it. In this perspective, the marginalisation of the urban poor serves to illustrate how social development is the product of historical, economic, political and social factors. Urban conflict is therefore better understood through the relationship between bottom-up and top-down approaches to social phenomena. Whilst the case of Kibera has demonstrated crucial aspects of urban conflict over land, the external validity of these conclusions is reliant upon extended this case study approach to the study of forced evictions.

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Convention on the Rights of the Child (CRC)

<http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

Interviews

Akinyi, Phanice	<i>Housing Rights Campaigner, Amnesty</i>	(15 th April, 2014)
George	<i>Volunteer Community Trainer</i>	(7 th April, 2014)
Odhialo, Robert	<i>Volunteer Activist on Housing Issues</i>	(5 th April, 2014)
Odhiambo, David	<i>Volunteer Activist / RRT Member</i>	(2 nd April, 2014)
Ochieng, Faith	<i>Programme Officer, KITUO</i>	(11 th April, 2014)

Appendix A: Interview Guide

The interviews comprised an important source of data in this thesis, and were carried out through e-mail. All the participants were made aware of the purpose of the project, and consented to take part in answering the questionnaire.

1. General information

- Could you tell me a bit about what you do, and what your job entails?

- Forced evictions have a long history in both urban and rural areas in Kenya. What would you say are the main reasons for this?

- What do you consider as the biggest challenges to overcome in order to address the problem of forced evictions (and tenure security) in informal settlements?

2. Legal aspects

- In Kibera, the government owns all the land and the slum-dwellers do therefore not have any formal rights to the land they live on. How would you say this affects the tenure security for the people living in Kibera, and the risks they face in terms of forced evictions?

- In Kenya's Constitution of 2010, the recognition of several human rights were included among them the right to housing. More recently, the High Court directed the government to develop a legal framework for evictions based on internationally accepted guidelines. In spite of this, the Evictions and Resettlements Bill of 2012, effectively placing a ban on forced evictions, has yet to be passed in Parliament. How do you see the role of the Constitution and other legal provisions in aiding the housing situation for people in Kibera in the long run?

3. Economic aspects

- The lack of legal protection against forced evictions is not the only factor making slum-dwellers vulnerable to evictions. To what extent would you say that urban development projects is to blame for forced evictions, and if so, what can be done about it?

- Despite steady rates of economic growth in the Kenya in recent years, both unemployment and extreme poverty continues to be a pervasive problem within slum areas. What would you say are the main barriers faced by people living in slums in acquiring jobs, and how does this affect their situation of living?

4. Political aspects

- A major problem of forced evictions is that governments often do not consult people in advance of forced evictions in informal settlements. To what extent do the authorities include the residents in Kibera in political decisions affecting their lives, for example as relating to their housing situation, resettlements schemes and so on?

- In what way would you say that the political exclusion of slum-dwellers affect the security of tenure and housing situation for people in Kibera?

- Is there anything you would like to add?

Thank you for answering my questions.