

UNIVERSITY OF NAIROBI

DEPARTMENT OF SOCIOLOGY AND SOCIAL WORK

**ASSESSING THE CAPACITY OF THE DEPARTMENT OF IMMIGRATION IN THE
CONTROL OF HUMAN SMUGGLING IN KENYA: A CASE OF SOMALI AND
ETHIOPIAN ILLEGAL IMMIGRANTS**

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**A RESEARCH PROJECT IN PARTIAL FULFILMENT OF THE REQUIREMENTS
FOR THE AWARD OF MASTERS DEGREE IN SOCIOLOGY WITH
SPECIALIZATION IN CRIMINOLOGY AND SOCIAL ORDER**

NOVEMBER 2014

DECLARATION

I confirm that this research project is my original work and has not been submitted for examination in any other university for the award of a degree.

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DEDICATION

First and foremost, I wish to dedicate this work to God Almighty for giving me the patience to complete the program. To my wife Linner, my daughter Diana and sons Aaron, Brian and Roy for their support during the writing of this project. I also wish to dedicate this work to my friends and colleagues at the Immigration Service, for their constant encouragement and advice. This ensured that I did not lose focus throughout the duration of the program. Finally, I wish to dedicate this work to all the respondents across the country who volunteered to make this study a success.

ACKNOWLEDGEMENTS

First and foremost I want to thank the Almighty God for giving me the opportunity to advance my studies and for having given me the strength to finish this research work. Special gratitude is to my supervisor Professor Paul Mbatia for his patience, guidance and constructive criticism throughout this process. Further gratitude goes to all my classmates who in one way or another offered constant encouragement and support.

I acknowledge the lecturers at the Department of Sociology and Social Work for their dedication while imparting knowledge to students like myself. This project is part of the product of their selfless work. I also wish to profoundly thank my wife and children for their support and for bearing the pressure I subjected them to as I endeavoured to accomplish this study. Last but not least, I would like to express my gratitude Ms Caro Nyaminde for her meticulous typing of this work. To you all I say, Thank you and God bless you!

LIST OF ABBREVIATIONS

GoK	- Government of Kenya
IGAD	- Inter-Governmental Authority for Development
IOM	- International Organization for Migration
KCIA	- Kenya Citizenship and Immigration Act 2011
KIS	- Kenya Immigration Service
MRS	- Migration Research Series
OLF	- Oromo Liberation Front
PISCES	- Personal Identification Secure Comparison and Evaluation System
RSA	-Republic of South Africa
UN	-United Nations
UNHCR	- United Nations High Commissioner for Refugees
UNODC	- United Nations Office for Drugs and Crime
UNTOC	- United Nations Transnational Organized Crimes Convention
WMR	- World Migration Report

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LIST OF ABBREVIATIONS

GoK	-	Government of Kenya
ICHRP	-	International Centre for Human Rights Policy
ICMP	-	International Centre for Migration Policy Development
IGAD	-	Inter-Governmental Authority for Development
IOM	-	International Organization for Migration
KCIA	-	Kenya Citizenship and Immigration Act
KIS	-	Kenya Immigration Service
MRS	-	Migration Research Series
OLF	-	Oromo Liberation Front
PISCES	-	Personal Identification Secure Comparison and Evaluation System
RSA	-	Republic of South Africa
UN	-	United Nations
UNHCR	-	United Nations High Commissioner for Refugees
UNODC	-	United Nations Office for Drugs and Crime
UNTOC	-	United Nations Convention Against Transnational Organized Crimes
WMR	-	World Migration Report

ABSTRACT

The main aim of this study was to assess the capacity of the Department of Immigration in control of human smuggling in Kenya specifically of Ethiopian and Somali nationals. The choice of these two nationalities was based on the fact that they form the highest number of illegal immigrants in Kenya as reflected by the available statistics of those arrested in the country.

The study utilized primary and secondary sources of data. Primary data was collected by use of a self administered questionnaire administered to 73 respondents drawn from 6 purposively selected stations of the Department of Immigration. The sample was drawn using both random and purposive sampling techniques and it targeted 87 respondents but 73 participated. Additional primary data was also obtained by interviewing 6 key informants drawn from Ethiopian and Somali illegal immigrants who had served their sentence and were awaiting repatriation. The face to face interview was conducted by use of an interview guide. The collected quantitative data was then analyzed by the use of Microsoft Excel and Statistical Package for Social Science (SPSS) and presented using descriptive statistics such as frequencies and percentages. The qualitative data was coded and analyzed using content analysis then presented in prose form.

The study found out that the main strategies employed by the Department of Immigration were quite effective for instance about 50% of the respondents reported that the Lead Agency role of the department was effective. Border patrols and surveillance was also seen as effective as reported by a majority of the respondents.

The study also found out that the legal instruments on immigration were perceived as effective by 41% of the respondents which is fairly low considering these are the users and also that the laws were reviewed recently. The knowledge of the legal instruments was however modest as slightly over half of the respondents reported that their knowledge was good. The study also found out that the United Nations Protocol against Smuggling of Human Beings was also effective in combating human smuggling internationally. This was evidenced by 50 % of the respondents who indicated that the Protocol was effective.

Whereas over 48% of the respondents reported that they have been well trained in their job, further probing revealed that most of them have not been trained on key legislations such as the Kenya citizenship and Immigration Act 2011 and the Human smuggling protocol.

Efficiency in curbing human smuggling was also found to be inhibited by inadequate equipment and lack of enough patrol vehicles as reported by 68% of the respondents and low staffing levels in several of the selected stations. It also came out clearly that corruption was a key driving force in human smuggling.

Generally, the capacity of the Department was found to be wanting in terms of personnel, relevant training, and use of modern equipment for surveillance and patrol and also for detecting document fraud. The number of borders in the Kenya –Somali border and Kenya-Ethiopia border were not only few but far apart therefore making them extremely porous. Most of the key informants narrated that they travelled several kilometres into Kenya without coming across any immigration or security officers.

CHAPTER ONE: INTRODUCTION

1.1 Background to the Study

The movement of people across national borders has accelerated partly due to a robust demand for immigrant labour in advanced industrial economies and also due to wide and growing economic and demographic disparities and improved communication systems (Cornelius, 2004). As states respond to this trend by strengthening border control and imposing visa requirements, migrants seek assistance from criminal networks to facilitate them to cross borders illegally a process known as human smuggling, (Schloenhardt, 2002). International Organisation for Migration (IOM) approximates that 4 million people are smuggled across borders every year (Adamson, 2006). Human smugglers take advantage of porous borders, use of corruption or by use of fraudulent documents to enable their clients to cross borders illegally.

According to UNODC estimates, around 25,000 West Africans enter Europe by successful irregular crossings each year, accounting for 20-38 per cent of the overall estimated population of 65,000-120,000 sub-Saharan citizens entering the Maghreb countries yearly (UNODC, 2010). In North African countries comprising of Algeria, Egypt, Libya, Morocco and Tunisia, a total of 1,368,000 illegal immigrants were reported to be living in the countries illegally (UNODC, 2010). From the foregoing, a notable flow of migrants from the poor countries to the rich countries most likely in search of better livelihoods is evident while poverty is a strong push factor.

The increasing phenomenon of mixed and irregular migration from the East and Horn of Africa and Great Lakes Regions is causing concern among the affected states, international organizations and other stakeholders. The movements, which have become more complex in recent years, involve groups such as asylum-seekers, refugees and irregular migrants IOM, (2013). ICMPD (2008:47) attributes the huge number of immigrants to Kenya from the Eastern African region to Kenya's strategic geographical location and cultural ties. Majority of the migrants migrate due to political instability in their countries among other reasons. This movement is now of concern due to overcrowding in refugee camps, its association with insecurity. There has been a spate of terrorism and proliferation of small arms in the country in

the recent past which is associated with illegal immigration especially of Somalis. It has also been costly to repatriate those arrested for being found illegally present in Kenya.

Irregular migrants cause even more concern as most of them are not documented because of their clandestine entry or by use of fraudulent documents where they enter through conventional routes. They include smuggled migrants, trafficked migrants, people who have overstayed their visas and those working without the requisite authorization UNODC (2010). All these are of concern as they pose threat to national security besides straining a state's resources and competing for jobs with the locals. The International Council on Human Rights (ICHR) notes that most states have challenges of managing migration and of dealing with irregular migration. Migrants' rights are infringed through exploitation, mistreatment by employers, authorities and the society at large. In an attempt to circumvent official frontier or police controls, migrants take risks during their journeys, and may die en route, sometimes in appalling circumstances (ICHR, 2010).

The focus of this study was to assess the capacity of the Department of Immigration in combating human smuggling in Kenya and specifically of Ethiopian and Somali nationals. It was necessary to find out how the Department of Immigration has build capacity to tackle the perennial problem of human smuggling and illegal immigration in general in view of the problems associated with the vice. The capacity was assessed based on staff strength, their training, availability of equipment for detection of illegal migrants and for identifying fraudulent documents, and also to assess the effectiveness of the strategies and policies put in place to combat illegal migration. It is noted that the USA, the EU and RSA have significantly improved their border control capacities to counter increased illegal migration or its associated threats such as drug trafficking and terrorism. The said states increased their personnel, introduced or enhanced biometric identifiers, militarized border controls, increased information sharing within and with third countries (source, or transit) and introduced integrated border control approach that brings together key stakeholders in security under one command (Carrera,2007; Boerdas et al ,2007; Andreas , 2003 ; Araia 2009). Mexico and Canada in reaction to terrorist threats have militarized their border controls and raised alert at their borders by increasing their personnel in key routes. There is also increased information sharing between them and the USA, Andreas

(2003). The porous borders of Kenya-Ethiopia and Kenya-Somali are comparable to the USA-Mexico, USA-Canada and RSA-Zimbabwe in terms of threat from illegal immigrants and its associated cross border crimes especially terrorism and drug trafficking. It was therefore important to assess the Department's capacity to deal with the real and potential threats.

The interest on these two nationalities is mainly because they share common borders with Kenya and have a large population in Kenya. The Ethiopian and Somali influx can be attributed to political instability that was experienced in the two countries due to the fall of the previous regimes in the early 1990s under the leadership of Mengistu and Siad Barre respectively (Horwood, 2009). As a result, there is a large number of Ethiopians and Somalis concentrated mainly in Eastleigh area of Nairobi. The two nationalities also form the bulk of refugees in Kenyan Refugee camps of Dadaab and Kakuma where they fled to due to fighting and persecution in their respective countries Horwood, (2009). Kyle et al (2001) observes that Diaspora plays a role in providing information and resources thus making migration paths fairly consistent within a given social network. It is therefore important to find out if the large population of Ethiopian and Somali nationals in Kenya plays a role in the smuggling process by way of information, providing safe houses or as smugglers.

Many publication and media articles use the terms human smuggling and human trafficking interchangeably hence creating confusion whereas according to policy makers and law enforcement agencies, the two terms are different (Wuebbels, 2010). The two terms differ in spite of involving transportation of human beings for remuneration whether monetary or exchange of some completed tasks. In the case of human smuggling, the smuggled person willingly enters into a contract to be smuggled into a new country. After being smuggled he pays and the contract ends. On the other hand, human traffickers often use deception to convince a person to be trafficked within a country or into another country. Once trafficked, the trafficker physically or psychologically forces the victim to work for debts. Very often these debts are never paid off leaving the victim trapped at an extremely low paying job or in dangerous occupation such as prostitution (Wuebbels, 2010).

The UN defines human smuggling as the procurement in order to obtain, directly or indirectly, a financial or other material benefit of the illegal entry of a person into a state party of which that person is not a national or a permanent resident (UN, 2000). Trafficking in Persons on the other hand involves facilitation of movement of persons but with an element of force, coercion, deception and exploitation. The former therefore is a crime against the state whilst the latter is a crime against humanity (UN, 2000).

Human smuggling as a vice is recognized by the United Nations as one of the transnational organized crimes alongside human trafficking, drug trafficking and arms trafficking. It is one of the three protocols that supplements the UN Convention Against Transnational Organized Crimes (UNTOC), UNODC, (2004). It is a problem that affects the source country, the destination and or transit country albeit in different ways. Owing to its transnational nature, human smuggling has a potential to cause diplomatic rows between the source, the transit and the destination countries if not properly addressed. Perhaps it is because of this awareness that the United Nations has provided mechanisms of cooperation to help curb human smuggling. This is contained in the UN protocol of 2000 known as the Protocol against Smuggling of Migrants by Land, Sea and Air (UNODC, 2004).

The problem of human smuggling in Kenya is of serious concern since the borderlines between Kenya and the source countries of concern (Ethiopia and Somalia) are highly porous (IOM, 2013). Kenya has 24 border control points and seven international airports where immigration officers man to control migration. In all the six international airports and all major border controls, immigration checks are carried out through a border control system commonly referred to as PISCES which captures and keeps all records of migrants. It has a database of prohibited immigrants and watch listed persons which include suspected terrorists, drug traffickers among others. Needless to mention, human smugglers facilitate their clients to evade this meaning that prohibited immigrants may enter undetected if they sought the help of smugglers.

This study intends to focus on how Kenya has build capacity to fight human smuggling into and through Kenya specifically of Ethiopians and Somali nationals. Ethiopia and Somalia, are the source of the highest number of illegal immigrants to Kenya (Department of Immigration

Statistics, 2012). Apart from this, the common borders between Kenya and each of the two neighbours are vast and highly porous. In order to appreciate the capacity of the Department of immigration two key thematic areas were considered very important. Firstly, the effectiveness of the existing legal instrument. Secondly, the role of corruption in human smuggling was also assessed as studies have pointed out that officers charged with the responsibility of checking illegal migration are often compromised (Howard 2009). He found evidence of complicity between smugglers and government officials mainly from Immigration and police units and to some extent, soldiers in border regions and at roadblocks. This therefore was thought to be a key driving force in human smuggling.

1.2 Problem Statement

The influx of immigrants from Ethiopia and Somalia present a logistical nightmare for both security agents and prison authorities since those convicted of being in the country illegally congest prisons. The government of Kenya has made attempts to allocate resources such as vehicles, computer systems and forgery detection equipment and has gradually increased the staff compliments over the last decade. The immigration laws have been reviewed and the government is a state party to the Palermo Protocols. Despite this, there are several reported cases of human smuggling.

Smuggling worries immigration officers and security enforcers all over the world as the smugglers facilitate illegal entry by evading immigration checks or by use of fraudulent documents. Either way the immigrants' real identity or details are unknown or cannot be matched by border control systems. Terrorists or other international criminals can easily take advantage of this to enter clandestinely and commit criminal acts. The recent spate of terrorist attacks and kidnapping in Nairobi, Mombasa and Northern parts of Kenya may be associated with this. It is also costly to remove illegal immigrants, for instance in the year 2011 alone statistics show that 477 Ethiopians and 222 Somalis were repatriated after being arrested and charged in various parts of the country. The repatriation cost the government a total of Kenya shillings Twenty Seven Million Six Hundred and Sixty Four Thousand Nine Hundred and Sixty (Ksh 27,664,960) which is equivalent to USD 300,000 (Department of Immigration Statistics, 2012). This cost covers only their transport, food and officers' allowances. There are many other

hidden costs such as that of surveillance, prosecution and upkeep whilst in prison among others. Patrols and surveillance along the common borders and potential routes is also expensive.

Studies on human smuggling the world over have shown that corruption is a key driving force in human smuggling (Howard, 2009; Broedus et al, 2007; Araia, 2003). A compromised officer will not inspect or scrutinize documents or baggage diligently which would compromise national interest due to the entry of improperly documented persons. This study thus considered the role of corruption in facilitating human smuggling in Kenya.

The number of illegal immigrants has continued to grow despite efforts by the Department to arrest and repatriate offenders. More than 300 arrests of foreigners mainly from Ethiopia were recorded in Isiolo in December 2010 (Standard Correspondent, 2011). In the year 2011, almost 200 members of Oromo Liberation Front (OLF) from Ethiopia were arrested in Moyale Kenya (Njagi, 2011a; Njagi, 2011b). Considering the rampant cases of human smuggling into Kenya and despite the legal mandate of the Department of Immigration to stem the vice, it is critical to examine the factors that have made it hard for the Department to control human smuggling in Kenya. The factors include the legal and international legal framework, the capacity of the department and corruption as a driving force in human smuggling.

Most research on migration focuses mainly on movement from developing countries to developed countries through illegal means or otherwise (Horwood, 2009). There is little done on similar movement between developing countries yet the problem of illegal migration including human trafficking and human smuggling is of grave concern globally. The few studies carried out in the region often combine human smuggling and human trafficking yet the two are quite distinct.

Given the social and economic burden associated with illegal immigration, this study considered it important to assess the legal and policy inadequacies and to also examine the effectiveness of the strategies employed by the government to combat this vice. This study is guided by the following research questions;

1. To what extent is the existing legal framework sufficient to curb human smuggling in Kenya?
2. What capacity does Kenya's Department of Immigration have to control human smuggling from Ethiopia and Somalia into and through Kenya?
3. To what extent does corruption facilitate human smuggling into and through Kenya?

1.3 Objectives of the Study

The main aim of this study is to assess the capacity of the Department of Immigration in control of human smuggling in Kenya. More specifically the study aims at assessing the capacity of the Department of Immigration in controlling human smuggling from Ethiopia and Somalia.

The specific objectives for this study are:

1. To examine the extent to which the Kenyan and International legal frameworks suffice to curb human smuggling in Kenya,
2. To assess the capacity of Kenya's Department of Immigration to control human smuggling from Ethiopia and Somalia.
3. To establish the extent to which corruption facilitates human smuggling from Ethiopia and Somalia.

1.4 Justification of the Study

Human smuggling has been largely ignored by academic researchers. The present perception is that this is an area that is only of interest to people with an interest on migration issues. This study sought to unravel the socio-economic and political dimensions of the problem and demystify the issue of human smuggling. It is a serious problem that calls for a combined effort for its effective control. The Department of Immigration is mandated to prevent human smuggling but this role has not been explored to determine the Department's capacity to fulfill its mandate.

Immigration control is about controlling and identifying persons who enter a state. It is a function that a state uses to determine who enters her territory, or who has access to legal residence within its borders ICHRP (2010). Those who are smuggled into a country avoid such checks or where they do, their identities are concealed. Their presence and identities are

therefore not known. Persons with ill intentions may take advantage of such loopholes to perpetuate crimes such as terrorism, arms smuggling and drug trafficking among others. It was therefore important to carry out this study to find out the gaps that enable human smuggling to thrive in Kenya.

Human smugglers use unorthodox means to conceal their 'human cargo' so as to avoid detection by security agents. These include use of containers, false compartments of vehicles, and improvised canoes among others. They also use dangerous routes in order to minimize possibility of arrest (Horwood, 2009). By so doing, the smuggled persons are left vulnerable and may get hurt, drown or suffocate to death. It is therefore important to understand how this can be avoided by sealing loopholes and coming up with sound policies to curb this vice (Horwood, 2009).

Human smuggling is a global problem that affects many countries either as a source, transit or destination country. If left unchecked, it can lead to strained relations amongst neighbouring states due to blame game. The United Nations obligates state parties to cooperate in combating human smuggling. To this end, the UN has developed an international legal instrument known as the Protocol Against Smuggling of Human Beings by Land, Air and Sea that supplements the United Nations Convention Against Transnational Organised Crimes. One of the state party obligations is the domestication and implementation of the human smuggling protocol. It would therefore be critical to assess the status of domestication, understanding and the implementation of the relevant protocol in Kenya as it is a state Party.

Kenya has experienced a spate of terrorist attacks in the recent past especially in Nairobi, North Eastern and Coast regions. Incidentally, the areas have high populations of foreigners causing the government and the public to attribute this to foreigners. Some of the attacks include the Westgate Mall attack where 72 persons died and the recent Mpeketoni attack where 50 persons died. In Eastleigh Nairobi, 6 persons died in another attack.

Persons arrested for flouting immigration laws have brought many challenges for the country due to congestion in police cells and prisons. It is also costly to repatriate or deport foreigners to their

countries of origin or as directed by the courts of law. In an attempt to avoid such inconvenience, constant surveillance are carried out by various security agencies and this is quite expensive. Many innocent citizens are at times caught in between and highly inconvenienced when they are arrested in police swoops such as the one recently conducted at Kasarani in Nairobi. On the Garissa-Nairobi road, the researcher witnessed passengers aboard public service vehicles offloaded at several police checkpoints and required to identify themselves before being allowed to proceed. There is also the danger of xenophobia which can harm innocent foreigners if they are perceived to be the cause of insecurity.

1.5 The Scope and Limitations

The study was conducted within Kenya and confined to points of entry and routes used for human smuggling specifically by Ethiopians and Somalis. It focused on immigrants from Ethiopia and Somalia whose entry into Kenya is as a result of human smuggling. These immigrants make up the largest concentration of nationalities migrating to Kenya through human smuggling (Department of Immigration Statistics, 2012). Attempts were made to collect narratives from these immigrants on their journeys from the point of origin to Kenya on issues such as smuggling fees, difficulties faced, the involvement of networks of smugglers and complicity of government agencies in the smuggling process.

Although persons who are smuggled into or through Kenya are from various countries, this study focused only on those from Ethiopia and Somalia. This is because time and resources did not allow coverage of other nationalities. The study does not also focus on Kenyans being smuggled to other countries due to the same reasons.

A limitation for the study was that smugglers and the smuggled persons who are the principal sources from whom information on the human smuggling can be obtained are difficult to reach and interview since they are involved in an illegal hence fear victimization. The fact that the researcher was an immigration officer did not help the case. This was overcome by interviewing smuggled immigrants who have gone through the court process and therefore had nothing to fear. Immigration officers from key stations that deal with human smuggling provided information on the phenomenon. The cooperation of all these persons was sought by indications

and assurance that the purpose of the study was to gather information to be used only for academic purposes and assurance of anonymity.

1.6 Definition of Key Terms

Human Smuggling: This is defined by the Kenya Citizenship and Immigration Act 2011 as the procurement, in order to obtain directly or indirectly a financial or other material benefit , of the illegal entry (and exit) of a foreign national into and outside Kenya.

Human Trafficking: Often involves use of deception to convince a person to be moved but with an element of force, coercion, deception and exploitation.

Illegal Immigrant: This refers to a foreigner who enters a state without permission from or contravenes the conditions of the entry authorization. This includes those facilitated through human smuggling or trafficking, over-stayers and those found working without authorization.

Diaspora: as used in this study refers to Somalis and Ethiopians who are already resident in Kenya whether legally or illegally. It also includes Somali and Ethiopian refugees and asylum seekers.

Capacity: Refers to efforts by the Department of Immigration towards addressing human smuggling. They include efforts towards border management, budgetary allocations, legal reviews, training of officers, staff establishment, provision of appropriate equipment and facilities and presence of Ethiopian and Somali Diaspora in Kenya.

Control: Refers to the results achieved on human smuggling as a result of the capacity of the Immigration department and other agencies. This can be positive or negative.

Actors: Refer to those who play a role in the control of human smuggling and illegal migration. They include Department of Immigration, Police, Judiciary and Refugees department.

CHAPTER TWO: LITERATURE REVIEW AND THEORETICAL FRAMEWORK

2.1 Introduction

This chapter reviews existing literature from both published and unpublished sources that is relevant to the study topic and objectives. It summarizes existing information on the capacity of the Department of Immigration in control of human smuggling from Ethiopia and Somalia. This includes an assessment of the adequacy of the Kenyan and International legal framework to curb human smuggling in Kenya and the extent to which corruption facilitates human smuggling from Ethiopia and Somalia. The chapter also presents two sociological theories and a conceptual framework to illustrate the phenomenon of human smuggling.

2.1.1 History of Illegal Immigration of Ethiopians and Somalis to Kenya

The movement of people across national borders has accelerated due to a robust demand for immigrant labour in advanced industrial economies and also due to wide and growing economic and demographic disparities and improved communication systems (Cornelius, 2004). International Organisation for Migration (IOM) approximates that 4 million people are smuggled across borders every year (Adamson, 2006). ICMPD attributes the huge number of immigrants from the Eastern African region to Kenya's strategic geographical location and cultural ties. Majority of the migrants migrate due to political instability in their countries. They also use Kenya as a transit point on their way to join their diaspora communities in America or Western Europe (ICMPD, 2008: 47). In Kenya, the flow of Somali immigrants increased due to regime-instigated political persecution under the government of President Siad Barre which disintegrated into clan warfare (Horwood, 2009). Events that have characterized security interventions in Somalia include the intervention of the Ethiopian Army from December 2006 and later by the African Union Forces led by Uganda as a result of the demise of the Islamic Courts in 2006 (Horwood, 2009). As a result of resurgence of warlord-ism and civil war, the flow of Somalis leaving Somalia for Kenya as refugees and as irregular migrants has increased markedly (ibid).

On the other, the presence of a large number of Ethiopians in Kenya can be traced to the fall of the Mengistu regime in the early 1990s. Between 1977 and 1991, Ethiopia was ruled by Mengistu Haile Mariam whose tyrannical regime violently repressed opposition to Marxist rule

and sent dissenters into exile to Kenya among other countries (Ketale, 2013). In 1991, a group of insurgents led by Eritreans and Tigreans overthrew the Mengistu regime but subsequent regimes have also pursued political dissenters. Members of liberation movements such as Oromo Liberation Front (OLF) have fled the country for fear of political persecution while poverty, unemployment, environmental changes and unproductive land particularly in the Eastern parts have been blamed for increasing cases of human smuggling into Kenya (IOM, 2007; Njagi, 2011b).

2.1.2 Push and Pull Factors of Illegal Migration of Somalis and Ethiopians into Kenya

Friebel and Guriev (2004) identify the pull factors for illegal immigration to include the desire to earn higher wages in the host country in both illegal and legal sectors and the growth of human smuggling networks. Prospective illegal immigrants also expect to be warmly received by relatives already resident in Kenya (Cowan, 2009). The push factors that make many Somalis to migrate to Kenya include civil conflicts, endemic poverty and the vagaries of climatic catastrophe swinging between flooding and droughts (Horwood, 2009; Hunter, 2012). Some factors that make Ethiopians immigrants move to Kenya include political persecution, endemic poverty, high food prices and drought (Salehyan, 2008).

Horwood (2009) reveals that indications are that the current trend of rising levels of irregular migration is set to continue, and movement will become easier as transportation and other technology evolves. At the same time, most borders will remain porous and unmanageable due to size, geography and resources and due to the failure of structures and controls to manage borders effectively (Horwood, 2009). This is very true for Kenya especially the Kenya-Somali and Kenya-Ethiopia borders which are highly porous. Despite the Department of Immigration's effort to create new border controls in other regions, the two borders seem to have been neglected (Department of Immigration, 2013a). As a result, the capacity of the Department of Immigration in controlling human smuggling from Ethiopia and Somalia may be adversely affected.

In response to the above challenges, the Department has made efforts to increase its capacity in controlling human smuggling from Ethiopia and Somalia through the introduction of a marine

patrol at the coast and the stationing of a land patrol unit at Isiolo. But whether this is enough remains a big question. Despite offering opportunities for sources of livelihood, illegal migration should be curbed because it exerts a heavy human toll on the migrants themselves (IOM, 2010). Illegal migration also undermines the rule of law by creating corrupt officials and market for counterfeit and fraudulently obtained documents which in turn create opportunities for identity theft (ibid). In this way, corruption can be linked to human smuggling from Ethiopia and Somalia.

Many researchers have acknowledged that Diaspora has a role to play in facilitating migration to a place, be it legally or otherwise. Kyle et al (2001) observes that Diaspora plays a role in providing information and resources thus making migration paths fairly consistent within a given social network (Kyle et al, 2001). Spencer (2006) points out that the expatriate community resident in a country becomes a focal point for provision of shelter, a common language and a basis of learning how a new society functions. Due to their link with their countries of origin they make the travel of the migrants easier (ibid). The large Ethiopian and Somali Diaspora according to Horwood (2009) play a critical role in financing at least half of all migrants being smuggled.

The large Ethiopian and Somali Diaspora in Kenya can be traced to the influx of both nationalities due to the Mengistu and Siad Barre regimes in the early 1990s (Reychler, 2006). The two nationalities form the bulk of refugees in Kenyan Refugee camps of Dadaab and Kakuma where they fled to escape fighting and persecution in their respective countries. A large number of Ethiopians and Somalis are concentrated in Eastleigh area of Nairobi. It is likely that this population plays a significant role in the smuggling process by way of providing information to would-be migrants, provision of temporary employment, provision of safe houses or as part of the smuggling rings. They also enable new arrivals to integrate easily and get a foothold in Kenya either on transit or as a final destination. Again, corruption may play a role in facilitating human smuggling from Ethiopia and Somalia.

According to a report by Refugee Consortium of Kenya (2011), as of 11th September 2011, there were 433,157 refugees in Dadaab alone as per UNHCR statistics. Of these, 95.6 % were Somalis

whereas 4.1% were Ethiopians. Between June and August 2011, there was a daily influx of 1,300 refugees crossing the border from Somalia. Given the proximity of the refugee camp to the respective borders of Ethiopia and Somalia and the ease with which one can access and be accepted at the refugee camp, its influence cannot be ignored. The easy access and acceptance to the refugee camps may be attributed to both the Kenyan and International legal framework that are quite lenient to refugees and asylum seekers.

The Government of Kenya's efforts to deal with illegal immigrants especially in Eastleigh is hampered by many factors chief among them are human rights and political issues. International Non-Governmental Organizations are vocal against any action to weed out illegal immigrants as they argue that refugees have freedom of movement and a right to seek asylum anywhere including Nairobi (Human Rights Watch, 2009). There is also a sizeable Kenyan population and any action is normally condemned by local politicians as harassment of citizens. Thus both the Kenyan and International legal framework may not work to curb human smuggling in Kenya while the capacity of the Department of Immigration in controlling human smuggling may not be fully utilized.

2.2 Role of the International and Domestic Legal Instruments

This section will assess the relevant international and domestic legal instruments that address human smuggling. The two main documents are the UN Protocol against Smuggling of Human Beings by Land, Sea and Air (Smuggling Protocol) and the Kenya Citizenship and Immigration Act of 2011. The 1951 Geneva Convention on Humane Treatment of Refugees and the Refugees Act of 2006 will also be mentioned briefly. When these legal documents are applied, they can play a significant role to curb human smuggling both locally and internationally.

2.2.1 Protocol against Smuggling of Migrants by Land, Sea and Air

The protocol against Smuggling of Migrants by Land, Sea and Air was adopted on 15th November, 2000 but entered into force on 28th January 2004 (UNODC, 2010). It supplements the United Nations Convention against Transnational Organized Crime (UNTOC). According to the United Nations Office on Drugs (UNODC) which is the custodian of the protocol, the Protocol against Smuggling of Migrants by Land Sea and Air is the first and only global treaty

aimed at preventing and combating the smuggling of migrants, protecting the rights of the smuggled migrants and promoting cooperation between states (UNODC, 2012).

UNTOC is an international legal instrument that provides obligation and guidelines to State Parties in the fight against crimes that are transnational in nature which smuggling of human beings is part of. Key among the means is cooperation through multilateral and bilateral agreements, memoranda of understanding and treaties among others. The cooperation includes but is not limited to information sharing, mutual legal assistance, joint investigation, repatriation and extradition (UNODC, 2012). UNTOC and the protocols that supplement it came into being through politically influenced efforts and represent the result of a compromise by developed nations rather than the best knowledge of contemporary transnational organized crime (Schoenhardt, 2002). Developing Nations were under-represented because of the expenses associated with the attendance of lengthy meetings (ibid). With little participation from the developing countries, it is doubtful whether this legislation took care of their circumstances, interest or concerns.

Article 2 of the Smuggling Protocol states that the purpose of the protocol is to prevent and combat the smuggling of migrants, as well as to promote cooperation among State Parties to that end, while protecting the rights of smuggled migrants (UNODC, 2004:24). The convention and the protocols that supplement it would work efficiently where all parties are signatories and are committed to the fight against the crimes. The convention presupposes that the source, transit and destination countries are all state parties, have organized structures committed to fighting these crimes and have domesticated the convention. In the case of Kenya and as relates to this study, the source countries of Ethiopia and Somalia are not State Parties to the protocol and besides, the latter has not had a functional government in a long period and to date most of her systems including immigration control have collapsed. Among the three neighbours therefore, it is only Kenya which is a state party to the protocol. Thus, the legal framework cannot be exercised internationally to curb human smuggling.

Article 10 of the Smuggling Protocol urges states with common borders or on routes used by smugglers to continually share information related to points of embarkation and destination

points and the identity and methods of smuggling organizations. It also urges sharing of information on the authenticity and proper form of travel documents and means and methods of concealment (UNODC, 2004:26). Application of these requirements in this case is not possible especially to Somalia. People depart from Somalia without passing through immigration checks as the same are nonexistent. There are few entry points along the borders of interest. For instance, the Kenya-Somali border is about 682 km long with only two border control points at Mandera and Liboi on the Kenya side and none on the Somali side. The Kenya-Ethiopia border has only one border crossing at Moyale Border Control despite the long borderline of about 861km. This implies that the two borderlines are highly porous and information sharing as envisaged by the Smuggling Protocol would therefore be nearly impossible or even where there is will be ineffective. These details reveal the extent to which the Kenyan and International legal framework may fail to curb human smuggling while the capacity of Kenya's Department of Immigration to control human smuggling may be inadequate.

Article 11 provides for border control, strengthening and adoption of legislations to inter alia provide for sanctions against carriers which bring in improperly documented migrants and denial of entry or revocation of visas of persons implicated in smuggling of persons (UNODC, 2004:24). This is an important article which if implemented may deter carriers from bringing in improperly documented migrants. Article 12 obligates states to ensure that travel or identity documents are of such quality and cannot readily be falsified or unlawfully altered, replicated or issued and to ensure the integrity and security of travel or identity documents issued to prevent their unlawful creation, issuance and use. Whereas this is important, the integrity of the systems is even more important as it ensures the documents are issued to the right persons. Identity or travel documents rely on certain primary documents as basis, therefore the process of issuing this primary documents is key in ensuring proper registration of citizens. Most of the documents in the region do not have the latest security features as recommended by the International Civil Aviation Authority (ICAO). These include travel documents, identity cards, refugee movement passes and visas, they are thus liable to abuse. These issues reveal drawbacks faced by the Kenyan and International legal frameworks and the subsequent capacity of Kenya's Department of Immigration to control human smuggling from Ethiopia and Somalia.

2.2.2 Kenya Citizenship and Immigration Act 2011 (KCIA)

Kenya's immigration legal history dates back to 1906 when Immigration Restriction Ordinances were introduced by the British colonial administrators. Various ordinances were subsequently adopted in 1940, 1944, 1948 and 1956 (Department of Immigration, 2006).

After independence, Kenya developed immigration laws and regulation to guide all migration related activities (ibid). The overriding principle of all these legislations was the control through visas, permits or passes of foreigners coming to Kenya. The shortcomings of most of them were that they never took into consideration of emerging transnational crimes such as human smuggling, human trafficking and drug trafficking.

The enactment of the Kenya Citizenship and Immigration Act, 2011 is a good attempt by the Kenya government to counter human smuggling among other criminal offences. The Act repealed the Immigration Act chapter 172, the Aliens Restriction Act chapter 173, and the Citizenship Act chapter 170. The new act unlike the repealed laws criminalizes human smuggling. It attracts a fine of up to Kenya shillings five hundred thousand or imprisonment for a term not exceeding three years for the smugglers (GoK, 2011). Before then, only the smuggled person was viewed as the offender while the smuggler would go scot-free as there was no law to be applied. This development is expected to deal more effectively with the fight against human smuggling. However, the tightening of legislations and policies to restrict immigration can fuel markets for smuggling and therefore work against its intentions (Anderson et al., 2003). The new legislations may therefore play a role in curbing human smuggling in Kenya.

The Kenya Citizenship and Immigration Act 2011 has a provision on carrier liability but whereas this can easily be applied to air carriers, it may not be easy for other modes of transport such as taxis, trucks, buses, boats or motorbikes. It will be important to find out if this has been effective in curbing human smuggling by air and what challenges the enforcers face with other modes of transport other than air transport. Besides, Article 11 of UNTOC does not take into consideration persons who cross on foot clandestinely without any documents due to corruption and porosity of the land borders.

Kyle et al (2001) in a study of Fujian China also points out that despite United States of America and China stepping up law enforcement efforts to check illegal migrants , the tide of illegal migration did not seem to abate (Kyle and Liang, 2001). Closer home, South Africa has a state of the art border control system that includes heavy patrols by the South African National Defence Forces (SANDF) and Immigration Border guards at the South Africa-Zimbabwe Border (Araia, 2010). Despite this, human smuggling is still rampant as smugglers resort to bribing border officials and using more dangerous routes to enable their clients access South Africa (Araia, 2010). This implies that laws alone without considering change of strategy may not be effective. It will therefore be important to study the Kenyan case and establish how the authorities deal with the challenges of human smuggling at selected border points.

The Kenya Citizenship and Immigration Act 2011(KCIA) has a shortcoming as it does not domesticate the Human Smuggling Protocol contrary to the recommendation of the protocol. It is still an offence to enter Kenya illegally regardless of whether one is smuggled. Smuggled persons are therefore liable to prosecution rather than protection as envisaged by the protocol. Whereas there is a whole law on counter trafficking in the Laws of Kenya, human smuggling has been given less prominence despite the fact that the two protocols are part of the three protocols that supplement the United Nations Convention against Transnational Organized Crimes (UNTOC) and therefore should be treated as equally serious.

The KCIA has not provided for key international cooperation areas in the fight against human smuggling such as prosecution, extradition, repatriation, mutual legal assistance and information sharing. As stated under Article 1 of UNTOC, international cooperation is essential in order to prevent and combat transnational organized crime effectively hence it is imperative for the legal framework to provide such avenues.

The new law provides for stricter rules for Somali nationals. Somalis are among a few other nationals whose applications for visas are subjected to stricter scrutiny well in advance of their arrivals (KCIA, 2011). This would imply that there would be fewer illegal immigrants from Somalia than say Ethiopians as the latter do not require visas to enter Kenya. Besides this, the border between Kenya and Somalia is currently closed save for humanitarian related movements.

These two measures do not seem to deter illegal entry of Somalis to Kenya through the common border. The gap in control therefore needs to be identified and remedial measures recommended.

Through the Presidential Circular No 1 of 2008, the Department of Immigration was appointed to be the Lead Agency in Border Management (GoK, 2008). This is a welcome move as it takes cognizance of the fact that to combat cross-border offences; there is need for a coordinated inter-agency cooperation. This study will assess the officers opinion on the success or otherwise of this circular. It will also assess the challenges of its implementation by the department and the cooperation by other stakeholders in the border management.

2.2.3 Refugees Laws and Other Legal instruments on Refugees

The 1951 UN Refugee Convention which is domesticated by the Kenya Refugees Act of 2004 obligates states to accept asylum seekers. All persons fleeing war torn regions such as Somalia are treated as prima facie refugees and are allowed up to 30 days to report to any government authority (GoK, 2004). Consequently, when they are arrested, smuggled persons are likely to take advantage of this loop hole. Kenya's policy on refugee is that of encampment which means that, all refugees should reside in designated refugee camps as per Article 25(e) of the Refugee Act (GoK, 2004). The two main refugee camps are Dadaab near the Kenya-Somali border and Kakuma in Northern Kenya. Despite this policy position, there are several thousand refugees without legal protection or material assistance living permanently in Nairobi (Chebichii, 2005). Considering this, the refugees in the camps are motivated to move to urban areas to avoid the suffering and deplorable conditions of the camps due to overcrowding. As such, they are better off in the cities as they can do small businesses or get employed by their kin (ibid). Through the application of Kenyan and International laws, and strengthening of its capacity, the Department of Immigration may be able to control human smuggling from Ethiopia and Somalia in the first instance.

The Refugees Act provides for issuance of movement passes to allow refugees leave the camp for various reasons such as medical, to visit relatives and education purposes among others, (Section 17 (f)). The passes are issued by the Department of Refugee Affairs upon application. There seems to be no mechanism to monitor movement and to ensure compliance with the terms

of the pass for instance it is difficult for the department to ensure return to the camp after the mission. It is also possible as in the case of South Africa where Home Affairs officers are compromised to issue passes to undeserving persons through corruption, thus facilitating smuggling (Araia, 2009). Since this is an important document that facilitates refugee movement within the country, it is important to find out the issuing criteria and its security to guard against abuse. Strengthening the capacity of the Department of Immigration may lead to control of human smuggling from Ethiopia and Somalia, therefore preventing corruption.

Under the Refugees Act, asylum seekers are required to report to the Commissioner for Refugees or to an appointed officer within 30 days and declare their intention to seek asylum. This is a gap in law and smugglers can take advantage to bring in illegal immigrants who can claim their intention to seek asylum at any point of arrest. The burden will then be on the arresting officials to prove that the immigrants have failed to report within 30 days under Section 11(1) of the Refugees Act. This is not easy to prove since asylum seekers are not obliged to carry any documents. Besides, would-be asylum seekers who could otherwise just report to the nearest authorities and be admitted to the refugee or reception centres which may not be aware of this. For instance in South Africa many immigrants with good chances of acquiring asylum enter South Africa clandestinely because they are unaware of the possibility of seeking asylum. Some are also misled by smugglers (Araia, 2009). With the porosity of the border in the area of interest and the few operational border crossing points, this is likely to be the situation in the Kenyan case. Enacting relevant amendments to laws, ensuring stronger capacity of the Department and addressing corruption will prevent human smuggling in the first instance.

Unlike other smuggled persons, smuggled refugees cannot be repatriated to their countries of origin as it will be contrary to the principle of non-refoulement as provided by the Refugees Act and the Refugee Convention. The courts would normally order them repatriated to Refugee camps. This is fairly lenient and the likelihood of recidivism is therefore high. Section 13 of the Refugee Act, protects any person and (their family) whose refugee application is under consideration from prosecution for being illegally present in Kenya. This provision is liable to abuse as smuggled immigrants and their 'family' can apply and move around freely on their way to their destinations. As such, the current laws and the capacity of the Department may be

inadequate to prevent human smuggling from Ethiopia and Somalia. A shift of strategies through legal amendments and improved capacity by the Department may therefore be required to address human smuggling.

2.3 The Role Corruption in Human Smuggling

Spencer (2006), notes that corrupt practices secure the compliance of officials hence allow criminals an easy passage across borders and at the same time legitimizes their illegal practises. Corruption of border guards could result in official residence stamp being placed in a passport and ignoring false documents or impostors (Spencer, 2006). Araia (2009) in his study of human smuggling in South Africa found out that a significant proportion of the police force was directly involved in the trade by providing direct passage through Beitbridge Border Post. Respondents claim that police, immigration officials and officers responsible for refugees are also bribed to facilitate movement (Araia,2009:31). The scenario is likely to be the case in the Kenyan situation as the circumstances between the two regions are quite similar. It is a case of a poorer and politically unstable neighbour (Somalia and Zimbabwe) and a richer and politically stable neighbour (Kenya and Republic of South Africa) on the other hand. Human smuggling will therefore be prevented by addressing corruption within agencies tasked with immigration issues.

Most media report of arrest of illegal migrants in Kenya especially Somalis and Ethiopians show that corruption plays a key role (the Star, 19 Aug 2011; BBC News Africa 1stAug 2009; The Standard 28 Mar 2012). Many of these illegal immigrants pass through immigration controls and various road blocks only to be arrested inside the country. A good number of them are also refused entry in Tanzania having travelled long distances across Kenya. Smuggled persons often travel on genuine but fraudulently obtained travel or identity documents (Department of Immigration, 2010). In many cases, these are obtained by bribing registration officers or immigration officers (The Standard 28 Mar 2011). They may fraudulently obtain primary documents such as birth certificates and then proceed to obtain passports. In this category are the fraudulently obtained visas from corrupt consular officers. Smugglers and illegal immigrants also depend on the cooperation of transporters hence bribe them to facilitate easy passage. Corruption, according to Araia is one of the key methods used in human smuggling as it lowers the risk in one of the most vulnerable part of the journey (Araia, 2009; Schloenhardt, 2002).

2.4 Capacity of Department of Immigration in the Control of Human Smuggling

This section discusses capacity of the Department of Immigration in the control of human smuggling. The capacity is reviewed in terms of border management, staffing, training and equipment. The Department of Immigration is the lead agency in immigration issues hence important in the control of human smuggling.

2.4.1 The Role of Border Management

Border management is important as the strategies put in place determine who enters, how they enter and even where they enter. Poor border management would mean that a state would not have control on entry of foreigners which would be a recipe for possible insecurity due to entry of illegal and undocumented immigrants. Article 11 of the smuggling protocol obligates state parties to strengthen their border control so as to prevent and detect the smuggling of migrants (UNODC, 2004:14).

The Department of Immigration is the lead agency in border management and administration. It has the mandate of liaising with other government ministries, Departments and international organizations on matters touching on migration (Department of Immigration, 2010). The Department also has the function of controlling and regulating entry and exit of all persons at airports, seaports and land border posts. In addition, the Department is tasked with investigating; arresting and prosecuting persons who contravene immigration laws and regulations. They also facilitate repatriation of illegal immigrants and deportation of undesirable immigrants as may be directed by the cabinet secretary (Department of Immigration, 2010).

Kenya has a borderline of 4013 km and a coastline of 536 km. Its border with Somalia is 682km long while that with Ethiopia is 861 km. The border between Southern Sudan and Kenya is 232 kilometres (km) that with Uganda is 933 km while that with Tanzania is 769 km. There are 26 ports of entry along Kenya's borderline. These consist of 14 for land, 7 for international airports and 5 on seaports (Department of Immigration, 2010). All these ports are manned by immigration officers and all persons seeking to enter Kenya are required to pass through these points for clearance. The major entry points for Somalis and Ethiopians would be expected to be through the common borderline, that is, on the Kenya-Somali border or on the Kenya-Ethiopia

border. The former has two border control points (Mandera and Liboi) whereas the latter has only Moyale Border Control (Department of Immigration, 2010).

In the last ten years, the Department has embarked on programs to open up new borders and move border controls to the actual border lines as several borders were located far away. Most of the new border controls, however, are in the Western region and border Uganda while some border Tanzania.

Despite the Kenya-Somalia and Kenya-Ethiopia borders being the biggest source of human smuggling and illegal migration, there are no new border controls in the two regions due to inadequate policy and budgetary provisions. There are immigration offices at Garissa and Ijara purposely to check illegal immigrants or smuggled persons from Somalia. The Tana River acts as a natural barrier hence officers check at the bridges where vehicles, bicycles and pedestrians pass through en route to Mombasa or Nairobi. A similar check is done in Isiolo where a state of the art mobile patrol unit is stationed to check on illegal immigrants mainly from Ethiopia. In addition there are numerous police roadblocks along the Moyale –Isiolo –Nairobi road and similarly along the Garissa-Nairobi and Garissa-Malindi roads to check on the same (Department of Immigration, 2013a). Despite all these efforts, illegal immigrants who are mainly smuggled persons are still arrested in various parts of the country. This suggests there are gaps which could be attributed to complicity by officers, or perhaps smugglers have employed new tactics to evade security agents. The capacity of the Department and the role played by corruption may therefore facilitate human smuggling.

The rationale of these checks is probably based on the assumptions that; all illegal migrants pass through the specific routes; that they travel by vehicles and that they travel during the day, that is, between 6am to 5pm. In reality there is a high possibility that smuggled persons can walk, travel at night or even use dugout canoes across the river and then catch buses at safer sections. This directs attention to the capacity of the Department in addressing these gaps through the newly introduced policy and regulatory frameworks led by adequate budgetary allocations.

2.4.2 Training, Equipment and Staff Establishment

As pointed out by UNODC (2012), it is crucial that officers are well trained and skilled to meet the many challenges and hazards associated with human smuggling. They need to be familiar with the investigation, the background, the techniques, the process and the legal requirements in order not to compromise the integrity of the investigations (ibid). Officers also need to be trained on areas such as document fraud, passenger profiling and interviewing so that they are able to detect human smuggling in particular and illegal migrants in general.

In Kenya, all newly recruited immigration officers undergo a three months induction course where they are taken through the theories of immigration practise, government structures, Code of Regulations, Immigration legislations among others (GoK, 2005). Another mandatory course is a three month paramilitary training conducted by the Administration Police Service. The curriculum includes paramilitary drill, endurance training and First Aid. This is meant to equip the officers for survival in hardship areas and to understand basics of paramilitary as they are expected to work side by side with police officers in such areas.

In the course of service, officers undergo various training sessions organized by the Department, other government agencies, international organizations and non-governmental organizations. These courses include document examination; investigation and prosecution; guidelines on identifying and curbing human smuggling and human trafficking; profiling of migrants and the rights of refugees or asylum seekers. Apart from the induction and paramilitary training, other courses are not mandatory. They are also not regulated nor structured in terms of content and duration of study. The selection for attendance is based on proximity, finances available and number of slots dictated by the donors. Deployment of officers is not linked to the training or expertise. It is therefore doubtful whether all officers are well equipped to identify, prevent or counter human smuggling. Assessing the capacity of the Department is therefore important in explaining the personnel and resource establishment.

The rapid expansion of the Department and cascading of services to the border Counties from the Nairobi headquarters has not been matched with the number of staff. In the past few years, the Department has opened Embu, Nyeri, Kisii, Bungoma offices and Nandapal, Muhuru Bay and

Mbita Border Control Points. It plans to open many more that were gazetted some years ago. The Department has a total of 754 technical officers against the approved establishment of 1355 resulting in a shortage of 601 officers. The variance in numbers affects the efficiency and effectiveness of the Department more so considering that the approved optimum staffing level was done before the aforementioned expansion. The various ranks of the technical officers include Director of Immigration Service (DIS), Deputy Director of Immigration Service (DDIS), Senior Assistant Director of Immigration Service (SADIS), Assistant Director of Immigration Service (ADIS), Principal Immigration Officer (PIO), Chief Immigration Officer (CIO), Immigration Officer I (IO I) and Immigration Officer (IO II).

Table 2.1: Department of Immigration Staff Establishment by 2013

Designation	Job Group	Authorized Establishment	In post	Variance
DIS	T	1	1	0
DDIS	R	4	1	-3
SADIS	Q	8	8	0
ADIS	P	30	30	0
PIO	N	50	1	-49
CIO	M	100	30	-70
SIO	L	190	296	106
IO I & IO II	K&J	972	387	-585
TOTAL		1355	754	-601

(Source: Human Resources Management Records, 2013)

The Department has procured boats for marine patrol at the coast and a mobile patrol unit with document verification equipment for land patrol. The mobile patrol unit which is based in Isiolo patrols known illegal migration routes in North Eastern and Northern Kenya. It is based far away from the border hence may not be effective in apprehending illegal immigrants despite the fact that it plies known smuggling routes. This points to the need to inform on the capacity of the Department.

Smuggling by air is often facilitated by use of forged, stolen or counterfeit passports and visas so as to disguise identity or to gain entry (FDUK, 2012). To beat this, there is need for forgery detection equipment and to this end there is one at the Jomo Kenyatta International Airport. Whereas this is a useful tool, it is located only at one station yet human smuggling could be taking place in the other airports. The equipment would only be useful when a case is suspected otherwise forgeries by professional forgers may escape the eyes of the officers. Further the fact that forgeries are invented each time as forgers seem to be ahead of the law enforces, thus some forgeries may go unnoticed. Similarly, this indicates gaps in the capacity of the Immigration Department.

In all the six international airports and all major border controls, immigration checks are carried out using a border control system commonly referred to as PISCES which captures and keeps all records of migrants and has a database of prohibited immigrants which include suspected terrorists, drug traffickers among others (Department of Immigration, 2010). Needless to mention, human smugglers facilitate their clients to evade this, meaning that prohibited immigrants can enter undetected if they sought the help of smugglers. The system is also of little use at land and sea borders due to porosity. Thus, gaps may be existent in the capacity of the Department.

2.5 Summary and Conclusion of Literature Review

The literature review described the capacity of the Department of Immigration in control of human smuggling from Ethiopia and Somalia. It assessed the extent to which the Kenyan and International legal framework suffice to curb human smuggling in Kenya and the extent to which corruption facilitates human smuggling from Ethiopia and Somalia. The Kenya-Somali and Kenya-Ethiopia borders are highly porous and seem to have been neglected despite the Department of Immigration's effort to create new border controls in other regions. As a result, the capacity of the Department of Immigration in controlling human smuggling from Ethiopia and Somalia may be adversely affected.

There has been a rapid expansion of the Department and cascading of services to the border Counties from the Nairobi headquarters. However, the Department faces a shortage of 601

officers which affects its efficiency and effectiveness. The PISCES system which captures and keeps all records of migrants is of little use at land and sea borders due to porosity. Most of the travel and identification documents in the region do not have the latest security features and are thus liable to abuse. Hence there is need for forgery detection equipment in all international airports and major border controls instead of only one at the Jomo Kenyatta International Airport which is inadequate. Department has also made efforts to increase its capacity in controlling human smuggling from Ethiopia and Somalia through the introduction of a marine patrol at the coast and the stationing of a land patrol unit at Isiolo.

The large Ethiopian and Somali Diaspora play a role in providing information and resources or finances thus making the travel of the migrants easier. The use of money confirms the role of corruption in facilitating human smuggling from Ethiopia and Somalia. The Government's efforts to deal with illegal immigrants especially in Eastleigh is hampered by many factors chief among them are human rights and political issues. The international and domestic legal instruments that address human smuggling include the UN Protocol against Smuggling of Human Beings by Land, Sea and Air (Smuggling Protocol) and the Kenya Citizenship and Immigration Act of 2011. When these legal documents are applied, they can play a significant role to curb human smuggling at the local level in Kenya and internationally.

The Smuggling Protocol presupposes that the source, transit and destination countries are all state parties, have organized structures committed to fighting these crimes and have domesticated the convention. However, the source countries of Ethiopia and Somalia are not State Parties to the protocol. Sharing of information on the authenticity and proper form of travel documents and means and methods of concealment is also not possible especially to Somalia. The 1951 UN Refugee Convention which is domesticated by the Kenya Refugees Act of 2004 obligates states to accept asylum seekers. However, when they are arrested, smuggled persons are likely to take advantage of this loop hole. The Refugees Act provides for issuance of movement passes to allow refugees leave the camp but there seems to be no mechanism to ensure return to the camp.

Corrupt practises secure the compliance of officials hence allows criminals an easy passage across borders and at the same time legitimises their illegal practises. Smuggled persons often travel on genuine but fraudulently obtained travel or identity documents such as fraudulently obtained visas. Therefore addressing the capacity of the Department, ensuring an effective legal framework and tackling corruption are important in the control of human smuggling from Ethiopia and Somalia.

2.6 Theoretical Framework

The theoretical framework is an explanation of how theories relate to the phenomenon of illegal migration. It included two theories, namely Control Theory and the Rational Choice Theory.

2.6.1. Control Theory

According to Giddens (2000), Control Theory posits that crime occurs as a result of an imbalance between impulses towards criminal activity and the social or physical controls that deter it. It is assumed that people act rationally and that, given the opportunity, everyone would engage in deviant acts. Many types of crime are as a result of situational decisions or opportunities motivating persons to act. Hirshi (1969) argues that humans are fundamentally selfish and make calculated decisions about whether or not to engage in criminal activity by weighing the potential benefits and risks. Bonds hold people to society and good behaviour and when strong, they maintain social control by binding people not to commit crimes but if weak, delinquency and deviance occurs. Push factors such as poverty and pull factors such as the ease of being smuggled encourage illegal migrants to enter Kenya.

Some control theorists see the growth of crime as outcome of the increasing number of opportunities and targets for crime in modern society. The presence of evidence for success in crime and absence of restrictions offer an opportunity for committing crimes. Control Theory is linked to an influential approach to policing called the theory of broken windows. The proponents of this theory are Wilson and Kelling (1982) who suggest that there is a direct connection between the appearance of disorder and actual crime. If a single broken window is left unrepaired, it sends a message to potential offenders that neither police nor local residents

are committed to the upkeep of the community. As time goes by, more signs of disorder will occur such as graffiti, litter and vandalism.

Cases of human smuggling occur and increase gradually as stakeholders fail to stem the problem. Initial success for criminals leads to subsequent commission of the crimes until effective measures are put in place. Criminals succeed to smuggle desperate victims into and out of Kenya illegally due to the opportunities that are available and the low risk of arrest that they perceive. Human smuggling will only be controlled *inter alia*, when the capacity of the Department of Immigration is brought to par, the legal framework is adequate and when corruption is addressed.

2.6.2 Rational Choice Theory

Among the proponents of this theory are Talcott Parsons and recently James Coleman (1990). According to Parsons, action is rational in so far as it pursues ends possible within the conditions of the situation by the means which, among those available to the actor, are intrinsically best adapted to the ends (Wallace, 1969). The actor knows the facts of the situation in which he acts and the conditions necessary for the realization of his ends or goals (Wallace, 1969). Action is taken only after its benefits and costs have been weighed hence to achieve objectives that are consistent with the actor's preference (Coleman, 1990 in Zey, 1998).

According to Coleman, persons act purposively toward a goal which is shaped by values and preferences (Ritzer, 1992). In application of the theory to criminology, criminals evaluate the risks of apprehension, the seriousness of punishments and the potential value or gains they are likely to derive from engaging in criminal activities (Siegel, 1995; Cornish & Clarke, 1986). The decision to commit crime is therefore a matter of personal choice based on weighing of the available opportunities and risks. Most illegal immigrants are attracted by the opportunities in Kenya and the relative ease of entering Kenya undetected. Victims of human smuggling are also ready to sacrifice finances and endure difficult journeys to enter or transit through Kenya in order to improve their livelihoods. They often have information about the journey and seek to maximize the benefits to be accrued from the journey. Therefore, relevant or applicable laws, adequate capacity of the Department of Immigration and extent of corruption may determine human smuggling from Ethiopia and Somalia.

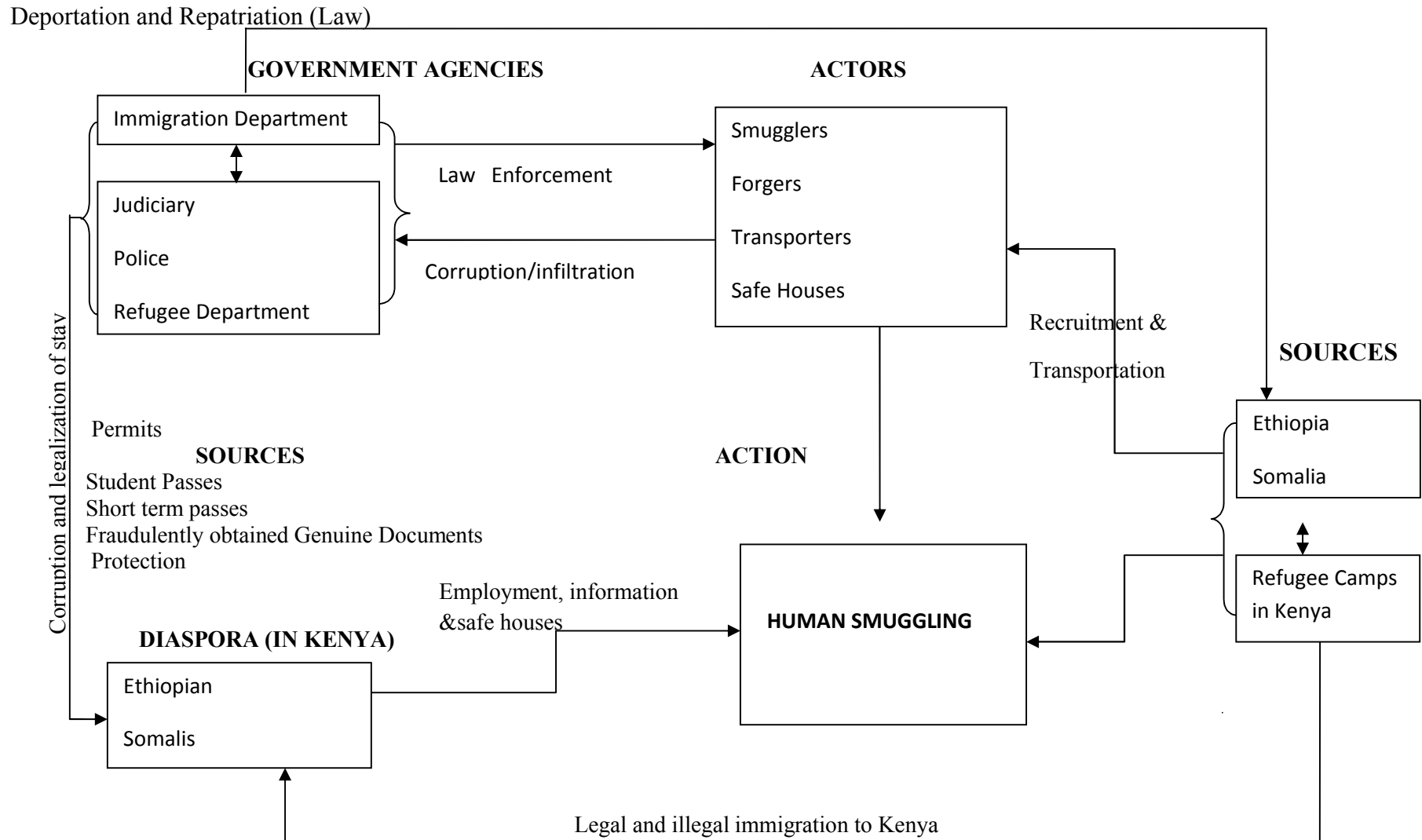
2.7 Conceptual Framework

Figure 2.1 is the conceptual model that illustrates the main variables of the study. The capacity of the Department of Immigration is determined by both internal and external factors. The internal factors are those that are within the docket of the department and by extension the Government of Kenya. They include border management, budgetary allocations, and legal reviews. It is also determined by training of officers, staff establishment and provision of appropriate equipment and facilities. On the other hand the external factors are those of the environment in which this takes place. They include the society which in this study is represented by the Ethiopian and Somali Diaspora in Kenya; the actors who include the smugglers, the forgers, the transporters and the providers of safe houses. Other external factors include the push and pull factors of human smuggling such as civil conflict, endemic poverty and droughts in the source countries and expectation of better life in the countries of destination.

The diagram shows various interrelations among different institutions and actors that work together to either facilitate or hinder human smuggling. The major variables are the government players led by the immigration department who are charged with controlling human smuggling in particular and illegal immigration in general by arresting perpetrators and deporting or repatriating the smuggled persons back to their countries. The actors play an important role in facilitating human smuggling through corruption and infiltration of the government agencies to defeat their effort in curbing corruption. They are also responsible for recruiting, harbouring and or transporting the illegal immigrants to or through Kenya. The other major player in this complex web of interrelations in the human smuggling phenomenon is the society which is represented here by the Ethiopian and Somali Diaspora in Kenya. The Diaspora has been built overtime through both legal and illegal migration. The role of the Diaspora is the provision of information and safe houses for the new arrivals. They also offer employment and protection from law enforcers. They therefore facilitate human smuggling and thus impede the department's effort to combat the vice.

Control of human smuggling is achieved when there are adequate and secure borders through the deployment of adequate personnel who are well trained and well equipped. In addition, adequate budgetary allocations and strengthening of legal instruments also contribute towards control of human smuggling.

Figure 2.1 Conceptual Framework



CHAPTER THREE: RESEARCH METHODOLOGY

3.1 Introduction

This chapter outlines the research site, the research design, the target population of the study, sampling technique and the method of data analysis that was applied. It also includes a section on the ethical considerations undertaken by the researcher.

3.2 Research Site

The site of the study comprised of the Immigration department's sections in Nairobi and selected stations which are either at the border or lie within known smuggling routes. These included Jomo Kenyatta International Airport and Immigration Headquarters in Nairobi, and border stations of Namanga and Liboi. Others were Garissa and Isiolo which are basically patrol bases.

The sites were purposively selected because owing to their locations or special role they come across human smuggling especially of Ethiopians and Somalis which are the subject of this study. For instance, Garissa and Isiolo lie on the route from Somalia and Ethiopia respectively. The two stations are further mandated to check on illegal migration from those regions. Liboi on the other hand lies on the Kenya-Somalia border and is major entry point to Kenya in that border. JKIA on the other hand is a major hub within the region where passengers connect flights to most parts of the world. Smuggled persons travelling by air through Kenya en route to other destinations would use the airport. At the Immigration Headquarters, the investigation and prosecution section that is responsible for investigation and prosecution of all immigration offences; and deportation/repatriation of all foreigners arrested in the country was selected. The section also holds illegal immigrants who are awaiting repatriation to various destinations hence it was convenient to contact the key informants at one point.

In addition to these reasons, Immigration Department is mandated to control entry and residence of all foreigners. The Department is also the Lead Agency in border management which means that it coordinates all other security agencies in border management. The immigration officers were therefore suitable to give their firsthand experience in the issue of human smuggling. A

major consideration for purposively selecting the said stations was the researcher's knowledge of the study sites as he has worked for the Department of Immigration for several years.

3.3 Research Design

The research used descriptive survey design and utilized mainly quantitative approach and supplemented by qualitative approach. Both approaches were used in order that different aspects of the investigation could be dovetailed as the two approaches complemented each other (Hammersley, 1996 in Bryman 2006:455). Orodho (2005) states that descriptive survey design is a method of collecting information by interviewing or administering questionnaires to a sample or individuals. Mugenda and Mugenda (1999) noted that a survey is an attempt to collect data from members of a population in order to determine the current status of that population with respect to one or more variables.

3.5 Units of Analysis and Observation

According to Singleton *et al.* (1988) the unit of analysis is that which the researcher wishes to study, understand or explain. The unit of analysis for this study was the capacity of the Department of Immigration to control human smuggling. The unit of observation is the element or aggregation of elements from which information is collected (Singleton *et al.*, 1988). The units of observation in this study were respondents who were immigration officers as they are well placed to understand the subject matter.

3.6 Sources of Data

The data sources were both primary and secondary. The secondary data and information was obtained from published and unpublished sourced from through libraries, websites, journals newspapers, and published research work.

Primary data was obtained from immigration officers who have firsthand information on human smuggling by virtue of their mandate and deployment. Another source of primary data was key informants drawn from persons who had entered Kenya through human smuggling and had gone through the due process in court. They provided information that was useful in supplementing

data obtained from the key respondents. Further, observations were recorded to provide more information to the study.

3.7 Target Population

According to Borg and Gall (1989), target population or universe of the study is described as all members of real or hypothetical set of people events or objects from which a researcher wishes to generalize the research study. The target population for this study included all the 754 Kenyan Immigration Officers from all over the country. In addition, the researcher interviewed 6 key informants drawn from released smuggled persons awaiting repatriation. There were three Somalis and three Ethiopians drawn from different cohorts of repatriates.

3.8 Sampling Design

The research adopted both probability and non probability sampling techniques. Orodho and Kombo (2002) define sampling as the procedure a researcher uses to gather people, places or things to study. In probability sampling, every member of the population has an equal or random chance of being selected and the sample is representative of the larger population. In this study, purposive sampling which is a form of non probability sampling approach was also used. It is an approach which is used when a population consists of subjects who have a special quality or information we want to study (ibid).

Purposive sampling was applied in selecting the sections and stations within the Department of Immigration that dealt to a large extent with human smuggling specifically of Ethiopians and Somalis. The stations purposively selected were Garissa; Namanga; Liboi; Jomo Kenyatta International Airport (JKIA); the Investigation and Prosecution Section (headquarters); and Isiolo. Where the population in the selected station or section was large such as Jomo Kenyatta International Airport, simple random sampling was adopted to come up with an appropriate sample. The Investigation and Prosecution section in the headquarters for instance is particularly important as it is responsible for investigation, prosecution and repatriation of all immigration offenders in the country. It is the only section in the Department that is responsible for repatriation and deportation of all foreigners.

The researcher sampled the 30 immigration officers from a total of 150 from JKIA by use of simple random sampling. Another sample of 5 respondents was also obtained from 30 officers from headquarters through simple random sampling. The rest of the stations had smaller populations and based on their importance, the whole population obtained as the sample. This included Namanga (20), Isiolo (12), Liboi (5) and Garissa (15). Therefore a total of 87 respondents were the target sample for the study. Based on this, the sample frame and sample from each station/section is as shown on Table 3.1.

Table 3.1: Number of Immigration Officers in Selected Stations/Sections and Sample Size

Station	JKIA	NGA	LIBOI	ISIOLO	HQs	GARISSA	TOTAL
No.of officers	150	20	05	12	30	15	232
Sample size	30	20	05	12	05	15	87

However, out of the target sample of 87 officers, 73 participated in the study. To enrich the information received from the 73 respondents, 6 key informants who entered Kenya as a result of smuggling and had been released after their sentences were interviewed. Most of those arrested and charged in various parts of the country are normally brought to the immigration headquarters, Nairobi for repatriation so it was easy for the researcher to meet and interview them. In every month, the Section repatriates a number of foreign nationals. Therefore, 6 purposively selected foreign nationals comprising of 3 Somalis and 3 Ethiopian nationals from different cohorts were interviewed by the researcher.

3.9 Techniques of Data Collection

According to Orodho (1998:82) the technique of data collection depends on the topic and inclination of the researcher as well as the situation in which the research takes place. This research utilized a questionnaire which had both closed-ended and open-ended questions. The questionnaire was self administered 87 immigration officers who were the targeted respondents but 73 responded.

In addition face to face interview with key informants was also applied to supplement the data obtained from the questionnaires. The interview was done using an interview guide. The interview was conducted by the researcher personally and it took an average of one hour per respondent.

3.10 Data Analysis

The collected data in form of the completed questionnaires and field records underwent editing to detect and correct errors and omissions. It was then put in categories or classes through coding or classification according to the study's objectives. Quantitative data was derived from the demographic sector of the questionnaires and other closed-ended questions and was analyzed using Microsoft Excel and Statistical Package for Social Science (SPSS). From the analysis, the researcher then drew statistical inferences to form the basis of the study findings through computation of percentages and distribution tables. Qualitative data was generated from the open-ended questions and from face to face interview with key informants by use of an interview guide. This was then analyzed thematically and the results presented in prose. Qualitative observational data was also analyzed thematically and the results presented in prose.

3.10 Ethical Considerations

As Babbie (2008) states, social scientists, like any other group have agreed on codes of conduct while carrying out research. This involves requirement for researchers to be aware of the general agreements shared by researchers about what is proper and improper in the conduct of scientific inquiry (Babbie, 2008:67). This study adhered to all appropriate ethical agreements for social researchers which include confidentiality; voluntary participation; no harm to the participants and disclosure of limitations of the analysis and reporting.

A research project guarantees confidentiality when the researcher can identify a given person's identity but promises not to do so publicly (Babbie 2008: 70). The questionnaire survey was self administered to the respondents. Whereas there was face to face contact, the study took into consideration confidentiality effectively protecting the identity of the respondents. This was done by avoiding the use of names or identifiers while compiling the report.

The questionnaire indicated clearly that the participation is on voluntary basis. The key informants were interviewed only because they agreed voluntarily to participate and were informed that they could choose to terminate the interview at any stage. There was no incentive or reward given to participants.

The principle of informed consent meant the research participants were given as much information as required to enable them to make an informed decision. Further, participants were made aware of their entitlement to refuse at any stage for whatever reason and to even withdraw data (Bryman, 2008:511). The respondents in this study who included immigration officers and released smuggled immigrants were accorded an opportunity to enable them make informed consent before participating.

3.11 Fieldwork Experiences

This section presents the researchers experiences in the field and includes the challenges and ways in which they were overcome. The fact that the researcher works in the Department of Immigration brought both challenges and advantages. The advantage was that most respondents knew me and were very cooperative in terms of answering the questionnaires and giving access to the smuggled immigrants under their custody who were my key informants. The disadvantage is that during the time of the field study, I was in charge of administration and some officers were a bit hesitant thinking that I was there on official duty. The researcher allayed their fears by explaining to them that he was there in his private capacity as a student.

In addition, the key informants were hesitant to participate especially when they knew that the researcher was an immigration officer. They thought it was part of the investigation even though they had gone through the court processes and were just awaiting repatriation. It took a lot of convincing for the key informants to participate. The other issue was language barrier as few of them spoke English. In order to get the required number, the researcher had to make several visits which resulted in obtaining the 6 key informants targeted. Some of the stations such as Garissa were distant from Nairobi where the researcher is based therefore required a longer time to cover. In spite of the challenges encountered, the researcher was able to get all the responses expected which informed this study.

CHAPTER FOUR: DATA ANALYSIS, PRESENTATION AND DISCUSSION OF FINDINGS

4.1 Introduction

The main purpose of this study was to assess the capacity of the Department of Immigration to control human smuggling in Kenya. This chapter has two major parts: the first part presents respondents' social and demographic background information whereas the second part is an analysis of data. The analysis of data is guided by the three objectives of the study namely:

1. To examine the extent to which the Kenyan and International Legal framework suffice to curb human smuggling in Kenya,
2. To assess the capacity of Kenya's Department of Immigration to control human smuggling from Ethiopia and Somalia.
3. To establish the extent to which corruption facilitates human smuggling from Ethiopia and Somalia.

4.2 Social and Demographic Background Information of the Respondents

This section addresses the background variables that capture the respondents' social and demographic characteristics. This study covered 73 respondents who were all immigration officers drawn from 6 selected stations of the Department of Immigration. The selected stations were: Jomo Kenyatta International Airport (JKIA), Headquarters (HQS), Namanga (NGA), Isiolo Patrol Base (IPB), Liboi (LBI) and Garissa Stations (GSA). In addition to these respondents, the researcher interviewed 6 key informants who had entered Kenya through human smuggling and had been arrested and charged in court. Table 4.1 shows the distribution of the respondents by stations against the target sample.

Table 4.1: Distribution of Respondents by Stations

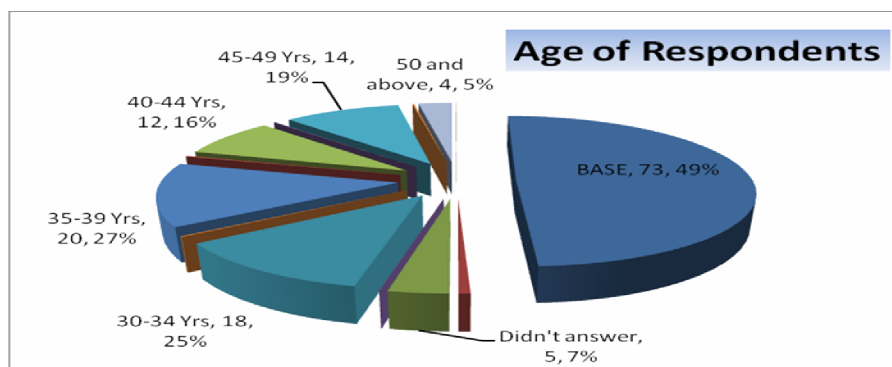
STATION	JKIA	NGA	LBI	IPB	GSA	HQS	TOTAL
Target sample	30	20	5	12	15	5	87
No. of Respondents	26(87%)	18(90%)	3(60%)	10(83%)	11(73%)	5(100%)	73(84%)

Table 4.1 shows that the study covered 73 respondents out of the target sample of 87, accordingly the study covered 84% of the target sample. The targeted sample had the highest response from the headquarters (100%) and the lowest was Liboi with 60 % response. The relatively low response from Liboi may be explained by the fact that the officers of that station were not on full time duty as they had been deployed temporarily to Garissa owing to insecurity in their station. A few of them could therefore be reached.

Majority of the respondents 58 (79%) were male while 15 (21%) were female. It was observed that Liboi, Garissa and Wajir did not have any female officer probably because they are generally viewed as hardship areas. This also explains the low number of female respondents compared to the male ones in the entire sample. In Kenya, the government is reluctant to post female officers to hardship areas as it is too demanding for them and involves separation with their immediate families.

The study also measured age by asking respondents to indicate their actual years of birth. Age is important as it can influence the level of use of modern technology. Youthful officers are expected to embrace technology easily as opposed to older ones. The age distribution per station is shown in Fig 4.2

Fig 4.1 Age distribution of respondents by Age



The findings as captured in Figure 4.2 show that the highest number of respondents were aged between 35-39 years 20 (27%) followed by those aged between 30-34 years 18 (25%). These results show that majority 52% of respondents were under 39 years old hence it can be concluded

that the department has young officers. This could be explained by the fact that most of the respondents were drawn from outposts rather than the headquarters or regional offices. It is expected that most of the older officers are in management positions and are thus based at the headquarters and regional offices.

As expected, majority 86% of the respondents were Christians followed at a distant second by Muslims 5%. This can be attributed to the fact that Kenya is largely a Christian country. This study also sought to measure the highest level of education of each respondent. The level of education is important in that well educated officers would be expected to have better understanding of legal provisions and be more receptive to new technology.

The findings reveal that majority of the respondents 51 (70%) had a Bachelor's degree followed by 17 (23%) who have Master's Degrees. The large number 69 (94%) of those who had at least Bachelor's degrees can be attributed to the Scheme of Service for immigration officers whereby the minimum qualification for employment as an immigration officer is a Bachelor's degree. Masters degree is also a requirement for purposes of promotion hence the relatively high number of respondents with a master's degree. It can be deduced that most of the respondents are well educated.

The study measured the duration of service of the respondents in their current stations. This is important because experience is a strong pointer to the officers' understanding of their work and knowledge of challenges and opportunities available. The results reveal that a large number of the respondents 47 (65%) had served in their current stations for less than 3 years followed by 15 (21%) who had served for 3 to 5 years. These results imply that most of the immigration officers have served for an average of 4 years in their stations which is a relatively short period. The administrative practice of the department is to keep officers in out stations considered to be hardship areas for not more than three years. These findings confirm that the department adheres to this practice though the average period served is slightly high probably due to large number of the sample drawn from JKIA which is not considered a hardship station.

A further attempt was made to measure the officers' length of service in the department by asking the respondents to indicate the actual date of joining the department. This is also important in establishing the level of experience and by extension the competence to handle immigration issues in the workplace. The findings reveal that well over half of the respondents 49 (59%) have worked for 10 or less years as compared to 34 (41%) who have worked for over 10 years in the department. These results are corroborated by the current establishment in the Department where the highest number of officers is those who were recruited in the years 2005, 2007 and 2009 respectively. This implies that a high number of officers have little experience in their work which could impact negatively on their service delivery.

In seeking to show the distribution of each respondent's rank, the study found that a large number of the respondents 36 (49%) were of the rank of Immigration Officer I followed by Senior Immigration Officer 18 (25%) and Chief Immigration Officer 13 (18%). Thus, most of the respondents are those who are within the lower ranks and also form the bulk of the personnel in the service.

Finally, the study also attempted to document key duties for immigration officers. Respondents reported the following as the key duties in order of popularity. About 41 (56%) are engaged in border control, manning checkpoints and passenger profiling and clearance at ports of entry. These duties form the key mandate of the Department which is the control of entry, stay and exit of foreigners in the country. This is followed by enforcement, patrols and surveillance at 22 (30%). This is also an important duty as it helps in deterring illegal immigrants from entering and or residing in Kenya. It can therefore be concluded that a large number of officers have been allocated duties that deal with the core mandate of the department which is control of entry, exit and residence of foreigners.

4.3 Effectiveness of the Existing Legal Framework in Curbing Human Smuggling

According to Siegel (1999:38), criminal law has a social control function which refers to the ability to control, restrain, and direct human behavior through its ability to punish and correct law violators. Siegel adds that for the law to be effective it must be constantly revised to reflect cultural, societal and technological adaptations of common acts (p.12). ICHRP (2010:23)

observes that states have control over border crossing and over who has access to legal residence within the state borders. States therefore use laws to ‘jealously guard their exclusive rights to encourage, regulate or prohibit movements of persons’. Accordingly, this study deemed it worthwhile to find out the effectiveness of the existing local and international legal framework in addressing human smuggling of Somalis and Ethiopians into and through Kenya. This section presents the findings from the data collected from respondents on local and international legal framework on human smuggling. The sub themes in this section include the respondents’ knowledge of the relevant laws that addresses the issue of human smuggling and the challenges and opportunities in implementing the said laws. In addition, the respondents’ perception of the effectiveness of the laws in curbing human smuggling is also included was also explored.

As a starting point, the respondents were asked to state whether they were aware of the laws that deal with immigration. A majority of the respondents 71 (97%) indicated they were aware. When further probed to name the specific laws they were aware of, 37 (51%) cited the Kenya Citizenship and Immigration Act 2011 (KCIA) while 13 (18%) respondents cited the Kenya Citizenship and Foreign Nationals Management Act 2011. Other respondents 7 (10%) were aware of the Kenya Citizenship and Immigration Regulation 2012 and the Kenya Constitution. The remaining respondents were aware of the following laws; Refugees Act 6 (8%) and the Penal Code 1 (1%).

Findings in this study indicate that immigration officers have a poor grasp of the key legal instruments for instance just over half of the respondents cited KCIA which is an instrument that they are expected to refer to on a daily basis. It was expected that all officers would have cited it. It is also noted that those who cited the Kenya Citizenship and Immigration Regulation 2012 were modest yet it is the legislation that operationalizes the key legal instrument. It is also surprising that none of the respondents cited the Smuggling Protocol which is the key international legal instrument in the fight against human smuggling. This gap in knowledge is quite significant as it may explain why human smuggling thrives despite application of various strategies. Considering that there is no other comprehensive human smuggling legislation in Kenya since the protocol has not been domesticated, then there is an urgent need to expose all officers to the protocol.

4.3.1 Knowledge of the Kenya Citizenship and Immigration Act 2011 (KCIA)

The KCIA came into force in 2011 and it consolidated all the immigration laws that were hitherto in different Chapters. The Act with its regulations is the key legal instrument that gives the Department of Immigration its legal mandate. It defines, inter alia immigration offences and prescribes sanctions for the said offences. It also outlines who may or may not enter or reside in Kenya and the conditions for entry and or residence. Its understanding therefore enables immigration officers to effectively execute their mandate. In this regard, the study sought to measure the respondents' rating of themselves on their knowledge of the KCIA on a scale ranging from Excellent to Very Poor.

The findings indicate that the knowledge of the law by respondents across different stations is good as evidenced by 56 (80%) of the respondents who indicated that their knowledge of the law was good or excellent. Only 14 (20%) of the respondents rated their understanding as fair but none of them rated their knowledge as either poor or very poor. It would appear that the response could have been influenced by a self reporting bias since slightly over half of them had cited this particular law when asked to list all the laws they knew. The next was therefore to further probe to appreciate their knowledge of the key provisions relevant to this study. to indicate if they were aware of certain specific provisions of the Act. The study therefore sought to measure the respondents' knowledge of the specific provisions of the Act that prescribes fines for carriers who transport illegal immigrants to Kenya. This was seen as a key consideration as it is the most practical way of deterring carriers from bringing into Kenya inadmissible persons such as smuggled persons. The respondents were asked to tick Yes or No to indicate awareness or lack of it. Table 4.8 is a cross tabulation showing the findings per station. The cross tabulation is important in comparing the level of conversance between and within stations.

Table 4.3: Awareness per station of the legal provision to surcharge a carrier found transporting illegal immigrant(s)

	Hqrs	Gsa	JKIA	Nga	IPB	Lbi	Total
Yes	8 (100%)	10 (91%)	24 (96%)	13 (87%)	6 (75%)	3 (75%)	64 (90%)
No	0 (0%)	1 (9%)	1 (4%)	2 (13%)	2 (25%)	1 (25%)	7 (10%)
Total	8 (100%)	11 (100%)	25 (100%)	15 (100%)	8 (100%)	4 (100%)	71(100%)

Majority of the respondents 64 (90%) reported that they were conversant with the provision under the Kenya Citizenship and Immigration Laws that prescribes fines for carriers who transport illegal immigrants to Kenya. Only 7 (10%) of the respondents said that they were not conversant with the provision under the Kenya Citizenship and Immigration Laws. The percentage of respondents who were conversant with the provision in the different stations is generally high with the lowest being 75% in Liboi and Isiolo Patrol Base, and the highest being the headquarters at 100%. Surprisingly, there are a few officers who reported being unaware of the existence of such a key provision in the fight against human smuggling and illegal immigration in general. A majority of the respondents however stated that the fine is meted either rarely or often 31 (52%), whereas 16 (27%) stated that it is never meted. Only 5 (8%) stated that the fine is meted to offending carriers very often. From this finding it can deduced that the implementation of this key provision of the law is quite low.

The respondents were also asked whether they face any challenges in imposing fines to carriers who ferry illegal immigrants. Out of the 59 respondents who answered the question, 47 (80%) indicated that there were challenges while 12 (20%) said there are no challenges. The challenge cited by the highest number of respondents 25 (57%) was impunity by carriers who enjoy protection by powerful individuals in government; this was followed by those who cited the law as being ambiguous or is not known by the officers who are expected to implement it 8 (14%).It

can therefore be deduced that corruption is a major obstacle in the implementation of this important provision of the law.

The respondents were also asked on the effectiveness of fines in deterring carriers from bringing in illegal immigrants to Kenya. They were asked for their ratings ranging from ‘Highly Deterrent’, ‘Deterrent’, ‘Cannot tell’, ‘Fairly deterrent’ to ‘Not deterrent’. The findings show that the highest number of respondents 29 (46%) said the fines were deterrent, 9 (14%) said they were fairly deterrent, while 11 (17%) said they were highly deterrent. It can be deduced that majority of the respondents believe that the fine is effective in deterring carriers from bringing in illegal immigrants. Thus, by being effective in deterring carriers, the use of KCIA assists in curbing human smuggling in Kenya.

4.3.2 Knowledge of the United Nations Protocol Against Transnational Organized Crimes and the Protocols Thereto

Since human smuggling is a form of a transnational organized crime, combating it effectively requires a transnational approach through cooperation. The international legal instrument that provides for this approach is the United Nations Protocol Against Smuggling of Human Beings which supplements United Nations Protocol Against Transnational Organized Crimes that Kenya is a state party to. The study thus attempted to measure the respondents’ knowledge of the Convention and the protocol, the status of the implementation of some of its key provisions, challenges faced whilst implementing them and opinion on its effectiveness.

The study found that majority of the respondents 59 (81%) were aware that the Government of Kenya is a state party to the United Nations Convention against Transnational Organized Crimes and the Protocols thereto. Only 14 (19%) of the respondents were not aware. The respondents were also asked to rate their knowledge of the United Nations Protocol against Smuggling of Human Beings on a scale ranging from ‘A Great Deal’, ‘A lot’, ‘Modest’ to ‘Little’. The findings are shown on Table 4.4.

Table 4.4: Knowledge of the United Nations Protocol against Smuggling of Human Beings

	Hqrs	Garissa	JKIA	Namanga	IPB	Liboi	TOTAL
Great deal	0 (0%)	0 (0%)	2 (11%)	0 (0%)	0 (0%)	0 (0%)	2 (3%)
A lot	0 (0%)	1 (13%)	4 (12%)	5 (33%)	0 (0%)	2 (50%)	12 (20%)
Modest	3 (43%)	6 (75%)	4 (21%)	5 (33%)	6 (100%)	1 (25%)	25 (42%)
Little	4 (57%)	1 (13%)	9 (47%)	5 (33%)	0 (0%)	1 (25%)	20 (34%)
TOTAL	7 (100%)	8 (100%)	19 (100%)	15 (100%)	6 (100%)	4 (100%)	59 (100%)

The findings show that the respondents' knowledge of the United Nations Protocol against Smuggling of Human Beings was: modest 25(42%), little 20(34%) and a lot 12 (20%). It can be deduced that most of the respondents did not have sufficient knowledge on the protocol probably because they have not been sufficiently sensitized on it. The implication of this is that the officers are not able to use the law to effectively curb human smuggling in Kenya. the fact that the protocol has not been domesticated under the Kenyan laws may also have contributed to an apathy towards it by the policy makers and the officers expected to implement it as there is no ownership or attachment to it. This gap is a major weakness in the fight against human smuggling in Kenya as the protocol is the only comprehensive legal instrument for combating human smuggling. As a quick win, all immigration officers should be trained on this important instrument. As a long term strategy, the protocol should be domesticated in the Kenyan statutes for easier implementation and ownership.

Article 10 of the Smuggling Protocol urges states with common borders or on routes used by smugglers to continually share information relating to the modus operandi and any relevant information. On this basis the study sought to measure the level of cooperation between Kenya and other states by asking respondents to rate it. The respondents reported as follows; Cooperative 26 (44%), Very Cooperative 19 (32%), Somewhat Cooperative 6 (10%) and Not Cooperative 8 (14%). These results suggest that Kenya and other state parties cooperate on information sharing. A good number of the respondents however that the level of cooperation is modest. This would be due to the poor administrative structures in Somalia as of now additionally the closure of the Kenya-Somalia border may hinder any form of cooperation.

However, the respondents' opinion on the effectiveness of the protocol is not as high as would be expected. Only 1 (2%) of the respondents rated it as very effective while the highest number 28 (48%) rated it as effective. On the flipside, 18 (31%) which is a relatively high number rated it as ineffective while the rest 11 (18%) percent were indifferent. The respondents overwhelmingly indicated that the smuggling protocol can only be effective where the source, transit and destination countries are parties to it. This implies that international cooperation is very necessary for the success in the fight against human smuggling. The relatively large number of those who indicated 'indifferent' in their opinion would imply that the officers have little exposure to the protocol.

The study further attempted to find out if there are any challenges that make the legal instruments ineffective. This was done by asking the respondents to state the challenges that they faced whilst trying to enforce the laws. Some of the challenges experienced when applying laws on human smuggling were cited as; interference or non cooperation of other stake holders 18 (41%), that smuggled people never admit to being smuggled as they are part of it 8 (18%), vague and conflicting laws. These challenges act as drawbacks in the fight against human smuggling while using the available legal instruments.

Respondents were further probed to rate their opinion on the whether the local and international legal instruments were adequate in addressing human smuggling, the findings showed that 30 (41%) respondents agreed , 19 (26%) respondents disagreed with it, 9 (12%) strongly agreed

while 3(4%) strongly disagreed. Thus, respondents who indicated that the legal instruments on immigration were sufficient to deter human smuggling in Kenya were slightly more than those who indicated otherwise. This slight disparity can be explained by the different stations which encountered varied challenges brought by human smuggling. Despite the challenges, the study found out that the local and international legal instruments were generally adequate in addressing the issue of human smuggling.

4.4 The Capacity of the Department of Immigration to Combat Human Smuggling from Ethiopia and Somalia

The second objective of the study was to assess the capacity of Kenya's Department of Immigration to control human smuggling from Ethiopia and Somalia. The overall capacity of the department will be looked at in two main themes: the effectiveness of the strategies employed to curb human smuggling and the general capacity building of the Department to enhance its ability to deal with illegal migration.

4.4.1 Strategies adopted By the Department of Immigration to Curb Illegal Migration

The government of Kenya has adopted several strategies to combat illegal immigration from Ethiopia and Somalia. The strategies include the closure of the Kenya Somali border; visa regimes; enforcement which involves arrest, prosecution and deportation; the lead agency concept and patrol and surveillance of the likely smuggling routes.

As one of the strategies to curb an influx of Somalis to Kenya, the government closed the common border between Kenya and Somalia in the year 2007. The closure which prevails to date prohibits any crossing to and fro except for purposes of humanitarian supplies which must be authorized prior to crossing. Similar studies in the USA-Mexican Border (Kyle et al, 2001; Araia, 2010) posit that even if immigration controls are tightened human smuggling still thrives as smugglers change tactics such as corruption or use of very dangerous methods to conceal the smuggled persons. In light of the findings by the said studies, this study sought to measure the effectiveness of the closure. The respondents were asked whether the closure of the Kenya-Somalia border achieved the intended purpose or not, a majority of the respondents 65 (89%) stated that it did not while only 7 (11%) said it did. The reasons cited for the failure were given

as porous borders 47 (87%) and illegal immigrants taking advantage of refugee laws 4 (7%) which treats Somali asylum seekers as prima facie refugees. Other reasons cited included proximity of refugee camps, corruption and strong push factors from the source country. The porosity of the border and the ease with which one can enter was corroborated by the key informants who entered through the Kenya Somali border. They all stated that they did not come across any government official at the border crossing. One Somali key informant stated:

“....after travelling for nearly a whole day through bushes and winding paths from Baidoa, we entered Kenya at a place called Liboi according to one of the ‘Mukhalas’. We were all scared as we had been told of scary stories of police harassment in Kenya. Fortunately for us, we didn’t come across any until a few kilometers from Dadaab where we found a roadblock manned by soldiers. Our lead ‘Mukhalas’ stepped out and exchanged greetings with the leader, within a few minutes we were let through and arrived safely at Dadaab.”

This is echoed by another Ethiopian Key informant who explained that they were smuggled through Moyale aboard a pickup truck who adds:

‘..... We drove through what appeared like cattle tracks for quite a long time without seeing any settlement, it is only on the second day that we were stopped at a place I learnt later was Archers Post near Isiolo. We were arrested and taken to court where we were sentenced and imprisoned for three months.’

From this, it can be concluded that the porous borders and corrupt security officers make it easy for illegal immigrants to enter Kenya.

Under the KCIA, Somali citizens need to apply for visas well in advance and get approval before embarking on their journey to Kenya. This gives the government ample time to vet the would-be immigrant before they arrive and ideally this will only let in legal immigrants. The study attempted to find out how effective this visa regime in controlling smuggling of Somalis into Kenya. In order to measure this, the respondents were asked whether they were conversant with the various visa regimes. Majority of the respondents 69 (95%) indicated that they were conversant with the various visa regimes as outlined in the Kenya Citizenship and Immigration Act 2011 while only 4 (5%) were not. Most of those who did not know were mainly from Garissa, Isiolo and Liboi as they do not issue any visa. A majority of the respondents 51 (75%)

believe that the referral visa regime deterred entry of illegal immigrants while 17 (25%) of the respondents thought it does not. The respondents who reported that it is deterrent explained that applicants are properly vetted before being allowed to come to Kenya. The few respondents who said that the visa regime did not deter entry of illegal immigrants from the targeted countries gave several reasons. They explained that illegal immigrants go round this by using forged passports of other countries, using porous borders to enter irregularly, bribing immigration officers or other border officials. The key respondents interviewed corroborate this as most of them used one or a combination of the methods to enter Kenya as represented by the response of one Somali Key Informant:

“.... Our destination was Nairobi but three Somali colleagues and myself were advised to fly to Uganda and travel to Kenya using a specific bus. At the border, our mukhalas took away our Somali passports and gave each of us a Kenyan ID card and escorted us on foot across the border where we boarded the bus again. We travelled all the way to Eastleigh. without any problem.”

It can be deduced from these findings that visa regime per se is not effective in controlling human smuggling. It may be effective if the integrity of those charged with securing our borders were high and also if surveillance and patrol were enhanced to ensure those who flout immigration laws are nabbed and charged accordingly.

In an effort to introduce a coordinated border management approach in Kenya, the Department of Immigration was given the role of lead agency in border management through a presidential circular No 1 of 2008. The lead agency concept is an appreciation that border management requires interagency cooperation under a lead and coordinating agency. The Coordinated Border Management concept is operational in countries such as the United States (US Customs and Border Protection) and United Kingdom (United Kingdom Border Agency). The study thus sought to find out the effectiveness of this role in curbing human smuggling. Effectiveness here refers to the positive results or performance achieved through a satisfactory lead agency role of the Immigration Department. Effectiveness of border management is indicated by the control of human smuggling from Ethiopia and Somalia.

The study found that a large number of respondents 36 (50%) indicated that the lead agency role of the immigration service in curbing illegal migration was effective while 19 (21%) and 6 (18%) of the respondents indicated that it was ineffective and very ineffective respectively. The respondents who felt it was not effective gave several explanations such as lack of resources and agencies withholding information available to them 24 (35%), lack of cooperation from other agencies 24 (35%), other agencies claiming to be the lead agency and looking down upon the Immigration service 23 (34%), porous borders 18 (26%) and interference by other agencies 9 (13%). Thus, the reasons can be summarized as lack of cooperation among the various agencies. This low level of cooperation can be attributed to resistance from the other security agents who are mainly from the disciplined forces. They may not be comfortable to be led and directed by a civilian authority (immigration officers) especially on matters touching on security. It should also be noted that this lead agency concept agencies are not bound together with firm structures. Each agency continues with their reporting structures which have no linkage with the lead agency. For the strategy to succeed there is need for a well structured command system complete with an operations budget. All officers brought together should be answerable to the agency so established. Such a system works well in the USA and UK.

Physical borders are the weakest link in border control as those with intention to enter clandestinely can easily do so by using unauthorized border crossings. To cure this, there is need to 'create a virtual fence through the use of surveillance and patrols' (Papademetriou et al,2011). In the case of Kenya where the border is highly porous on one hand and a strong pull and push factors on the other that can be likened to that of Mexico-USA border, border patrols and surveillance are a very important component of border control. The study therefore sought to find out the effectiveness of the border patrol and surveillance in Kenya. Most respondents reported that they carried out patrols and surveillance in their stations mostly on a daily basis followed far behind by weekly. The effectiveness of border surveillance and patrols was found to be effective 25 (52%) followed by very effective 11 (23%) and modest 10 (21%). Only 2 (4%) of the respondents indicated it was not effective.

Those who thought the patrols and surveillance were not effective explained that there were no vehicles or where available they were unserviceable. Other reasons include lack of fuel,

insecurity, vast areas and poor road networks. Most of the key informants stated that they travelled long distances without being stopped for checks. One of the key informants said;

“Me and ten other Ethiopian colleagues en route to South Africa travelled by road at night from Moyale to Isiolo on a hired four-wheel drive vehicle driven by a Kenyan man. We didn’t come across any roadblock or check by any government agent.”

The above account shows that smuggling routes are not effectively manned and it is therefore easy for illegal immigrants to enter Kenya without being detected. As compared to patrols and surveillance by countries such as USA, Australia, the Netherlands and even the Republic of South Africa (RSA), the level of surveillance and patrol employed in Kenya is rudimentary which corroborates the key respondents’ observations. In RSA for instance, according to Araia (2009) RSA-Zimbabwean border is heavily patrolled by South African Police Service and South African National Defence Forces. They utilize vehicles, reconnaissance, and surveillance facilities. The border in some parts is fenced using barbed wire. Apart from the border defense, main roads are well manned and farms in the vicinity are regularly patrolled to remove any illegal immigrant. It can therefore be concluded that patrols and surveillance in Kenya are not as effective as would be expected. The data that was obtained from the respondents might have been influenced by the self reporting bias or a misconception by the respondents that they were doing a good job while in essence they were doing very little. Patrols should not be limited to the border points and smuggling routes only, there should regular patrols in major urban areas to remove illegal immigrants. a combination of these will make it hard to enter clandestinely and also to live in Kenya illegally thus reducing the incidence of human smuggling in particular and illegal immigration in general.

4.4.2 Capacity Building

This section addresses capacity building of the department in terms of training, staffing and the use of technology in the fight against human smuggling. The areas that will be covered in capacity building include staff compliments, staff training, and provision of equipment

It is the policy of the government on training that officers are continually trained so as to upgrade their core competencies, knowledge, and attitudes. The training should also be based on

identified performance gaps GoK (2006). UNODC (2012) adds that training of border officials is important in equipping them to face the many challenges and hazards associated with human smuggling. It is therefore clear that training is important hence the study inquires on whether this policy direction is implemented. The study found out that immigration officers undergo various training courses to equip them in executing their mandate. A large number of respondents 35(48%) agreed that they have been adequately trained in all their areas of operations. A relatively high number 17(23%) felt they have not been adequately trained in the key areas. Officers who have not been adequately trained are not suitable to carry out their mandate efficiently and risk compromising the security of the state especially if they are deployed to sensitive entry points.

Respondents who reported having been trained were further probed to provide specific area of training they have undergone. Specific areas of training cited included: Document examinations and imposter detection 24 (38%); Immigration law and public relations 7 (10%); Basic security 8 (12%) and use of PISCES, smuggling/human trafficking and refugees law 3 (4%). It can be deduced that the Immigration Department provided various training modules which covered the entire roles performed by officers hence sufficiently preparing them for their work. However few officers 6 (9%) were trained in human smuggling, the subject of this study. It implies that officers do not understand this phenomenon well hence may limit their effectiveness in combating it. This implies that a large number of officers are not trained on a key area of border control a core mandate of the department. This impacts negatively on enforcement of the act as they cannot easily identify human smuggling in their borders and even if they do, they may do shoddy prosecution leading to offenders getting light sentences. To ensure that officers get the relevant training, the curriculum needs to be revised regularly and a comprehensive training needs assessment carried out to ensure that training opportunities are distributed in an equitable manner. This will also ensure that situations where few officers are over trained whereas others have little or no training opportunities. In the interim, officers should be deployed where their training can be utilized well.

The approved staff compliment of the Department is 1,355 but the staff on post is 754 which show that there is a shortfall of 601 officers. The variance in numbers affects the efficiency and

effectiveness of the service. In order to assess the level of staffing per station, respondents were asked to rate their opinion on the proposition that their stations had optimum staffing. The findings show that 29 (40%) of the respondents thought they had optimum number of officers as compared to 20 (27%) who disagreed. Though some stations expressed satisfaction with the number of staff, some others such as JKIA, Garissa and Liboi were affected by understaffing. It can be concluded that there is shortage of staff in the stations whose strategic locations are important in controlling entry of illegal immigrants.

Modern technology is important in strengthening the capacity of Kenya's Department of Immigration in the control of human smuggling particularly from Ethiopia and Somalia. The study sought to find out the level of technology available for use by officers and the quality and effectiveness of the equipment. Respondents indicated that the equipment that they had at their stations were UV light devices 52 (87%), magnifying glasses 38 (63%), PISCES 13 (22%), Scanners 10 (17%) and Retrochecks 9 (15%). Most of this equipment is basic and is readily available in most of the stations. The respondents also indicated that their mastery of the available equipment was either good or excellent. This can be attributed to training offered to relevant staff whenever a piece of equipment is availed to stations. The conclusion here is that the equipment here is basic and are not sufficient to detect and deter human smuggling. For instance no respondent mentioned any equipment that can be used to detect persons concealed in containers. The equipment mentioned also cannot be used for biometric comparison to detect imposters.

With the current challenges and advancement in technology, modern border control needs to employ modern and sophisticated technology that can detect and help in the deterrence of illegal entry especially through physical land and sea borders. In the USA, some of the technology employed include: Seismic and infrared sensors, unmanned aerial vehicles, satellite and radar coverage and the use of biometrics to identify individuals. This study therefore sought to get the opinion of the respondents on the usefulness of ICT equipment in border control. They gave the following advantages: it enables one to detect inadmissible passengers (chosen by 22 (69%) of the respondents), it stores important information on passengers or applicants 11 (34%), able to detect one applying for a second passport 2 (6%) and that all information regarding a person can

be found easily hence makes clearance easier 2 (6%). However, when the respondents were asked if there was a way by which the equipment was not useful in border control, all of them indicated that it was because the equipment was only for issuance of passports and other travel documents. Indeed, a majority of the respondents also indicated that lack of ICT networking of immigration checkpoints enabled human smugglers to pass undetected. The study further sought to find out if the various stations had adequate equipment. Table 4.12 illustrates these findings.

Table 4.5: Availability of Adequate Equipment Per Selected Stations

	Hqrs	Gsa	JKIA	Nga	IPB	Liboi	Total
Didn't rank	0 (0%)	0 (0%)	2 (8%)	0 (0%)	1 (13%)	0 (0%)	3 (4%)
Strongly agree	0 (0%)	0 (0%)	3 (12%)	0 (0%)	0 (0%)	0 (0%)	3 (4%)
Agree	3 (38%)	2 (18%)	7 (27%)	2 (13%)	1 (13%)	1 (25%)	16 (22%)
Undecided	1 (13%)	1 (9%)	3 (12%)	2 (13%)	1 (13%)	1 (25%)	9 (12%)
Disagree	2 (25%)	7 (64%)	11 (42%)	10 (63%)	4 (50%)	1 (25%)	35 (48%)
Strongly disagree	2 (25%)	1 (9%)	0 (0%)	2 (13%)	1 (13%)	1 (25%)	7 (10%)
Total	8 (100%)	11 (100%)	26 (100%)	16 (100%)	8 (100%)	4(100%)	73(100%)

The findings show that a high number of the respondents 35 (48%), indicated that they did not agree that there was adequate technology for effective border management while 16 (22%) of the respondents were affirmative that the technology was adequate. These results indicate that the equipment is not adequate across the different stations probably due to high costs and inadequate funds. It may also be due to priority given to other areas such as document issuance. Subsequently, most of the respondents also indicated that there is lack of efficient communication facilities at their stations. However, the attitude of all the Immigration officers'

towards the use of ICT in immigration control was largely supportive. From the findings it can be concluded that the level of technology employed for border control is basic and may not be effective in the control of illegal immigrants.

4.5 Extent to Which Corruption Facilitates Human Smuggling

Studies on human smuggling (Araia, 2009 and Spencer 2006) point out that corruption plays a big role in facilitating human smuggling specifically and illegal migration in general. The studies show that human smugglers bribe those charged with manning border controls to facilitate their trade. It was therefore important to find out how significant corruption is in facilitating human smuggling of Ethiopians and Somalis into and through Kenya. The extent of how corruption facilitates human smuggling is discussed under the following sub themes: incidents of corruption in the selected stations; anti-corruption measures employed; and the integrity of security officers charged with manning border controls.

4.5.1 Incidence of Corruption

The literature review revealed that human smuggling thrives through corruption and it is therefore important to assess if this is the case in Kenya. In order to measure this, the respondents were asked whether they agree that human smugglers bribe border officials to facilitate illegal entry. Table 4.7 presents the responses from the respondents.

Table 4.6: Perceived corruption among border officials across the stations covered

	Hqrs	Gsa	JKIA	Nga	IPB	Liboi	Total
Yes	5 63%	6 55%	10 38%	8 50%	3 38%	1 25%	33 45%
No	3 38%	5 45%	16 62%	8 50%	5 63%	3 75%	40 55%
Total	8	11	26	16	8	4	73

The findings show that more than half of the respondents 40 (55%) did not agree that human smugglers bribed border officials to facilitate illegal entry while the rest 33 (45%) agreed.

Although the difference between the two views is small the point made is that corruption does exist and can be attributed to rampant smuggling of Somalis and Ethiopians.

The 33 respondents who confirmed that human smugglers bribe immigration officers were probed further to rate the incidence of corruption in their various stations. A large number of respondents 11 (33%) and 5 (15%) indicated that the incidence of corruption were either rare or very rare respectively. Those respondents who indicated that corruption was rampant were only 8 (24%) which indicates that incidence of corruption depended on opportunities of corruption that are available in particular stations. However, all the respondents indicated that corruption facilitated human smuggling to a great extent despite the existence of anti-corruption measures in all the stations. Considering that there exists a bias among the respondents in reporting levels of corruption amongst themselves, the confirmation of existence of corruption is quite significant. This was validated by key informants who confessed to having paid large sums of moneys to their facilitators who in turn used it to compromise officers charged with the responsibility of border control. It is also important to point out that when respondents were asked to rank their opinion based on their experience on the proposition; ‘corruption is a key driving force in human smuggling’. Results show that most of the respondents 51(70%) agreed that corruption is a key driving force in human smuggling.

These results corroborate previous ones that found that a large number of the respondents indicated that corruption was important in facilitating human smuggling. A large number of the respondents indicated that smugglers had infiltrated government institutions to enable them obtain travel documents irregularly, that transporters of smuggled persons bribe government agents to facilitate human smuggling and that Magistrates are compromised to give lenient fines and sentences to immigration offenders. It can therefore be concluded that human smuggling from Ethiopia and Somalia is facilitated to a great extent by corruption.

Key informants interviewed explained that they paid an average of 800 US Dollars each (equivalent to Ksh71,000) to be facilitated across the border and through the numerous roadblocks along the route. An Ethiopian key respondent had this to say:

“....my family sold a piece of land and handed all the proceeds to a known agent in my village. He promised that with 1000 USD, he could take me safely to Nairobi where it would be easy to plan for my travel to South Africa. I saw him bribe police officers at all the roadblocks we passed through though I couldn’t tell how much he paid.”

This informant confirmed he and his four companions did not have any document on them as they were advised that it was not necessary. It would therefore mean that they entered Kenya illegally and were facilitated through by bribing police and other security agencies along the route. Similarly, most of the Somali key informants said that they had no passports yet they passed through numerous roadblocks. From this it can be deduced that corruption facilitates human smuggling which is consistent with the findings from scholars such as Araia (2009) and Spencer (2006).

There are concerted efforts to fight the scourge of corruption in Kenya. Some of the milestones include the establishment of the Kenya Ethics and Anti corruption Commission with the mandate of fighting corruption. The study therefore sought to know whether there are deliberate steps in the selected stations to check corruption by asking respondents to identify anticorruption measures that were present in their stations. A high number of the respondents 25 (49%) listed corruption reporting boxes and or Telephone hotline reporting whereas 12 (24%) cited CCTV cameras. Others were: impromptu visits by anti-corruption officials 7(14%), open office plans 6 (12%) and sensitization on the virtues of integrity 6 (12%). It can be deduced that there are sufficient anti corruption measures and is therefore surprising why they have not been successful.

4.5.3 Integrity of Security Officers Manning Border Controls or Other Immigration Checks

As similar studies on human smuggling (Spencer, 2006 and Araia ,2009) found out, human smugglers bribe immigration officers, police officers and other security officers in key routes to facilitate their trade. It was therefore important for this study to find out the respondents’ opinion on the integrity of officers charged with manning borders and or checkpoints along major routes from Ethiopia and Somalia. The respondents were asked to rate in their opinions the integrity of security officers charged with the responsibility of manning border points, checkpoints and other

immigration controls. The findings show that most of the respondents 28 (38%) and 26 (36%) indicated that the integrity of security officers charged with manning border controls or other immigration checks in their various areas of operation was high and moderate respectively. Thus, the integrity of security officers was rated to be generally high which may be a true representation of the reality as it could have been affected by self reporting bias. Indeed, a majority of the key informants (5 out of 6) indicated witnessing border officials receiving bribes from smugglers and in other instances, they concluded that the officers were compromised as they were released without any charges being preferred against them. One of the key informants observed the foregoing and commented as follows:

“..... We arrived at the Tana Bridge at around 9 a.m where there were several policemen and other people who did not have uniform. Everybody was asked to alight and show their documents to be checked. They looked at the ID I had been given and checked my fingerprints and they obviously noted it wasn't mine. I was taken to a waiting vehicle together with two other people. One of the bus crews told us not to worry as he engaged a senior police officer in what looked like an argument. After about 30 minutes we were given back our 'IDs' and allowed to proceed.”

It can be concluded from these findings and that the integrity of the officers is sometimes compromised. The findings from the respondents which seem to suggest that officers are of high integrity must have been influenced by self reporting bias. The respondents, being part of the players may have shied from accepting that their integrity is questionable. The key informants' explanation is therefore more credible as they had nothing to lose. To address the issue of instances of officers being compromised, it is suggested that use of technology be enhanced so that all persons checked regardless of their nationality have their biometrics captured so that the system can be audited. Sting operations by the relevant agencies need to be carried out regularly to weed out corrupt officers.

CHAPTER FIVE

SUMMARY OF FINDINGS, CONCLUSION AND RECOMMENDATIONS

5.1 Introduction

This chapter presents a summary of the findings, conclusion of the research, recommendations and suggestions for further studies. The purpose of this study was to assess the capacity of the Department of Immigration in controlling human smuggling from Ethiopia and Somalia. To achieve the aim of the study, the research was guided by the following research questions:

1. To what extent is the existing legal framework sufficient to curb human smuggling in Kenya?
2. What capacity does Kenya's Department of Immigration have to control human smuggling from Ethiopia and Somalia into and through Kenya?
3. To what extent does corruption facilitate human smuggling into and through Kenya?

Data was collected by use of a survey instrument which was administered to immigration officers sampled from selected stations that lie on the smuggling routes or are involved in enforcement. The selected stations were: Jomo International Airport (JKIA), Garissa, Liboi and Namanga Border Control. The study targeted a sample of 87 officers but 73 responded to the questionnaires. Qualitative data was also collected from 6 Key Informants who had been charged in court and had either completed their jail terms or paid fines and were being prepared for repatriation.

5.2 Summary of Research Findings

This section presents the summary of the research findings. The section is in two main parts, the first part summarizes the background information of the respondents and the second part covers the findings on the specific objectives of the study. These include assessing the Kenyan and International legal framework, the capacity of Kenya's Department of Immigration and how corruption facilitates human smuggling from Ethiopia and Somalia.

5.2.1. Background Information of the Respondents

Most of the respondents (52%) were relatively youthful being 39 years and below. The staff establishment also reveals that a bulk of the officers was of lower ranks having been recently employed hence their youthful age. The officers are also highly educated with 93 % having at least a bachelor's degree. This is attributed to the minimum academic requirements for one to be employed as immigration officers. The few who are non graduates are mainly those who rose through the ranks before the requirement was fully enforced.

Well over half 50 (59 %) of the respondents have served in the department for 10 years or less. This can be explained by the high recruitment of officers in the years 2003, 2005, 2007, and 2009 which was preceded by a freeze in employment for close to ten years. It was also found out that a large number of the respondents have served for less than 5 years in their current stations. This can be explained by the human resource practice which discourages keeping officers in one station for over 3 years.

5.2.2 Suitability of the Existing Legal Framework to Curb Human Smuggling in Kenya

The study found out that a large number of respondents (53%) perceived the legal instruments as adequate to deal with all forms of illegal immigration. However, it was clear that the knowledge of the various pieces of relevant legislation is not as good as would be expected. For instance, 48 (82%) of the respondents had modest or little knowledge of the Kenya Citizenship and Immigration Regulations 2012 and similarly a high number of respondents had low knowledge of the Refugees Act 2006. It also came out that the implementation of some of the legislations is poor. For instance, the provision on fines for carriers who ferry illegal immigrants is not fully implemented in all the selected stations. A high number of respondents 47 (80%) stated that they faced challenges in trying to implement it. Some of the challenges cited include: impunity by carriers, ambiguity of the law, interference by powerful individuals and corruption between carriers and Immigration officers. It was also observed that the Kenyan Refugees Act and the Kenya Citizenship and Immigration Act 2010 have provisions that conflict making it difficult to enforce and also giving room to smugglers to take advantage of the situation

5.2.3 Technological and Personnel Capacity of Kenya's Department of Immigration to Control Human Smuggling from Ethiopia and Somalia into and through Kenya

It was found that a larger number of the immigration officers 35 (48%) have been adequately trained in all their areas of operations. A number of stations such as JKIA, Garissa and Liboi were found not to have an optimum number of officers while others lacked expensive equipment such as Fingerprint uplifting machines, Passport readers, Projection machines, and Laminate verifiers. However, most stations were found to have specialized ICT equipment for clearing and storing passenger information which was useful in border control. The findings also show that a high number of the respondents 35 (48%), indicated that equipment and efficient communication facilities are not adequate across the different stations

5.2.4 Strategies Employed to check Illegal Immigration

Findings of the study indicate that most of the respondents 64 (95%) revealed that the closure of the common border with Somalia did not achieve the purpose of stemming the influx of illegal migrants. Most of the respondents 69 (95%) were also conversant with the various visa regimes and a high number of them 51 (75%) also believed that the referral visa regime deterred entry of illegal immigrants. A large number of the immigration officers 36 (50%) indicated that the lead agency role of the immigration service in curbing illegal migration was effective as evidenced by over 90% who said that border surveillance and patrols was effective.

5.2.5 Role of Corruption in the Human Smuggling of Ethiopians and Somalis into and through Kenya

The findings show that a large number of the respondents 40 (55%) did not agree that human smugglers bribed border officials to facilitate illegal entry. However, the presence of corruption as indicated by the rest of the respondents revealed that corruption facilitated human smuggling to a great extent despite the existence of anti-corruption measures in all the stations. The findings indicate that most respondents 51 (70%) agreed that corruption was a key driving force in human smuggling. The study found that most of the respondents 28 (38%) and 26 (36%) indicated that the integrity of security officers charged with manning border controls or other immigration checks was high and moderate respectively. Majority of the key informants narrated witnessing

border officials receiving bribes from smugglers to compromise them to release suspects without any charges being preferred against them.

5.3 Conclusion

Based on the findings, it can be concluded that majority of the immigration officers 93% are highly educated by having at least a bachelor's degree which strengthens the capacity of Kenya's Department of Immigration to control human smuggling. Even though legal instruments were reported as adequate to deal with all forms of illegal immigration, respondents' knowledge and implementation of the various pieces of relevant legislation is not as good as would be expected. It can be concluded that the closure of the common border with Somalia did not achieve the purpose of stemming the influx of illegal migrants.

The lead agency role of the immigration service in curbing illegal migration and the border surveillance and patrols were found to be effective. The study established that a large number of the immigration officers have been adequately trained while a number of stations did not have an optimum number of officers and others lacked expensive equipment. Some of stations were however found to have specialized ICT equipment for clearing and storing passenger information which was useful in border control. It can be concluded that equipment and efficient communication facilities are not adequate across the different stations and this negatively impacted on the capacity of the Department to control human smuggling from Ethiopia and Somalia.

From the sample interviewed, it can be concluded that corruption facilitated human smuggling to a great extent hence was a key driving force in human smuggling. Though the findings suggested that the integrity of security officers charged with manning border controls or other immigration checks was high, doubts were raised from accounts by key informants who indicated to have witnessed border officials receiving bribes from smugglers.

5.4 Recommendation

The main aim of this study was to assess the capacity of the Department of Immigration in the control of human smuggling in Kenya. This section outlines recommendations for policy makers

to help curb the vice of human smuggling specifically of Ethiopians and Somalis smuggled into and through Kenya. On the basis of the findings of this study the researcher presents the following recommendations:

1. The study found out that the local and international legal framework that deal with human smuggling was sufficient to combat human smuggling effectively. It was however noted that the implementation of the key legal instruments is wanting. It was also found out that most of the respondents were not fully conversant on the pieces of legislation on human smuggling. There is therefore an urgent need to carry out sensitization of all immigration officers and other stakeholders. The Refugees Act and the Kenya Citizenship and Immigration Act were seen as having some conflicting provisions which smugglers take advantage of. The two pieces of legislation therefore need to be harmonized. For effective combating of human smuggling, cooperation between the source, transit and source countries is mandatory. This was seen to be low or totally missing.
2. Though the Department of Immigration has greatly improved its capacity, the study found out that there are still areas of improvement. The staff levels were found to be very low in many stations thus rendering them less effective. There is therefore an urgent need for optimum staffing of the various stations. Besides this, the government needs to increase the number of border controls in the Kenya-Ethiopia and Kenya –Somalia borders so as to reduce porosity. The working tools are very basic and do not match the sophistication of smugglers. There is need for supply of adequate and modern equipment that are able to detect fraudulent documents and imposters. Suitable and adequate number of vehicles needs to be supplied to enable efficient and effective patrols along the likely smuggling routes. Patrols and surveillance should not just be at the ports of entry and smuggling routes, it should extend to major urban centres on regular basis so that illegal immigrants are weeded out;
3. The frequency and variety of training for immigration officers should be increased to capture all the diverse issues that call for their attention. These include relevant legislations, training in the use of various equipment and information on current trends of

illegal migration and specifically human smuggling. There should an exhaustive training needs assessment done regularly to ensure all courses are distributed equitably.

4. There is need to strengthen and focus on the anti-corruption measures in all stations since corruption facilitates human smuggling to a great extent. This can be achieved by sensitization through training and encouraging integrity among officers. A good stating point is on sensitizations on the Public Officer Ethics Act, continuous supervision and removing all opportunities for corruption through streamlining and making procedures hard to manipulate.
5. The Coordinated Border Management strategy that brings together key stakeholders in the border management as exemplified by the lead agency concept needs to be reviewed as it has several flaws. The structures need to be developed fully with clear reporting structures from bottom to the top under one independent command.

5.5 Suggestions for Further Research

This research was a study on human smuggling of Ethiopians and Somalis into and through Kenya. The researcher therefore suggests other studies on human smuggling in Kenya of all the other nationalities including the smuggling of Kenyans to other countries.

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APPENDIX 1
A SURVEY TO ASSESS THE CAPACITY OF IMMIGRATION DEPARTMENT IN
COMBATING HUMAN SMUGGLING: A CASE OF SOMALI AND ETHIOPIAN
ILEGAL IMMIGRANTS

SURVEY QUESTIONNAIRE

INTRODUCTION

Dear Participant,

My name is John Cheruiyot and I am a Master's student at the University of Nairobi, Department of Sociology. I am carrying out a research that attempts to **assess the Capacity of the Department of Immigration to control Human Smuggling in Kenya** in partial fulfilment of the degree requirements. As an immigration officer who is fully knowledgeable on human smuggling, you have been identified as a key source of the required information. I am therefore requesting you to participate in the research project by completing the short questionnaire attached.

There is no known risk involved in participating in this research and to ensure your anonymity, you do not have to indicate your name in the questionnaire. If you agree to participate, kindly answer all the questions as honestly as possible. Although participation is voluntary, i would be grateful if you would support my research project whose finding will enable the Department of Immigration to curb human smuggling. Later, if you would like to get a summary of the findings, you can write to me using the address provided.

Thank you for your participation.

A: BACKGROUND INFORMATION

1. Sex: 1. Male ☐ 2. Female ☐
2. Date of birth _____ Age _____
3. Religion? 1. Muslim ☐ 2. Christian ☐ 3. ☐ Traditionalist ☐ 4. Other (specify) 4.
What is your highest educational qualification? 1. O' Level ☐ 2. A' Level ☐ 3.
Diploma ☐ 4. Masters ☐ 5. PhD ☐ other (specify).....
5. Area of operation (tick one)

1. Immigration Headquarters ☐ 3. Regional Headquarters ☐ 4. Seaport ☐
5. Airport ☐ 6. Land Border ☐

Other (Specify) _____

6. Which year did you join the Department of Immigration? _____
7. Which year were you posted to your current station? _____
8. What is your rank? 1. Immigration Officer II ☐ 2. Immigration Officer I ☐
3. Snr Immigration Officer ☐ 4. Chief Immigration Officer ☐ Other rank (Specify) _____
9. What are your actual duties at the Station/ section?

B. ASSESSING THE EFFECTIVENESS OF LEGAL INSTRUMENTS IN CURBING HUMAN SMUGGLING

This section intends to assess your knowledge of the domestic and international laws that deal with immigration and your opinion on their effectiveness

10. Are there laws and regulations that deal with immigration issues in Kenya that you know of?
1. Yes ☐ 2. No ☐
11. If yes, list them.....
.....
.....
12. How do you rate your knowledge of the Kenya Citizenship and Immigration Act 2011?
Excellent ☐ Good ☐ Fair ☐ Poor ☐ Very poor ☐
13. Are you conversant with the provision under the Kenya Citizenship and Immigration Laws that prescribes fines for carriers who transport illegal immigrants to Kenya?
1. Yes ☐ 2. No ☐
14. If yes to question 13, how often is the fine meted to the offending carriers in your station?
1. Very often ☐ 2. Often ☐ 3. rarely ☐ 4. very rarely ☐ 5. never ☐
15. Are there any challenges in the imposing fines to carriers who contravene the provisions of the Act? 1. Yes ☐ 2 No ☐

Explain in either case.....

-
16. How would you rate the effectiveness of the fines in deterring carriers from abetting human smuggling in Kenya?
1. Highly deterrent ☐ 2. Deterrent ☐ 3. Cannot tell ☐ 4. Fairly deterrent ☐ 5. Not deterrent ☐
17. Are you aware that the Government of Kenya is a state party to the United Nations Convention against Transnational Organised Crimes and the Protocols thereto?
1. Yes ☐ 2. No ☐
18. How do you rate your knowledge of the United Nations Protocol against Smuggling of Human Beings supplementing the United Nations Convention against Transnational Organised Crimes?
1. Great deal ☐ 2. A lot ☐ 3. Modest ☐ 4. Little ☐ 5. None ☐
19. The United Nations Protocol against Smuggling of Human Beings requires state parties to cooperate as a strategy to curb human smuggling. How do you rate the level of cooperation between Kenya and other state parties?
1. Very cooperative ☐ 2. Cooperative ☐ 3. Somewhat cooperative ☐
4. Not cooperative ☐ 5. Not cooperative at all ☐
21. How would you rate the effectiveness of the United Nations Protocol against Smuggling of Human Beings in combating human smuggling internationally?
1. Very effective ☐ 2. Effective ☐ 3. Indifferent ☐ 4. Ineffective ☐
5. Not effective at all ☐
22. Have you ever experienced any challenges when applying laws on human smuggling?
1. Yes ☐ 2. No ☐
23. If yes in question 22, what are the challenges?.....
-
24. Are you familiar with the refugee rights under the International laws domesticated by the Refugees Act 2006? 1. Yes ☐ 2. No ☐

25. How would you rate your knowledge of the refugee rights under the Refugees Act 2006?

1. Excellent ☐ 2. Good ☐ 3. Fair ☐ 4. Poor ☐ 5. Very poor ☐

26. Rank your opinion on the following propositions on legal instruments against human smuggling. Use the following scale to rank your orientation:

1. Strongly agree 2. Agree. 3. Indifferent. 4 Disagree. 5. Strongly disagree

	Statement	1	2	3	4	5
a)	The legal instruments on immigration are sufficient to deter human smuggling in Kenya	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b)	The smuggling protocol can only be effective where the source, transit and destination countries are parties to it	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c)	Smugglers take advantage of refugees' rights by having their clients pose as refugees	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

C.EFORTS BY THE GOVERNMENT TO DEAL WITH HUMAN SMUGGLING

This section seeks to assess the efforts that the government has made to check human smuggling and illegal immigration in general

27. Are you aware that the border between Kenya and Somalia has been closed since 2007?

1. Yes ☐ 2.No ☐

28. If yes to question 27, do you feel that the closure has achieved the intended purpose of checking the influx of illegal immigrants from Somalia?

1. Yes ☐ 2.No ☐

Explain in either case.....
.....

29. Do you know that the Department of Immigration has been the lead agency in border management since the year 2008? 1. Yes ☐ 2. No ☐

30. If yes in question 29, how do you rate the role of the Department of Immigration's lead agency role in curbing illegal migration? 1. Very effective ☐ 2. Effective ☐ 3. Indifferent ☐ 4. Ineffective ☐ 5. Very ineffective ☐
31. What challenges does the Department of Immigration experiences as the lead agent in border management? Name them by order of importance starting with the most challenging.
.....
.....
32. Do you have any equipment for examination of documents in your station?
1. Yes ☐ 2. No ☐
33. If yes in question 32, list the sets of equipment available.....
.....
34. Rate your overall expertise on the use of the pieces of equipment listed ~~on~~ in question 33.
1. Excellent ☐ 2. Good ☐ 3. Fair ☐ 4. Poor ☐ 5. Very poor ☐
35. Are you conversant with the various visa regimes as outlined in the Kenya Citizenship and Immigration Act 2011 ? 1. Yes ☐ 2. No ☐
36. If yes in question 35, does the referred visa regime deter entry of illegal immigrants from the targeted countries? 1. Yes ☐ 2. No ☐
Explain in either case.....
.....
37. Rank your opinion on the following propositions on the efforts by the government to check illegal migration using the following scale: 1. Strongly Agree. 2. Agree 3. Undecided 4. Disagree 5. Strongly Disagree

	Statement	1	2	3	4	5
a)	The current strategy of arrest, prosecution and deportation is effective in deterring human smuggling.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b)	Border surveillance through patrols is key to effective border control.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c)	Lack of ICT networking of immigration checkpoints enable human smugglers to pass undetected.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d)	The document examination equipment available is of high quality.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e)	The officers working at the Department of Immigration are fully competent to handle existing examination equipment.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f)	There is need to train officers working at the Department of Immigration to perfect their application of existing examination equipment.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
g)	Most of the examination equipment of the Department of Immigration are outdated.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

D. CHALLENGES OF INTEGRITY IN THE FIGHT AGAINST HUMAN SMUGGLING

38. It is perceived that human smugglers bribe border officials to facilitate illegal entry. Do you agree ?

1. Yes ☐ 2. No ☐

39. If yes in question 38, are the incidents of corruption in your area of operation rampant?

1. Very rampant ☐ 2. Rampant ☐ 3. Don't know ☐ 4. Rare ☐ 5. Very rare ☐

40. Do you think corruption facilitates human smuggling to a great extent?
1. Yes ☐ 2.No ☐
41. If yes in question 40, how important is corruption in facilitating human smuggling?
1. Very Important ☐ 2. Important ☐ 3. Moderate ☐ 4. Not important ☐
5. Not important at all ☐
42. Are there any anti-corruption measures in your station? 1. Yes ☐ 2.No ☐
43. If yes to question 42 list them.
.....
44. How would you rank the effectiveness of Integrity testing program ran by the Ethics and Anti-corruption Commission? 1. Very effective ☐ 2.effective ☐ 3.Indifferent ☐ 4. Ineffective ☐ 5. Not effective at all ☐
45. Are you familiar with the Public Officers' Ethics Act? 1. Yes ☐ 2.No☐
46. If yes in question 45, how would you rate your knowledge of the Public Officers Ethics Act? 1. Great deal ☐ 2.A lot ☐ 3.Modest ☐ 4. Little ☐ 5.None ☐
47. How would you rate the integrity of security officers charged with manning border controls or other immigration checks in your area of operation?
1. Very high ☐ 2. High ☐ 3.Moderate ☐ 4. Low ☐ 5. Very low☐
48. Rank your opinion on the following propositions on integrity. Use the scale provided as follows:
1. Strongly agree 2. Agree 3. Undecided 4. Disagree 5. Strongly disagree

	Statement	1	2	3	4	5
a)	Corruption is a key driving force in human smuggling.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b)	Smugglers have infiltrated government institutions to enable them obtain travel documents irregularly	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c)	Transporters if smuggled persons bribe government agents to facilitate human smuggling.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d)	Magistrates are compromised to give lenient fines/sentence to immigration offenders.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e)	Bribery is a rare phenomenon among officers working in the Department of Immigration.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

D. BUILDING CAPACITY TO DEAL WITH HUMAN SMUGGLING

49. Have you ever been trained since you joined the Department of Immigration Services?

1. Yes ☐ 2.No ☐

50. If yes in question 49, which areas of your job have you been trained on?

.....

51. How would you rate the relevance of the training that you may have undergone in your work as an immigration officer? 1. Very relevant☐ 2. Relevant ☐ 3.Indifferent ☐

4. Irrelevant ☐

5. Very irrelevant ☐

52. Do you have specialized ICT equipment for clearing and storing passenger information in your station?

1. Yes ☐ 2. No☐

53. If yes, list them.....
.....
54. Do you find the equipment useful in border control? 1. Yes ☐ 2. No ☐ Explain in either case
.....
.....
55. How do you rate the immigration officers' attitude towards the use of ICT in immigration control?
1. Very supportive ☐ 2. Supportive ☐ 3. Indifferent ☐
4. Not supportive ☐ 5. Not supportive at all ☐
56. Do you carry out patrols and surveillance in your area of operations?
1. Yes ☐ 2. No ☐
57. If yes in question 56, how often are patrols and surveillance done?
1. Daily ☐ 2. Weekly ☐ 3. Fortnightly ☐ 4. Monthly ☐ If other frequency, state.....
58. How would you rate the effectiveness of such patrols?
1. Very effective ☐ 2. Effective ☐
3. Modest ☐ 4. Not effective ☐ 5. Not effective at all ☐
59. Rank your opinion on the following propositions on capacity building at your station. Kindly use the scale provided: 1. Strongly agree 2. Agree 3. Undecided 4. Disagree 5. Strongly disagree

	Statement	1	2	3	4	5
a)	I have been sufficiently trained to handle all kinds of immigration Offences in the station.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b)	We have efficient communication facilities at our station.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c)	There is adequate technology at our station for effective border management.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d)	Our station has optimum level of staffing.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e)	We have enough functional vehicles for the necessary patrols within our area of operations.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

APPENDIX II

INTERVIEW GUIDE

My name is John Cheruiyot, a Master of Arts student at the University of Nairobi. I am carrying out a research on human smuggling. I have selected you as one of my respondents in this interview owing to your personal experience as a person who was assisted to enter the country. The interview will take a few minutes of your time. I wish to assure you of the highest level of confidentiality and that the information you give will be used solely for academic purposes. Your participation is on voluntary and you can choose to stop at anytime. Do you have any questions before we start?

Discussion Points

1. Observable/demographic information
2. Personal experience in human smuggling
3. Drivers of human smuggling
4. Gains and costs of human smuggling
5. Challenges in human smuggling
6. Encounter with Government agents and institutions
7. Acquisition of essential documents – identity card, Passports etc
8. Other experiences and/or information to share