ENFORCEMENT OF KENYA IMMIGRATION LAWS: A CASE OF THE DIRECTORATE OF IMMIGRATION SERVICES

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DECLARATION

I declare that this research project is my original work and no portion referred to in the project has been submitted in support of an application for another diploma, degree or qualification of this or any other university or other institution.

Signature... Date. 04/05/2020

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Declaration by the Supervisor

This research project has been submitted for examination with my approval as the University Supervisor.

Signature... Date......................... 07 - 05 - 2020

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DEDICATION

This study is dedicated to my family, friends, and colleagues at the Kenya Institute of Migration Studies (KIMS) for their unwavering support throughout the program.

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ABBREVIATIONS AND ACRONYMS

BCOCC: Border Control and Operations Co-ordination Committee

BLD: Black's Law Dictionary

BMC: Border Management Committees

DIS: Directorate of Immigration Services

EAC: East African Community

GIS: Ghana Immigration Service

GOK: Government of Kenya

ICCPR: International covenant on civil and political rights

IOM: International organization for Migration

INA: United States' Immigration and Naturalization Act

KCIA: Kenya Citizenship and Immigration Act, 2011.

KCIR: Kenya Citizenship and Immigration Regulations, 2012

KIMS: Kenya Institute of Migration Studies

KVP: Kenya Visitor's Pass

MOICNG: Ministry of Interior and Coordination of National Government

NSEERS: National Security Entry-Exit Registration System (U.S)

OAS: Organization of American States

POE: Port of Entry

PSRI: Population Studies and Research Institute

SMS: Short message service

UDHR: Universal Declaration of Human Rights

UNGA: United Nations General Assembly

UON: University of Nairobi

ABSTRACT

This study aimed to examine how effectively the Directorate of Immigration Services (DIS) enforces Kenya immigration laws, especially those related to post-entry and residence of foreign nationals in Kenya. The study had three objectives: to identify noncompliant incidences encountered by the DIS in enforcing Kenya immigration laws; to examine methods of enforcement used by the DIS Services to ensure compliance with Kenya immigration laws, and to identify challenges faced by the DIS in enforcing Kenya immigration laws. The study adopted a case study research design. The researcher employed both primary and secondary sources of data. Collection of primary data was through questionnaires administered to immigration officers while secondary data were collected from review of records in the Investigation and Prosecution Section at the DIS for the period, January, 2018 to December, 2019. Target population involved 15 immigration officers at the DIS, Investigation and Prosecution Section. The researcher opted for a census. Data were analyzed quantitatively by use of Microsoft Excel and presented using tables and figures. The response rate was 93%. The research found that most of the noncompliance incidences to immigration laws are related to document forgeries, illegal entry, overstay and engaging in employment without authority. The study also found that the DIS uses various methods to enforce Kenya immigration laws. Such methods include arrests, prosecution, detention, repatriation, deportation, administrative removals and watch listing. The study found that the DIS encounters various challenges in the enforcement of Kenya immigration laws. Such challenges are low staffing levels, inadequate holding/detention facilities, high cost of enforcing removals, lack of modern and appropriate technology, shortage of functional vehicles for use, inadequate cooperation and coordination with other government agencies, delays in enforcement action taken against suspected noncompliance and lack of independence in decision making resulting from interference from senior government officials within and/or without the Directorate of Immigration Services. In order to address the challenges encountered in the effective enforcement of immigration laws, the study proposes recommendations for policy makers and practitioners. For policy, the study recommends use of appropriate technology in post-entry surveillance of foreign nationals, creation of interior management committees to coordinate interior enforcement of immigration laws and increase in funding to cater for recruitment of more enforcement officials, purchase of vehicles and the identification, and prompt removal, of undesirable persons from Kenya. For practice, the study recommends emphasis on the perennial noncompliance incidences for deterrence, and continuous research and training to build the capacity of immigration officers. The limitations of this study concern methodology and context. On methodology the study did not involve top management in the target population, and probably their views could have had some effect on the findings. On context, the study was carried out at the DIS, Headquarters, Kenya, and therefore the findings could not be generalized to other similar contexts within and outside Kenya. Suggestions for further studies are therefore recommended on replications through different methodology and contexts.

CHAPTER ONE: INTRODUCTION

1.1   Background to the study

Countries the world over have enacted immigration laws and regulations to regulate entry, residence, exit and employment of foreign nationals in their territories (Tapinos, 2000; Ryan & Mitsilegas, 2010). In enforcement of immigration laws, the goal is to achieve that level of conformity with the recommended (or disapproved) behaviour that a country desires and can manage (Conser, Paynich & Gingerich, 2011). A country therefore enforces its immigration laws to ensure compliance with terms and conditions of admissibility and residency of foreign nationals (Kanapathy, 2008; Meissner et al., 2013; Kalhan, 2014; Low & Mokhtar, 2017; Yuval-Davis, Wemyss & Cassidy, 2018). However, it has been noted that not all foreign nationals within the territory of a country comply with terms and conditions relating to their entry, residence and employment; thus the need for effective interior enforcement of immigration laws to ensure compliance (Menjívar, 2014).

This study was guided by social control theory (Hirschi, 1969), deterrence theory (Beccaria, 1764; Bentham, 1781) and economic theory of public enforcement of law (Becker, 1968). The social control theory (Hirschi, 1969) assumes that the chances of human beings engaging in criminal activities is high when not under any form of control, and therefore to regulate their behavior the society should have some form of social control mechanisms through the enactment and enforcement of laws and regulations. According to the deterrence theory (Beccaria, 1764; Bentham, 1781), a country enforces its laws and rules to discourage their citizens from violating them. Becker (1968) in the economic theory of public enforcement studies the costs versus benefits of violating, or enforcing, a law. These three theories guided the study on how the Directorate of Immigration Services (DIS) identifies, prosecutes and removes foreign nationals who violate the various provisions of Kenya immigration laws.

The DIS is guided by various domestic legal and policy frameworks in its mandate of managing the entry into, residence, employment and removal, in case of noncompliance with the law, of foreign nationals from Kenya. These include the Kenya Citizenship and Immigration Act, 2011; the Kenya Citizenship and Immigration Regulations (KCIR), 2012; the Penal Code (section 26A on removal of foreign nationals); the Refugees Act, 2006 (Section 21 on expulsion of refugees and

members of their family) and the Counter-Trafficking in Persons Act, 2010. This study was conducted at the DIS, Investigation and Prosecution Section, Nairobi Headquarters, to assess how they enforced Kenya immigration laws.

1.1.1 Immigration Enforcement

Enforcement has been viewed differently by various writers, for example, according to Black's Law Dictionary (BLD) (BLD, 2009), to enforce means compelling a person to follow a law. Further, BLD defines enforcement as the process followed in making persons adhere to the provisions of particular laws, and law enforcement as the discovering and punishing of those who violate the provisions of the law. Conser, Paynich & Gingerich (2011) sees law enforcement as among the means of controlling human behaviour so that the existing laws and regulations are complied with. It is further observed that law enforcement is the prerogative of the executive arm of the government, the president and his representatives (Conser et al., 2011). This study considers law enforcement as the effort to ensure compliance with the law through the use of threat of punishment.

The United States' Immigration and Naturalization Act (INA), considers immigration enforcement as involving the enforcement of civil provisions, for example, violations of admission terms and conditions, and criminal provisions, for example, marriage fraud and smuggling of foreign nationals into the U.S.; it also involves control at ports of entry (POEs), interior, and in the identification, investigation, apprehension, prosecution, and deportation of foreign nationals who violate U.S. laws and become removable (Seghetti, Viña & Ester, 2004; Kandel, 2018).

Kalhan (2014) and Meissner, Kerwin, Chishti and Bergeron (2013) views immigration enforcement as the ability of a country to apply its rules and regulations in the control and observation of foreign nationals before entry, at the POEs, during their stay and departure. Further to this, Vigneswaran (2019) looks at immigration enforcement as involving the isolation of foreign nationals, whose entry into the territory of a country or their residence was not authorized, from the general population, taking them into custody and removing them from the country.

In this study, immigration enforcement concept has been viewed as the internal control (interior enforcement), comprising of identification, surveillance, investigation, arrest, prosecution, detention, and removal, targeting those foreign nationals who are already in the territory of Kenya. To achieve this function, the Directorate of Immigration Services (DIS) enforces various laws to ensure lawful post-entry presence of foreign nationals in Kenya, and their removal in the event of noncompliance with the terms and conditions of their residency immigration status.

1.1.2 Kenya Immigration Laws

Kenya immigration laws can be defined as the rules and regulations set up by the government for guiding in the determination of who is to be allowed entry into the country, for what duration and purpose; it also governs the process of acquiring citizenship, and the legal proceedings in case of noncompliance with terms and conditions of entry, residence and employment.

In its mandate of ensuring foreign nationals comply with the provisions of Kenya immigration laws relating to their entry, residence and employment, the DIS is guided by various domestic and international legal and policy framework: the constitution of Kenya (GOK, 2010a); the Kenya Citizens and Foreign Nationals Management Service Act, 2011; the Kenya Citizenship and Immigration Act (KCIA), 2011(GOK, 2011); the Kenya Citizenship and Immigration Regulations (KCIR), 2012 (GOK, 2012); the Penal Code (Chapter 63) (GOK, 2008); the Refugees Act, 2006 (GOK, 2006); and the Counter-Trafficking in Persons Act, 2010 (GOK, 2010b); East African Community(EAC) Treaty and the attendant Protocols, the One Stop Border Post Act, policies and administrative circulars, International instruments related to migrants and Refugees.

1.1.3 The Directorate of Immigration Services, Kenya

The Directorate of Immigration Services (DIS) is a department under the Ministry of Interior and Coordination of National Government (MOICNG) in the Republic of Kenya mandated to enforce immigration laws. In undertaking the function of immigration enforcement of the relevant laws, the DIS is guided by the following policy objectives: to maintain the integrity of Kenya's borders; to maintain and protect public order and security; to enforce immigration legislation and other immigration policies; to remove illegal migrants and immigration law violators; to ensure credibility and integrity of the Kenyan migration policy; to enhance national and regional security;

to remove alien/foreign national criminals as quickly as possible; and to conduct removals effectively and equitably (GOK, 2017).

1.2 The Research Problem

In an effort to protect their territorial integrity and exercise their sovereignty, countries have enacted immigration laws in order to govern the entry and stay of foreign nationals- specifically, who they are, why they are there, what they are doing and where they are staying. However, to some of the countries there are challenges hampering the effective enforcement of these laws to ensure full compliance (Carafano, 2004). Carafano identifies one of the challenges as inadequate resources at a country's disposal to ensure that foreign nationals entering their territories comply with the immigration laws. However, this cannot be said to be the only challenge.

A study by Landau and Segatti (2009) on impacts of migration in South Africa found out that violations to the immigration regulations are due to the government's lack of capacity to enforce them and the entrenched corruption among officials tasked with enforcement. Landau and Segatti further explain that foreigners are likely to violate the immigration laws due to fact that the likelihood of being caught is low, and if caught they can buy their freedom by bribing the government officials. However, these findings by Landau and Segatti do not capture all challenges faced in enforcement of immigration laws. Also, the study was done in South Africa, which is a different geographical region from Kenya.

Despite the provisions in the various Kenya immigration laws governing the entry into and stay of foreign nationals in Kenya, cases of contravention have been reported (Mbuthia, 2016; Mbugua, 2019). The study by Mbuthia on the impact of Kenya Citizenship and Immigration Act, 2011, on reduction of immigration offenders in Kenya dealt with the use of heavy fines and penalties in ensuring compliance with the law. However, Mbuthia focused only on part of immigration enforcement action taken against noncompliance. The focus of this study is on all the immigration enforcement actions employed by the DIS. Mbugua in her study on policy factors leading to illegal immigrants in Kenya found out that presence of unauthorized immigrants in Kenya is due to lack of policy guidelines on the implementation of existing immigration laws but did not look at how the existing immigration laws are enforced.

From the studies discussed above, it shows that there is inadequate literature on the enforcement of immigration laws in Kenya. This study is therefore an attempt to answer the question: "How effective is the enforcement of Kenya immigration laws by the Directorate of Immigration Services?"

1.3 Research questions

i. What noncompliant incidences does the Directorate of Immigration Services encounter in the enforcement of Kenya immigration laws?

ii. What are the enforcement methods used by the Directorate of Immigration Services to ensure compliance with Kenya immigration laws?

iii. What are the challenges encountered by the Directorate of Immigration Services in enforcing Kenya immigration laws?

1.4 Research objectives

1.4.1 General objective

The purpose of this study is to examine the effectiveness of the enforcement of Kenya immigration laws by the Directorate of Immigration Services.

1.4.2 Specific objectives

The following specific objectives guided this study.

i. To identify noncompliant incidences encountered by the Directorate of Immigration Services in enforcing Kenya immigration laws

ii. To examine methods of enforcement used by the Directorate of Immigration Services to ensure compliance with Kenya immigration laws.

iii. To identify challenges faced by the Directorate of Immigration Services in enforcing Kenya immigration laws.

1.5 Justification of the Study

Countries have enacted various immigration laws and invested a lot of resources in the enforcement of these laws at the external borders to deter undesirable persons from accessing their territories. However, not much has been done to monitor those already within their territories. For

example, in Kenya, the KCIA, 2011, sections 5A to 5D, provides for the establishment of Border Control and Operations Co-ordination Committee (BCOCC) at the designated ports of entry (POEs) to coordinate the activities of the respective agencies (GOK, 2011) but lacks an interior enforcement component.

The immigration laws regulating entry and stay of foreign nationals in Kenya are enforced by the DIS. However, both local and international media have reported cases of foreign-national noncompliance with immigration laws, namely overtstaying their visa, engaging in employment without permits and engaging in criminal activities (Maina & Kakah,2014; Ombati, 2018a; Otieno, 2018; Ndonga, 2018; Ombati, 2018b; Achuka & Kakah, 2019) leading to deportations (Vidija, 2019) and high cost of removals (Wanjala, 2018; Yinglun, 2018). This study was therefore necessary to explore the issue of persistent foreign-national noncompliance with Kenya immigration laws despite enforcement by the DIS.

1.6 Value of the Study

It is envisioned that the research findings will provide more knowledge to immigration officers on the effective ways of enforcing immigration laws. Other researchers interested in the area of enforcement of immigration laws in Kenya and beyond may find this study useful. The research findings may also act as a reference point to policy makers in the areas of migration governance in relation to the internal enforcement of immigration laws.

CHAPTER TWO: LITERATURE REVIEW

2.1 Introduction

This chapter provides an overview of the theoretical foundation and review of literature related to enforcement of immigration laws. Theories guiding this study include social control theory, deterrence theory and economic theory of public enforcement of law. Literature reviewed is presented in four sub-topics, namely noncompliance with immigration laws, enforcement of immigration laws, challenges of enforcement and enforcement of Kenya immigration laws.

2.2 Theoretical Foundation

2.2.1 Social control theory

The social control theory is also known as the social bond theory (Hirschi, 1969). Hirschi argues that people engage in criminal activities due to lack of existence of a strong bond with the society in which they live. He further argues that the propensity for people to commit crime is inborn. Therefore the society should have mechanisms of controlling such behaviour through laws and regulations. He proposed four elements of people's social bond to the society that determines their behavior relating to compliance with the laws.

First element is attachment. It involves a person's internalization of the society's norms and values. The second element is the commitment bond. This involves what people value in the society that will deter them from involvement in deviant behavior. The third element is the involvement bond. It involves how people utilize their time; the more idle a person is the more likely they are to be involved in acts that deviate from the society's norms and values. The fourth bond is the belief bond. It relates to importance of a person's values in relation to acts of criminal nature. When a person's values are important in relation to acts of involvement in any crime then the probability of their engagement diminishes.

The Social control theory deals with how the society controls the behaviour of its members through the use of customs and social norms (Conser et al., 2011), thus through the process of law enforcement, the society exercises some form of social control over the behaviour of its members. This theory therefore endeavours to explain why people desist from engaging in practices that are contrary to the permitted societal norms and values (Akers and Sellers (2004) as cited by

Hoffmann, 2003). Wiatrowski, Griswol & Roberts (1981), Kuhn (2009) and Levesque (2011) observe that human beings are likely not to conform to the society's norms and values thus necessitating investigation on how the society informally controls them through the process of socialization. The existence of laws, as a formal social control mechanism (Conser et al., 2011), in the society is to bring order because people do not at all times behave as expected of them. The social control theory explains that prevention of noncompliant behaviour is, to a greater extent, brought about by the fear that the behaviour may not be approved by other members of the society.

2.2.2 Deterrence theory

Deterrence theory is founded on the works of Beccaria (1764) and (Bentham, 1781). Beccaria argued that every human being in any society has a tendency of taking from it more than they are entitled to without considering the welfare of others. Due to this inherent behavior among people, laws become necessary to punish those who violate its provisions, and discourage the others from violating the same provision of the law. Bentham explained that the success of punishment in deterring offenders is dependent on its severity, duration, certainty and swiftness.

Deterrence theory (Onwudiwe, 2005) explains that when people know that the consequences for violating a law are severe, certain and swift they will be discouraged from violating it. For countries to deter people from engaging in undesirable activities, they must enact and enforce laws and policies that make the involvement expensive to the offenders (Akers, 1990; Ellis, 2003; Pratt, Cullen, Blevins, Daigle & Madensen, 2006; Kobach, 2008; Jacobs, 2010; Martin, 2015). Kobach further argues that deterrence of noncompliance with the laws is dependent on how credible the threat of an enforcement action is, that is, the higher the probability of an enforcement action being taken the lower the desire for noncompliance. This means that the laws and policies that increases the chances of offenders being caught, and severely punished without delay, are more effective in discouraging violations than an increase in penalty (De Genova, 2002; Vaughan, 2006; Tomlinson, 2016; Johnson, 2019).

When deterrence theory is applied in the context of immigration it will imply that the threat of punishment will influence the decisions of the immigrants (Low, 2017). This study views the enforcement of Kenya immigration laws as meant to discourage noncompliance with the

provisions of the law relating to entry and stay in Kenya. The deterrence theory therefore forms the basis on which the Directorate of Immigration Services (DIS) enforces the Kenya immigration laws.

2.2.3 Economic theory of public enforcement of law

The economic theory of public enforcement of law (Becker, 1968) relies on the amount of resources a government agency will incur in apprehending and successfully convicting offenders, the type of sanctions and reactions of the violators to the variations in enforcement of the law. Becker therefore asserts that, on the one hand the cost incurred in the enforcement of any law should not be more than the loss of income resulting from the commission of an offense, and on the other, the cost of committing the same crime on the part of the offender should be higher than the expected benefit. Polinsky & Shavell (2003) argues that when the probability of being caught contravening a law is low and the punishment provided for, in case of the contravention, is affordable, the chances of noncompliance will increase.

2.3 Noncompliance with immigration laws

The Universal Declaration of Human Rights (UDHR), article 13(2), provides that every person has a right to leave any country, including their own, and to return to their country, (Assembly, 1948). However, according to the Havana Convention on the Status of Aliens (OAS, 1928), Article 1, countries are at liberty to enact laws to regulate entry and residence of foreigners in their territories. Further to this, states are allowed to enact domestic laws to govern the entry and stay of foreign nationals in their territory through Article 2(1) of the declaration on the human rights of individuals who are not nationals of the country in which they live (Assembly, 1985). This means that a person has a right of leaving their country but the right does not extend to entering another country (Pécoud & De Guchteneire, 2006). The authority, therefore, to allow or deny entry to foreign nationals into a country rests with the respective receiving country (Chetail, 2014).

Hirsch (2017) observes that there is a close relationship between control over a country's territory and its state sovereignty, therefore any laxity in the enforcement of its immigration laws is an indication of the absence of sovereignty. Tervonen, Pellander & Yuval-Davis (2018) have highlighted that since the 1990s there has been an increase in mobility of migrants in the world

while at the same time countries have enacted stringent immigration laws resulting in foreign nationals in various countries who lack valid residency status. This therefore should be a wake-up call to countries to enforce their respective immigration laws.

In the United Kingdom (UK), with the enactment of Immigration Act, 2014, the entry and stay of foreign nationals has been made difficult (UK, 2014). In the Act, the responsibility of monitoring foreign nationals has been extended to landlords, employers and other institutions, with prosecution and heavy fines in case of noncompliance. For example, employers are fined 10,000 UK pounds for each irregular worker they are found to employ (Yuval-Davis, Wemyss & Cassidy, 2018). Despite the effort by countries to enforce regulations governing the entry and stay of foreign nationals there are still cases of noncompliance to the provisions (Van der Leun, 2003; Broeders & Engbersen, 2007; Merlino & Parkin, 2011; Jain, 2019), in terms of illegal entry, overstay or engagement in activities that are unauthorized.

In order for countries to effectively enforce immigration laws within their territories, the various likely noncompliance violations to the laws must be identified. Papademetriou (2005) highlights four common categories of immigration violations, namely, failure to report entry into a country at the official ports of entry (POEs), entry using fraudulently obtained and/or false documents, overstaying visa duration, and violations of the terms and conditions of a residency immigration status. Baldwin-Edwards (2008) argues that there are other categories of immigration violations including, asylum seekers whose applications are rejected and are required to leave but do not; those unable to renew their permits; and change of employers without the permission of the relevant authorities. Tapinos (2000) has categorized these situations that foreign nationals can find themselves in into three groups, namely clandestine entrants, clandestine residence and clandestine workers. Each of these criteria (entry, residence and employment) can be looked at from both legal and illegal angles (Van der Leun, 2003; Broeders & Engbersen, 2007; Merlino & Parkin, 2011). Tapinos (2000) has summarized these different situations of entry, residence and employment violations that foreign nationals can find themselves in into six categories; category A, foreign nationals who enter a country legally, but who engage in unauthorized employment; category B, foreign nationals who enter a country legally, but are living illegally because of, for instance, expiry of their work permit or visa, and are working unlawfully; category C, foreign nationals who

enter a country legally, but are living illegally because of, for instance, expiry of their work permit or visa, but are inactive; category D, foreign nationals who enter a country clandestinely, and are engaged in employment unlawfully; category E, foreign nationals who enter a country clandestinely, but are inactive, and category F, foreign nationals who enter a country clandestinely, but were issued with a residence permit through regularization of their immigration status, and who are unlawfully engaged in employment.

Broeders and Engbersen (2007) and Kalhan (2014) argue that in order to discourage noncompliance with immigration laws, countries should apply both direct post-entry and indirect post-entry enforcement tools such as such as sanctions on employment, denying them access to public services - healthcare and education, increase in police surveillance, imprisonment and removal; and imposing sanctions on those harbouring them (Lahav, 1998; Parra-Chico, 2008). The focus of this study was interior immigration enforcement, concerning the immigrants who get to remain within, rather than determining who enters, the territory of the country (Franck, 2019). This covered three categories of foreign-national noncompliance situations, namely document, work permit/pass and residence related, after their entry into Kenya. The study also highlights the various enforcement actions taken by the Directorate of Immigration Services against noncompliance with Kenya immigration laws.

2.4 Enforcement of Immigration Laws

The interior enforcement of immigration laws supplements the external border controls in discouraging unauthorized entry, and/ or irregular stay of foreign nationals, through implementation of various measures that includes but not limited to employment restrictions, exclusion from access to public services like healthcare and education, surveillance by law enforcement agencies, imprisonment and removal (Torpey, 1998; Van der Leun, 2003; Cornelius, 2005; Pécoud & Guchteneire, 2006; Broeders & Engbersen, 2007; Leerkes, Bachmeier & Leach, 2013; Delvino, 2017; Ataç & Rosenberger, 2019). The implementation of these stringent measures is believed to lead to self-deportation (Park, 2019). The interior enforcement, comprising of identification, surveillance, prosecution, detention, and removal, targets those foreign nationals who are already in the territory of a country.

Enforcement of immigration laws involves the investigation, detection, arrest, prosecution and removal (repatriation and deportation) of immigrants/ foreign nationals who violate the law. For example, in the United Kingdom, immigration officials track down foreigners who may be in the country illegally by conducting workplace raids on suspected companies that breach rules on the employment of foreign workers (UK Home Office, 2019).

Countries all over the world have come up with various innovative strategies to strengthen interior enforcement to ensure foreign-national compliance with immigration laws; this aggressive effort has meant that the likelihood of detecting and removing unauthorized foreign nationals from respective countries has increasingly become realistic (Meissner, Kerwin, Chishti & Bergeron, 2013). Arrest and prosecution are among the important enforcement tools employed by immigration authorities against immigration law violators (Meissner et al., 2013; Frost, 2017; Jain, 2019). In Austria, for example, targeted or random street and workplace checks, and/or inspections, are some of the instruments used by the police for the detection, and eventual removal, of foreign nationals not complying with the immigration laws (Doomernik & Jandl, 2008).

The French adopted an interagency taskforce model of decentralizing coordination of enforcement to the local level to include representatives from government enforcement agencies, elected officials, employers and workers (Miller, 1995). Pham (2008) and Walsh (2014) have also dealt with this model of interior immigration enforcement of the involvement of non-governmental agencies in regulating access to public services, employment and institutions by foreign nationals. According to Lee (2011); Low and Moktar (2017) and Kandel (2018) strengthening enforcement at the workplace through investigations, arrests, prosecutions and penalizing employers is another enforcement tool that can discourage foreign-national noncompliance with immigration laws.

The other enforcement tools used are detention and deportation of foreign nationals who do not comply with a country's immigration laws (Walters, 2002; Ellermann, 2009; Chauvin & Garcés-Mascareñas, 2014; Kanstroom & Chicco, 2015; Di Molfetta & Brouwer, 2019; Jain, 2019; Lister, 2020). In Malaysia (Kanapathy, 2008; Low & Mokhtar, 2017), United States (U.S) and Australia (Kandel, 2018; Witsman, 2019), foreign nationals awaiting deportation are detained at designated immigration detention centres.

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Monitoring and registration of foreigners, through the use of an integrated database system, is the other enforcement tool used to ensure compliance with terms and conditions of stay in a country's territory (Doomernik & Jandl, 2008; Kalhan, 2014). Kalhan gives the example of United States' National Security Entry-Exit Registration System ("NSEERS") program that handles the registration of foreign nationals upon arrival, and if they stayed for more than thirty days. Delvino (2017) observes that in the European Union, the European commission has proposed the setting up of new immigration systems (Smart borders), like the *European Travel Information and Authorisation System and the Entry-Exit System*, for the purpose of automatically identifying those individuals who overstay their authorized duration of stay. Nuñez-Neto (2019) recommends that, as is the case with healthcare in the United States, the use of timely text message, and/ or email, reminders to individual immigrants who are close to the end of the validity of their residency immigration status may have a powerful effect on the behavior of those who are tempted to stay for longer (overstay).

In addition to removal enforcement action, deporting countries may subject foreign nationals to other sanctions, such as bars to future re-entry. For instance, in the U.S, depending upon the individual circumstances of the case, future admission of a foreign national removed may be subjected to a ban of a period of between five years and life (Witsman, 2019) while in South Africa (Da Costa & Ertner, 2018), in case of overstay after the expiry of their visa, a person is not only fined but also prevented from future re-entry into the country for a period of between 12 months and five years.

In undertaking the mandate of enforcement of Kenya immigration laws, the Directorate of Immigration Services (DIS) employs different enforcement mechanisms, namely investigation, arrest, prosecution, detention and removal (repatriation, deportation and administrative removals), and watch listing, in dealing with incidences of noncompliance.

2.5 Challenges Encountered in Enforcement of Immigration Laws

Countries have enacted immigration laws to regulate entry and stay of foreign nationals in their territories. In an effort to effectively enforce immigration laws within their territories, countries have experienced various challenges that slow down the process. Seghetti et al., (2004), Lucas

(2014) (as cited by Koros, 2018), Dick & Schraven (2018), Düvell, Cherti & Lapshyna (2018) and Jain (2019), argue that even in developed countries, like the United States, the lack of adequate financial resources necessary to identify and remove the high number of noncitizens who are legally removable has been identified as hindering interior enforcement of immigration laws.

In studies carried out in South Africa on the challenges of controlling the borders, it was established that there existed challenges in the enforcement of immigration laws as a consequence of corruption among officials and lack of capacity of the concerned government agency to equip and train its border personnel (Hennop, Jefferson & McLean, 2001; Vigneswaran, 2019).

Low & Mokhtar (2017), in their study in Malaysia point out that harbouring of noncompliant foreign nationals by citizens is another factor that acts as an obstacle to the effective enforcement of immigration laws. They argue that this behaviour is due to benefits accruing to the local people, for example through provision of services to the irregular immigrants, therefore their cooperation with enforcement agencies is never guaranteed

Corruption has been identified as playing a key role in the process of handling noncompliance with immigration laws (Franck, 2019; Vigneswaran, 2019). Franck and Vigneswaran have noted that immigrants avoid enforcement action (arrest or deportation) taken against them by bribing government officials.

The issue of inadequate training and equipment to enforcement officials also determines the success of enforcement of immigration laws (Seghetti et al., 2004; Parra-Chico, 2008; Düvell et al., 2018; Vigneswaran, 2019). Enforcement agents must be thoroughly trained so that they are equipped to handle the highly technical cases that involve the detection of travel document fraud, trafficking in persons (perpetrators and victims) and smuggling of human beings.

Due to lack of full cooperation and collaboration among various government agencies, enforcement of immigration laws is negatively affected (Stana, 2003; Düvell et al., 2018). This is a challenge to enforcement because the responsible agencies fail, or delay, to share information as and when required (Seghetti et al., 2004).

Another challenge that has been identified as slowing down enforcement (Seghetti et al., 2004; Düvell et al., 2018), is the lack of adequate detention space for holding immigration violators, or those foreign nationals awaiting removal. Seghetti et al, further argue that due to lack of adequate holding space, there is fear that many foreign nationals are released from detention.

Enforcement of immigration laws is influenced by the number of personnel involved; this means that lack of sufficient number of officials (Seghetti et al., 2004; Kobach, 2008; Düvell et al., 2018; Dick & Schraven, 2018; Düvell et al., 2018; Vigneswaran, 2019) to enforce the laws results in a likelihood of noncompliant foreign nationals avoiding enforcement action taken against them. This issue of low staffing levels has been seen to mostly affect workplace enforcement (Cornelius, 2005).

The challenges to effective immigration enforcement highlighted above, focused on different geographical regions and may not be applicable in the Kenya context. This study, therefore, is an effort to find out the challenges peculiar to the interior enforcement of immigration laws in Kenya.

2.6 Enforcement of Kenya Immigration Laws

Kenya has ratified and domesticated various international and regional instruments related to migrants and Refugees (GOK, 2017). All the applicable immigration laws in Kenya derive their legitimacy from the Constitution of Kenya, 2010 (GOK, 2010a). The Directorate of Immigration Services (DIS) enforces various laws governing the post-entry of foreign nationals in Kenya. For example, the leading legislation on migration governance in Kenya, the Kenya Citizenship and Immigration Act (KCIA), 2011 (GOK, 2011), is an Act of Parliament enacted as envisaged in article 18 of the constitution (GOK, 2010a), to provide for matters relating to citizenship; issuance of travel documents; immigration and for connected purposes. For the purpose of this study, the focus is on the provisions of the Act that are enforced by the Directorate of Immigration Services (DIS) relating to the post-entry of foreign nationals in Kenya. These provisions of the Act are Part VI on Immigration Control and Part VII on Foreign Nationals Management of the KCIA, 2011. The KCIA, 2011, Part VI on Immigration Control comprises of, Section 33 (1) and (2) on Prohibited Immigrants and inadmissible persons, respectively; section 34 on Residence; Section 36 on the types of permits and passes; sections 37 and 39 on Permanent residence and loss of

permanent residence, respectively; sections 40 and 41 on Issuance of permits and Invalidation of work or residence permits, respectively; section 42 on void for permits, passes or certificates obtained through fraud; section 43 on the power to remove persons unlawfully present in Kenya; section 45 on duties and obligations of employers in relation to employment of foreign nationals; section 46 on learning institutions that provide training or instruction to foreign nationals; section 47 on businesses or persons offering accommodation to foreign nationals; section 48 on the powers of immigration Officers in relation to investigation and arrest of suspected cases of noncompliance; section 49 on the power of arrest and search of persons covering investigations, arrest, or detention of a permanent resident or a foreign national; section 50 on the Holding facility to be used for holding persons ordered to be removed to their countries; section 52 on the Institution and conduct of criminal proceedings by an immigration officer; section 53 on general offenses, specifically related to entry, residence and employment of foreign nationals; section 54 on offences relating to documents; and section 55 on instant fine, and/or prosecution, for overstay in Kenya. Further to the above provisions, Part VII on Foreign nationals' management, section 56, relates to the requirement of a foreign national to register, including notification of change of address or travelling, with an immigration officer, when they reside in Kenya for continuous period exceeding three months.

For the better carrying into effect the provisions of the KCIA, 2011, discussed above, the Cabinet Secretary in-charge of the Ministry responsible for Immigration, in exercise of the powers conferred by KCIA, 2011, section 59, made the Kenya Citizenship and Immigration Regulations (KCIR), 2012, through legal Notice number 64 dated June 15, 2012 (GOK, 2012). These Regulations gives guidelines on the procedures for entry, residence and employment of foreign nationals; application for and issuance of Residence or work permits, and passes; registration of foreign nationals residing in Kenya for continuous period exceeding three months, and notification of change of their residence and address, in a Foreign Nationals' Register. The Regulations further gives guidelines on the type of information required to be contained in the records relating to foreign-national employment and accommodation.

The DIS also enforces section 26 (A) of the Penal Code, Chapter 63, of the Laws of Kenya relating to the recommendation by a court of law to the Cabinet Secretary responsible for immigration, in accordance with section 43 of the KCIA, 2011, for an order for removal of a foreign national convicted of an offence punishable for imprisonment (GOK, 2008; GOK, 2011).

As provided for in section 21 of the Refugees Act, 2006, the Cabinet Secretary responsible for matters relating to immigration and internal security, may, through consultation, order the expulsion from Kenya of any refugee or member of his family if he considers the expulsion to be necessary on the grounds of national security or public order, (GOK, 2006), in accordance with section 43 of the KCIA, 2011 (GOK, 2011). It is the mandate of the DIS to carry out this kind of enforcement action.

Another legislation, relating to foreign-national presence in Kenya, that the DIS enforces is the Counter-Trafficking in Persons Act, 2010; section 7 and section 8 respectively, deal with facilitation of foreign-national entry into Kenya, and interfering with travel documents and personal effects for the purpose of promoting trafficking in persons (GOK, 2010b).

The entry, residence and employment of foreign nationals is regulated through the enforcement of various provisions of the relevant immigration laws. However, there are cases of illegal entry, overstay, and/ or engaging in activities that contravene the terms and conditions of the residency immigration status, including fraud, employment and business (Ombati, 2018a, 2018b). The enforcement of Kenya immigration laws by the DIS is meant to ensure that, like in other jurisdictions (Warren, 2019, Nuñez-Neto, 2019), incidences of foreign-national noncompliance with terms and conditions of entry, residence and employment are curbed.

In Kenya, cases of foreign national noncompliance with the Kenya immigration laws have been reported. These cases include foreign nationals failing to report entry into Kenya at the POEs (Cheruiyot, 2014; Mbuthia, 2016; Koros, 2018), working without authority, forging travel documents, overstaying the duration of their visa, using other peoples' travel documents for entry (Mbuthia, 2016), smuggling of human beings (Cheruiyot, 2014) and trafficking in persons (Koros, 2018). Where noncompliance with Kenya immigration laws has been encountered, the DIS takes

enforcement actions against the offenders through arrests, prosecution and removal (Mbuthia, 2016), in compliance with both domestic and international laws.

As discussed above, enforcement of immigration laws in other geographical jurisdictions has been seen to face challenges. In Kenya, studies by Cheruiyot (2014) and Koros (2018) have identified various challenges, including low staffing levels, inadequate training, lack of equipment and corruption as hampering enforcement of immigration laws. However, this study is an effort to find out the challenges faced by the DIS in the enforcement of immigration laws governing post-entry, residence and employment of foreign nationals in the Kenyan context.

2.7 Conceptual Framework

Figure 2.1 below is a conceptual model illustrating the main variables of this study. It shows independent variables as the methods of enforcement used by the Directorate of Immigration Services to deter noncompliance with Kenya immigration laws.

Independent variables	Dependent variable

Enforcement of Immigration Laws	Compliance
• Arrests • Prosecutions • Detention • Removals • Watch Listing	• Deterrence
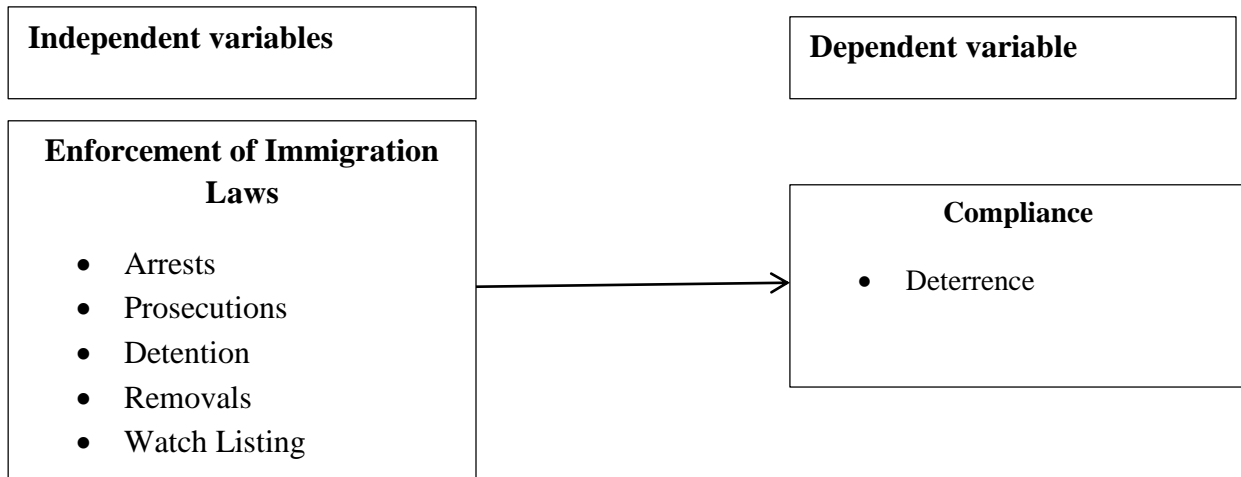
Figure 2.1: Conceptual Framework

Source: Researcher (2020)

CHAPTER THREE: RESEARCH METHODOLOGY

3.1 Introduction

This chapter covers the research design of the study, the targeted population, data collection, data analysis and ethical considerations. The study endeavored to find out how the Directorate of Immigration Services (DIS) enforced Kenya immigration laws.

3.2 Research Design

This study adopted a case study research design. It focused on the Investigation and Prosecution Section at the headquarters of the Directorate of Immigration Services (DIS). Due to its location, the Investigation and Prosecution Section was ideal because it is this section that deals with noncompliance incidences and data on these cases is available. According to Kumar (2011), a case study involves comprehensively exploring a particular area of study. This research design was selected because the study was meant to comprehensively explore and gain more knowledge on the enforcement of Kenya immigration laws by the DIS.

3.3 Target Population

According to Fraenkel and Wallen (2009), target population is the group of persons, including objects and institutions that is the focus of a study. This study targeted all the fifteen (15) immigration officers working at the Directorate of Immigration Services, Investigation and Prosecution Section. The whole population of the targeted immigration officers was selected as respondents.

3.4 Data collection

The study utilized both primary and secondary sources of data. Primary data were collected through questionnaires administered to the fifteen (15) immigration officers at the Investigation and Prosecution Section via both the drop-and-collect later and email methods while secondary data was collected from review of administrative records at the Directorate of Immigration Services through the use of transcript forms. The questionnaire as a research instrument was favoured due to its low cost of administration and effective way of collecting data in a structured and easily manageable form (Wilkinson & Birmingham, 2003; Ruane, 2005). The review of administrative records as a source of secondary data was necessitated by the fact that these data

are usually available in aggregate form and require limited reanalysis (Smith, 2008), and for corroboration with information obtained from the primary sources.

3.5 Data Analysis

Kothari (2004) views processing of the data as involving editing, coding, classifying and tabulating the raw information that had been gathered from the field with the intention of answering a study's research questions. According to Kombo and Tromp (2006) the processed data should be further analyzed through deliberate categorization to determine any emerging patterns, connections or relationships. The same procedure as above was used for the purpose of answering the research questions. This study utilized quantitative data analysis method through the use of Microsoft Excel and presented the analyzed data in tables and figures.

3.6 Ethical Considerations

For this study to be undertaken permission was sought, and granted, from the Directorate of Immigration Services (DIS) through the Kenya Institute of Migration Studies (KIMS) under the department of Population Studies and Research Institute (PSRI), University of Nairobi (UON) (see attached Appendix V). Participation was voluntary. Informed consent was obtained from the respondents before their participation in filling the questionnaires (see attached Appendix I). Anonymity and confidentiality of responses was guaranteed in order to increase the chances of high quality and honesty of the responses, encourage participation and protect the respective respondent's privacy.

CHAPTER FOUR: DATA ANALYSIS, RESULTS AND DISCUSSION

4.1 Introduction

The purpose of this chapter is to present, analyze and interpret the data collected by means of questionnaires administered to the immigration officers and review of records held at the Directorate of Immigration Services (DIS). This chapter presents various data analysis methods, results, discussion of the findings, comparison of the research findings with theory and empirical literature.

4.2 Response Rate

The questionnaires were administered to all the fifteen (15) immigration officers undertaking the duties of enforcement of Kenya immigration laws at the Directorate of immigration Services (DIS), Headquarters, Nairobi.
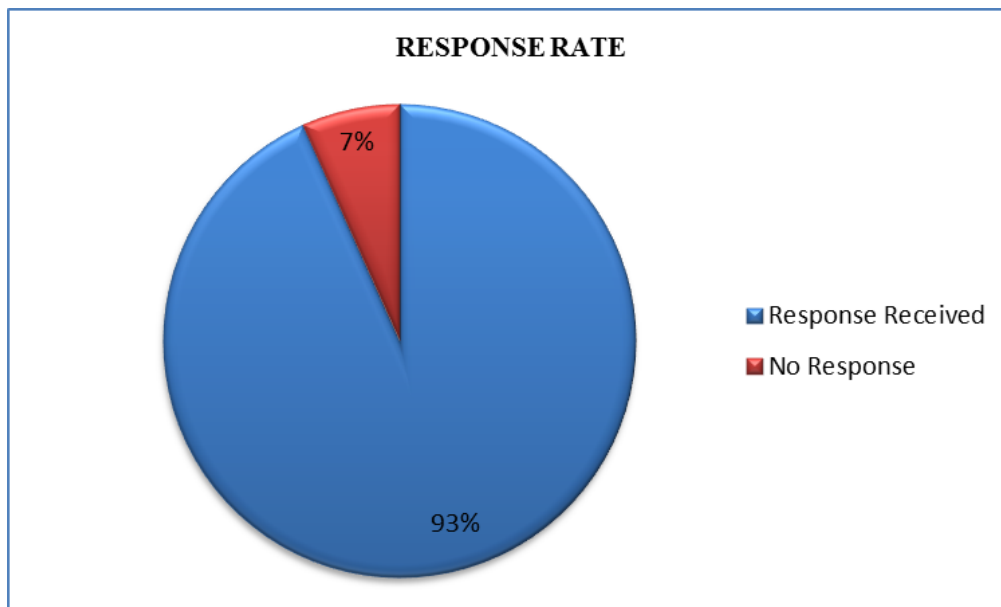
Figure 4.1: Response rate (N: 14)
Source: Field Data (2020)

A total number of fifteen (15) immigration officers were approached to fill the questionnaires but only fourteen (14) immigration officers responded. Therefore, 93% of the targeted respondents issued with questionnaires responded and 7% did not respond (see fig. 4.1 above).

4.3 Socio-demographic Information

This section illustrates the socio-demographic information of the respondents of this study with regard to the number of years worked in the current section, Investigation and Prosecution Section. Table 4.1 below shows the number of years worked at the section. The number of years worked at the section was important as it was meant to determine whether there was relationship with knowledge of Kenya immigration laws enforced, activities performed, incidences of noncompliance and challenges encountered. The responses were classified into four groups of years worked at the Section; with 64.3% of the respondents having worked for 1-5 years, followed by 14.3% respectively for 6-10 years and 11-15 years worked and 7.1% for less than 1 year. This shows that a large number of respondents (92.9%) have worked in this section for more than one year, thus capable of responding to the various issues in the questionnaire.

Table 4.1: Respondents' Number of Years Worked at the Investigation and Prosecution Section (N: 14)

Years Worked	Frequency	Percent %
Less than 1 Year	1	7.1
1-5 Years	9	64.3
6-10 Years	2	14.3
11-15 Years	2	14.3
Total	**14**	**100**

Source: Field data (2020)

4.4 Familiarity with Kenya laws enforced by the Directorate of Immigration Services

The first objective of this study was to identify the various noncompliance incidences encountered by the DIS in the enforcement of Kenya immigration laws. The respondents were asked to mark/tick against the various Kenya laws given in the questionnaire that they were familiar with in their duties of enforcement. Figure 4.2 shows five of the Kenya laws enforced by the Section. The first three Kenya laws, namely the Kenya Citizenship and Immigration Act, 2011, the Kenya Citizenship and Immigration Regulations, 2012 and the Penal Code, Chapter (Cap) 63, which had

a response of 100%, 100% and 28.6% respectively, were listed in the questionnaire in that order. The last two of the Kenya laws, the Counter-Trafficking in Persons Act, 2010 and the Refugee Act, 2006, with a respective response of 14.3% and 7.1%, were specified by the respondents in the category of any other(s) laws enforced by the section in response to question 2 (iv) of the questionnaire.

Respondents' Familiarity with Laws of Kenya Enforced

	The Kenya Citizenship and Immigration Act, 2011	The Kenya Citizenship and Immigration Regulations, 2012	The Penal Code, Cap 63	The Counter-Trafficking in Persons Act, 2010	The Refugee Act, 2006
Percent %	100	100	28.6	14.3	7.1
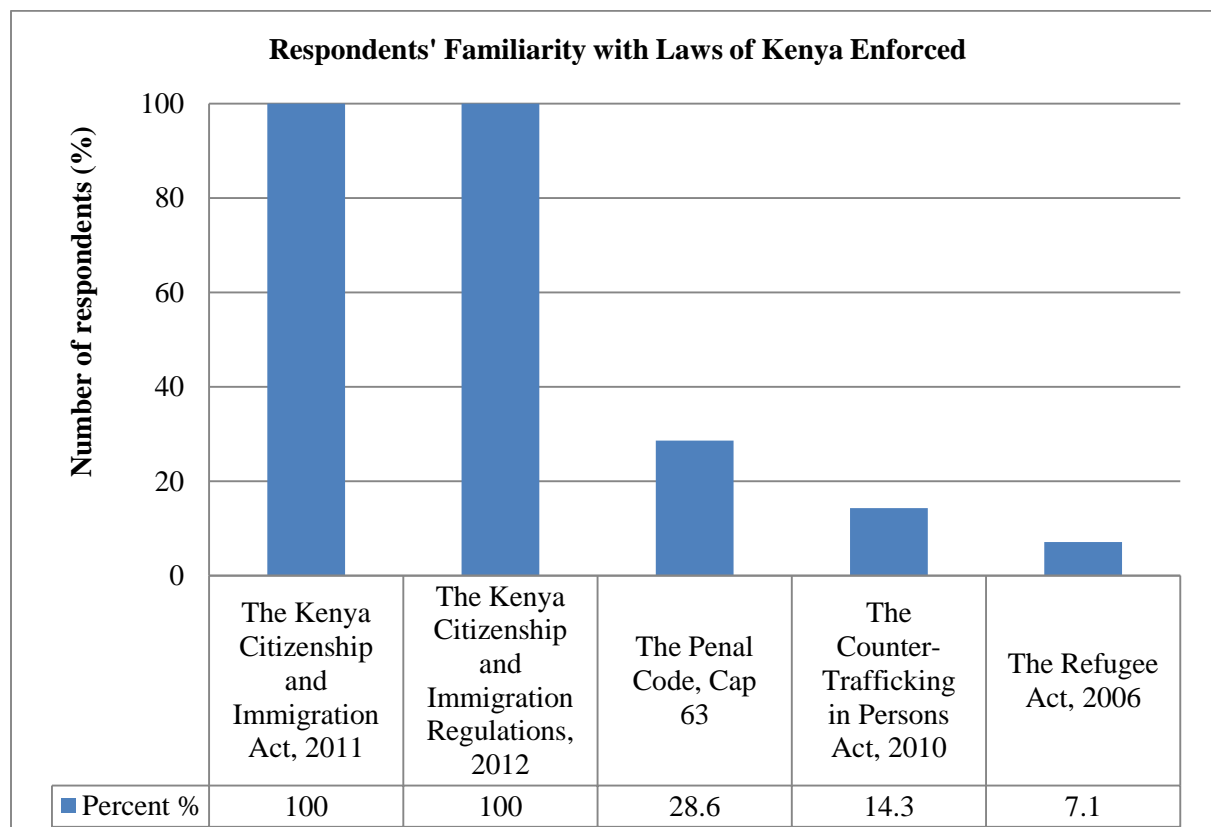
Figure 4.2: Respondents' familiarity with Laws of Kenya Enforced (N: 14)
Source: Field data (2020)

4.5 Methods of Enforcement used by the Directorate of Immigration Services

This section examines the various methods of Enforcement used by the DIS to ensure compliance with Kenya immigration laws. The areas of interest include; the respondents' duties at the Investigation and Prosecution Section; the activities carried out by the section for the period, January 2018 to December 2019; various categories of removals, January to December, 2018; respondents' ranking of encounter with foreign-national non-compliance incidences; various cases prosecuted; and the means utilized in locating suspected foreign-national noncompliance with Kenya immigration laws.

4.5.1 Duties of the Respondents at the Investigation and Prosecution Section

The respondents were asked to choose from the various options provided in the questionnaire the duties they perform at the Section. Figure 4.3 below shows the respondents indicated the duties they perform, not mutually exclusive, as follows; repatriation (92.9%), investigations on suspected noncompliant cases (85.7%), arrests (85.7%), deportations (78.6%), identification/detection of suspected noncompliant cases (78.6%), prosecutions (57.1%), detention before an enforcement action (28.6%) and other duties (28.4%).
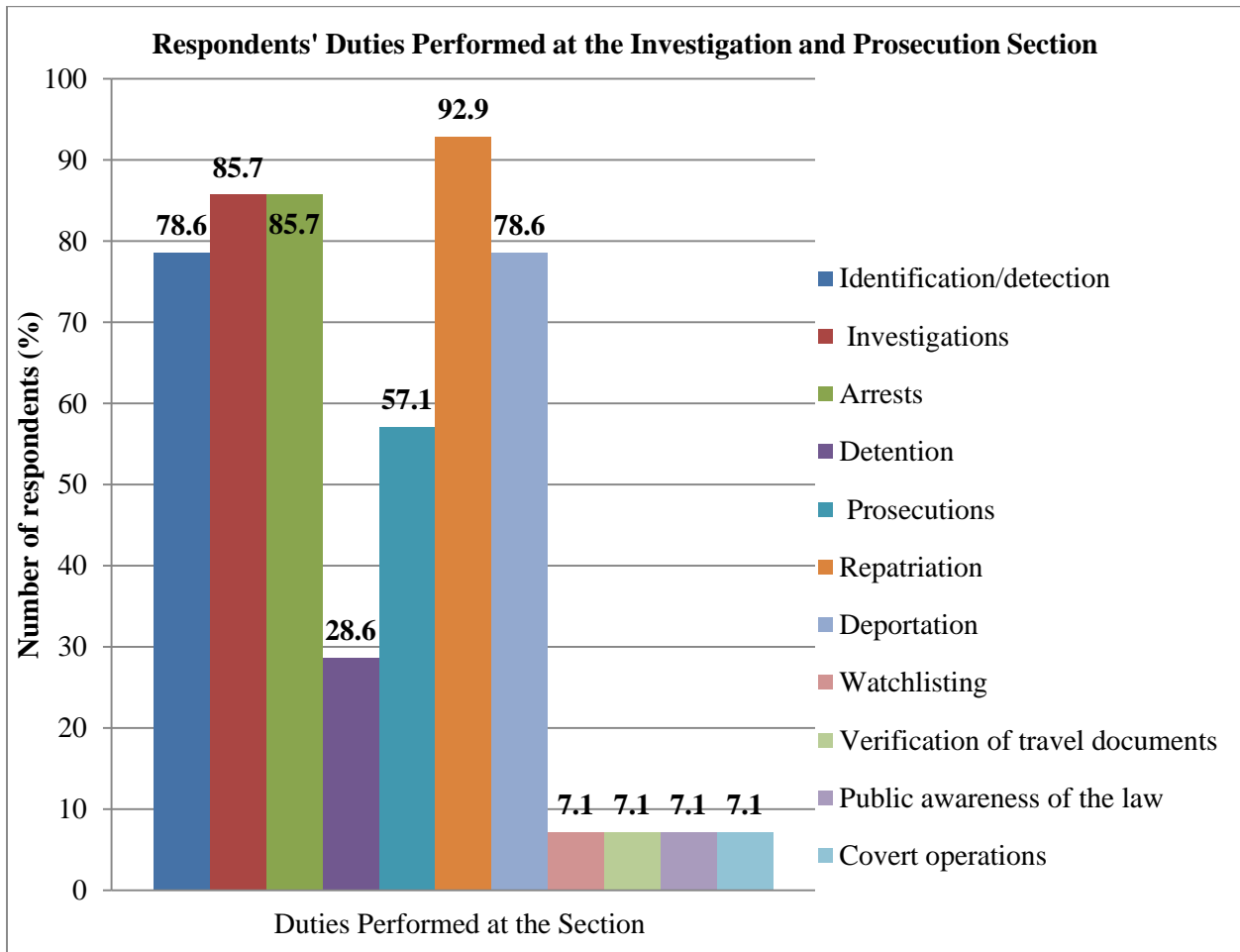
Figure 4.3: Respondents' duties performed at the Investigation and Prosecution Section (N: 14)

Source: Field data (2020)

4.5.2 Enforcement activities undertaken by the Directorate of Immigration Services

The researcher gathered secondary data from the records in the custody of the DIS. According to the monthly Returns Records of enforcement Activities for the period, January 2018 to December 2019, the activities shown in Table 4.2 below were undertaken.

Table 4.2: Enforcement Activities undertaken by the Directorate of Immigration Services (January, 2018 to December, 2019)

ACTIVITIES UNDERTAKEN	2018	2019	ABSOLUTE CHANGE	% CHANGE
Field Visits	786	671	-115	**-14.6%**
Arrests	1034	934	-100	**-9.7%**
Detentions	1239	575	-664	**-53.6%**
Prosecutions	433	293	-140	**-32.3%**
Repatriations	756	1556	+800	**+105.8%**
Deportations	299	228	-71	**-23.7%**
Administrative Removals	637	519	-118	**-18.5%**
Watch Listing	2772	2419	-353	**-12.7%**

Source: Directorate of Immigration Services Annual Enforcement Activities (January, 2018 to December, 2019)

There was decline in number of all enforcement activities handled during the two year period except repatriation that recorded an increase of 105.8%.

4.5.3 Respondents' ranking of encounter with foreign-national non-compliance incidences

The respondents were asked to rank the frequency of their encounter with three categories of foreign-national violations with Kenya immigration laws, namely document related, work Permit/Pass related and unlawful stay violations as illustrated below by Figures 4.4a, 4.4b and 4.4c respectively. All (100%) of the respondents indicated that, in their operations, they encounter cases of foreign-national noncompliance with Kenya immigration laws.

Respondents' Ranking of Encounter with Document Related Noncompliance Incidences

	Forged immigration security stamp endorsements	Forged visas	Forged passports or travel documents	Counterfeit passports or travel documents	Impostors
Never	0	0	7.1	7.1	0
Rarely	7.1	21.4	14.3	42.9	28.6
Undecided	14.3	7.1	7.1	0	14.2
Often	50	42.9	42.9	28.6	28.6
Very Often	28.6	28.6	28.6	21.4	28.6
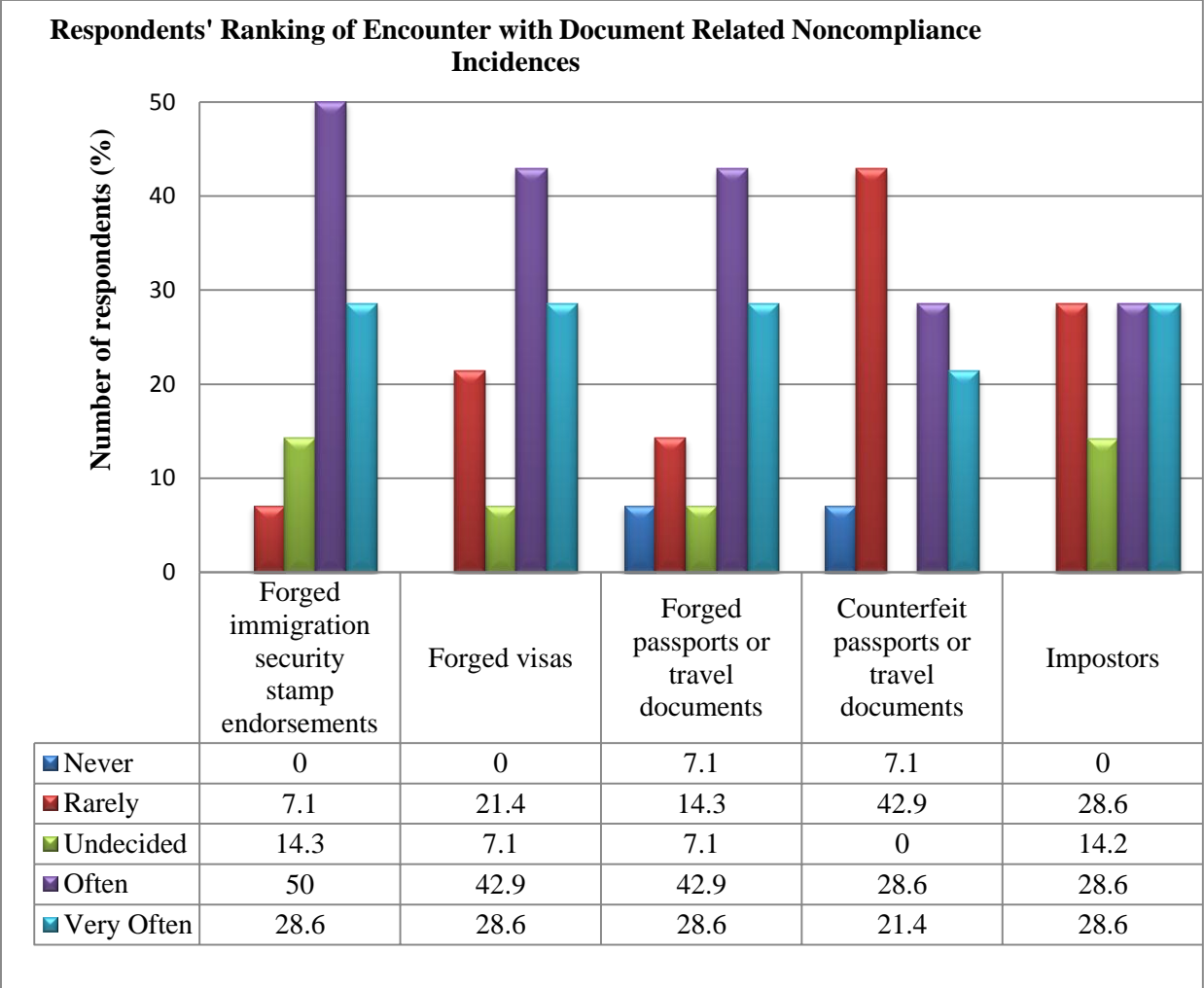
Figure 4.4a: Respondents' Ranking of Document Related Noncompliance Incidences Encountered (N: 14)

Source: Field Data (2020)

Figure 4.4a above shows that a higher percent of respondents (with response of Often and Very often) indicated they encounter incidences of forgeries: forged immigration stamp endorsements (78.6%), forged visas (71.5%), forged passports or travel documents (71.5%) than impostors (57.2%).

As illustrated in Figure 4.4b below, a high number of respondents rated the frequency of their encounter with foreign nationals working on expired permits, working on a Kenya Visitor's Pass (KVP) and studying without student pass at 78.5%, 78.6% and 64.3% respectively, as Often and Very often.
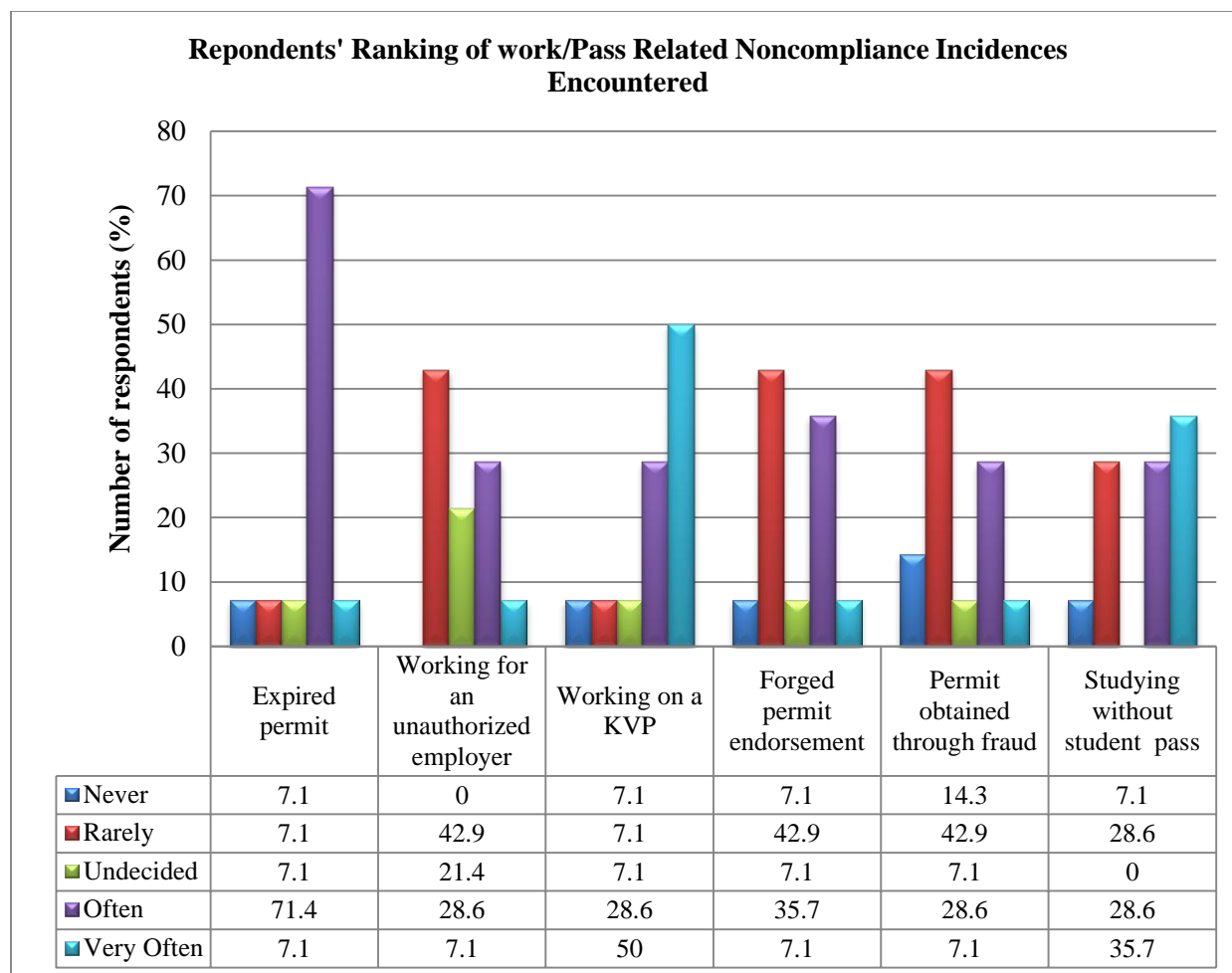
Figure 4.4b: Respondents' Ranking of Work/Pass Related Noncompliance Incidences Encountered (N: 14)

Source: Field Data (2020)

On the other hand, the findings in Figure 4.4b above reveal that incidences of working for an unauthorized employer, forged permit endorsements and obtaining permits through fraud were each indicated by 42.9% of the respondents as Rarely encountered.

On the ranking of the respondents' frequency of encounter with foreign-national incidences of unlawful stay in Kenya (see Figure 4.4c below), the findings reveal that a combined 71.4% of the respondents indicated their frequency of encounter as Often and Very for overstay, 50% and 7.1% indicated their frequency of encounter with foreign-national failure to report entry into Kenya at designated ports of entry (POEs) respectively as Rarely and Undecided while 42.9% and 14.2%

respectively indicated as Rarely and Undecided their frequency of encounter with foreign nationals on expired travel documents.

Respondents' Ranking of Encounter with foreign-national Incidences of Unlawful Stay in Kenya

	Failure to report entry at designated ports of entry (POEs)	Expired travel document	Overstay
■ Never	0	0	0
■ Rarely	50	42.9	21.4
■ Undecided	7.1	14.2	7.1
■ Often	35.7	42.9	35.7
■ Very Often	7.1	0	35.7
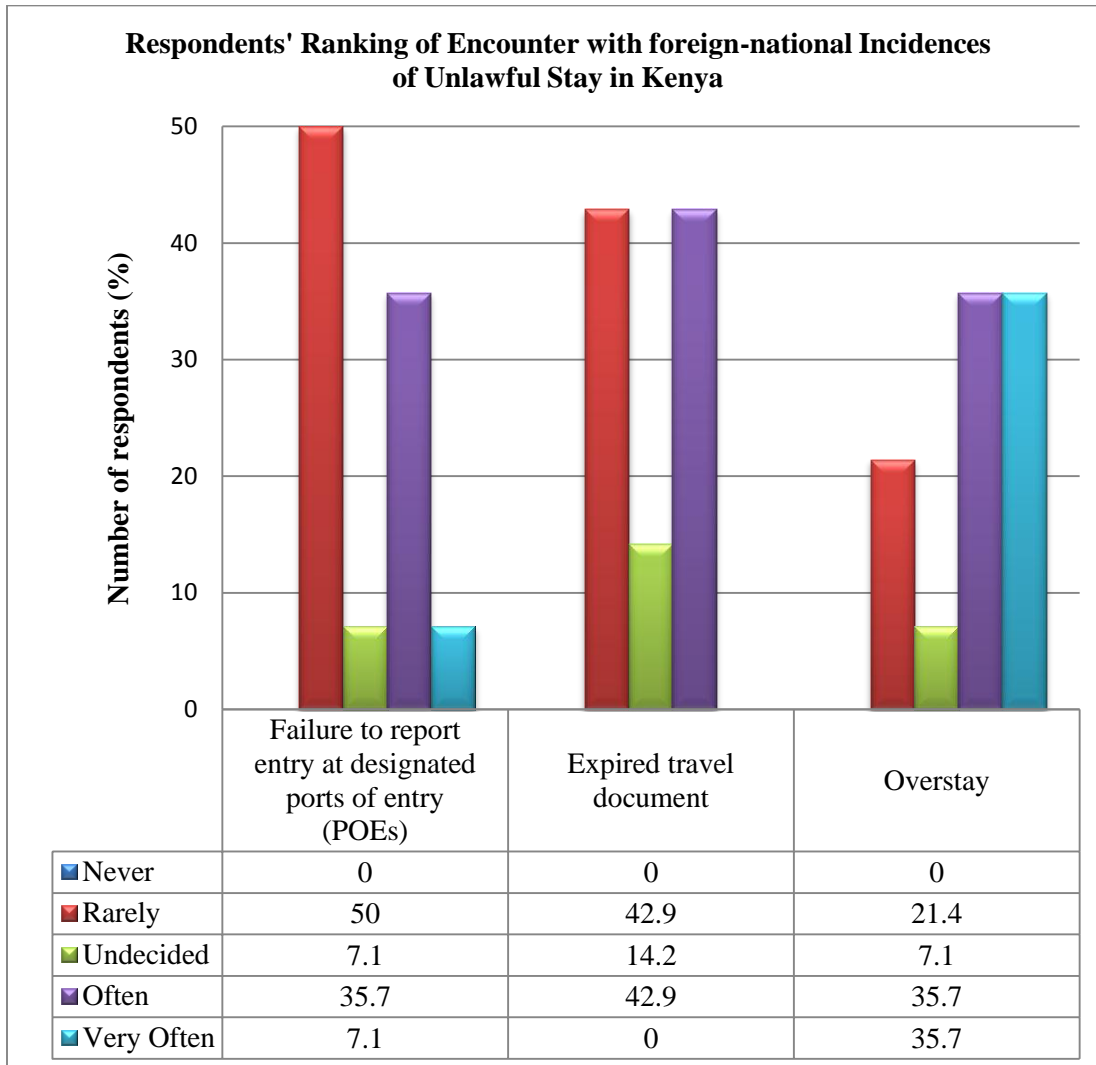
Figure 4.4c: Respondents' Ranking of Encounter with Incidences of Unlawful Stay in Kenya (N: 14)

Source: Field Data (2020)

As indicated in Figure 4.4c above, it can be deduced that most incidences of foreign-national unlawful stay in Kenya encountered by the respondents are as a result of visa overstay.

4.5.4 Prosecution of document related offenses by Category, January, 2018 to December, 2019

Figure 4.5 below shows five sub-categories of 271 cases of document related offenses prosecuted by the Directorate of Immigration Services between January, 2018 and December, 2019.

Prosecution of Document Related Offences by Category,
January 2018 to December 2019

	Forged immigration security stamp(s) endorsements	Forged visas	Forged passports or travel documents	Counterfeit passports or travel documents	Impostors
■ % Share	40	25	21.4	1.1	12.5

Figure 4.5: Prosecution of Document Related Offenses by Category, Jan., 2018 to Dec., 2019

Source: Directorate of Immigration Services Prosecution Records, January 2018 to December 2019

Cases of forgery comprising of forged immigration security stamp(s) endorsements, forged visas, forged passports or travel documents, counterfeit passports or travel documents accounted for 40%, 25%, 21.4% and 1.1% respectively while persons using other people's travel documents (Impostors) accounted for 12.5% of the cases prosecuted during the period as illustrated in Figure 4.5 above.

4.5.5 Prosecution of Work Permit/Pass related offenses by Category, Jan. 2018 to Dec. 2019

The researcher had sought to find out the various categories of work permit/pass related offenses that had been prosecuted by the Directorate of Immigration Services during the period under review. Available records reviewed at the DIS showed that out of 71 Work Permit/Pass related cases prosecuted, 97.2% were due to working on a Kenya Visitor's Pass (KVP) while forged work permit endorsement were 2.8%. No cases were recorded in categories of expired permits, working for an unauthorized employer, permits obtained through fraud and studying without student pass. Figure 4.6 below illustrates the status.

Prosecution of Work Permit/Pass Related Offences by Category, January 2018 to December 2019

	Expired permit	Working for an unauthorized employer	Working on a Kenya Visitors Pass (KVP)	Forged permit endorsement	Permit obtained through fraud	Studying without student pass
■ % SHARE	0	0	97.2	2.8	0	0

Y-axis: Number of cases (%)
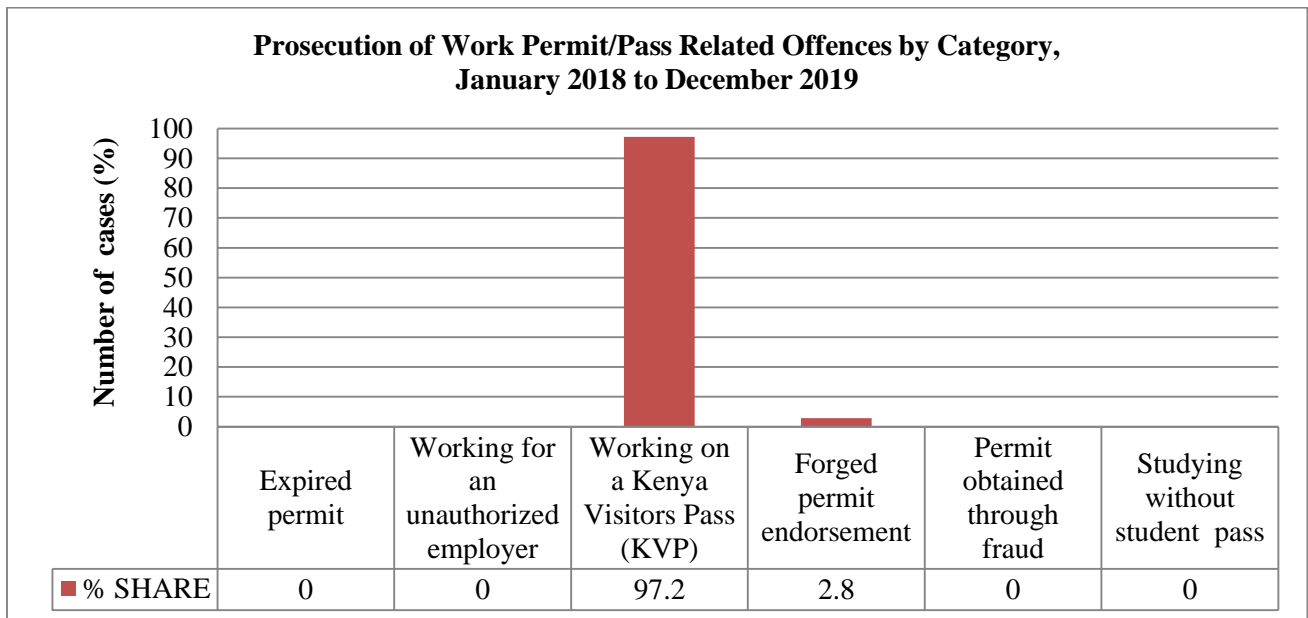
Figure 4.6: Prosecution of Work Permit/Pass Related offenses by category, Jan. 2018 – Dec. 2019

Source: Directorate of Immigration Services Prosecution Records (January 2018 to December 2019)

4.5.6 Prosecution of Unlawful Stay Related Offenses by Category, January 2018 to December 2019

The researcher had sought to find out the cases prosecuted by the Directorate of Immigration Services in relation to unlawful stay in Kenya. This is as represented in Figure 4.7.below.

PROSECUTION OF UNLAWFUL STAY RELATED OFFENSES BY CATEGORY, Jan. 2018 - Dec. 2019

- Failure to report entry at designated ports of entry (POEs)
- Expired travel document
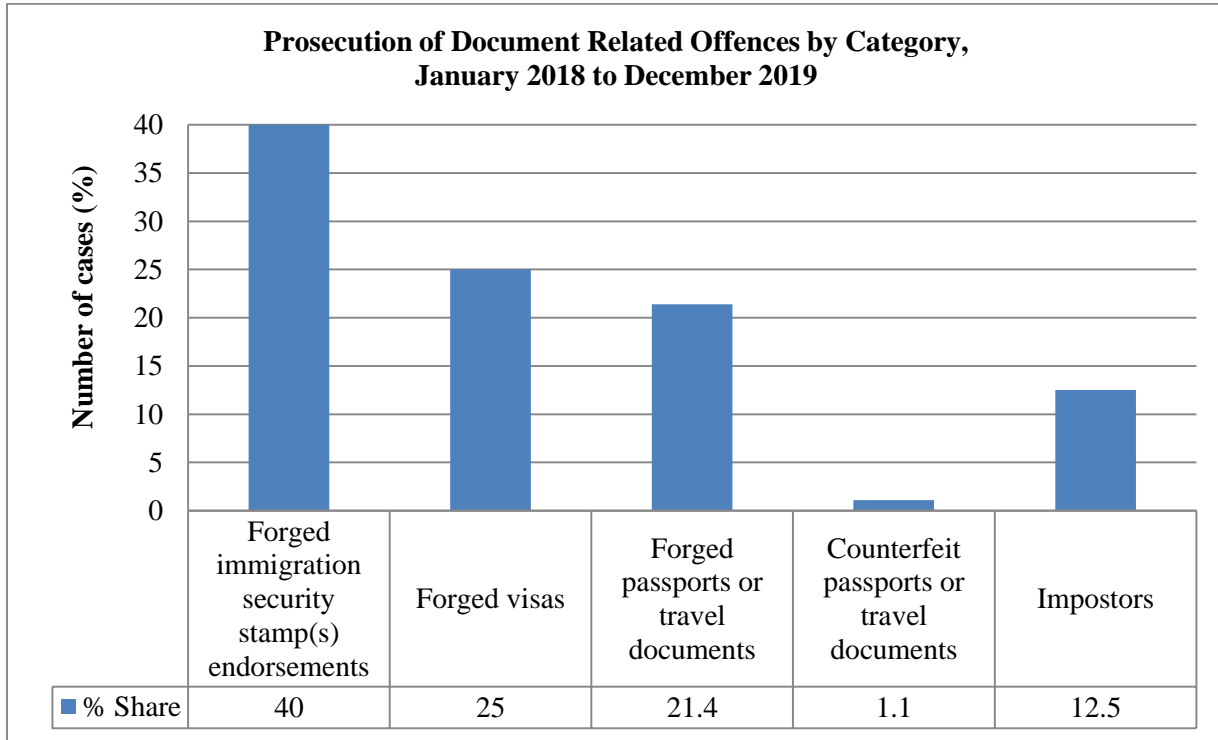- Overstay

45%

55%

0%
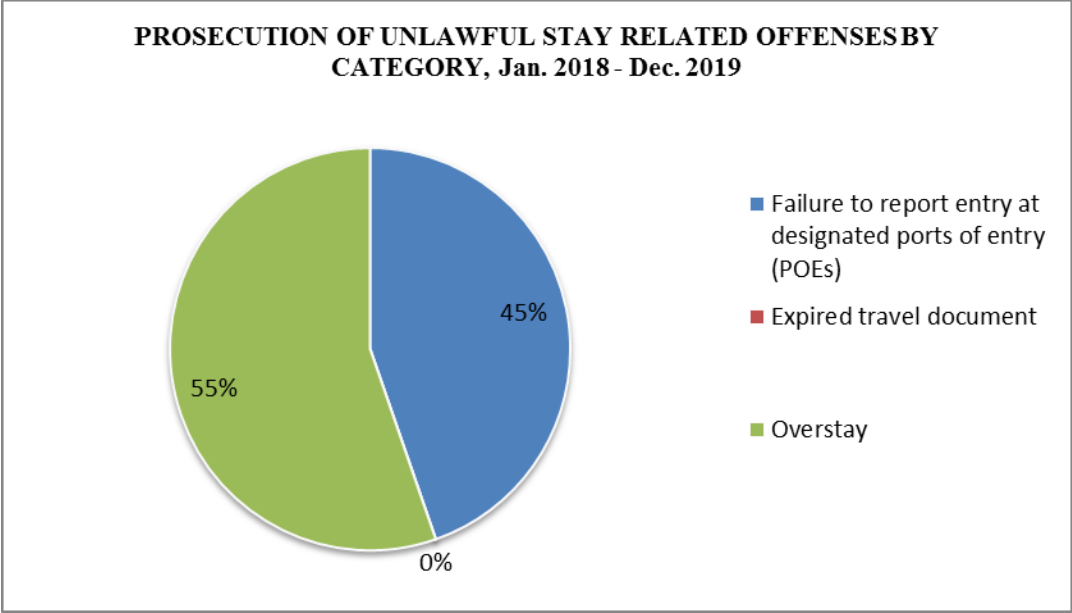
Figure 4.7: Prosecution of Unlawful Stay Related Offenses by Category, Jan. 2018 to Dec. 2019

Source: Directorate of Immigration Services Prosecution Records, January 2018 to December 2019

As Figure 4.7 above illustrates, out of 76 unlawful stay cases prosecuted during the period, 55% were due to overstay and failure to report entry into Kenya at designated ports of entry (POEs) were 45%.

4.5.7 Means Utilized in Locating Suspected Noncompliance with Kenya Immigration Laws

The researcher sought to find out how often the respondents utilized the means indicated in Table 4.3 below in locating suspected cases of noncompliance with Kenya immigration laws. In the table it is shown that majority of the respondents ranked their frequency as Often/ Very often the utilization of the following means, namely impromptu visits to worksites at 78.6%, public complaints (71.4%), informers (64.3%) and detection at ports of entry (POEs) (64.3%), in locating foreign-national noncompliance incidences.

On the other hand, it is important to note that the respondents ranked as Never/Rarely the utilization of Automatic notification through foreign national management information system at 64.3%, anonymous messages (42.8%) and other government agencies (35.7%).

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Table 4.3: Respondents' ranking of the means applied in locating noncompliance with Kenya immigration laws (N: 14)

Ranking of means Applied in locating Noncompliance	Never	Rarely	Undecided	Often	Very Often	Totals N %
Informers	0	21.4%	14.3%	**28.6%**	**35.7%**	14 100%
Impromptu visits to worksites	7.1%	0	14.3%	**35.7%**	**42.9%**	14 100%
Public complaints	0	21.4%	7.1%	**50%**	**21.4%**	14 100%
Other government agencies	0	**35.7%**	14.3%	**35.7%**	**14.3%**	14 100%
Detection at Ports of entry (POEs)	0	21.4%	14.3%	**42.9%**	**21.4%**	14 100%
Anonymous messages	**7.1%**	**35.7%**	14.3%	28.6%	14.3%	14 100%
Automatic notification through Foreign National management information system	**50%**	**14.3%**	7.1%	21.4%	7.1%	14 100%

Source: Field data (2020)

4.6 Challenges Encountered in the Enforcement of Kenya Immigration Laws

This section discusses the challenges encountered by the DIS in enforcing Kenya immigration laws. The section covers respondents' ranking of challenges encountered in enforcement of Kenya immigration laws (4.6.1), the effect of the identified challenges on individual method(s) of enforcement (4.6.2) and the suggested solutions to the challenges (4.6.3).

4.6.1 Respondents' Ranking of Challenges Encountered in Enforcement of Kenya Immigration Laws

The respondents were asked to rank their opinion on how frequent of each of the factors given posed challenges to the enforcement of Kenya immigration laws. All the respondents (100%) indicated that they had encountered challenges in the enforcement. Table 4.4 below shows the respondents' ranking of the frequency of encounter with various challenges in the enforcement of immigration laws. The findings reveal that the majority of the respondents ranked as Often/ Very often the frequency of the factors indicated as hindering the enforcement of immigration laws, namely low staffing (100%), holding/detention facilities (92.8%), cost of enforcement (85.8%),

shortage of functional vehicles (85.7%), lack of appropriate post-entry monitoring technology, personal safety (78.6%) and delays in enforcement action against suspected noncompliance (57.2%). It is worth noting that 35.7% of the respondents introduced a new factor, interference/ lack of independence in decision making, as hindering enforcement action.

Table 4.4: Respondents' Ranking of Challenges Encountered in Enforcement of Kenya Immigration Laws (N: 14)

Ranking of Challenges Encountered in Enforcement	Never	Rarely	Undecided	Often	Very Often	Totals	
						N	%
Low staffing levels	0	0	0	**64.3%**	**35.7%**	14	100.0%
Inadequate personnel skills	0	57.1%	14.3%	28.6%	0	14	100.0%
Holding/detention facilities	0	7.1%	0	**35.7%**	**57.1%**	14	100.0%
Cost of enforcement	0	14.3%	0	**42.9%**	**42.9%**	14	100.0%
Shortage of functional vehicles for use	0	14.3%	0	**35.7%**	**50%**	14	100.0%
Lack of appropriate technology to monitor foreign-national post-entry compliance with the laws	0	14.3%	7.1%	**35.7%**	**42.9%**	14	100.0%
Cooperation from other government agencies	0	35.7%	21.4%	**28.6%**	**14.3%**	14	100.0%
Personal safety/security	0	14.3%	7.1%	**50%**	**28.6%**	14	100%
Delays in enforcement action taken against suspected noncompliance	0	42.9%	0	**42.9%**	**14.3%**	14	100%
Foreign nationals lack information on the provisions of the existing immigration laws	0	50%	14.3%	28.6%	7.1%	14	100%
Bribery of government law enforcement agencies to avoid enforcement action	0	35.7%	21.4%	**42.9%**	0	14	100%
Foreign nationals' failure to report entry at ports of entry (POEs)	0	71.4%	7.1%	7.1%	14.3%	14	100%
Any other(s) (Specify): Interference/lack of independence in decision making	0	0	0	14.3%	21.4%	14	100%

*Source***:** Field data (2020)

4.6.2 The Effect of the Identified Challenges on Methods of Enforcement

The respondents were asked to indicate whether the challenges encountered in the enforcement of Kenya immigration laws identified in table 4.5 above affect the effectiveness of the various methods of enforcement.

As illustrated in table 4.5 below, the respondents indicated which of the challenges identified in table 4.4 above, had an effect on which method(s) of enforcement. According to 92.7% and 50% of the respondents, the top ranking challenge of low staffing levels affects arrest and prosecution respectively; the second challenge of inadequate Holding/detention facilities is indicated by 71.4% of the respondents as affecting detentions; 78.6% and 71.4% of the respondents respectively indicated that the cost of enforcement affects repatriation and deportation; the fourth ranked challenge of shortage of functional vehicles is indicated by 71.4%, 78.4% and 57.1% of the respondents as respectively affecting arrests, repatriation and deportation; the challenge of lack of appropriate technology to monitor post-entry compliance of foreign nationals is indicated by 50% of the respondents as affecting arrests; according to 78.6% of the respondents, lack of personal safety/security affects the arrest method of enforcement and 57.1% of the respondents indicated that the challenge of delays in enforcement action taken against suspected noncompliance with Kenya immigration laws affects prosecution more than the other methods of enforcement.

Table 4.5: Respondents' opinion on the effect of challenges encountered on the methods of enforcement of Kenya immigration laws

CHALLENGES	METHOD OF ENFORCEMENT				
	Arrest	Prosecution	Detention	Repatriation	Deportation
a) Low staffing levels	92.9%	50.0%	14.3%	35.7%	28.6%
b) Inadequate personnel skills	14.3%	71.4%	0	0	0
c) Inadequate Holding/detention facilities	35.7%	0	71.4%	42.9%	35.7%
d) Cost of enforcement	21.4%	7.1%	21.4%	78.6%	71.4%
e) Shortage of functional vehicles	71.4%	7.1%	14.3%	78.6%	57.1%
f) Lack of appropriate technology to monitor post-entry noncompliance	50.0%	35.7%	0	7.1%	7.1%
g) Cooperation from other government agencies	50.0%	42.9%	35.7%	35.7%	28.6%
h) Personal safety/security	78.6%	0	14.3%	42.9%	50.0%
i) Delays in enforcement action taken against noncompliance	28.6%	57.1%	0	35.7%	21.4%
j) Lack of information on the provisions of the existing immigration laws on the part of foreign nationals	14.3%	28.6%	7.1%	0	0
k) Bribery of government law enforcement agencies	50.0%	35.7%	7.1%	14.3%	14.3%
l) Foreign nationals' failure to report entry at ports of entry (POEs)	28.6%	21.4%	0	14.3%	0
m) Any other(s) (Specify): Interference	35.7%	35.7%	35.7%	0	0

Source: Field data (2020)

4.6.3 Suggested solutions to the challenges encountered by the Directorate of Immigration Services in the enforcement of Kenya immigration laws.

The respondents were asked to suggest solutions to the challenges identified in Table 4.5 above. Figure 4.8 below illustrates the various solutions suggested by the respondents to address the identified enforcement challenges. The top five suggested solutions are; the necessity of continuous research and training (78.6% respondents), increase in funding (71.4% respondents), increase in the number of personnel (50% respondents), provision of adequate and functional vehicles (35.7% respondents) and inter-agency coordination and information sharing (28.6%

respondents). The least three suggested solutions were post-entry surveillance system (7.1%), safety/security of personnel (7.1%) and punishing corrupt government officials (7.1%).
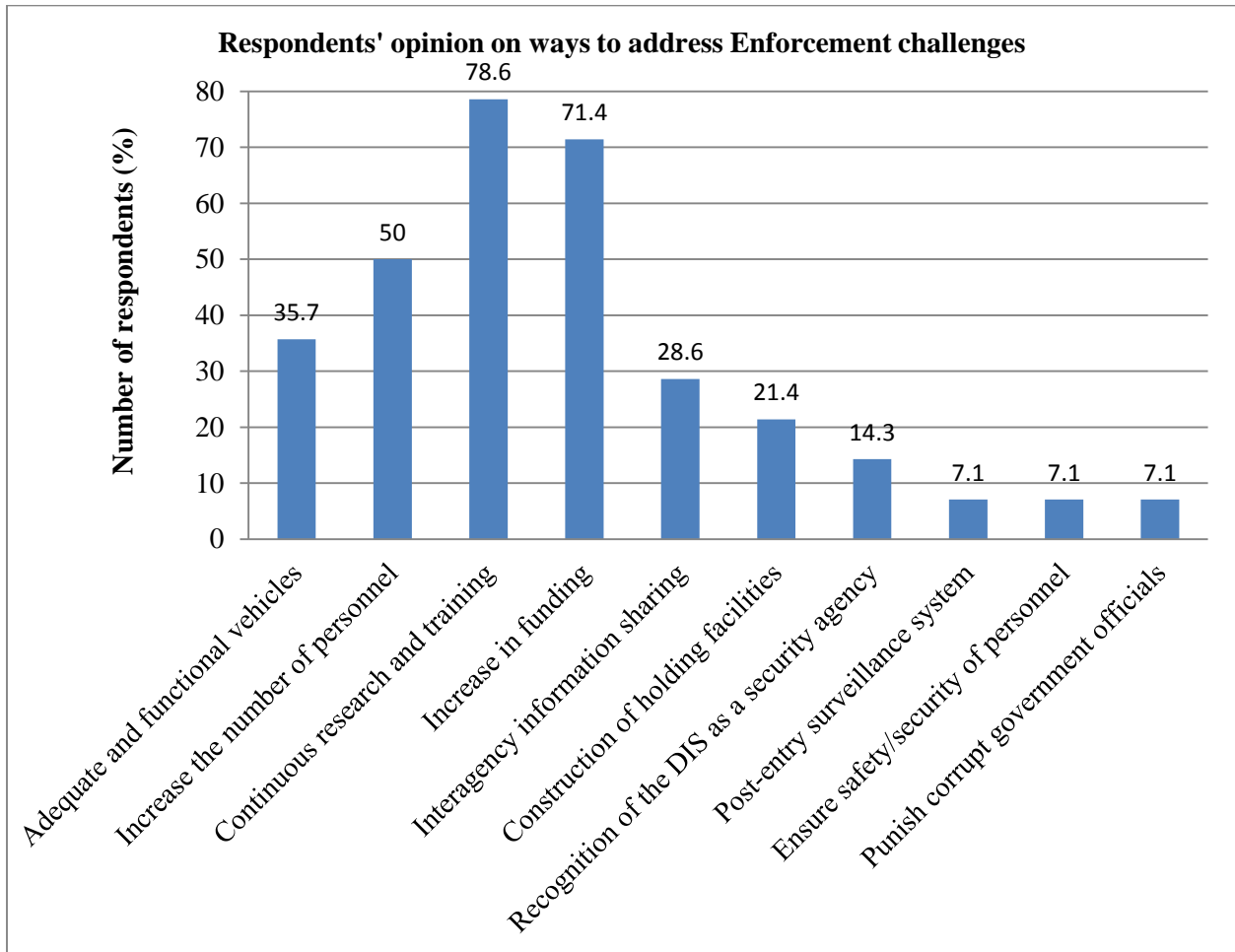
Figure 4.8: Respondents' opinion on ways to address Enforcement Challenges
*Source***:** Field data (2020)

4.7 Discussion of Findings

In this study, the researcher was guided by the following objectives; to identify noncompliant incidences encountered by the Directorate of Immigration Services in enforcing Kenya immigration laws; to examine methods of enforcement used by the Directorate of Immigration Services to ensure compliance with Kenya immigration laws; and to identify challenges faced by the Directorate of Immigration Services in enforcing Kenya immigration laws.

4.7.1 Response Rate

The researcher conducted a census of the immigration officers at the DIS, Investigation and Prosecution Section, and administered questionnaires to the whole population. The response rate was 93%.

4.7.2 Number of Years Worked at the Investigation and Prosecution Section

The researcher had sought to find out the number of years the respondents had worked at the section. Majority of the respondents (64.3%) indicated that they had worked for 1 to 5 years; 6 to 10 years and 11-15 years (14.3% respectively) while 7.1% for less than one year. This shows that the majority of the respondents had the requisite knowledge on enforcement of immigration laws thus able to respond to the issues raised in the questionnaire.

4.7.3 Familiarity with Laws Enforced by the Directorate of Immigration Services

The respondents were to indicate how familiar they were with the laws enforced by the DIS; all respondents (100%) indicated that they were familiar with both the Kenya Citizenship and Immigration Act, 2011 and the Kenya Citizenship and Immigration Regulations, 2012. However, the familiarity with other laws was low, the Penal Code (28.6%); the Counter-Trafficking in Persons Act, 2010(14.3%) and the Refugee Act, 2006 (7.1%). Since the objective of the study was on the enforcement of immigration laws, the respondents' knowledge on the leading immigration legislation made them fit to participate.

4.7.4 Noncompliance with Immigration Laws

The researcher had sought to identify the noncompliant incidences encountered by the DIS. Majority of the respondents indicated that they Often/Very Often encountered document related incidences of noncompliance, namely forged immigration stamp endorsements (78.6%), forged visas (71.5%), forged passports or travel documents (71.5%) and impostors (57.2%) while counterfeit passports was indicated as Rarely/Never (50%) encountered. This shows that forgery is the leading noncompliant incidence encountered as corroborated by the records of cases prosecuted by the DIS during the period, January, 2018 to December, 2019, where forgery comprised of 86.4% of the 271 document related cases.

On the respondents' ranking of work permit/Pass related noncompliance incidences, majority of the respondents, 78.5% and 78.6%, rated as Often/Very Often the frequency of their encounter with foreign nationals working on expired permits and on a Kenya Visitor's Pass (KVP) respectively while forged permit endorsement and obtaining permit through fraud were rated as Rarely/Never encountered at 50% and 57.2% respectively. The records available at the DIS that were reviewed by the researcher indicated that out of the 71 work permit/pass related incidences prosecuted, 97.2% were due to working on a KVP. This is an indication that majority of the work/pass related noncompliance incidences are due to working without authority.

Further, in the respondents' ranking of their encounter with incidences of unlawful stay in Kenya, majority(71.4%) indicated their encounter with overstay as Often/Very Often whereas 50% indicated as Rarely, their encounter with incidences of failure to report entry at designated POEs. This is an indication that majority of the incidences of unlawful stay in Kenya are as a result of overstay and the least is failure to report entry at POEs. As per the records at the DIS on prosecution of cases on unlawful stay in Kenya, out of the 76 cases prosecuted 55% were due to overstay while 45% were due to failure to report entry at POEs.

4.7.5 Methods of Enforcement of Kenya Immigration Laws

The respondents were asked to indicate the duties they perform in the enforcement of immigration laws. The top six activities identified were repatriation (92.9%), investigations of suspected noncompliant cases (85.7%), arrests (85.7%), deportations (78.6%), identification/detection of suspected noncompliant cases (78.6%) and prosecutions (57.1%). The respondents were also asked to rank the frequency of the means used in the detection of noncompliance. The majority (78.6%) of the respondents ranked as Often/ Very Often the utilization of impromptu visits to worksites, public complaints (71.4%), informers (64.3%) and detection at ports of entry (POEs) (64.3%) while 64.3% indicated as Never/ Rarely the utilization of automatic notification through Foreign National management information system, anonymous messages (42.8%) and other government agencies (35.7%). This shows that the DIS utilizes technology to a small extent in the detection of noncompliant incidences.

During the period, January, 2018 to December, 2019, as per the records at the DIS, the top five activities undertaken were watch listing, removals (repatriation, deportation and administrative removals), arrests, detentions, worksite visits and prosecutions, in that order. The DIS therefore to a great extent undertakes removals compared to the other enforcement activities.

4.7.6 Challenges Encountered in the Enforcement of Kenya Immigration Laws

The respondents were asked to rank their opinion on how often they encountered the challenges indicated, in the enforcement of immigration laws. The majority of the respondents ranked as Often/ Very Often the frequency of the factors indicated as hindering the enforcement of immigration laws: low staffing (100%), holding/detention facilities (92.8%), cost of enforcement (85.8%), shortage of functional vehicles (85.7%), appropriate post-entry monitoring technology (78.4%), personal safety (78.6%) and delays in enforcement action against suspected noncompliance (57.2%). The respondents indicated Rarely/Never on the failure to report entry at ports of entry (POEs) (71.4%) and inadequate personnel skills (57.1%). It is worth noting that 35.7% of the respondents introduced the factor of interference in decision making as hindering enforcement actions taken by the DIS. From the above, it can be deduced that low staffing levels is the greatest, while failure to report entry at ports of entry (POEs) is the least, of the challenges hindering enforcement.

The respondents were asked to indicate whether the identified challenges above, affected specific method(s) of enforcement. The respondents indicated that the highest ranked challenge of low staffing mostly affected arrest (92.7%) and prosecution (50%), and least affected detention (14.3%); the second challenge of inadequate Holding/detention facilities is indicated by 71.4% of the respondents as affecting detentions and does not affect prosecution (0%); the challenge of cost of enforcement is indicated as affecting repatriation (78.6%) and deportation (71.4%); the fourth ranked challenge of shortage of functional vehicles is indicated as affecting arrests (71.4%), repatriation (78.4%) and deportation (57.1%); the fifth ranked challenge of lack of appropriate technology to monitor post-entry compliance of foreign nationals is indicated by 50% of the respondents as affecting arrests and does not affect detention (0%). From the discussions above it can be observed that arrest as an enforcement action is affected by all the identified challenges.

The respondents were asked to suggest solutions to the challenges identified as hindering the effective enforcement of immigration laws by the DIS. The top three ranked suggested solutions were; the necessity of continuous research and training (78.6% respondents), increase in funding (71.4% respondents) and increase in the number of personnel (50% respondents) while the least three ranked suggested solutions include, post-entry surveillance system (7.1%), safety/security of enforcement personnel (7.1%) and punishing corrupt officials(7.1%).

4.8 Comparison of Key Findings with Theory

This study was founded on three theories, namely the social control theory; the deterrence theory and the economic theory of public enforcement of law. The findings of this study support the social control theory to the extent that the behaviour of immigrants in Kenya is regulated through the enforcement of immigration laws, a formal social control mechanism, to ensure compliance.

The deterrence theory advocates for certainty, severity and swiftness of enforcement action taken against noncompliance with the law but from the findings this was hampered by the challenges identified by the respondents. The identified challenges hinder the certainty of any enforcement action being taken against noncompliance with the law. This therefore partly explains why Kenya continues to experience cases of noncompliance with its immigration laws.

However, the economic theory of public enforcement of law does not explain why a government spends more in carrying out an enforcement action whose cost of enforcement is higher than the loss suffered due the commission of an offense. For example, in effecting removals of foreign nationals from the territory of Kenya, the DIS incurs cost of removal that is above the loss incurred due to noncompliance with the immigration laws.

4.9 Comparison of Key Findings with Empirical Studies

In the effort to achieve the objectives of this study, the researcher reviewed various relevant studies on immigration enforcement. From the studies reviewed, it was found that foreign nationals find themselves in different situations in a country of destination. These situations relate to their entry, residence and employment (Tapinos, 2000; Papademetriou, 2005; Baldwin-Edwards, 2008). This study found out that similar situations of noncompliance with immigration laws obtain in Kenya,

specifically situations relating to illegal entry, overstay and engaging in employment without permission from the DIS.

This study had also sought to find out the methods used by the DIS in the enforcement of Kenya immigration laws. In the studies reviewed, the researcher found out that countries use diverse methods in the enforcement of their immigration laws. The methods of enforcement identified include arrest and prosecution (Meissner et al., 2013; Frost, 2017); workplace inspections (Doomernik & Jandl, 2008); denying of access to public services foreign nationals who are unlawfully present in a country (Broeders & Engbersen, 2007; Kalhan (2014); imposing sanctions on those harbouring irregular immigrants (Lahav, 1998; Parra-Chico, 2008); detention and deportation (Chauvin & Garcés-Mascareñas, 2014; Di Molfetta & Brouwer, 2019; Lister, 2020); monitoring and registration of foreign nationals through the use of integrated database systems (Doomernik & Jandl, 2008; Kalhan, 2014). The study confirmed that the DIS utilizes arrests, prosecutions, detention, removals and watch listing as enforcement methods though in a different context from the one discussed above.

The third objective of this study was to identify challenges encountered in the enforcement of immigration laws. From the literature reviewed, the various challenges identified include; inadequate financial and personnel resources (Seghetti et al., 2004; Düvell et al, 2018); harbouring of noncompliant foreign nationals (Low & Mokhtar, 2017); corruption (Franck, 2019; Vigneswaran, 2019); lack of cooperation and collaboration among various government agencies (Stana, 2003; Düvell et al., 2018). Similar, though not all, challenges seen above, were identified in this study as affecting enforcement of immigration laws in Kenya. Therefore, it can be deduced that the studies reviewed support the findings of this study.

CHAPTER FIVE: SUMMARY, CONCLUSION AND RECOMMENDATIONS

5.1 Introduction

This chapter covers summary of the research findings, conclusions, recommendations and suggestions for further research. The purpose of this study was to examine the effectiveness of the enforcement of Kenya immigration laws by the Directorate of Immigration Services. The study was guided by the following research questions; what noncompliant incidences does the Directorate of Immigration Services encounter in the enforcement of Kenya immigration laws?; what are the enforcement methods used by the Directorate of Immigration Services to ensure compliance with Kenya immigration laws?; and, what are the challenges encountered by the Directorate of Immigration Services in enforcing Kenya immigration laws?

5.2 Summary of Research Findings

This study was to examine the effectiveness of the enforcement of Kenya immigration laws by the Directorate of Immigration Services. This section presents a summary of the research findings on the specific objectives of the study.

5.2.1 Noncompliance with Kenya Immigration Laws

The study found out that 100% of the respondents were conversant with the Kenya Citizenship and Immigration Act, 2011 (KCIA) and the Kenya Citizenship and Immigration Regulations, 2012 (KCIR) as the laws enforced by the Directorate of Immigration Services. However, few respondents showed familiarity with the other laws enforced, namely the Penal Code, Cap 63 (28.6% respondents), the Counter-Trafficking in Persons Act, 2010 (14.3% respondents) and the Refugee Act, 2006 (7.1% respondents). As observed from the findings, it is imperative that the respondents are sensitized on all the relevant laws enforced by the Directorate of Immigration Services.

Further, the findings show that majority of the respondents (73.9%) had encountered document related noncompliance incidences (forged immigration stamps, forged visas and forged travel documents or passports), work permit/pass related noncompliance incidences (expired permit, working on a Kenya Visitor's Pass and studying without Student Pass), 73.8%, and unlawful stay in Kenya (overstay), 71.4%.

5.2.2 Methods of Enforcement used by the Directorate of Immigration Services

The findings show that in the enforcement of Kenya immigration laws, the respondents indicated the duties they are involved in as follows: repatriation (92.7% respondents), arrests (85.7% respondents), deportations (78.6% respondents) and prosecutions (57.1%). From the review of records held at the Directorate of Immigration Services, for January, 2018 to December, 2019, there was an overall decline in cases handled on arrests, prosecutions, deportations and administrative removals except repatriations that recorded an increase of 105.8%. This increase in repatriation was attributed to an achievement of 994 repatriation cases in the months of July to September, 2019, that resulted from increased inter-agency cooperation on locating the presence in Kenya of unauthorized immigrants.

According to the prosecution records at the Directorate of Immigration Services, for the period January, 2018 to December, 2019, 87.5% of the document related cases prosecuted were due to forgeries; 97.2% of the work permit/pass noncompliance related cases were of persons working on a Kenya Visitor's Pass, and 55% of the unlawful stay related cases were due to overstay.

The findings show that the majority of the respondents ranked the top five means used by the Directorate of Immigration Services in locating noncompliance with Kenya immigration laws as; impromptu visits to worksites (78.6%), public complaints (71.4%), informers (64.3%), detection at ports of entry (POEs) (64.3%) and other government agencies (50%). However, 64.3% of the respondents indicated the minimal use of Foreign National management information systems in the automatic notification of the immigration status and/or location of foreign nationals within Kenya.

5.2.3 Challenges Encountered in the Enforcement of Kenya Immigration Laws

From the findings, 100% of the respondents indicated that they had experienced challenges in the enforcement of Kenya immigration laws. These challenges include, low staffing levels as indicated by the majority (100%) of the respondents. The second challenge indicated by 92.8% of the respondents was inadequate holding/detention facilities. Cost of enforcement action was ranked third with a response of 85.8%. The fourth challenge identified by 85.7% of the respondents was shortage of functional vehicles. Lack of appropriate technology to monitor foreign-national post-entry compliance with the laws was ranked fifth by 78.6% of the respondents. The sixth challenge

identified by 78.6% respondents was personal safety/security of the enforcement officers. Delays in enforcement action taken against suspected noncompliance with the laws was ranked seventh by 57.2% of the respondents. The eighth challenge as ranked by 42.9% of the respondents was bribery of government law enforcement agencies, and lack of cooperation from other government agencies was ranked ninth with 42.9% of the respondents.

The findings show the respondents' opinion on the effect of the identified challenges on respective method(s) of enforcement, for instance low staffing levels affects arrests (92.9%) and prosecutions (50%); inadequate holding facilities affects detention (71.4%); cost of enforcement affects repatriation(78.6%) and deportation (71.4%); shortage of functional vehicles affects arrests (71.4%), repatriations (78.6%) and deportations (57.1%); lack of appropriate technology to monitor post-entry noncompliance affects arrests (50%); personal safety/security affects arrests (78.6%) and deportations (50%); delays in enforcement action taken against suspected noncompliance affects prosecutions (57.1%); bribery of government law enforcement agencies affects arrests (50%); and lack of cooperation from other government agencies affects arrests (50%).

To address the identified challenges hindering the effective enforcement of immigration laws, the respondents suggested that the DIS should: undertake continuous research and training (78.6% respondents), request for increase in funding (71.4% respondents), deploy more personnel to the Investigation and Prosecution Section (50% respondents), provide adequate and functional vehicles (35.7% respondents) and seek for improvement in inter-agency coordination and information sharing (28.6% respondents).

5.3 Conclusion

Findings show that document related noncompliance incidences constitute 65% of the total cases prosecuted by the Directorate of Immigration Services. This therefore calls for deliberate research and training, to empower the immigration officials with appropriate skills necessary in the detection and handling of these incidences. The study further, found out that foreign nationals abuse their Kenya Visitor's Pass (KVP) residency immigration status by overstaying, and/or engaging in employment without authority.

As indicated by the respondents, the challenges encountered by the Directorate of Immigration Services hinder its effort of locating and taking appropriate enforcement action against suspected incidences of noncompliance. This uncertainty of enforcement action being taken against suspected cases of noncompliance can be assumed to contribute to cases of foreign-national noncompliance with the Kenya immigration laws.

5.4 Recommendations

The general objective of this study was to examine how effectively the Directorate of Immigration Services enforces Kenya immigration laws. Based on the findings of the study, the researcher proposes recommendations to the policy makers and practitioners to address the interior enforcement of Kenya immigration laws. For policy, the researcher recommends that;

The post-entry monitoring of foreign nationals can be made possible through the use of appropriate technology that has capability of storing biodata information and biometrics, immigration status and residence of foreigners in Kenya. Through such technology, the DIS is automatically notified when, for example, a foreign national's immigration status expires. Also, SMS and e-mail notifications can be sent to foreign nationals toward the end of the validity of their immigration status.

The government should consider coming up with a comprehensive interior and external enforcement strategy with strategic priorities on how to increase cooperation and collaboration between, and among, government agencies, the local communities and the private sector. This can be realized, for example, through amending the Kenya Citizenship and Immigration Act (KCIA), 2011, Sections 5A to 5D, to allow for the incorporation of interior management committees with the Border Management Committees (BMCs) that operate under the Border Control and Operations Co-ordination Committee at Kenya's ports of entry (POEs). The mandate of these committees should be the handling of interior enforcement of immigration laws. These committees or subcommittees, to be based at county headquarters, should be part of the community policing structures, so as to avoid duplication of functions. They should comprise of the relevant stakeholders, including a representative from the Directorate of Immigration Services. Through such committees, inter-agency coordination and information sharing is guaranteed in the effort of addressing interior enforcement of immigration laws.

The Directorate of immigration Services should request for more allocation of resources to cater for recruitment of more enforcement personnel, purchase of vehicles and prompt removal of foreign nationals whose presence in Kenya violates the laws.

There is need for continuous research and training to build the capacity of immigration officers. Such kind of trainings should include sensitization of the laws enforced by the Directorate of Immigration Services; analysis, storage and retrieval of disaggregated migration data; current migration trends and use of technology in law enforcement.

Finally, due to the delays experienced in enforcement action taken against violators of immigration laws, as highlighted in the research findings, there is a need to request the Chief Justice to designate special courts to handle immigration matters. For practice, the researcher recommends the need for the practitioners to dedicate more time in the surveillance of foreign nationals already within the territory of Kenya.

Cooperation and collaboration with other government agencies should be prioritized. This can be realized through sensitization on the need to deter foreign national noncompliance with Kenya immigration laws. The immigration officers should make effort to learn and internalize all the laws related to immigration enforcement in Kenya, such as the Refugee Act, 2006.

5.5 Limitations of the Study

In carrying out data collection, the researcher was limited by the nature of secondary data available at the Directorate of Immigration Services that was not disaggregated in terms of age, gender, nature of noncompliant incidence and the enforcement actions.

Due to corona virus disease (COVID-19), it was not possible to get information through interviewing key informants as had been intended. The targeted key informants were out of office. Another limitation of this study was that it did not involve the top management of the Directorate of Immigration Services for their opinion on the enforcement of the immigration laws. Their involvement could probably have affected the research findings.

Further, from the targeted population of fifteen (15) immigration officers as respondents for the study, only 93% responded. There is likelihood that the no response rate of 7% could affect the outcome of the study.

Finally, since the study was carried out at the Headquarters of the Directorate of Immigration Services, Investigation and Prosecution Section, the research findings might not be generalized to other regions within or outside Kenya.

5.6 Suggestions for Further Research

The researcher suggests other studies with a wider scope to be carried out. This should include top management, border officials, more respondents, or choose different respondents and data collection instruments, for example use of interview guides.

There is also need for similar research to be carried out in different context and use of different research instruments for data collection, for the purpose of generalizability of the research findings.

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APPENDICES

APPENDIX I: Letter of Introduction

Dear Participant,

My name is Dominic M. Maobe. I am a post-graduate diploma student at the Kenya Institute of Migration Studies (KIMS) based at the University of Nairobi. As part of the requirement for this course, I am supposed to undertake a research project. I am conducting a research on: **ENFORCEMENT OF KENYA IMMIGRATION LAWS: A CASE OF THE DIRECTORATE OF IMMIGRATION SERVICES**. I have identified the Directorate of Immigration Services (DIS), Investigations and Prosecutions Section as a source of the required information. I believe the research asks important, useful questions, the answers to which will help the researcher understand how the enforcement of Kenya immigration laws is done. The information sought is purely for academic purposes and I assure you that your views will be used solely for research purposes and your participation is anonymous.

There are no anticipated risks, compensation, or other direct benefits to you as a participant in this research. Please be advised that you may choose not to participate in this research, and you may withdraw from the research at any time without consequence.

I realize filling this questionnaire will take twenty or thirty minutes of your valuable time, but your participation is the only way by which the researcher will better understand the process of enforcement of Kenya immigration laws. You are very important to the success of this research, and I thank you for your consideration.

If you have any questions or comments about the research, please contact me via the contact given below.

Sincerely,

Dominic M. Maobe

Telephone: 0733713934

Email:maomochabo@gmail.com

If you have read the procedure described above, and voluntarily agrees to participate, please continue to the next page**.**

APPENDIX II: QUESTIONNAIRE FOR IMMIGRATION OFFICERS

1. Please indicate the number of years you have worked at this section:

   i.   Less than 1   [ ]

   ii.   1 – 5   [ ]

   iii. 6 – 10   [ ]

   iv. 11 – 15   [ ]

   v.   Above 15   [ ]

2. Which of the Kenya laws listed below do you enforce?

   i)   The Kenya Citizenship and Immigration Act, 2011   ☐

   ii) The Kenya Citizenship and Immigration Regulations, 2012   ☐

   iii) The Penal Code, Cap 63   ☐

   iv) Any other(s) (specify)……………………………………………………........................
        …………………………………………………………………………………………..

3. In your duties of enforcing Kenya immigration laws, which of the activities listed below do you perform? (**Tick all that apply**)

   i.   Identification/detection of suspected noncompliant cases   ☐

   ii.   Investigations on suspected noncompliant cases   ☐

   iii. Arrests   ☐

   iv. Detention   ☐

   v.   Prosecutions   ☐

   vi. Repatriation   ☐

   vii. Deportation   ☐

   viii. Other(s) (Specify)………………………………………………………………………
        ....

4. Do you encounter cases of foreign-national noncompliance with Kenya immigration laws?

   Yes [ ]   No   [ ]

   If your answer is NO proceed to No.6

5. If your answer to No. 4 above is YES, kindly indicate on a scale of 1 to 5, how often you encounter foreign-national non-compliance incidences listed below? Tick where appropriate.

Never=1	Rarely=2	Undecided=3	Often=4	Very often =5

FOREIGN-NATIONAL NONCOMPLIANT INCIDENCES	SUB-CATEGORIES OF INCIDENCES		SCALE				
			1	2	3	4	5
Document related	Forgery	Forged immigration security stamp(s) endorsements					
		Forged visas					
		Forged passports or travel documents					
		Using complete counterfeit passports or travel documents					
	Impostors	Using another person's travel document					
Work Permit/Pass related	Working without authority	Expired permit					
		Working for an unauthorized employer					
		Working on a Kenya Visitor's pass (KVP) residency immigration status					
		Forged permit endorsement					
		Permit obtained through fraud					
		Studying without Student Pass					
Unlawful stay in Kenya	Failure to report entry at designated						

	ports of entry (POEs)					
	Expired travel document					
	Expired KVP endorsement (Overstay)					

6. On a scale of 1 to 5, please rank how often the means indicated below are applied in locating suspected foreign-national noncompliance with Kenya immigration laws:
   1. Never 2. Rarely 3. Undecided 4. Often 5. Very often

	SCALE				
MEANS	1	2	3	4	5
Informers					
Impromptu visits to worksites					
Public complaints					
Other government agencies					
Detection at Ports of entry (POEs)					
Anonymous messages					
Automatic notification through Foreign National management information system					
Any other(s) (Specify)…………….					
………………………………….					

7. Have you ever experienced any challenges in enforcing Kenya immigration laws?

   Yes [ ]   No   [ ]

8. If your answer to No. 7 above is YES, please rank your opinion on how often each of the factors listed below has been a challenge in the enforcement of immigration laws in Kenya?

Never=1	Rarely=2	Undecided=3	Often =4	Very often =5

	SCALE				
CHALLENGES	1	2	3	4	5
a) Low staffing levels					
b) Inadequate personnel skills					
c) Holding/detention facilities					
d) Cost of enforcement					
e) Shortage of functional vehicles for use					
f) Lack of appropriate technology to monitor foreign-national post-entry compliance with the laws					
g) Cooperation from other government agencies					
h) Personal safety/security					
i) Delays in enforcement action taken against suspected noncompliance					
j) Foreign nationals lack information on the provisions of the existing immigration laws					
k) Bribery of government law enforcement agencies to avoid enforcement action					
l) Foreign nationals' failure to report entry at ports of entry (POEs)					
m) Any other(s) (Specify): Interference/lack of independence in decision making					

9. Please indicate whether the challenges identified in No. 8 above affect the effectiveness of the respective method(s) used in the enforcement of Kenya immigration laws? **(Tick all that apply)**

CHALLENGES	METHOD OF ENFORCEMENT					
	Arrest	Prosecution	Detention	Repatriation	Deportation	Any other(s) (Specify)…………… ………………
a) Low staffing levels						
b) Inadequate personnel skills						
c) Inadequate Holding/detention facilities						
d) Cost of enforcement						
e) Functional vehicles						
f) Lack of appropriate technology to monitor post-entry noncompliance						
g) Cooperation from other government agencies						
h) Personal safety/security						
i) Delays in enforcement action taken against noncompliance						
j) Lack of information on the provisions of the existing immigration laws on the part of foreign nationals						
k) Bribery of government law enforcement agencies						
l) Foreign nationals' failure to report entry at ports of entry (POEs)						
m) Any other(s) …….............						
………………………………..						

10. In your opinion, what do you think can be done to address the challenges identified in No. 9 above?

    i.   …………………………………………………………………………………………

    ii. …………………………………………………………………………………………

   iii. …………………………………………………………………………………………

   iv. …………………………………………………………………………………………

THANK YOU

APPENDIX III: Transcript Form for Recording of Noncompliant Cases Prosecuted

YEAR:………………………………..

MONTH:…………………………..

Month…………………………	Noncompliant Incidences	Totals
	Forged immigration security stamp(s) endorsements	
	Forged visas	
	Forged passports or travel documents	
	Using complete counterfeit passports or travel documents	
	Impostors	
	Expired permit	
	Working for an unauthorized employer	
	Working on a Kenya Visitor's pass (KVP) residency immigration status	
	Forged permit endorsement	
	Permit obtained through fraud	
	Studying without Student Pass	
	Failure to report entry at designated ports of entry (POEs)	
	Expired travel document	
	Expired KVP endorsement (Overstay)	
	Totals	

APPENDIX IV: Transcript Form for Recording of Removals Enforcement Action

YEAR:………………………………..

MONTH:……………………………..

Month, Year	REMOVALS		
	Repatriations	Deportations	Administrative Removals
TOTALS			

APPENDIX V: Introduction Letter for Permission to Collect Data

University of Nairobi

Kenya Institute of Migration Studies (KIMS)

Postgraduate Diploma in Migration Studies (PgDipMS)

in collaboration with **Maastricht University**

Website: www.immigration.go.ke
Email: kims@immigration.go.ke
Tel. + 254-20-2222022 /2212760
Fax: + 254-20-2220731
When replying please quote:

Office of KIMS Coordinator
Hyslop Building 2nd Floor Room H201
Population Studies & Research Institute
University of Nairobi
P.O Box 30197-00100
NAIROBI, KENYA

REF: IMM/3/1/vol.

26th February, 2020

TO WHOM IT MAY CONCERN

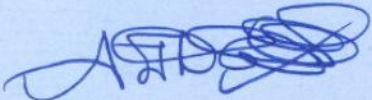**SUBJECT: DOMINIC MOCHABO MAOBE**

Dear Sir or Madam,

RE: COLLECTION OF DATA

The above named is Postgraduate Diploma in Migration Studies student in this Institute. He is currently carrying out research on the Topic: **Enforcement of Kenya Immigration Laws: a Case of the Directorate of Immigration services, Nairobi Headquarters.**

Kindly allow him into your Organization to collect relevant data that we believe will go a long way in helping him to achieve the academic objectives of his Research.

Yours faithfully,

Dr. Gabriel Lubale
COORDINATOR

Appendix VI: Certificate of Corrections

Kenya Institute of Migration Studies (KIMS)

in collaboration with **Maastricht University**

University of Nairobi

Directorate of Immigration Sevices

Website: www.immigration.go.ke
Email: kims@immigration.go.ke
Tel. + 254-20-2222022 /2212760
Fax: + 254-20-2220731
When replying please quote:

Hyslop Building 2nd Floor Room H201
Population Studies & Research Institute
University of Nairobi
P.O Box 30197 – 00100
NAIROBI, KENYA

Director, Graduate School
University of Nairobi
P.O. BOX 30197-00100
Nairobi

Date: 02/11/2020

RE: **CERTIFICATE OF CORRECTION: DOMINIC M. MAOBE- Q68/30621/2019**

This is to certify that Mr. Dominic Mochabo Maobe has effected corrections from the board of examiners.

James Mutua.

Supervisor.

Appendix VII: Certificate of Originality

ENFORCEMENT OF KENYA IMMIGRATION LAWS: A CASE OF THE DIRECTORATE OF IMMIGRATION SERVICES.

ORIGINALITY REPORT

9%	9%	3%	%
SIMILARITY INDEX	INTERNET SOURCES	PUBLICATIONS	STUDENT PAPERS

PRIMARY SOURCES

1	pdfs.semanticscholar.org Internet Source	2%
2	erepository.uonbi.ac.ke Internet Source	1%
3	info.mzalendo.com Internet Source	<1%
4	chss.uonbi.ac.ke Internet Source	<1%
5	cickenya.org Internet Source	<1%
6	www.jkuat.ac.ke Internet Source	<1%
7	LexisNexis Publication	<1%
8	publications.iom.int Internet Source	<1%
9	ir.jkuat.ac.ke	