ENFORCEMENT CHALLENGES IN ADDRESSING MIGRANT SMUGGLING INTO KENYA: A CASE OF MOYALE BORDER

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DECLARATION

This research is my original work and has never been presented for an award of a diploma or degree in this or any other university.

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Declaration by the supervisor

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

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DEDICATION

I dedicate this project to my family for their love and encouragement through this journey, and especially to Jason, for waiting for mummy to finish.

ACKNOWLEDGEMENTS

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ACRONYMS AND ABBREVIATIONS

AU   African Union

CCTV   Closed Circuit Television

EU   European Union

EAC   East African Community

ECOWAS   Economic Community of West African States

HoA   Horn of Africa

IBM   Integrated Border Management

IGAD   Intergovernmental Authority on Development

ILO   International Labour Organization

INT   Interviewee

IOM   International Organization for Migration

KDF   Kenya Defense Forces

MPFA   Migration Policy for Africa

NCM   National Co-ordination Mechanism on Migration

NGOs   Non-Governmental Organizations

NIS   National Intelligence Service

OECD   Organisation for Economic Co-operation and Development

OSBP   One Stop Border Post

RECs   Regional Economic Communities

RMMS   Regional Mixed Migration Secretariat

SADC   Southern African Development Community

SDGs   Sustainable Development Goals

UN   United Nations

UNODC   United Nations Office on Drugs and Crime

UNCCT   United Nations Office of Counter Terrorism

US   United States of America

ABSTRACT

Moyale border has been identified as a hotspot for human smuggling. Majority of irregular migrants travelling south are said to be smuggled into Kenya through Moyale. This research takes a case study approach to getting a detailed understanding of the challenges encountered and the measures in addressing migrant smuggling at Moyale border from the enforcement point of view. Primary data was collected by interviewing key informants including high ranking officials at policy level at the Directorate of Immigration headquarters, former and current Immigration and Police officials working at Moyale border and Investigations officials from the Directorate of Immigration Services. The migration industry theory offers opportunity for a deeper conceptualization of the irregular migration phenomenon and the particular challenges encountered by enforcement officials in combating migrant smuggling at Moyale border. The findings reveal the presence of factors that are particular to Moyale border such as the vastness and porosity of the border, language barrier and the lack of translators, insecurity resulting from inter-communal conflicts, and local communities that are economically dependent on migrant smuggling and therefore engaged in facilitating the illicit trade. There are also factors that may not be specific to the border including inadequate government investment in strengthening the border control and posting of officials to far flung borders as punishment rather than normal posting which may be an underlying factor for corruption and persistence of migrant smuggling. The findings of this research fill a particular gap in understanding why migrant smuggling has persisted at Moyale border. The study also offers an opportunity for reflection by policy makers to inform and guide future policy.

CHAPTER ONE: INTRODUCTION

1.1 Background of the Study

Kenya has been identified as a hub for mixed migration flows in the East and Horn of Africa (HoA) region (Regional Mixed Migration Secretariat, 2013). It is a destination country for refugees, asylum seekers and economic migrants, as well as a transit country for irregular migrants headed southwards towards Southern Africa (RMMS, 2017). A report by Expertise France (2017) also indicates the presence of transnational organized criminal networks of migrant smuggling as well as human trafficking operating behind these mixed migration movements. According to the report, migrant smuggling networks operate criminal networks that facilitate irregular migration into, within and through Kenya.

Migrant smuggling commonly occurs around Moyale border between Kenya and Ethiopia and the migrants mostly consist of Ethiopian and Somali nationals (IOM, 2018). It is estimated that at least 20,000 Ethiopian and Somali migrants transit through Kenya and Southern African Development Community (SADC) regions to try to reach South Africa each year (IOM, 2018). On this Southern route, it is estimated that at least 73 percent of the irregular migrants make use of smugglers for at least part of their journey (RMMS, 2017). Regional Mixed Migration Secretariat (RMMS) estimates also show that the Southern route, which runs from Ethiopia through Kenya, Tanzania and other countries to Southern Africa was worth USD 35 million in the year 2017 and up to USD 47 million dollars in the preceding period of 2015/ 2016 in terms of proceeds from smuggling

(RMMS, 2017). This indicates the depth and scale of migrant smuggling that occurs, mostly through Kenya's borders.

The Horn of Africa region is a source for many irregular migrants due to the intensity of migration push factors. Migration push factors from the region as identified by the International Organization for Migration (IOM, 2018) include protracted refugee situations, internal ethnic conflicts, insecurity, poverty and lack of livelihoods, drought and crop failure. In Ethiopia, for instance, millions have been displaced from their homes in recent years as a result of inter-communal violence and climate related events (IOM, 2019). Similarly in Somalia, complex interactions of different drivers for migration ranging from political, economic, cultural, the influence of social media and Diaspora interactions have been cited as push factors for high levels of emigration (Van Hear, Bakewell & Long, 2018; Hersi & Nabira, 2014). These factors may as well be extended to migrants from other countries in the region which face similar circumstances such as Eritrea and South Sudan. However, migrants find it difficult to travel legally due to migration restrictions and because of the dangers associated with the journeys such as detection by authorities, many opt to make use of smugglers (Frouws and Horwood, 2017).

Research has shown that increase in border restrictions reinforces markets for migrant smuggling and enhances the dangers and risks under which migrants are smuggled (Gammeltoft-Hansen and Nyberg-Sorensen, 2013). The intensity of migration push and pull factors and the resultant strategies put in place by governments to control and regulate the scale of migration may have resulted in large scale irregular migration and the large

numbers of migrants being smuggled. Further, research has shown the important role that corruption plays in enabling migrant smuggling on the route (Cheyuiyot 2014, Barasa & Fernandez 2015, Frouws & Horwood 2017). Migration industries and Street level bureaucracy theories are proposed in understanding the complex interactions of these factors and the resultant difficulty in addressing migrant smuggling along Moyale border by enforcement agencies.

Migrant smuggling is an issue of growing global concern for origin, transit and destination countries. It is a crime against the states involved through violation of their borders and sovereignty and also a threat to public security (Koser, 2016). It also raises human rights concerns for the migrants who are exposed to significant dangers and risks on the migration journey. Deaths caused by among other reasons, dehydration and starvation, lack of access to medical care, suffocation in sealed and frozen containers or drowning at sea are a common occurrence (Sahan/IGAD 2016; Koser 2016; RMMS 2016). Migrants also face the increased risk of being trafficked due to their vulnerability while being smuggled (Marchand et al, 2017). In spite of these dangers and measures put in place by governments, migrant smuggling on the southern route has continued to persist, many of the migrants entering Kenya through Moyale border.

1.1.1 The concept of enforcement

Enforcement refers to the process of detecting crime, preventing and investigating, apprehension and detention of individuals suspected to have acted against set rules, laws, regulations and policies by an authority such as a government (Bureau of Justice and

Statistics, 2016). According to the United Nations Office of Counter Terrorism (UNCCT), weaknesses in border enforcement may be easily exploited by transnational organized criminal groups to carry out their activities including the entry of terrorist operatives, smuggling of small arms and light weapons, contraband commodities as well as smuggling of migrants among others, threatening public and national security. Successful border enforcement measures are dependent on inter-agency and cross-border cooperation, anti-corruption measures put in place, increased surveillance and local communities engagement (UNCCT, 2018).

Enforcement in this study will include any actions by state authorities to combat migrant smuggling. This will include activities such as border patrols, vigilance and surveillance, profiling, joint coordination, arrests, and investigation.

1.1.2   The concept of migrant smuggling

Also referred to as human smuggling, migrant smuggling is defined by the United Nations Office on Drugs and Crime (UNODC) as "the procurement of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident" (Article 3(a) of the UN Protocol Against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, 2000).

Migrant smuggling and human trafficking, as noted by Baird, T (2013) are terms that are often conflated or used synonymously in public discussions, media and even policy circles.

As pointed out by Marchand et al (2016), the two terms have distinct meanings and significantly different implications for the migrant even though the lines between them are blurred. A clear distinction between the two terms is made in the United Nations Protocol against the Smuggling of Migrants and the Protocol to Prevent, Suppress and Punish Trafficking in Persons (2000). Human trafficking therefore**,** refers to "the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation" (Article 3(a) of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the UN Convention against Transnational Organized Crime, 2000).

Triandafyllidou & Marouskis (2012) use the checklist provided by UNODC to disentangle the meanings. In their distinction, they observe that the two terms are not quite different in terms of the act, which involves recruitment, transportation, transfer, harbouring, and receipt of persons. The significant difference is in the means and purpose of the crime. While migrant smuggling may be seen more as a willing agreement and exchange between the smuggler, who provides the services of crossing an international border and the prospective migrant, who is the consumer that needs the services, human trafficking involves the use of threat, force, coercion, abduction, fraud, deception, abuse of power or vulnerability, or giving payments or benefits to a person in control of the victim in order to obtain their consent. In addition, the purpose for human trafficking is not simply the profit,

but also the exploitation such as for prostitution, sexual exploitation, forced labour, slavery and the removal of organs. Thus, while the relationship between the migrant and the smuggler is terminated on arrival at the destination country, the trafficker intends to exploit the victim at the destination, which can be within the same country, and therefore the relationship does not end at the destination (Perrin, 2010).

The two phenomena are often interlinked in the sense that they are both trans-national organized crimes that use the same migration routes with similar means of transportation. Migrants being smuggled may also encounter instances of kidnapping for extortion and ransom, robbery and sexual violence which constitute trafficking (Horwood, 2015). Further, what starts as smuggling may easily turn into trafficking as the migrants are vulnerable and dependent on their smugglers for the decisions regarding the travel (Marchand et al, 2017).

Having made clear the difference between the two terms, the migration phenomenon under study at Moyale border can largely be categorized as migrant smuggling because, due to the perceived difficulties of making their irregular migration journey, migrants willingly seek out the services of established networks and pay a fee to be facilitated to cross the Kenya Ethiopia border at Moyale in order to enter Kenya and beyond to reach their desired destination in Southern Africa (Oucho & Majidi (2016). Even though reports of abuses on the migrants within the country have not been documented, apart from migrants' arrests and imprisonment as noted by Barasa & Fernandez (2015), RMMS (2017) has documented some abuses on the migrants along the southern route as they walk through the bushes to

cross the border between Zimbabwe and South Africa. Abuses such as kidnapping for ransom which are perpetrated even by the smugglers themselves as the migrants go further down the route highlights the blurred lines between the two concepts. This study however focuses on migrants who initially knowingly have consented to be smuggled across the Ethiopian-Kenyan border at Moyale.

1.1.3   Moyale Border

Moyale is a border town between Kenya and Ethiopia that lies at approximately 560 km North East of Nairobi (Graham-Jolly, 1988). The location Coordinates for Moyale border are at 3.527°N 39.056°E in the largest county in Kenya, Marsabit County. At the Moyale border, Kenya and Ethiopia are separated physically by a seasonal river namely river Laga.

The area is inhabited by traditionally pastoralist communities which include the Borana and Gabbra, straddling the border and often moving on both sides of the border in search of pasture for their livestock. The area is characterized by dry and hot climatic conditions and experiences long droughts. Pastoralism therefore remains the main economic activity where people engage in herding cattle, camels, sheep and goats in the vast dry area (Miller, 1974). Recent studies however show businesses in Moyale town thriving on migrant smuggling with an estimated 60 percent of the town's income being generated from the illicit trade (Frouws & Horwood, 2017).

On the Ethiopian side of the border, the Moyale area is controlled by region 4 and 5, resulting from the Ethiopian federal system of governance. Moyale has as a result remained

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disputed between the Somali and Oromia nationalities, each claiming the town as its administrative center (Adugna, 2011). A larger percentage of the district remains under the Oromia administration, a situation that often results in frequent inter-communal conflicts and clashes over the control of grazing grounds and water resources. Although the area's inhabitants have traditionally felt marginalized from their capital cities in Nairobi and Addis-Ababa (Miller, 1974), the recent construction of Isiolo-Moyale highway which connects to Hawassa and Addis Ababa in Ethiopia among other projects like the Moyale One-Stop border post is expected to open up the area to more trade and development opportunities (Trademark East Africa, 2019). While such development initiatives are important in providing alternatives for the communities around Moyale who mostly depend on migrant smuggling for their livelihoods as observed by Frouws and Horwood (2017), continued clashes over land and other resources between communities and the resultant insecurity in southern Ethiopia is likely to continue creating push factors for irregular migration and migrant smuggling.

1.2 Problem Statement

Kenya has been identified as the key transit country for south bound irregular migration and human smuggling networks from the Horn of Africa (IOM, 2016). Media has also highlighted the existence of organized and well entrenched human smuggling cartels at Moyale border (Mungai 2019, Daghar 2019, Kangai 2019). This is a border entry point where there is often heavy government security presence including the National Intelligence Security (NIS), the Kenya Police, the Kenya Defense Forces (KDF), Anti-terrorism Police Unit as well as the Immigration Officers among other law enforcement

agents. There are also numerous roadblocks from the border where police screen for irregular migrants among other issues. However, going by Frouws & Horwood's (2017) estimates of about 14,000 irregular migrants that are detected in South Africa annually, and most of who transit through Kenya. Irregular migrants are only occasionally intercepted as the majority of them successfully make entry into the country and transit into neighbouring countries and beyond with the help of the criminal smuggling networks. The continued thriving of human smuggling activities at Moyale points to some enforcement challenges. Literature on irregular migration and human smuggling at the global level mostly focuses on the migrants and smugglers' modes of operation, the risks involved, the restrictive policies put in place by governments and their effects (for instance Dandurand, 2020; De Haas, 2005; Lutterbeck, 2006; Koser, 2016; Betts, 2012; Anderson, 2016). There is little focus on enforcement challenges. Regionally, a study conducted in the HoA by the Sahan/Inter-governmental Authority on Development (IGAD) foundation found the lack of migration policies and corruption to be major challenges in combating human smuggling (Sahan/ IGAD, 2016). A similar study by RMMS also found corruption among enforcement officials through bribery or actively taking part in the smuggling activities (RMMS, 2017).

Available literature on migrant smuggling in Kenya highlights the lack of resources to manage expansive borders, lack of effective laws and policies, corruption and institutional challenges such as inadequate staff, equipment (Barasa & Fernandez, 2016; Cheruiyot, 2014, Koros 2018). While these studies may be addressing the challenges of addressing migrant smuggling in the country, none of them is focused on Moyale border, which has

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been identified as appoint where many migrants are smuggled into the country (IOM, 2018; RMMS, 2017). Further, in spite of consistently finding that there was corruption, they did not go into sufficient depth to identify whether there were any underlying factors that contributed to that. The studies may also be understood to imply that curbing migrant smuggling is all in the hands of the enforcement officials if they chose to do so. Apart from the lapse in time for some of the studies and the need to find if there are any emerging challenges, it is the view of this study that there may be other underlying challenges that are specific to Moyale border that contribute to making it a hotspot for migrant smuggling. This study is therefore an effort to address the identified gap and answer the research question: What are the enforcement challenges in addressing human smuggling into Kenya across Moyale border?

1.3: Research Questions

1. What are the enforcement challenges in addressing migrant smuggling at Moyale border?

2. What measures do enforcement officials use to address these challenges?

1.4.1: General Objective

To identify the enforcement challenges encountered by officials to combat migrant smuggling at Moyale and the measures used to address them.

1.4.2: Specific Objectives

1. To identify the enforcement challenges encountered by officials in addressing migrant smuggling at Moyale border

2. To identify the measures used by officials in addressing migrant smuggling at Moyale border

1.5 Justification of the study

Migrant smuggling has been identified by the UNODC as a crime that involves the procurement of illegal entry of a person into a State of which that person is not a national or resident for financial or other material benefit. It undermines the integrity of countries and communities, and costs thousands of people their lives every year (UNODC, 2011). Kenya has been identified as a key transit country for migrants smuggled along the southern route to southern African countries and Moyale border identified as a key transit point often used by smugglers to smuggle migrants into the country on their route to Southern Africa (RMMS 2013, IOM 2018, Frouws & Horwood 2017, and Expertise France 2017). While these studies point to the important geographical locations in terms of migrant smuggling in the country, the practice has persisted, pointing to enforcement challenges in addressing the crime. Studies carried out within the country have however not focused on Moyale border despite the area being identified as a key transit point. This study endeavors to look at the enforcement challenges that government authorities encounter in trying to address migrant smuggling at the border.

1.6 Significance of the Study

It is the view of the researcher that this study will provide important contributions to migration policy making in Kenya and beyond, especially with respect to challenges associated with migrant smuggling which the government needs to address for successful enforcement measures. Other researchers may find the study findings a useful reference for future studies in a similar research area. Migration practitioners involved in border control may also find the study findings important in the improvement of their operations to combat migrant smuggling.

CHAPTER TWO: LITERATURE REVIEW

2.1: Introduction

Migration has taken a center stage in contemporary development discussions, being seen as a factor that can greatly contribute to equity through its various benefits to individuals, communities and even nations. The direct benefit of remittances on poverty reduction and development has been well researched and established (Russell 1992; Ratha 2005). In the light of these benefits, there are associated dangers especially with irregular migration and thus the inclusion in the Sustainable Development Goals (SDGs). SDG number 10.7 explicitly speaks to the need for governments to facilitate orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well managed migration policies.

Migrant smuggling is a transnational crime with immense consequences not only for the state sovereignty and public security, but also for the human rights of migrants themselves. It threatens public security when different public institutions are corrupted to abet the crime (Koser, 2016). The infiltration of the country's borders by human smugglers undermines the state control of who enters its territory. Koser (2016) further points out that persistent negative media reports on migration such as human smuggling may create negative public perceptions and undermine public confidence in the integrity and effectiveness of the country's migration policies. This hampers the government's ability to expand regular migration channels. Finally, migrant smuggling exposes the migrants to serious risks and dangers, especially if and when smuggling becomes trafficking and the migrants get

physically abused and extorted even by the smugglers themselves as a result of their vulnerability (Marchand et al, 2016; Kuschminder & Triandafyllidou, 2019).

2.2: Literature on migrant smuggling

2.2.1 Migrant Smuggling at the Global Level

Many countries are affected by migrant smuggling as origin, transit or destinations (UNODC, 2019). Although accurate statistics are difficult to come by, OECD estimates at the height of the irregular migration crisis in Europe put the figure of irregular migrants detected on Europe's land and sea borders at over 1.2 million in the year 2015 (OECD, 2015). Majority of these migrants are reported to make use of smugglers to be able to reach Europe's borders (UNODC, 2019). Migrant smuggling is also rampant across the US-Mexico border where an estimated 3 million irregular migrants from Central America are reported to cross the border into the United States (UNODC, 2020). According to the UNODC report, most of these migrants are smuggled in trucks, by rail, on foot or through tunnels. The UNODC also estimates that the two main smuggling routes from East, West and North Africa to Europe and from South America to North America often generate about US$ 6.75 billion a year for the smugglers (UNODC, 2019).

In spite of the staggering statistics, Dandurand (2020) observes that the demand for migrant smuggling services is on the rise. The high demand stems from increasing globalization, high cost and limited opportunities for regular migration, conflicts and political oppression resulting in migrants seeking for asylum, and regional inequalities causing migration of people to where there may be life changing opportunities (European Commission, 2015,

Dandurand, 2020). The strength of the push and pull factors often results in a situation where migrants are ready to take any risk to reach their desired destination country. Most migrants who have undertaken irregular migration journeys to Europe in the most dangerous ways such as through the Mediterranean were well aware of the risks lying ahead but were still willing to take them, citing the lack of opportunities for growth in their home countries (UNDP, 2019).

2.2.2 Migrant smuggling at the Regional and Local levels

The Migration Policy Framework for African States (AU, 2016) notes that irregular migration is rampant on the continent due to reduction in legal pathways for migration. IOM (2018) also observes and attributes rampant irregular migration on the continent to ethnic tensions and conflict, income inequalities and high levels of poverty, as well as environmental disasters such as drought. Alongside the irregular migration patterns, migrant smuggling has been documented along at least five major and several smaller routes in Africa (UNODC, 2018). The first major three routes originate from the HoA region. Migrant smuggling is prominent in the region, with many smuggling networks being based in the Horn of Africa and East African Community countries largely being used as transit countries (IOM, 2017).

Emigration from the HoA region mainly occurs towards Europe and Southern Africa, with migrants using the western route via Sudan, Libya and the Mediterranean to reach Europe and migrants traveling southward along the Eastern Corridor towards South Africa (IOM, 2017). The migrants originate particularly from Ethiopia, Eritrea and Somalia and Djibouti

and a large majority of them attempt reaching their destinations through established human smuggling networks (Oucho & Majidi, 2016; RMMS, 2017). Several Eastern African countries are not sources but are used as main transit routes including Kenya, Uganda and Tanzania (Oucho & Majidi, 2016). It is estimated that at least 20,000 Ethiopian and Somali migrants transit through Kenya and Southern African Development Community (SADC) regions to try to reach South Africa each year (IOM, 2018).As such, Kenya is identified as a major transit country for smuggled persons from the horn of Africa region towards South Africa. According to IOM (2018), the smuggling is traditionally done on road, although there is a growing significance in use of air transport.

The horn of Africa region has attracted considerable research on the scope and nature of human smuggling by international organizations and even individual researchers (for instance the RMMS and the Sahan/IGAD foundation). This is probably because of the scale of the problem experienced in the region. As observed in the Sahan/IGAD, (2016) report, the human smuggling industry in the Horn of Africa is widespread and well entrenched, having been necessitated by widespread humanitarian vulnerabilities, violent conflicts and predatory authoritarian governments for over decades. The report further makes an observation that the smuggling industry in the HoA region is state-enabled. This is because of government policies which prompt emigration, the lack of policies towards migration, corruption and involvement of enforcement officials and a punitive approach to irregular migration taken by certain states which ensures a continued demand for smuggling services at the most sophisticated level.

Addressing migrant smuggling remains a big challenge for many African countries. This challenge is expected to persist due to economic, political factors and demographic pressure (Adepoju, 2016) creating an increasing need for proper migration governance to ensure orderly and safe migration. Migration governance touches on the existence of the right policies and proper implementation of those policies by those charged with their implementation.

2.2.3 Migration governance with respect to migrant smuggling

Likic-Brboric (2018) defines migration governance as a functional regime for the movement of people, encompassing shared norms, procedures, rules and practices, and the existence of authorities and actors who are accountable for its implementation. Different states and regions have different approaches in governing migration depending on the circumstances. What works for one state may not work for the other, although good practices can be learnt and replicated with differing levels of success (Gituanja, 2013).

High levels of irregular migration especially to the developed countries have prompted the governments of many of these countries to increasingly strengthen their border controls and apply strict immigration measures. In the US and Europe, the policy approach adopted has been to fight irregular migration (Triandafyllidou & Maroukis, 2012). Irregular migrants have been viewed as both a security threat and a humanitarian challenge. As a result, many European countries as well as the United States (US) have been observed to invest significant resources in building border infrastructure such as walls and fences. They have also become more restrictive to the entry of people by categorizing different types of

migrants and spatially detaching the functions of their borders from the traditional boundary line to rigorous control measures both within and outside their countries. This for instance includes efforts to intensify law enforcement cooperation with source and transit countries (Lutterbeck, 2006; Bates-Eamer, 2019).

In migration governance, states have traditionally collaborated and cooperated with each other through bilateral, regional and multilateral agreements on different policy areas having an effect on migration, such as human rights and trade (Betts, 2011). Bilateral border management has been adopted in North America as opposed to a more multilateral approach in Europe (Gituanja, 2013). In Europe for instance, the concept of Integrated Border Management (IBM) has been used to entrench collaboration and information sharing at the intra-agency, inter-agency and international levels (European Commission, 2010). Through this, cross-border policing initiatives such as Frontex have been conceived and deals between Europe and third countries made to address issues of irregular migration and migrant smuggling (IOM, 2011).

Multilateral collaboration has in theory resulted in policies to protect the rights of migrants and facilitate safe, legal, regular migration, as envisaged in the Sustainable Development Goals (SDGs) and the Global Compact for Migration. The SDGs and the Global Compact on Migration give guidelines on how States can promote orderly, safe and responsible migration through enhanced cooperation, data sharing, capacity building of enforcement officials and protection and assistance to victims of trafficking and smuggling. While the factoring of migration into the UN 2030 development agenda in some SDGs has been

considered as a major breakthrough for global migration governance as observed by Likic-Brboric (2018), bilateral and multilateral agreements that have been implemented in the recent past, such as the European Union (EU)-Turkey Deal and the EU's Migration Partnership Framework with African countries through the Khartoum process have focused rather on restricting migration in practice, going contrary to what is envisaged in the SDGs in protecting and promoting rights of migrants through increasing channels for legal, safe and orderly migration.

Specific strategies used in the European Union to control irregular migration and migrant smuggling for instance as outlined by the European Commission (2015) include increasing surveillance at borders, capacity building of their enforcement officials, detecting and apprehending smugglers and irregular migrants, prosecution, prevention and disruption, and deployment of liaison officers in 3rd countries to establish and maintain cordial contacts with authorities for improved cooperation and information sharing. Other measures include sharing intelligence, restricting access to their territories through strict visa regimes, awareness raising among communities and addressing root causes for irregular migration in the source countries (European Commission, 2015). Generally, the EU tries to address cooperation and information sharing, well trained officials, the availability of rules, laws and policies, efficient investigation and prosecution, resources to scale up surveillance and the important role played by communities in addressing migrant smuggling.

Regional Economic Communities (RECs) have also played an important role in facilitating regular migration especially with free movement of persons modalities incorporated in their agreements in many parts of the world. A case in point is the Schengen area, which although facing challenges with respect to asylum pressure has successfully created a visa free zone among 26 European countries and thus eliminating the restrictions in movement (Triandafyllidou & Dimitriadi, 2014). The regional integration and expansion of free movement agreements throughout the African continent would be a bold step towards addressing migrant smuggling, especially on the Southern route. Besides the free movement of persons, RECs are tasked with the analysis and exploration of multi-level migration governance in Africa (Hakami & Urso, 2018). Discussions and agreements on ways of cooperation among various countries which are the sources, transit and destination for the irregular migrants from this region are taking momentum with the assistance of international organizations like the IOM and EU Joint Initiative in the Horn of Africa, with attention being paid to addressing the root causes of migration as well as capacity building of law enforcement officials (RMMS, 2017).

The RECs of which Kenya is a member state include the East African Community (EAC), Common Market for Eastern and Southern Africa (COMESA) and Intergovernmental Authority on Development (IGAD). The IGAD Regional Consultative Process which was established in the year 2009 has facilitated dialogue among member states through several conferences that it has held with the aim of promoting safe and orderly migration within IGAD member state countries, most of which are in the HoA region. In the Western African region, the Economic Community of West African States (ECOWAS) is reported

to have made major strides towards the implementation of free movement of persons within the economic bloc (Hakami & Urso, 2018). Free movement on the African continent has however been determined to be highly constrained in spite of the numerous RECs, considering that most migratory movements in Africa occur just within the continent (Frouws & Horwood, 2017; Adepoju, 2016).

On the continental front, the African Union (AU) Migration Policy framework (2006) has sought to promote safe, orderly and responsible migration through policy guidance for the member states on various thematic issues including irregular migration, forced displacement and human rights among others. The AU has in addition to the three IBM pillars of cooperation at intra-agency, inter-agency and international levels identified capacity building, borderland development and community engagement, conflict prevention and border security and facilitation of mobility, migration and trade as strategic pillars for the effective management of its borders (AU, 2017). This not only recognizes of the important role that well trained border officials have to play in combating cross border crimes, but also the critical role of local border communities if the state is to successfully address migrant smuggling. Conflict prevention and resolution and border security along territorial borders are identified as factors often that stifle legitimate commercial activities and replaces them with illegitimate ones, denying local communities and governments their intended economic development. Finally, community engagement, which aims at involving the local stakeholders to be part of the solution to ineffective border governance, considers the critical role played by communities in being part of the solution to the local problems as well as the importance of increasing public services in the border areas which

are traditionally marginalized in many African countries, contributing to ineffective border governance.

Nationally, relevant government ministries, departments and agencies, international humanitarian agencies and civil society remain important players in migration governance in the country. Key ministries with migration related functions in the country include the Ministry of Labour and Social Protection, Foreign Affairs and International Trade, Commerce and Tourism, Devolution and Planning, the East African Affairs, and Interior and Co-ordination of National Government (IOM, 2018). International organizations such as the IOM, UNODC and International Labour Organization (ILO) along with NGOs work in collaboration with the Kenyan government to enhance migration governance. According to the latest Migration Profile published by the IOM, Kenya's Directorate of Immigration Services remains responsible for controlling and regulating entry and exit of all persons as well as removal of all persons without legal immigration status from the country (IOM, 2018). By ratifying the UN Convention against Transnational Organized Crime and its 2000 Protocols to Prevent, Suppress and Punish Trafficking in Persons and Against the Smuggling of Persons under Palermo Protocol, the government has shown commitment to deal with the problem of human smuggling. The government is however yet to enact a law specific to migrants smuggling even after enacting the Counter Trafficking in Persons Act (2010). Crimes on migrants smuggling therefore continue to be handled under Kenya's Citizenship and Immigration Act of 2011 contrary to best practice which requires a separate dedicated law (Barasa & Fernandez, 2015).

Coordination and collaboration between and among government agencies is critical to the fight against migrant smuggling. The Kenya Citizenship and Immigration Act (2011) amended in the year 2014 established a Border Control Operations Co-ordination Committee (BCOCC), with the aim of enhancing inter-agency coordination and efficient border management (IOM, 2018). The National Coordination Mechanism on Migration (NCM), which is a government-led inter-agency coordination platform, also facilitates collaboration and information sharing on migration issues at the national level (IOM, 2018). It has representatives from the County Governments through which public awareness can be raised through campaigns on the forms and associated risks human smuggling. In spite of these measures in place, migrant smuggling continues to thrive on Kenyan borders, pointing to some enforcement challenges.

2.2.4 Enforcement Challenges

Managing borders can be a complex task. This is because of the multiple and often contradictory objectives border officials are confronted with. Borders need to be closed enough to secure the country from undesirable elements such as terrorist groups and transnational organized crime, but also open enough to allow easy flow of trade and communication with other countries (Gituanja, 2013). As such, when confronted with a border where there is rampant human smuggling, addressing the problem can be a complex activity with enormous challenges for enforcement officials.

The underground nature of the migrant smuggling and the constant changes in the modes of operation particularly makes it difficult for enforcement to detect activities of smugglers.

Migrant smuggling syndicates operate in flexible, loose and less hierarchical structures, only having relationships based on transactions rather than collaboration, and constantly changing their routes depending on circumstances. This kind of operation leads to an extremely low success rate in arresting the smugglers and making a successful investigation and prosecution (Dandurand, 2020). Migrant smuggling is also a phenomenon that is difficult to observe, measure and gather any reliable data on (Baird & Van Liempt (2015). This makes it difficult for governments to come up with appropriate strategies for enforcement officials to combat it. Perrin (2010) identifies several other factors which can contribute to challenges in addressing irregular migration. The geographical location of a country, for instance when it borders a long coastline, the existence of weak or inadequate legislation, countries with liberal migration policies that ease the ability of smugglers and traffickers to transport migrants through and the existence of an operational infrastructure which facilitates easy entry into and exit from the country such as the ability to corrupt enforcement officials and produce fraudulent documents all contribute to a thriving migrant smuggling industry. The European Commission similarly observes that border management agencies are particularly vulnerable to corrupt practices due to their tasks and frequent interaction with the public (EC, 2010).

Research carried out on enforcement challenges has also emphasized the role of corruption in enabling migrant smuggling. Alberola and Janssen (2019) for instance argue that corruption is embedded among law enforcement officials and is the main facilitator of migrant smuggling. They consider corruption as an enabler for the procurement of genuine but fraudulent travel documents from government officials which makes it extremely

difficult for enforcement authorities to identify migrant smuggling. Corruption also creates a challenge by loosening border controls. By bribing officials, smugglers and migrants are easily let to pass through the borders (OECD, 2015). OECD advocates for strategies which consider the interconnectedness of corruption and migrant smuggling by investigating any allegations and addressing them according to laid down procedures. This should be done together with targeting sectors and industries which may harbor victims of smuggling and irregular migrants such as construction, agriculture and brothels for sanctions. The lack of alternatives for communities is considered a challenge, as many residents of key towns along smuggling routes are seen to depend on migrant smuggling as a source of their livelihood (OECD, 2015).

Other challenges include weak responses by states in terms of laws and the reinforcement of both international cooperation and inter agency coordination at the national level (UNODC (2020). Marenin (2010) also highlights several challenges related to implementation of the IBM in Europe, for instance the scarcity of resources, secrecy in information sharing associated with the Frontex agency, the lack of executive authority, operational limitations and the failure to take corruption seriously. While some of these challenges may be specific to the European context and also lack specificity to migrant smuggling, they are important pointers to the enforcement challenges encountered.

Studies focusing on the HoA region also emphasize the role of corruption as well as weak policies (Sahan/IGAD, 2016; RMMS, 2017). In Kenya's context, several studies were found to have been conducted that related to enforcement challenges in migrant smuggling.

A study by Cheruiyot (2014) assessing the capacity of the Department of Immigration in the control of human smuggling in Kenya found that inadequate training on laws governing migrant smuggling, inadequate equipment and staff as well as corruption were the major challenges driving migrant smuggling in the country. Another closely related research by Koros (2018) on the Challenges Facing the Department of Immigration in Preventing Illegal Immigration of Ethiopians into Kenya, the study found very similar challenges related to long porous borders, corruption and inadequate resources. This study was on irregular migration generally and interviewed officials working at Jomo Kenyatta International Airport. An article by Barasa & Fernadez (2015) on Kenya's implementation of the Smuggling Protocol highlights the lack of resources to manage the expansive land and sea borders, corruption among enforcement officials, poor regulation of the borders by authorities and a weak legal and policy framework to address migrant smuggling but is based on other studies and did not collect any primary data from Moyale border. While none of these studies was focused on Moyale border, they offer critical knowledge that shapes the direction of this research. This research hopes to fill a knowledge gap on the enforcement challenges encountered by officials which results in the persistence of human smuggling activities at Moyale border.

2.3 Theoretical Foundation

Because of the complexity of migrant smuggling, this research has reviewed two different theories and integrated them with empirical findings of other researchers in order to conceptualize the potential enforcement challenges that may be relevant in the case of Moyale border. These are the Migration Industry and Street Level Bureaucracy theories.

The migration industry theory describes the demand and creation of a wide array of services around the migration process which are provided by different actors in the facilitation and control of migration, due to restricted migration into many countries (Castles and Miller, 2003).The development of the migration industry is based on opposed, but interrelated activities of different actors in the industry. The migration industry encompasses legal and illegal services geared towards the facilitation and control of forced or voluntary migration in its various phases before, during and after the migration process (Cranston, Schapendonk & Spaan, 2018). The actors may include businesses, transnational organizations, formal and informal recruitment agencies, charities, traffickers and smugglers, State authorities, non-governmental organizations (NGOs) among others that shape migration patterns during the facilitation of migrants across restrictive borders. Services such as transport, legal advice, document processing, offering of dwellings, agencies for labour contracts among others which may be legal or illegal are often offered in the industry (Schapendonk, 2018). The migration industry thus mediates between the micro level of social networks and the state and international levels, thereby shaping migration flows through policy and the political economy (Cranston, Schapendonk & Spaan, 2018).

This research views enforcement challenges in addressing migrant smuggling through the lens of the actions of different actors in the migration industry as identified by Cranston, Schapendonk & Spaan (2018). The various actors in the control and facilitation of migration in this research will include smugglers, the border communities, border officials/enforcers and the migrants themselves who exercise agency in the migration

process. In the AU's strategic pillars for border governance, while coordination and collaborative border management is encouraged in dealing with cross-border threats, border communities have been identified as important actors in irregular migration due to their important role in sharing intelligence information with authorities on illegal activities in their localities. Similarly, the AU observes that border communities may find themselves in conflict over trans-boundary resources resulting in violence and insecurity (AU, 2017). When insecurity occurs, illicit cross border activities such as migrant smuggling are likely to thrive due to lawlessness.

The research also conceptualizes enforcement challenges in addressing migrant smuggling as a factor of other contextual factors such as inadequate training, weak legal framework, inadequate resources, location of the border on a vast porous stretch and corrupt practices among border enforcement officials, based on the reviewed literature and empirical findings by Cheruiyot (2014), Barasa & Fernandez (2015) and Koros (2018). As such, enforcers or border officials are also considered as actors in the migration industry for their role in control and facilitation of migration in cases where they may not necessarily be enforcing due to complacency or corruption. Norms and practices such as corruption and laxity which may contribute to enforcement challenges are viewed in the lens of the street level bureaucracy theory.

The street level bureaucracy theory, developed by Lipsky (1980), explains the working practices of frontline workers in bureaucracies and the ways in which their practices shape policy outcomes for their organizations due to the significant discretionary powers they

wield. Examples of frontline workers include public servants like police officers, teachers, social workers, nurses and border guards, whose work involves the direct interaction with the general public in assessing the credibility of their cases. They are responsible for making decisions which are expected to be appropriate for their clients including depending on the situation they are confronted with, including the kinds of services, benefits and sanctions (Lipsky, 1980).

However, in exercising their discretion, their actions may differ from the policies enacted by the central planners or the government. Furthermore, they work in a difficult and complex work environment with meager resources which compromises the quality of their work (Lipsky, 1980). These results in developing routines as a coping mechanism for the difficulties they encounter at work. This can include making clients to queue for long and complicating services that are supposed to be straight forward for their individual gain. As such, street-level bureaucrats are considered the ultimate policy makers because they determine what clients experience with them and that is what is considered by the public to be the policy of the organization.

2.4 Conceptual Framework

The figure on the next page provides a synthesis of the most relevant empirical and theoretical literature that is reviewed in the section above. This conceptual framework sets out the expectations of this study regarding the variables that may explain migrant smuggling at Moyale border. In the center of the figure are the various actors in migrant smuggling at the border including the border officials, border communities, smugglers and

migrants whose actions may constitute enforcement challenges in addressing migrant smuggling. Surrounding this are the contextual factors, including inadequate resources, inadequate training, weak legal framework, location of the border, norms and practices and weak inter-agency co-ordination whose presence may also constitute enforcement challenges in addressing migrant smuggling. On the left is the Enforcement Challenges, which is the independent variable and on the right is Migrant Smuggling which is the dependent variable.

Figure 2.1: Conceptual framework

Source: Author's own elaboration

CHAPTER THREE: RESEARCH METHODOLOGY

3.1 Introduction

This section outlines the methods and procedures used to achieve the study objectives. These include the study design, study area, study population, sampling, data collection and data analysis methods that were employed.

3.2 Research design

The study takes a case study approach to get an in-depth understanding of the migrant smuggling phenomenon at Moyale border, so as to answer the research questions. Moyale border has been identified by other research as a hotspot for migrant smuggling. It is a border point between Kenya and Ethiopia through which many irregular migrants from the Horn of Africa region are believed to enter Kenya as they proceed on the southern migration route (IOM, 2016; RMMS, 2017; IOM, 2018). The target population consisted of current and former enforcement officials both from Kenya Police Service and the Directorate of Immigration, senior officials at policy level and Investigations officials both from the Directorate of Immigration. Former officials must have worked at Moyale within the last fifteen years, as this marks the period during which Kenya has been a State party of the Palermo protocols. This choice was also made because migrant smuggling has been a persistent problem and the challenges experienced in the past were also expected to be persisting.

The sampling strategy was necessarily purposive because of the need to get in-depth information from a population that had rich knowledge on the subject matter and also

willing to participate in the research. Personal contacts were used to identify some key

informants; and others were recruited to the research by snowballing. The interviews

therefore included 3 senior level officials from the Directorate of Immigration, 3

Investigation officials from the Directorate of Immigration, 2 Police officers form the

Kenya Police Service, 5 immigration officials currently serving at Moyale border and 6

former immigration officers of Moyale border. One of the interviewees was both a senior

policy official as well as a former serving immigration official at Moyale border.

The distribution and characteristics of the interviewees are as shown in Table 3.1 below.

Table 3.1: Work characteristics of the interviewees

Interviewee	Department	Role	Status-Currently working at Moyale (Yes/No)
INT1	Immigration	Senior management-Policy	No, Previously
INT2	Immigration	Senior management-Policy	No
INT3	Immigration	Senior management-Policy	No
INT 4	Immigration	Border enforcement	Yes
INT 5	Immigration	Border enforcement	Yes
INT 6	Immigration	Border enforcement	Yes
INT 7	Immigration	Border enforcement	Yes
INT 8	Immigration	Border enforcement	Yes
INT 9	Police	Border enforcement	Yes
INT 10	Police	Border enforcement	Yes
INT 11	Immigration	Border enforcement	No, Previously
INT 12	Immigration	Border enforcement	No, Previously
INT 13	Immigration	Border enforcement	No, Previously
INT 14	Immigration	Border enforcement	No, Previously
INT 15	Immigration	Border enforcement	No, Previously
INT 16	Immigration	Investigation	No
INT 17	Immigration	Investigation	No
INT 18	Immigration	Investigation	No
Total number of participants at policy level **3,** Total at enforcement level **15**			
Total number of participants who have **previously** worked at Moyale **6, currently** working at Moyale **7** and not worked at Moyale **5**			
Total number of Participants 18			

3.3 Data Collection

The researcher collected primary data to answer the research questions on the enforcement

challenges and measures taken by officials to address migrant smuggling at Moyale border.

Semi-structured interviews were used to obtain both qualitative and quantitative data. The

quantitative data was mainly used to validate or confirm some findings of the qualitative

data and also ensure that all aspects of the research were adequately covered.

Data collection was carried out in the month of March, 2020. The data was collected from

the participants through telephone or face to face interviews. The study had initially

intended to carry out face to face interviews for all the respondents but this was not possible

due to the health risks associated with the Corona Virus pandemic. The telephone

interviews typically took an average time of 40 minutes excluding protocols such as the

authorization and signing of the consent form which was done by the researcher on behalf

of the respondents. During the interviews, the researcher took detailed notes of the

responses given by the interviewees. The citations in the findings are therefore not the

interviewees' own words verbatim, but rather the researcher's notes on what they said.

3.4 Data Analysis

The analysis of the data collected was carried out through a thematic analysis. The data

was manually coded according to the themes that emerged and the conceptual framework.

The data was analysed with the aid of Ms Excel spread sheet, where the identified themes

were put as headers in the columns and the interviewees with their respective comments

input in the rows to get a good picture of the patterns in the generated data. Simple

statistical descriptive statistics were used to analyse the quantitative data that was generated.

3.5 Ethical Considerations

The researcher was bound by ethical considerations throughout the study. Some of the ethical issues that were adhered to included obtaining prior informed and voluntary consent. Consent was obtained by participants signing a consent form before the interview. In the case of Telephone interviews the researcher read the contents and signed on behalf of the participants upon their verbal consent. Appointments and other necessary permissions were sought from authorities prior to visiting the respective interviewees. Confidentiality and anonymity of information given was ensured by not capturing any personal information such as the names or positions of work held by the participants and instead used codes to refer to their comments, as well as ensuring that the information received was handled with utmost care to ensure confidentiality.

CHAPTER FOUR: DATA ANALYSIS, RESULTS AND DISCUSSION

4.1 Introduction

The purpose of this study was to investigate the enforcement challenges in addressing migrant smuggling into Kenya through Moyale border. The study was seeking to identify the enforcement challenges encountered by officials and the measures used in addressing migrant smuggling at Moyale border. The findings of the research were as follows

4.2 The presence of human smuggling at Moyale

It was necessary for the researcher to establish whether the respondents understood what human smuggling involved and whether they thought there was human smuggling at Moyale border before proceeding with the rest of the interview. All of them had a description which fitted the description of human smuggling. 17 out of the 18 participants were of the view that migrant smuggling in Moyale was real. Most of them described it as being rampant in the area and it mostly involved Ethiopian young male migrants (18-30 years on average) from the southern part of Ethiopia and usually headed to South Africa. For instance one interviewee INT 7 had this to say;

> "Migrant smuggling in Moyale exists on a rampant scale. Ethiopia encourages export of labour but is not keen on how the migration takes place. Smuggling is therefore fueled by the well laid out networks for people smugglers who through their pervasive marketing, facilitate the movement of the many young Ethiopians all the way from the Ethiopian hinterland with transporters, guides, escorts changing at different relay points through Kenya to South Africa."

The one participant (INT6) who had a contrary opinion said that there was no smuggling at Moyale border and that the smugglers used other unofficial migration routes such as Forole, Sessi and Laga to facilitate the illegal entry of migrants into the country. These

being routes in the close vicinity of Moyale border, it implies that the participant was also aware of human smuggling around Moyale although using other routes other than the official border crossing point at Moyale. These results suggest that overall; all the respondents were aware and admitted to the presence of human smuggling activities at either at Moyale border town or in the close vicinity of Moyale border town. It may however be difficult to estimate the actual numbers of the people smuggled across the border, especially due to the proliferation of these illegal smuggling routes.

4.3 Border specific challenges in addressing migrant smuggling at Moyale border

Challenges were categorized into border specific and enforcement specific. With regard to border specific challenges, interviewees were asked if they had encountered any challenges in addressing migrant smuggling at the border due to the border community settlements, inter-community clashes and the Geographical location of the border itself. The challenges identified which were specific to Moyale border included the following:

4.3.1 Border Community Settlements

14 out of the 18 participants identified the border communities settling around Moyale as having a positive role in the thriving of migrant smuggling at the border and were therefore a challenge in combating migrant smuggling in the area. The straddling communities which commonly occur along the border, for instance was cited as a factor that enhanced human smuggling by INT4, INT 7 and INT12. Communities from similar linguistic groups settling both on the Kenyan and Ethiopian sides made it difficult for the enforcement officials to get any credible information from the Kenyan border communities regarding ongoing

activities since the Kenyan local communities considered the migrants as close relatives. INT 7 explained how easy it was for communities speaking the same language to cross the border and "merge" with the communities on the Kenyan side, making it difficult for the enforcement officials to identify who was foreign and who was not. INT 12's comments on straddling communities were as below;

"The Borana on the Kenyan side and Oromo in Ethiopia are just the same people, they speak the same language. They are sympathizers; they will always protect their brothers from the officials. It's very hard for them to give information on smuggling to the authorities."

Border communities were also reported to be engaged in different activities through which they facilitated migrant smuggling. Locals were involved as smugglers, brokers, agents, language interpreters among other activities thus directly participating in the smuggling of migrants (INT10, INT6, INT5, and INT3). Other participants said the locals carry out businesses in transport and hospitality which have flourished on migrant smuggling and thus encouraging the crime.

"The migrants are smuggled after giving out money to smugglers, some of who are Moyale locals; it makes it difficult to be detected when locals are used. The locals do not share vital information concerning human smuggling and those who are involved in it thus making it difficult to apprehend the smugglers."(INT10)

INT 11 also explained that migrant smuggling was considered as a 'cash cow' for the communities settling around. Services such as hotel rooms, shops, transport mostly thrived on human smuggling. A migrant could book and stay in a hotel for two weeks before getting smuggled. He added that communities harbour the migrants with full knowledge of what is happening and encourage more to come because they are driven only by the economic gain.

The rivalry among communities was cited as a factor that has contributed to the failure to use the official border crossing point. This had resulted in each community developing their illicit routes which they use to cross with their commodities for trade. The administrative challenge in the Ethiopian tax system which does not accommodate small business traders on the border by requiring that all consignments are cleared from the capital in Addis Ababa was blamed for encouraging small traders to engage in illicit trade. The illicit trade routes such as Laga, which is often used by Somalis and Sessi, often used by the Borana are usually exploited and used by human smugglers.

> "Hostilities between the two major communities at Moyale to the point that they cannot use the same routes is a challenge. They cannot use the OSBP because they do not want to mix, therefore each has their illegal routes to pass through with their commodities for sell, and there is the Sessi route for the Borana and Laga for the Garre [Somali]. These illegal routes are often used by the smugglers."(INT7)

4.3.2 Insecurity due to inter-community conflicts

On the question of whether the frequent insecurity reports at the Moyale border often highlighted in the media and if that posed any particular challenges to combating migrant smuggling. 13 out of the 18 participants were affirmative that insecurity was indeed a major challenge. The area was described as volatile with frequent inter-communal conflicts and clashes erupting resulting from disputes over resources such as grazing land and water for the communities which are nomadic pastoralists. Such clashes between different communities usually spill over to the border thus dividing the attention of the enforcement officials. Participants had similar sentiments about the insecurity situation in the area which causes tension, fear for their own lives and makes it difficult to carry out any patrols. Smugglers usually take advantage of the situation to increase their activities (INT4,

INT10). Besides the difficulties encountered by enforcement officials to carry out their duties, insecurity especially in the southern parts of Ethiopia due to inter-clan fights is a push factor for many youths to decide to migrate and as such causes an influx of migrants being smuggled. For instance INT4 had this to say;

> "Migrant smuggling escalates during clashes because the attention of security agencies is diverted to the clashes. Inter clan conflicts in Ethiopia also push many people to want to migrate to other countries thus increasing the amount of people being smuggled. Even now as we are grappling with insecurity and health issues, many have been arrested in Nairobi who might have passed here."

On the receiving end, there are usually a high number of arrests within the country in times when the border is experiencing high insecurity incidence as confirmed by majority of the Investigations officials (INT2, INT16, INT17, and INT18).

4.3.3 Location of the border

Interview responses from 8 of the 18 participants on the question on any specific challenges associated with Moyale border itself in terms of its geographical location confirmed that there were indeed enforcement challenges which they thought were particular to the border. A large number of the interviewees pointed out different challenges specifically associated with Moyale border for instance its location in mountainous and rocky place, making it difficult to carry out border patrols and its location in an arid environment with limited opportunities for the local communities who are pushed by poverty to depend on human smugglingINT4, INT5, INT7, INT10, INT11, INT12, INT14, and INT18. Geographically, the border is located in vast areas which are difficult to police. The unemployment and conflicts in Southern Ethiopia and the resultant high numbers of migrants are also

challenging for the enforcement officials to handle. INT4 had this expression on the situation that the enforcement officials have to deal with at Moyale;

> "The border lies in a mountainous area with rugged terrain. This makes patrols very difficult. The vast arid area with limited economic opportunities drive the communities to concentrate on the border town for their livelihoods, most of their activities are geared towards enabling the smuggling. The border also neighbors marginalized zones of Ethiopia which have many challenges. Poverty forces large numbers to want to migrate."

4.3.4 Language barrier

13 out of the 18 participants in the research identified language barriers as a challenge that they have to deal with on a day to day basis at Moyale border. Participants particularly emphasized the lack of government employed interpreters or translators as a challenge in dealing with the language barrier with the Ethiopian people who mainly speak the Amharic language and which many Kenyans are not familiar with (INT1, INT2). The language barrier significantly affected the interactions of officials with migrants during profiling (INT4, INT5). It was for instance difficult understanding the reasons for travel of the migrants and whether they were at risk of being smuggled. It was also difficult communicating with apprehended migrants (INT9). It was established that the language barrier had a negative impact on the cross-border collaborative efforts with the Ethiopian law enforcement counterparts (INT4) as well as the ability of the officials to get intelligence information from the locals, most of who were not familiar with English and Swahili languages (INT10). The research established that the language barrier and lack of government employed translators necessitated the widespread use of agents and brokers as language translators even with the realization that they may not be honest. This is what INT1 had to say;

"Language barrier and the lack of government employed translators necessitates the use of agents to interpret, but who in most cases are compromised and working for the interest of the migrants."

4.3.5 A vast porous border

On the question about the most critical enforcement challenges at Moyale border, 14 interviewees identified the long porous border between Ethiopia and Kenya as a challenge to them in combating human smuggling. Many participants expressed the difficulty of manning the close to 800km open border stretch between Ethiopia and Kenya which was dotted with many illegal entry routes. INT12 for instance said that were able to only patrol 40km of the stretch whenever they went for patrols. The border between the two countries which is separated only by a dry river valley offers easy access to the smugglers and migrants who are unable to obtain legal entry into the country. Similar comments were given by the participants with regard to the openness of the border, the lack of other border points in between and the many illegal entry points expressing their frustration about their inability to be at every point at every time. It is however clear from the sentiments below by INT1 and INT10 that the migrants may be evading the official crossing point but still converging somewhere in the town or on the highway from where they can find a means of transport.

> "Smugglers exploit our weaknesses in manning the expansive border and smuggle in people especially at night through illegal routes to pick up points on the Moyale-Marsabit-Isiolo route. The routes used for illicit smuggling of commodities by the individual border communities are the same ones used to smuggle in people; Laga for the Somalis and Sessi for the Borana."(INT1)

> "There are so many unofficial routes to enter Kenya popularly known as "Panya routes," like Forole, Laga and Sessi. These are used to smuggle in goods and migrants into Moyale town."(INT10)

4.4 Enforcer Specific Challenges

Other challenges identified were not specific to Moyale border but rather involved some failure either on the part of the government or the enforcement officials themselves, hence constituting challenges in their efforts to combat migrant smuggling. Participants were asked what they thought were the most critical challenges in addressing migrant smuggling at Moyale border. The frequency at which the challenges were outlined could be used to point at how critical the officials thought the particular challenges were.

4.4.1 Inadequate resources

16 out of the 18 interviewees cited the lack of adequate resources as a major challenge in combating migrant smuggling at Moyale border. The lack of adequate and appropriate (4-wheel drive) vehicles suitable for the terrain and the accompanying fuel budgetary allocation was the most mentioned resource constraint encountered by officials (INT1, INT4, INT5, INT7, INT8, INT9, INT10,INT12, INT18). Other resource constraints identified were the lack of adequate personnel (INT4, INT5, INT8, INT11, INT12, INT 14, and INT15). The two problems of inadequate vehicles and personnel seemed to be persistent as they were mentioned by both current and previously serving officials. The personnel constraints however seemed to be more prevalent within the Directorate of Immigration than was apparent in the Police Service. Resource constraints were also identified in terms of minimal budgetary allocations for running the offices and the lack of surveillance equipment such as radio and satellite, which are important technologies in manning such expansive borders. INT4 explained these limitations as below;

"Generally, the border is inadequately resourced to combat the vice. There is need for adequate 4-wheel-drive vehicles, allowances for patrols and surveillance equipment such as radio and satellite which are lacking."

4.4.2 Corruption

12 out of the 18 participants interviewed pointed out corruption among enforcement officials as a weak link in the fight against smuggling. Participants expressed their frustrations in combating human smuggling at the border when some of their colleagues had gotten into the cartels and were countering their efforts by receiving bribes and abetting the crime. INT3 had these sentiments;

"It is mostly a matter of integrity of some officials that has contributed to persistent human smuggling at the border. Officials are compromised to turn a blind eye to smuggling, and to give very lenient fines when taken to the courts. This only encourages the continuation of the practices."

A quantitative question on a culture of corruption among enforcement officials was also asked and the responses from the 18 participants were as follows; 1 strongly agreed, 12 agreed, 2 were neutral, 1 disagreed and 2strongly disagreed that a corruption culture among enforcement officials contributed to the persistence of migrant smuggling at Moyale border. These results were consistent to a large extent with the qualitative data where 12 out of the 18 respondents had already identified corruption as a critical challenge to them in combating migrant smuggling at the border.

4.4.3 Inadequate Training

11 out of the 18 participants identified inadequate training as a challenge in addressing human smuggling at the border. From the responses received, it was apparent that training was needed especially in identifying incidents of migrant smuggling, keeping up with the

trends, making a clean distinction between migrant smuggling and human trafficking, investigation and prosecution, and addressing the needs and rights of the victims. INT18 was particular in emphasizing the general lack of awareness of these crimes in the broader enforcement circles leading to a casual approach to crimes that were serious in nature. Some participants expressed concern that officials were posted to the border without any appropriate training on what to expect and how to handle such challenges as human smuggling and trafficking (INT5, INT8, INT13, INT16, INT17, INT18). INT1 emphasized the importance of training and retraining all enforcement officials including Immigration, Police, Judiciary, to avoid the confusion which is often witnessed the use of the four terms; human smuggling, human trafficking, smuggling and trafficking, and which results in loss of cases in the courts. INT16 had similar sentiments:

> "There is a lack of awareness of these crimes and especially making a clear distinction of what entails human smuggling and human trafficking. Many enforcement officials are not even able to prepare a proper charge sheet for human smuggling or trafficking. Many cases get easily lost in the courts because of the confusion."

In spite of the training challenges highlighted, some of those who were working or had previously worked at Moyale demonstrated a good level of awareness of the crimes, which they gave credit to international organizations like IOM for organizing their training and sensitization (INT7, INT8, and INT14).

A quantitative question was asked to the respondents on whether they thought inadequate training and sensitization contributed to their challenges in addressing migrant smuggling at Moyale and their responses were as follows; 4 strongly agreed, 7 agreed, 1 was neutral, 5 disagreed and 1 strongly disagreed that inadequate training and sensitization was a

challenge. These results are also consistent with the qualitative data in which 11 of the respondents had identified inadequate training as a challenge.

Of particular interest on the discussion about corruption among the enforcement officials was a dissenting view that this was not about corruption. It was rather a matter of vulnerability of a few officials who get recruited into smuggling by the cartels. The fact that the smugglers would not just approach any official randomly and offer them a bribe apart from the ones they had organized with pointed to the likelihood that it was not a case of widespread corruption (INT1).

> "It is not a matter of corruption; it is criminality of a few officials who are recruited into smuggling. A smuggler will not just approach any official and offer a bribe. Their activities are carried out in an obscure and underground manner. You are recruited, and your colleague working next to you may not be aware of what you are doing."INT1

4.4.4 Deficient law

6 out of the 18 participants interviewed identified a weak and deficient law governing migrant smuggling in the country as a challenge in combating human smuggling. The Citizenship and Immigration Act (2011), under which offences in migrant smuggling are handled fails to give clear guidelines on handling the victims (INT17). INT15 had a problem with the thin line between human smuggling and illegal migrants which made it difficult to enforce the law appropriately. Migrants are therefore often prosecuted for unlawful presence in the country, hence foregoing the opportunity of getting crucial evidence from the migrants on the real perpetrators of the crimes who are left to continue operating with impunity (INT3). The inadmissibility of CCTV (Closed-Circuit Television) footages in court was cited as a factor that often frustrates the fight against migrant smuggling (INT18). Overall, the interviewees felt that the law did not fully address the issues surrounding human smuggling as per the views by INT17 below;

"There are no clear guidelines in dealing with victims of human smuggling. Most often arrested migrants are taken to court and prosecuted for unlawful presence in the country under the Citizenship and Immigration Act, [….]. Cases also take too long to be heard, leading the key witnesses to go back to their country without testifying." INT17

4.4.5 Norms and Practices

A question was asked on any norms and practices by officials which would be considered to be a challenge in combating human smuggling at Moyale border and apart from corruption which has already been discussed as a challenge, and which also came up as one of the practices, drunkenness was also mentioned by INT1 and laxity among officials by INT14. Officials who had the habit of drinking were more at risk of being recruited into the smuggling cartels since the smugglers found them more accessible and easier to deal with. Laxity in officials was also blamed on the officers not being well motivated and the fact that the border was far flung from Nairobi which made the officials feel out of touch with the rest of the country.

Quantitative questions were also asked on motivation of the officials, wide discretion by officials, and the transfer of officials to the border as a punishment rather than a normal posting and the responses from the interviewees were as follows: on the question of whether officials were poorly motivated, 3 strongly agreed, 13agreed, and 2 strongly disagreed that officials were poorly motivated. These results mean that a large majority of officials did not feel adequately motivated in their role in combating migrant smuggling. This position can be supported by the views of INT4 and INT9 who through their recommendations for improvement suggested the need to have financial allowances for doing patrols. Most of those who disagreed to the question were in the higher management

category. This result demonstrated a possible lack of understanding by the managers and policy makers of the needs of the enforcement officials.

On the question of wide use of discretionary powers, 2 strongly agreed, 6 agreed, 4 were neutral, 5 disagreed and 1 strongly disagreed that officials had wide room to exercise discretion. From these results it was difficult to conclude whether there was excessive use of discretion by officials since majority (10) of the participants either disagreed or were neutral to the question. Most of those who disagreed were immigration officials more than the Police where 1 agreed and the other was neutral. This could be interpreted to mean that there could be more measures to curb wide discretion for the immigration officials more than for the police officials. Some dissenting views on the question on the availability of wide discretionary powers were expressed by the current and some previous serving immigration officials who said that there were administrative procedures in place which guided the stringent profiling and accountability procedures which had to be followed as well as close monitoring and supervision on the ground, at the regional level and at the headquarters. It was therefore very difficult for officials to exercise personal discretion with clearance of migrants which would fail the scrutiny that their decisions were often subjected to (INT1, INT4, INT5, INT6, INT8, and INT11). From these views, it was clear that the degree of discretion for immigration officials was low. The research however could not however establish the same with certainty for the police officials.

On the question on transfer as punishment rather than normal posting, 4 participants strongly agreed, 10 agreed, 3 were neutral and 1 disagreed that the practice of transferring

officials as a punishment posed a challenge in combating human smuggling. These results confirm the presence of this practice which majority of the participants viewed as a factor that posed a challenge in enforcement efforts to combat migrant smuggling at Moyale border. Strong views against the practice are given by INT2 who says that such transfers are counterproductive since officials with discipline issues in most cases have low integrity but are systematically posted to areas which require highly motivated officials with high integrity in order to successfully combat crimes.

4.4.6 Collaboration and information sharing

The interviewees were asked on the nature of collaboration and information sharing between and among agencies. The qualitative data shows that 13 out of the 18 interviewees expressed various challenges with information sharing and collaboration among agencies. The challenges highlighted for instance included bureaucracy in information sharing (INT2), mistrust between the agencies and the uncertainty of how the shared information would be used (INT1, INT4, INT5, INT6, INT7), supremacy wars among the agencies (INT8), the lack of proper platforms for information sharing(INT1,INT2), individual interests or what was popularly referred to as the "silo effect" by some participants (INT13, INT16,INT17,INT18), and the use of the information to implicate others (INT8, INT18).

> "There is a lot of bureaucracy in information sharing- the issue of unauthorized disclosure which curtails information sharing in many instances. There's also the lack of an integrated secure intelligence sharing network […], also the balance between the need to know versus the need to share."INT2

Information sharing was both formal and informal. Formal information was channeled through collaborative bodies such as the Moyale Border Management Committee (BMC), The Border Management Secretariat (BMS) and the Moyale Sub-county Security and Intelligence Committee, which often met twice a month or when urgent need arose (INT7). A quantitative question was asked on how satisfied the participants were with the collaboration and information sharing among agencies and the responses were as follows: 3 participants were very dissatisfied, 4 were dissatisfied, 1 was neutral, 7 were satisfied and 3 participants found the information sharing and collaboration very satisfactory. These results show that majority of the participants(10 out of 18) were generally satisfied with the nature of collaboration and information sharing among government agencies in spite of the many challenges they had highlighted. These results are not surprising going by a comment by the comments of one of the participants (INT7) who responded "Satisfied but with exceptions".

4.5 The measures put in place to combat human smuggling at Moyale border

Participants outlined various measures put in place to curb migrant smuggling, most of which reflected their various roles and duties in their respective places of work. Some participants mentioned the use of border patrols (INT3, INT5, INT10, INT11, INT12, INT13, INT14, and INT15). INT14 and INT15 were particular about the joint border patrols, emphasizing an important aspect of the patrols which the other participants may have not paid attention to. More officials who worked at Moyale border previously identified more with border patrols than the current officials, perhaps reflecting a lesser use of the border patrols currently than it was in the past. Other participants identified arrest

and prosecution of the migrants and smugglers as a measure used to combat migrant smuggling (INT2, INT4, INT6, INT8, INT10, INT11, INT16, INT17, and INT18). These responses also reflected the various roles and duties performed by different officials in their respective places of work, particularly for INT16, INT17, and INT18 from the Investigation and Prosecution department who also mentioned the repatriation of the migrants who had been arrested and prosecuted as a measure that is used.

There was also the use of strict immigration procedures through profiling of some special identified groups that are more prone to smuggling mentioned by INT4, INT5, INT6, INT7, INT12, and INT14. Migrants had to meet a certain set criteria to be allowed legal entry and officials were aware of some mentioned groups which they paid particular attention to while performing their duties. This measure was identified more by current serving Immigration officials and not by the Police, probably because of their different work definitions. The strict profiling and interview procedures were accompanied by an administrative measure that allowed just a limited number of admissions per day (INT11). As a result, on days when there was more demand for entry, the excess majority who would not be allowed entry would find other ways of gaining entry, including the use of smugglers who would assist them to enter through illegal points especially at night.

Some participants also mentioned the use of police roadblock checks on the highway. Some of the checks were random and others stationed at particular known points (INT1, INT2, INT3, INT9, INT10, and INT15). Some of the police checks were done by a Multi-agency Special Team (INT1, INT2, INT3, and INT15). INT1 had these comments:

"Currently, inner border control checks manned by the multi-agency special teams like the one at Archers' Post are doing a great job. They know the modus operandi of those syndicates, are well motivated and knowledgeable."INT1

This particular measure identifies the important role played by the Police at the road checks as it was pointed out by all the officials working with the Police. The Multi-agency Special Team was mentioned more by the high ranking officials pointing probably to a lack of awareness of the presence of such a measure that was complementing the efforts of the enforcement officials at the border. It also highlights the importance of good training and motivation for all officials to be able to do a good job.

Other measures mentioned included the deployment of Kenya Defense Forces (KDF) to help in manning the expansive border (INT4, INT12).The deployment of the KDF was also reported to be having a positive effect on curbing migrant smuggling at the border since they were more resourced both in terms of equipment and personnel. The KDF were engaged in various initiatives including trying to seal the illegal entry points in a bid to improve security associated with terrorism threats. However, on the negative side, the KDF would at times arrest every migrant, including those given legal entry and take them into police custody for lack of understanding of procedures, creating a negative working relationship among agencies as reported by INT12.

Finally, there is a multi-agency vetting committee which helps in making some critical decisions (INT7), the sensitization of local communities and migrants (INT13, INT15) and frequent transfers for officials (INT14).

4.6 Discussion of the findings

The objectives of the study were to establish the enforcement challenges encountered by officials and the measures put in place to address migrant smuggling at Moyale border.

4.6.1 Enforcement challenges encountered by officials in addressing migrant smuggling at Moyale border

The study findings show that there exist numerous challenges that are particular to Moyale border. These include the border communities: 14 out of the 18 interviewees noted that the border communities were a challenge in their enforcement efforts. Border communities were blamed for carrying out businesses which aided or harboured the migrants such as transport and hospitality, driven by their need for economic gain. Communities were also reported to be sympathetic to migrant smuggling by failing to share crucial information with enforcement officials. They were reported to also be participating in migrant smuggling either as brokers, agents and smugglers themselves. Finally, by failing to use the official border entry points and smuggling goods for trade through unofficial routes, border communities encouraged migrant smugglers to use the same illegal routes used by the locals to cross the border.

13 out of the 18 interviewees identified insecurity as a challenge. The study found that the area is characterized by high insecurity resulting from inter-communal conflicts and fights. The insecurity was cited as a push factor for migration as well as posing a challenge to the enforcement officials' ability to patrol the border. Some interviewees said that insecurity

divided their attention, such that as they concentrated on quelling the situation, migrant smugglers often took advantage of the security lapse to increase their activities.

The interviewees identified the vast porous border as a challenge, considering the resource constraints they had. They were only able to patrol a small stretch of the border which was dotted with many illegal entry points which are often used by smugglers. They identified illegal entry points such as Laga, Sessi and Forole. Some of them said that the border itself was located in a geographically challenging environment which is a mountainous, rocky and arid jungle like environment. The terrain is difficult patrol and the jungle is often used by smugglers to sneak in the migrants on foot, easily avoiding the detection of authorities. On the most critical challenges encountered by enforcement officials, a large majority of the interviewees identified the language barrier and the lack of government employed translators as a challenge. This forced them to rely on the local brokers and agents, most of who had the interests of the migrants and therefore would not be trusted to be giving the right information. The language barrier had an effect on the enforcement officials' ability to interview the migrants either for admission or those they had arrested. The language barrier also made it difficult for the enforcement officials to get intelligence information from the local communities and curtailed their cross-border engagement necessary for cooperation with their Ethiopian counterparts.

A large majority of interviewees said they were inadequately resourced. Most of them identified vehicles and fuel as the major hindrance although other resources like personnel, financial allowances for patrols, and equipment like radio and satellite were also mentioned

by some interviewees. Majority of the interviewees also identified corruption among some enforcement officials as a weak link in combating migrant smuggling. These results were to a large extent consistent with the responses obtained from the quantitative question on which participants were prompted to give their views on corruption by the enforcement officials, to which 13 of them agreed that corruption was indeed a challenge. To this result however, the research found that it was not a case of widespread corruption, but a few officials who are targeted by the smuggling syndicates for recruitment into their activities. The research found that training of officials was a challenge. Majority of the interviewees acknowledged that there were training gaps especially with regard to differentiating incidents of migrant smuggling and human trafficking, protecting the victims and investigating and prosecuting crimes in migrant smuggling. 11 of the respondents thought that training for officials working at Moyale border was a challenge and that this often results in losing migrant smuggling cases in court when the distinction is not clear. Further, officials were posted to the border without being given any specific training regarding the irregular migration challenges. As such, they had to learn through experience from their colleagues who were more experienced. This posed an enforcement challenge because new officials could easily carry on bad habits from their colleagues. The research also found that for those who had knowledge of the crimes, the little training and sensitization they had been exposed to was given by international organizations like IOM. These findings pointed to a gap in the governments' capacity building efforts which is expected of it since it is the government that is in the best position to understand the specific migration challenges that the country encounters. The research found that there was a weak and deficient law governing migrant smuggling in the country and this was a challenge in

addressing migrant smuggling. This was particularly a concern for 4 interviewees, consisting mainly of the investigations officials, whose job entails investigating migration related crimes for prosecution. Some of the weaknesses identified were that there was no clear line of distinction between smuggled migrants and irregular migrants and smuggled migrants were generally prosecuted for unlawful presence. The law also lacked clarity on handling of victims, who could be used to give incriminating evidence against the smugglers, but this did not happen especially when the victims themselves had been incriminated. Finally, that crucial evidence that could be produced in courts like CCTV footages were not acceptable and lenient court fines were given to smugglers, therefore making combating the crime difficult. This finding demonstrates the difficulty of prosecuting migrant smuggling crimes under weak laws and a lack of understanding and cooperation between the enforcement and judicial officials.

On norms and practices, corruption, drunkenness and laxity among enforcement officials were identified as challenges encountered. The wide use of discretionary power was not a factor considered by the majority of respondents, more so the immigration officials who considered their operations as lacking much room for discretion due to the administrative systems and procedures put in place as well as the level of supervision available.10 out of the 18 interviewees disagreed or were neutral on the question of the use of excessive discretion. In this regard, a general consensus could not be established whether wide discretion contributed to the challenges in addressing migrant smuggling. However, with regard to the Police, between the two interviewees, one indicated that there was wide discretion due to limited supervision while the other was neutral. This result could be

interpreted to mean that although the Directorate of Immigration has made significant efforts in curbing wide discretion among its officials, there may be wide discretion among the police which may contribute to challenges in addressing migrant smuggling.

The research also established that majority of the participants, most of them being at enforcement level, did not feel well motivated in their role of combating migrant smuggling, perhaps contributing to laxity among some officials as observed by INT14. More than half of the participants also thought that the practice of transferring officials to far flung areas as a punishment led to the persistence of migrant smuggling because officials who had discipline issues were prone to getting into bad practices.

On collaboration and information sharing, majority of the respondents were satisfied with the current state of inter-agency collaboration and information sharing. 10 of the 18 interviewees were either very satisfied or satisfied with the current status of information sharing although they noted challenges such as mistrust and turf wars between different agencies and the lack of a secure platform for information sharing. Most of those who reported dissatisfaction were those who had worked previously in Moyale. This could be interpreted to mean that there were current efforts to improve interagency collaboration and information sharing which were having positive results.

4.6.2: The measures used by officials in addressing migrant smuggling at Moyale border

On this objective, measures such as joint border patrols, police checks on the highway, arrest and prosecution of both smugglers and victims, repatriations, and sensitization of communities and migrants on the dangers of migrant smuggling were mentioned as the tools often used to address migrant smuggling at Moyale border. While some of the measures above may yield positive results in preventing, curtailing and discouraging irregular migration, the arrest and prosecution of victims of migrant smuggling could be viewed as a weak link in the fight against migrant smuggling. Successful prosecution of the smugglers may be difficult when the victims who are supposed to act as witnesses are criminalized through measures such as arresting, prosecuting and repatriating the victims because the country foregoes the opportunity to get witnesses for successful prosecution of the real offenders who are the smugglers themselves.

The research also found that stringent profiling procedures were used to check not only the number of migrants who could be allowed legal entry, but also the suitability of the migrants in terms of the reason for travel, thus trying to exclude those who were at risk of being smuggled. This measure however resulted in migrants who could not get authorization to enter legally, and who were thought to be using the illegal entry routes by being assisted by smugglers. This policy measure by the government may be seen as counterproductive since by limiting the opportunities for legal entry, migrants are observed to be seeking assistance from smugglers, and therefore the thriving of the illicit trade.

The research found that the deployment of Kenya Defense Forces which are well resourced with equipment and personnel, as well as Multi-agency Teams which have well trained and motivated officials were having a positive impact in the fight against migrant smuggling at the border. This shows the importance of funding and training for all government agencies involved in dealing with migrant smuggling for the country to achieve greater positive results.

CHAPTER FIVE: SUMMARY OF FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

5.1 Introduction

The main objective of this chapter is to provide a summary of the findings in relation to the research questions, anchor the conclusion of this study in the major arguments presented in the migration industry and street level bureaucracy theories as well as compare the findings of the research with the knowledge that other researchers in the area have already found.

5.2 Summary of Findings

The research sought to answer two research questions: What are the enforcement challenges encountered by officials in addressing migrant smuggling at Moyale border and what measures are used by officials to address migrant smuggling at Moyale border.

5.2.1 Enforcement challenges encountered by officials in addressing migrant smuggling at Moyale border

With regard to this first research question, the research found that officials at the border encountered both border specific and enforcer specific challenges in addressing migrant smuggling. The border specific challenges found included border community settlements, insecurity around the border, location of the border and language barriers.

With regard to border community settlements, the research found that straddling communities settling along the border made it difficult for enforcement officials to differentiate who was a foreigner and who was not as they shared many characteristics with local communities including language. It was difficult for local communities to share information that would incriminate smugglers and migrants whom they sympathized with due to community, ethnic or kinship ties. Border communities were reported to be involved directly and indirectly in migrant smuggling. Directly, they took part as bush guides, language translators, agents or brokers and even as smugglers. Indirectly, border communities carry out businesses in hospitality and transport and knowingly habour and transport migrants who are being smuggled. Due to rivalry among different border communities, they avoid using the official border where they are likely to mix and therefore devise their own unofficial routes along the border which they use to transport through their commodities of trade. These routes were reported to often be exploited by migrant smugglers to smuggle migrants into the country.

Insecurity was another challenge cited. Conflicts and intercommunity clashes were reported to be a frequent occurrence resulting from disputes over resources such as grazing land and water. These often spill over to the border making it difficult for enforcement officers to carry out patrols. The insecurity also diverts their attention, a situation that is usually taken advantage of by smugglers to increase their activities.

The border location in a mountainous and difficult rocky terrain within a vast jungle environment is a factor that poses a challenge in carrying out border patrols, but also

enables the concealing of migrant smuggling activities. The research also found that there were language barriers as many officials were not familiar with Amharic or other local languages spoken. This challenge was compounded by the lack of government employed translators. The officials were therefore forced to make use of local brokers and agents who offered to translate the language, but who mostly had the interest of securing entry for the migrants and therefore would not be trusted most of the time. The language barriers made it difficult to get intelligence information from local communities, interview migrants and engage in cross-border cooperation.

Finally, with regard to border specific challenges, the research found that the border between Kenya and Ethiopia was expansive and porous, dotted with many illegal entry points. Officials found it difficult to patrol the close to 800km stretch of the border. Enforcer specific challenges identified included inadequate resources, inadequate training, weak laws governing migrant smuggling in the country and norms and practices either by the enforcement officials themselves or at the administration level. They did not have adequate resources to mann the expansive border due to minimal budgetary allocation, lack of vehicles and surveillance equipment. Inadequate training was a challenge with many acknowledging that many cases were lost in court due to the inability to identify and differentiate well between crimes in human trafficking and migrant smuggling. The law governing migrant smuggling in the country was deficient in a way that victims of migrant smuggling were prosecuted for illegal presence in the country and repatriated back to their countries, failing to use them as witnesses in prosecuting the real offenders who are the migrant smugglers.

There were norms and practices either among the enforcers or the administrators that were cited a challenge in addressing migrant smuggling at the border. These included corruption among some of the officials, laxity, drunkenness and lack of motivation. The practice of transferring officials to the border as a punishment instead of a normal transfer was cited as a factor that demotivates officials and a possible reason for persistence of migrant smuggling.

5.2.2 The measures used by officials to address migrant smuggling at Moyale border

With regard to this research question, the measures identified in addressing migrant smuggling at Moyale border included joint border patrols, strict profiling, arrest and prosecution of migrants and smugglers, repatriation, random and custom police roadblock checks were reported as frequently used. Other measures included sensitizing local communities on the dangers of migrant smuggling, multi-agency special team operations and a multi-agency vetting committee was in place to help in decision making when necessary. Finally, the government had deployed the KDF to secure the country from terrorist threats, but their presence was helping to curtail migrant smuggling along the border.

5.3 Conclusion

The research has made a number of contributions in terms of strengthening the use of the two theories in explaining challenges in addressing irregular migration. The study has also helped to fill a particular gap in research on the enforcement challenges encountered by officials at Moyale border in combating migrant smuggling.

5.3.1 Theoretical contributions

The findings of the study provide empirical evidence which enhances our understanding of migration industries from the enforcer perspective. In an attempt to locate the migration industry at Moyale border, this research came across a network of different state and non-state actors in the migration process including security forces, international organizations, local communities, businesses in hospitality and transport, bush guides and migrant smugglers, migration brokers, agents and language translators. This forms a networked entity of actors which according to Schapendonk (2018), have objectives that may oppose each other, sometimes overlapping. It is through the interplay of these different actors, including the decisions taken by the migrants themselves that shapes the migration patterns at the border, and hence the enforcement challenges.

The data collected through this research also lends weight to the argument by Schapendonk (2018) that migration is a booming business. In the context of irregular migration through Moyale border, this reality is particularly emphasized by accounts of the interviewees on how the local communities generate income through local businesses which thrive on migrant smuggling. Businesses in hospitality and transportation of migrants as well as the activities of smugglers, bush guides, brokers and agents in facilitating irregular migrants to enter the country for economic gain demonstrates the commercialization of international migration at the border.

Low levels of development around Moyale as observed by Trademark East Africa (2019) have aggravated the situation at this border by drawing in many actors in the migration

industry, including the local communities for lack of alternative livelihoods. As a result, these communities have had to improvise ingenious ways of surviving, a situation that Schapendonk (2018: p664) describes with the French term "debrouillardise"- by utilizing the border to their own advantage. This scenario well describes the thriving informal economy at Moyale border, in this case describing the "hustling" of the local communities to survive by facilitating irregular migration. Cranston, Schapendonk & Spaan (2018) emphasize that government policies resulting in marginalization and community ties have an important role to play in migration industries. In this case study, the feeling of marginalization makes it difficult for the local communities to share information with the authorities. Local communities are also sympathetic to the migrants with whom they feel they belong more together due to kinship and ethnic ties than their feeling of belonging to the State. This study therefore concludes that due to marginalization and lack of economic opportunities in the area, communities have had to find ways of survival by depending on the border and engaging in activities which depend and encourage migrant smuggling.

The argument by Cranston, Schapendonk & Spaan (2018) on the important role that marginalization plays in migration industries can also be extended to the challenges encountered where some enforcers may not be necessarily enforcing, contrary to what is expected. Posting to far flung borders as well as the inadequate resourcing to manage expansive far flung borders may create feelings of marginalization and therefore contribute to the positive growth of the migration industry. The failure of some enforcers to enforce also emphasizes the scenario conceptualized by Schapendonk (2018) of the migration industry as a complex web with opaque and shifting roles between migration facilitation

and control as well as the lack of a strict divide in the realms of migration facilitation and control.

As a response to the challenges in migration management at the border, the Kenyan government has increasingly shifted the migration management practices towards a military combat against the facilitation of migration due to security threats posed by terrorist groups which are thought to enter the country illegally through such borders. Besides the deployment of the Kenya Defense Forces at the frontiers of the border, legal channels of migration through the border have also been severely limited through stringent profiling procedures and a limit on the numbers that can be allowed in. It can be argued that the general aim behind this has been to cut off the business networks of smugglers and stop irregular migrants from entering into the country, and in so doing, reduce terrorist threats. This rationale, however, is contrary to what research has shown that increasing border restrictions actually creates more demand for migrant smuggling (Gammeltoft Hansen & Nyberg-Sorensen 2013). The conditions under which migrants are smuggled also become more risky (Carling 2007). It can be concluded that the restrictive border policies adopted by the Kenyan government to control the illegal entry of migrants has to a large extent created a high demand for the illicit trade in migrant smuggling at the border. The findings of the study also support the use of Lipsky's theory of Street Level Bureaucracy (Lipsky, 1980) in explaining the norms and practices of officials which may contribute to enforcement challenges. Although the research found that the government had put in place measures to reduce discretionary powers for officials at the Directorate of Immigration services, Police officials working at the border were found to have wide

discretion coupled with inadequate supervision. The discretion, according to Lipsky's theory, gives room for frontline officials to be the ultimate policy makers through their decisions, which may not reflect the policies of the central planners or the government.

Similarly, working under scarce resources that are necessary for border patrols, a difficult and vast geographical terrain and low morale due to lack of incentives, officials are likely to develop routine practices such as laxity, drunkenness and complicating procedures or stringent rules for entry for their individual gain. This situation as foreseen by the street level bureaucracy theory can explain the norms and practices by officials as established by this research. This usually determines the kind of services and experience that the public gets from the frontline officials, which may be viewed by the public as the ultimate policy of the government.

5.3.2 Empirical Contributions

The research participants provided rich empirical information on the challenges encountered in addressing migrant smuggling at Moyale border which have important policy implications for those interested in addressing the illicit trade. The study findings reiterate what has already been evidenced in existing literature on enforcement challenges such as the vast porous borders, weak legal and policy frameworks, inadequate resources, inadequate training and corruption among the enforcement officials (Cheruiyot, 2014; Barasa & Fernandez, 2015; RMMS,2017; Sahan/IGAD, 2016; Koros, 2018).

The study also makes findings that are not well established in existing literature on migrant smuggling in the HoA smuggling routes. The study therefore makes valuable empirical contributions to understanding the particular policy context in Moyale for Kenyan policy makers. Border specific factors such as the direct and indirect involvement of local communities in migrant smuggling are brought to the fore. Directly, local communities are involved as agents, bush guides and smugglers procuring illegal entry of migrants into Kenya. Indirectly, communities are involved by running businesses in transport and hospitality which benefit from migrant smuggling. The failure of local communities to share information with authorities as a result of being sympathetic to human smuggling due to kinship and ethnic ties to communities in the neighbouring countries has also compounded the challenges encountered by enforcement in addressing migrant smuggling and thus their positive role in enhancing migrant smuggling. Insecurity resulting from inter-community tension and clashes, language barriers and the geographical location of the border in a difficult terrain have also posed challenges to enforcement officials in addressing migrant smuggling. Besides that, human resource management practices such as transfers and postings of officials have also been found by this research to have an important role to play in combating migrant smuggling.

5.4 Recommendations for Policy and Practice

Government policies targeted at reducing marginalization among communities living along far flung borders may yield positive results in better migration management. In order to address the challenges encountered in relation to the border communities, the government could put in place policies to reduce the feelings of marginalization for the border

communities such as issuance of identity cards, and the promotion of alternative economic livelihood strategies. Development projects such as roads coupled with practical alternatives for the border communities in terms of projects which stimulate trade in other areas may divert their dependence on migrant smuggling. Public education programs for communities on the dangers migrants are exposed to when smuggled may also make them more sensitive and willing to share information with authorities.

Cooperation and coordination at the intra-agency, inter-agency and international levels is expected to yield significant results in the fight against migrant smuggling. Although the research found that significant steps had been put in place to enhance coordination and cooperation, various challenges were cited in association with the measures in place. Inter-agency and cross border collaboration and information sharing could be improved by sensitization of multiple agencies on the importance of collaboration, having a central source of information sharing and a secure electronic platform for the information sharing. An express legal framework to entrench collaboration could help deal with bureaucracy in information sharing.

The allocation of adequate resources to government agencies on the frontline of migration management will address their challenges in relation to vehicles and the much necessary current technologies and equipment such as radio and satellite necessary for managing vast expansive borders like the Kenya-Ethiopia border as established by the research. Resources will also include personnel, particularly language translators for easier operations. The allocation of adequate resources will reduce feelings of marginalization among officials

who may perceive that their posting to the border to work in difficult conditions is a punishment. The government could also consider giving financial allowances for patrols and encourage positive human resource practices which motivate the enforcement officials. This research established that many cases in migrant smuggling are often lost in court due to the failure by officials to distinguish well between migrant smuggling and trafficking. There is need for the government to develop a curriculum for border officials and ensure that they are regularly trained and sensitized on emerging and persisting border crimes. The training could also focus on handling of victims as well as the importance of integrity for officials to successfully address migrant smuggling. This can be complemented with proper supervision by checking on the practices of officials which may put them at risk of recruitment into migrant smuggling cartels such as drunkenness. Laxity and wide discretionary power can also be checked by increased supervision for agencies where adequate supervision is lacking.

Finally, enacting an independent law on migrant smuggling would address the numerous grey areas and show greater commitment for the country in combating the crime. The law will be able to clarify handling of victims as well as refocus the efforts of addressing migrant smuggling from prosecuting the victims to the perpetrators of the crimes.

5.5 Limitations and future research recommendations

Although the research presents rich information from a cross-section of enforcement officials, the findings may be undermined in the following ways; former officials may not have an accurate account of recent developments in addressing migrant smuggling at the

border. Officials who have not worked in Moyale may have also lacked adequate information on the border specific questions and therefore introducing an element of bias. Their inclusion in the research was however important in getting their views on the phenomenon from the policy as well as the arrest and investigation points of view which constitute the enforcement efforts. The researcher therefore tried to mitigate this limitation by ensuring they must have interacted with the border for instance when repatriating migrants and through other administrative duties and hence had an adequate understanding of the border and its operations.

The use of telephone interviews in producing the knowledge also had its limitation. Face to face would have been more ideal considering the sensitivity of the information being shared. Some participants were a little uncomfortable and this may have undermined the amount of information shared. However, it was not possible to carry out the entire research through in person interviews due to the current health challenges associated with the corona virus pandemic. Nonetheless, the research was able to obtain quite detailed data.

Future research on migrant smuggling at Moyale could examine both sides of the border to get a more comprehensive understanding of the phenomenon from the source and receiving country point of view. Being a transnational crime, curbing migrant smuggling at the border requires the effort and collaboration of both countries for strategies to be successful. Getting the views of Ethiopian enforcement officials would illuminate more on the challenges (if any) they encounter for more successful policy responses. Future research could also explore the importance of language barriers as an enforcement challenge as well

as the nature of transfers and postings and how this impacts on the measures to address

migrant smuggling. This research found these to be significant challenges which have not

been given much attention in the existing academic literature and policy discussions.

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APPENDICES

Appendix 1: Interview Schedule

My name is Roselyn Makokha, a student from the Kenya Institute of Migration Studies (KIMS) at the University of Nairobi. I am carrying out a research on "Enforcement Challenges in Addressing Human Smuggling into Kenya: A case of Moyale Border". This research is purely for academic purposes and your data will only be used for that purpose, in partial fulfillment of my Postgraduate Diploma in Migration Studies. I will treat the information given with utmost confidentiality and fully commit to non-disclosure of the identity of all participants (Exceptions will be made for those who prefer not to remain anonymous and would like their views to be attributed to them by filling in a consent form). I really appreciate this opportunity you have given me to participate in my research and would like you to feel free and give me information in the following questions.

PART A: BACKGROUND INFORMATION

Please tick where applicable

1. What is your job title? …………………………
2. How long have you been working in your organization?
   a. Below 5 years   [ ]
   b. 5-10years   [ ]
   c. 10-15 years   [ ]
   d. Over 15 Years   [ ]
3. What is your role? ………………………….......................................
4. How long have/ did you work at Moyale border?   …………………………………..
5. a) Migrant smuggling has been pointed out as a growing challenge regionally in terms of migration governance. Briefly state your views about migrant smuggling at Moyale border (whether it exists, the scale or whether it is rampant, and who are the commonly smuggled groups, their age groups, etc).

…………………………………………………………………………………………

…………………………………………………………………………………………

…………………………………………………………………………………………

b). From your experience, how do you think the smuggling is carried out around Moyale border (the routes, the organization, the money exchange, etc)

…………………………………………………………………………………………

…………………………………………………………………………………………

…………………………………………………………………………………………

…………………………………………………………………………………………

c) Would you be having any understanding of the factors that motivate these migrants to be smuggled, for instance through your interaction with the arrested/apprehended victims? Please mention them.

....
....
....

d) Are there any measures that have been taken in trying to combat migrant smuggling at Moyale border? Please mention any

……
……
……
……

PART B: ENFORCEMENT CHALLENGES

6. a) From your work experience, are there any particular challenges in relation to the border community settlements around Moyale in terms of facilitation of human smuggling?
Yes   [   ]
No   [   ]
Don't Know   [   ]

b) Please give some details if the answer is yes above
……
……

c) Media has frequently reported about clashes between different communities around Moyale. Does this situation pose any particular challenges with regard to addressing human smuggling along that border?
Yes   [   ]
No   [   ]
Don't Know   [   ]

d) Please give some details if your answer above is yes
……
……
……

e) What challenges in relation to the geographical location of the border would you think are unique to Moyale border and pose challenges in terms of combating human smuggling?

…………………………………………………………………………………………………
…………………………………………………………………………………………………
…………………………………………………………………………………………………

f) What would you consider to be the most critical challenges in combating human smuggling at Moyale border?

…………………………………………………………………………………………………
…………………………………………………………………………………………………
…………………………………………………………………………………………………
………………………………………………

g) What recommendations would you suggest for improvement of current situation?

…………………………………………………………………………………………………
....
....
....

7. Cooperation and collaboration among different state security agencies through intelligence sharing and other joint activities has been shown to be effective in combating crimes like human smuggling, since these are crimes that cut across jurisdictions of several adjacent government ministries and departments.

(a)Which government ministries or departments do you think are critical in the fight against human smuggling at Moyale border?

…………………………………………………………………………………………………
…………………………………………………………………………………………………

(b) In your experience, is there any collaboration and information-sharing among such government agencies?

Yes [   ]   No [   ]   Don't Know [   ]

(c) If yours answer above is yes, in what ways do you collaborate?

…………………………………………………………………………………………………
…………………………………………………………………………………………………

(d) Is the collaboration/information sharing formal or informal?

....

....

(d) Are there any coordinating bodies for the collaboration and information sharing?

Yes [   ]   No [   ]   Don't Know [   ]

(e)If yes above, kindly mention the coordinating bodies you are aware of

……………………………………………………………………………………………

....

(g)How would you describe the nature information sharing among government agencies?

     Very satisfactory   [   ]

     Satisfactory   [   ]

     Neutral   [   ]

     Dissatisfactory   [   ]

     Very dissatisfactory   [   ]

 (h) What specific challenges can you cite in relation to collaboration and information sharing among government agencies at Moyale border? ………………………………..

……………………………………………………………………………………………
……………………………………………………………………………………………

(j) Do you think this information sharing could/should be improved in any way? (Please give recommendations)

……………………………………………………………………………………………
……………………………………………………………………………………………

8. What norms or practices by officials if any can you identify and which you think often compromise the fight against human smuggling at Moyale border?

……

……

9. Reasons for persistence of human smuggling

Some practices either at the enforcement officials' level or at the higher management level are likely to affect the fight against migrant smuggling. Using a scale of 1 to 5 where 1 = Strongly Agree, 2 = Agree, 3 = Neutral, 4 = Disagree, 5 = Strongly Disagree, please give your views on the following factors in relation to why enforcement challenges in combating human smuggling at Moyale border may persist.	Rating				
	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree
Reasons	**1**	**2**	**3**	**4**	**5**
1. Officials fail to apply laws strictly because they have a lot of room to use their discretion.					
2. Inadequate training and sensitization on human smuggling has had a negative impact on the efforts to combat the crime.					
3. Officials at Moyale border are not adequately motivated to combat human smuggling.					
4. A general culture of corruption among officials has posed a challenge in combating human smuggling at Moyale border.					
5. There is lack of adequate supervision for far flung borders like Moyale.					
6. Transfer to far flung borders as punishment rather than a normal posting is a challenge in curbing migrant smuggling at Moyale border					

(d)What would you suggest for improvement of the current situation?

....

....

Thank you so much for taking your time to participate in this research.

Do you have any additional comments on the topic that you think are relevant but have not been captured by the interview?

……

……

Appendix II: Consent Form

Declaration of consent for participation in the research study

- I have been informed about the study and had an opportunity to ask questions about it. I have been able to think about my participation in the study and I understand that my participation is completely voluntary. I have the right to withdraw my consent and quit the study at any time without needing to give a reason.

- I have considered to what extent I wish my participation in the study to remain anonymous. I understand that I can change my preferences regarding the anonymity of my participation in the study during or after the interview. I wish:

  - ☐ **To remain fully anonymous:** any information or views that I share during the interview and that are presented in the research results *will not* be linked in any way to my identity, for example with reference to my name, organizational affiliation or professional role.

  - ☐ **To remain partially anonymous**: I consent to allowing any information or views that I share during the interview to be presented in the research results with reference to my organizational affiliation, but with no reference to my individual professional role or identity.

  - ☐ **To disclose my identity:** my contributions to the study will not be confidential or anonymous. I consent to allowing any information or views that I share during the interview to be presented in the research results with reference to my organizational affiliation AND individual role or identity.

- I agree to participate in the study on this basis:

Signature: Date:

I, the undersigned, responsible researcher, declares that the said person has been well informed about the study mentioned above.

Name:

Signature: Date:

APPENDIX III: CERTIFICATE OF CORRECTION

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: 11/11/2020

RE: CERTIFICATE OF CORRECTION: Roselyne Silima Makokha Q68/31473/2019

This is to certify that Ms Roselyne Silima Makokha has effected corrections from the board of examiners.

Talitha Dubow

Talitha Dubow.

Supervisor.

Appendix IV: ORIGINALITY REPORT

Enforcement Challenges in Addressing Migrant Smuggling into Kenya: A Case of Moyale Border

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