

**IMPACT OF PROSECUTION ON COMPLIANCE TO
REQUIREMENTS OF SAFETY AND HEALTH IN
WORKPLACES IN KENYA**

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**Impact of Prosecution on Compliance to Requirements of Safety and
Health in Workplaces in Kenya**

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**A thesis submitted in partial Fulfillment for the degree of Master of
Science in Occupational Safety and Health in the Jomo Kenyatta
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DECLARATION

This thesis is my original work and has not been presented for a degree in any other University.

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This thesis has been submitted for examination with our approval as university supervisors.

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DEDICATION

This work is dedicated to my parents Nyakego and Nyangweso for having educated me.

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LIST OF ABBREVIATIONS AND ACRONYMS

| | |
|-------------------|--|
| All E.R | All England Report |
| Cap. | Chapter |
| DOSHS | Directorate of Occupational Safety and Health Services |
| DPP | Director of Public Prosecutions |
| Fig. | Figure |
| HSE | Health Safety Executive |
| NACOSH | National Council for Occupational Safety and Health |
| OSHA, 2007 | Occupational Safety and Health Act, 2007 |
| OSHO | Occupational Safety and Health Officer |
| PCR | Petty Criminal |
| Rev. | Revised |
| TAC | Technical Advisory Committee |
| v. | Versus |

ABSTRACT

Despite the presence of safety and health legislation, places of work in Kenya continue to have poor safety and health conditions and consequently there is continued accident occurrence. In 2007, the Occupational Safety and Health Act, 2007 (OSHA, 2007) replaced the Factories and Other Places of Work Act, Cap.514 which had been in existence for over five decades. The enactment of the Occupational Safety and Health Act, 2007, has since not caused a notable impact on safety and health status in workplaces. Workers and employers continue to be unaware of existence of the Act and its provisions and therefore proceed to work in contravention of the requirements of the Act. The Directorate of Occupational Safety and Health Services (DOSHS) is charged with the responsibility of prosecuting those who contravene the provisions of OSHA, 2007. The Directorate also ensures safety and health of persons in workplaces by regular inspections and maintains records of such activities. This report details the outcome of delving into the impact prosecution under the provisions of OSHA, 2007 by the DOSHS, on the compliance to some aspects of safety and health of workplaces between October 2007 and December 2010. The research examined how the prosecutions influenced compliance to safety and health in workplaces on the aspect of workplace registration, risk assessment, safety and health audit and fire safety audit. The study involved perusal of records about workplaces that were inspected and subsequently prosecuted under the provisions of the Act. A comparison was then done between the status of compliance to selected aspects of safety and health of the workplaces before and after the proceedings to bring the impact to light. An interview schedule was administered to officers of

DOSHS office stations to gather information about the cases prosecuted and status of compliance thereafter. It emerged from the results of this study that prosecution in respect of selected aspects of safety and health yielded remarkable compliance. The outcome of this research would be useful in providing a way forward as to whether prosecution is a more appropriate approach in enhancing compliance to safety and health requirements in Kenyan workplaces.

CHAPTER ONE

1.0 INTRODUCTION

1.1 Background

Hitherto enactment of the Occupational Safety and Health Act, 2007 (OSHA, 2007) in October, 2007, the safety, health and welfare of persons employed in factories and other workplaces were provided for in the Factories and Other Places of Work Act, Cap. 514 (now repealed) that was enacted in 1951 and revised in 1972. The OSHA, 2007 repealed the Factories and Other Places of Work Act, Cap.514 with a wider scope of application to cover entirely all workplaces.

The Factories and Other Places of Work Act, Cap. 514 was repealed because it was providing for safety, health and welfare of persons employed in limited workplaces namely factories and other specified workplaces only. The OSHA, 2007 provides for safety, health and welfare of persons employed in all workplaces. In OSHA, 2007, unlike the Factories and Other Places of Work Act, Cap. 514 (now repealed), chemical safety has been given emphasis. Chemical safety is presently an important item as chemicals are currently used virtually in every workplace. In offices, there is the use of chemical detergents. In farms, insecticides, herbicides and fertilizers, which are forms of chemicals, are used. The OSHA, 2007, also expounds more on machinery safety in that distinct machinery safety and plant safety are given emphasis separately. Workplace safety policy, workplace safety and health audit, workplace risk assessment and workplace fire safety audit are among important safety and health aspects that were not

previously addressed and thus warranting the repeal of the Factories and Other Places of Work Act, Cap. 514.

Within the provisions of section 6 of OSHA, 2007, it is required of every workplace to carry out a risk assessment in relation to the safety and health of persons employed and on the basis of the assessment, measures to mitigate the risks be adopted. Section 11 of OSHA, 2007 also provides that safety and health audits be conducted in every workplace. In order for records about workplaces to be maintained, the Act provides for registration of workplaces and award of a registration certificate. This is a requirement of section 44 of the Act. The Factories and Other Places of Work (Fire Risk Reduction) Rules, Legal Notice 59 of 2007 is a subsidiary legislation to OSHA, 2007 which provides for fire safety at workplaces. Provisions of this subsidiary legislation require every workplace to undertake a fire safety audit on an annual basis.

1.2 Occupational Safety and Health Act, 2007

The Occupational Safety and Health Act, 2007 provides that;

- i. Workplaces be kept clean and free of dirt and effluvia,
- ii. Adequate space be available for every worker at every workplace so as to eliminate overcrowding,
- iii. Adequate ventilation be provided at every workplace,
- iv. Adequate sanitary conveniences be provided and maintained for use by persons employed; taking into account the aspect of gender,

- v. Dangerous parts of plants, machinery, tools and equipment be appropriately guarded or fenced for safety,
- vi. Thorough examination be done on lifting appliances, pressurized vessels and refrigeration plants after specified periods of time,
- vii. Good safety practices be observed with regards to workplaces where there are vessels containing dangerous liquids,
- viii. Good safety practices be exercised in workplaces where warehousing is done,
- ix. Good ergonomics be provided and maintained in all workplaces and
- x. Safe use of chemicals be embraced in workplaces where chemicals are used or handled.

1.3 Statement of the Problem

Noncompliance to requirements of safety and health in workplaces lead poor safety and health status of workplaces which in turn lead to occurrence of occupational accidents and ailments. Fatal occupational accidents which involve family breadwinners deny families of their source of bread leading to orphaned children, widows and widowers. This has a great impact on the social family fabric which most often disintegrates. Many other problems arise due to loss of breadwinners; children drop out of school ending up with poor upbringing and eventually in the streets with a future possibility of being criminals.

In the event of occurrence of non-fatal accidents, victims may permanently be disabled and be unable to provide for their families but be a burden instead. Costs are incurred in

treatment of occupational ailments and accident injuries. Occupational ailments and accidents turn out to be an expense due to cost of treatment, compensation expenses paid, cost of training persons to replace the injured at work, lost time, litigation costs, damage to products and raw materials. This translates to being a cost to the state.

This study establishes the relationship between prosecution under the provisions of OSHA, 2007 and particular aspects of safety and health requirements of workplaces. From the findings, it would emerge as to what impact prosecution has on compliance to requirements of safety and health of a workplace and if the prosecution may be applied to achieve compliance to the requirements.

1.4 Objectives

1.4.1 Main Objective

To determine whether prosecution under the provisions of the Occupational Safety and Health Act, 2007 has an impact on the status of compliance to requirements of certain aspects of safety and health requirements of workplaces in Kenya

1.4.2 Specific Objectives

- i. To establish the status of compliance to requirements of safety and health of a workplace before prosecution of an offender under the provisions of the OSHA, 2007.
- ii. To determine the status of compliance to requirements of safety and health of a workplace after prosecution.

1.5 Hypotheses

1.5.1 Null Hypotheses

- i. Safety and health aspects of a workplace conformed to the provisions of OSHA, 2007 before commencement of prosecution.
- ii. Prosecution under the provisions of the OSHA, 2007 does not have an impact on the status of compliance to requirements of safety and health of a workplace.

1.6 Research Questions

In this study, solutions to the following questions have come to light;

- i. What was the status of compliance to requirements of safety and health aspects in workplaces before commencement of court proceedings?
- ii. What impact did prosecution have on compliance to requirements of safety and health of the workplaces?

1.7 Significance of the Study

Accidents and ill-health at workplaces continue to be a cost to employers. Occupational accidents and work related ill-health in workplaces continue to be apparent. Accidents and ill-health in workplaces continue to not only cost families but also deny the families of their basic needs by disabling or eliminating many a family breadwinners. By conducting the study, recommendations would be made and these would go a long way to not only popularize the provisions of OSHA, 2007 among workers, employers and general public but also to ensure compliance with these provisions. This can be achieved

if there is a remarkable decrease in the number of accidents and incidences of ill-health as years go by. The decrease would reflect good safety and health status and this will imply compliance to the provisions of OSHA, 2007. Compliance to the provisions of the Act will mean that the safety and health legislation is popular. The findings bring out the indication as to whether prosecution under certain provisions of OSHA, 2007 improves the workplace status of compliance to requirements of safety and health and therefore popularize the provisions of the Act. If compliance to requirements on the aspect of registration, risk assessment, health and safety audits and fire audits could be used as safety and health status indicators in workplaces, it can not be deemed that prosecution has no impact on safety and health. Looking at the available data in Table 2.1, it is true that a relationship cannot be established between inspections and number of accidents in workplaces. The incapability to establish how prosecution impacted on safety and health and therefore on compliance to requirements of safety and health triggered the process of delving into the impact of prosecution under the specified provisions of the OSHA, 2007 on the status of compliance to requirements of safety and health of individual workplaces who were sued.

1.8 Conceptual Framework

Workplace safety and health inspection is a responsibility of DOSHS. This is most often conducted by Occupational Safety and Health Officers (OSHOs). During a health and safety inspection visit to a workplace, an OSHO is met with prevailing safety and health conditions that are construed to be initial status. The officer's inspection result will yield formation of an opinion as to the level of compliance with the provisions of OSHA,

2007 on aspects being sought by the officer. If, according to the officer, the workplace is deemed to be remarkably compliant with provisions of the Act, no further action in accordance with the law will be necessary. The inspection results must be documented and filed as an inspection report. If on the contrary, the officer is of the opinion that compliance with provisions of the Act is required, then it would be at the officer's discretion to take steps that would have the effect of influencing the occupier (offender) to improve the workplace status of compliance to aspects of safety and health as required by law. Among the steps that may be taken by the officer would include prosecution of the offender.

A visit to DOSHS office stations and perusal of files would unveil all information about the workplaces visited by station's officers and respective status of compliance at the time of inspection, information about prosecution that ensued and status of compliance after completion of the case. Any other information that may not have been documented and unavailable in the files could orally be obtained from the prosecuting officer or officer in charge of the station. The process of information gathering at a DOSHS office station to realize the impact of prosecution on compliance to requirements of four safety and health aspects is conceptualized in Figure 1.1 below.

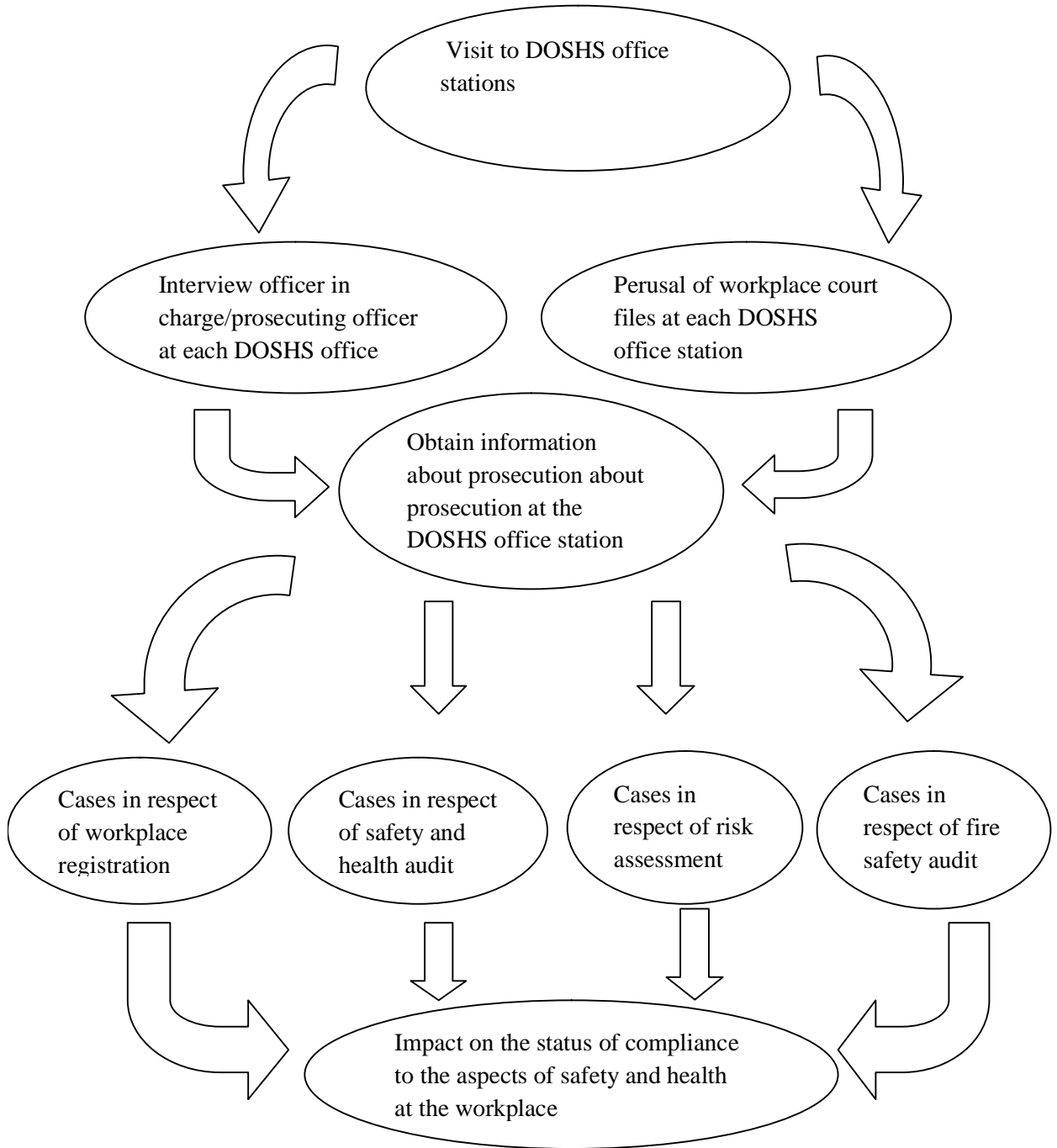


Figure 1.1 Conceptual Framework on Determination of Impact of Prosecution on Compliance to Requirements of Four Aspects of Safety and Health

Arrow direction indicates causal effect and connotes that one activity or action or finding leads to another.

1.9 Aspects of Safety and Health under Study

Aspects that relate to occupational safety and health are enormously many. Not every individual aspect was given consideration for study due to the vast scope. Aspects that were deemed to be all inclusive were given due consideration for scrutiny. These aspects included;

1.9.1 Workplace Registration

Section 44 of OSHA, 2007 provides that all workplaces be registered. For the award of a certificate of registration under OSHA, 2007 to be possible, a workplace should satisfy some basic safety and health requirements. Satisfaction of basic safety and health requirements warranted the aspect of registration to be included in the study.

1.9.2 Workplace Safety and Health Risk Assessment

Risk assessment is a systematic approach to identify hazards, evaluate risk and incorporate appropriate measures to manage and mitigate risk for any work process or activity. Risk assessment involves hazard identification and risk evaluation. Hazards can only be controlled if they are identified. The hazard identification details the hazard identified for every activity at a workplace, potential adverse effects (consequence) and current existing controls. Risk evaluation indicates the severity or degree of possible harm, probability or likelihood of occurrence of the hazard identified, frequency of exposure, number of people at risk and risk rating number. The higher the risk rating

number, the more imminent the hazard and therefore the higher in priority ranking for remedy is the hazard. Not only the priority ranking is given to the imminent hazards but also control measures are often recommended to bring the risk to as low as reasonably possible. A time limit is given for remedy of the control measures to be put in place. This aspect was given consideration in the study as the risk assessment exercise identifies hazards that exist in a workplace, the number of persons affected by such hazards and the necessary mitigation measures for the hazards. Highlight of the hazards in a workplace would help improve health and safety status by implementing the mitigation measures that are recommended in a risk assessment report within a given span of time.

1.9.3 Workplace Safety and Health Audits

Safety and health audits in workplaces help point out what is available and what is missing in terms of safety and health of a workplace. Recommendations arising from a safety and health audit exercise would help a workplace determine the safety and health status as well as help improve on the missing gaps. This aspect was included in the study as it engulfs a wide spectrum of safety and health.

1.9.4 Workplace Fire Safety Audit

In the recent times, fire disasters have been known to frequent not only workplaces and human habitat but also natural habitat in Kenyan society. Many fire incidences have been reported in human settlements and forest ecosystem. Fires do not just occur, they are caused. Fire safety audit is an exercise which brings out potential fire hazards in a

workplace and recommended mitigation measures that can be put in place to counter the problems. Being privy to these potential hazards in a workplace can help in coming up with solutions well in advance rather than wait for a disaster to strike. By giving fire safety audit a priority in this study, an establishment of how prosecution impacts on the parties that do not heed the requirement of conducting a safety fire audit was established.

1.10 Challenges and Limitations

1.10.1 Limited Scope of Site and Aspects under Study

- i. The study was only limited to four aspects that have been mentioned i.e. workplace registration, risk assessment, safety and health audit and fire audit. A wider scope of aspects of safety and health could have a positive bearing on the results.
- ii. The DOSHS offices were not available in all the district headquarters in Kenya yet within all the districts' jurisdictions in Kenya workplaces exist and matters of health and safety are paramount just like any other part of the country with DOSHS offices. The study could be richer if DOSHS offices were located in all the district headquarters from which information could be gathered.

1.10.2 How the Challenges Were Overcome

- i. The four aspects under study namely registration, risk assessment, safety and health audit and fire audit formed the basis of health and safety in most workplaces. The aspects tended to cover virtually the entire spectrum of occupational safety and health.

- ii. I took cognizance of those districts in the country that had no office of the DOSHS to be economically active to a much lower degree and therefore insignificant in the data that was useful for this study.

1.10.3 Shortage of Literature

- i. The study was limited to cases that were instituted by DOSHS only. Cases that may have been instituted by private persons, parties or the Attorney General and did not come to the knowledge of DOSHS were left out of the study.
- ii. The study missed out information in respect of court cases that may not have been concluded at the time of the study as the health and safety status of the workplace before and after the proceedings was of importance to this study. It is important to note that some cases take long to be concluded.
- iii. Not all information was available about the already concluded cases because there could be instances where the officers involved in such cases could have been transferred, terminated employment or unavailable.

1.10.4 How the Challenges Were Overcome

- i. Being mandated to enforce the Act and prosecute cases under the provisions of OSHA, 2007, DOSHS is expected to prosecute most of the cases relating to occupational safety and health more especially on the four aspects that were under study. The proportion of cases that may have been prosecuted directly by

private persons, agents and Attorney General were deemed minimal and therefore, had little significance and left out of the study.

- ii. Incomplete cases had little or no useful information to this study.
- iii. The questionnaire that was designed for data collection was detailed as much as possible so that even in the absence of the officer in question, adequate information will be extracted from the documents in the case file.

1.10.5 Time Management

It was challenging to balance working with making visits to DOSHS offices for data collection. Amid annual leave that was sought from my place of employment, time became available by virtue of hard work and trying to complete assigned tasks so that possibility of off-duty awards was apparent.

CHAPTER TWO

2.0 LITERATURE REVIEW

2.1 Introduction

There is shortage of literature with respect to impact of prosecution on status of compliance to the requirements of safety and health in workplaces in Kenya by virtue of minimal research that has been done in the area of safety and health. The literature available for the purpose of this research could be secondary and not deep. Types of literature that were available for compilation of this report were as per their sources as outlined hereunder.

2.2 Statutes

Provisions of various statutes provided a recipe for prosecution of persons contravening the requirements of safety and health in workplaces. Provisions found in the Kenyan statutes were important in the cases that were important in the cases that were prosecuted in Kenya while foreign statutes were important in bringing cases that were prosecuted outside Kenya with relevance to this study, to the limelight.

2.2.1 Foreign Statutes

- i. American Building (Safety, Health and Welfare) Regulation, 1948 is a subsidiary legislation in America that provides for safety, health and welfare of persons employed in building operations and construction works. Its provisions were applied in a case highlighted herein.

- ii. Health and Safety at Work etc. Act 1974 is a statute for provision of safety, health and welfare of workers in Great Britain. Prosecutions highlighted in this report on aspects of safety and health has applied the statute's provisions in the legal arena.

2.2.2 Kenyan Statutes

- i. The Civil Procedure Act Cap. 21 provides for civil matters in the Kenyan Courts. Order No. LIII is High Court of Kenya precedence under the provisions of Cap. 21. Precedence from the High Court of Kenya applies as if it was a subsidiary legislation. A case that was relating to the provisions of safety and health was highlighted in this report.
- ii. The Constitution of Kenya, 2010 provides guidance as to who powers of prosecution is vested. Provisions of the Constitution were important in this report as powers to conduct prosecutions under the provisions of safety and health legislation cascaded from those who have been conferred with powers to all types of prosecution.
- iii. The Constitution of Kenya Cap.1 (now repealed) reigned supreme over all statutes in Kenya before promulgation of The Constitution of Kenya, 2010, now in use. This report is based on a research done between October 2007 and December 2010. The research started when Cap. 1 was still in use and ended after promulgation of the new Constitution.
- iv. The Criminal Procedure Code Cap.75 provides for the procedure followed during prosecution of criminal cases in Kenyan courts. Provisions of Cap. 75 were followed in the prosecution of the cases highlighted in this report.

- v. The Evidence Act Cap 80 provides for declaration of evidence in Kenyan courts. All cases prosecuted must declare evidence for viability.
- vi. The Factories and Other Places of Work Act Cap. 514 (now repealed) provided for safety and health of persons in workplaces before enactment of OSHA, 2007. Under section 129 of OSHA, 2007, subsidiary legislations were saved from Cap. 514 to OSHA, 2007.
- vii. The Factories and Other Places of Work (Building Operations and Works of Engineering Construction) Rules, Legal Notice No. 40 is subsidiary to OSHA, 2007 and details provisions of safety and health of persons employed in building operations and works of engineering. Any offences in building operations and works of engineering are prosecuted using the provisions of this statute.
- viii. The Factories and Other Places of Work (Fire Risk Reduction) Rules, Legal Notice No. 59 is subsidiary to OSHA, 2007 and provides for fire safety in workplaces in Kenya. Some cases highlighted in this report applied its provisions for success of prosecution. The aspect of workplace fire safety audit is a requirement in the rules.
- ix. The OSHA, 2007 provides for safety and health of persons in workplaces in Kenya and the data collected was highlighting cases prosecuted under its provisions.

2.3 Information from DOSHS Documents

Previous information relating to prosecution and compliance to requirements of safety and health at the time of compilation of this report was unavailable. However, raw data on safety and health inspections, reported accidents and number of prosecutions was

available at DOSHS from annual reports over a span of 11 years and up to 2007 (see Table 2.1).

It is possible that many more occupational accidents could have occurred in workplaces but could have been un-captured by the Directorate and therefore not highlighted in the table. Section 43 of Factories and Other Places of Work Act Cap.514 (now repealed) provided for accidents that disabled a worker for at least 3 days to be reported to the DOSHS meaning that those that did not disable a worker for at least 3 days went unreported and therefore not captured. Also, other occupational accidents could escape capture by the DOSHS if the employer did not make an effort of doing so and the Directorate did not get to know about the accident. From the table, one can not establish the relationship between the number of accidents reported and the number of prosecutions. No explanation is available as to why the number of accident are in the manner they are and whether prosecution brought forth any impact on the number of reported accidents. It therefore cannot be established from the table what impact prosecution had on the status of compliance to requirements of safety and health in the workplaces. To establish what impact prosecution under the provisions safety and health legislation had on the status of compliance to requirements of safety and health of persons in workplaces was therefore necessary. There are no available records of previous study to establish this relationship.

Table 2.1 Summary of Safety and Health Inspections, Accidents and Prosecutions by DOSHS between 1996 and 2007

| Year | Inspection Visits | Accidents Notified | Prosecutions |
|-----------|-------------------|--------------------|--------------|
| 1996 | 1859 | 2192 | 19 |
| 1997 | 2249 | 3339 | 29 |
| 1998 | 3033 | 2749 | 28 |
| 1999 | 3151 | 2105 | 24 |
| 2000 | 3839 | 1528 | 34 |
| 2001 | 4572 | 1923 | 37 |
| 2002 | 3452 | 1332 | 57 |
| 2003 | 3254 | 1599 | 85 |
| 2004 | 2364 | 1387 | 27 |
| 2005/2006 | 2637 | 1829 | 11 |
| 2006/2007 | 1096 | 347 | 23 |

Source: Director of Occupational Health & Safety Services. (1996–2007). *Annual Reports*, DOSHS, Nairobi

2.4 Books

Books on prosecution in the area of occupational safety and health were unavailable in Kenya at the time of compilation of this report. Literature was therefore gathered from books that had information on prosecution under general criminal law as the cases that are highlighted in this report are classified criminal. In their books, Bwonwong’a (1994), *Procedures in Criminal Law in Kenya* and Lumumba (1998), *Criminal Procedure in Kenya*, process of prosecution has been outlined. Prosecution under the provisions of OSHA, 2007 are classified criminal making the literature in the mentioned books important to this study.

2.4.1 Criminal Law

Contraventions under the provisions of OSHA, 2007 are classified criminal. Otherwise referred to as penal law, criminal law is enforced by government. DOSHS being a government agent, it is charged with the responsibility of enforcing OSHA, 2007. Depending on the offence and jurisdiction; penalty under the provisions of OSHA, 2007 may include loss of liberty, being placed under government supervision (parole), fine or combination of fine and jail term. Section 116 of OSHA, 2007 provides for prosecution of all offences committed under the Act and section 109 provides for general penalty for contravening sections of the Act that have no express penalty.

2.4.2 Decision and Authority to Prosecute

A number of factors are considered before prosecution is instituted. These factors include the following;

2.4.2.1 Existence of *Prima Facie* Evidence

Prima Facie evidence is overwhelming evidence that is beyond reasonable doubt. This kind of evidence required for success of any criminal prosecution. A case with *Prima Facie* evidence provides for suitable ground of successful prosecution under provisions of OSHA, 2007.

2.4.2.2 Attitude of Complainant

Considering cases prosecuted under the provisions of OSHA, 2007, the complainant is often the Republic of Kenya and consideration of complainant attitude would not arise.

2.4.2.3 Health of the Accused

The factor concerning health of an accused may be rare in prosecutions under the provisions of OSHA, 2007 as the accused may often turnout to be an employer or representative of the employer. However, an accused person of poor health especially of terminal illness may be exempted from prosecution. Also in instances of mental illness, the accused qualifies for prosecution if certified fit to stand trial as provided for in section 163 of the Criminal Procedure Code Cap.75, Laws of Kenya.

2.4.2.4 Humanitarian Factor

In any proceedings including those under the provisions of OSHA, 2007, prosecution has to be fair and not oppressive.

2.4.2.5 Public Interest

This is prosecution which arises from cases of public or national concern. Issues at workplaces relating to health and safety occasioned by the work activities can be of public concern to warrant prosecution.

2.4.2.6 Gravity of the Offence

The circumstances surrounding commission of an offence determines the gravity of an offence. According to Bwonwong'a M. J. (1994) in his book 'Procedures in Criminal Law in Kenya', a prosecutor may decline to prosecute if it appears that the prosecution arises out of family vendetta and intended to settle old scores. This kind of situation may however be rare in a matter of safety and health in workplaces.

2.4.2.7 Impact on International Relations

It is good practice to consider what impact prosecution would have on relations between affected sovereign states if the commission of the offence involves sovereign states. Before mounting prosecution in a situation where there is likelihood of international relations being affected, wide consideration and consultation have to be involved.

2.4.2.8 Jurisdiction of the Court

Before the proceedings are instituted, it must be shown that the trial court has powers to hear the case. Section 72 of the Criminal Procedure Code Cap.75 provides for the trials of offences to be done in the court located nearest to the place where the offence occurred unless special circumstances dictate otherwise. Cases instituted under the provisions of OSHA, 2007 are rarely affected by this kind of situation.

2.4.3 Methods of Controlling Prosecutions

Prosecutions just like any other activity must be controlled. In his book ‘Criminal Proceedings in Kenya’, Lumumba P.L. (1998) has cited the following two methods of controlling prosecutions;

2.4.3.1 Entry of *Nolle Prosequi*

This is a statement entered by the Attorney General on the behalf of the republic to discontinue a prosecution. This application can be done at any stage of the case by the Attorney General.

2.4.3.2 Withdrawal

This may be done before a subordinate court with the consent of the court. The withdrawal takes two forms;

- before the accused has been called upon to make his defense or
- after the accused has made his defense.

2.5 Website

Remarkable literature regarding prosecutions in the area of safety and health and respective impact on compliance to requirements of safety and health was obtained from the website. The cases may not specifically be on aspects under study but were in the area of safety and health. The cases were prosecuted in previous years before this study and outside Kenya.

2.5.1 Lawsuits on Occupational Safety and Health

In the past, some legal proceedings relating to safety and health have been instituted and have been found to have an impact on compliance to requirements of safety and health of the workplace in question. Some of the highlighted cases may have been outside Kenya but were based on that country's prevailing safety and health legislation.

2.5.2 Health and Safety Executive (HSE), United Kingdom v. Kentucky Fried Chicken (Great Britain) Limited (2006) 4 All E.R 92

2.5.2.1 Facts

In a case highlighted by Williams C. and Cynthia K. (2004), HSE v. Kentucky Fried Chicken (Great Britain) Limited, at, <http://www.hse.gov.uk/prosecutions/cases>, (last accessed on 24th June 2009), two employees at Kentucky Fried Chicken (Great Britain) Limited, Northerdam, Manchester restaurant suffered burns in an accident in May 2004. While cleaning the shop, one employee slipped on a part-tiled floor contaminated with cooking oil and water. As he slipped, he instinctively reached out and pulled over a deep fryer which had 35 liters of hot oil. The employee suffered burns after the hot oil caused extensive burns to his legs, buttocks and chest requiring skin grafts. A second worker received splash burns to her legs which also required skin grafts. A third worker suffered minor burns while attempting to rescue.

The court held that, under the provisions of the Workplace (Health, Safety and Welfare) Regulations, Kentucky Fried Chicken (Great Britain) Limited had failed to keep the kitchen floor free from contamination of oil and water. The court further held that the floor of the workplace in question was poorly maintained, poorly cleaned and had floor tiles that were not slip resistant. The Kentucky Fried Chicken (Great Britain) Limited also provided the victim with poor footwear. All these factors had combined effect of increasing likelihood of a slipping accident. Kentucky Fried Chicken (Great Britain) Limited was therefore found guilty and was penalized with a fine.

2.5.2.2 Health and Safety Status Thereafter

Kentucky Fried Chicken (Great Britain) Limited thereafter took measures to prevent slip and trip accidents at their stores nationwide. The measures included improvement in the flooring, improved cleaning regimes and introduction of slip-resistant footwear. This is further highlighted by Williams C. and Cynthia K. (2004), HSE v. Kentucky Fried Chicken (Great Britain) Limited, at, <http://www.hse.gov.uk/prosecutions/cases>, (last accessed on 24th June 2009).

2.5.3 Health and Safety Executive (HSE), United Kingdom v. Cauldron Food Limited (2006) 3 All E.R. 67

2.5.3.1 Facts

It is also highlighted by Williams C. and Cynthia K. (2004) HSE v. Cauldron Food Limited, available at, <http://www.hse.gov.uk/prosecutions/cases>, (last accessed 25th June 2009) that on the 17th of January 2006, an employee at the company's Portishead site in Bristol slipped at the doorway of a freezer and suffered a twisted ankle. He reported the accident to the company. Two days later he slipped again at the doorway of another freezer and fractured his ankle. The door seals of both freezers had not been maintained. Also, due to damaged floors near the doors, water vapour would freeze on both the inside and outside of the freezers doors. The company was aware of risks associated with ice build up at freezer doors and employees slipping on the ice for over a year.

2.5.3.2 Health and Safety Status Thereafter

In reference to the same case, HSE v. Cauldron Food Limited highlighted by Williams C. and Cynthia K. (2004) the freezers were replaced with new models after the accidents. Another company bought Cauldron Limited and made strides to significantly improve the site's health and safety performance.

2.5.4 Corn v. Weirs Glass (Hanley) Limited (1960) 2 All E.R 300

In yet another lawsuit highlighted by Smith G. (2009), Corn v. Weirs Glass (Hanley) Limited, available at, <http://en.wikipedia.org/wiki> (last accessed on 16th June 2009), an employer in North America was in breach of statutory duty that was treated not be the cause of an injury. At a construction site, provision of guardrails for working platforms, gangways, runs and stairs became the subject in question.

2.5.4.1 Facts

Smith G. (2009) in Corn v. Weirs Glass (Hanley) Limited, highlighted that, stairs in a building that was being erected had no hand-rails. Corn, who was employed by the defendants, Weirs Glass (Hanley) Ltd, as a glazier and was descending the stairs carrying a sheet of glass measuring about 5 feet by 2 feet 6 inches. It required the use of both arms to carry the glass down the staircase. He was holding the sheet in the crook of his right arm and was steadying it with his left arm. He over-balanced and fell over the side of the staircase and was injured. There was no hand rail on the stairway.

2.5.4.2 Court Decision

As highlighted by Smith G. (2009) in *Corn v. Weirs Glass (Hanley) Limited*, a distinction was to be drawn between a handrail as prescribed by the American Building (Safety, Health and Welfare) Regulations 1948 regulation number 27(1), and guardrails required to be provided by regulation number 27(2). The court held that a handrail connotes a rail that can be gripped by the hand. Such a rail need not necessarily act as a physical barrier. The court further held that, though there was a breach of regulation 27(1), the defenders were not liable, because Corn had failed to prove that his injury was caused by the defendants' breach of statutory duty. It was shown that, as both his hands were involved in holding the glass; a handrail would not have been of use to him anyway. The absence of a handrail was not the cause of injury.

2.5.4.3 Kenyan Legal Perspective

According to OSHA, 2007 and the Factories (Building Operations and Works of Engineering Construction) Rules, 1984, a handrail is deemed to be a guardrail which is a structure of adequate strength erected at a side of a full length of a gangway, run or stairs to prevent fall of a person in which there is likelihood of fall of a distance of more than three metres. Section 77(5) of OSHA, 2007 provides that, every staircase in a building or affording a means of exit from the building, a substantial handrail shall be provided and maintained, which, if the staircase has an open side, and, in the case of a staircase having two open sides, such handrail shall be provided and maintained on both sides; and any open side of a staircase shall also be guarded by the provision and maintenance of a lower rail or other effective means.

According to the decision made in the case, *Corn v. Weirs Glass (Hanley) Limited*, a handrail connotes a rail that can be held by hand. One grips a structure for the purpose of stability and support. For the structure to be worth gripping, it must be strong and firm to sustain the support and stability it is meant to provide. A handrail should have these characteristics of strength and firmness to support a weight. So without gripping the handrail, one can actually be supported in a similar manner he would be supported by guardrail. In reference to the case, Corn could not have fallen and sustained injuries if a handrail with correct characteristics was provided.

2.5.5 *Armour v. Skeen (1977)*

In a lawsuit in the Great Britain, a workman fell to his death while repairing a road bridge over the river Clyde. Mr. Armour was the director of Roads for the Regional Council and as such the responsibility for supervising the safety of road workers was his. He had not produced a written safety policy for such work.

He was prosecuted under Section 37(1) of the Health and Safety at Work, etc. Act 1974 which imposes personal liability on senior executives.

Mr. Armour's defense was that he was under no personal duty to carry out the Council's statutory duties, one of which was the formulation of a detailed safety policy for the roads department.

2.5.5.1 Court's Decision

Mr. Armour's defense was rejected. Section 37(1) of the Health and Safety at Work, etc Act 1974 imposed upon Mr. Armour the personal duty to carry out the Council's

statutory duty to prepare a written policy. This he had failed to do and was therefore guilty of an offence.

2.5.5.2 Kenyan Legal Perspective

The court's decision tallies with a decision that can arise from the provisions of section 7 of the OSHA, 2007 which provides that an occupier has a duty to prepare a safety and health policy of a workplace and have its content disseminated to workers at the workplace.

2.5.6 Health and Safety Executive (HSE), United Kingdom v. Associated Octel Co. Ltd (1996)

Associated Octel Co. Ltd engaged some contractors to carry out repairs of a tank during a shut-down period. A permit to work was issued by Associated Octel Co. Ltd but it proved to be inadequate and was not monitored. A contractor took a flammable liquid into the tank to clean the inner surface. However a flash fire developed and the contractor was seriously burned. The HSE successfully prosecuted Octel Co. Ltd.

2.5.6.1 Court's Decision

Associated Octel Co. Ltd were convicted and penalized by fine. The defendant appealed first to the Court of Appeal who upheld the conviction and then the House of Lords. The Lords held that if an employer engages a contractor who works on his or her premises then the employer, subject to reasonable practicability, must ensure the contractors health and safety. The House of Lords appeal was concerned with the definition of the

term “undertaking”, which effectively includes any work carried out on the employer’s premises.

2.5.6.2 Kenyan Legal Perspective

It is true that even if a contractor may engage persons who are non employees of the occupier, a person representing the occupier should oversee the operations of the contractor. A permit to work was to be signed between the contractor’s worker and the employer with the occupier as overseer. In the Kenyan context, section 96 of the Occupational Safety and Health Act, 2007 provides for issuance of a permit to work in respect of certain work activities with high risk. The occupier in this case failed in his duties in all respects and was liable for the offence such that all the appeals he made were futile.

2.5.7 Health and Safety Executive (HSE), United Kingdom v. Swan Hunter Shipbuilder and another (1982)

A fire broke out on board a ship which was under construction by Swan Hunter Ltd. The fire was intense because the atmosphere inside the vessel had become oxygen enriched and eight men were killed. The oxygen had escaped from a hose left by an employee of a firm of subcontractors. Swan Hunter Ltd. had distributed a book of rules to their own employees for the safe use of oxygen equipment, but this was not distributed to subcontractors’ employees, except on request.

Swan Hunter Ltd. were prosecuted under the Health & Safety at Work Etc. Act 1974 for “failure to provide a safe system of work” (contrary to Section 2(2)(a)), “failure to

provide information and instruction to ensure the safety of their employees” (contrary to Section 2(2)(c)) and “failure to ensure that persons not in their employment were not exposed to risk” (contrary to Section 3(1)).

2.5.7.1 Trial Court’s Decision

The trial judge ruled that all the above mentioned sections of the Act imposed a duty to inform or instruct employees other than Swan Hunter’s own, with regard to all relevant safety matters. Therefore Swan Hunter Shipbuilder and another were convicted and penalized. Swan Hunter Ltd. appealed.

2.5.7.2 Court of Appeal’s Decision

The Court of Appeal dismissed the appeal and upheld the trial judge’s ruling. If, to ensure a safe system of work for an employer’s own employees, it was necessary to provide to persons other than his employees with information and instruction as to potential dangers, then he was under a duty to provide such information and instruction, so far as was reasonably practicable.

2.5.7.3 Kenyan Legal Perspective

Section 117 of OSHA, 2007 provides that if a person is lawfully found in a workplace while work is ongoing, the person is deemed to be a worker at that workplace. This provides the duty to the occupier to provide for the person’s safety and health. The eight victims who died while carrying out duties at the workplace in the case highlighted were lawfully at the workplace and therefore were to be protected against any hazard by their

employer (subcontractor) and the occupier as the overseer of operations of the subcontractor.

2.5.8 Wilsons and Clyde Coal Co. Ltd v. English (1938)

Wilsons and Clyde Coal Co. Ltd was a coal mining company. An employee of Wilsons and Clyde Coal Co. Ltd was working underground near the pit bottom at the end of his shift when the haulage equipment was switched on and the worker was crushed between the equipment and the wall of the mine.

2.5.8.1 Court's Decision

The defendant claimed that the claimant could have got out of the pit by a different route or could have called to the operator of the haulage equipment telling him of his presence.

The common law duties of an employer to his employees were identified in general terms in this case. These duties comprise employers' liability. In this case the employers were liable for injuries caused to a miner as a result of an unsafe system of work. The defendants appealed to the House of Lords.

2.5.8.2 Lord's Decision

The House of Lords held that the employer owed a duty of care to his employee which was threefold:

- A safe place of work (including safe access and egress);
- Safe equipment;

- A safe system of work and provision of competent employees.

Those duties were owed personally by the employer to each employee and were non-delegable, that is to say the performance of those duties could be delegated but the responsibility for their correct discharge could not.

2.5.8.3 Kenyan Legal Perspective

In the Kenyan context, sections 6 and 77 of OSHA, 2007 provide for safe system of work and safe access and egress respectively with the occupier (employer) bearing the duty to ensure. The Lord's decision was justified in this case.

2.5.9 Application by London Distillers (K) Limited for Orders of Judicial Review Order No. LIII Rule 1 of the Civil Procedure Rules to Prohibit Prosecution

2.5.9.1 Background

On the 22nd February 2005, occupational safety and health officers from the Directorate of Occupational Safety and Health Services – Ministry of Labour, Kenya made a visit to premises of London Distillers (K) Limited with intention to carry out a safety and health inspection but were denied entry into the workplace. The officers later preferred obstruction charges against the company and its directors in a subordinate court. As highlighted in the proceedings of case No. 418 before Justice Ang'awa M. (2005), in the High Court of Kenya, Nairobi, the accused (London Distillers (K) Limited and Directors) did not take plea on the initial obstruction charges raised by the officers in the subordinate court but moved to high court to quash the case in the subordinate court. The applicants (London Distillers (K) Limited and Directors) were seeking from the

high court, orders of Judicial Review Order No. LIII Rule 1 of the Civil Procedure Rules to prohibit prosecution under the provisions of the Factories and Other Places of Work Act, Cap.514 that had been instituted by the occupational safety and health officers.

2.5.9.2 Grounds of Motion to High Court

According to the proceedings by Ang'awa, M. (2005), in the case No. 418 of 2005, the applicants, London Distillers (K) Limited and Directors, moved to high court on the grounds that the charges leveled against them in the subordinate court under the provisions of the Factories and Other Places of Work Act, Cap.514 were tramped-up, irrational and unfair with gross miscarriage of justice in that the officers were complainants, prosecutors and investigators at the same time.

2.5.9.3 Stay Orders

Orders for stay of proceedings in the subordinate court were issued until determination of the application before Justice Ang'awa, M. (2005), in the case No. 418 of 2005 in the high court.

2.5.9.4 Judgment

The high court held that the proceedings in the subordinate court had not begun. The applicants, London Distillers (K) Limited and Directors, were to attend the proceedings in the subordinate court, raise the same issues before the very subordinate court and seek the striking out of the charge sheet on grounds that the charges were defective and without merit. By moving to the High Court of Kenya on a Judicial Review, the applicants did so prematurely. There were no proceedings from the trial magistrate upon

which the judge could rely on to show whether the said magistrate would accept or reject the charges. There was no decision that had been done by the magistrate. The applicants did not demonstrate that the said magistrate had acted outside powers and that the subordinate court had acted irrationally, unreasonably, failed in its mandate or acted unfairly. The high court further held that the Occupational Safety and Health Officers were not decision makers in determining whether the applicants were guilty of an offence or not. In the miscellaneous application No. 418 of 2005, Justice Ang'awa, M. (2005), held that the application by London Distillers (K) Limited and Directors pursuant to the provisions of Order LIII Rule 1 of the Civil Procedure Rules was therefore null and void. This is highlighted in the court proceedings by Ang'awa, M. (2005), Judgment in Miscellaneous Application No. 418 of 2005, High Court of Kenya, Nairobi.

CHAPTER THREE

3.0 MATERIALS AND METHODS

3.1 Study Area

The study entailed making visits to each provincial and district office of the DOSHS and collecting information that was relating to prosecution under the provisions of the OSHA, 2007 and respective safety and health inspection visits. Only four aspects of safety and health were selected for this study. These were:-

- i. Workplace registration
- ii. Workplace risk assessment
- iii. Workplace health and safety audit
- iv. Workplace fire safety audit

The four aspects were deemed to represent a wide scope of safety and health, and therefore, data was collected with respect to the status of compliance to the requirements of the aspects before prosecution, and after prosecution. A comparison of the status before and after prosecution revealed the impact that arose from the prosecution process. Only cases that touched on the mentioned aspects formed part of the study. Cases that fell outside the scope of the aspects were not covered in the study. Visits were made to all the district and provincial stations where the DOSHS has offices in the country to collect the information required for the study. The stations that were visited are situated in various towns throughout the country including Kisii, Kericho, Kisumu, Kakamega, Bungoma, Eldoret, Nakuru, Naivasha, Thika, Nyeri, Embu, Mombasa, Malindi and Nairobi (see Figure 3.1).

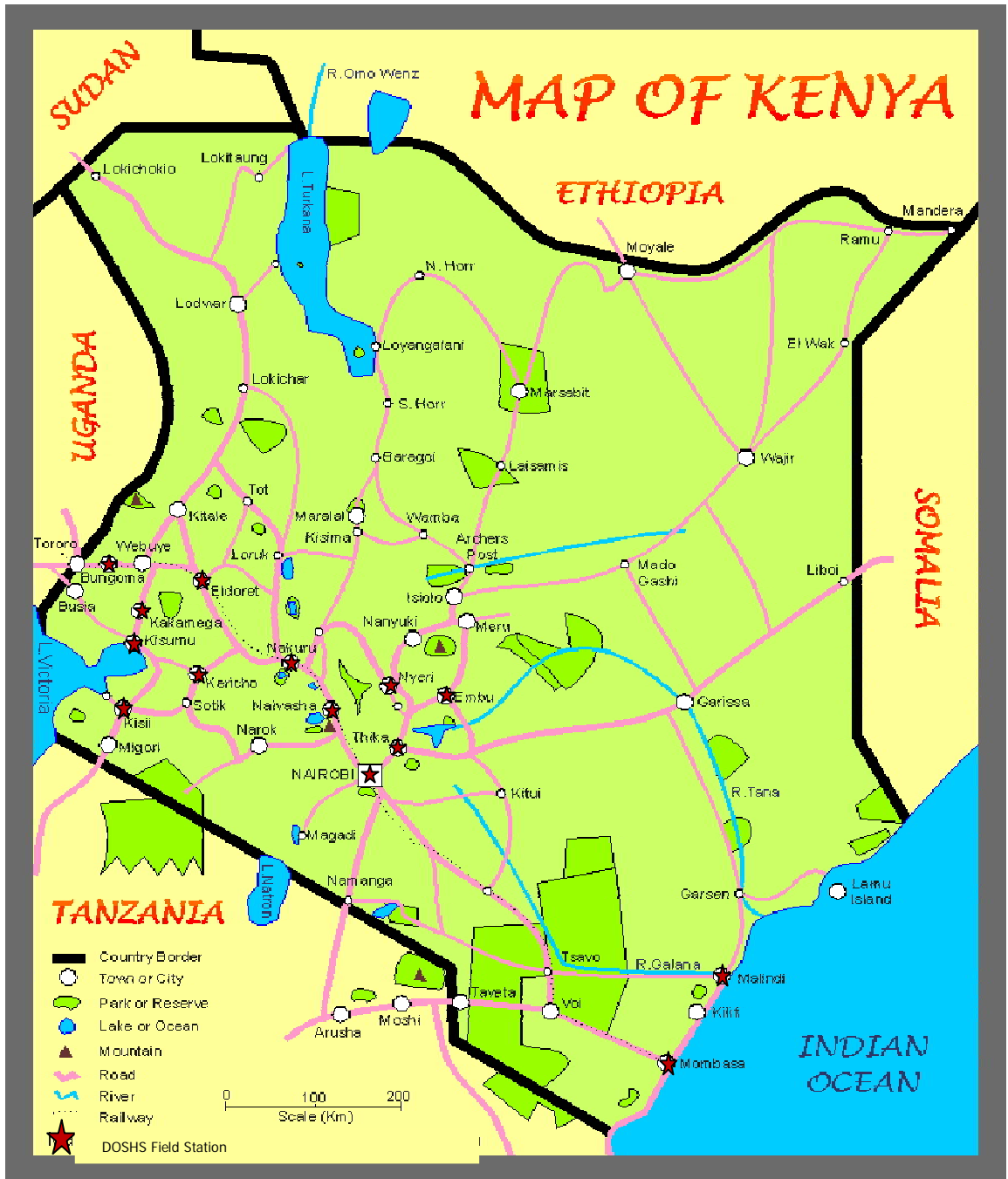


Figure 3.1 Map Showing DOSHS Field Stations Visited

Source: Director of Occupational Health & Safety Services. (2006/2007), *Annual Report*, DOSHS, Nairobi

3.2 Data Collection Methods

In every office station of the Directorate of Occupational Safety and Health Services, records of all workplaces within the jurisdiction of the station regarding health and safety are maintained. Records of prosecution, workplace inspection visits, accident investigation and other health and safety surveys are maintained within the station. Every station of DOSHS was visited and:-

- i. Inquiry was done from the area officer in-charge as to the number of cases that have been lodged in the area law courts relating to the OSHA, 2007.
- ii. Records (files) for all workplaces that were involved in court proceedings were gathered.
- iii. The circumstances leading to prosecution were noted and documented.
- iv. Most of the information was gathered using an interview schedule which was administered on the date of visit.
- v. The name of the offender and case number was noted and documented.
- vi. Information about the status of compliance to requirements of the aspects in question before prosecution was noted and documented.
- vii. Information about the status of compliance to the aspects in question after prosecution was noted and documented.
- viii. The interview schedule was designed in such a way that, comparison of the status of compliance to requirements of safety and health of a

workplace before and after legal proceedings emerges upon completion of administration.

- ix. Compilation of the overall impact was worked out on basis of the number of documented findings.

3.2.1 Primary Data

Since the information for the study was available in the office reports, data so obtained by perusal of the reports and through an interview with the officer who conducted the prosecution in the DOSHS office station visited, could not be primary.

3.2.2 Secondary Data

If the officer who had conducted the prosecution was not available, an officer with knowledge about the case(s) was requested to provide information and this formed the source of secondary information. Information provided by the officer was either oral or documentary. All the oral information was then documented. It was also important to know the experience and level of training in prosecution of the officer(s) who conducted the prosecution.

3.2.2.1 Administration of an Interview Schedules

Informed consent (see Appendix 1) was first sought from the officer being interviewed before embarking on gathering of information. An interview schedule (see Appendix 2) was then administered on the officer in charge of the station or other officers of the station who had knowledge of the cases to gather the required information. Officers who attended the proceedings as witnesses were also useful in providing information about

the cases prosecuted. Officer(s) who made visits to the workplace before and after the proceedings were interviewed to provide other information relating to the workplace. This information was entered in the remarks section of the interview schedule (see Appendix 2). The interview schedule was designed to gather sufficient information from perused documents even without input from prosecuting officer and witness officers.

3.2.2.2 Desk Review

Information obtained from perusal of documents pertaining to the prosecution under the provisions of the OSHA, 2007 in the local court relating to the four aspects under study formed another source of secondary data. Records of the case(s) were directly obtained from respective prosecution files where details of the proceedings were documented.

- The status of compliance to requirements of health and safety of a workplace before the proceedings commenced was noted and documented.
- Each of the record (file) of a workplace involved in court proceedings was perused. The information so gathered could then be used to complete the interview schedule.

3.3 Research Design

No earlier studies on the impact of prosecution on compliance to requirements of safety and health were available and therefore exploratory research design was adopted in this study. Apart from establishing the impact prosecution under the provisions of OSHA, 2007 would have on the status of compliance to safety and health requirements in workplaces, an accompanying explanation was sought as to such impact. The

explanation brings to light why there was compliance or noncompliance after prosecution.

3.4 Target Population

All files with reports of workplaces that had been engaged in the court process from all the fourteen DOSHS office stations had to be perused so that those that bore the selected safety and health aspects could be isolated for study. A total of 132 case files bearing charges under various provisions of OSHA, 2007 were opened.

3.4.1 Sampling Technique

Convenience sampling technique was adopted in this study. From the larger population of all the 132 court cases prosecuted under the provisions of the OSHA, 2007, a smaller group of files bearing the selected aspects namely; workplace registration, workplace risk assessment, workplace safety and health audit and workplace fire safety audit was selected for study.

3.4.2 Sample Frame

The study laid emphasis on the aspects of health and safety that were selected. Despite the fact that all the files bearing information about prosecution under the provisions of OSHA, 2007 were perused, only those with cases that had counts touching on registration, risk assessment, health and safety audits and fire audits were considered to contain the data required for study. Those case files with aspects of health and safety different from the selected aspects were isolated and left out the study.

An interview schedule was completed using the available information in the files. The period of consideration was between October 2007, the date of inception of OSHA, 2007 and December 31st 2010. Any cases that were still ongoing at the time of completion of data collection were left out of the study. Information about the case(s) as provided by the prosecuting officer or officer in charge of station was obtained and documented.

3.4.3 Sample Size

The sample size consisted of all court case files that were available in all the fourteen countrywide DOSHS stations bearing the selected aspects namely; registration, risk assessment, safety and health audit and fire safety audit.

3.5 Data Handling Methods

The data collected in this study was numerical in terms of how many of the prosecuted cases yielded compliance and the number that yielded no compliance. Other criteria were used to further sub-categorize those that yielded compliance and those that did not. This could best be described and represented in form of frequency tables, bar graphs and bar charts. In this representation, actual figures and proportion in form of percentages are shown.

3.6 Data Analysis Techniques

The data that was collected was subjected to inferential test in which a one-tailed t-test was used to put the alternative hypothesis to test. The t-test was applied because the set of data was lean and did not exceed 30. The t-test is inapplicable to sets of data that exceed 30. Measures of dispersion in the data were determined for use in the tests.

3.7 Data Validation

Cross-checking with entries made on the data collection tool (interview schedule) ensured that what was being tabulated was a correct record of what had been gathered during the field visits. The questionnaire interview schedule had been designed in a manner to ensure that upon its completion, a comparison emerged to show if prosecution had yielded compliance or not. The t-test was then applied on the tabulated data to ensure there were no systematic errors and to confirm that the data was therefore useful.

CHAPTER FOUR

4.0 RESULTS AND DISCUSSIONS

4.1 Introduction

As soon as intention to prosecute a deemed offender is conceived, a file to contain information as to all processes to follow, is opened. All information regarding what happens thereafter is documented and maintained in the file which otherwise becomes a court case file. Information for this study was gathered from court case files that were bearing only the four selected aspects of safety and health namely; registration, risk assessment, safety and health audit and fire safety audit. The prosecuting officer or officer in charge of the station was also a contributor of the desired information as per the schedule administered. If information provided by the officer was of the nature that would indicate prosecution to have been improperly instituted, the respective file bearing information about a workplace in question was disqualified from being a source of information for the study and the information given by the officer was dropped altogether. The oral or documentary contribution by the officer played an important role in the inclusion of information in the file as part of secondary data for the cases that qualified for this study. A file that was disqualified was missed out in making entries in the schedule.

4.2 Findings

Between October 2007 and December 2010, a total of 132 cases were lodged in various courts under the provisions of OSHA, 2007. 43 of the cases among the total number of

cases lodged had none of the aspects that were of interest and therefore were omitted in this study. As seen from Table 4.1 below, a number of DOSHS office stations lodged less than 10 cases while few other stations did not lodge any case at all. OSHA, 2007 being a new law, shortage of staff gazetted to prosecute and inadequate resources in the various DOSHS office stations were among the many reasons for low court case lodgment.

Table 4.1 Number of Cases Lodged in Court per DOSHS Office Station between October 2007 and December 2010

| No. | DOSHS Office Station | Total No. of Cases Lodged | No. of Cases with Selected Aspects |
|---------------|-----------------------------|----------------------------------|---|
| 1. | Bungoma | 0 | 0 |
| 2. | Eldoret | 2 | 0 |
| 3. | Embu | 3 | 0 |
| 4. | Kakamega | 5 | 0 |
| 5. | Kericho | 10 | 7 |
| 6. | Kisii | 9 | 6 |
| 7. | Kisumu | 2 | 0 |
| 8. | Malindi | 3 | 0 |
| 9. | Mombasa | 11 | 0 |
| 10. | Nairobi | 77 | 73 |
| 11. | Naivasha | 0 | 0 |
| 12. | Nakuru | 9 | 3 |
| 13. | Nyeri | 1 | 0 |
| 14. | Thika | 0 | 0 |
| Totals | | 132 | 89 |

4.2.1 Workplace Status of Compliance before Prosecution

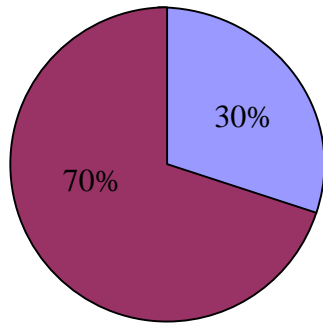
Table 4.2 below is a representation of the number of workplaces that breached provisions of OSHA, 2007 with respect to each of the four selected aspects. Files totaling to 89 were opened and prosecution ensued. The files were bearing cases with charges that were raised against each of the workplaces undergoing prosecution.

Table 4.2 Number of Workplaces in Breach of Selected Safety and Health Aspects

| No. of Workplaces in breach of requirements of Registration | No. of Workplaces in breach of requirements of Risk Assessment | No. of Workplaces in breach of requirements of Safety and Health Audit | No. of Workplaces in breach of requirements of Fire Safety Audit |
|--|---|---|---|
| 60 | 70 | 39 | 19 |

4.3 Outcome of Prosecution on the Aspect of Registration

A total of 60 court files were bearing charges against accused parties who were operating workplaces without having been issued with certificates of registration contrary to section 44 (5) of OSHA, 2007. Among the cases lodged, 70% representing a total of 42 cases yielded compliance by having the accused apply for and being awarded certificates of registration of their workplaces. The rest of the cases lodged did not yield compliance. Figure 4.1 below is a representation of this situation. Table 4.3(a) uses two criteria to sub-categorize cases that yielded compliance with respect to the station where the data was gathered. Table 4.3(b) uses six criteria to sub-categorize cases that did not yield compliance with respect to the station where the data was gathered. The criteria bring into light how noncompliance was yielded.



$$42/60 \times 100 = 70\%$$

■ 30% did not comply
 ■ 70% complied

Figure 4.1 Chart Showing the Percentage Number of Cases that Yielded Compliance on the Aspect of Registration of Workplaces

Table 4.3(a) Cases that Yielded Compliance on the Aspect of Registration

| Station | Compliance after conviction | Withdrawn after compliance | Sub totals |
|----------------------------------|-----------------------------|----------------------------|------------------|
| Nairobi Provincial DOSHS offices | 2 (20%) | 27 (84.4%) | 29 (69%) |
| Nakuru District DOSHS offices | 2 (20%) | - | 2 (4.8%) |
| Kericho District DOSHS offices | 6 (60%) | 1 (3.1%) | 7 (16.7%) |
| Kisii District DOSHS offices | - | 4 (12.5%) | 4 (9.5%) |
| TOTALS | 10 (100%) | 32 (100%) | 42 (100%) |

Table 4.3(b) Cases that did not Yield Compliance on the Aspect of Registration

| Station | Convicted but did not comply | Case dismissed | Case withdrawn due to | | | | Total |
|----------------------------------|------------------------------|----------------|-----------------------|---------------------------|------------------|---------------|------------------|
| | | | Lack of witnesses | DOSHS office instructions | Accused at large | Other reasons | |
| Nairobi Provincial DOSHS offices | 7 (38.9%) | 1 (5.6%) | 2 (11.1%) | 1 (5.6%) | 3 (16.6%) | 4 (22.2%) | 18 (100%) |

4.3.1 An Account of Dismissed Case

The case in Table 4.3(b) above, shown to have been dismissed is case No. PCR 2260/09, Republic v. Siesta Investments Limited and another in Nairobi Law Courts and was dismissed under Section 202 of the Criminal Procedure Code (CPC). The case was dismissed for delay on the part of prosecution to bring forth a key witness to testify. The witness is said to have travelled abroad. Prosecution was therefore deemed not be serious with its work leading to dismissal of the case.

4.3.2 An Account of Cases Withdrawn Due to

4.3.2.1 Lack of Witnesses

Two cases shown in Table 4.3(b) namely, PCR 789/08, Republic v. Navin Patel and PCR 2595/09 Republic v. Rajendra Patel were withdrawn under Section 87(a) of the CPC in Nairobi due to lack of witnesses as it emerged that persons who were engaged at the workplace in question and who were meant to be witnesses in the cases had already vacated the workplace as soon as the works were complete. The workplaces in question were construction sites and the works were complete before the employer could comply with the requirement of registration.

4.3.2.2 DOSHS Office Instructions

Table 4.3(b) shows case No. PCR 614/10, Republic v. Kundan Singh Construction Company Limited and others which was withdrawn under Section 87(a) of the Criminal Procedure Code in Nairobi after the Directorate of Occupational Safety and Health Services instructed so. No reason was tendered by the Directorate for the case

withdrawal considering that the accused had not complied with the issues that were raised as charges in the matter.

4.3.2.3 Accused at Large

Three cases shown in Table 4.3(b) namely, PCR 2131/09, Republic v. Dan Holdings Company Limited and others, PCR 2272/09, Republic v. Haji Adan and PCR 601/09, Republic v. China Wu Yi Company Limited and others were withdrawn under section 87(a) of the CPC in Nairobi after failing to apprehend the accused parties. Warrants of arrest had been issued against the accused parties, but upon attempt to arrest them, no success was achieved. This resulted in the delay of the cases to proceed, ending up in the respective construction work activities undertaken by the accused parties coming to an end and the workers, in whose interest the cases were lodged, vacating the workplace. The workers were meant to testify as prosecution witnesses. This meant lack of witnesses resulting to withdrawal.

4.3.2.4 Other Reasons

Table 4.3(b) also shows other cases that were withdrawn due other reasons that are highlighted hereunder.

4.3.2.5 ‘Nolle Prosequi’

In the case PCR 998/09 Republic v. Orienza Enterprises Limited and others, the office of the Attorney General took up the matter and proceeded with the prosecution only to enter a ‘*nolle prosequi*’ thereafter without the accused having complied with what were raised as charges. Grounds for entry of ‘*nolle prosequi*’ were not fronted.

4.3.2.6 Death of Accused

In the case PCR 1435/08, Republic v. China Huade Construction Kenya Limited and another, section 87(a) of the CPC was invoked to have the case withdrawn because of death of one of the accused parties.

4.3.2.7 Mistaken Identity

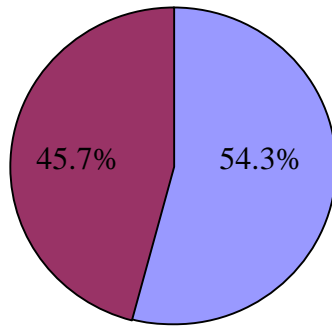
In yet another case PCR 624/10 Republic v. Bahati Industries and another, Section 87(a) of the CPC was used to terminate the case due to mistaken identity. The latter was a contractor who subcontracted services at a construction site whereby the subcontractor engaged his own workers. The subcontractor was the actual employer. In the case, the contractor was wrongly sued on contraventions that were pointing an accusing finger to the subcontractor.

4.3.2.8 Closure of Workplace

In the case PCR 613/10, Republic v. Joseph Mbindyo, section 87(a) of the CPC was applied to have the case withdrawn when it emerged that the construction works undertaken by the accused were complete rendering the charges invalid.

4.4 Outcome of Prosecution on the Aspect of Risk Assessment

70 cases were registered in court against parties who had not conducted a risk assessment of their workplaces pursuant to section 6(3) of OSHA, 2007. 54.3% of the cases yielded compliance as shown in Figure 4.2. Table 4.4(a) uses three criteria to sub-categorize cases that yielded compliance with respect to the station where the data was gathered.



$$38/70 \times 100 = 54.3\%$$

■ 54.3% complied
 ■ 45.7% did not comply

Figure 4.2 Chart Showing Percentage Number of Cases that Yielded Compliance on the Aspect of Risk Assessment

Table 4.4(a) Cases that Yielded Compliance on the Aspect of Risk Assessment

| Station | Compliance after conviction | Withdrawn after compliance | Other reasons | Sub total |
|----------------------------------|-----------------------------|----------------------------|-----------------|------------------|
| Nairobi Provincial DOSHS offices | 3 (60%) | 32 (100%) | - | 35 (92.1%) |
| Nakuru District DOSHS offices | - | - | 1 (100%) | 1 (2.6%) |
| Kericho District DOSHS offices | 2 (40%) | - | - | 2 (5.3%) |
| Totals | 5 (100%) | 32 (100%) | 1 (100%) | 38 (100%) |

4.4.1 An Account of Compliance Due to Other Reasons

One case in Nakuru No. 2857/08, Republic v. Kenya Power and Lighting Company Limited and another yielded compliance even though conviction was not achieved as seen from Table 4.4(a) above. The case was prejudiced leading to non-conviction. But the proceedings emerged to be a lesson for the offender to ensure compliance in subsequent similar work activities.

Table 4.4(b) sub-categorizes cases that did not yield compliance with respect to the station where the data was gathered. The six criteria bring into light the underlying factors for compliance or noncompliance.

Table 4.4(b) Cases that did not Yield Compliance on the Aspect of Risk Assessment

| Station | Convicted but did not comply | Case dismissed | Case withdrawn due to | | | Other reasons | Total |
|----------------------------------|------------------------------|---------------------------|-------------------------|---------------------------|---------------------------|---------------------------|----------------------------|
| | | | Lack of witnesses | DOSHS office instructions | Accused at large | | |
| Nairobi DOSHS Provincial Offices | 8 (88.9%) | 1 (100%) | 4 (100%) | 6 (85.7%) | 3 (100%) | 8 (100%) | 30 (93.7%) |
| Kericho District DOSHS offices | 1 (11.1%) | - | - | 1 (14.3%) | - | - | 2 (6.3%) |
| Totals | 9 (100%) | 1 (100%) | 4 100% | 7 (100%) | 3 (100%) | 8 (100%) | 32 (100%) |

4.4.2 An Account of Cases Withdrawn Due to

4.4.2.1 Lack of Witnesses

One case shown in Table 4.4(b) to have been withdrawn was case No. PCR 609/10 Republic v. Space and Style Limited and another in Nairobi and was withdrawn under section 87(a) of the CPC due to lack of witnesses who were employees of the accused. The witnesses declined to adduce because of harboring a feeling that they were going against their employer and therefore their testimonies in the case would cost them their jobs. Prosecution was keen to preserve the employee-employer relationship. It would be unfair to damage this relationship, and OSHA, 2007, being a law that upholds workers' welfare, the prosecution therefore opted to withdraw the case.

In the other 3 cases namely PCR 613/10, Republic v. Joseph Mbindyo, PCR 236/09, Republic v. Shengli Engineering Construction Company Limited and another and PCR 2595/09, Republic v. Rajendra Patel withdrawal was made under Section 87(a) of the CPC due to lack of witnesses as shown in Table 4.4(b). The workplaces in question were construction sites and had already been deserted due to completion of construction works by the time the cases were due for hearing. Witnesses who most often were employees of the accused parties had long left the workplace upon completion of works. It would not be of any value to have a risk assessment carried out on works that were already complete and without any workforce on site. The only option was to have the cases withdrawn.

4.4.2.2 DOSHS Office Instructions

In all the 6 cases as in Table 4.4(b) shown to have been withdrawn at Nairobi under section 87(a) of the CPC due to DOSHS office instructions, no reasons were given as a basis for withdrawal by the DOSHS offices. These cases included PCR 2044/10, Republic v. Choda Fabricators Limited and others, PCR 238/09, Republic v. Allied Plumbers Limited and others, PCR 2345/09, Republic v. Alloy Steel Casting Limited and another PCR 91/09, Republic v. Weld-con Limited and another, PCR 992/09, Republic v. Kay Construction Company Limited and another and PCR 614/10, Republic v. Kundan Singh Construction Company Limited and others.

A seventh case 1954/09, Republic v. Jagir Singh Contractors and others was withdrawn with DOSHS office instructions, under section 87(a) of the CPC after convincing

DOSHS that full compliance will be observed by the accused thereafter. Upon withdrawal of the case, the accused did partial compliance on the charges raised whereby the aspect of risk assessment was not complied with.

4.4.2.3 Accused at Large

In three cases namely, PCR 601/09, Republic v. China Wu Yi Company Limited and others, PCR 2131/09, Republic v. Dan Holdings Company Limited and others and PCR 2272/09 Republic v. Haji Adan withdrawal under section 87(a) was done as shown in Table 4.4(b) because accused parties were not apprehended even if warrants of arrest were issued against them. The workplaces in question were construction sites. In all the three workplaces, the works were completed and sites vacated without the accused parties showing up in court. Completion and desertion of the worksite would mean no witnesses for the cases and with the cases' prevailing absence of the accused, the cases lost strength. Only one thing was wise to do, withdraw.

4.4.2.4 Other Reasons

Table 4.4(b) also shows other cases that were withdrawn due other reasons that are highlighted hereunder.

4.4.2.5 Promissory Sentiments

In one of the cases, PCR 1945/10, Republic v. Triple Eight Construction Kenya Limited and another section 87(a) of the Criminal Procedure Code was applied on account of the accused promising to comply with the requirements raised as charges. The accused

however did not fully comply with the requirement. Out of three counts of charges raised, two were complied with leaving the aspect of risk assessment out of compliance.

4.4.2.6 Inadequate Investigations

In another case PCR 603/09, Republic v. Kamji Marji Ramji and another, withdrawal was done so that a proper search could be done at the Attorney General's offices (office of the registrar of companies) together with adequate investigations for proper names of the real accused to be used in the charge sheets. By the time of data collection, the substitution of the accused with the proper names had not been done.

4.4.2.7 Change of Workplace Management

In the case PCR 1265/08, Republic v. Capital Construction Co. Ltd and others, there was change of company directorship. Apart from the company, the directors were co-accused. The change of company directorship meant that the charge sheet had to be amended. As at the time data collection, amended charge sheet had not been constructed and lodged. The case had been withdrawn under section 87(a) of the CPC.

4.4.2.8 Subcontractor Factor

In a case PCR 609/10, Republic v. Space and Style Ltd and another, it emerged that the person who was later to be key witness in the case was not an employee of the accused. The case would not stand if the evidence had no strength. Section 87(a) of the CPC was therefore, applied to have the case withdrawn. The accused in this case had engaged a sub-contractor at a site who in turn employed his own workers. The charges were therefore relevant to the sub-contractor and not the accused. The case had to be

withdrawn. In a similar case PCR 624/10 Republic v. Bahati Industries and another, withdrawal was done under section 87(a) of the CPC because the accused sub-contracted construction works and employed his own workers. The case was therefore relating to the subcontractor and not the accused.

4.4.2.9 Death of Accused

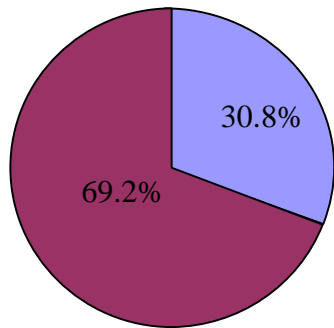
In the case PCR 1435/08 Republic v. China Huade Construction Kenya Limited and Others, Section 87(a) of the CPC was invoked to have the matter withdrawn because the co-accused person passed away leaving only the artificial person as accused. The artificial person (company) could not be sued in isolation. Case No. PCR 2485/10, Republic v. Chandaria Industries Limited and others was withdrawn under Section 87(a) of the CPC after considering several reasons. Firstly, there was compliance on the part of the accused; secondly, one of the accused parties was diseased. Thirdly, more time was required for investigation with respect to some charges.

4.4.2.10 ‘Nolle Prosequi’

Case No. PCR 998/09 Republic v. Orienza Enterprises Limited and others was taken up by Attorney General and later terminated by entry of ‘*Nolle Prosequi*’.

4.5 Outcome of Prosecution on the Aspect of Safety and Health Audit

Cases totaling to 39 were lodged against parties who had not conducted a safety and health audit at their workplaces. 69.2% of the cases yielded compliance as shown in Figure 4.3. Table 4.5(a) shows two criteria sub-categorizing cases that yielded compliance with respect to the station where the data was gathered.



$27/39 \times 100 = 69.2\%$

■ 30.8% did not comply
 ■ 69.2% complied

Figure 4.3 Chart Showing Percentage Number of Cases that Yielded Compliance on the Aspect of Safety and Health Audits

Table 4.5(a) Cases that Yielded Compliance on the Aspect of Safety and Health Audit

| Station | Compliance after conviction | Withdrawn after compliance | Sub totals |
|--------------------------------|-----------------------------|----------------------------|------------------|
| Nairobi provincial offices | 3 (50%) | 16 (76.2%) | 19 (70.4%) |
| Nakuru District DOSHS offices | 1 (16.7%) | - | 1 (3.7%) |
| Kericho District DOSHS offices | 2 (33.3%) | - | 2 (7.4%) |
| Kisii District DOSHS offices | - | 5 (23.8%) | 5 (18.5%) |
| Totals | 6 (100%) | 21 (100%) | 27 (100%) |

Table 4.5(b) shows six criteria sub-categorizing cases that did not yield compliance criteria with respect to the station where the data was gathered. The criteria bring into light the underlying factors for compliance or noncompliance.

Table 4.5(b) Cases that did not Yield Compliance on the Aspect of Safety and Health Audit

| Station | Convicted but did not comply | Cases dismissed | Cases withdrawn due to | | | Other reasons | Sub totals |
|----------------------------------|------------------------------|-----------------|---------------------------|---------------------------|------------------|---------------------------|----------------------------|
| | | | Lack of witnesses | DOSHS office instructions | Accused at large | | |
| Nairobi provincial DOSHS offices | 1 (33.3%) | - | 4 (100%) | 2 (100%) | - | 3 (100%) | 10 (83.3%) |
| Kericho District DOSHS offices | 2 (66.7%) | - | - | - | - | - | 2 (16.7%) |
| Totals | 3 (100%) | - | 4 (100%) | 2 (100%) | - | 3 (100%) | 12 (100%) |

4.5.1 An Account of Cases Withdrawn Due to

4.5.1.1 Lack of Witnesses

Table 4.5(b) above shows 3 cases namely PCR 2595/09, Republic v. Rajendra Patel, PCR 613/10, Republic v. Joseph Mbindyo and PCR 236/09, Republic v. Shengli Engineering Company Limited and another that were withdrawn under section 87(a) of the CPC due to lack of evidence as the workers who were meant to be witnesses in the cases and in whose interest the charges had been raised, had already vacated the site where construction works were already complete. One of the cases PCR 428/09, Republic v. Tusker Mattresses and others the section 87(a) of the CPC had to be used to have the case withdrawn as it emerged that if the witnesses adduced evidence, employee-employer relationship would be damaged as the witnesses were employees of the accused.

4.5.1.2 Other Reasons

Table 4.5(b) also shows cases that were withdrawn due other reasons that are highlighted hereunder.

4.5.1.3 Inadequate Investigation

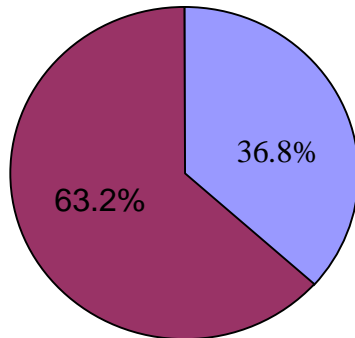
In one case PCR 603/09, Republic v. Kamji Marji Ramji and others section 87(a) of the CPC was invoked to have the case withdrawn when it emerged that the accused were not the actual offenders. The withdrawal opened a window for the investigation officers to establish the actual offenders and bring them to book. Meanwhile, the case had to be withdrawn. As at the time of data collection for this report, actual offenders had not been established.

4.5.1.4 Promissory Sentiments

In another case PCR 2596/09, Republic v. Behiv Contractors and another withdrawal was done under section 87 (a) of the CPC on realization that the accused had started the course of compliance. But on withdrawal the accused ceased the process of compliance. By the time of ceasure of construction work, the aspect of safety and health and not been complied with. PCR 1903/09, Republic v. Topen Industries Ltd and another was withdrawn under section 87 (a) of the CPC on account of compliance but did not fully comply with the requirements especially on the aspect of safety and health audit.

4.6 Outcome of Prosecution on the Aspect of Fire Safety Audit

Only 19 parties were arraigned in court with not carrying out a fire safety audit of whom 12 complied by undertaking a fire safety audit as represented in the Figure 4.4 below.



$$12/19 \times 100 = 63.2\%$$

■ 36.8% did not comply
 ■ 63.2% complied

Figure 4.4 Chart Showing Percentage Number of Cases that Yielded Compliance on the Aspect of Fire Safety Audit

Table 4.6(a) below shows two criteria sub-categorizing cases that yielded compliance with respect to the station where the data was gathered.

Table 4.6(a) Cases that Yielded Compliance on the Aspect of Fire Safety Audit

| Station | Compliance after conviction | Withdrawn after compliance | Sub totals |
|----------------------------------|-----------------------------|----------------------------|------------------|
| Nairobi provincial DOSHS offices | 3 (60%) | 7 (100%) | 10 (83.3%) |
| Kericho District DOSHS offices | 2 (40%) | - | 2 (16.7%) |
| Totals | 5 (100%) | 7 (100%) | 12 (100%) |

Table 4.6(b) here below shows six criteria sub-categorizing cases that did not yield compliance criteria with respect to the station where the data was gathered. The criteria bring into light the underlying factors for compliance or noncompliance.

Table 4.6(b). Cases that did not Yield Compliance on the Aspect of Fire Safety Audit

| Station | Convicted but did not comply | Cases dismissed | Cases withdrawn due to | | | Other reasons | Total |
|----------------------------------|------------------------------|-----------------|------------------------|---------------------------|------------------|---------------|-------------|
| | | | Lack of witnesses | DOSHS office instructions | Accused at large | | |
| Nairobi provincial DOSHS offices | - | - | - | 2 (28.6%) | - | 5 (71.4%) | 7 (100%) |

4.6.1 An Account of Cases not Yielding Compliance Due to Other Reasons.

4.6.1.1 Destroyed Evidence

The case PCR 2473/09 Republic v. Nakumatt Holdings Limited and another ended with the accused not found guilty of the charges raised. The case had been lodged following a fire disaster at a Downtown Supermarket on the 28th January 2009 in Nairobi. The fire disaster had burnt down the premises eliminating most of the available evidence. The burnt down premises were demolished and work operations were stopped thereafter. No compliance was achieved at these particular premises. The defendant in this case has many other supermarket outlets in the country that took steps to comply with this requirement.

4.6.1.2 ‘Nolle Prosequi’

In the case PCR 998/010 Republic v. Orienza Enterprises Limited and others, a ‘*nolle prosequi*’ was entered to terminate the case by the Attorney General’s office after having taken over the case from DOSHS.

4.6.1.3 Promissory Sentiments

The case PCR 615/10 Republic v. Nairobi Sports House Limited and others was withdrawn under Section 87 (a) of the CPC as the accused was complying with the requirements. The accused however, complied with all other requirements leaving out the aspect of fire safety. The accused made this omission after the case had already been withdrawn. In the case PCR 2274/09, Republic v. Inter-Tractor Company Limited and another, Section 87 (a) of the CPC was applied to have it withdrawn on the account of compliance. However, the accused did not fully comply with the requirements by the time the case was withdrawn.

4.6.1.4 Employer-Employee Relationship Preservation

Case No. PCR 428/09 Republic v. Tusker Mattresses Limited and others was withdrawn under Section 87(a) of the CPC as it emerged that if the case proceeded, damage to the employee-employer relationship would be caused by witnesses who were employees of the accused, testifying against the accused. The case was withdrawn so that other means of yielding compliance could be applied. By the time of data collection for this report, no compliance was forthcoming as yet.

4.7 Discussions

Despite existence of laws, crimes are still committed and therefore prosecution of offenders is warranted. Mounting of prosecution in a court of law is meant to have the offender stop further and future crime commitment, have justice administered and have the offender comply with provisions of a given statute. The notion that prosecution imply, automatic compliance with provisions of a law is merely an educated assumption. To be out of this assumption, the impact of prosecution under the provisions of OSHA, 2007 of selected aspects namely, workplace registration, risk assessment, safety and health audit and fire safety audit was under study. To do the study, delving into individual court cases, taking note of the status of compliance to requirements of safety and health before and after the case was necessary. By doing the study, the hypothesis; ‘prosecution under the provisions of the OSHA, 2007 is enhancer to status of compliance to the requirements of health and safety status of a workplace’, would be put to test. It is only through the study and hypothesis test that it can be established whether prosecution under the provisions of the OSHA, 2007 has an impact, and to what extent, to compliance to requirements of health and safety of a workplace or not.

4.7.1 Hypothesis Test

There are two hypotheses to be put to test. These are, ‘prosecution under the provisions of the OSHA, 2007 is enhancer to the status of compliance to requirements of safety and health of a workplace’ and ‘prosecution under the provisions of the OSHA, 2007 has an impact on the status of compliance to requirements of safety and health of a workplace’. Checking for systematic errors in respect of the gathered data would confirm rejection of

or acceptance of the hypotheses. A t-test can be employed to put the two hypotheses into test. Presence of systematic errors upon application of mathematical t-test would connote rejection of the alternative hypotheses and therefore acceptance of null hypotheses.

Taking into consideration the four aspects that were under study, namely; workplace registration, workplace risk assessment, workplace safety and health audit and workplace fire safety audit, it was found that percentage of compliance were as listed respectively;

70, 54.3, 69.2 and 63.2

Considering the so obtained percentage values there could be systematic errors if population mean value, denoted as μ , is outside the range of the obtained percentages and no systematic errors if μ has a value within the percentage values. If x is taken to be the percentage compliance values (the variables), n to be the number of aspects in question and \bar{x} to be the mean of the values. Let the standard deviation for the values be denoted by s^δ .

Then the mean of the values is calculated as $x = \frac{\sum x}{n} = \frac{70+54.3+69.2+63.2}{4} = 64.2$.

So the standard deviation is calculated as $s^\delta = \sqrt{\frac{\sum(x-\bar{x})^2}{n-1}} = \sqrt{\frac{157.65}{3}} = 7.2$.

The population's mean μ would be calculated using the following t-test formula;

$\mu = \bar{x} \pm \frac{t s^\delta}{\sqrt{n}}$ where $n = 4$, t is the one tailed t-test value from t-test distribution tables.

At 90% confidence level, we have

$\mu = 64.2 \pm t \frac{7.2}{\sqrt{4}}$ and from one tailed t-test distribution tables $t = 1.638$. One tailed t-test distribution tables are used because the mean is more than 50 thus 64.2.

So we have $\mu = 64.2 \pm 5.76$

$$= 58.3 \text{ or } 69.96.$$

The two values are within the range of percentage values of compliance. No systematic errors were apparent. The alternative hypotheses that, ‘prosecution under the provisions of the OSHA, 2007 is enhancer to status of compliance to requirements of health and safety of a workplace’ and ‘prosecution under the provisions of the OSHA, 2007 has an impact on compliance to requirements of health and safety of a workplace’, are therefore accepted.

4.7.2 Many Court Cases Lodged

More than half of the cases prosecuted in respect of every aspect in question that is registration, risk assessment, safety and health audit and fire safety audit, yielded compliance at workplaces. A majority of the field stations (75%) had no cases that were bearing charges that had any of the four aspects that were used in the study. Nairobi provincial DOSHS offices filed the majority of cases with regards to workplace health and safety on the aspects in question. This is clear from the tables of findings in all the Tables 4.3(a) to 4.6(b). This could be explained in the following contexts.

4.7.2.1 Staffing Levels

Nairobi provincial DOSHS offices were found to have the highest number of officers as compared to all other field offices of DOSHS in the republic. The big number of officers translated into the highest number of field visits and therefore identification of more contraventions in the workplaces. There were a total of 12 field officers charged with the responsibility of making field visits for the purpose of inspection. A combined effect of the field visits would mean identification of many safety and health contraventions and many cases in the court. The only other station comparable to Nairobi in terms of staffing was the Coast provincial DOSHS offices with 5 field officers. Other stations were found to have two to three field officers. It is most often easier to obtain prosecution witnesses from the DOSHS fraternity than the workplace itself. An office with 1 field officer would have a big challenge in obtaining witnesses to adduce evidence in court as the employees of the accused would most likely turn down the opportunity for fear of losing their employment because testifying against the accused (their employer for that matter) would be perceived as being anti-employer. The Nairobi office also has a variety of officers trained in various disciplines. Medical doctors, nurses, industrial hygienists and other officers with safety and health training who are important during court proceedings as evidence that may be adduced will have expertise content. An office without officers of various disciplines will tend to avoid framing charges with issues requiring expert input for fear of facing defeat in court.

4.7.2.2 Proximity to Workplaces

The distance from the Nairobi provincial DOSHS offices to a majority of workplaces in Nairobi is within a scope which can be covered by foot. In other field DOSHS offices, lack of means of transport to carry out field activities was found to be a common feature. Means of transport may not have been necessarily an obstacle in reaching workplaces for inspection in Nairobi. This being the situation, more inspection visits were achieved and therefore more contraventions identified. The workplaces around the Nairobi provincial DOSHS offices are of high concentration as compared to other workplaces around other DOSHS offices.

4.7.2.3 Availability of Resources

Comparing with other DOSHS offices, Nairobi provincial DOSHS office was endowed with more financial resources than other field stations. In terms financial office allocations, Nairobi provincial DOSHS office was found to have been awarded about twice as much as other field stations. This would make it easier to make distant visits when necessary. This would translate into more field visits and therefore more cases in court. The Nairobi provincial DOSHS office is also endowed with transport facilities that are missing in other field DOSHS offices. The transport facilities enabled wider coverage in terms of inspection visits to workplaces translating into many cases being lodged.

4.7.2.4 Proximity to Headquarters

Nairobi provincial DOSHS offices are situated more proximal to the headquarters of the Directorate, and the Ministry. The headquarters are the ones to determine the pecking order of National resource cake for offices of the Directorate. Being so close to the source of resources, it made it easier to seek for assistance when necessary for the purpose of making visits of inspection. Again this would lead to higher number inspections done and therefore more case lodgment in the courts of law.

4.7.2.5 Proximity to Area Courts

The number, of courts easily accessible by the Nairobi provincial DOSHS offices were found to be higher in number as compared to the number of courts that are available to other field DOSHS offices. This offered a variety of choice. Section 71 of the CPC provides for any criminal case to be lodged in the court nearest to the place where the crime was committed. The section provides that every offence shall ordinarily be tried by a court within the local limits of whose jurisdiction the accused was apprehended, or is in custody on a charge for the offence, or has appeared in answer to summons lawfully issued charging the offence. An office where there are limited facilities/resources, lack of transport facilities and shortage of field staff, case lodgment at a court distant from the office is most unlikely.

4.7.3 Withdrawal on Compliance

In all the cases that compliance was achieved, majority of the cases were withdrawn after compliance. Nairobi provincial DOSHS offices made a majority of cases that were withdrawn after compliance. This could be explained in following three ways.

4.7.3.1 Decongestion of Local Courts

The Nairobi provincial DOSHS offices formed the majority of the cases lodged at the law courts. Again the Nairobi courts were found to have busy cause lists with many cases pending for hearing. Cases under the provisions of OSHA, 2007 were classified petty. As a way of easing congestion of cases in the courts cases could be withdrawn upon compliance by the accused. This could free the courts of some of the petty cases leaving the courts with more serious criminal cases for administration of justice. According to article 49(2) of the Constitution of Kenya, 2010, an offender in a petty criminal case is not to be held in custody. The implication here is that an accused upon pleading not guilty to the charges would be released on a free bond only. A free bond is signed by an accused party to get freedom from custody and if there is subsequent failure to attend court by the accused, specified payment will be made to the court for such failure. Consistent subsequent court attendance by the accused would see it through to case conclusion without payment of any money to court as bond or bail.

4.7.3.2 Amicable Termination

Section 176 of the CPC, the court has powers to allow termination of a case on amicable terms. The section provides that in all cases, the court may promote reconciliation,

encourage and facilitate settlement in an amicable way of proceedings for common assault, or for any other offence of a personal or private nature not amounting to felony, and not aggravated in degree, on terms of payment of compensation, or other terms approved by court, and may thereupon order proceedings to be stayed or terminated.

4.7.3.3 Plea Bargaining

Workplaces make sources of income to employers and workers. Certainly, a situation where the accused party is an employer will affect income, work output and even contribution to the national economy. An agreement whereby the accused would comply with issues raised as charges and then have the matter withdrawn would be most welcome to the accused party. This application of plea bargaining was instrumental in the cases that were withdrawn as soon as he/she remedied matters raised as charges. The application of plea bargaining is provided for in a legislation subsidiary to the Criminal Procedure Code. Plea bargaining was used to have the cases withdrawn whenever it was apparent that the accused parties had complied with the requirements before case conclusion.

4.7.4 Withdrawal on Noncompliance

In all the cases that compliance was not achieved, majority of the cases were withdrawn. Prosecutions that did not yield compliance formed a majority in the Nairobi provincial DOSHS offices. The explanation for this could take the following dimensions.

4.7.4.1 Large Number of Cases Lodged

A very big proportion of cases that yielded no compliance were lodged in Nairobi Provincial DOSHS offices. This was by virtue of the big number of cases that lodged. As seen from the Tables 4.3(b), 4.4(b), 4.5(b) and 4.6(b), Nairobi Provincial DOSHS offices lodged the highest number of cases. The cases so lodged could assume fate of any direction; compliance or non-compliance.

4.7.4.2 DOSHS Office Instructions

Cases withdrawn as a result of DOSHS offices instructions formed quite a substantial portion of the cases lodged in the courts. Nairobi provincial DOSHS offices had the highest number of cases that were withdrawn under the influence of the DOSHS offices (i.e. withdrawal due to DOSHS offices instructions). As seen from Tables 4.3(b), 4.4(b), 4.5(b) and 4.6(b), quite a number of cases were withdrawn as a result of DOSHS offices instructions yet compliance with contraventions was not achieved. No reasons were given by the DOSHS to accompany such instructions. In all the cases withdrawn as a result of DOSHS offices instructions, section 87(a) of the CPC Cap.75 was applied to have the cases withdrawn. This is a section which allows the prosecutor, with the court's consent, at any time before judgment is pronounced to withdraw from prosecution of the accused and upon withdrawal the accused shall be discharged. But the discharge of an accused person shall not operate as a bar to subsequent proceedings against the accused on the account of the same facts. One implicit reason of withdrawal as a result of DOSHS offices instructions but could not be presented at the court during withdrawal was because accused parties were friendly acquaintances to senior officers to whom the

prosecutor is not only subordinate but also from whom the prosecutor gets instructions. In this regard, the prosecutor had to employ manipulative fallacies to convince the court about the grounds of withdrawal.

Another reason was that, some accused parties could manipulate the office and bring some members of staff to a state of compromise. Here, professional ethics are thrown out the window leaving evil way of doing things to prevail. As before, this could not qualify as a reason that could be offered in court as grounds for withdrawal. Some excuse had to be given to the court but again this had to be convincingly dishonest.

In another situation where cases had to be withdrawn as a result of DOSHS offices instructions, an accused party could begin to remedy the contraventions and go ahead to convince DOSHS offices that there would be absolute compliance in the soonest possible time. Being in the path of compliance, the accused could further be able to convince DOSHS office to instruct the prosecutor to have the case withdrawn. As soon as the case was withdrawn, the accused terminated the efforts made in trying to comply.

CHAPTER FIVE

5.0 CONCLUSIONS AND RECOMMENDATIONS

5.1 Conclusions

Charges were raised and cases lodged in courts due to deemed non-compliance to provisions of OSHA, 2007 by offenders on selected four aspects. To raise charges for prosecution, the status of safety and health had to be established by the officers. This satisfied the objective of establishing the safety and health status of a workplace before prosecuting an offender.

The results obtained show that for each of the chosen aspect of safety and health, prosecution had an impact of more than 50% compliance. There was 70% compliance due to prosecution on the aspect of workplace registration, 54.3% on the aspect of risk assessment, 69.2% on the aspect of safety and health audit and 63.2% on the aspect of fire safety audit. Workplace safety and health status after prosecution therefore, improved by an average of 67.2%. On the other hand, situations of noncompliance which accounted for less than 50% for each of the aspects in question were as a result of employees of an accused party not being relied on as prosecution witnesses.

It is already clear that prosecution had an impact on status of compliance to requirements of safety and health of workplaces considering the chosen aspects. By achieving over 50% compliance in each aspect, prosecution caused improvement and therefore, was enhancer to the status of compliance to the requirements of safety and health of workplaces. By the same improvement, this was an impact on compliance to

the requirements the safety and health of workplaces. In a majority of the prosecutions that yielded compliance, the accused rushed to comply upon realization that a case had been lodged and then go ahead to plea bargain for withdrawal after compliance.

5.2 Recommendations

5.2.1 Creation of Legal and Compliance Division

Since prosecution has shown to have an impact on the status of compliance to requirements of safety and health of workplaces by yielding more than 50%, the Directorate of Occupational Safety and Health can intensify prosecutions against parties who are noncompliant in occupational safety and health. Firstly, the Directorate should create a legal and compliance division headed by a person whose background is of legal studies. The fully fledged division should be staffed with more other officers who are well trained in prosecution and legal matters. These officers should be distributed to all DOSHS office stations in the republic to execute prosecutorial activities. This will result to less interference by the DOSHS who as it has been shown from this study, influence cases to be withdrawn for reasons based on fallacies without compliance.

5.2.2 Amendment of Acts

There is need to amend the general penalty section 109 of OSHA, 2007 which renders cases under the provisions the Act petty. Cases that refer to section 109 for penalty ends up being categorized petty criminal (PCR) and according to section 49 of the Constitution of Kenya, 2010 the accused in a petty criminal case (a case where the accused, if proved guilty, can be punished by fine or a jail term not exceeding 6 months)

cannot be held in custody. And in the event of a case being categorized petty, plea bargaining ranks high in terms of fate alternatives for the case. As it has been seen, this will definitely affect status of compliance to requirements of safety and health as offenders will bargain their way out and end up not complying with requirements in question. There is a further need for the Act to be amended to ensure that witnesses who may testify against their employer are secure. A clause should be introduced in OSHA, 2007 to ensure that an employee is secure should he/she be a prosecution witness. The clause should hold that the employee shall not lose benefits, opportunities or wages by virtue of being a prosecution witness under the provisions of OSHA, 2007. The amendment can be recommended to the National Council for Occupational Safety and Health (NACOSH) and initiated by DOSHS through the Technical Advisory Committee (TAC) whose existence is provided for in section 30 of OSHA, 2007. Review of the Act by NACOSH is provided for in section 27(1)(e). An alternative clause can be introduced in the Evidence Act, Cap. 80 to cushion an employee who may be a prosecution witness.

5.2.3 Need for Further Research

There is need to conduct further research on the impact of prosecution on compliance to requirements of safety and health. This is because the aspects covered in this study may not have yielded absolute representation of compliance. More data collected is deemed to yield more accurate and absolute results. Further research to include information from other subjects like the offenders and information gathered from the workplaces that were charged after making a visit to the workplaces in question. Such information would enrich the study in this respect.

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Appendix I

Informed Consent

Dear Sir/Madam,

My name is Justus Bosire Nyakego, a student at Jomo Kenyatta University of Agriculture and Technology undertaking studies on the impact of prosecution under the provisions of the Occupational Safety and Health Act, 2007 on the status of compliance to requirements of safety and health at workplaces in Kenya in partial fulfillment of the requirement of the Master of Science in occupational safety and health. I would like to ask you some questions regarding prosecution and status of compliance to requirements of safety and health of workplaces; and would appreciate and be grateful for the information you will be able to provide.

Be assured that the information obtained during the interview shall be kept confidential and only for the purpose of this study.

You are free to ask any questions or seek clarity regarding this interview.

Interviewee

I have consented to participate in the in the intended interview and would undertake to provide information as required to the best of my knowledge.

Signed this day of 20 .. .

Name.....

Designation

Prosecuting officer , Officer in charge of station (tick as appropriate).

Interviewer

The information obtained during this interview shall be treated with confidence and only for the purpose of this study.

Signed this day of 20 .. .

May I commence the interview?

Appendix II

Interview Schedule

**Analysis of Cases Prosecuted under the Occupational Safety and Health Act, 2007
from October 2007 to December 2010**

- 1. Name of the station.
- 2. Name of prosecuting officer
- 3. Is the officer trained on prosecution? Yes No
- 4. Date of offence.....Date of lodgment..... Case number.....
- 5. Accused party(ies) i.....
 - ii.....
 - iii.....
 - iv.....
 - v.....

(if there are more accused party(ies), please attach list)
- 6. Particulars of previous
 - i Visits
 - ii Warnings
 - iii Improvement notices
 - iv Prohibition notices
 - v Prosecutions.....
 - vi Contravention letters.....

7. Reasons for prosecution

.....

Table i

8. Details of charges.

| Charge | Summary of charge particulars. | Sections contravened |
|---------|--------------------------------|----------------------|
| Count 1 | | |
| Count 2 | | |
| Count 3 | | |
| Count 4 | | |

9. Date of plea

10. Current case status (Delete whichever is inapplicable)

- i. Case is ongoing.
- ii. Case has stay orders from high court.
- iii. Case concluded

Table ii

a) Summary of concluded cases

| Charge | Plea | Convicted | Discharged | Acquitted | Withdrawn* | Order made* | Penalty |
|---------|------|-----------|------------|-----------|------------|-------------|---------|
| Count 1 | | | | | | | |
| Count 2 | | | | | | | |
| Count 3 | | | | | | | |
| Count 4 | | | | | | | |

b) Reasons for withdrawal*

.....

c) Particulars of the order(s) given*

.....

11. Was the workplace visited after case conclusion? Yes No

i. If No:

a) Please explain why

.....

b) Are there plans of making a visit in future to check compliance? (*please state how soon*).....

.....

.....

ii. If Yes:

a) Was there improvement on the matters raised as charges in the case No....

Table iii

Particulars of improvements

| Counts | Yes/No | Particulars of compliance/Improvement |
|--------|--------|---------------------------------------|
| Count1 | | |
| Count2 | | |
| Count3 | | |
| Count4 | | |

b) Percentage compliance (improvement) = $\frac{\text{Cumulative compliance}}{\text{Total number of counts}} \%$

12. Remarks relating to the case:

- i. By the interviewee/prosecutor/respondent (attach separate sheet if necessary).

.....
.....

- ii. By the interviewer

.....

*(*delete if not applicable)*

7. Reasons for prosecution

...Failing to heed improvement notice.....

Table i

8. Details of charges.

| Charge | Summary of charge particulars. | Sections contravened |
|---------|--|----------------------|
| Count 1 | Failing to carry out workplace health and safety audit | 11(1) |
| Count 2 | Failing to carry out a risk assessment of a workplace | 6(3) |
| Count 3 | | |
| Count 4 | | |

9. Date of plea19/3/010.....

10. Current case status (Delete whichever is inapplicable)

- i. Case is ongoing.
- ii. Case has stay orders from high court.
- iii. Case concluded

Table ii

a) Summary of concluded cases

| Charge | Plea | Convicted | Discharged | Acquitted | Withdrawn* | Order made* | Penalty |
|---------|------------|-----------|------------|-----------|------------|-------------|---------|
| Count 1 | Not Guilty | | Yes | | Yes | Yes | |
| Count 2 | Not Guilty | | Yes | | Yes | Yes | |
| Count 3 | | | | | | | |
| Count 4 | | | | | | | |

b) Reasons for withdrawal* The accused complied with requirements raised as charges

c) Particulars of the order(s) given* ...Case withdrawn under section 87(a) of the CPC

11. Was the workplace visited after case conclusion? Yes No

i. If No:

a) Please explain why

.....

b) Are there plans of making a visit in future to check compliance? (*please state how soon*).....

.....

.....

ii. If Yes:

a) Was there improvement on the matters raised as charges in the case No. PCR 515/010?

Table iii

Particulars of improvements

| Counts | Yes/No | Particulars of compliance/Improvement |
|--------|--------|---------------------------------------|
| Count1 | Yes | Health and safety audit was done |
| Count2 | Yes | Risk assessment was done |
| Count3 | | |
| Count4 | | |

b) Percentage compliance (improvement) = $\frac{\text{Cumulative compliance}}{\text{Total number of counts}} \times 100\% = \frac{2}{2} = 100\%$

12. Remarks relating to the case:

- i. By the interviewee/prosecutor/respondent (attach separate sheet if necessary).

.....
.....

- ii. By the interviewerAbsolute compliance was achieved.....

.....

(*delete if not applicable)

Table i

8. Details of charges.

| Charge | Summary of charge particulars. | Sections contravened |
|---------|---|----------------------|
| Count 1 | Operating a workplace without a certificate of registration | 44(5) |
| Count 2 | Failing to carry out a risk assessment of a workplace | 6(3) |
| Count 3 | | |
| Count 4 | | |

9. Date of plea22/4/010.....

10. Current case status (Delete whichever is inapplicable)

- i. Case is ongoing.
- ii. Case has stay orders from high court.
- iii. Case concluded

Table ii

a) Summary of concluded cases

| Charge | Plea | Convicted | Discharged | Acquitted | Withdrawn* | Order made* | Penalty |
|---------|-----------|-----------|------------|-----------|------------|-------------|---------|
| Count 1 | Not Taken | | Yes | | Yes | Yes | |
| Count 2 | Not Taken | | Yes | | Yes | Yes | |
| Count 3 | | | | | | | |
| Count 4 | | | | | | | |

b) Reasons for withdrawal* Case withdrawn on account of compliance

.....
 c) Particulars of the order(s) given* ...Case withdrawn under section 87(a) of the CPC

11. Was the workplace visited after case conclusion? Yes No

i. If No:

a) Please explain why

.....

b) Are there plans of making a visit in future to check compliance? (*please state how soon*).....

.....

.....

ii. If Yes:

a) Was there improvement on the matters raised as charges in the case No. PCR 746/010?

Table iii

Particulars of improvements

| Counts | Yes/No | Particulars of compliance/Improvement |
|--------|--------|---|
| Count1 | Yes | Applied for and was awarded certificate of registration |
| Count2 | Yes | Risk assessment was done |
| Count3 | | |
| Count4 | | |

b) Percentage compliance (improvement) = $\frac{\text{Cumulative compliance}}{\text{Total number of counts}} \times 100 = \frac{2}{2} = 100\%$

12. Remarks relating to the case:

- i. By the interviewee/prosecutor/respondent (attach sheet if necessary).

.....
.....

- ii. By the interviewerAbsolute compliance was achieved.....

.....

*(*delete if not applicable)*

Table i

8. Details of charges.

| Charge | Summary of charge particulars. | Sections contravened |
|---------|---|----------------------|
| Count 1 | Failing to carry out a risk assessment of a workplace | 6(3) |
| Count 2 | Operating a workplace without a certificate of registration | 44(5) |
| Count 3 | | |
| Count 4 | | |

9. Date of plea10/12/010.....

10. Current case status (Delete whichever is inapplicable)

- i. Case is ongoing.
- ii. Case has stay orders from high court.
- iii. Case concluded

Table ii

a) Summary of concluded cases

| Charge | Plea | Convicted | Discharged | Acquitted | Withdrawn* | Order made* | Penalty |
|---------|------------|-----------|------------|-----------|------------|-------------|---------|
| Count 1 | Not Guilty | | Yes | | Yes | Yes | |
| Count 2 | Not Guilty | | Yes | | Yes | Yes | |
| Count 3 | | | | | | | |
| Count 4 | | | | | | | |

b) Reasons for withdrawal*..... Case withdrawn on account of compliance

.....
 c) Particulars of the order(s) given* ...Case withdrawn under section 87(a) of the CPC

11. Was the workplace visited after case conclusion? Yes No

i. If No:

a) Please explain why

.....

b) Are there plans of making a visit in future to check compliance? (*please state how soon*).....

.....

.....

ii. If Yes:

a) Was there improvement on the matters raised as charges in the case No. PCR 2484/010?

Table iii

Particulars of improvements

| Counts | Yes/No | Particulars of compliance/Improvement |
|--------|--------|---|
| Count1 | Yes | Risk assessment was done |
| Count2 | Yes | Applied for and was awarded certificate of registration |
| Count3 | | |
| Count4 | | |

b) Percentage compliance (improvement) = $\frac{\text{Cumulative compliance}}{\text{Total number of counts}} \times 100 = \frac{2}{2} = 100\%$

12. Remarks relating to the case:

- i. By the interviewee/prosecutor/respondent (attach separate sheet if necessary).

.....
.....

- ii. By the interviewerAbsolute compliance was achieved.....

.....

*(*delete if not applicable)*

**Analysis of a Case Prosecuted under the Occupational Safety and Health Act, 2007
between October 2007 and December 2010**

1. Name of the station. ...Kericho district DOSHS offices.....

2. Name of prosecuting officerKennedy Omwoyo.....

3. Is the officer trained on prosecution? Yes No

4. Date of offence...13/8/08...Date of lodgment...9/9/08. Case number. 1531/08

5. Accused party(ies) i...Easy Coach Limited.....

ii...Azym Dossa.....

iii.....

iv.....

v.....

(if there are more accused party(ies), please attach list)

6. Particulars of previous

i Visits2 inspection visits made.....

ii Warnings

iii Improvement notices1 improvement notice issued.....

iv Prohibition notices

v Prosecutions.....

vi Contravention letters.....

7. Reasons for prosecution

...Failing to comply with provisions of OSHA, 2007.....

Table i

8. Details of charges.

| Charge | Summary of charge particulars. | Sections contravened |
|---------|---|----------------------|
| Count 1 | Operating a workplace without a certificate of registration | 44(5) |
| Count 2 | Failing to carry out a risk assessment of a workplace | 6(3) |
| Count 3 | | |
| Count 4 | | |

9. Date of plea19/2/08.....

10. Current case status (Delete whichever is inapplicable)

- i. Case is ongoing.
- ii. Case has stay orders from high court.
- iii. Case concluded

Table ii

a) Summary of concluded cases

| Charge | Plea | Convicted | Discharged | Acquitted | Withdrawn* | Order made* | Penalty |
|---------|--------|-----------|------------|-----------|------------|-------------|---------|
| Count 1 | Guilty | Yes | Yes | | | Yes | |
| Count 2 | Guilty | Yes | Yes | | | Yes | |
| Count 3 | | | | | | | |
| Count 4 | | | | | | | |

b) Reasons for withdrawal*.....

.....

c) Particulars of the order(s) given* ...Discharged under section 110 of OSHA, 2007.

Ordered to comply with the requirements within a period of one month.

11. Was the workplace visited after case conclusion? Yes No

i. If No:

a) Please explain why

.....

b) Are there plans of making a visit in future to check compliance? (*please state how soon*).....

.....

.....

ii. If Yes:

a) Was there improvement on the matters raised as charges in the case No.

1531/08?

Table iii

Particulars of improvements

| Counts | Yes/No | Particulars of compliance/Improvement |
|--------|--------|---|
| Count1 | Yes | Risk assessment was done |
| Count2 | Yes | Applied for and was awarded certificate of registration |
| Count3 | | |
| Count4 | | |

b) Percentage compliance (improvement) = $\frac{\text{Cumulative compliance}}{\text{Total number of counts}} \times 100\% = \frac{2}{2} = 100\%$

12. Remarks relating to the case:

i. By the interviewee/prosecutor/respondent (attach separate sheet if necessary).

.....Case successful.....
.....

ii. By the interviewerAbsolute compliance was achieved.....

.....

*(*delete if not applicable)*

**Analysis of a Case Prosecuted under the Occupational Safety and Health Act, 2007
between October 2007 and December 2010**

1. Name of the station. ...Kisii district DOSHS offices.....

2. Name of prosecuting officerKennedy O. Aroko.....

3. Is the officer trained on prosecution? Yes No

4. Date of offence...27/5/08...Date of lodgment...28/7/08. Case number..CR. 1577/08

5. Accused party(ies) i...Charles Kaba Ongere trading as Ng'ina Gisore General Stores.

ii.....

iii.....

iv.....

v.....

(if there are more accused party(ies), please attach list)

6. Particulars of previous

i Visits2 inspection visits.....

ii Warnings

iii Improvement notices1 improvement notices issued.....

iv Prohibition notices

v Prosecutions.....

vi Contravention letters...Dated 17/6/08 Ref P/K/37/08(1).....

7. Reasons for prosecution

...Failing to heed the contents of the contravention letter.....

.....

Table i

8. Details of charges.

| Charge | Summary of charge particulars. | Sections contravened |
|---------|---|----------------------|
| Count 1 | Operating a workplace without a certificate of registration | 44(5) |
| Count 2 | | |
| Count 3 | | |
| Count 4 | | |

9. Date of plea01/08/08.....

10. Current case status (Delete whichever is inapplicable)

- i. Case is ongoing.
- ii. Case has stay orders from high court.
- iii. Case concluded

Table ii

a) Summary of concluded cases

| Charge | Plea | Convicted | Discharged | Acquitted | Withdrawn* | Order made* | Penalty |
|---------|-----------|-----------|------------|-----------|------------|-------------|---------|
| Count 1 | Not Taken | | Yes | | Yes | Yes | |
| Count 2 | | | | | | | |
| Count 3 | | | | | | | |
| Count 4 | | | | | | | |

b) Reasons for withdrawal*...Applied for registration of the workplace.....

c) Particulars of the order(s) given* ...Discharged under section 87(a) of the CPC

.....

11. Was the workplace visited after case conclusion? Yes No

i. If No:

a) Please explain why

.....

b) Are there plans of making a visit in future to check compliance? (*please state how soon*).....

.....

.....

ii. If Yes:

a) Was there improvement on the matters raised as charges in the case No. CR 1577/08?

Table iii

Particulars of improvements

| Counts | Yes/No | Particulars of compliance/Improvement |
|--------|--------|---|
| Count1 | Yes | Applied for and was awarded certificate of registration |
| Count2 | | |
| Count3 | | |
| Count4 | | |

b) Percentage compliance (improvement) = $\frac{\text{Cumulative compliance}}{\text{Total number of counts}} \times 100 = \frac{1}{4} = 25\%$

12. Remarks relating to the case:

- i. By the interviewee/prosecutor/respondent (attach separate sheet if necessary).

.....None.....

.....

- ii. By the interviewerAbsolute compliance was achieved.....

.....

*(*delete if not applicable)*