

**AN INVESTIGATION INTO THE NATIONAL CONSTRUCTION  
AUTHORITY'S CHALLENGES IN REGULATING BUILDING  
CONTRACTORS: THE CASE OF MOMBASA COUNTY**

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**2015**

**An investigation into the national construction authority's challenges in  
regulating building contractors: the case of Mombasa County**

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**A thesis submitted in partial fulfillment for the degree of Master of  
Science in Construction Project Management**

**2015**



**DECLARATION**

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

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## **DEDICATION**

To my parents Paul Gacheru Thuita and Joyce Wacuka Gacheru

## **ACKNOWLEDGEMENT**

I thank all who in one way or another contributed in the completion of this thesis. First, I give thanks to God for protection and ability to do work.

I give deep thanks to the lecturers at the Department of Construction Management, the librarians, and other workers of the School of Architecture and Built Sciences. My special and heartily thanks to my supervisors, Dr. Diang'a and Dr. Kivaa whose expertise, understanding, and patience, added considerably to my graduate experience. Their challenges and supervision brought this work to a completion.

I want to acknowledge and appreciate the help and transparency of my informants, the NCA and contractors, during my research as their information has helped me complete this thesis. I am also so thankful to my fellow students whose challenges and productive critics have provided new ideas to the work.

Furthermore, I am thankful to Technical University of Mombasa Staff Development Program for supporting me to pursue my studies at Jomo Kenyatta University of Agriculture and Technology.

My gratitude goes to Dr. Obudho and Mr. Muli for their invaluable assistance and relentless pieces of advice that kept me going. I also thank my family who encouraged me and prayed for me throughout the time of my research.

## **TABLE OF CONTENTS**

<b>DECLARATION</b> .....	<b>ii</b>
<b>ACKNOWLEDGEMENT</b> .....	<b>iv</b>
<b>TABLE OF CONTENTS</b> .....	<b>v</b>
<b>LIST OF TABLES</b> .....	<b>viii</b>
<b>LIST OF FIGURES</b> .....	<b>ix</b>
<b>LIST OF APPENDICES</b> .....	<b>x</b>
<b>ABBREVIATIONS AND ACRONYMS</b> .....	<b>xi</b>
<b>ABSTRACT</b> .....	<b>xii</b>
<b>CHAPTER ONE</b> .....	<b>1</b>
<b>1.0 INTRODUCTION</b> .....	<b>1</b>
1.1 Background Information .....	1
1.2 Problem Statement .....	2
1.3 Objectives of the Study .....	3
1.4 Research Questions .....	3
1.5 Research Justification.....	4
1.6 Research Significance .....	4
1.7 Scope of the Study .....	5
1.8 Limitation .....	5
1.9 Operational Terms.....	5
1.10 Outline of the Thesis .....	6
<b>CHAPTER TWO</b> .....	<b>8</b>
<b>20. LITERATURE REVIEW</b> .....	<b>8</b>
2.1 Introduction .....	8

2.2 What is Regulation? .....	8
2.3 Requirements for Regulation .....	9
2.4 The National Construction Authority (NCA).....	11
2.4.1 The NCA Mandate .....	12
2.4.2 The NCA Regulations .....	13
2.4.3 The NCA Code of Conduct.....	14
2.3 Enforcing Regulation .....	16
2.3.1 Detecting: Identifying Non-Compliant and Undesirable Behaviour.....	17
2.3.2 Responding: Developing Rules and Tools .....	18
2.3.3 Enforcement: Strategies for Applying Tools .....	20
2.4 Policy Implementation in Developing Nations: The Nigerian Experience.....	23
2.5 Theoretical Framework .....	26
2.6 Conceptual Framework .....	29
<b>CHAPTER THREE .....</b>	<b>30</b>
<b>3.0 METHODOLOGY .....</b>	<b>31</b>
3.1 Introduction .....	31
3.2 Research Design.....	31
3.3 Target Population .....	31
3.4 Sampling Size and Sampling Procedures.....	32
3.5 Data Collection Method .....	34
3.6 Validity and Reliability of Data Collection Instruments.....	36
3.7 Methods of Data Analysis and Presentation .....	37
3.8 Operational Definition of Variables.....	37



<b>CHAPTER FOUR.....</b>	<b>40</b>
<b>4.0 RESEARCH FINDINGS AND DISCUSSION.....</b>	<b>40</b>
4.1 Introduction.....	40
4.2 Response Rate.....	40
4.3. NCA Category of Registration.....	40
4.4 Compliance Challenges Faced by Contractors.....	41
4.6 Weaknesses in the NCA Regulation Enforcement Strategies.....	44
4.7 Improvement of the NCA Regulation Process.....	47
4.8 Building Contractor Regulation by the NCA.....	50
4.9 Comparison of Contractors’ and NCA Perceptions on Regulation.....	56
4.10 Relationship between Weaknesses in the NCA Regulatory Structure and Contractor Compliance.....	64
<b>CHAPTER FIVE.....</b>	<b>67</b>
<b>5.0 SUMMARY, CONCLUSIONS AND RECOMMENDATIONS.....</b>	<b>67</b>
5.1 Introduction.....	67
5.2 Summary.....	67
5.3 Conclusion.....	75
5.4 Recommendation.....	77
5.5 Areas of Further Research.....	78
<b>REFERENCE.....</b>	<b>79</b>
<b>APPENDICES.....</b>	<b>85</b>

## LIST OF TABLES

<b>Table 1:</b> Regulatory tasks: the DREAM framework .....	16
<b>Table 2:</b> Registered building contractors in Mombasa.....	32
<b>Table 3:</b> Building contractors disproportionate stratified random samples .....	34
<b>Table 4:</b> Operational definition of variables.....	38
<b>Table 5:</b> Challenges faced by contractors in ensuring compliance .....	42
<b>Table 6:</b> Analyses of the weaknesses in the NCA regulatory structure .....	45
<b>Table 7:</b> Improvement of the NCA regulation process .....	48
<b>Table 8:</b> Comparison of contractors' and NCA perceptions on compliance.....	58
<b>Table 9:</b> Comparison of contractors' and NCA perceptions on NCA compliance strategies.....	62
<b>Table 10:</b> Challenges of contractor regulation by the NCA .....	65
<b>Table 11:</b> Summary of challenges of contractor compliance with NCA regulations..	68
<b>Table 12:</b> Summary of weaknesses of the NCA regulation compliance strategies.....	69
<b>Table 13:</b> Proposed improvement areas in the NCA regulation process.....	70
<b>Table 14:</b> Summary of comparison of contractors' and NCA perceptions on compliance .....	71
<b>Table 15:</b> Comparison of contractors' and NCA perceptions on NCA compliance strategies.....	72
<b>Table 16:</b> Summary of challenges of contractor regulation by the NCA.....	74

## LIST OF FIGURES

<b>Figure 1:</b> Conceptual Framework.....	30
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## **LIST OF APPENDICES**

<b>Appendix 1:</b>	Questionnaire for contractors.....	85
<b>Appendix 2:</b>	Interview schedule for NCA official.....	89
<b>Appendix 3:</b>	NCA categories of registration according to capability.....	90
<b>Appendix 4:</b>	NCA fee for application, registration and renewal.....	91

## **ABBREVIATIONS AND ACRONYMS**

<b>AAK</b>	Architectural Association of Kenya
<b>BIM</b>	Building Information Modeling
<b>BORAQS</b>	Board of Registration of Architects and Quantity Surveyors of Kenya
<b>CIDB</b>	Construction Industry Development Board
<b>CRB</b>	Contractors Registration Board
<b>EBK</b>	Engineers Board of Kenya
<b>KAPM</b>	Kenya Association of Project Managers
<b>KFMB</b>	Kenya Federation of Master Builders
<b>MoPW</b>	Ministry of Public Works
<b>NCA</b>	National Construction Authority
<b>NCC</b>	National Construction Cooperation
<b>NEMA</b>	National Environmental Management Authority
<b>OSHA</b>	Occupational Health and Safety Authority
<b>SME</b>	Small and Medium Sized Enterprises
<b>SPSS</b>	Statistical Package for the Social Science
<b>OECD</b>	Organization for Economic Co-operation and Development

## **ABSTRACT**

Cases of collapse of buildings which lead to subsequent loss of lives and property are prevalent in Kenya. This can be attributed to a variety of reasons which include poor designs and non-compliance, cost cutting and use of sub-standard material, lack of quality control, and use of incompetent contactors (Lidonga, 2014). The NCA is mandated to register and regulate the undertakings of contractors in Kenya. This research aimed at investigating and documenting the challenges of contractor registration and regulation by the NCA.

The research adopted a mixed design approach which incorporates both qualitative and quantitative elements of research. A sample population of 89 contractors from Mombasa County and an NCA official were used for this research. Data was collected from contractors using questionnaires and a follow up interview was then conducted with the NCA official in management level.

The research concluded that there is a relationship between weaknesses in the NCA regulatory structure and contractor challenges of compliance with regulation since most challenges identified were as a result of human resource constraints in the NCA. These challenges included: Inadequate capacity to detect errant behaviour in contractors by conducting frequent random surveys; Poor enforcement of regulations; Lack of adequate sensitization; and Poor attitude of contractors towards the NCA. The research recommended that the NCA should increase the human capital throughout the country to ensure timely inspections thus getting rid of deterrent contractor behaviour.

## **CHAPTER ONE**

### **1.0 INTRODUCTION**

#### **1.1 Background Information**

An important criterion for the success of regulatory reform is whether regulatory systems accomplish their policy objectives (OECD, 2000). Despite a massive increase in regulation and government-imposed formalities in most countries since the 1970s, results have too often been disappointing (Cheit, 2011). This has prompted most governments to examine how they can achieve their policy objectives more cost effectively through better regulation and different mixes of policy tools. This expansion of national focus is reflected in the establishment of the National Construction Authority (NCA) to regulate the construction industry in Kenya.

There is no single accepted definition of regulation applicable to the very different regulatory systems in individual countries. In the Organization for Economic Co-operation and Development work on regulatory reform, regulation refers to the diverse set of instruments by which governments establish requirements for enterprises and citizens (OECD, 2000). Regulations include laws, formal and informal orders, subordinate rules issued by all levels of government, and rules issued by non-governmental or self-regulatory bodies to whom governments have delegated regulatory powers (Hawkins, 2002).

Regulations are generally promulgated and maintained because they are expected to achieve concrete policy objectives that will increase the quality of life in society as a whole – by, for example, improving environmental quality, human safety and health, or consumer protection (Robert *et al.*, 2011). If a government wants to improve regulatory compliance, it must understand what the target group is doing in real life and use that understanding to inform regulatory design (Weait, 2005). The degree to which a target group complies with a regulation is based on how various characteristics of the target group interact with the design and quality of the regulation (OECD, 2000).

Contractors operating or willing to undertake construction operations in Kenya are required by law to register through the National Construction Authority (NCA), which is constituted under Act No. 41 of 2011 Laws of Kenya (G.O.K., 2011). The NCA is mandated to clear builders and contractors as a way of eliminating rogue contractors in Kenya and malpractices in building and construction. The Authority, which is tasked with the responsibility of inspecting construction and building projects around the country to ensure high quality of work and close projects posing health risks and collapse hazards, has provided the regulatory framework for registration and renewal of contractors (G.O.K., 2011). The NCA has published the National Construction Authority Regulations 2014, the Code of Conduct and Ethics for the Construction Industry, and the NCA Strategic Plan (2015-2020) to effectively regulate the construction industry in Kenya.

If the NCA wants to improve regulatory compliance, it must understand what challenges are faced by the contractor in real life and use that understanding to inform regulatory design. The degree to which the contractor will comply with the NCA regulations is based on how various characteristics of the contractor interact with the design and quality of the regulation (OECD, 2000).

## **1.2 Problem Statement**

The construction industry everywhere faces problems and challenges. However, in developing countries like Kenya, these difficulties and challenges are present alongside a general situation of socio-economic stress, chronic resource shortages, institutional weaknesses and a general inability to deal with the key issues (Aggarwal, 2003). Cases of collapse of buildings which lead to subsequent loss of lives and property are prevalent in Kenya. This can be attributed to a variety of reasons which include poor designs and non-compliance, greedy property owners, cost cutting and use of sub-standard material, lack of quality control, and use of incompetent contactors (Lidonga, 2014).

The NCA is mandated to clear builders and contractors as a way of eliminating rogue contractors in Kenya and malpractices in building and construction (G.O.K, 2012). The



Authority is tasked with the responsibility of inspecting construction and building projects around the country to ensure high quality of work and close projects posing health risks and collapse hazards (G.O.K., 2011).

If the NCA wants to ensure regulatory compliance, it must understand what challenges are faced by contractors and seek ways to curb these challenges through appropriate regulatory tools and strategies. The degree to which the contractor will comply with the NCA regulations is based on how various challenges faced by both the contractors and the Authority interact with the design and quality of the regulation (OECD, 2000). This research therefore aims at investigating the National Construction Authority's challenges in regulating building contractors and ensuring compliance to the NCA rules and regulations from the contractors' perspective.

### **1.3 Objectives of the Study**

The main objective of this study was to investigate and document the challenges of contractor registration and regulation by the NCA in Kenya.

The specific objectives are:

1. To investigate the challenges faced by contractors in ensuring compliance with NCA regulations.
2. To identify weaknesses in the NCA regulation enforcement strategies.
3. To investigate the relationship between weaknesses in the NCA regulatory structure and challenges of contractor compliance with NCA regulations.

### **1.4 Research Questions**

1. What are the challenges faced by contractors in ensuring compliance with NCA regulations?
2. What are the weaknesses in the NCA regulation enforcement strategies?
3. Is there a relationship between weaknesses in the NCA regulatory structure and challenges of contractor compliance with NCA regulations?

## **1.5 Research Justification**

The cases of building failures and consequent collapse of structures in Kenya had reached an alarming stage in the past few years (Kioko, 2014). A four-storey building that was partly under use though under construction in Mlolongo, along Mombasa Road, collapsed in on Saturday 9th June 2012 killing five people and ten others. A five-storey building under construction collapsed in the central business district in Nairobi, in January 2013 killing at least 11 and injuring dozens. During the same month, a building adjacent to Imperial Hotel in Kisumu city tumbled down killing at least 7 and scores of others (Kioko, 2014).

In addition to the collapsed structures, the NCA continues to inspect upcoming and existing construction sites to enhance compliance of the rules and regulations as stipulated in the NCA Regulations 2014. According to the NCA senior investigations officer interviewed by a local daily, over 2000 construction projects across the country had been marked out for closure because of flouting safety and building regulations (Beja, 2014). The affected buildings were in Nairobi, Machakos, Nakuru, Kiambu, Nyeri, Kisumu, Garissa, Eldoret, Isiolo, Kiambu, Kitengela and Mombasa. This figure indicates that there are challenges facing contractors and the NCA in implementing the NCA regulations. This research aims at conducting a detailed investigation into the implementation and compliance challenges of the NCA regulations in Kenya using Mombasa as a case study.

## **1.6 Research Significance**

An important criterion for the success of regulatory reform is whether regulatory systems accomplish their policy objectives (OECD, 2000). The objectives of the NA is to oversee the construction in industry in Kenya by maintaining sanity in the construction activities by enforcing compliance to the regulations set out in the National Construction Authority Regulations 2014, and the Code of Conduct and Ethics for the Construction Industry. Any challenges facing the NCA will subsequently increase non-compliance to the set regulations and as a result cases of collapsing buildings are likely

to keep occurring if left unchecked as construction activities increase. The results of this study provided suggestions of ways in which the NCA can mitigate the challenges under investigation in order to improve on implementation of its mandate of registering and regulating contractors in Kenya.

### **1.7 Scope of the Study**

The research majors on the NCA mandate of contractor regulation and ways of ensuring contractors adhere to the set regulations. The study investigates and documents the challenges faced by the authority in the delivery of its mandate to regulate contractor practices in Kenya considering the case of Contractors in Mombasa County. It further focuses on how contractors and the NCA would work together to improve the practices in the building industry.

### **1.8 Limitation**

The target population was all contractors in Kenya but due to resource and time constraints, the researcher conducted the study on contractors in Mombasa County. Mombasa is the second largest city in Kenya after Nairobi which is the capital city and has an estimated population of 1.2 million people. In a survey carried out in 2014 by the NCA to investigate non-compliance of construction projects, Mombasa County was victim to closure of at least 50 construction sites and as such could be used to give relevant information on the challenges facing the NCA in regulating contractors in Kenya.

### **1.9 Operational Terms**

**Accreditation** - accreditation is the procedure by which an authoritative body gives formal recognition that a person or firm in accordance to the standards and technical regulations, is competent to carry out specific tasks (EA, 2014).

**Code of Conduct** - the National Construction Authority Code of Conduct for the construction industry (G.O.K., 2015).

**Building contractor** - A building contractor is a group or a person who is in-charge of the construction, building, renovation or demolition of a building, road or structure (G.O.K., 2011).

**Certifications** - certification is the action performed by an independent third party, who verifies that product, process or service in question fulfills all the specified requirements of relevant standards, technical regulations or other normative acts in force (EA, 2014).

**Construction** - is a process that consists of the clearing, dredging, excavating, and grading of land and other activity associated with buildings, structures, or other types of real property such as bridges, dams, roads (G.O.K., 2011).

**Informal contractors** - contractors who are not registered according to the regulations of national or local governments and also very small and operating with little capital and with simple technology, using mostly local resources, and constructing in unregulated and competitive markets

**Mandate** - an official or authoritative instruction or command (Oxford, 2015).

**Qualified person** - a person who is recognized by virtue of his or her training and experience as having the necessary qualifications to undertake construction works in a specific category (G.O.K, 2012)

**Regulation** - regulation refers to the diverse set of instruments by which governments establish requirements for enterprises and citizens (OECD, 2000).

### **1.10 Outline of the Thesis**

The structure of the thesis comprised of five main chapters to ensure that all crucial components of the research were captured. Chapter one discusses construction industry and the challenges of regulating it. It also addresses the research problem in general, the objectives of the study, research questions, limitations and scope are stated and the study justified.

Chapter two has related studies on regulations of the construction industry. It also discusses various concepts of construction industry regulation globally and in the Kenyan context. Concepts and theories informing the study are identified.

Chapter three discusses the methodology used in conducting the study comprising the research design, population, data collection procedures and analysis. Chapter four presents analysis of the data and the results observed. Chapter five has recommendations and conclusion of the study.

## CHAPTER TWO

### 20. LITERATURE REVIEW

#### 2.1 Introduction

This chapter reviews literature related to challenges faced by regulation bodies in enforcing rules and regulations on the ground. This chapter highlights the NCA mandates, regulations and code of conduct with regards to regulation of contractors. In addition, it provides literature on the meaning of regulation, methods of detecting non-compliance and undesirable behaviour, development of rules and tools to deal with the problems discovered, and enforcement strategies for securing desired results on the ground.

#### 2.2 What is Regulation?

The term regulation has been defined in a number of ways. Regulation is often thought of as an activity that restricts behaviour and prevents the occurrence of certain undesirable activities ( Harlow *et al.*, 2009). Regulation can also be defined as sustained and focused control exercised by a public agency over activities that are valued by a community (Selznick, 1985). The latter definition is referred to as expressing a central meaning of the term regulation. The term regulation is however used in the following different senses (Robert *et al.*, 2011):

- As a specific set of commands - where regulation involves the promulgation of a binding set of rules to be applied by a body devoted to this purpose.
- As deliberate state influence - where regulation has a more broad sense and covers all state actions that are designed to influence business or social behaviour.
- As all forms of social or economic influence - where all mechanisms affecting behaviour, whether these be state-based or from other sources, are deemed regulatory.

Building regulations are statutory instruments that seek to ensure that the policies set out in the relevant legislation are carried out (Billington, Stephen, Keith , & Andrew, 2014). In Kenya, like in most leading economies, there are institutions established by various laws that serve to regulate the practice of professionals in construction. The Board of Registration of Architects and Quantity Surveyors (BORAQS) regulates the professional practice of architecture and quantity surveying in Kenya through setting standards and approving courses or training programs for its members (G.O.K., 2010). The Engineers Board of Kenya (EBK) registers engineers and engineering firms, regulates the practice of engineering in Kenya and sets standards among the professionals in Kenya's construction sector (G.O.K, 2011).

Contractors and sub-contractors are involved in the actual process of assembling different materials and erecting structures. Previously, contractors were registered by the now defunct Ministry of Roads and Public Works. Currently, all contractors are supposed to be registered and regulated by the National Construction Authority which came up upon the passing of the National Construction Authority Act No. 41 of 2011.

### **2.3 Requirements for Regulation**

The concept of contractor regulation is underpinned by the regulation theory (Billington *et al.*, 2014). Academic research has identified two basic schools of thought emerging from regulatory policy, as the positive theories of regulation and the normative theories of regulation (Jameson & Berg, 2008). The positive theories of regulation include an examination of “why regulation occurs”, and “group theory that describes the roles of stakeholders’ interest in regulation” (Robert *et al.*, 2011). The government’s solution with regulation requirement is to address the stakeholders’ individual interest such as consumer protection and ethical behavior by contractors (Billington, Stephen, Keith , & Andrew, 2014). To this end the government of Kenya has established the NCA to regulate the undertakings of all contractors and as such oversee the operations of the construction industry as a whole (G.O.K., 2011).

From a normative perspective the regulators encourage competition where feasible, and minimize the costs of information asymmetries (Robert *et al.*, 2011). Additionally, the regulatory authority is intended to improve consumer confidence and welfare (Billington, Stephen, Keith , & Andrew, 2014). In the scenario of consumer protection, the government through the NCA has introduced legislation and penalties to deter fraudulent behavior of contractors and ensure compliance.

Normative theories require the regulating authority to provide the stakeholder with information about the sector (Konisky, 2007). Konisky stated that “The necessity for occupational licensing has traditionally been justified on the basis of asymmetric information. The asymmetry arises when buyers are unable to differentiate the various services offered for sale in the market on the basis of quality.” Therefore, for the purpose of this research, we could surmise for example that the asymmetry arises when construction industry stakeholders are unable to determine whether or not the contractor they are dealing with is a holder of an appropriate license or certificate of registration.

Prior to 2012, construction industry stakeholders in Kenya had no access to information regarding the licensing status of the contractor that they were dealing with. But provisions now under the NCA Act of 2011 and the NCA Regulations 2014 requires the Authority to publish and maintain a public list of registered contractors for licensing checks on all contractors.

Therefore, prior to 2012, the government had information advantage, with regards to who held a license or certificate of registration under which ministry. This is generally referred to as information asymmetry. In Kenya, from 4<sup>th</sup> July 2012, the information about registered contractors available to the public includes the NCA registration number of the contractor, the name of the company, the town the contractor is located, the category and class of registration (GOK, 2014).

In a research paper undertaken by Jamison and Berg in 2008, the authors contended that governments establish regulation of services to “improve sector performance”, and



debated whether this implied to control market power and /or to facilitate competition, or to protect operation and customers from politically-driven decisions. However, it can be said that regulation of any industry requires a “control mechanism” from the regulator. In the case of occupational licensing, there does appear a trend to use educational requirements as the vehicle to determine acceptance of a license and the ongoing renewal process for the license.

#### **2.4 The National Construction Authority (NCA)**

The NCA is a state corporation under the ministry of public works created by the National Construction Authority Act 2011. The NCA was assented to on 2<sup>nd</sup> December, 2011 and operationalized on 8<sup>th</sup> June, 2012. It was formed with the main aim of consolidating and creating a well regulated construction industry that will promote sustainable socio-economic development (G.O.K., 2011).

The creation of the Authority was timely especially since all sectors in Kenya are geared towards ensuring the success of Vision 2030 and the construction industry is responsible for creation of infrastructure required by various sectors (G.O.K., 2007). In order to achieve the goals and aims of Vision 2030, the construction industry is under pressure to restore sanity in the industry which was currently a freewheeling industry.

Huge challenges abound in the Kenyan construction sector ranging from oligopolistic and monopolistic tendencies to unfair competition and substandard work especially amongst the small and medium-sized contractors (Gitau, 2008). These, coupled with complications and irregularities in the procurement value chain, could eventually lead to stunted growth of the industry. As such, there was a need to tame the industry as well as shape it in the face of new and emerging challenges such as liberalization and increased foreign competition. The NCA is independent and, being a recognized legal entity, will have the capacity to sue as well as be sued as it takes on its responsibilities.

### **2.4.1 The NCA Mandate**

According to the Oxford Dictionary, a mandate is an official order or commission to do something. As such, the NCA is mandated by the National Construction Authority Act 2011 to carry out the following (G.O.K., 2011):

- (a) Promote and stimulate the development, improvement and expansion of the construction industry;
- (b) Advise and make recommendations to the Minister on matters affecting or connected with the construction industry;
- (c) Undertake or commission research into any matter relating to the construction industry;
- (d) Prescribe the qualifications or other attributes required for registration as a contractor under this Act;
- (e) Assist in the exportation of services connected to the construction industry;
- (f) Provide consultancy and advisory services with respect to the construction industry;
- (g) Promote quality assurance in the construction industry;
- (h) Encourage the standardization and improvement of construction techniques and materials;
- (i) Initiate and maintain a construction industry information system;
- (j) Provide, promote, review and co-ordinate training programmes organized by public and private accredited training centers for skilled construction workers and construction site supervisors;
- (k) Accredite and register contractors and regulate their professional undertakings; and
- (l) Accredite and certify skilled construction workers and construction site supervisors.

This research focuses on the NCA mandate of accrediting, registering, and regulating professional undertakings of contractors. It aims at investigating challenges faced by the NCA in detecting errant behaviour, responding to errant behaviour and enforcing NCA regulations which may hamper effective regulation and create a gap in the realization of the Authority's objectives.

#### **2.4.2 The NCA Regulations**

The National Construction Authority Regulations 2014 are a set of rules and regulations that regulate the operations of the construction industry in Kenya. The Regulations were published in the Kenya Gazette by the Cabinet Secretary for Land, Housing and Urban Development on 6th June, 2014 through Legal Notice Number 74 of 2014. It contains rules and regulations pertaining to the following (G.O.K, 2014):

- (i) Registration of contractors
- (ii) Joint ventures
- (iii) Identification and reporting of construction works contracts or projects by owner
- (iv) Certification and accreditation of skilled construction workers and skilled supervisors
- (v) Collection and payment of construction levy
- (vi) Enforcement

The Regulations require that a contractor, whether foreign or local, be registered under the category of construction works (Works) they propose to undertake. The Works are classified under eight categories; NCA-1 to NCA-8, ranging in monetary value from unlimited value contracts (NCA-1 contract) to contracts valued for Kenya Shillings five million and below (NCA-8) (G.O.K., 2011). Registration under each category of the Works is on a point basis pegged on criteria such as financial capacity, experience, available equipment and technical expertise.

Any action, or default, which conflicts with the NCA Regulations, is unacceptable. The purpose of this research is investigate challenges facing the NCA in detecting the contractors' non-compliance to the NCA Regulations, responding to the non-compliance by formulating tools and strategies to deal with the behaviour and effectively enforcing the formulated tools and strategies on the ground in order to enhance compliance.

### **2.4.3 The NCA Code of Conduct**

The broad mandate of the National Construction Authority in Kenya under the NCA Act 2011 is to oversee the construction industry and coordinate its' development with a particular objective for the Authority to develop and publish a Code of conduct for the industry (G.O.K., 2011). The Code describes the rights and responsibilities of every player in the construction procurement value chain while laying the foundational principles for their harmonious relationship in service delivery and obligates all players to abide with their professional codes and regulations (G.O.K, 2013).

The Code of Conduct applies to the various parties involved in all construction works under the Act. The parties that may be directly and indirectly involved include the agent, contractor, employer, procuring agents, employee, client/employer representative, subcontractor, tenderer and the supplier (G.O.K, 2013). According to the Code of Conduct developed by the NCA, to achieve a healthy construction industry that delivers value to clients and society, the parties in any public or private construction contract procurement and execution should in their dealings with each other act in the best interests of the contract and particularly:-

1. Behave equitably, honestly and transparently.
2. Discharge duties and obligations in a timely manner and with integrity.
3. Comply with all applicable legislation and associated regulations.
4. Satisfy all relevant requirements established in procurement documents.
5. Avoid conflicts of interest.

6. Not maliciously or recklessly injure or attempt to injure the reputation of another party.

The Code of Conduct serves to establish the broad framework within which an action, or default, by any party to the procurement value chain may be judged (G.O.K, 2013). For the purpose of this research, the researcher narrowed down to the conduct of the contractor as stipulated in the Code. The conduct of a contractor or his employees should be as follows (G.O.K, 2013):

1. Act professionally

2. Undertake the contract with the objective of satisfying the requirements of the employer by observing the spirit as well as complying with the letter of the contract and, in pursuit of this objective, co-operate with all other parties in the procurement value chain.

3. Aim to meet all statutory and contractual obligations fully and timeously in regard to conditions of employment, occupational health and safety, training, fiscal matters and any other.

4. Not attempt to influence the judgment, or actions, of agents, employees, or representatives by inducements of any sort.

5. Employ subcontractors only on the basis of fair, unbiased, written subcontracts.

6. Not engage in unfair or unethical practices in dealings with subcontractors.

7. Not make spurious claims for additional payment or time extensions to the contract.

8. Not approach any client/ employer representative directly in connection with a contract, save to clarify on any matter for which such clarification may be sought;

9. Not undermine the development objectives of the employer through pursuit of interests contrary to the employers stated objective;

10. Not engage in collusive practices that have direct or indirect adverse impacts on the cost of the project to the employer.

Any action, or default, which conflicts with the code, is unacceptable. The purpose of this research is investigate challenges facing the NCA in detecting non-compliance to the Code of Conduct, responding to the non-compliance by formulating tools and strategies to deal with the behaviour and effectively enforcing the formulated tools and strategies on the ground in order to enhance compliance.

### 2.3 Enforcing Regulation

Applying regulatory controls on the ground involves the carrying out of a number of tasks. Even if it is assumed that regulatory objectives have been established with clarity, there is still much work to do. Information on risks, harms, and mischief creators has to be gathered, rules and other responses have to be devised, and the behavior of regulatees has to be modified (Robert *et al.*, 2007). An astute regulator, moreover, will also set about assessing whether current efforts are achieving the right results and whether there is a need to change strategy in order to improve performance (Billington, 2014). It is accordingly useful to think of enforcement, in its narrow ‘behavior modification’ sense, as just one part of the broader regulatory process - a process that involves five core tasks termed as the ‘Dream Framework’ (Robert *et al.*, 2007) as shown in Table 2.

**Table 1: Regulatory tasks: the DREAM framework**

<b>Detecting</b>	<b>The gaining of information on undesirable and non-compliant behaviour</b>
1. Responding	The developing of policies, rules, and tools to deal with the problems discovered
2. Enforcing	The application of policies, rules, and tools on the ground
3. Assessing	The measuring of success or failure in enforcement activities
4. Modifying	Adjusting tools and strategies in order to improve compliance and address problematic behaviour

*Source: (Robert et al., 2011)*

### **2.3.1 Detecting: Identifying Non-Compliant and Undesirable Behaviour**

Uncovering undesirable behaviour through detection is a first step in regulatory enforcement (Oded, 2013). Detection challenges are, however, often severe. Enforcers frequently face extreme difficulties in detecting errant behaviour when the regulated community is extensive and where breaching rules is cheap and easily carried out in a clandestine manner (Konisky, 2007). Resourcing realities often mean that enforcers have to rely on tip-offs from the public or hotlines and whistleblowing processes (Oded, 2013).

Resourcing constitutes a perennial constraint on detection (Oded, 2013). In many controlled areas the calculation of levels of compliance and the incidence of ‘off the-screen’ activity would demand the operation of registration schemes or the carrying out of surveys, but funds may not permit such activities (OECD, Oecd Best Practice Principles for Regulatory Policy Regulatory Enforcement and Inspections, 2014). In other domains, such surveys are conducted and, in many sectors, programmes of random inspection are used to obtain relevant data (OECD, Oecd Best Practice Principles for Regulatory Policy Regulatory Enforcement and Inspections, 2014). In yet other areas, detection can only be carried out after the event, and this impedes precautionary intervention (Robert *et al.*, 2007). In responding to these challenges, regulators must first develop clear conceptions of their aims and an appropriate disaggregation of those objectives into subsidiary aims so that achievable targets can be set and problems identified in a manageable way. If this is not done, the regulators will not know what sort of errant behaviour they need to detect.

Second, in such a state of flux it is essential to be able to identify levels and patterns of compliance that pose challenges (Oded, 2013). New methods of avoiding the rules or concealing non-compliance may be devised constantly. Enterprises may be creatively complying with, or breaking, the rules in innovative ways. A regulator, accordingly, needs to be able to detect not merely the levels of any non-compliance with

requirements but also the extent of any ‘off-the-screen’ or ‘invisible’ black market activity that affects the achieving of the agency’s legitimate objectives ( Harlow *et al.*, 2009). Third, regulators have to assess the extent to which compliance with the relevant legal requirements will not be enough to achieve agency objectives (Jameson & Berg, 2008). In a world of change, with new problems and strategies for escaping the rules, it is essential to know, in a continuing manner, the gap between rules and objectives (Robert *et al.*, 2007)

In conclusion, this research is aimed at investigating whether the NCA is facing challenges in detection of undesirable behaviour from contractors. The research is guided by the challenges highlighted by the various researchers reviewed. These challenges include an extensive regulated community (Konisky, 2007), an environment where breaching rules is easily carried out (Konisky, 2007), relying on tip-offs from the public or hotlines and whistleblowing processes (Oded, 2013), resourcing constraint (Oded, 2013), inadequate surveys and programmes of random inspection (OECD, 2014), detection after an event has occurred (Robert *et al.*, 2007), and the existence of a gap between rules and objectives (Robert *et al.*, 2007).

### **2.3.2 Responding: Developing Rules and Tools**

A second core task of regulatory enforcement is the development of those rules and tools that are fit for purpose both in detecting non-compliance or undesirable behaviour and in producing compliance with relevant requirements (Robert *et al.*, 2007). The absence of a relevant tool such as a power to fine on the spot may be seen by enforcers as a significant impediment to effective control. Enforcers are, however, often constrained in their development of new tools by factors such as institutional environments and legislation governing operations of the regulator (OECD, Oecd Best Practice Principles for Regulatory Policy Regulatory Enforcement and Inspections, 2014). Legislation may often be needed in order to introduce new powers, and it is common for officials to consider that new legislation an unrealistic political prospect.



Existing bodies of legislation are often seen as constraints on the use of new tools and uncertainties in legislative requirements tend to blight creative approaches to new tools (OECD, 2014). Government policies and institutional factors are also often seen as an impediment to new tool use especially when these involve dispersions of regulatory responsibility across numbers of bodies or where attention is directed at enforcing existing tools to the detriment of forward looks at new powers (Robert *et al.*, 2007). Resource constraints constitute a hurdle especially where these stand in the way of the surveying or inspection exercises that are needed in order to reveal the true incidence of non-compliance or unwanted activity and hence the need for new tools and strategies (Oded, 2013).

Not all kinds of rule can be enforced with the same degree of success. Rules may fail for a number of reasons, for example, because they are too vague or too long and complex to understand readily or to enforce; or because they prohibit desirable behaviour or they do not cover certain undesirable conduct (Konisky, 2007). Rules, moreover, have to be employed by enforcers in conjunction with different compliance-seeking strategies - be these prosecutions, or processes of persuasion, negotiation, advice, education, or promotion (Robert *et al.*, 2007). Different enforcement strategies may thus call for different kinds of rule. If prosecutions are the main mode of enforcement, this may call for precise rules so that guilt or innocence can be established easily (Jameson & Berg, 2008).

As to the selection of enforcement strategies and accompanying rule types, it has been argued that this requires an analysis of the kinds of regulatee being dealt with (Billington, 2014). If the regulatee is well-intentioned (i.e. wishes to comply) and is ill-informed (about legal requirements or how to meet these), prosecution may be a lower priority than educating and promoting— since information rather than a big stick is required. Accessible rules will, accordingly, be useful. The well-intentioned, well-informed regulatee will be able to cope with more detailed rules. The ill-intentioned, ill-informed category may demand a higher level of prosecution and, accordingly, precise

rules will be in order. Finally, the ill-intentioned, well-informed regulatee will demand strategies, rules, and sanctions that can cope with deliberate rule avoidance, and mixtures of general and specific rules may be appropriate.

Effective enforcement thus calls for judgments to be made concerning blends of enforcement strategies and the rule types that will best produce compliance. This suggests that informers and rule-makers should ask the following questions to allow strategies and rules to be designed accordingly:

1. What is the undesirable behaviour, or mischief at issue?
2. Who is responsible for the mischief?
3. Which enforcement strategies will best lead the mischief creators to comply?
4. Which types of rules best complement those strategies?

In conclusion, the research aims at investigating the challenges faced by the NCA in formulating policies, strategies and tools that will best produce compliance in contractors. The challenges to be investigated are guided by challenges identified by various authors and they include: legislation governing operations of the regulator (OECD, *Oecd Best Practice Principles for Regulatory Policy Regulatory Enforcement and Inspections*, 2014), existing bodies of legislation (OECD, 2014), dispersions of regulatory responsibility across numbers of bodies (Robert *et al.*, 2007), resource constraints (Oded, 2013), vague rules, too long and complex rules, and rules that do not cover certain undesirable conduct (Konisky, 2007), lack of compliance-seeking strategies (Robert *et al.*, 2007), lack of precise prosecution rules (Jameson & Berg, 2008), the kind of regulatee being dealt with (Billington, 2014).

### **2.3.3 Enforcement: Strategies for Applying Tools**

Enforcement is a matter of deploying a strategy or mixture of targeted strategies for securing desired results on the ground (Macrory, 2014). Regulatory officials seek to gain compliance using a host of informal techniques including education, advice, persuasion, and negotiation (Robert *et al.*, 2007). Macroy has drawn a distinction between two

approaches to enforcement: the compliance approach, which emphasizes the use of measures falling short of prosecution in order to seek compliance with laws, and the deterrence approach which is adversarial, litigious, and penal and uses prosecutions in order to deter future infractions.

Within the compliance approach, Macrory distinguished two sub-strategies that are termed as the persuasive and the insistent approaches. Both aim to secure compliance, but the persuasive approach is more accommodating. The regulator educates and persuades offenders into complying with the law. They explain rationales for laws and possible means of compliance, and do so in a patient, open-ended way. The insistent strategy is less flexible and there are defined limits to the tolerance of officials who will increase pressures when compliance is not forthcoming within a limited period.

On the relative effectiveness and desirability of compliance and deterrence approaches to enforcement, there are a number of conflicting arguments. Proponents of deterrence tend to argue that compliance approaches are indicative of capture, lack of enforcement resources, and of regulator and regulatee having sufficient identification with each other as to make routine prosecution unthinkable (Thomas & Nitish , 2015). In favour of compliance, however, it is often argued that this approach offers an efficient, cost-conscious use of resources and can be justified as economically rational, rather than indicative of capture (Macrory, 2014). Prosecutions are so costly in time and money that selective use of less formal mechanisms may produce higher levels of compliance for a given level of state expenditure than is possible with routine prosecution (Robert *et al.*, 2007).

Compliance approaches are said to be better than deterrence strategy in fostering valuable information flows between regulators and regulated; in educating regulatees so that they think constructively about modes of compliance; and in encouraging firms to perform to higher standards than the law calls for (Macrory, 2014). Deterrence approaches, in contrast, are based on claims that they can prove highly effective in changing corporate cultures and stimulating management systems that reduce the risks

of infringement (Harlow *et al.*, 2009). Tough approaches to enforcement, say deterrence advocates, make it rational for firms to give a high priority to compliance. (Macrory, 2014)

In order to ensure the effectiveness of deterrence approaches to enhancing compliance, the fines imposed on an offender should be sufficiently severe to incentivize compliance beyond the immediate case (Robert *et al.*, 2007). However, this is usually not the case for the various reasons. A large fine may be seen as threatening an errant company's solvency and employees' livelihoods or it may be viewed as depriving the rule breaker of the liquidity that is needed to remedy the mischief at issue (Oded, 2013). Whatever the cause, the frequent effect is under-inducement to comply (Robert *et al.*, 2007).

The regulatees may reduce the probability of facing the deterrence approach by exercising creative compliance, bringing pressure to bear on the regulator (to discourage prosecution); shifting risk or blame on to the shoulders of individuals or outsourced business partners; or evasion, non-cooperation with regulators, and concealment (Oded, 2013). On rational deterrence assumptions, companies will balance the costs and benefits of compliance with the expected costs and benefits of non-compliance, and will choose the combinations of risk-reducing responses that maximize benefits over costs (Macrory, 2014). The predominant position is, however, that many companies operate largely unaware of their exposure to punitive regulatory risks, and the overall evidence is not highly consistent with effective and rational regimes in which anticipated penalties stimulate compliance.

Another difficulty faced by deterrence approaches is that they can often prove inflexible; they may fail to identify the best ways to improve performance; and they may cause resentment, hostility, and lack of cooperation in those regulated (Robert *et al.*, 2007).. Where such resistance is forthcoming from regulated parties, this, in turn, is likely to reduce the effectiveness of enforcement, as well as increase overall costs (Macrory, 2014). Compliance strategies, on the other hand, can provide responses to risks (as opposed to harms actually inflicted) and can do so more effectively than deterrence

approaches (Oded, 2013) . They can thus prevent more harm from occurring (Macrory, 2014).

To summarize the argument between the compliance and deterrence approaches, Ian Ayres and John Braithwaite comment: ‘To reject punitive regulation is naive; to be totally committed to it is to lead a charge of the light brigade. The trick of successful regulation is to establish a synergy between punishment and persuasion.’ (Braithwaite & Ian, 2004).

In conclusion, the research was aimed at investigating into the challenges faced by the NCA in enforcing rules and regulations on contractors and ensuring compliance. The challenges investigated were based on extensive literature review which highlighted the main challenge to be the use of either the compliance approach or the deterrence approach (Macrory, 2014), as a strategy to applying rules and tools used to deal with deterrent behaviour and hence enhance compliance. The pros and cons of both approaches were highlighted and the summary of the argument stated that a balance between the two approaches was most efficient for successful regulation.

#### **2.4 Policy Implementation in Developing Nations: The Nigerian Experience**

It has been observed that policy implementation is one of the major problems confronting developing nations (Makinde, 2005). Policy implementation refers to the activities that are carried out in the light of established policies (Salamon, 2002). It refers to the process of converting financial, material, technical and human inputs into outputs – goods and services (Peters, 2001).

Implementation problem occurs when the desired result on the target beneficiaries is not achieved (Makinde, 2005). Wherever and whenever the basic critical factors that are very crucial to implementing public policy are missing, whether in developing or developed nations, there is bound to be implementation problem. These critical factors are communication, resources, dispositions or attitudes, and bureaucratic structure

(Matland, 2003). The four factors operate simultaneously and they interact with each other to aid or hinder policy implementation.

Stripped of all technicalities, implementation problem in most developing nations is the problem of a widening gap between intentions and results (Pressman & Wildavsky , 2002). Honadle tried to identify the problem associated with policy implementation using the following quote:

*“Implementation is the nemesis of designers, it conjures up images of plans gone awry and of social carpenters and masons who fail to build to specifications and thereby distort the beautiful blue prints for progress which were handed to them. It provokes memories of “good” ideas that did not work and places the blame on the second (and second-class) member of the policy and administration team... (Honadle, 2000)”*

The above quotation shows the importance that is attached to policy implementation and those that are responsible for implementing these policies. It also shows that no matter how beautiful the blueprint of a programme is, a defective implementation of it will make nonsense of the whole programme (Olabisi, 2011). Unfortunately, the situation as described by Honadle above is what goes on in most developing countries, Kenya inclusive.

Policy failure occurs when there is a sizeable gap between a policy decision and its implementation (Matland, 2003). Such a gap is characterized, for example, by the rich getting richer and the poor getting poorer in spite of stated policy goal to the contrary ( Salamon, 2002). Implementation gap thus manifests in the “widening of the distance between stated policy goals and the realization of such planned goals” (Pressman & Wildavsky , 2002).

Implementation gap can arise from the policy itself when such a policy emanates from government rather than from the target groups (Matland, 2003). By this, it means that planning is top-down. And, by implication, the target beneficiaries are not allowed to contribute to the formulation of the policies that affect their lives ( Salamon, 2002). This

is usually what happens in most developing nations as it happened in the case of the Better Life Programme (BLP) and the Family Support Programme (FSP) in Nigeria (Olabisi, 2011).

Policy implementation can also fail due to serious problems of bribery and corruption which have contributed greatly to the failure of policy implementation in developing countries. For example, implementation problem may arise in a situation where huge amounts are earmarked for a project but the officers in charge of implementation steal such amounts or a substantial part of the amounts.

An over-ambitious policy such as the “free education for all” in some of the southern states in Nigeria can lead to policy failure (Matland, 2003). The rate at which private institutions are being established in Nigeria shows that the public has lost confidence in public schools due to its ineffectiveness (Olabisi, 2011). Even many of those who are sometimes considered as illiterates in the society now prefer to send their children to fee-paying primary and secondary schools. They seem to have lost confidence in the free primary and secondary institutions. This is a pointer to the inability of government or its agents to successfully implement the free education policy due to its comprehensiveness.

It should also be noted that for policies to be successful they should involve target groups and they should allow for participatory system, whereby policy makers plan with the people rather than for the people in meeting their felt needs (Matland, 2003). Such participation will give the target groups a sense of belonging as well as get them committed to the successful implementation of the policy.

For any government to be judged to be administratively competent there must be evidence of bridging the gap between the intention of a policy and the actual achievement of the policy (Salamon, 2002). This is where it becomes necessary for any policy maker, be it government or non-governmental organization, to take the issue of policy implementation seriously even at the formulation stage. Towards a successful

policy implementation, therefore, consideration should be given to the following (Matland, 2003):

(a) Target beneficiaries should be involved at the formulation stage in order for them to have an input in what affects their lives. This will also give them a sense of belonging and, therefore, a sense of commitment.

(b) Attention should be paid to both the manpower and financial resources which will be needed to implement the policy.

(c) There must be effective communication between the target beneficiaries and the implementers of policy programmes.

(d) The culture of discontinuing a policy once there is a change in government should be discouraged because even though government comes and goes, administration is continuous. There should be continuity in policy except if the policy is found not to be useful to the people.

(e) Provision should be put in place for adequate monitoring of projects, as poorly monitored projects will only yield undesired results.

## **2.5 Theoretical Framework**

The theoretical framework backing this research is the economic theory of registration. 'Economic regulation' typically refers to 'government imposed restrictions or firm decisions over price, quantity, entry and exit (Viscusi *et al.*, 2005, p. 355). Under regulation, either a fixed price or range may be stipulated. Quantity may be restricted to a defined amount of goods or services produced or sold. Control of entry/exit may take the form of ceiling the entry/exit of new firms or controlling the entry/ exit of existing firms.

There are two broad traditions with respect to the economic theories of regulation. The first tradition assumes that regulators have sufficient information and enforcement powers to effectively promote the public interest. This tradition also assumes that



regulators are benevolent and aim to pursue the public interest. Economic theories that proceed from these assumptions are therefore often called ‘public interest theories of regulation’ (Hertog, 2010).

Another tradition in the economic studies of regulation proceeds from different assumptions. Regulators do not have sufficient information with respect to cost, demand, quality and other dimensions of firm behavior (Viscusi *et al.* 2005). They can therefore only imperfectly, if at all, promote the public interest when controlling firms or societal activities. Within this tradition, these information, monitoring and enforcement cost also apply to other economic agents, such as legislators, voters or consumers. And, more importantly, it is generally assumed that all economic agents pursue their own interest, which may or may not include elements of the public interest.

Under these assumptions there is no reason to conclude that regulation will promote the public interest. The differences in objectives of economic agents and the costs involved in the interaction between them may effectively make it possible for some of the agents to pursue their own interests, perhaps at the cost of the public interest (Viscusi *et al.*, 2005). Economic theories that proceed from these latter assumptions are therefore often called ‘private interest theories of regulation’ (Hertog., 2010).

A distinction is often made between economic and social regulation (Viscusi *et al.*, 2005). Two types of economic regulations can be distinguished: structural regulation and conduct regulation. Structural regulation concerns the regulation of the market structure. Examples are restrictions on entry or exit, and rules mandating firms not to supply professional services in the absence of a recognized qualification (Hertog, 2010). Economic regulation is mainly exercised on so-called natural monopolies and market structures with imperfect or excessive competition. The aim is to counter the negative welfare effects of dominant firm behavior and to stabilize market processes.

The economic literature distinguishes between positive and normative economic theories of regulation. The positive variant aims to provide economic explanations of regulation and to provide an effect-analysis of regulation while the normative variant investigates

which type of regulation is the most efficient or optimal (Overman *et al.*, 2005). The latter variant is called normative because there is usually an implicit assumption that efficient regulation would also be desirable.

The public interest theory of regulation proceeds from the assumptions of full information, perfect enforcement and benevolent regulators. According to this theory, the regulation of firms or other economic actors contributes to the promotion of the public interest. This public interest can further be described as the best possible allocation of scarce resources for individual and collective goods and services in society.

In western economies, the allocation of scarce resources is to a significant extent coordinated by the market mechanism. In theory, it can even be demonstrated that, under certain circumstances, the allocation of resources by means of the market mechanism is optimal. Because these conditions do frequently not apply in practice, the allocation of resources is not optimal from a theoretical perspective and a quest for methods of improving the resource allocation arises (Bator, 1958). This situation is described as a market failure. A market failure is a situation where scarce resources are not put to their highest valued uses. Regulation in the case of market failure is argued to be justified because the uncontrolled market place will, for some reason, fail to produce behaviour or results in accordance with the public interest (Robert *et al.*, 2011).

One of the methods of achieving efficiency in the allocation of resources when a market failure is identified is government regulation (Robert *et al.*, 2011). In the earlier development of the public interest theories of regulation, it was assumed that a market failure was a sufficient condition to explain government regulation. But soon the theory was criticized for its Nirvana approach, implying that it assumed that theoretically efficient institutions could be seen to efficiently replace or correct inefficient real world institutions.

The NCA regulations of 2012 were developed to exemplify the standards for social responsibility and ethical behavior within the construction industry. Regulatory theory argues over the necessity for regulation. The Positive theories of regulation examine the

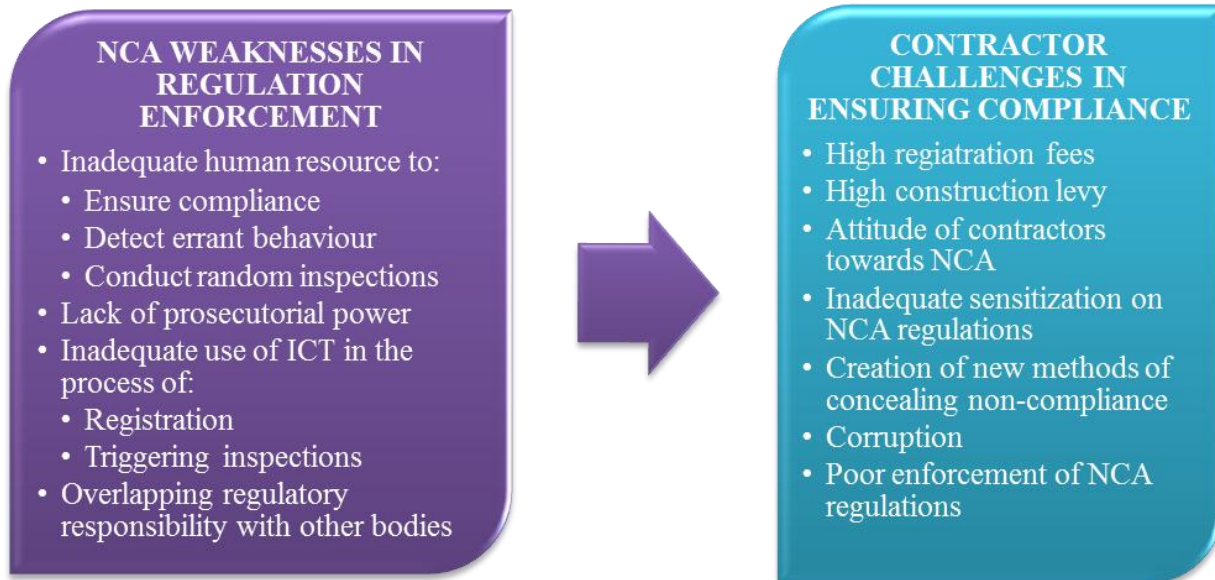
reason and need for regulation whilst the normative theories of regulation will generally include transparency, predictability and credibility for the regulatory system. With regards to the construction industry, the government is also interested in overcoming information asymmetries.

## **2.6 Conceptual Framework**

A conceptual framework is a visual or written product that explains, either graphically or in narrative form, the main things to be studied such as the key factors, concepts, or variables and the presumed relationships among them.

The conceptual framework for the research was based on the public interest theory of regulation. The theory assumes that regulators (such as the NCA) have sufficient information and enforcement powers to effectively promote the public interest (Hertog, 2010). This tradition also assumes that regulators are benevolent and aim to pursue the public interest. The NCA is mandated to regulate the construction industry by among other things regulating the undertakings of contractors to ensure that only professional contractors accredited by the Authority engage in construction works. This looks out for the public interest by ensuring that they are not put at risk by sub-standard construction works undertaken by quack contractors. Such construction works may lead to loss of lives and property of unsuspecting Kenyans.

The NCA therefore seeks to ensure compliance of contractors with the NCA regulations in order to get rid of unqualified contractors in the construction industry (G.O.K., 2011). This research aims at identifying contractor perceived challenges faced by the NCA in registering and regulating contractors and the relationship between weaknesses in the NCA regulations and challenges facing contractors in registration and regulation by the NCA. Finally, the research aimed at proposing mitigation strategies for the challenges of contractor registration and regulation by the NCA. Figure 6 visualizes the conceptual framework for the research.



**Figure 1: Conceptual Framework**

## **CHAPTER THREE**

### **3.0 METHODOLOGY**

#### **3.1 Introduction**

This chapter focuses on basic research techniques and methods used to validate study objectives. It includes research design, the target sample, sampling procedures and methods of data collection. It also looks into validity and reliability of the collected data, the collection tools, how data was presented and the data analysis techniques.

#### **3.2 Research Design**

The research adopted a mixed design approach which incorporates both qualitative and quantitative elements in such a way that the qualitative and quantitative information complements each other (Creswell, 2013). Using the quantitative approach, the researcher was able to ask questions whose responses were given using the Likert scale of “Strongly Agree”, “Agree”, “Undecided”, “Disagree”, and “Strongly Disagree”. A final open-ended question of “Ways in which the NCA can improve on their current regulation process for effective registration and regulation of contractors in Kenya” was asked in the questionnaire to generate qualitative data to provide context. The advantage of a mixed methods approach is that it balances efficient data collection and analysis with data that provides context (Maxwell, 2012).

#### **3.3 Target Population**

The target population in this study was all contractors in Mombasa County, home to Kenya’s second largest city Mombasa. The contractors were identified from the National Construction Authority Register after applying a filter of Mombasa as the town the contractor is registered under. The number of contractors registered in Mombasa County as at January 2015 were 538 in total as shown in Table 4 (G.O.K., 2015). The research further established that the contractors registered under Mombasa were actually carrying out construction work in Mombasa County.

**Table 2: Registered building contractors in Mombasa**

	<b>Category</b>	<b>No. of Registered Contractors</b>
<b>1</b>	NCA 1	6
<b>2</b>	NCA 2	13
<b>3</b>	NCA 3	20
<b>4</b>	NCA 4	69
<b>5</b>	NCA 5	59
<b>6</b>	NCA 6	136
<b>7</b>	NCA 7	189
<b>8</b>	NCA 8	46
	<b>Total</b>	<b>538</b>

Source: <http://www.nca.go.ke/index.php/contractors-center/search-registered-contractors>  
accessed 30th January, 2015

The NCA officials were also targeted in this research in order to obtain information intended at rebutting responses from contractors. An interview schedule was used to collect information from the NCA in order to clarify issues highlighted by contractors in the questionnaire. Such information can be obtained from the NCA CEO, or from Board members, management or mid-level management officials at the NCA. One interview was adequate for purposes of this research as the main target group was contractors.

### **3.4 Sampling Size and Sampling Procedures**

The sampling procedure used for this research is the disproportionate stratified random sampling. Disproportionate stratified sampling is a stratified sampling procedure in which the number of elements sampled from each stratum is not proportional to their representation in the total population (Creswell, 2013). In this sampling procedure,

different sampling fractions are applied to each stratum and as such the sampling procedure is not an equal probability selection method sampling procedure.

In order to estimate population parameters, the population composition must be used as weights to compensate for the disproportionality in the sample (Walliman, 2011). Disproportionate stratified random sampling offers several advantages over simple random sampling. Firstly, a stratified sample can provide greater precision than a simple random sample of the same size. Because it provides greater precision, a stratified sample often requires a smaller sample, which saves money. A stratified sample can guard against an "unrepresentative" sample (e.g., an NCA 8 and NCA 7 sample in a population comprised of NCA1-NCA 8).

The population of registered contractors in Mombasa County was established to be 538. From this, a sample of 89 contractors was obtained using a sample size calculator. Sample sizes for each stratum were determined by the following equation and the results tabulated in Table 3:

$$n_h = (N_h / N) \times n$$

Where:  $n_h$  is the sample size for stratum  $h$ ,  $N_h$  is the population size for stratum  $h$ ,  $N$  is total population size, and  $n$  is total sample size.

**Table 3: Building contractors disproportionate stratified random samples**

Stratum	Population Size		Sample size
	Frequency	Percentage	
1 NCA 1	6	1.1%	3
2 NCA 2	13	2.4%	5
3 NCA 3	20	3.7%	7
4 NCA 4	69	12.8%	12
5 NCA 5	59	11.0%	11
6 NCA 6	136	25.3%	20
7 NCA 7	189	35.1%	21
8 NCA 8	46	8.6%	10
<b>Total</b>	538	100%	89

### **3.5 Data Collection Method**

Data collection was done using questionnaires. This was owing to the large number of contractors sampled for the survey, large amounts of information was to be collected within a short period of time and in a relatively cost effective way (Creswell, 2013). The results of the questionnaires were can be quickly and easily quantified by the researcher using the SPSS software package since the responses from the questionnaire are highly structured and easily coded as opposed to the use of an interview schedule.

The questionnaires used comprised of Likert Scale (strongly agree -strongly disagree) questions for the body and an open ended question for the conclusion. The Likert Scale is a psychometric response scale primarily used in questionnaires to obtain participant's preferences or degree of agreement with a statement or set of statements (Garson, 2013).



According to Garson, the advantage of the Likert Scale is that it is the most universal method for survey collection, therefore it is easily understood. The responses are easily quantifiable and subjective to computation of mathematical analysis.

Since Likert Scale questions do not require the participant to provide a simple and concrete yes or no answer, it does not force the participant to take a stand on a particular topic, but allows them to respond in a degree of agreement; this makes question answering easier on the respondent. Also, the responses presented accommodate neutral or undecided feelings of participants. Finally, the responses are very easy to code when accumulating data since a single number represents the participant's response.

Open-ended questions are exploratory in nature and allow the respondent to provide any answer they choose without forcing them to select from concrete options (Creswell, 2013). Open-ended questions provide rich qualitative data and provide the researcher with an opportunity to gain insight on all the opinions on a topic under research (Maxwell, 2012). The researcher therefore asked an open-ended question on ways in which the NCA can improve on their strategies for ensuring contractors' compliance with their regulations in order to gain more information on any areas that may not have been covered in the questionnaire.

Questionnaires were administered both by email and by hand to the sample population, filled out and collected within between 1<sup>st</sup> February, 2015 and 28<sup>th</sup> February, 2015. The researcher contacted the contractors through the phone and was able to establish the present location of the contractors owing to the nature of their jobs. The researcher then emailed questionnaires to all contractors and hand delivered others to those who requested to be found on construction sites they were currently undertaking within Mombasa County.

Data from the NCA official was collected using a structured interview schedule and recording was done by both note taking and tape recording. An interview as opposed to a questionnaire was used in order to obtain more information by using probing questions were necessary. Tape recording was used to record data from the interviewee in order to

obtain information that may have been omitted during note taking. Data recorded using both methods were then synchronized to obtain coherent answers to the open ended interview schedule.

### **3.6 Validity and Reliability of Data Collection Instruments**

Reliability is defined as the extent to which a questionnaire, test, observation or any measurement procedure produces the same results on repeated trials (Maxwell, 2012). There are different methods of assessing reliability in data and they include the test-retest, equivalent-form, split-half and internal consistency (Mugenda & Mugenda, Research Methods: Qualitative and Quantitative Approaches, 1999). The researcher selected the internal consistency approach because multi-scale responses (Likert Scales) uses in the questionnaire. The internal consistency of the questionnaire was determined from scores obtained from a single test administered by the researcher in January 2015 to a pilot sample of 8 contractors obtained randomly by selecting one contractor from each NCA category from the sample of 89 already obtained. In this approach, a score obtained in one item is correlated with scores obtained from other items in the instrument and Cronbach's Coefficient Alpha computed to determine how items correlate among themselves (Creswell, 2013). A Cronbach's Coefficient Alpha of 0.7 was obtained by running the Cronbach's Alpha test using the reliability command in SPSS. To interpret the output, the rule of Mallery and George was used indicating that a result of 0.7 was acceptable (Mallery & Goerge, 2003).

Validity is the accuracy and meaningfulness of inferences, which are based on the research results (Mugenda & Mugenda, Research Methods: Qualitative and Quantitative Approaches, 1999). In other words, validity is the degree to which results obtained from the analysis of the data actually represents the phenomenon under study (Creswell, 2013).

Validity is defined as the extent to which the instrument measures what it purports to measure. To ensure content validity, the researcher ensured that the questionnaires fully assessed and measured the construct of interest which was the challenges facing the

NCA in the implementation of its mandate in relation to regulation of contractors while at the same time ensuring the readability, clarity and comprehensiveness of the questions.

### **3.7 Methods of Data Analysis and Presentation**

Data analysis involved preparation of the collected data, coding, editing and cleaning of data that was processed using Statistical Package for Social Sciences (SPSS). SPSS was preferred because it is very systematic and covers a wide range of the most common statistical and graphical data analysis. The researcher used descriptive statistical measures such as percentages, frequencies, mean score and standard deviations. The results were presented using tables and figures for ease of understanding.

The open ended question asked on ways in which the NCA can improve on their strategies for ensuring contractors' compliance with their regulations was analyzed using NVivo, a computer software program used for analysis of qualitative data. Each question from the 84 questionnaires collected was carefully read through to identify common themes. Codes were then developed with each theme having a unique code. Using NVivo, codes and their associated text passages were linked, amassing a data set of codes and their frequency of use. Codes similar in nature were grouped together to define themes; the clustered frequencies represented as grouped themes, or "parent" categories, describe both the range and relative weighting of issues in participants' collective report.

### **3.8 Operational Definition of Variables**

The operational definition of variables defines the independent and dependent variables operationally stating how the variables will be measured in this research as shown in Table 4.

**Table 4: Operational definition of variables**

<b>INDEPENDENT VARIABLES</b>		
<b>Variable</b>	<b>Operational definition</b>	<b>Coding</b>
<b>Contractor capacity</b>	Capacity of the contractor to obtain NCA registration in the desired category and class of works.	<p>Capable – Possesses all required documents and qualifies for the desired category and class of works</p> <p>Incapable – Does not possess all required documents and qualifies for the desired category and class of works</p>
<b>NCA capacity</b>	Capacity of the NCA in terms of personnel, finance and infrastructure	<p>Capable – NCA has well equipped offices in all 47 counties containing adequate personnel to ensure compliance to NCA regulations</p> <p>Incapable – NCA does not have well equipped offices in all 47 counties containing adequate personnel to ensure compliance to NCA regulations</p>
<b>Compliance</b>	Contractor compliance to NCA regulations and Code of Conduct	<p>Compliant -Contractor carries out all construction activities in accordance to the NCA regulations and Code of Conduct</p> <p>Non-compliant -Contractor does not carry out all construction activities in accordance to the NCA regulations and Code of Conduct</p>
<b>Attitude of contractors</b>	Perception of contractors towards the NCA	Positive attitude - Contractor views the NCA as a necessary initiative in the improvement of the construction industry

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Negative attitude - Contractor does not view the NCA as a necessary initiative in the improvement of the construction industry

**DEPENDENT VARIABLES**

<b>Variable</b>	<b>Operational definition</b>	<b>Coding</b>
<b>Effective regulation</b>	NCA ability to regulate contractors in the right way, with integrity and achieving the set mandates	Effective – The NCA regulates contractors by strictly following the set guidelines of the NCA Regulations and the Code of Conduct and with utmost integrity ensuring zero tolerance to corruption
		Ineffective – The NCA does not regulate contractors by strictly following the set guidelines of the NCA Regulations and the Code of Conduct and with utmost integrity ensuring zero tolerance to corruption
<b>Efficient regulation</b>	NCA ability to regulate in an optimal way, in the fastest and least expensive way	Efficient-Registration of contractors, site supervisors and construction workers takes the least time, least cost and is IT compliant. Compliance checks for ongoing projects are conducted in a timely manner.
		Inefficient-Registration of contractors, site supervisors and construction workers does not take the least time, least cost and is IT compliant. Compliance checks for ongoing projects are not conducted in a timely manner.

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## **CHAPTER FOUR**

### **4.0 RESEARCH FINDINGS AND DISCUSSION**

#### **4.1 Introduction**

This chapter presents analysis, findings and discussion of the study in line with objectives. The main purpose of this study was to investigate and document the challenges of contractor registration and regulation by the NCA in Kenya. The study raised three specific objectives; to investigate the challenges faced by contractors in ensuring compliance with NCA regulations; to identify weaknesses in the NCA regulation enforcement strategies; to investigate the relationship between weaknesses in the NCA regulatory structure and challenges of contractor compliance with NCA regulations.

#### **4.2 Response Rate**

A total of 89 questionnaires were issued out to contractors around Mombasa County. 84 questionnaires were returned and analysed. The response rate was 96.8%. The response rate was deemed sufficient to be used to make conclusions about the research problem. This is because a response rate of 70% and above is excellent and representative (Mugenda & Mugenda, Research Methods: Qualitative and Quantitative Approaches, 1999).

#### **4.3. NCA Category of Registration**

The survey included all NCA categories of registration according to the stratified random sampling method used. The research will therefore represent the views of all building contractors. The figure further indicates that majority of the contractors are found in the NCA 7 class while the NCA 1 class of registration has the lowest number of contractors. This is because most contractors do not have the capacity in terms of equipment and finances to carry out large construction works. NCA 7 has ceiling value of up to KShs. 20 million as opposed to the NCA1 class that has no limit according to Appendix 4.

#### **4.4 Compliance Challenges Faced by Contractors**

The NCA continues to inspect upcoming and existing construction sites to enhance compliance of the rules and regulations as stipulated in the NCA Regulations 2014. According to the NCA senior investigations officer interviewed by a local daily, over 2000 construction projects across the country had been marked out for closure because of flouting safety and building regulations (Beja, 2014). These statistics indicate that there is a problem of contractors complying with NCA regulations. This research aimed at investigating and documenting the challenges faced by contractors in ensuring compliance with NCA rules and regulations.

The contractors were requested to give their opinions and views on the various aspects of the regulatory challenges facing the construction industry in Kenya using the questionnaires provided. The response for the questions was rated in Likert Scale of 5 where 1 = strongly agree, 2=agree, 3= undecided, 4=disagree, and 5=strongly disagree. The percentage for each response and their respective Likert Mean was computed and the results presented using tables.

The results of the analysis of data from the questionnaires presented to the contractors with respect to contractor compliance challenges are shown in Table 5.

**Table 5: Challenges faced by contractors in ensuring compliance with NCA regulations**

<b>Statement</b>	<b>Strongly Agree</b>	<b>Agree</b>	<b>Undecided</b>	<b>Disagree</b>	<b>Strongly Disagree</b>	<b>Likert mean</b>
1. High registration fees imposed by NCA	7.0%	57.0%	7.0%	20.9%	8.2%	3.34
2. High construction levy imposed by NCA	11.4%	46.8%	10.8%	22.2%	8.9%	3.30
3. Poor attitude towards the NCA as a government regulator	8.9%	43.7%	9.5%	23.4%	14.6%	3.09
4. Corruption in the regulation process	23.2%	46.8%	3.8%	14.9%	11.4%	3.30
5. Lack of adequate sensitization about NCA rules and regulations	14.6%	41.9%	8.9%	20.7%	13.9%	3.28
6. Inadequate NCA capacity leading to poor enforcement of regulations	33.5%	43.7%	4.4%	10.8%	7.6%	3.85
7. Inadequate contractor capacity to ensure compliance to regulations	20.9%	40.8%	7.3%	21.5%	9.5%	3.36
<b>Average Likert Mean</b>						<b>3.36</b>



Results in Table 5 indicate that 57% of the respondents agreed that the registration fees imposed by the NCA for each class of work was high and posed a challenge in the process of complying with NCA regulations. The results further indicate that 11.4% of the respondents strongly agreed that the 0.5% construction levy charged by the NCA for any project exceeding five million was high while 46.8% agreed to the same. This levy was termed as unnecessary and an extra expense on the cost of construction.

A total of 52.6% of the contractors involved in the research agreed that there was generally a poor attitude of contractors towards the NCA as a government regulator. As a result of high construction levy, the respondents viewed the Authority as a government project aimed at generating revenue for the government. However, this may not be true as the NCA is mandated to regulate the construction industry and not to collect revenue for the government.

Majority of the respondents (70%) agreed that there was indeed corruption in the regulation process. These accusations were however not backed with evidence as no contractor was willing to accept having taken part in any corrupt deal or mentioning anyone who had engaged in the same. The allegations raised included the acquisition of desired NCA classes of registration through corruption. Corruption attracts quacks into the construction industry which in turn leads to compromising of safety and quality standards.

Contractors involved in this survey strongly disagreed with the ability of the NCA to weed out quacks in the construction company as it scored a mean of 1.16 for SME contractors and 1.87 for large contractors citing that this was a challenge to the NCA. Corruption in the registration process, the use of falsified documents for registration and inadequate infrastructure in the Authority creates a leeway for quack contractors to register and practice.

56.5% of the contractors agreed that there was inadequate sensitization provided by the NCA about the regulations, the rationale of the regulations and ways of complying with the regulations. The respondents agreed that there was still more sensitization effort

required to be put in by the NCA in creating awareness to the stakeholders about the NCA mandates and regulations.

The NCA lacks adequate capacity to ensure enforcement of rules and regulations. This is because 33.5% and 43.7% respondents strongly agreed and agreed respectively to the NCA's lack of capacity. The NCA is understaffed and this creates a challenge in detecting errant behaviour through frequent random surveys. In order to create sanity in the construction industry, the NCA requires adequate capacity in terms of capital and human resources.

The challenge of inadequate contractor capacity to ensure compliance to regulations was raised by 61.7% of the respondent. It was highlighted that upcoming contractors lacked the minimum requirements stipulated by the NCA. This led to quack contractors who operated illegally since no contractor is allowed to carry out any construction work without a valid NCA license. The mean response for this section was 3.36 indicating that majority of the respondents agreed that there were compliance challenges facing contractors and these needed to be addressed.

#### **4.6 Weaknesses in the NCA Regulation Enforcement Strategies**

Enforcement is a matter of deploying a strategy or mixture of targeted strategies for securing desired results on the ground (Macrory, 2014). Regulatory officials seek to gain compliance using a host of informal techniques including prosecution, education, advice, persuasion, and negotiation (Robert et al., 2007). The NCA ensures compliance by among other strategies, conducting random inspections on construction projects.

As a result, the NCA has identified over 2000 construction projects across the country and ear marked them for closure because of flouting safety and building regulations (Beja, 2014). This problem could be due to rampant non-compliance of contractors with regulations or it could also have been contributed by weaknesses in the NCA regulation enforcement strategies. This research aimed at investigating the weaknesses in the enforcement of regulations by the NCA from the contractors' perspective and the data analysed was presented in Table 6.

**Table 6: Analyses of the weaknesses in the NCA regulatory structure**

Statement	Strongly Agree	Agree	Undecided	Disagree	Strongly Disagree	Likert mean
1. Inadequate capacity to detect errant behaviour in contractors	17.0%	59.0%	6.0%	11.9%	6.2%	3.31
2. Inadequate capacity to conduct random surveys	16.4%	52.8%	7.8%	13.2%	8.9%	3.29
3. Lack of prosecutorial power	14.6%	43.7%	9.5%	23.4%	8.9%	3.11
4. Inadequate use of ICT in the process of triggering timely inspection	25.2%	44.8%	11.8%	18.9%	10.4%	3.30
5. Overlapping regulatory responsibility with other bodies	12.9%	49.6%	8.9%	21.9%	12.7%	3.33
6. High construction levy charged by the NCA	29.8%	47.6%	6.4%	8.5%	7.7%	3.79
7. Lack of a transparent system of registration	19.9%	39.8%	7.5%	21.3%	9.5%	3.34
8. Lack of clear cut building classifications to determine regulatory controls	24.8%	33.2%	16.8%	14.4%	10.9%	3.31
<b>Average Likert Mean</b>						<b>3.59</b>

Results in Table 6 indicate that 59.0% of respondents agreed that the NCA was facing a challenge of inadequate capacity to detect errant behaviour in contractors. 52.8% of the respondents also agreed that the NCA had inadequate capacity to conduct random surveys. The NCA lacks capacity to adequately inspect all construction sites across the country due to understaffing in the Authority. The NCA currently has ten regional offices but this is still not adequate to cover all forty seven counties in the country.

Majority (58%) of the respondents involved in this survey agreed that lack of prosecutorial power was a weakness in the enforcement strategies of the NCA. The Authority in the execution of its mandate has realized that there are gaps within the law especially when it comes to enforcement. A copy of all closure notices is given to the police and another to the respective county government in order to enforce the closure as the current law does not provide for a prosecutorial power.

44.8% of the contractors agreed that there was inadequate use of ICT by the NCA in the process of triggering timely inspection. This opinion was based on the observation that most of the buildings ear-marked for closure by the NCA were at an advanced stage of construction. This could not have been the case had the NCA conducted timely surveys from the onset of the construction. To facilitate the numerous surveys required, the use of ICT was necessary and mandatory.

According to the results given in Table 6, 32.5% of the respondents agreed that overlapping regulatory responsibility of the NCA with other bodies was posing as a challenge to effective enforcement of regulations. This was due to the blame game that ensues once a building collapses. There is need therefore to clarify the role and level of responsibility apportioned to each regulating body in order to enhance regulatory compliance by the NCA. The NCA needs to partner more with the private sectors such as Kenya Federation of Master Builders, Architectural Association of Kenya, the Board of Registration of Architects and Quantity Surveyors of Kenya, County Councils, NEMA, Engineers Board of Kenya, and Kenya Association of Project Managers.

Lack of a transparent system of registration was highlighted as a weakness by 59.7% of the respondents. The contractors involved in this survey said that transparency in the process of awarding NCA classes of registration and in the renewal of licenses was lacking. They suggested that the NCA adopt an online web-based software application to automate contractor license administration and renewal, site supervisors and construction workers accreditation, together with project registration and supervision.

58% of the respondents agreed that there was lack of clear cut building classifications to determine the degree and intensity of regulatory controls. The contractors involved in the survey agree that it is important to classify construction projects with consideration to risk in order to allocate resources better and to improve the regulatory outcomes. High risk structures require more supervision as opposed to low risk structures.

#### **4.7 Improvement of the NCA Regulation Process**

The improvement of NCA regulation process is a continuous process. This research aimed at highlighting areas in the NCA regulations that required improvement. Respondents were asked to list down ways in which the NCA can improve on their current regulation process for effective registration and regulation of construction contractors in Kenya. From the suggestions given by the respondents, the researcher highlighted major areas as shown in Table 7. The results are given as a percentage of the total contractors involved in the survey in each research category.

**Table 7: Improvement of the NCA regulation process**

<b>Improvement Areas</b>	<b>Percentage of Respondents</b>
1. Review of registration and renewal fees	84%
2. Ensure relevance of contractor trainings	68%
3. Extension of renewal period	72%
4. Curb corruption in the Authority	94%
5. Unnecessary payment of construction levy	63%
6. Accreditation of all construction workers and site supervisors is not practical	92%
7. Role of NCA not clear cut and is overlapping and interfering with other regulating bodies like NEMA and county government	68%

From the analysis of Table 7, 84% of the contractors taking part in this survey cited the issue of high registration and renewal fees as a hindrance to the registration process. They felt that the NCA should reduce the amount of levy charged for both registration and renewal especially when one requires registration for more than one class of works.

Majority (68%) of the respondents felt that the NCA needed to improve on the quality of the annual training programs to ensure that they were relevant, current and addressed the dynamics of the construction industry. They also felt that it was not necessary for a contractor to attend a meeting as a requirement for registration but rather the NCA should stress on the importance of the trainings for continuous professional improvement of the contractors.

Decentralization of the NCA services was highlighted by 72% of the respondents as an area in which the NCA needed to improve on so as to efficiently execute its mandates. NCA should have offices in each county to enhance access of registration, renewal and

accreditation services as well as ensure compliance of contractors, owners, site supervisors and construction workers across the country.

52% of the contractors in the survey, most of whom had been in operation for less than five years, felt that there was a need to extend the renewal period to a period of two years citing that one year was too short as one may not have conducted any business. This was not an issue with established contractors who had mastered the construction industry and knew their way around it.

Corruption was raised as a major by 91% of the contractors in this survey as a major challenge to the NCA. They cited that the mandate and regulations of the NCA were well spelt out but their implementation would be hampered if the issue of corruption was not quickly dealt with. Areas highlighted as prone to corruption include the use of falsified documents for registration, acquisition of desired categories of registration through corruption, obtaining of certificates of compliance through bribes, and during the upgrading process where contractors give kick-backs. No evidence was however given to justify the above corruption accusations.

Construction levy paid to the NCA at the rate of 0.05% of the total construction cost for any construction project of more than five million was viewed as a challenge since 63% of the respondents cited it as an area that required improvement. Respondents viewed this levy as unnecessary and uncalled for since its purpose was not clearly given.

92% of the respondents under the contractor agreed that the requirement by the NCA to have all site supervisors and construction workers working under the contractors to be accredited was challenging to achieve. This was due to the numerous numbers of construction workers available most of whom lack any form of technical training although they possess technical skills learnt on the job.

Role of NCA is not clear cut and is overlapping and interfering with other regulating bodies like National Environmental Management Authority (NEMA) and county government. 68% of the SME contractors in the survey reiterated that NCA issues

instructions to contractors that other bodies are mandated to provide. Contractors therefore find themselves in a dilemma as to which instructions to follow.

#### **4.8 Building Contractor Regulation by the NCA**

The researcher interviewed an NCA official in order to obtain information on regulation of building contractors in Kenya by the Authority. The verbatim response is discussed below:

*1. How did the NCA come up with the amount of money to be paid for registration and renewal of contractor licenses?*

The amount of money paid for registration and renewal of contractor licenses and any other levy paid to the Authority was based on best practices in developed and developing economies. The NCA benchmarked with similar authorities such as those in South Africa, USA, UK, Malaysia, Singapore and Tanzania in order to establish the best methods of regulating contractors in Kenya.

The claim of high registration and renewal fees, according to the interviewee, was not valid. The fee required by the NCA for registration and renewal (Appendix 5) is small compared to the amount of work carried out by the contractor in a given year (Appendix 4). Taking an example of a building contractor in the lowest category of registration, NCA 8, the registration fee required is KShs. 5000, and an annual renewal fee of KShs. 2500. The contractor is allowed to carry out projects of up to KShs. 10, 000, 000 and therefore the amount of levy required is relatively small.

According to the Construction Industry Survey of July 2014, the Kenyan construction industry is composed of 79% “SME” contractors and 21% large contractors. (“SME contractors” is an operational term used to refer to NCA 8-5 categories of registration while “Large contractors” is a term used to refer to NCA 1-4 categories of registration). The levy required from SME contractors is much lower than that required from large contractors.

*2. How does the NCA use the levy they collect from the contractors?*



The levy collected from the NCA is used to fulfill the mandates of the NCA which include regulation, capacity building and consultancy. In regulation, funds are required for ensuring compliance in the construction industry. The Authority requires funds to pay the staff involved in ensuring that contractors comply with the NCA regulations.

Capacity building on the other hand involves money, material, methods and manpower. Money is a requirement for any project to be realized. However, contractors may lack adequate project financing to undertake given projects. The NCA seeks to assist contractors by establishing a bank for contractors and the construction supply chain as a whole, which will provide soft loans, securities, bonds, advances etc. The supply of a skilled and professional manpower is essential for the success of the construction sector. The NCA seeks to ensure that the industry is well furnished with professional contractors, site supervisors and construction workers through annual contractor training and accreditation of training institutes. Capacity building in terms of methods and materials involves continuous research on the best practices used globally to ensure that the Kenyan construction industry is up to date.

3. *Why should contractors renew their licenses annually?*

The annual renewal of licenses was brought about by benchmarking and best practices in developed and developing economies. It is a global system and all professionals undergo annual renewal and subscription. Annual renewal is important as it gets rid of quacks and mal-practicing contractors since the process of renewal vets the contractors to ensure compliance to the regulations.

4. *How does the NCA deal with the issue of contractors using falsified documents for registration?*

Kenya is prone to corruption and the NCA is not an exception. However, this does give way to corruption in the Authority since it is a criminal offense for any person to give false documents or information to any institution or authority. Any person who does this will be prosecuted by the court of law. The NCA conducts due diligence on the

contractors in order to ensure that all information given in the registration form is valid. The Authority cancels licenses of those found guilty.

5. *Is the NCA an income generating government project?*

No. The NCA is not an income generating project for the government. It is supported by the ex-checker for its first three years of operation according to the NCA Act 2012, after which the Authority runs its operations using construction levy collected.

6. *How does the NCA deal with the issue of corruption in acquisition of NCA categories and classes of registration by the contractors?*

Corruption is a crime punishable by law according to the constitution of Kenya and the NCA is governed by this supreme law. Any NCA staff that is alleged to be engaging in corrupt activities will be prosecuted. The Authority has a code of conduct and performance manuals binding its entire staff to ensure that work ethics are maintained at the set standards.

Due diligence conducted on each contractor assists in weeding out cases of corrupt acquisition of registration. Inspection of projects also helps identify corrupt contractors since the NCA inspectors are able to establish the capacity of the contractor vis-a-vis the magnitude of the project being undertaken.

7. *What is the importance of the mandatory contractor training programs?*

Annual trainings are carried out across the country to train individual contractors and principals in the case of a partnership. These trainings do not have a prescribed curriculum to be followed but instead trending issues are discussed as prepared by the NCA department of research and development. In order to ensure relevance of the training programs, the NCA has developed a stratified system of training contractors whereby those in NCA 1-3 are trained separately from those in NCA 4-6 and NCA 7-8 respectively. This is because different contractors face different issues depending on

their abilities. For example, contractors in NCA 1-3 deal with issues of partnership, Public Private Partnership and joint ventures and may therefore require training on how to contract with partners. Contractors in NCA 7-8 are relatively new in the industry and should be flooded with information about the nature of the construction industry in Kenya. Contractors in NCA 4-6 get a blend of the two (NCA 1-3 and NCA 7-8).

8. *Is it necessary to regulate both roads and building contractors under one authority?*

Yes. This was done in order to establish a one-stop-shop for all construction works. It was established from benchmarking and best practices in developed and developing economies. However, the NCA is facing the challenge of adequate staff as the lean staff is already overstretched.

9. *Are the NCA regulations getting rid of quack contractors?*

Yes. Anyone who is not registered by the NCA is not a contractor and hence should not carry out any construction work. Any contractor who practices without a valid NCA license commits an offense and is liable to prosecution and a fine as prescribed under the NCA regulations. The Authority carries out due diligence on each contractor before registration to ensure that only qualified contractors are practicing. Compliance by registered contractors is carried out by NCA inspectors to ensure adherence to not only NCA regulations but also with related bodies such as county governments, NEMA, OSHA, and the Ministry of Health.

In addition, the NCA liaises with the local police, NEMA officials, and officers of the county government responsible for the approval of building plans, construction works, public health and sanitation. The NCA further aims at getting rid of quack contractors by ensuring that all professionals involved in a given project have current practicing

licenses issued by their relevant bodies of registration. Finally, the NCA has issued notices after the collapse of buildings in Huruma and Majengo in Nairobi which led to the subsequent loss of lives of innocent Kenyans. The notice includes among other things, hotlines to be used for reporting directly to the NCA in case of any malpractices or if a person suspects that a given construction is not up to the required standards.

*10. What is the NCA doing to ensure that their services are devolved?*

The NCA is currently deploying its staff to county level. The challenge facing the Authority is that of staffing since the current staff is lean, inadequate and overstretched. Recruitments are however being conducted in phases to ensure the availability of adequate personnel since the budget allocated to the NCA each year is not adequate to employ all the required officers at a go. In addition, the NCA is devolving their services to county level by constructing or renovating existing offices as in the case of the renovation of MoPW offices in Shimanzi, Mombasa to accommodate the NCA offices.

*11. How long does it take an applicant to get an NCA contractor license?*

Once an application for registration as a contractor has been made, the NCA goes through the applications and notifies the applicant in one week of the class that one has qualified for and the levy required to be paid. Once this fee has been paid by the applicant, the NCA license is issued and the applicant can legally practice as a qualified and professional contractor. The whole process is carried out with integrity and is guided by the NCA regulations.

*12. What is the importance of project registration?*

All projects must be registered by the NCA using the prescribed forms as in Appendix 3. The information provided by the owner to the NCA includes: project name, developer, project consultant, project contractors, project class, cost and construction period, and approval by relevant authorities. Registration of projects is done in order to ascertain that the said contractor is registered by the NCA. The completion date of the project is important to the NCA as it assists the Authority identify contractors who have a record

of stalled or incomplete projects. Project registration further provides information about the construction industry in Kenya by keeping a record of the number of projects undertaken within a particular period in a given area. The NCA is able to ascertain the credibility of consultants involved in the given project by ensuring that they have current valid licensing from relevant bodies of registration. The physical address of the project given during its registration is important since NCA inspectors visit each construction site to ensure compliance. Evidence of approval by the local authorities must also accompany the project registration form to ensure that the project is valid.

*13. Is the NCA facing challenges in the accreditation of site supervisors and construction workers?*

The accreditation of site supervisors and construction workers is yet to be fully implemented since there has been a low turnout of the workers for accreditation. All site supervisors and construction workers must be accredited by the NCA before working under any contractor. Accreditation is given based on formal education or skills assessment. Referrals and recommendations from professionals in the construction industry who have seen the quality of workmanship possessed by the said person may also be used for accreditation. Large contractors who have permanent employees have not had a challenge complying with the regulation and some have even incurred the cost of the accreditation fees on behalf of their employees.

*14. How is the upgrading of contractors carried out?*

Upgrading of contractors is done after a period of one year when a contractor provides evidence of capability to handle projects of a higher value than the current ceiling of the given category of registration. The equipment possessed by the contractor may also have increased hence increasing the capacity of the contractor. The upgrading process is vetted by the Authority and due diligence conducted to ascertain the validity of the given information.

15. *Has the NCA provided adequate sensitization to the stakeholders and the general public?*

The sensitization by the NCA can be termed as fair and more effort is still required to ensure adequate sensitization of all stakeholders in the construction industry.

16. *Does the NCA lack prosecutorial power for errant contractors?*

The Authority in the execution of its mandate has realized that there are gaps within the law especially when it comes to enforcement. Enforcement must be anchored in law in order to counter non-compliance. A copy of all closure notices is given to the police and another to the respective county government in order to enforce the closure as the current law does not provide for a prosecutorial power. The Authority has made proposals for the revision of the NCA Act in order to counteract this in the long run.

#### **4.9 Comparison of Contractors' and NCA Perceptions on Regulation**

Regulation that fails to elicit an adequate level of compliance not only fails to meet its underlying policy objective, but also: creates unnecessary costs through fruitless administration and implementation; postpones the achievement of the policy objective; erodes general confidence in the use of regulation, the rule of law, and government in general; and cumulatively leads to the undermining of other regulations and regulation itself, which can lead to a vicious cycle in which more and more rules are promulgated while public confidence in government regulation lessens and compliance outcomes become worse (OECD, 2014).

This research investigated the challenges faced by the NCA in regulating building contractors in Kenya from the contractors view. This was conducted by collecting data from registered contractors in Mombasa County using questionnaires and following up with an interview from an NCA official to clarify on matters raised by the contractors. The purpose of the interview was to shed light on misconceptions possessed by contractors about the NCA. It provided clarifications on matters that may otherwise be

viewed as challenges from the contractor's point of view yet they are due to lack of awareness regarding NCA regulations.

As such, the NCA should fully and transparently sensitize and educate contractors on what is expected of them as regards the NCA rules and regulation. Education and persuasion are tools used in the compliance approach of enforcing regulation which emphasizes the use of measures falling short of prosecution in order to seek compliance with laws (Robert et al., 2007).

The analysis of the data collected from contractors on the challenges faced by contractors in ensuring compliance with NCA regulations vis-a-vis data collected from the interview with the NCA official on the same challenges is shown in Table 8.

**Table 8: Comparison of contractors’ and NCA perceptions on compliance challenges**

<b>Compliance challenges highlighted by contractors</b>	<b>Clarification of highlighted challenges by NCA</b>
1. High registration fees imposed by NCA	Registration fees are based on best practices in developed and developing economies
2. High construction levy imposed by NCA	Construction levy are based on best practices in developed and developing economies
3. Poor attitude towards the NCA as a government regulator	The NCA is not an income generating project for the government but a watch dog for the government
4. Corruption in the regulation process	Corruption is a crime punishable by law according to the constitution of Kenya and the NCA is governed by this supreme law.  Due diligence conducted on each contractor assists in weeding out cases of corrupt acquisition of registration
5. Lack of adequate sensitization about NCA rules and regulations	Sensitization by the NCA can be termed as fair and more effort is still required to ensure adequate sensitization
6. Inadequate NCA capacity leading to poor enforcement of regulations	The challenge facing the Authority is that of staffing since the current staff is lean, inadequate and overstretched.
7. Inadequate contractor capacity to	Anyone who is not registered by the NCA



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ensure compliance to regulations is not a contractor and hence should not carry out any construction work. Any contractor who practices without a valid NCA license commits an offense and is liable to prosecution and a fine as prescribed under the NCA regulations.

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The challenges raised by contractors regarding non-compliance to NCA regulations are not all valid as indicated by the comparison given in Table 8. The issues of high registration fees and construction levy imposed by NCA are not challenges to elicit non-compliance to regulations. The amounts given by NCA as per Appendix 4 were obtained by benchmarking with similar authorities such as those in South Africa, USA, UK, Malaysia, Singapore and Tanzania in order to establish the best methods of regulating contractors in Kenya. The 0.5% construction levy charged by the NCA for any construction project exceeding a contract sum of five million is charged in accordance with the NCA Act 2011 governing the operations of the Authority. The monies thereof are used to fulfill the mandates of the NCA which include regulation, capacity building and consultancy.

The poor attitude of contractors towards the NCA as an income generating project for the government is not valid. The NCA is mandated to oversee the operations of the construction industry in Kenya by among other things regulating the undertakings of contractors (G.O.K., 2011). In order to fulfill this mandate, the NCA requires revenue to facilitate its functions by building capacity through capital and human resource. Contractors should therefore change their attitude and obtain a different mindset about the NCA since the Authority is aimed at weeding out quack contractors to ensure that Kenyan citizens are safe in the hands of qualified contractors.

Lack of adequate sensitization about NCA rules and regulations as cited by contractors is indeed a challenge to compliance. There are two approaches used to ensure compliance; the insistent approach and persuasive approach (Macrory, 2014). The latter

is more accommodating as the regulator educates and persuades offenders into complying with the law. They explain rationales for laws and possible means of compliance, and do so in a patient, open-ended way (Macrory, 2014). The NCA should adopt this approach by vigorously sensitizing contractors on the importance of complying with the regulations and highlighting the possible ways which contractors can follow to ensure compliance.

The NCA in deed has inadequate capacity in terms of capital and human resources to effectively enforce its regulations. Resource constraints constitute a hurdle especially where these stand in the way of the surveying or inspection exercises that are needed in order to reveal the true incidence of non-compliance or unwanted activity and hence the need for new tools and strategies (Oded, 2013). Enforcers frequently face extreme difficulties in detecting errant behaviour when the regulated community is extensive and where breaching rules is cheap and easily carried out in a clandestine manner (Konisky, 2007). Resourcing realities often mean that enforcers have to rely on tip-offs from the public or hotlines and whistleblowing processes (Oded, 2013). Based on the above studies, the NCA needs to increase its capacity in all the 47 counties to supplement the current state of lean, inadequate and overstretched staff in the ten regional offices (G.O.K., 2015).

Inadequate contractor capacity to ensure compliance to regulations may be a challenge to the contractors but one that the NCA has no two ways about. Anyone who is not registered by the NCA is not a contractor and hence should not carry out any construction work. Any contractor who practices without a valid NCA license commits an offense and is liable to prosecution and a fine as prescribed under the NCA regulations (G.O.K, 2012). Therefore, the role of the NCA is to weed out contractors who do not have the capacity to register with the Authority and as such do not have the capacity to undertake construction work in Kenya.

The analysis of the data collected from contractors on the weaknesses in the NCA regulation enforcement strategies vis-a-vis data collected from the interview with the NCA official on the same is shown in Table 9.

**Table 9: Comparison of contractors’ and NCA perceptions on NCA compliance strategies**

<b>Weaknesses in the NCA compliance strategies highlighted by contractors</b>	<b>Clarification of highlighted weaknesses by NCA</b>
1. Inadequate capacity to detect errant behaviour in contractors	The challenge facing the Authority is that of staffing since the current staff is lean, inadequate and overstretched.
2. Inadequate capacity to conduct random surveys	The challenge facing the Authority is that of staffing since the current staff is lean, inadequate and overstretched.
3. Lack of prosecutorial power	There are gaps within the law when it comes to enforcement and the Authority proposes or revision of the NCA Act
4. Inadequate use of ICT in the process of triggering timely inspection	The NCA utilizes ICT in project registration and scheduling inspections. The challenge is that of staffing to conduct timely inspection
5. Overlapping regulatory responsibility with other bodies	The NCA is the overall body mandated with regulating the construction industry
6. High construction levy charged by the NCA	Registration fees are based on best practices in developed and developing economies
7. Lack of a transparent system of registration	The registration process is carried out with integrity and is guided by the NCA regulations

The interview with the NCA official indicated that there is indeed a challenge in enforcing compliance as a result of lack of prosecutorial power. The Authority in the execution of its mandate has realized that there are gaps within the law especially when it comes to enforcement. Enforcement must be anchored in law in order to counter non-compliance. A copy of all closure notices is given to the police and another to the respective county government in order to enforce the closure as the current law does not provide for a prosecutorial power. The Authority has made proposals for the revision of the NCA Act in order to counteract this in the long run.

Inadequate use of ICT in the process of triggering timely inspection is viewed as a challenge by the contractors since the NCA does not have adequate staff to conduct the inspection when triggered. This therefore should be addressed by the NCA by increasing the human capital throughout the country to ensure timely inspections thus getting rid of deterrent contractor behaviour in time.

Contractors involved in the survey highlighted the NCA overlapping regulatory responsibility with other bodies as a weakness leading to challenges in getting rid of non-compliance. This was as a result of the blame game that ensues after the collapse of a structure. It should however be noted that the NCA is the overall body mandated with regulating the construction industry as a whole (G.O.K., 2011). The Authority works in collaboration with other regulatory bodies such as County Governments, NEMA, EBK, BORAQS, AAK and Master Builders who are also represented in the NCA Board. The NCA should coordinate its activities in such a way as to identify the role of each regulatory body in a given construction project and as such conduct frequent random surveys to ensure that compliance is adhered to.

Lack of a transparent system of registration was highlighted as a challenge by contractors involved in the survey. This was because contractors felt that corruption was rampant in acquisition of categories of registration. However, the NCA official interviewed highlighted that the registration process was carried out with integrity and is guided by the NCA regulations. He added that once an application for registration as a

contractor has been made, the NCA goes through the applications and notifies the applicant in one week of the class that one has qualified for and the levy required to be paid. Once this fee has been paid by the applicant, the NCA license is issued and the applicant can legally practice as a qualified and professional contractor.

#### **4.10 Relationship between Weaknesses in the NCA Regulatory Structure and Contractor Compliance**

Enforcement is a matter of deploying a strategy or mixture of targeted strategies for securing desired results on the ground (Macrory, 2014). Regulatory officials seek to gain compliance using a host of informal techniques including education, advice, persuasion, and negotiation (Robert *et al.*, 2007). Macroy has drawn a distinction between two approaches to enforcement: the compliance approach, which emphasizes the use of measures falling short of prosecution in order to seek compliance with laws, and the deterrence approach which is adversarial, litigious, and penal and uses prosecutions in order to deter future infractions.

Based on the data analysis of perceived challenges of contractor registration and regulation by the NCA in Kenya, it is evident that what is lacking is adequate sensitization on the NCA regulations and rationale of compliance. The Authority needs to educate and persuades offenders into complying with the law (Robert *et al.*, 2007). The NCA should explain rationales for laws and possible means of compliance, and do so in a patient, open-ended way to ensure compliance.

The NCA in deed has inadequate capacity in terms of capital and human resources to effectively enforce its regulations. Resource constraints constitute a hurdle especially where these stand in the way of the surveying or inspection exercises that are needed in order to reveal the true incidence of non-compliance or unwanted activity and hence the need for new tools and strategies (Oded, 2013). Enforcers frequently face extreme difficulties in detecting errant behaviour when the regulated community is extensive and where breaching rules is cheap and easily carried out in a clandestine manner (Konisky, 2007). Resourcing realities often mean that enforcers have to rely on tip-offs from the

public or hotlines and whistleblowing processes (Oded, 2013). Based on the above studies, the NCA needs to increase its capacity in all the 47 counties to supplement the current state of lean, inadequate and overstretched staff in the ten regional offices (G.O.K., 2015).

The perceived challenges of contractor registration and regulation by the NCA in Kenya obtained from this research were summarized in Table 10.

**Table 10: Challenges of contractor registration and regulation by the NCA**

<b>Challenges</b>
1. Inadequate capacity to detect errant behaviour in contractors by conducting frequent random surveys
2. Inadequate NCA capacity leading to poor enforcement of regulations
3. Lack of adequate sensitization about NCA rules and regulations
4. Lack of prosecutorial power
5. Poor attitude towards the NCA as a government regulator
6. Inadequate contractor capacity to ensure compliance to regulations
7. Inadequate use of ICT in the process of triggering timely inspection

The research concludes that there is a relationship between weaknesses in the NCA regulatory structure and challenges of compliance with regulation experienced by contractors since most challenges identified were as a result of human resource constraints in the NCA. These challenges included: Inadequate capacity to detect errant behaviour in contractors by conducting frequent random surveys; Inadequate NCA capacity leading to poor enforcement of regulations; Lack of adequate sensitization about NCA rules and regulations; Inadequate use of ICT in the process of triggering timely inspection and Poor attitude of contractors towards the NCA as a government regulator.

Lack of prosecutorial power was highlighted as a weakness in the NCA regulatory structure but this was a matter of policy and unless the NCA Act 2011 is reviewed, and the NCA mandated with prosecutorial powers to deal with errant behaviour, this will remain as a weakness. This study therefore recommends that the review of the Act be done in a timely manner to ensure the Authority effectively enforces its mandates.

Inadequate contractor capacity to ensure compliance to regulations as a result of the inability to meet the set minimum qualifications is a challenge more so to upcoming and informal contractors. This is however non-negotiable since anyone who is not registered by the NCA is not a contractor and hence should not carry out any construction work. Any contractor who practices without a valid NCA license commits an offense and is liable to prosecution and a fine as prescribed under the NCA regulations (G.O.K, 2012).



## **CHAPTER FIVE**

### **5.0 SUMMARY, CONCLUSIONS AND RECOMMENDATIONS**

#### **5.1 Introduction**

This chapter presents general conclusions and recommendations of this study, along with an implication of its major findings. The area for further research is also highlighted at the end of this chapter.

#### **5.2 Summary**

Cases of collapse of buildings which lead to subsequent loss of lives and property are prevalent in Kenya. This can be attributed to a variety of reasons which include poor designs and non-compliance, cost cutting and use of sub-standard material, lack of quality control, and use of incompetent contactors (Lidonga, 2014). The NCA is mandated to register and regulate the undertakings of contractors in Kenya. This research aimed at investigating and documenting the challenges of contractor registration and regulation by the NCA.

The study raised three specific objectives; to investigate the challenges faced by contractors in ensuring compliance with NCA regulations; to identify weaknesses in the NCA regulation enforcement strategies; to investigate the relationship between weaknesses in the NCA regulatory structure and challenges of contractor compliance with NCA regulations.

The research adopted a mixed design approach which incorporates both qualitative and quantitative elements of research. A sample population of 89 contractors from Mombasa County and an NCA official were used for this research. Data was collected from contractors using questionnaires and a follow up interview was then conducted with the NCA official in management level.

A total of 89 questionnaires were issued out to contractors around Mombasa County. 84 questionnaires were returned and analysed. The response rate was 96.8%. The response rate was deemed sufficient to be used to make conclusions about the research problem.

This is because a response rate of 70% and above is excellent and representative (Mugenda & Mugenda 1999).

The NCA continues to inspect upcoming and existing construction sites to enhance compliance of the rules and regulations as stipulated in the NCA Regulations 2014. According to the NCA senior investigations officer interviewed by a local daily, over 2000 construction projects across the country had been marked out for closure because of flouting safety and building regulations (Beja, 2014). These statistics indicate that there is a problem of contractors complying with NCA regulations. The research collected data from the questionnaires presented to the contractors about challenges facing contractors in complying with NCA regulations and the results are shown in Table 11.

**Table 11: Summary of challenges of contractor compliance with NCA regulations**

<b>Challenges</b>	
1.	High registration fees imposed by NCA
2.	High construction levy imposed by NCA
3.	Poor attitude towards the NCA as a government regulator
4.	Corruption in the regulation process
5.	Lack of adequate sensitization about NCA rules and regulations
6.	Inadequate NCA capacity leading to poor enforcement of regulations
7.	Inadequate contractor capacity to ensure compliance to regulations

The NCA has identified over 2000 construction projects across the country and ear marked them for closure because of flouting safety and building regulations (Beja, 2014). This problem could be due to rampant non-compliance of contractors with

regulations or it could also have been contributed by weaknesses in the NCA regulation enforcement strategies. The study therefore further investigated the weaknesses of the NCA regulation compliance strategies from the contractor's perspective and the results are shown in Table 12.

**Table 12: Summary of weaknesses of the NCA regulation compliance strategies**

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<b>Challenges</b>
1. Inadequate capacity to detect errant behaviour in contractors
2. Inadequate capacity to conduct random surveys
3. Lack of prosecutorial power
4. Inadequate use of ICT in the process of triggering timely inspection
5. Overlapping regulatory responsibility with other bodies
6. High construction levy charged by the NCA
7. Lack of a transparent system of registration
8. Lack of clear cut building classifications to determine the degree and intensity of regulatory controls

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The contractors involved in the survey proposed improvement areas in the NCA regulation process as shown in Table 13 in a bid to enhance compliance of contractors with the NCA regulations.

**Table 13: Proposed improvement areas in the NCA regulation process**

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1. Review of registration and renewal fees
  2. Ensure relevance of contractor trainings
  3. Extension of renewal period
  4. Curb corruption in the Authority
  5. Unnecessary payment of construction levy
  6. Accreditation of all construction workers and site supervisors is not practical
  7. Role of NCA not clear cut and is overlapping and interfering with other regulating bodies like NEMA and county government
- 

An interview was conducted with an NCA official to ascertain or not the challenges highlighted by contractors involved in the survey. Table 14 and 15 presents an analysis of the comparison made with the data collected from the questionnaires and that from the interview.

**Table 14: Summary of comparison of contractors’ and NCA perceptions on compliance challenges**

<b>Compliance challenges highlighted by contractors</b>	<b>Clarification of highlighted challenges by NCA</b>
1. High registration fees imposed by NCA	Registration fees are based on best practices in developed and developing economies
2. High construction levy imposed by NCA	Construction levy are based on best practices in developed and developing economies
3. Poor attitude towards the NCA as a government regulator	The NCA is not an income generating project for the government but a watch dog for the government
4. Corruption in the regulation process	Due diligence conducted on each contractor assists in weeding out cases of corrupt acquisition of registration
5. Lack of adequate sensitization about NCA rules and regulations	Sensitization by the NCA can be termed as fair and more effort is still required to ensure adequate sensitization
6. Inadequate NCA capacity leading to poor enforcement of regulations	The challenge facing the Authority is that of staffing since the current staff is lean, inadequate and overstretched.
7. Inadequate contractor capacity to ensure compliance to regulations	Any contractor who practices without a valid NCA license commits an offense and is liable to prosecution and a fine as prescribed under the NCA regulations.

**Table 15: Comparison of contractors’ and NCA perceptions on NCA compliance strategies**

<b>Weaknesses in the NCA compliance strategies highlighted by contractors</b>	<b>Clarification of highlighted weaknesses by NCA</b>
1. Inadequate capacity to detect errant behaviour in contractors	The challenge facing the Authority is that of staffing since the current staff is lean, inadequate and overstretched.
2. Inadequate capacity to conduct random surveys	The challenge facing the Authority is that of staffing since the current staff is lean, inadequate and overstretched.
3. Lack of prosecutorial power	There are gaps within the law when it comes to enforcement and the Authority proposes or revision of the NCA Act
4. Inadequate use of ICT in the process of triggering timely inspection	The NCA utilizes ICT in project registration and scheduling inspections. The challenge is that of staffing to conduct timely inspection
5. Overlapping regulatory responsibility with other bodies	The NCA is the overall body mandated with regulating the construction industry
6. High construction levy charged by the NCA	Registration fees are based on best practices in developed and developing economies
7. Lack of a transparent system of registration	The registration process is carried out with integrity and is guided by the NCA regulations

Based on the data analysis of perceived challenges of contractor registration and regulation by the NCA in Kenya, it is evident that what is lacking is adequate sensitization on the NCA regulations and rationale of compliance. The Authority needs to educate and persuade offenders into complying with the law (Robert *et al.*, 2007). The NCA should explain rationales for laws and possible means of compliance, and do so in a patient, open-ended way to ensure compliance.

The NCA in deed has inadequate capacity in terms of capital and human resources to effectively enforce its regulations. Resource constraints constitute a hurdle especially where these stand in the way of the surveying or inspection exercises that are needed in order to reveal the true incidence of non-compliance or unwanted activity and hence the need for new tools and strategies (Oded, 2013). Enforcers frequently face extreme difficulties in detecting errant behaviour when the regulated community is extensive and where breaching rules is cheap and easily carried out in a clandestine manner (Konisky, 2007). Resourcing realities often mean that enforcers have to rely on tip-offs from the public or hotlines and whistleblowing processes (Oded, 2013). Based on the above studies, the NCA needs to increase its capacity in all the 47 counties to supplement the current state of lean, inadequate and overstretched staff in the ten regional offices (G.O.K., 2015).

The perceived challenges of contractor registration and regulation by the NCA in Kenya obtained from this research were summarized in Table 16.

**Table 16: Summary of challenges of contractor registration and regulation by the NCA**

<b>Challenges</b>	
1.	Inadequate capacity to detect errant behaviour in contractors by conducting frequent random surveys
2.	Inadequate NCA capacity leading to poor enforcement of regulations
3.	Lack of adequate sensitization about NCA rules and regulations
4.	Lack of prosecutorial power
5.	Poor attitude towards the NCA as a government regulator
6.	Inadequate contractor capacity to ensure compliance to regulations
7.	Inadequate use of ICT in the process of triggering timely inspection

The research concludes that there is a relationship between weaknesses in the NCA regulatory structure and challenges of compliance with regulation experienced by contractors since most challenges identified were as a result of human resource constraints in the NCA. These challenges included: Inadequate capacity to detect errant behaviour in contractors by conducting frequent random surveys; Inadequate NCA capacity leading to poor enforcement of regulations; Lack of adequate sensitization about NCA rules and regulations; Inadequate use of ICT in the process of triggering timely inspection and Poor attitude of contractors towards the NCA as a government regulator.



### **5.3 Conclusion**

The conclusion of the study provides answers to the research questions which were: to investigate the challenges faced by contractors in ensuring compliance with NCA regulations; to identify weaknesses in the NCA regulation enforcement strategies; to investigate the relationship between weaknesses in the NCA regulatory structure and challenges of contractor compliance with NCA regulations.

The research found out that the challenges faced by contractors in ensuring compliance with NCA regulations include: High registration fees imposed by NCA, High construction levy imposed by NCA, Poor attitude towards the NCA as a government regulator, Corruption in the regulation process, Lack of adequate sensitization about NCA rules and regulations, Inadequate NCA capacity leading to poor enforcement of regulations, and Inadequate contractor capacity to ensure compliance to regulations.

The weaknesses highlighted by the contractors in the NCA regulation enforcement strategies included: Inadequate capacity to detect errant behaviour in contractors, Inadequate capacity to conduct random surveys, Lack of prosecutorial power, Inadequate use of ICT in the process of triggering timely inspection, Overlapping regulatory responsibility with other bodies, High construction levy charged by the NCA, Lack of a transparent system of registration, and Lack of clear cut building classifications to determine the degree and intensity of regulatory controls.

The interview with the NCA official summed up the main challenges facing NCA in registration and regulation of contractors as: Inadequate capacity to detect errant behaviour in contractors by conducting frequent random surveys, Inadequate NCA capacity leading to poor enforcement of regulations, Lack of adequate sensitization about NCA rules and regulations, Lack of prosecutorial power, Poor attitude towards the NCA as a government regulator, Inadequate contractor capacity to ensure compliance to regulations, and Inadequate use of ICT in the process of triggering timely inspection.

Based on the data analysis of perceived challenges of contractor registration and regulation by the NCA in Kenya, it is evident that what is lacking is adequate

sensitization on the NCA regulations and rationale of compliance. The Authority needs to educate and persuade offenders into complying with the law (Robert *et al.*, 2007). The NCA should explain rationales for laws and possible means of compliance, and do so in a patient, open-ended way to ensure compliance.

The NCA in deed has inadequate capacity in terms of capital and human resources to effectively enforce its regulations. Resource constraints constitute a hurdle especially where these stand in the way of the surveying or inspection exercises that are needed in order to reveal the true incidence of non-compliance or unwanted activity and hence the need for new tools and strategies (Oded, 2013). Enforcers frequently face extreme difficulties in detecting errant behaviour when the regulated community is extensive and where breaching rules is cheap and easily carried out in a clandestine manner (Konisky, 2007). Resourcing realities often mean that enforcers have to rely on tip-offs from the public or hotlines and whistleblowing processes (Oded, 2013). Based on the above studies, the NCA needs to increase its capacity in all the 47 counties to supplement the current state of lean, inadequate and overstretched staff in the ten regional offices (G.O.K., 2015).

The research concludes that there is a relationship between weaknesses in the NCA regulatory structure and challenges of compliance with regulation experienced by contractors since most challenges identified were as a result of human resource constraints in the NCA. These challenges included: Inadequate capacity to detect errant behaviour in contractors by conducting frequent random surveys; Inadequate NCA capacity leading to poor enforcement of regulations; Lack of adequate sensitization about NCA rules and regulations; Inadequate use of ICT in the process of triggering timely inspection and Poor attitude of contractors towards the NCA as a government regulator.

Lack of prosecutorial power was highlighted as a weakness in the NCA regulatory structure but this was a matter of policy and unless the NCA Act 2011 is reviewed, and the NCA mandated with prosecutorial powers to deal with errant behaviour, this will

remain as a weakness. This study therefore recommends that the review of the Act be done in a timely manner to ensure the Authority effectively enforces its mandates.

Inadequate contractor capacity to ensure compliance to regulations as a result of the inability to meet the set minimum qualifications is a challenge more so to upcoming and informal contractors. This is however non-negotiable since anyone who is not registered by the NCA is not a contractor and hence should not carry out any construction work. Any contractor who practices without a valid NCA license commits an offense and is liable to prosecution and a fine as prescribed under the NCA regulations (G.O.K, 2012).

#### **5.4 Recommendation**

The findings of this study show that the major challenges to the effectiveness of the NCA in registering and regulating the practices of construction contractors include; main challenges facing NCA in registration and regulation of contractors as: Inadequate capacity to detect errant behaviour in contractors by conducting frequent random surveys, Inadequate NCA capacity leading to poor enforcement of regulations, Lack of adequate sensitization about NCA rules and regulations, Lack of prosecutorial power, Poor attitude towards the NCA as a government regulator, Inadequate contractor capacity to ensure compliance to regulations, and Inadequate use of ICT in the process of triggering timely inspection.

The study therefore recommends the following:

1. That the NCA sets up fully equipped and staffed offices in all 47 counties to supplement the 10 regional offices currently in operation
2. The NCA should conduct rigorous sensitization programs to educate contractors on the rationales for the NCA Regulations and Code of Conduct and possible means of compliance.
3. The NCA should make proposals for the revision of the NCA Act in order to provide the Authority with prosecutorial power.
4. The NCA should come up with programs to fund upcoming contractors in order to enhance contractor capacity to comply with NCA regulations.

5. Enhance the use of ICT in the process of triggering timely inspection and complement it with adequate personnel to conduct the inspections.

### **5.5 Areas of Further Research**

This research suggests the following areas for further research:

- Comparison between the deterrent and compliance approach used by the NCA
- Efficiency of integration of Building Information Modeling into the NCA regulation framework

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## APPENDIX 1

### AN INVESTIGATION INTO THE NATIONAL CONSTRUCTION AUTHORITY'S CHALLENGES IN REGULATING BUILDING CONTRACTORS: THE CASE OF MOMBASA COUNTY

#### Questionnaire for Contractors

##### Introduction

This is part of an educational study being undertaken with the aim of evaluating the construction industry in Kenya against the regulatory framework set up by the National Construction Authority (NCA). The purpose of this questionnaire is to seek your opinion and views on the various aspects of the regulatory challenges facing building contractors in Kenya.

It is designed to allow you express your views freely and also propose improvement areas. You are one of the chosen Contractors to participate in this study. You are therefore requested to complete the questionnaire as accurately as possible and return it.

Your responses will be treated confidentially both during and after the study.

Thank you.

I. Which NCA category of registration are you registered under? Kindly respond by ticking the appropriate option.

NCA 1	<input type="checkbox"/>	NCA 5	<input type="checkbox"/>
NCA 2	<input type="checkbox"/>	NCA 6	<input type="checkbox"/>
NCA 3	<input type="checkbox"/>	NCA 7	<input type="checkbox"/>
NCA 4	<input type="checkbox"/>	NCA 8	<input type="checkbox"/>

II. Given below are statements about the contractor perceived challenges experienced by the National Construction Authority (NCA) in registering and regulating the practices of the building contractors in Kenya. Kindly respond by ticking the appropriate option.

		<b>Strongly Agree</b>	<b>Agree</b>	<b>Undecided</b>	<b>Disagree</b>	<b>Strongly Disagree</b>
1.	High registration fees imposed by NCA					
2.	High construction levy imposed by NCA					
3.	Poor attitude towards the NCA as a government regulator					
4.	Corruption in the regulation process					
5.	Lack of adequate sensitization about NCA rules and regulations					
6.	Inadequate NCA capacity leading to poor enforcement of regulations					
7.	Inadequate contractor capacity to ensure compliance to regulations					

III. Given below are statements about weaknesses in the NCA regulation enforcement strategies. Kindly respond by ticking the appropriate option.

		<b>Strongly Agree</b>	<b>Agree</b>	<b>Undecided</b>	<b>Disagree</b>	<b>Strongly Disagree</b>
1.	Inadequate capacity to detect errant behaviour in contractors					
2.	Inadequate capacity to conduct random surveys					
3.	Lack of prosecutorial power					
4.	Inadequate use of ICT in the process of triggering timely inspection					
5.	Overlapping regulatory responsibility with other bodies					
6.	High construction levy charged by the NCA					
7.	Lack of a transparent system of registration					
8.	Lack of clear cut building classifications to determine the degree and intensity of regulatory controls					

IV. List down ways in which the NCA can improve on their current regulation process for effective registration and regulation of construction contractors in Kenya.

(i) \_\_\_\_\_

\_\_\_\_\_

(ii) \_\_\_\_\_

\_\_\_\_\_

(iii) \_\_\_\_\_

\_\_\_\_\_

(iv) \_\_\_\_\_

\_\_\_\_\_

(v) \_\_\_\_\_

\_\_\_\_\_

**THANK YOU FOR YOUR CO-OPERATION**

## **APPENDIX 2**

### **REGULATING BUILDING CONTRACTORS IN KENYA AND CHALLENGES OF ENFORCING THE NATIONAL CONSTRUCTION AUTHORITY MANDATE**

#### **Interview Schedule for NCA official**

1. How did the NCA come up the amount of money to be paid for registration and renewal of contractor licenses?
2. How does the NCA use the levy they collect from the contractors?
3. Why should contractors renew their licenses annually?
4. How does the NCA deal with the issue of contractors using falsified documents for registration?
5. Is the NCA an income generating government project?
6. How does the NCA deal with the issue of corruption in acquisition of NCA categories and classes of registration by the contractors?
7. What is the importance of the mandatory contractor training programs?
8. Is it necessary to regulate both roads and building contractors under one authority?
9. Are the NCA regulations getting rid of quack contractors?
10. What is the NCA doing to ensure that their services are devolved?
11. How long does it take an applicant to get an NCA contractor license?
12. What is the importance of project registration?
13. Is the NCA facing challenges in the accreditation of site supervisors and construction workers?
14. Is the upgrading of contractors carried out with integrity?
15. Has the NCA provided adequate sensitization to the stakeholders and the general public?
16. Does the NCA lack prosecutorial power for errant contractors?

### APPENDIX 3

#### NCA Categories of Registration According To Capability

<b>1</b>	<b>Contractors (Buildings)</b>	
	<b>Category</b>	<b>Value Limit (Kshs)</b>
	1. NCA1	Unlimited
	2. NCA2	Upto 500,000,000.00
	3. NCA3	Upto 300,000,000.00
	4. NCA4	Upto 200,000,000.00
	5. NCA5	Upto 100,000,000.00
	6. NCA6	Upto 50,000,000.00
	7. NCA7	Upto 20,000,000.00
	8. NCA8	Upto 10,000,000.00
<b>2</b>	<b>Specialist Contractors</b>	
	<b>Category</b>	<b>Value Limit (Kshs)</b>
	1. NCA1	Unlimited
	2. NCA2	Upto 250,000,000.00
	3. NCA3	Upto 150,000,000.00
	4. NCA4	Upto 100,000,000.00
	5. NCA5	Upto 50,000,000.00
	6. NCA6	Upto 20,000,000.00
	7. NCA7	Upto 10,000,000.00
	8. NCA8	Upto 5,000,000.00
<b>3</b>	<b>Roads and other Civil Works</b>	
	<b>Category</b>	<b>Value Limit (Kshs)</b>
	1. NCA1	Unlimited
	2. NCA2	Upto 750,000,000.00
	3. NCA3	Upto 500,000,000.00
	4. NCA4	Upto 300,000,000.00
	5. NCA5	Upto 200,000,000.00
	6. NCA6	Upto 100,000,000.00
	7. NCA7	Upto 50,000,000.00
	8. NCA8	Upto 20,000,000.00



## APPENDIX 4

### NCA Fee for Application, Registration and Renewal

	S/NO	TYPE OF APPLICATION	KENYAN CONTRACTORS (KShs.)	FOREIGN CONTRACTORS (US\$)
A	1.	New application	5,000.000	500
	2.	Up-grading class of Contractors	5,000.00	500
	3.	Appeals	5,000.00	500
	4.	Replacement of lost Certificates	5,000.00	500
B	<b>REGISTRATION</b>			
	Category			
	1.	NCA1	100,000.00	2,500
	2.	NCA2	75,000.00	-
	3.	NCA3	50,000.00	-
	4.	NCA4	25,000.00	-
	5.	NCA5	20,000.00	-
	6.	NCA6	15,000.00	-
	7.	NCA7	10,000.00	-
8.	NCA8	5,000.00	-	
C	<b>ANNUAL RENEWAL FEES</b>			
	Category			
	1.	NCA1	30,000.00	1,500
	2.	NCA2	25,000.00	-
	3.	NCA3	20,000.00	-
	4.	NCA4	15,000.00	-
	5.	NCA5	12,000.00	-
	6.	NCA6	10,000.00	-
	7.	NCA7	5,000.00	-
8.	NCA8	2,500.00	-	
D	<b>CHARGES OF DEFAULTERS OF RENEWAL</b>			
	Category			
	1.	NCA1	90,000.00	4,500
	2.	NCA2	75,000.00	-
	3.	NCA3	60,000.00	-
	4.	NCA4	45,000.00	-
	5.	NCA5	36,000.00	-
	6.	NCA6	30,000.00	-
	7.	NCA7	15,000.00	-
8.	NCA8	10,000.00	-	
	Charges for Non-Registered Contractors		300,000.00	7,500
	<b>Skilled Construction Workers and Construction Site Supervisors</b>			
	1.	Skilled Construction Workers	1,000	
	2.	Construction Site Supervisors	2,000	
	<b>Training Institution</b>			
	1.	Universities	50,000	
	2.	Polytechnics and Technical Colleges	20,000	
	3.	Youth Polytechnics	10,000	