THE APPLICATION OF CORPORATE GOVERNANCE IN THE PUBLIC SECTOR: A CASE STUDY OF THE NATIONAL COUNCIL FOR LAW REPORTING (KENYA LAW)

By

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UNITED STATES INTERNATIONAL UNIVERSITY, AFRICA

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CORPORATE GOVERNANCE APPLICATION IN THE PUBLIC SECTOR: A CASE STUDY OF THE NATIONAL COUNCIL FOR LAW REPORTING (KENYA LAW)

BY

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A Research Project Report submitted to the Chandaria School of Business in partial fulfillment of the requirement for the Degree of Executive Masters of Science in Organizational Development [EMOD]

UNITED STATES INTERNATIONAL UNIVERSITY AFRICA

SUMMER 2015
STUDENT’S DECLARATION

I the undersigned, declare that this is my original work and that it has not been submitted to any other Institution, College or University other than the United States International University of Africa for academic purposes.

Signed ________________________ Date _________________

Edna Wambui Kuria (ID 643897)

This research project has been presented for examination with my approval as the appointed supervisor

Signed ________________________ Date _________________

Dr. John Muteti

Signed ________________________ Date _________________

Dean, School of Business
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ABBREVIATIONS

ASX – Australian Securities Exchange
CACG - Commonwealth Association for Corporate Governance
CEO – Chief Executive Officer
CG – Corporate Governance
CMA – Capital Markets Authority
GOE – Government Owned Entities
OECD – Organisation for Economic Co-operation and Development
PSC – Public Service Commission (Kenya)
SCAC – State Corporations Advisory Committee (Kenya)
SC – State Corporation
SPSS – The Statistical Package for Social Sciences
ACKNOWLEDGEMENT

I would like to appreciate the following people for their support towards the completion of this study. I wish to express my thanks and gratitude to my supervisor Dr. John Muteti for his advice and guidance.

I wish to thank my husband, Paul, for his love, support and advice throughout the program and as I undertook this project, I could not have done this without him. To my family, Kanji, Kangi, Mum, Dad, Kui, Melvin, Nimo, Kush, Pat and Sue, thank you.
DEDICATION

This work is dedicated to my husband Paul, for always being by my side.
The purpose of the study was to investigate the meaning, understanding and application of corporate governance in a public sector agency.

The study sought to answer the following research questions:

a) How is Corporate Governance applied in the Public Service?

b) What are the elements of corporate governance implemented in the case study?

c) What are the challenges faced in the implementation of Corporate Governance in the case study?

A case study research design was used to undertake this study with a population of 20 employees of the case study organization the National Council for Law Reporting (Kenya Law).

The study adopted simple random sampling technique for the respondents. Data was collected using a structured questionnaire. Analysis was carried out using the Statistical Package for Social Sciences (SPSS) version 22. A total of nineteen (19) questionnaires were distributed, and nineteen questionnaires were returned constituting a response rate of 100%. Descriptive data was analyzed using the mean, percentages, and frequencies. The data was analyzed and presented and organized form of figures and tables, according to the research questions.

The first research question looked at how corporate governance is applied in the public service. The findings show that the council is aware of the elements of corporate governance application within the public service. The study also found that most the council understood and accepted its responsibility for reviewing the appropriateness of long range planning and corporate strategy (100% of the respondents agreed) which are integral to application of corporate governance; that the council periodically reviewed the mission statement and corporate objectives to determine both current and future direction of the institution (84.21% of the respondents agreed).

The second research question sought to find out what the various elements of corporate governance are implemented in the case study. The study found that the council understood and accepted its responsibility for reviewing the appropriateness of long range planning and corporate strategy (100% of the respondents agreed) which are integral to application of corporate governance; that the council periodically reviewed the mission statement and corporate objectives to determine both current and future direction of the institution (84.21% of the respondents agreed).
governance that had been identified in the case study during implementation. The results showed that the most outstanding element of good corporate governance implemented was laying solid foundations for management oversight. Other elements included board independence, board composition and size; responsible and ethical decision making; transparency and integrity in reporting; respecting rights of stakeholders; encouraging enhanced organizational performance among others.

The third research question sought to find out what the challenges the organization faced during the implementation of corporate governance. The results show that the most common challenge faced in the implementation of corporate governance was the existing legal and policy environment with the least common challenge being corporate governance communication channels and strategies and funding.

From the study, it is recommended that the case study should continue to implement corporate governance using other public bodies as a benchmark for application and implementation. Further, it is recommended that the case study continue to implement corporate governance by noting the challenges faced and working towards implementation of corporate governance.
CHAPTER ONE

1.0 INTRODUCTION

1.1 Background of the Problem

Mallin (2007) defined corporate governance as the combination of corporate policies and best practices implemented by organizations to meet its objectives in relation to its investors and stakeholders. The growth of corporations in terms of scale and activities has made governance a significant issue in the world (Clarke & Rama 2006). Many scholars note that the effects of the activities of corporations are felt not only internally, but have an impact on societies and broader economies (Jamali, Safieddine & Rabbath (2008)). With these impacts in mind, governance of corporations has become a priority for competitive entities not only to the owners of the company but also to the wider community and its stakeholders (Esser & Dekker, 2008).

Governance has assumed critical importance in the socio-economic and political systems. Shareholders are large in number, and an average shareholder controls an infinitesimal proportion of the shares of the firm. A typical firm is characterized by numerous owners having no management role, and with managers with no equity interest in the firm. This gives rise to the tendency for such a shareholder to take no interest in the monitoring of managers, who, left to themselves, may pursue interests different from those of the owners of equity. The compatibility of corporate governance practices with global standards has also become an important part of corporate success (Wanjiru, 2012).

Corporate Governance is however not confined to the private sector, but must also become a requirement for the public sector (Koma, 2009). Only after changing their systems and processes, to include corporate governance, will the public sector be able to improve their efficiency, effectiveness, accountability and reputation. Appropriate corporate governance arrangements are a key element in the success of any company, be it public or private (Meredith & Robyn, 2005). Corporate Governance practices and systems form the basis of a responsive and robust framework required for the delivery an organization’s objectives (Gachoki & Rotich, 2013).
Countries are struggling to expand their economies and improve living standards. This is true especially in Africa, which has, for a long time, been mired in declining economic performance, rising unemployment, deteriorating national infrastructure, inequality, and increasing and abject poverty (Gatamah, 2002). Persistent internal conflicts as well as external aggression have forced the poorest region in the world to divert such proportions of its resources that the very survival of increasing numbers of African countries may be at risk.

Without durable peace and the security of life and property both within and beyond national borders, it is not possible for citizens, economic actors, and governments to plan and implement the necessary corporate governance activities that are required so urgently to arrest the region’s protracted decline and stagnation.

Corporate Governance in Kenya has become very important, because of various financial and management scandals. Mismanagement, pilferage, and bureaucracy, combined with the irresponsibility and incompetence of employees and directors are highlighted in the Government of Kenya Sessional Paper No. 4 of 1991 as some of the problems that causing the failure of State Corporations (SC’s) in achievement of their mandate. This signifies the crucial role that corporate governance plays in any sector, including the public sector (Gatamah, 2002).

Weak financial performance of the majority of SC’s in Kenya has been attributed to an inadequate governance framework. SC’s operate under a governance structure that was complex, involving relationship between Parliament, Ministries, Boards and CEOs. This complexity has been a source of confusion and conflict, particularly in the allocation of responsibilities, and in accountability for results. The improved performance and viability of SC’s will require the development appropriate governance framework (PSC & SCAC, 2015).

Often it appears as though the public sector is exempted from the application of corporate governance (Herman & Renz, 2009), however the accountability and effectiveness of the public sector can be significantly improved when the principles of corporate governance are correctly applied (Rainey, 2009). Despite the numerous benefits of effective
governance practices, changing governance models is difficult as the models are embedded within the institutional environment of any nation (Aoki, & Jackson, 2001). Implementation of corporate governance in developing countries is further complicated by the need to change national laws to ensure good governance implementation. Consequently, little is known about the impact of Corporate Governance Implementation in the Public Sectors in the African context (Mulili, 2011).

1.2 Statement of the Problem

Over time state controlled economies realized the growing need for democratic culture and values through which to govern the state owned enterprises. A major issue in many countries is the effective and efficient management of public sector organizations. Public sector organizations are increasingly being held more accountable for their performance and are therefore expected to operate efficiently and effectively (Melese, Blandin, & O’Keefe, 2004).

The Public sector is always in search for ways to improve their activities. The uses of performance contracts, balanced score cards and key performance indicators are all models, which have been implemented. Consequently, management practices based on specific activities could result in the increase transparency and efficiency when conducting government activities thereby assisting public sector organizations to achieve their objectives (Baird, 2007; Melese et al, 2004).

Global best practices demonstrate the strong linkage between good governance and enterprise growth and profitability. The institutionalization of good governance practices in the leadership and governance of SC’s is therefore expected to spur growth, development, employment creation and economic transformation of the country (PSC & SCAC, 2015).

Public sector management has increasingly become results and customer-focused (Jarrar & Schiuma, 2007). In some countries, public sector enterprises are formed to create employment for large numbers of people. The growing unwillingness among many governments and communities to accept the continuation of historic commitments simply because they are historic may be as a result of this employment creation trend (Mulili, 2011). Some countries have also noticed diminishing differences between the private and
public sectors. Private sector organizations are expected to take social responsibility measures while the public sector is witnessing the need to focus on customers, performance and justify their existence. Business environment pays great attention to target, measurement, accountability, and productivity gains and the continued relevance and value of specific activities or programs. Proper management of public sector organizations is clearly an issue of concern in both developed and developing countries (Matengo, 2008).

Developing countries are utilizing the concept of corporate governance as part of their sustainable economic growth structures. Some state corporations have tremendous governance problems. Some State Corporations have folded up partly due to governance problems (Kyereboah & Biekpe, 2006).

The Government of Kenya, Parliamentary Sessional Paper No. 4 of 1991 on development and employment in Kenya highlighted the deterioration of the performance of Government Owned Entities. The report noted that the creation of state corporations, through which government participation in economic activities was promoted, was perhaps appropriate soon after independence. However the objectives for and the circumstances under which most of the state enterprises were created have since changed without resulting changes in the state corporations.

This project intends to investigate the implementation of corporate governance in the public service sector in Kenya and scrutinize the elements of corporate governance implemented and the challenges facing implementation.

1.3 Purpose of the Study

This study is undertaken to study the application of Corporate Governance in the public sector.

1.4 Research Questions

The project seeks to answer the following questions
a) How is Corporate Governance applied in the Public Service?
b) What are the elements of Corporate Governance implemented in the case study?
c) What are the challenges faced in the implementation of Corporate Governance in the case study organization?

1.5 Importance of the Study
The study will be of importance to the following entities and individuals:

1.5.1 The National Council for Law Reporting (Kenya Law)
The findings of the study will serve to provide evidence of the effect of the implementation of Corporate Governance. The findings will assist Kenya Law to plan for its corporate governance implementation and make informed decisions on any challenges arising.

1.5.2 Stakeholders in the Industry
The findings will inform the activities of other State Corporations, especially those that are service oriented as they seek to implement Corporate Governance within their organizations. As governments become more focused on service delivery and people centered approaches to work, public sector organizations need to understand the effects, challenges and areas of operations that will be impacted by the implementation of Corporate Governance.

1.5.3 The makers of Policy
The findings of this study will inform policy makers within the public sector on the relevant details and implementation components to include as they formulate corporate governance policies. Noting the scarcity of research in the service public sector, the study would form a basis for knowledge for future Corporate Governance implementation policies.

1.5.4 Researchers and Academicians
The area of research of corporate governance implementation of the public sector is scarcely populated and requires more input. This study will form a resource tool for other researchers in the field of corporate governance to inform them on the impact of corporate
governance implementation within the public sector.

1.6 Scope of the Study

The study will focus on the National Council for Law Reporting, (Kenya Law) a Semi-Autonomous State Corporation under the Judiciary of Kenya. The study population will comprise of the top-level management, mid-level management and the general staff at Kenya Law in Nairobi, Kenya. The study will be undertaken within a period of 6 months.

1.7 Definition of Terms

1.7.1 Corporate Governance

The set of responsibilities and practices exercised by the board and executive management (“the governing body”) with the goal of

   a) Providing strategic direction
   b) Ensuring that objectives are achieved
   c) Ascertaining that risks are managed appropriately
   d) Verifying that the organization’s resources are used responsibly (International Good Practice Guide, 2009)

1.7.2 Public Sector

The part of the economy that is controlled by Government (Lane, 1995)

1.7.3 State Corporation

A body corporate created under the State Corporations Act of Kenya (CAP 446)

1.7.4 Mwongozo Code


1.8 Chapter Summary

The chapter introduced the background of the problem and set out a case for the statement of the problem. The purpose of the study and the three research questions were identified.
The chapter also set out the importance of the study and the scope, which the study would cover. Terms were defined in the chapter and a summary of the chapter provided. The next chapter will focus on the literature review for the study.
CHAPTER TWO

2.0 LITERATURE REVIEW

2.1 Introduction

The objective of this chapter is to provide a literature review of the studies of the various factors affecting the implementation of Corporate Governance in government owned service entities. This chapter is based on the three research questions. The first section will look into the corporate governance implementation in the public sector. The second section will look into theories on which corporate governance is based on. The third section will deal with issues of principles of good corporate governance and the fourth section issues of the challenges of corporate governance implementation.

2.2 Corporate Governance Implementation in the Public Sector

Many countries and companies want to signal good governance by meeting international standards and practices. There is need for Kenya to apply all of her resources to address the national development challenges (PSC & SCAC, 2015).

In recent years, with growing interest in the relationship between corporate governance and employment relations, a body of literature has emerged that finds patterns of relationship that vary across national productive systems (Gospel & Pendleton 2005; Jacoby, 2005). Shareholders’ long-run interests are probably well served by including employees in corporate governance (Blair, 1995; Blair & Stout, 1999).

While the implementation of systems and structures may provide an attractive environment for good corporate governance practices, the acts and omissions of those charged with relevant responsibilities will eventually determine whether governance objectives are achieved. Cairnes (2003) study outlines the various aspects of bad behavior that could serve as a catalyst for the financial under-performance of the organization. Corporate governance enhances motivation of managers to raise operational efficiencies, maximize returns on investment and ensure long-term productive growth. In the long term, corporate governance enhances organizational performance and competitive advantage (Coughlin & Schmidt, 1985).
Gospel and Pendleton, (2005) suggest that corporate governance deals with the relationship between capital, management and labor. This is a realistic way of thinking about corporate governance. It is impossible to understand the central purpose of the firm, and about how it adds value, without bringing employees into the picture. Clearly, employee interests cannot be well served if corporate governance is reduced to a conversation between management and capital. As Jacoby (2005) has shown, employee participation in corporate governance can make a radical difference to how employees are treated by the firm.

Parkinson (2003) highlights the link between the prevailing conception of the corporation and the way that employee interests fit into the corporate governance structure. He argues that the firm should be seen as a complex social institution. It is neither simply the property of its shareholders nor a mere nexus of contracts; these conceptions of the firm are to some degree impoverished. Rather, he suggests that the firm should be considered as a complex social institution that has a reality of its own and that is not simply the property of its shareholders. This way of thinking about the firm would bring employees (and he believes other “stakeholders”) into the center of corporate governance. The challenge is then to find legal mechanisms to give content and meaning to the firm-social institution approach.

Firm's performance is a measure of standard or prescribed indicators of effectiveness, efficiency, and environmental responsibility. Performance refers to the quantification relating to how a particular request is handled, or performed. It is the outcome of all of the organization’s operations and strategies (Claessens, 2003). It is also the extent to which an individual meets the expectations regarding how he should function or behave in a particular context, situation, job or circumstance. Solomon and Solomon (2004) are of the view that performance is what people do in relation to organizational roles (Wasike, 2012).

Agrawl and Knoeber (1996) define corporate governance as a system, which has dual mechanism to control organizations; it can be external mechanism and internal mechanism. Firm’s decision makers (top management) decide the internal mechanisms
like size of board, remunerations and other internal policies. Corporate Governance is linked with performance for the sustainable organizational success. It is also denoted that good corporate governance serves for a number of public policy objectives in new markets (Attiya & Robina, 2010).

Claessens (2003) notes that better corporate frameworks benefit firms through greater access to financing, lower cost of capital, better performance and more favorable treatment of all stakeholders. Other researchers contend that good corporate governance is important for increasing investor confidence and market liquidity (Donaldson & Preston, 1995). The governance structure of any corporate entity affects the firm's ability to respond to external factors that have some bearing on its performance. In this regard, it has been noted that well governed firms largely perform better and that good corporate governance is of essence to firms (Brown & Caylor, 2004). Good governance develops, enhances and maintains confidence and goodwill of investors and stakeholders. Poorly governed firms are seen to be less profitable.

Governance is concerned with how an organization is managed. It is important to understand the difference between managing and governance. In a broad sense, governance involves the processes and systems in place that assist management to visualize, shape, enable and oversee management of an organization. Management is concerned with coordinating and managing a company’s day-to-day operations.

The following table shows the conceptual difference between governing and managing.

**Table 2.1 Difference between governing and managing.**

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<td>The mind</td>
<td>The hands</td>
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<tr>
<td>Directors direct</td>
<td>Managers manage</td>
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<td>Policy</td>
<td>Action</td>
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Within organizations, corporate governance imposes a structure on stakeholder relationships that has the potential to undermine the ability and willingness of managers and employees to fully commit themselves to each other and to the organization and its
objectives (Konzelman, 2007).

By adopting a transformational mindset in the way business is conducted, Government expects the entities it owns to promote and accelerate economic growth and development, and to drive the social and economic transformation in Kenya. State Corporations need to support government’s efforts by building the institutional and technical capacity of the state in facilitating and promoting national development; improving the delivery of public services to meet the basic needs of citizens; supporting the creation of employment opportunities in diverse sectors across the entire country and supporting the nation's regional integration initiatives and international partnerships (Wasike, 2012).

Good corporate governance is therefore crucial in transforming SC’s into engines of economic development and social wellbeing in the country. Further, good corporate governance promotes value enhancement for stakeholders including the public and the governments, thus ensuring that benefits flow to every aspect of the economy. Good corporate governance in the public sector in the country will result in accelerated development and fast track the transformation of the Kenyan economy (PSC & SCAC, 2015).

According to Kyereboah and Biekpe (2006) corporate governance may be about many things, but the essence of corporate governance is about how owners (principals) of firms can ensure that the firm's assets (and the returns generated by those assets) are used efficiently and in their best interests by managers (agents) delegated with powers to operate those assets. This problem is intrinsic to any arrangement where owners themselves do not undertake the management function directly. The following are areas, which the public sector needs to concentrate on in order to entrench corporate governance practices:

1. Separation of ownership and control rights leading to a division between residual risk bearing by principals or the owners and control by agents or the management.
2. Informational asymmetry where principals have less knowledgeable about the actual strategy, operations and performance of firms than agents in day-to-day control; and
3. Incomplete or state-contingent contracts which provides potential moral hazards for management to dissemble and deceive owners, and to operate the firm in their (managers') own interest at expense of owners.

4. Alignment of risk-bearing and control founded on a clear property rights structure and enforceable laws/regulations;

5. Monitoring and oversight of management and firm's performance based on transparency, regular and reliable disclosures, and internal checks and balances; and

6. Managerial incentives to enhance effort and align interests of management with those of owners.

Governance guidelines include requirements that SC’s should observe high standards of transparency in accordance with OECD principles of corporate governance; the boards of state-owned enterprises should have the necessary authority, competencies and objectivity to carry out their function of strategic guidance and monitoring of management; and members of the Board are required to act with integrity and be held accountable for their actions (Mulili, 2011).

There is need to implement corporate governance mechanisms in order to increase efficiency and accountability in the use and deployment of scarce public resources. An effective corporate governance framework allocates responsibilities for supervision, implementation and enforcement to different institutions while respecting the role of complementary agencies (Kyereboah & Biekpe, 2006).

2.3 **Elements of Corporate Governance Implementation in Public Institutions**

Global best practice demonstrates the strong linkage between good governance and enterprise growth and profitability. The institutionalization of good governance practices in the leadership and governance of SC’s is therefore expected to spur growth, development, employment creation and economic transformation of the country (PSC & SCAC, 2015).

Kenya recognizes the value of good governance as demonstrated in the constitution. 3 Chapter 2 articles 10 (1) on National Values and Principles of Governance commits all
persons, state organs and any other parties to the national values, good governance being one of the values. 4 Chapter 6 of the constitution on Leadership and integrity stipulates the responsibility of leadership essentially promoting effective leadership, which is a good tenet of good governance. Article 73 – 78 and subsequently the leadership and integrity act prescribe a code of conduct for all state and public officers. The code in the Leadership and Integrity Act recognizes that leadership assigned to state or public officer is a public trust that is to be exercised in a manner that is consistent with the purposes and objects of this constitution, brings honor to the nation and dignity to the office and promotes public confidence in the integrity of the office. (Capital Markets Authority, 2014)

The academic literature on corporate governance examines the efficacy of alternative ownership structures and alternative structures for the board of directors. While there is mounting evidence of the failure of certain governance structures to motivate managers to increase firm performance, the empirical evidence to date is mixed and gives little coherent evidence for the shape of an optimal governance structure. The multi-dimensional nature of corporate governance connects corporate governance to organizational performance. This is because governance involves ensuring compliance with legal obligations as well as the protection of owners and shareholders against fraud or organizational failure. (Meredith & Robyn, 2005)

The state as the owner has established its overall expectations and set mandates for State Corporations, which have been given operational autonomy and insulated from political interventions. The role of oversight institutions has been enhanced to monitor, consolidate and share information across government. Best practice highlights the most important tool for improving corporate governance as being the appointment professional Boards with well-defined skills undertake board induction and evaluation and require regular performance reports. The reduction in the size of the Boards and the increase in the number of independent Board members is therefore at the fore in changes to State Corporation boards (Wanjiru, 2012).

Hajer & Wagenaar (2003) propose a normative deliberative theory of governance and espouses that governance is about opening up a participative democratic process and
highlights the significance of interpretation and language in the making of policy and decisions, which determine an organizations performance. The theory argues that the central concepts of governance are similar, deliberative governance refers to places where politics are made under conditions of radical uncertainty and interdependence.

The critical areas to be addressed by corporate governance can be easily described as, efficient, responsible, transparent and honest governance of economic entities, whether they are private or state owned, large, medium or small. The principles set out by the Commonwealth Association for Corporate Governance (CACG) are a well-recognized benchmark within the Commonwealth; but similar codes and principles, for example the Cadbury and King Reports are available in other jurisdictions. Corporate governance is a concept that is still at its evolution stage (Miringu & Muoria, 2011)

Effectiveness of Boards, transparency and disclosure, accountability, risk management, internal controls, ethical leadership and good corporate citizenship are key to governance of an organization. There is also need for an organization to provide a platform for addressing shareholder rights and obligations and ensuring more effective engagement with stakeholders. By implementing corporate governance, State Corporations will ensure that sustainability, performance and excellence become their hallmark (PSC & SCAC, 2015).

Corporate governance constitutes the organizational climate for the internal activities of a company. Corporate governance brings new outlook and enhances and organizations corporate entrepreneurship and competitiveness (Jebet, 2011). Corporate governance practices play a role in organizational stability, market development and organizational competitiveness. Without a board to direct and control, in some scenarios, managers may utilize the profits to their own ends. Good governance practices minimize the risk of poor organizational performance (Meredith & Robyn, 2005).

Organizations in Kenya have a history of poor governance systems with about 70% of the corporate scandals being blamed on lack of internal controls, weak regulatory and supervisory systems, conflicts of interest and weak corporate governance practices (Gachoki & Rotich, 2013). Corporate governance has received increased global attention because of the various high profile scandals resulting from abuse of corporate power,

The government, as regulator and paymaster, is the major shareholder in public sector organizations. This dominance however, is conditional on electoral support and as a result, taxpayers and users of public services can be regarded as the stakeholders in public sector organizations. The interests of taxpayers and users of public sector services oftentimes may conflict. Taxpayers demanding to pay as little as possible and users of public sector services wanting high levels of good quality services. This then leads to the government intensifying work relative to pay in the public sector. (Konzelmann, 2007).

Although the private sector model of corporate governance, which tends to view shareholders as the main stakeholder group, requires some adaptation for the public sector, many of the underlying principles of good corporate governance still apply. In the public sector, specific user groups, those directly responsible for funding, and the community at large, from which public resources ultimately derive, assume a greater importance as stakeholders. However, the pivotal role of the governing board and the issues of transparency and accountability are as relevant to the public sector as they are to the private sector. ASX Corporate Governance Principles (2014) set out the following elements of corporate governance

1. Implement solid foundations for management oversight
2. Establish and structure a Board that adds value to the organization
3. Promote and ensure ethical and responsible decision making
4. Safeguard and ensure integrity in financial reporting
5. Ensure timely and balanced disclosure
6. Respect the rights of shareholders
7. Identify, plan for and manage risks
8. Encourage enhanced performance
9. Fair and responsible remuneration
10. Recognize the legitimate interests of stakeholders
In developing the *Mwongozo* code of conduct, the taskforce on Parastatal reforms noted that the following were the missing elements in the implementation of Corporate Governance within the Public Sector:

1. Absence of a clear framework for recruitment, selection, appointment and inductions of Boards of SC’s;
2. Lack of uniformity in the application of appointment procedures;
3. Inadequate induction processes for Board members;
4. Lack of proper skills mix and bloated Boards;
5. Shortcomings in the process of appointment of CEOs;
6. Lack of understanding of the role of Boards by directors;
7. Fusing of the roles of the Chief Executive and Board Secretary.

The six principles of good governance developed by OECD, and which are now global benchmarks for corporate governance principles. These are ensuring the basis for an effective corporate governance framework; the rights of shareholders and key ownership functions; the equitable treatment of shareholders; the role of stakeholders; disclosure and transparency; and the responsibilities of the Board (PSC & SCAC, 2015).
<table>
<thead>
<tr>
<th>PRINCIPLE</th>
<th>SOURCE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Implement a solid foundation for management oversight</td>
<td>The Business Roundtable (2002)</td>
</tr>
<tr>
<td></td>
<td>ASX Corporate Governance Council (2003)</td>
</tr>
<tr>
<td>Establish and structure a board that adds value to the organization</td>
<td>ASX Corporate Governance Council (2003)</td>
</tr>
<tr>
<td></td>
<td>Cadbury Report (1992) UK</td>
</tr>
<tr>
<td>Equitable and respectful treatment of shareholders</td>
<td>OECD (1999)</td>
</tr>
<tr>
<td></td>
<td>The Business Roundtable (2002)</td>
</tr>
<tr>
<td></td>
<td>ASX Corporate Governance Council (2003)</td>
</tr>
<tr>
<td>Accurate and timely disclosure of financial, performance, ownership,</td>
<td>ASX Corporate Governance Council (2003)</td>
</tr>
<tr>
<td></td>
<td>OECD (1999)</td>
</tr>
<tr>
<td>Effective monitoring of management and the accountability of the board</td>
<td>OECD (1999)</td>
</tr>
<tr>
<td></td>
<td>ASX Corporate Governance Council (2003)</td>
</tr>
<tr>
<td></td>
<td>Sarbanes-Oxley Act 2002 (‘SOX’).</td>
</tr>
<tr>
<td>Operating ethically and responsible decision making</td>
<td>ASX Corporate Governance Council (2003)</td>
</tr>
<tr>
<td></td>
<td>The Business Roundtable (2002)</td>
</tr>
<tr>
<td>Fairness in dealing with employees</td>
<td>ASX Corporate Governance Council (2003)</td>
</tr>
<tr>
<td></td>
<td>OECD (1999)</td>
</tr>
<tr>
<td>Recognize the legitimate interests of stakeholders</td>
<td>ASX Corporate Governance Council (2003)</td>
</tr>
<tr>
<td></td>
<td>OECD (1999)</td>
</tr>
</tbody>
</table>
2.4 Challenges facing the implementation of Corporate Governance in the Public Sector

There are intrinsic and fundamental problems of corporate governance in SC’s because of the ambiguity of property rights associated with state ownership. SC’s represent the classic case of the principal agent problem. Under a system of ownership by the whole people through state ownership, property rights belong to everyone and to no one in particular. The state assumes the role as representative of the people and acts as the principal/owner on behalf of the public in delegating day-to-day operational powers over enterprises to managers/agents (Koma, 2009).

At independence, Kenya established State Corporations to implement government policies and execute programmes for economic and social development of our country. The Government at that time assumed a greater role in the development of critical sectors of our economy to enhance the participation of citizens in economic activities. However, it became clear over the years, and with new challenges, that State Corporations have not operated at expected levels due to weak governance structures as well as other external factors (Miringu & Muoria, 2011).

There are a number of reasons it is important to move corporate governance to the fore of the policy agenda. Some of them are:

a) Weak Corporate Governance practices
   In the past few years there have been a number of governance scandals and “boardroom wars” among Kenya’s large companies. These events are often triggered by the arrival of new management, but tend to follow years of alleged poor corporate governance, corruption and mismanagement of investor funds.

b) International perception
   According to a series of international benchmarks, Kenya is lowly ranked on governance and accountability, competitiveness, and investor protection indicators. These international comparisons of competitiveness indicate that there is a serious need to push forward on corporate governance reform:
i. The World Economic Forum’s annual Global Competitiveness Report indicates a clear perception that Kenya’s investor protection and corporate governance framework lags behind other countries. This contributed to an overall ranking in the Global Competitiveness Index of 106 out of 144 countries in the world in 2013.

ii. Several components of the institutional pillar reflect key elements of the corporate governance framework. Kenya’s rank on the perception of “ethical behavior of firms” was 102, down from 99. Kenya’s rank on “the effectiveness of corporate boards” was 79 (up from 94 in 2012).


The governance challenges faced by State Corporations are relatively easy to identify. What is needed is clear political leadership and commitment to change. For instance, high level of political affiliation and insufficient competence in Boards of State Corporations is a result of an opaque appointment process. A professional and independent Board is more likely to safeguard a State Corporation from political interference, lead to more efficient operations through well-defined strategy and ultimately result in increased value-for-money to the shareholders, that is, the public (PSC & SCAC, 2015).

Researchers have identified the key functions of the board as the following:

1. Strategic
2. Controlling (monitoring managers and accountability)
3. Institutional (building links with investors and stakeholders)
4. Approval of a core philosophy and mission, maintenance of legal and ethical practices, communication with shareholders
5. Review.
Usually, the statutory framework of the country of operation explicitly states the responsibilities of the board of directors. The company’s memoranda and its declaration of board values and charter serve as guiding principles of the role and fiduciary duties of the board (Riana, 2008).

Developing countries are often defined by relatively underdeveloped institutional and policy environments within which their firms operate. Legal and regulatory frameworks are elementary with poor enforcement mechanisms. Accounting, auditing and disclosure standards in these countries are often inadequate for the level of monitoring and needed for good corporate governance practices to thrive. SC’s tend to be weak in these economies with senior appointments often made on political or kinship ties. Managerial job markets are less developed and senior managerial jobs are not easily contestable (Gatamah, 2002)

According to Gachoki and Rotich (2013), the challenges facing State Owned Corporations in Africa have further been identified as among others

1. The structure of company ownership and control
2. Interlocking relationships with government and the financial sector
3. Weak civil and judicial systems
4. Absent or underdeveloped monitoring institutions and
5. Limited human resource capabilities

Research into the issue of challenges of implementation of corporate governance yields specific responses for Africa as a developing region. Okeahalam and Akinboade (2003), list the following as the specific corporate governance challenges in Africa:

1. Lack of political will on the parts of governments
2. Regulating payment disclosure
3. Preponderance of small firms in Africa
4. The informal nature of enterprises
5. Restricted competition in markets for goods and services
6. Corrupt practices
7. Crony capitalism challenges
8. Valuation of state assets for privatization
9. Challenges due to boardroom composition

These are however general challenges, identification of which are important, given the recent spate of high profile scandals and financial crises at a number of corporations in developed economies. Some of the challenges are regulatory nature; some fall under enforcement, incentive regime, state capacity and responsible corporate citizenship.

Companies in Kenya perform poorly not only because of the nature of the laws in place but also because of the political and regulatory environment in the country. Although it is possible to argue that enforcing the law that is currently in place would improve corporate governance to an extent and that reviewing the current law without improving the environment in which it operates is likely to have a limited impact on corporate governance, implementing effective laws is a fundamental requirement for establishing a successful corporate governance system (Gachoki & Rotich, 2013).

Corporate governance reform is a key component of the governance and anti-corruption agenda. Corruption can affect all stakeholders of an enterprise: its shareholders, creditors, business partners, relevant government agencies, as well as consumers and the society at large, particularly the poor. Corruption discourages investment, particularly in countries with weak governance conditions, and affects country competitiveness and investment climate. A good corporate governance system requires disclosure and provision of adequate information to minimize information inconsistencies between stakeholders and make an organization accountable for their actions (Okeahalam & Akinboade, 2003)

The challenge of corporate governance development is undoubtedly more formidable in transition and developing countries because of policy and institutional environments less conducive to the enforcement of corporate governance. However, these challenges provide these economies with unique and historic opportunities for corporate governance development less available to the advanced economies. Many of these economies need to
engage in a whole host of reforms, in particular public sector reform as well as development of the legal and regulatory regime (Capital Markets Authority, 2014).

This study sought to find the challenges faced by the case study organization as it seeks to implement corporate governance structures.

2.5 Chapter Summary

The chapter gave an introduction to the literature review and sought to collect information about the three research questions. The chapter highlighted the issues of corporate governance within the context of employee performance, organizational performance and elements of corporate governance implementation. The chapter also contained a summary. The next chapter will highlight the research methodology aspect of the project.
CHAPTER THREE

3.0 RESEARCH METHODOLOGY

3.1 Introduction

This Chapter contains an overview of the research methodology used in the study. It contains information on the projects research design, population and sampling design. The chapter also deals with data collection methods and procedures and data analysis.

3.2 Research Design

The research design that was used to undertake the study was a case study. The design will analyze the organization under review (Kenya Law) in relation to the pertinent information being sought by the researcher. This differs from a statistical survey as it is an in depth study of one organization from a specific perspective. Case studies may be descriptive or explanatory. Explanatory case studies are used to delve into the causes of phenomenon to find the root causes.

A case study can be deemed to be an in-depth study on a specific situation rather than a statistical survey. A case study allows the researcher to narrow down a broad field of research into a researchable topic (Cooper & Schindler, 2003)

3.3 Populations and Sample Design

3.3.1 Population

The population to be identified means the whole set of objects or events under investigation about which you will make presumptions based on material findings (Robins, 2006). The population for the study will include the 30 permanent and contractual staff members of Kenya Law taken from the various departments. The employees are ranked in grade (KLR 1 – KLR 6) with top management being identified as KLR 1 - KLR 4 (departmental and function heads). The organization is based in Nairobi, Upperhill area.

3.3.2 Sampling Design

The sampling design will be made up of a sampling technique, the sampling frame and
the sample size.

3.3.2.1 Sampling Frame

The sampling frame is the list of the population from which the researcher will select samples for analysis (Merriam, 2003). The list of employees as provided by the Human Resources department of Kenya Law will be used as the sampling frame for the study.

3.3.2.2 Sampling Technique

The study will use stratified random probability sampling accompanied by systematic random sampling within each strata (employee level 1-9) representing the population of the study. This technique was chosen to reduce bias and to allow for more even sampling within the population.

3.3.2.3 Sample Size

Field (2005) stated that a sample is a smaller collection of units from a population used to determine truths about that populations. Out of the target population of 20 employees, a sample size of 19 employees will be chosen as shown in table 3.2

Table 3. 1 Display of sample size

<table>
<thead>
<tr>
<th>Categories</th>
<th>Population</th>
<th>Sample size</th>
</tr>
</thead>
<tbody>
<tr>
<td>*KLR 1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>KLR 3</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>KLR 4</td>
<td>7</td>
<td>7</td>
</tr>
<tr>
<td>KLR 5</td>
<td>4</td>
<td>4</td>
</tr>
<tr>
<td>KLR 6</td>
<td>7</td>
<td>6</td>
</tr>
<tr>
<td>TOTAL</td>
<td>20</td>
<td>19</td>
</tr>
</tbody>
</table>

In the table above KLR is the referencing prefix in the organization and the numerical value is the category of staffing. 1 is the highest level (CEO) while 6 is the officer level of the organization.

After determining the appropriate sampling method, the next step involves determining
the sample size of the study. Bryman (2003) argue that the decision on sample size is not straightforward because the major criterion to consider on sample size is the extent to which the sample is representative of the population. This can be expressed in terms of probability. Collis and Hussey (2003) propose three main considerations to bear in mind when deciding on the sample size.

1. The kind of statistical analysis which is planned;
2. The expected variability within the samples and the results based on experience (the greater the expected variation, the larger the sample);
3. The traditions in the particular research area regarding appropriate sample size.

Malhotra (1996) offers the following guidelines when selecting the sample size given the size of the population (see Table 3.3).

**Table 3.2 Guidelines for sample size selection**

<table>
<thead>
<tr>
<th>Population</th>
<th>Number of respondents (actual sample)</th>
</tr>
</thead>
<tbody>
<tr>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>20</td>
<td>19</td>
</tr>
<tr>
<td>30</td>
<td>28</td>
</tr>
<tr>
<td>40</td>
<td>36</td>
</tr>
<tr>
<td>50</td>
<td>44</td>
</tr>
<tr>
<td>100</td>
<td>80</td>
</tr>
<tr>
<td>150</td>
<td>108</td>
</tr>
<tr>
<td>200</td>
<td>132</td>
</tr>
<tr>
<td>300</td>
<td>169</td>
</tr>
<tr>
<td>400</td>
<td>196</td>
</tr>
<tr>
<td>500</td>
<td>217</td>
</tr>
</tbody>
</table>

3.4 **Data Collection Methods**

The instrument that will be used to collect data will be questionnaires. The questionnaires will be sectioned into three parts and will be based on the research questions the study seeks to investigate. The first section will seek to obtain basic
information about the respondent. The second part will research the respondent’s knowledge of corporate governance. This section will seek to find out how much knowledge and information the staff members have about the implementation of corporate governance in the organization. Section three of the questionnaire look into the challenges facing the implementation of corporate governance in the organization. The questionnaire will be an unforced labelled Likert scale questionnaire.

3.5 Research Procedures

Various methods of collecting primary data are available, including observations, interviews and self-administered questionnaires. Self-administered questionnaires are common instruments for collecting raw data beyond the physical reach of the researcher. Under self-administered questionnaires respondents are invited to complete either a questionnaire, often as part of a postal survey; a questionnaire send through an e-mail; or a questionnaire hosted on the internet (sometimes referred to as web-based computer-assisted self-interviewing or web-CASI).

The researcher will develop a questionnaire and use it to collect data for the study. The questionnaire will comprise of four sections all designed to obtain information about the research questions. Section 1 will obtain basic information about the respondent. Section 2 will research the respondent’s knowledge of corporate governance. This section will seek to find out how much knowledge and information the staff members have about the implementation of corporate governance in the organization. Section 3 will look into the challenges facing the implementation of corporate governance in the organization.

The questions in the instrument will be ordered sequentially for ease of understanding of the respondents. Each questionnaire will be assigned an identification number to anonymize the responses.

Leedy (1997) specifies that there are three practical guidelines that govern the use of a survey questionnaire as a tool in survey research.

i. The language must be unmistakably clear,

ii. It should be designed to fulfill a specific research objective, and
iii. It should be tested repeatedly for precision of expression, objectivity, relevance, suitability to the problem situation and probability of favorable reception and return.

Some authors are of the opinion that questionnaires have a number of advantages. According to Seliger and Shohang (1989)

1. They are self-administered and can be given to large groups of respondents at the same time. Therefore, they are less expensive to administer than other procedures, for example interviews.
2. When anonymity is assured, respondents tend to share information of a sensitive nature more readily.
3. Since the same questionnaire is given to all respondents, data will be of a uniform standard and reliability can be established.
4. Since they are usually given to all respondents at the same time, the data would be accurate. This contributes to validity.

3.6 Data Analysis Methods

An interview guide will be developed and edited for consistency and completeness. Primary and secondary data will be qualitative in nature. Content analysis will then be used to analyze the data. Content analysis is a technique inferring by objectively and systematically identifying specified characteristics of messages and using the same to relate trends. The data obtained will then be compared with existing literature in order to establish areas of agreement and disagreement Creswell (2003).

Quantitative and qualitative data will be collected through the use of questionnaires. Data collected will be keyed in and SPSS Version 17 will be used for clean-up. Dempsey (2003) encouraged the use of SPSS Version 17 as it was programmed with descriptive statistics features to assist in variable response comparison and give clear indication of responses frequencies. The data was then be analyzed using multiple regression technique where the relationship between the independent and dependent variable was determined.

To test the reliability and validity of the questionnaire, a pilot study will be undertaken. This will help to establish whether the instrument is comprehensive enough to elicit the
intended information exhaustively. The open and closed questionnaires will be administered to a total of nineteen respondents, which was later analyzed.

Chapter Summary

This Chapter highlighted the research design, sample and data collection procedure and data analysis. The next chapter will highlight the results and findings of the research.
CHAPTER FOUR

4.0 RESULTS AND FINDINGS

4.1 Introduction

Chapter four discusses the findings carried out on the study of the Kenya Law. The chapter starts by presenting demographic data from the respondents. The first section research question findings are on the basic information about the respondent. The other sections in the chapter are arranged according to the three research questions. The second section, will research the respondent’s knowledge of corporate governance.

The first question findings are of the general knowledge the staff may know with regard to question governance and its implementation. The second questions findings are and information the staff members have about the implementation of corporate governance in the organization. The third questions findings will look into the challenges facing the implementation of corporate governance in the organization.

This chapter presents study findings in form of distribution mean tables, charts, and graphs. Major findings are made in the summary at the end of the chapter.

4.2 Response Rate

The response rate is the extent to which the final set of questionnaires collected from respondents is calculated against the number of questionnaires received back from respondents interviewed in the study. This study had a sample size of 20 respondents, out of which 19 questionnaires were returned fully filled by respondents representing a response rate of 95%.
4.3 Reliability Analysis

A reliability test was done to establish the internal consistency of the tool. This was done through Cronbach Alpha. A value of 0.7 was considered for this study. Thus all values above 0.7 indicated that the tool was good and reliable.

<table>
<thead>
<tr>
<th>Questions</th>
<th>Cronbach’s Alpha</th>
<th>N of Items</th>
</tr>
</thead>
<tbody>
<tr>
<td>Q7-q23</td>
<td>.751</td>
<td>17</td>
</tr>
</tbody>
</table>

All the Likert scale variables had a Cronbach Alpha of more than 0.7

4.4 Characteristics of the respondents

The researcher asked the respondents some of the basic information about the respondents. The results are presented below

4.4.1 Classification of the respondents by level of employment

The respondents were requested to indicate their levels of employment to establish the
respondents’ level of employment. The result in figure 4.2 shows the number of responses by their levels of employment. From the findings shown, majority of the respondents were employed at level KLR 7 which accounted for 36.84% of the total respondents.

Figure 4.2 Classification of respondents by levels of employment

4.4.2 Classification by departments

The respondents were required to indicate their departments to establish the respondents’ department. The result in table 4.2 shows the number of responses by their departments. From the findings shown, majority of the respondents were from the Law Reporting department (26.32%) and the least represented department was the CEO and Marketing and Communications which accounted for 5.26% of the total respondents.
### Table 4.2 Classification of the respondents by department

<table>
<thead>
<tr>
<th>Department</th>
<th>Frequency</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>CEO</td>
<td>1</td>
<td>5.26</td>
</tr>
<tr>
<td>Finance</td>
<td>2</td>
<td>10.53</td>
</tr>
<tr>
<td>HR</td>
<td>2</td>
<td>10.53</td>
</tr>
<tr>
<td>ICT</td>
<td>2</td>
<td>10.53</td>
</tr>
<tr>
<td>Law Reporting</td>
<td>5</td>
<td>26.32</td>
</tr>
<tr>
<td>Laws of Kenya</td>
<td>2</td>
<td>10.53</td>
</tr>
<tr>
<td>Marketing and Communications</td>
<td>1</td>
<td>5.26</td>
</tr>
<tr>
<td>Research and Development</td>
<td>2</td>
<td>10.53</td>
</tr>
<tr>
<td>Strategy and Quality</td>
<td>2</td>
<td>10.53</td>
</tr>
</tbody>
</table>

#### 4.4.3 Classification by years of employment

The study requested the respondents to indicate the number of years that they had worked for their institution to establish the respondents’ years of employment. The result in figure 4.3 shows the number of responses by their years of employment. The findings shows that most of the respondents had worked for their organization for more than 6 years and this represented 36.84 of the total respondents.
On the basis of employment, all the employees were employed on permanent and pensionable basis.

4.4.4 Classification by gender
The respondents were required to indicate their gender to establish the respondents’ gender. The result in table 4.3 shows the number of responses by gender. From the findings shown, 10 of the respondents were female which accounted for 52.63% of the total respondents.

Table 4.3 Classification of the respondents by gender

<table>
<thead>
<tr>
<th>Gender</th>
<th>Frequency</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Male</td>
<td>9</td>
<td>47.37%</td>
</tr>
<tr>
<td>Female</td>
<td>10</td>
<td>52.63%</td>
</tr>
</tbody>
</table>
4.5 Implementation of corporate governance in public service

In order to establish the indicators of corporate governance application in public service, the respondents were asked to rank the corporate governance implementation measures according to their level of knowledge of the implementation of corporate governance in public sector on a scale of 1 to 5. The scale respectively represents Strongly Disagree, Disagree, Neutral, Agree and Strongly Agree. The data were analyzed using descriptive statistics - frequencies and percentages and the findings are shown in Table 4.4

The most outstanding variables which indicated the corporate governance application in public service was that the council understood and accepted its responsibility for reviewing the appropriateness of long range planning and corporate strategy (100% of the respondents agreed); that the council periodically reviewed the mission statement and corporate objectives to determine both current and future direction of the institution (84.21% of the respondents agreed); that the council regularly referred to approved goals, objectives, and plans to guide its decision making process (84.21% of the respondents agreed); and that the council understood and accepted its fiduciary accountability in areas of financial performance (84.21% of the respondents agreed)
Table 4.4 Implementation of corporate governance in public service

<table>
<thead>
<tr>
<th>Statements</th>
<th>Levels of agreement</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>SD</td>
</tr>
<tr>
<td>Review of mission, vision and objectives</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Long range planning and corporate strategy</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Review of short and long range planning</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Goals and objectives to guide organization</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Separation of roles</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>(10.53%)</td>
</tr>
<tr>
<td>Succession Planning</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>(5.26%)</td>
</tr>
<tr>
<td>Corporate structure</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Diversity in Council experience</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Establishment of committees</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Council policy overview</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Committee roles - compensation</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>The Council has a disciplinary</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Committee roles - Audit</td>
<td>0</td>
</tr>
<tr>
<td>-----------------------</td>
<td>---</td>
</tr>
<tr>
<td>Council Performance evaluation</td>
<td>0</td>
</tr>
<tr>
<td>Public knowledge and understanding of organization</td>
<td>0</td>
</tr>
<tr>
<td>Fiduciary accountability</td>
<td>0</td>
</tr>
<tr>
<td>Advance Council meeting information</td>
<td>0</td>
</tr>
</tbody>
</table>

Key: SD=Strongly Disagree, D=Disagree, N=Neutral, A=Agree, SA=Strongly Agree

4.6 Elements of corporate governance implemented

In order to determine the elements of the corporate governance being implemented, the study requested the respondents to provide their suggestions on the elements of corporate governance being implemented and the findings from the respondents’ suggestions are presented below.
Table 4. 5 Elements of corporate governance implemented

<table>
<thead>
<tr>
<th>Elements of Good Corporate Governance</th>
<th>Frequency</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sustainability and performance management</td>
<td>4</td>
<td>21.05</td>
</tr>
<tr>
<td>Board independence, composition and size</td>
<td>7</td>
<td>36.84</td>
</tr>
<tr>
<td>Promote ethical and responsible decision-making</td>
<td>3</td>
<td>15.78</td>
</tr>
<tr>
<td>Safeguard integrity and transparency in financial reporting</td>
<td>4</td>
<td>21.05</td>
</tr>
<tr>
<td>Management intervention</td>
<td>8</td>
<td>42.10</td>
</tr>
<tr>
<td>Stakeholder rights</td>
<td>5</td>
<td>26.31</td>
</tr>
<tr>
<td>Recognize and manage risks</td>
<td>4</td>
<td>21.05</td>
</tr>
<tr>
<td>Encourage enhanced performance</td>
<td>7</td>
<td>36.84</td>
</tr>
<tr>
<td>Remunerate fairly and responsibly</td>
<td>6</td>
<td>31.57</td>
</tr>
</tbody>
</table>

The results show that the most outstanding element of good corporate governance implemented was management intervention. Other elements included board independence, composition and size; promote ethical and responsible decision-making; safeguarding integrity and transparency in financial reporting; respecting rights of stakeholders; encouraging enhanced performance among others

4.7 Challenges faced in the implementation of Corporate Governance

The study sought to establish the respondents’ opinion on the challenges being faced by organizations in implementation of the corporate governance. The findings are as shown below.
Table 4. 6 Challenges faced in the implementation of Corporate Governance

<table>
<thead>
<tr>
<th>Challenges of implementation of Good Corporate Governance</th>
<th>Frequency</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Corporate governance communication channels and strategies</td>
<td>2</td>
<td>10.53</td>
</tr>
<tr>
<td>Governance implementation and evaluation framework</td>
<td>2</td>
<td>10.53</td>
</tr>
<tr>
<td>Knowledge gap and training</td>
<td>5</td>
<td>26.31</td>
</tr>
<tr>
<td>Strategies for inclusion of stakeholder needs</td>
<td>2</td>
<td>10.53</td>
</tr>
<tr>
<td>Legal and policy environment</td>
<td>6</td>
<td>31.57</td>
</tr>
<tr>
<td>Constitution of board committees and board composition</td>
<td>4</td>
<td>21.05</td>
</tr>
<tr>
<td>Funding</td>
<td>2</td>
<td>10.53</td>
</tr>
<tr>
<td>Risk management</td>
<td>3</td>
<td>15.7</td>
</tr>
<tr>
<td>Lack of political and management goodwill</td>
<td>4</td>
<td>21.05</td>
</tr>
</tbody>
</table>

The results shows that the most common challenge faced in the implementation of corporate governance was the existing legal and policy environment, the least common challenge was the efficiency of the corporate governance communication channels, development of corporate governance implementation strategies; and funding towards implementation.

4.8 Chapter Summary

This Chapter has presented the data that was obtained from the field study. Descriptive statistics was used to represent the data and consequently, bar graphs and pie charts as well as frequency tables have been used to present the data. Chapter 5 will provide the summary, discussion of the findings, conclusion and recommendations.
CHAPTER FIVE

5.0 DISCUSSION, CONCLUSION AND RECOMMENDATION

5.1 Introduction
This chapter is structured to provide discussions, conclusions, and recommendations based on the findings of corporate governance implementation within the case study. The study findings are outlined according to the purpose of the study. This chapter provides the researchers discussion on the findings of the research question as compared to analysis of the literature review. Of importance to note, conclusions and recommendations will also be provided in this chapter.

5.2 Summary
The objective of this study was to determine the application of corporate governance within the public sector. The research questions were

1. To establish how Corporate Governance is applied in the Public Service
2. To establish the elements of corporate governance implemented in the case study
3. To establish the challenges faced in the implementation of Corporate Governance in the case study.

The population of the study was composed of employees from Kenya Law at Nairobi. The sample frame of the study was adopted from Kenya Law’s Human Resources office. Simple random sampling technique was utilized to ensure that every employee within Kenya Law had an equal chance of being sampled.

Data was collected using questionnaires structured on the study’s research questions. SPSS version 22 was utilized to carry out descriptive analysis. A total of nineteen (19) questionnaires were distributed, and nineteen questionnaires were returned constituting a response rate of 100%. Descriptive data was analyzed using frequencies, percentages, and the mean. The data was compiled and presented in the form of tables, and figures according to the three research questions:

The first research question sought to find out how corporate governance was implemented
in the public sector. 100% of the respondents agreed that the most outstanding variable was the Board of Directors.

The second research question looked into the elements of corporate governance in the case study. The study found that the most common elements of corporate governance were board composition and size, knowledge of corporate governance objectives and communication.

The third research question looked into the challenges of implementation of Corporate Governance in the case study. The study found that some of the challenges faced included funding, capacity, training, legislative environment, legal and policy environment, board composition, corruption and stakeholder relations.

5.3 Discussions

5.3.1 Corporate Governance implementation in the public sector

The study found that the most outstanding variables for the implementation of corporate governance application in public service was that the council understood and accepted its responsibility for reviewing the appropriateness of long range planning and corporate strategy (100% of the respondents agreed).

The findings agree with the Mwongozo Code (PSC & SCAC, 2015), which identified the elements of corporate governance within a public institution as being

1. The Board of Directors
2. Transparency and disclosure
3. Accountability, risk Management and internal Control
4. Ethical Leadership and corporate citizenship
5. Shareholder rights and obligations
6. Stakeholder relationships
7. Sustainability and Performance Management
8. Compliance with Laws and Regulations

These findings agree with ASX Corporate Governance guidelines, which set out the
following elements of corporate governance

1. Implement solid foundations for management oversight
2. Establish and structure a Board that adds value to the organization
3. Promote and ensure ethical and responsible decision making
4. Safeguard and ensure integrity in financial reporting
5. Ensure timely and balanced disclosure
6. Respect the rights of shareholders
7. Identify, plan for and manage risks
8. Encourage enhanced performance
9. Fair and responsible remuneration
10. Recognize the legitimate interests of stakeholders

These could be attributed to the fact that the different elements for the application and implementation of corporate governance issues are largely similar, therefore creating similarity in the elements of corporate governance to be implemented.

In terms of laying solid foundations for management oversight, the study found that the council periodically reviewed the mission statement and corporate objectives to determine both current and future direction of the institution (84.21% of the respondents agreed); The study further found that the council regularly referred to approved goals, objectives, and plans to guide its decision making process (84.21% of the respondents agreed). These findings agree with Mulili (2011), who identified safeguarding integrity of financial reporting as a key element of corporate governance in the public sector. This could be attributed to enhanced shareholder confidence in any organization with the track record of integrity in financial reporting.

On safeguarding integrity in financial reporting, the study findings also indicated that the council understood and accepted its fiduciary accountability in areas of financial performance (84.21% of the respondents agreed). These findings agree with Jensen and Meckling, 1976, who noted that financial accountability and transparency were at the core of corporate governance. This could be attributed to the fact that financial accountability and transparency can be used to enhance a firm’s competitive advantage.
5.3.2 Elements of Corporate Governance implemented in the case study

The study found that the most common elements of corporate governance was board composition and size, knowledge of corporate governance objectives and communication, transparency and accountability, inclusion of stakeholder rights, independent leadership, accountability and financial disclosure. These findings agrees with Gillian, Hartzell and Straks, (2003), whose analysis of the components of corporate governance including the following:

1. Board independence size and composition
2. Audit independence
3. Financial accountability
4. Fiscal disclosure
5. Leadership
6. Communication
7. Knowledge of corporate governance

This also agrees with the finding of Okpara (2011) who noted the elements of corporate governance as being

1. Effective corporate governance structures and systems
2. Board responsibilities
3. Regulatory framework
4. Disclosure
5. Enforcement
6. Monitoring
7. Transparency
8. Access to information
9. Independent auditors
10. Basic shareholders’ rights

This could be attributed to the fact that these are general areas of implementation, which are then further narrowed down to the various principles and activities towards
implementation. It is also evident that the areas outlined above heavily involve staff members and are therefore regularly communicated to them.

5.3.3 Challenges faced in the implementation of corporate governance

The study found the most common challenges in the implementation of corporate governance to be Commitment and implementation, follow ups, Communication channels and strategies, funding, capacity, training, legislative environment, legal and policy environment, board composition, corruption, customer care relations, financial accountability. These findings agree with Gachoki and Rotich (2013) who noted the various challenges of implementation of corporate governance include financial constraints, need for corporate governance reforms, knowledge gaps. This could be because of the commonality in context both geographically and in terms of the legal and political environment.

Other findings from the study shows that the general challenges in an African context include corruption, board composition, legislative environment, political will power and training. Okpara (2011) lists the following as challenges of implementation of corporate governance

a) Weak or non-existent law enforcement mechanisms
b) Abuse of shareholder rights
c) Weak monitoring systems
d) Lack of knowledge on implementation
e) Lack of commitment of management and boards
f) Weak systems for transparency and disclosure
g) Corruption within organizations
h) Lack of political will power.

The Mwongozo Code (PSC & SCAC, 2015) further identifies the following challenges to implementation of corporate governance in the public sector

1. Absence of a clear framework for recruitment selection, appointment and inductions of Boards of SC’s;
2. Lack of uniformity in the application of appointment procedures;
3. Inadequate induction processes for Board members;
4. Lack of proper skills mix and bloated Boards;
5. Shortcomings in the process of appointment of CEOs;
6. Lack of understanding of the role of Boards by directors;
7. Fusing of the roles of the Chief Executive and Board Secretary.

The similarities could be attributed to the fact that the context of Africa, there exist major similarities in policy and legislative environments of the various countries.

5.4 Conclusions

5.4.1 Implementation of Corporate Governance
Organization must appreciate that in order to implement corporate governance in public sectors, then following elements should be considered

1. Implement solid foundations for management oversight
2. Establish and structure a Board that adds value to the organization
3. Promote and ensure ethical and responsible decision making
4. Safeguard and ensure integrity in financial reporting
5. Ensure timely and balanced disclosure
6. Respect the rights of shareholders
7. Identify, plan for and manage risks
8. Encourage enhanced performance
9. Fair and responsible remuneration
10. Recognize the legitimate interests of stakeholders

5.4.2 Elements of corporate governance implemented in the case study
The most common elements of corporate governance were

1. Board composition and Size
2. Separation of powers between Board and Management
3. Transparency and accountability
4. Financial oversight
5. Inclusion of stakeholder rights
6. Risk management
7. Ethics and integrity
8. Effective corporate governance framework
9. Goodwill and leadership commitment
10. Monitoring and evaluation of implementation.

These are the factors, which should be considered while continuing to implement corporate governance

5.4.3 Challenges of corporate governance implementation
As noted above, there are several challenges, which need to be addressed so as to improve corporate governance implementation in the public service. The adoption of corporate governance principles by African public organizations will be a giant step towards creating safeguards against corruption and mismanagement, promoting transparency in economic life and attracting talent.

In addition an effective program to combat corruption and bribery and is also capable of protecting shareholder value is an important requirement for the improvement of corporate governance in an organization. There has been limited published research on corporate governance in Africa and even less rigorous academic or empirical research. There is an urgent need to embark on meaningful analysis of corporate governance in Africa.

From the study, the common challenges experienced in the implementation of corporate governance are

1. Corporate governance communication channels and strategies
2. Governance implementation and evaluation framework
3. Knowledge gap and training
4. Strategies for inclusion of stakeholder needs
5. Legal and policy environment
6. Diversity of skills in board composition
7. Succession planning
8. Risk identification and management strategy
9. Resistance to change
10. Changes in the macro environment
11. Transparency
12. Capacity resource constraints
13. Separation of roles between Board and management,

5.5 Recommendations

In light with the above conclusions, the following is recommended

5.5.1 Recommendations For Improvement

5.5.1.1 Corporate Governance implementation in the Public sector

From the study, the case study should continue to implement corporate governance using other public bodies as a benchmark for application and implementation.

For investors, shareholders and stakeholders, corporate governance provides protection from abuse, and any likely reduction in organizational value. Good corporate governance systems encourage global and local investors, donors and customers. As a result, they increase their profitability and competitive advantage and their ability to drive change.

For companies, good corporate governance practices should provide improved decision-making. Sustainable organizations within the public sector can only be brought about through good management, entrepreneurship, innovation, and better allocation of resources.

Better corporate governance adds value by improving the performance of companies through more efficient management, better resource allocation, and improvements in productivity. This greatly influences the ability of companies to grow, innovate, diversify and compete.

For regulators and supervisors, corporate governance acts as a first line of prudential defense, and increases financial stability. Customers, development partners and investors are less likely to flee to well-governed countries / companies in times of crisis.
Companies and financial institutions with good corporate governance practices will have better risk-management systems than those without.

5.5.1.2 Corporate governance implementation in the case study

It is recommended that the case study continue to implement corporate governance by noting the challenges faced and working towards implementation of corporate governance.

The case study organization is committed to continuous implementation of corporate governance and has identified activities and change processes to ensure sustainability of the framework.

The following are the elements that the case study organization should continue to take into account when implementing Corporate Governance:

1. Board independence size and composition
2. Audit independence
3. Financial accountability
4. Fiscal disclosure
5. Leadership
6. Communication
7. Knowledge of corporate governance

Of those elements, which the organization has already implemented, it is recommended that continuous review and where required update of the governance framework is undertaken to keep the organizations systems and processes current with market trends and changes in the organizations working environment.

Improved corporate governance practices increase competitive advantage and therefore, better-governed firms appear to enjoy a lower cost of capital. Operational performance is higher in better corporate governance companies. When a country’s overall corporate governance and property rights systems are weak, voluntary and market corporate
governance mechanisms have limited effectiveness. Proper frameworks and enforcement mechanisms are crucial to promote good corporate governance practices. Better corporate governance leads to better developed systems, which, in turn, is associated with greater access to services for enterprises and the public.

5.5.1.3 Challenges of corporate governance implementation

It is recommended that the organizations undertaking implementation of corporate governance note the challenges above. The challenges would allow for effective planning geared towards early identification and addressing of the challenges.

Corporate governance reform is a key component of the governance and anti-corruption agenda. Corruption can affect all stakeholders of an enterprise: its shareholders, creditors, business partners, relevant government agencies, as well as consumers and the society at large, particularly the poor. Corruption discourages investment, particularly in countries with weak governance conditions, and affects country competitiveness and investment climate.

For the economy as a whole, improved corporate governance practices should result in more sustained economic growth, increased financial stability, increased competitiveness, a higher number of “champion” companies that can compete innovate and grow internationally.

5.5.2 Recommendations for Future Research

Academicians and researchers can utilize this study findings for to test their hypothesis, or to enhance further research, particularly on corporate governance implementation within the public sector.
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APPENDIX I

EXTERNAL QUESTIONNAIRE

This questionnaire seeks your opinion on the application of corporate governance and asks you to contribute your knowledge and expertise on Corporate Governance. Please respond as accurately and honestly as possible. Thank you.

Part I

Commence with a brief overview of your background – specifically related to expertise/interest in Corporate Governance. (E.g. corporate lawyer, accountant, CEO of an organization, have served on a number of boards, academic) * Can include a mix.

Part II

1. What is your definition of Corporate Governance?

2. What is *good* Corporate Governance? What are the key elements? How do these differ in a public entity?

3. How can *good* Corporate Governance be achieved and sustained?

4. Does Corporate Governance differ between private and public sector organizations? How?

5. What is the relationship between Corporate Governance and ethics?

6. How do we separate our personal opinion from Boardroom decisions? Is this difficult?
7. Some studies have shown that the emphasis of corporate governance is on conformance/compliance as opposed to performance. Do you agree? Is this good – i.e. does it promote /ensure good governance? What are the differences between private and public environments?

8. Is Corporate Governance necessary? Why? Can we be over governed?

9. There are claims that good Corporate Governance gives an organization a competitive advantage? Is this really the case? How? Why? Why not?

10. What do you understand the terms transparency and accountability to mean?

11. Are they realistic achievable? How/Why/Why not?

12. How does an organization demonstrate transparency yet maintain confidentiality?

13. How do organizations best manage risks in relation to corporate governance?

14. Are external auditors the best protective mechanism for good corporate governance on Boards? If not, who are?

15. Have the global evolutions in corporate governance practices been reflected in domestic codes? To what extent are new codes being implemented? To what extent are these new codes effective?
APPENDIX II

STAFF QUESTIONNAIRE

Questionnaire Number

Dear Respondent,

This questionnaire seeks your opinion on the application of corporate governance within the organization and asks you the staff member to evaluate your organizations. Please respond as accurately and honestly as possible. Thank you.

With respect to Section II and III, please indicate the level of agreement with each statement.

<table>
<thead>
<tr>
<th>Levels of agreement</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Strongly Disagree</strong></td>
</tr>
<tr>
<td>(1)</td>
</tr>
</tbody>
</table>

Part 1

The following 5 questions are concerned with demographic data

1. I am employed at Kenya Law as a level.........employee

2. I am employed in the ............... department

3. I have worked at Kenya Law for ........ years

4. I am employed on the following basis

   a) Contract          b) Permanent and Pensionable
5. I am  a) Male [ ]  b) Female [ ]

Part II

The following 10 questions are concerned with your knowledge and understanding of corporate governance.

6. In your opinion, what are the main elements of implementation of corporate governance? (kindly list them below)

<table>
<thead>
<tr>
<th>NO</th>
<th>ANSWER EACH QUESTION WITH LEVELS OF AGREEMENT</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
</tr>
</thead>
<tbody>
<tr>
<td>7.</td>
<td>The Council periodically reviews the mission statement and corporate objectives to determine both current and future direction of the institution.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>8.</td>
<td>The Council understands and accepts its responsibility for reviewing the appropriateness of long-range planning and corporate strategy.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>9.</td>
<td>The Council assists management to review its short and long range planning assumptions as they relate to economic, political and market projections.</td>
<td></td>
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<td></td>
</tr>
<tr>
<td>10.</td>
<td>The Council regularly refers to approved goals, objective, and plans to guide its decision making process.</td>
<td></td>
<td></td>
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<td></td>
</tr>
<tr>
<td>NO</td>
<td>ANSWER EACH QUESTION WITH LEVELS OF AGREEMENT</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
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</tr>
<tr>
<td>11</td>
<td>There an understanding and acceptance that the organization is managed and led by the CEO, who serves at the pleasure of the Council.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>12</td>
<td>Does the Council have a succession plan for itself, in terms of how Council members are identified, reviewed and selected?</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>13</td>
<td>The Council’s structure been designed to help the institution achieve its purposes and goals.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>14</td>
<td>The Council has an adequate range of expertise and Council experience to make it effective.</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>15</td>
<td>All committees have written statements of purpose and terms of reference.</td>
<td></td>
<td></td>
<td></td>
<td></td>
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</tr>
<tr>
<td>16</td>
<td>The Council is focused on substantial policy matters as opposed to minutiae and administrative details.</td>
<td></td>
<td></td>
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<tr>
<td>17</td>
<td>A specific committee (i.e. executive compensation, audit, or personnel) has a responsibility for evaluation of the CEO’s performance and compensation.</td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>18</td>
<td>The Council has a disciplinary policy for members.</td>
<td></td>
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<tr>
<td>NO</td>
<td>ANSWER EACH QUESTION WITH LEVELS OF AGREEMENT</td>
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<tr>
<td>19.</td>
<td>The Council has an Audit Committee, an approved audit policy, and does it review the implementation of auditor’s recommendations.</td>
<td></td>
<td></td>
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<tr>
<td>20.</td>
<td>The Council has an established set of performance standards of criteria that allow for periodic evaluation of a Council director’s performance.</td>
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<td>21.</td>
<td>The Council understands the need to ensure that the institution is understood and appreciated by its public.</td>
<td></td>
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<tr>
<td>22.</td>
<td>The Council understands and accepts its fiduciary accountability in areas of financial performance.</td>
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</tbody>
</table>

Part III

24. What are the challenges faced in the implementation of Corporate Governance within the organization? Kindly list them below.

a. 

b. 

c. 

62