

**UNIVERSITY OF NAIROBI**

**SCHOOL OF LAW**

**Implementation of Corporate Governance in Selected Public Universities in Kenya in the  
Context of the Universities Act, 2012**

**A Research Project Presented to the School of Law of the University of Nairobi in Partial  
Fulfillment for the Requirement of the Award of the Degree of Master of Law**

**By**

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Signature.....this.....day of..... 2017

Prof. Albert Mumma

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## ABSTRACT

To govern public universities, the Government has enacted the Universities Act, which came into force in December 2012. In the discharge of their functions under the Act, public universities are required to embrace corporate governance ideals as contained in the Act. Despite this, the enforcement and implementation of these provisions on corporate governance has not been wholly effective because public universities continue encountering challenges. The study sought to establish the implementation of corporate governance practices in public universities in Kenya in the context of the Universities Act with a view of making necessary recommendations for legal reform. Specifically, the study sought to establish to what extent inclusive governance systems and practices have been implemented in the public universities; the extent to which efficient and effective systems and practices have been applied; how transparent systems and governance have been embraced and to what extent systems for enhancing sustainability have been put into operation. The study employed a cross-sectional research design which entailed a desk review and a field study. The desk work entailed the review of statutes, government reports, journals, periodicals, books and internet searches as secondary sources of data. The field work entailed the collection of primary data from respondents by way of administration of research instruments. The study considered the top management staff in the public universities within the central region of the Republic of Kenya. The top management considered were the deputy vice chancellors in charge of planning, registrars, the finance officers and the legal officers.

The study found out that: employment opportunities had been offered to the local communities and people from communities which were not from the localities where the universities were situated were left out. Persons with physical challenges were provided with amenities like ramps, sanitation facilities and special parking slots but only with a bias for the new buildings. The persons sitting in the university councils largely merited the positions by virtue of their academic qualifications. Presence of multiple agents derailed the operations of the institutions owing to numerous approvals that were required before the budgetary appropriations were implemented thereby occasioning operational inefficiency. The universities had strived to ensure transparency in the budget making process. Ability to conform to the Public Finance Management Act, 2012 was evident though the universities failed to publish their audited accounts. There were inadequacies in the procurement process in the institutions which was confirmed by the numerous complaints that had been lodged by aggrieved suppliers and contractors with the public procurement oversight authority. The research project recommends that the public universities should be forced to implement inclusive governance systems through provisions that make it mandatory for them to embrace participatory processes. The Commission for University Education should put in place provisions to audit the conformance to the institutional service charters, enforce stringent and deterrent measures to deter tribalism and nepotism. It should also come up with provisions which make it mandatory for the public universities to put in place the requisite infrastructure and comply with the Universities Act as a precondition for licensing.

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**School of Law: November 2017**  
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## **ABBREVIATIONS**

CACG:	Commonwealth Association for Corporate Governance
CMA:	Capital Markets Authority
CEO:	Chief Executive Officer
CHE:	Commission for Higher Education
CUE:	Commission for University Education
DUC:	Differentiated unit cost
ICT:	Information and Computer Technology
IMF:	International Monetary Fund
JKUAT:	Jomo Kenyatta University of Agriculture and Technology
KCSE:	Kenya Certificate of Secondary Education
MoEST:	Ministry of Education Science and Technology
OECD:	Organization for Economic Cooperation and Development

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## CHAPTER ONE: INTRODUCTION

### 1.0 Conceptual Background

Governance entails procedures, practices, processes and systems governing institutions. Employment of rules and regulations and the relationships created by the rules defines the governance prisms.<sup>1</sup> Governance affects the exercise of power in economic and social resources management. It defines the balance between order and equality in an institution and the society at large and in addition determines the exercise of freedoms in the context of human rights protection and the regulation of relations attributed to the organizational set-up.<sup>2</sup>

Public governance has attracted attention locally and internationally.<sup>3</sup>It advocates for the implementation of decisions and the exercising of power with the public concern as the driving factor.<sup>4</sup> In this regard, the organizational structure should play a key role in ensuring effectiveness.<sup>5</sup> Work division and coordination reinforces accountability and efficiency with regards to the public good.<sup>6</sup> Institutions of higher learning are expected to ensure the protection of public interests optimally.<sup>7</sup>

Sound public governance can only be realized at the advent of autonomy or self-governance as a key ingredient in the governance spectrums.<sup>8</sup> Sound public governance envisages the freedom to make decisions on broad and complex issues without reference to external non-university factors.<sup>9</sup> To ensure sound public governance and proper implementation of their social welfare mandate, public universities are required to embrace corporate governance ideals as enshrined in Section 3 of the Act.

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<sup>1</sup>Ankumah E.A. "Good Governance and African Charter on Human and People's Rights, African Legal Aid," African Commission of Human Rights. (1996). London.

<sup>2</sup> Ibid

<sup>3</sup>Kanter R.M. "On the frontiers of Management," Harvard Business school press, (1997), Boston

<sup>4</sup> Ibid

<sup>5</sup> Ibid

<sup>6</sup> Ibid

<sup>7</sup> Ibid

<sup>8</sup>Jauch L. and Glueck W. Business Policy and Strategic Management (5th Edition).(1998), McGraw-Hill Inc

<sup>9</sup> Ibid

Corporate Governance began being an issue of concern since the foundation of the joint stock market in the Eighteenth Century.<sup>10</sup> It is further underpinned on the Berle Means thesis where the central topic is the separation of ownership and control.<sup>11</sup> More recently, interest in corporate governance has been renewed by collapses of large corporations like Enron. Owing to this, the current trend is that managers of corporations are now expected to run corporations more transparently and efficiently.

Moreover, there is global recognition of the benefits of good corporate governance that has kept the debate in the area aflame.<sup>12</sup> Indeed, it has been noted that well governed firms largely perform better and that good corporate governance is of essence to firms. Empirical studies have provided the nexus between corporate governance and a firm's performance.<sup>13</sup>

Corporate Governance determines how power is exercised in the stewardship of organisational resources and in the protection of shareholder interests. It creates a balance between the organizational freedoms and the protection of communal resources as a measure of ensuring prudence. Corporate governance is thus a value addition process which assures the achievement of organizational ideals while at the same time propagates structures to cushion to shareholders' interests by ensuring the integrity of the internal processes. It ensures optimal implementation of institutional, environment, legal and economic for the benefit of all stakeholders.

The Commonwealth Association for Corporate Governance (CACG) avers that "globalization and international market dynamics has caused the re-orientation of local laws, national priorities and regulations leading to governance challenges in virtually all jurisdictions. Corporate governance thus envisages creating of more efficient institutions and assures accountability by

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<sup>10</sup> Smith, A, "The Wealth of Nations", (W, Strahan and T, Cadell, London, 1776)

<sup>11</sup> Berle A and Means G, "The Modern Corporation and Private Property" (New Brunswick, N.J., 1997; first published 1932) 110-111

<sup>12</sup> The benefits are recognized in various global instruments like, "Organisation for Economic Cooperation and Development principles of corporate governance", (OECD publications service, Paris, France 2004); "Commonwealth Association for Corporate Governance Guidelines, Principles for Corporate Governance in the Commonwealth: Towards Global Competitiveness and Economic Accountability", Commonwealth Association for Corporate Governance, (Marlborough, New Zealand 2010); Shleifer, A and Vishny, R, "A Survey of Corporate Governance" (1997), The Journal of Finance, Vol. LII, No. 2, p.737

<sup>13</sup> Bebchuk, L, et al "What Matters in Corporate Governance?" Working paper, Harvard Law School, Cambridge, MA, 2004.

promoting efficiency in the utilization of resources. This ultimately impacts on the wealth creation capacity of the organizations. The CACG goes ahead to define corporate governance as the rules defining relationships and behaviours that shape corporate strategy. According to CACG, corporate governance is essentially about leadership. It advocates for leadership for efficiency, leadership for probity, leadership with responsibility and lastly leadership which is transparent and accountable.<sup>14</sup> Kenya is a Commonwealth country and has by law ascribed to the CACG principles. Further, the definition of corporate governance as proffered by the CACG resonates well with the content of this study.

The Cadbury Report describes corporate governance as the system by which companies are directed and controlled.<sup>15</sup> Additionally, according to the Report, effective accountability is the essence of any system of good corporate governance. Corporate governance has also been described as the internal means by which corporations are operated and controlled. The OECD principles recognize the role played by corporations in economic development and emphasizes the need for corporate entities to embrace transparency and accountability in order to increase investor confidence and to contribute to the overall national economic performance.<sup>16</sup> According to Margaret Blair, corporate governance is about the whole set of legal, cultural and institutional arrangements that determine what public corporations can do, who controls them, how that control is exercised, and how the risks and returns from the activities they undertake are allocated.<sup>17</sup> Corporate governance is therefore the establishment of appropriate legal, economic and institutional environments that allow companies to thrive as institutions for advancing long-

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<sup>14</sup> “Commonwealth Association for Corporate Governance Guidelines, Principles for Corporate Governance in the Commonwealth: Towards Global Competitiveness and Economic Accountability”, Commonwealth Association for Corporate Governance, (Marlborough, New Zealand 2010);

<sup>15</sup> Committee on the financial aspects of corporate governance, “Report of the Committee on the financial aspects of corporate governance” (Cadbury Report) (1992) paragraph 2.5 available at [ecgi.org/codes/documents/Cadbury.pdf](http://ecgi.org/codes/documents/Cadbury.pdf)

<sup>16</sup> Organisation for Economic Cooperation and Development (OECD), “OECD Principles of Corporate Governance” (OECD Publications Service, Paris, France 2004) p7 available at <http://www.oecd.org/corporate/ca/corporategovernanceprinciples/31557724.pdf>

<sup>17</sup> See Blair, M, “Ownership and Control: Rethinking Corporate Governance for the Twenty First Century”, (Brookings Institute, 1995)

term shareholder value and maximum human centered development while remaining conscious of their responsibilities to stakeholders, the environment and the society in general.<sup>18</sup>

A public university has been defined as a university which is established and maintained out of public funds.<sup>19</sup> In the year 2012, the Universities Act was enacted by Parliament to be the Act to govern all private and public universities in Kenya. It repealed all the individual Universities Acts.<sup>20</sup>

### **1.1 Statement of the Research Problem**

Research has alluded to state corporations in Kenya encountering challenges of leadership and governance, mismanagement, bureaucracy, wastage, incompetence and irresponsibility.<sup>21</sup> Other challenges include; the absence of a clear framework for recruitment, selection, appointment and induction of boards of state corporations; lack of uniformity in the application of appointment procedures; lack of proper skills mix and bloated boards; shortcomings in the process of appointment of chief executive officers and board secretary; and the fusing of the roles of the Chief Executive and the Board Secretary.<sup>22</sup> According to the provisions of section 2 of the State Corporations Act, Chapter 446 Laws of Kenya, public universities are state corporations and as such also encounter these challenges.

In addition, public universities also encounter other challenges. These include massive student enrolment and expansion of universities that compromise quality,<sup>23</sup> lack of separation of

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<sup>18</sup> Private Sector Initiative for Corporate Governance, “Principles for Corporate Governance in Kenya: A Sample Code of Best Practices for Corporate Governance” (1999) Private Sector Initiative for Corporate Governance, Nairobi

<sup>19</sup> Universities Act 2012, s 2

<sup>20</sup> Universities Act 2012, s 71

<sup>21</sup> See Kinyanjui, K, “The Transformation of Higher Education in Kenya, Challenges and Opportunities” paper presented at the “Mijadala on social policy, governance and development in Kenya” (2007) [https://www.google.co.ke/?gws\\_rd=ssl#q=PROF+KABIRU+TRANSFORMATION+OF+HIGHER+EDUCATION+IN+KENYA](https://www.google.co.ke/?gws_rd=ssl#q=PROF+KABIRU+TRANSFORMATION+OF+HIGHER+EDUCATION+IN+KENYA) accessed on 18<sup>th</sup> February 2015

<sup>22</sup> See Public Service Commission & State Corporations Advisory Committee “Mwongozo, the Code of Governance for State Corporations” (2015) <https://drive.google.com/file/d/0BytnSZLruS3GdVVuOFRRa0RrYTQ/view> accessed on 21st July 2015

<sup>23</sup> See Oanda, I, “Privatization and Private Higher Education in Kenya: Implications for Access, Equity and Knowledge Production”, African Books Collective, (2008)

ownership and control in the governance structure,<sup>24</sup> disruptions of the University business by staff and student strikes,<sup>25</sup> political appointment of Council members,<sup>26</sup> the Vice-Chancellor and the Deputy-Vice Chancellors,<sup>27</sup> chronic resource deficits for programme expansion, research and staff development,<sup>28</sup> challenges faced by CUE as the regulator of University education<sup>29</sup> and ethnic culture in public universities.<sup>30</sup>

There is need to embrace corporate governance practices to tackle these challenges because they hinder income generation and the proper delivery of services by the public universities to their customers. Furthermore, effective governance of public universities in Kenya is necessary given the key roles they play in the country. Kenya's current development targets are driven by Vision 2030 which is the country's development blueprint covering the period 2008 to 2030. The blueprint aims at transforming Kenya into a newly industrializing, middle-income state that provides a high quality life to all its citizens by the year 2030.<sup>31</sup> With regard to University education, the blue print suggests expansion to realize transition rates to technical institutions and universities from 3% to 8% by 2012, and the revision of the curricula of universities and technical institutes to include more science and technology subjects. More importantly, the blueprint proposes intensified application of science, technology and innovation to raise productivity and efficiency and recognises the critical role played by research in accelerating development in the Country.<sup>32</sup> Based on these tenets of the blueprint, universities are key

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<sup>24</sup> Universities Act 2012 s 36 (Council membership comprises of 9 Government officials)

<sup>25</sup> Mwiria, K, "Public and Private Universities in Kenya", James Currey Ltd, UK, (2007)

<sup>26</sup> See Nairobi Industrial Court Petition No. 33 of 2013, Joseph Mutuura Mbeeria & another Vs- Cabinet Secretary, Education, Science and Technology and the Attorney General and Jomo Kenyatta University of Technology, <http://www.kenyalaw.org>; Nairobi CA-Civil Application No. 320 of 2014 (UR242 of 2014) Council, Jomo Kenyatta University of Technology vs Joseph Mutuura Mbeera and others, <http://www.kenyalaw.org>

<sup>27</sup> Universities Act 2012, s 35 & s 39

<sup>28</sup> Chronicle of Higher Education, "Kenya's Universities Reject to Call to Admit More Students", (2001) <http://chronicle.com/daily/2001/03/2001032805n.htm> accessed on 21st July 2015

<sup>29</sup> Commission for University Education, "Universities Standards and Guidelines", (2014) <http://www.cue.or.ke/images/phocadownload/UNIVERSITIES%20STANDARDS%20AND%20GUIDELINES%20JUNE%202014.PDF> accessed on 21st July 2015

<sup>30</sup> See National Cohesion and Integration Commission, "Briefs on Ethnic Diversity of Public Universities in Kenya", (2012) <http://cohesion.or.ke/~cohesion/images/downloads/briefs%20of%20ethnic%20audit%20of%20public%20universities%20-%20final.pdf>

<sup>31</sup> Government of the Republic of Kenya, "Kenya, Vision 2030", (2007) [http://theredddesk.org/sites/default/files/vision\\_2030\\_brochure\\_july\\_2007.pdf](http://theredddesk.org/sites/default/files/vision_2030_brochure_july_2007.pdf)

<sup>32</sup> Ibid pg 16

players in achieving vision 2030.<sup>33</sup>

The governance structure and policies of any corporate entity which are informed by corporate governance affects the firm's ability to respond to external factors like the challenges being encountered by state corporations in Kenya; which has a bearing to their performance.<sup>34</sup>

Despite the provisions of the Universities Act (Act) requiring public universities to embrace corporate governance, various challenges still continue facing the institutions. The study sought to establish the extent to which the Act ensures structured association between the universities management and all the stakeholders as envisaged in the governance tenets. It also sought to confirm the extent to which the public universities ensure compliance to the legal requirements, industry standards and accountability to all relevant stakeholders. The essence of the Act was to assure inclusivity and representation of the stakeholders in the decision making processes.<sup>35</sup> In this regard, the study sought to confirm the extent to which the Act has allowed pertinent stakeholders like the students, lecturers and non-teaching staff to get involved in the decision making processes. The study also sought to find out the extent to which the Act has assured the institutions' ability to conform to transparency in their decision making processes.<sup>36</sup>

The study therefore sought to evaluate the implementation of corporate governance in selected public universities in Kenya in the context of the Universities Act, 2012.

## **1.2 Justification of the study**

### **1.2.1 The existence of minimal research on good governance in public universities**

When conducting literature review on corporate governance in public universities, the study identified a knowledge gap and this motivated the researcher to contribute to the body of knowledge in this area.

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<sup>33</sup> Gudo, "University Expansion in Kenya and Issues of Quality Education: Challenges and Opportunities", (November 2011), International Journal of Business and Social Science, Vol 2, No 20

<sup>34</sup> Miring'u, A and Muoria, E, "An Analysis of the Effect of Corporate Governance on Performance of Commercial State Corporations in Kenya" (April 2011), International Journal of Business and Public Management, Vol. 1, No 1

<sup>35</sup> Universities Act, 2012

<sup>36</sup> Ibid



## **1.2. 2 Universities Act, 2012**

Numerous challenges continued to face public universities despite the enactment of the Act which contained various provisions mandating the institutions to embrace corporate governance ideals. This situation aroused the researcher's curiosity to find out the extent to which the ideals of corporate governance were being employed by the public universities.

## **1.3 Objectives of the study**

### **1.3.1 General Objective**

The general objective of the study is to establish the implementation of corporate governance in public universities in Kenya in the context of the Universities Act 2012, with a view of making necessary recommendations for legal reform.

### **1.3.2 Specific Objectives**

- a) To establish the extent to which inclusive governance systems and practices have been implemented by public universities.
- b) To determine the extent to which efficient and effective systems and practices have been implemented by public universities.
- c) To determine the extent to which transparent systems with checks and balances have been implemented in public universities.
- d) To examine the extent to which systems for enhancing sustainability have been implemented by public universities.

## **1.4. Research Questions**

For the purposes of this study, four research questions were derived from the objectives and they were:

- 1) How have inclusive governance systems and practices been implemented by public universities?
- 2) To what extent have efficient and effective systems and practices been implemented by public universities?

- 3) How have transparent systems with checks and balances been implemented by public universities?
- 4) To what extent have systems for enhancing financial sustainability been implemented by public universities?

## **1.5 Theoretical framework**

The study was premised on the agency and social contract theories. The agency theory identifies with the study because it is the most relevant corporate governance theory. The relevance of the agency theory is attributed to its effective ability to capture the relationship between the principal and the agent as envisaged in the governance realms. In this regard, corporations have defined contracts with their shareholders which are aimed at safeguarding their interests and thereby assuring sound corporate governance. On the other hand, the social contract theory is relevant because it brings out the aspect of self-preservation from the nature of the human perspective. The practice causes human beings to cede their rights to some authority and to a governance structure which allows them to be governed from a common spectrum of a legal and regulatory structure. Equally, the authority has the responsibility of providing social services and related benefits. The theory identifies with the study because it helps bring out the contract relationship between the Government as the principal and public universities as their agents in the delivery of its social welfare function. In this study, the Government's social welfare function entails offering of university education.

The agency theory is the study of the agency relationship and the issues that arise from it. An agency relationship is one in which one or more persons (principal) engage another person (agent) to perform some service on their behalf. It addresses the agency problem which is an essential element of the contractual view of the firm as developed by Fama.<sup>37</sup> The agency problem arises because the principal and the agent may not always share the same interests despite working towards the same goal. The agency theory revolves around the methods and systems aimed at aligning the interests of the principal and the agent.

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<sup>37</sup> Fama, E, "Agency Problems and the Theory of the Firm", *Journal of Political Economics*, (April 1980), Vol 88 No 2 pp 288-307; Coase, R, 'The Nature of the Firm', (Nov. 1937), *Economica*, New Series, Vol 4, No 16, pp 386-405.

The social contract theory on the other hand, was asserted by Thomas Hobbes.<sup>38</sup> It is hinged on liberalism and is driven by a philosophy where the value of liberty must be measured as the highest political good in a society. The theory advocates for a social contract between all citizens and their states. The social contract's theoretical incentive is to strive for the fairest and the most inclusive society which assures equitable distribution of national resources. This is through a legitimate government which has a social contract with the residents. Residents consent to the authority thereby enhancing their ability to freely interact and integrate with each other. Liberty is thus enhanced for all the citizenry. The key tenets of the social contract theory identify with the requisites of corporate governance. The legitimization of government is the foremost provision of the social contract theory and it gives credence for the accountability of government to its citizenry as part of governance. Legitimate governments therefore have the obligation of appointing agents to execute their mandates.

The two theories captured the ideals of the study with regards to the enshrining of the key tenets of corporate governance in the running and management of public institutions through the principal-agent relationship and execution of the social contracts. This is so because the Government has a social contract with its citizens to deliver on its social welfare obligations. As regards this study, the Government has an obligation under the Constitution of Kenya 2010 and the Universities Act 2012, to offer university education. To implement this social contract with the citizens, the Government as the principal has engaged public universities as its agents. In turn, public universities are required to embrace corporate governance principles as enshrined in the Universities Act 2012, in order to properly execute the mandate bestowed upon them by the Government.

The theories identified with the context of the study because it sought to confirm the extent to which the social contract with the citizenry is being implemented by the Government through public universities as its agents by checking their adherence to the demands of the corporate governance principles.

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<sup>38</sup> Thomas Hobbes, Social Contract Theory American Journal of Educational Research, 6(15), 798-834.

## **1.6 Research design and methodology**

The study entailed secondary data interrogation and a field study which involved the collection of primary data from respondents by way of administration of research instruments.

### **1.6.1 Introduction**

This section presents the methodological approaches for the study. It presents study site details, population, sample and sampling procedures, data collection methods, data management methods and ethical considerations. The study employed quantitative and qualitative mediums of data collection and analysis. The quantitative study approach was well suited for the determination of the extent to which the principles of corporate governance were applied in the running and management of public universities by use of data from primary sources. The qualitative approach involved the review and the analysis of secondary sources in the context of the study.

### **1.6.2 Research Design**

The study employed a cross-sectional research design. It had a focus on the using of varied mediums entailing primary and secondary data sources with a view of triangulating them in the wake of studying the phenomenon. This was in line with the views of Kombo and Tromp who posited that a cross-sectional research design is the most appropriate in the determination of a phenomenon in research that entails primary and secondary data sources.<sup>39</sup>

In this study, the field work entailed visits to the public universities and university colleges in the central region of Kenya for observation and questionnaire administration. It also entailed the conducting of an interview with an officer at CUE. The review of records, statutes and related literature augmented the study.

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<sup>39</sup> Kombo, D. K. Tromp. Proposal and Thesis Writing .Nairobi Kenya (2006). Pauline Publication Africa.

### 1.6.3 Population of the Study and Sampling Procedure

A target population is the set of subjects that the study for the purposes of getting a representation from the parent population. It aided in the generation of adequate responses for the study.<sup>40</sup> The study considered the top management staff in the public universities and university colleges within the central region of the Republic of Kenya. For the purpose of this study, top management considered were the Deputy Vice Chancellors in charge of planning, Registrars, the Finance Officers and the Legal Officers. The top management personnel were subjected to the questionnaires. The Legal Officer at the Commission for University Education was equally reached by the administration of an interview schedule. The breakdown of the target population for each of the targeted institution was captured in table 1.

**Table 1 Target Population of public universities and university colleges in Kenya**

<b>University</b>	<b>University top Management staff</b>
Dedan Kimathi University of Technology	9
Jomo Kenyatta University of Agriculture and Technology	9
Karatina University	9
Murang'a University College	9
Kirinyaga University College	9
Kenyatta University	9
<b>Total</b>	<b>54</b>

**Source:** Respective University websites, 2017

<sup>40</sup> Orodho A. J. "Research Methods" Kenyatta University, Institute of Open Learning, (2005).Masola Publishers

#### **1.6.4 Research Site**

The study was carried out in public universities located in the former central province of the Republic of Kenya. The region has six universities and university colleges. The motivation of the choice of the study area was the entrenched perceptions on the need to have the local populations around the public universities directly benefiting from them in terms of employment and procurement contracts. This had caused a lot of friction and antagonism between the university administrators and local communities. The study sought to confirm the extent to which the prevailing situation as established by the pre-survey conducted prior to the study affected the public universities. These conflicts existed despite the institutions being governed by a clear legal and regulatory framework prescribed by the Universities Act 2012.<sup>41</sup> The choice of the study location was also motivated by the challenges that were inherent in the public universities and university colleges within the area as evidenced in the report published by the National Cohesion and Integration Commission.<sup>42</sup>

#### **1.6.5 Population, Sample and Sampling Procedure**

The study picked on the top management of the public universities selected for the study. The choice of the top management was motivated by the fact that they were in constant interaction with the policy provisions of the institutions and were involved in policy formulation and implementation. They were also well versed with the statutory provisions guiding the management and administration of the institutions by virtue of their positions. Requirements and demands placed on the institutions by their service charters and provisions for certification which are key tenets of corporate governance were equally well known to the administrators serving in the top management positions. This made them well qualified to provide information for the study during the primary data collection exercise.

The study carried out census sampling to reach the target respondents. The choice of the sampling method was attributed to the relatively small number of respondents thus negating the need of getting a representation by way of taking a small percentage. This identified with the

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<sup>41</sup> Universities Act, 2012

<sup>42</sup> National Cohesion and Integration Commission Report on Ethnic Imbalances in Employment in the public universities

views of Orodho who advocated for the use of the census sampling method where small populations were involved and could be effectively reached.<sup>43</sup>

### **1.6.6 Data Collection**

The research employed questionnaires, an interview schedule, a secondary data interrogation guide and an observation sheet for data collection purposes.

The questionnaires were deemed suitable in that they could serve a large group of respondents; they have the benefit of self administerability, anonymity and the standardization of questions for the purpose of easing the data analysis procedures.<sup>44</sup>The questionnaires encompassed the social demographics section and questions derived from the research objectives. The questionnaires had both closed and open ended questions.

The study equally used the interview schedule for the purpose of having a structured interview with the Legal Officer of the Commission for University Education. He was considered a key informant and a resource person of high value to the study by virtue of working for the regulator. The interview schedule was considered adequate in facilitating interaction in a structured manner with a view of getting as much information as possible.<sup>45</sup>

The secondary data interrogation guide was the yardstick that the study used in determining the records to review in the quest of gathering data for the study. This entailed the statutes, service charters and related documents that enabled fruition of the study.

The observation sheet was used to mark out the specific key observable trends with regard to corporate governance practices during the field visits to the public universities. Some of the key trends that the study sought to confirm were the enactment of service charters and their implementation within the institutions as well as their display. The study also made random observations on the upholding of the ideals of nationalism in the institutions especially with

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<sup>43</sup> Orodho A. J. "Research Methods" Kenyatta University, Institute of Open Learning, Masola Publishers (2005).

<sup>44</sup> Mugenda, O. M. & Mugenda, A. G. Research methods; Quantitative and qualitative approaches. (2009). Nairobi. ACTS

<sup>45</sup> Martin F., Acuna, S. Developing Writing Strategies in Research Papers. (2002). Oxford

regard to employees' use of the national language and being accommodative of persons from different tribes and cultural inclinations. The courses offered by the universities were observed to determine the extent to which they envisaged to serve the public good as opposed to being commercially motivated.

### **1.6.7 Pilot study**

The study carried out a pilot study to determine the ability of the research instruments to generate the responses that they ought to. The pilot study was carried out using the test and retest method whereby two consecutive questionnaire administration procedures were done on the respondents. The study carried out the pilot study in Laikipia University. The choice of the pilot study location was motivated by the need to have an institution in a region with similar socio-demographics like those of the study area. Five pilot study respondents were subjected to the research instruments.

### **1.6.8 Validity and Reliability**

Reliability is a measure of the extent to which an instrument will consistently yield similar results after being administered several times to the same respondents.<sup>46</sup> To establish the reliability of the research instruments, the test re-test method was used. The pre-test respondents were issued with questionnaires to fill for two consecutive times to see how the response was. Validity is the degree to which a test measures what it purports to measure.<sup>47</sup> The study tested the face and content validity of the questionnaire. Face validity was in relation to the misunderstanding or misinterpretation of the question.<sup>48</sup> This was checked by way of employing the pre-testing method. Content validity refers to the capacity of the instrument to provide adequate coverage of a topic.<sup>49</sup> Adequate preparation of the instruments under the guidance of the supervisors, expert opinion and pre-testing of the open-ended questions helped establish the content validity.

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<sup>46</sup> Khan, V., Best, J. W., "Research in Education", (2006), USA: Ally al. Bacon, Boston.

<sup>47</sup> Martin F., Acuna, S. "Developing Writing Strategies in Research Papers." (2002). Oxford

<sup>48</sup> Orodho A. J. "Research Methods" (2005). Kenyatta University, Institute of Open Learning, Masola Publishers

<sup>49</sup> Mugenda, O. M. & Mugenda, A. G. "Research methods. Quantitative and qualitative approaches". (2009). Nairobi. ACTS



### **1.6.9 Data analysis**

Data analysis entailed data reduction, data display, conclusion and verification. Data reduction was the process of making selections geared towards simplifying and transforming data into a mode that can be understood.<sup>50</sup>

Data display entailed organization of the information from the field in a manner that could facilitate drawing of deductions from the results generated from the responses. Conclusions entailed making configurations and propositions in line with the theoretical inclinations from previous studies. Verification entailed drawing conclusions in line with the intended objectives of the study going by the responses proffered in the tool administration exercise.

Qualitative data was analyzed by way of deciphering the meaning of the responses provided in the open ended questions and aligning it to previous research carried out in the field of corporate governance vis-à-vis public institutions administration and management. This was with an aim of making inferences in line with establishing congruence to determine the extent to which the generated information tallied with the situation in the public universities.

### **1.6.10 Ethical considerations**

The study ensured informed consent from the respondents before tool administration. This saw to it that they understood the essence of participating in the data collection exercise and they equally participated based on their own volition. The study sought authority to collect data from the college of study and equally liaised with the administrators of the universities before engaging the personnel. This ensured that the study was within the spectrum guided by the statutes in the field of research. All cited sources in the research were acknowledged with a view of ensuring authenticity of the document and the upholding academic standards as pertains to originality of the work.

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<sup>50</sup> Kombo, D. K, Tromp Proposal and Thesis Writing. (2006). Pauline Publication Africa

## 1.7 Literature review

This section provides an overview of the literature reviewed in relation to the research problem. It helps identify the gaps existing in the current body of knowledge in respect to the issue under study.

Although there exists a wealth of literature on governance and its impact on a firm's performance, there no direct literature on corporate governance and its influence on running and management of universities. This notwithstanding, a number of aspects of this study relating both to form and substance have been crafted with heavy reliance on the existing literature.

Section 3(2) of the Universities Act 2012 outlines the principles of corporate governance that should guide public universities in the discharge of their functions as follows;

- establishing inclusive governance systems and practices;
- putting in place efficient and effective governance systems and practices;
- promoting transparent systems and practices with checks and balances and
- Establishing a sustainable system.

### **Inclusivity**

Under section 3(2) (c) of the Act, universities are required to promote inclusive governance systems and practices as a key corporate governance principle. Magutu defined inclusivity as a tool of governance in public universities.<sup>51</sup> He enumerated the essence of involvement of students and staff in decision making processes as a way of ensuring that they own the resultant decisions. He averred that their involvement elevated the institutions in the governance prism and minimized the risk of conflicts within the institutions.<sup>52</sup> Todorovic called for reforms in the public universities with a view of instilling responsibility and continuity of programs by ensuring inclusivity in the decision making processes.<sup>53</sup> He further articulated the need for inclusivity in

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<sup>51</sup> Magutu, P. O., Mbeche, I. M., Nyaoga, R. B., Onger, R. N. & Ombati, T. O. Quality Management Practices in Kenyan Educational Institutions: The Case of the University of Nairobi. *African Journal of Business and Management*, 1, 14-28. *Management & Marketing*,(2010).4(2), 35-44

<sup>52</sup> Oanda, I. O. Privatization and Private High Education in Kenya: Implications for Access, Equity and Knowledge Production. (2008). CODESRIA Dakar: Imprimerie Saint Paul.

<sup>53</sup> Todorovic, L. K. Institutional factors affecting student retention. (2011). *Education*, 124(1), 126-136

the public sector as a basis of ensuring collective ownership of programs; meeting the demands of current best practices with regard to reforms and the transformation of the public perceptions towards the governance programs employed in the institutions.

In the context of the Kenyan public universities, the need to ensure equitable sharing of resources has been a thorny issue and a source of strife in many institutions.<sup>54</sup> This has seen entrenched positions as regard the communal sense of entitlement driven by ethno-lingual persuasions and other motivating factors defeating the essence of nationalism.<sup>55</sup> The study sought to confirm the extent to which the enactment of the Universities Act, 2012 and the prevailing legal spectrums have mitigated the situation.

The study identifies elements of inclusivity in public universities as promotion of access for both students and staff to admissions and employment respectively; promotion of equity by addressing gender, regional, ethnic and social disparities; institutionalizing non-discrimination practices and promotion of participatory practices that involve staff and students in decision making in order to curb student and staff unrest. The working definition of inclusivity that is adopted by the study is the capacity of the university to promote access for students and staff, to promote equity, to institutionalize non-discrimination and to promote participation of key stakeholders in decision making.

Professor Kabiru averred that universities were faced with the challenge of increasing access to higher education especially going by the high numbers of students who were desirous of tertiary education. This compromised equity as an inclusivity ideal. Affirmative action geared towards gender, regional, ethnic balance should be embraced to assure inclusivity.<sup>56</sup> Evidence of ethnicity derailing university administration was cited in Moi University over the appointment of the Vice-Chancellor with the politicians advocating for the appointment of a local person thus

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<sup>54</sup> Wangenge-Ouma, G. Globalization and higher education funding policy shifts in Kenya(2008).African Journal of Business and Management, 1, 14-28

<sup>55</sup> NCIC Report on ethnicity in public universities

<sup>56</sup> Kinyanjui, K, "The Transformation of Higher Education in Kenya, Challenges and Opportunities" paper presented at the "Mijadala on social policy, governance and development in Kenya" (2007) [https://www.google.co.ke/?gws\\_rd=ssl#q=PROF+KABIRU+TRANSFORMATION+OF+HIGHER+EDUCATION+IN+KENYA](https://www.google.co.ke/?gws_rd=ssl#q=PROF+KABIRU+TRANSFORMATION+OF+HIGHER+EDUCATION+IN+KENYA) accessed on 18<sup>th</sup> February 2015

jeopardizing efforts for inclusivity.<sup>57</sup>In the USA all universities assure diversity, equity and inclusion motivated by the previous histories of the whites and blacks.<sup>58</sup> The equity ideology is a contrast to the Kenyan situation where these ideals are not assured despite the provisions of the law.

### **Efficient and effective governance systems and practices**

Universities are required to promote efficient and effective governance systems and practices.<sup>59</sup>The efficiency of public universities as defined by Kouzmin relates to the ability of the university's governing council to ensure that the strategic vision and policy formulation of the institutions is in line with the ideals of current best practices.<sup>60</sup>Optimal resource allocation in public universities can only be realized if management positions are held by qualified persons.<sup>61</sup>This ensures that the decision making processes on the pertinent needs of the institutions are guided by good governance ideals in order to confer benefits to the key stakeholders who entail the students, local communities and the staff.<sup>62</sup>

Public universities in Kenya have the challenge of parochial interests and political patronage in the establishment of university councils. This was postulated by Mulili who sought to establish the best corporate governance practices model for public universities in Kenya.<sup>63</sup>The study sought to examine the extent to which the Universities Act 2012 has affected the efficiency and effectiveness of the institutions.

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<sup>57</sup> <http://www.trendingpost.co.ke/2016/09/north-rift-leaders-protest-against-appointment-of-vice-chancellor-at-moi-university.html>

<sup>58</sup> Danowitz, MA and Tuitt, F. Enacting Inclusivity through Engaged Pedagogy: (2011) A Higher Education Perspective, Equity & Excellence in Education,

<sup>59</sup> Universities Act S 3 (2).

<sup>60</sup> Kouzim M. L., &Huisman, J. Main Transformation, Challenges and Emerging Patterns in Higher Education Systems. Higher Education Policy, (2007).20, 361-363

<sup>61</sup> Fielden, J..Global trends in university governance .Education Working Paper Series No. 9.(2008) Washington, DC: World Bank

<sup>62</sup> Saint, W. Guiding Universities: Governance and Management Arrangements around the Globe. Commissioned by the Human Development Network World Bank,(2009). Retrieved from <http://siteresources.worldbank.org/EXTHDOFFICE/Resources/5485726-1239047988859/University-Governance-and-Management-FINAL-Revised-2-Feb-2010.pdf>

<sup>63</sup> Mulili, B, "Towards the Best Corporate Governance Practices Model for Public Universities in Developing Countries, the Case of Kenya", (Southern Cross University, DBA Thesis2011)

The research identifies the main elements of effectiveness and efficiency by public universities as having independent councils which have their appointment based on relevant technical expertise as opposed to political influence. Capacity of council to act independently and to be governed by clear legal and regulatory framework which is not encumbered with overlaps is equally a good parameter for this principle. The working definition for efficiency and effectiveness as adopted by this study is having the governance and management in the public universities being executed with merit. This enhances the ability of the institutions to have firm decisions which are driven by public interest and greater good as opposed to self interest and other incidental persuasions.

### **Promoting transparent systems and practices**

Thirdly, public universities should uphold transparent governance systems and practices which institutionalize checks and balances. Transparency has been defined as honesty and openness.<sup>64</sup> Umemoto postulated the need to ensure transparency and openness as a critical aspect of public institutions management which gives them positive perceptions in the mindsets of the target clientele.<sup>65</sup> Jowi enumerated the need to ensure that stakeholder's aspirations were met by guaranteeing access to information with a view of ensuring full disclosure.<sup>66</sup> He further emphasized on the need to have transparency in all financial dealings in public universities. He argued that this was a critical basis for positive peer reviews as well as a platform for earning international acclaim motivated by globalization. Additionally, he noted that this was a measure that had the potential of attracting international students owing to the positive perception towards the systems of administration and governance and the inclinations towards transparency.

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<sup>64</sup> Sajadi, H. S., Maleki, M., Ravaghi, H., Michael, & Hadi, M. Evaluating the University's Governing Board: A comprehensive Review of its domains and indicators. *American Journal of Educational Research*, (2014).2(10), 892-897. <http://dx.doi.org/10.12691/education-2-10-7>

<sup>65</sup> Umemoto, W. *Guiding Universities: Governance and Management Arrangements around the Globe*. (2009). Commissioned by the Human Development Network World Bank

<sup>66</sup> Jowi, J. University Expansion and the Challenges to Social Development in Kenya : Dilemmas and Pitfalls. *Journal of Higher Education in Africa*, (2013).10(1), 49–71.

In the Kenyan public universities, the issue of financial mismanagement is a factor ailing the administration and governance of public universities.<sup>67</sup> The litany of evidence from the Controller and Auditor General reports gives credence to lack of transparency and maladministration of financial resources.<sup>68</sup> The study sought to confirm the extent to which the Universities Act 2012 has ensured transparency in the administration and management of the institutions.

The study identifies the main elements of transparency in public universities as disclosure on financial and non-financial matters. Clear separation of duties and roles among the governing organs of the university to allow for checks and balances is equally another prism of transparency. Presence of clear strategies of identifying, evaluating and controlling risks is also a factor defining transparency. The working definition of transparency adopted by the study is full disclosure as a premise of mitigating the occurrence of risk and ensuring the protection of public interests in the institutions for posterity.

### **Establishing a sustainable system**

The universities should implement systems and practices that ensure sustainability. The Oxford English dictionary defines sustainability as the ability of something to be maintained at a certain level and the ability of something to be upheld or defended. The need to ensure sustainability in the public sector programs has been articulated by Hoques.<sup>69</sup> He argued that the previous regime where public sector institutions made whimsical decisions was no longer tenable owing to the need to ensure value for money in the programs carried out. The need to meet the expectations of the public in terms of observing key tenets of governance is equally a guiding principle that enforces the need to ensure program sustainability.<sup>70</sup>

In the public university sector, assurance of the sustainability of the academic programs from the value for money as well as the optimal service delivery parameters is a key indicator of

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<sup>67</sup> Ngari F. & Gichira, R. University Marketing : Perceptions, Practices and Prospects in the Less Developed World. *Journal of Marketing for Higher Education*, (2015).15(2), 129–153.

<sup>68</sup> Owino, E. O.). *The Influence of Service Quality and Corporate Image on Customer Satisfaction among University Students in Kenya* (2013)

<sup>69</sup> Hoques, K. P. Faculty Participation in Policy Making. In J. Smart (Ed.), *Higher Education: Handbook of Theory and Research* (Volume 4). New York: (1988). Agathon.

<sup>70</sup> Kearney, M. L., & Huisman, J. Main Transformation, Challenges and Emerging Patterns in Higher Education Systems. (2007). *Higher Education Policy*, 20, 361-363.

sustainability.<sup>71</sup> Relevance of the academic programs offered enhances client satisfaction and ultimately ensures the continuity of the programs offered.<sup>72</sup>

The study sought to find out the extent to which the Universities Act, 2012 has made provisions for the sustainability of programs. The research identifies the key elements of sustainability as capacity to diversify its sources of income without compromising on quality in order to deal with chronic resource deficiencies and student enrolment, academic programmes expansion and establishment of campuses that is based on proper planning, availability of resources and an institution's potential to open up new frontiers of knowledge, research and economic activities.

### **Critique of the literature review**

The European Corporate Governance Institute in their book titled "Corporate Governance and Economic Performance" carried out a study in Austria, Belgium, Germany, France, Italy, Japan, Netherlands, Spain, Turkey, the United Kingdom and the United States and established that there is a strong relationship between corporate governance and economic performance in a number of countries. The study population comprises of 11 countries whereas the study specifically targeted public universities in Kenya. Secondly, the study focused on economic performance whereas this study addressed the issues of good governance practices in the universities in the context of the Universities Act, 2012, which was put in place as a measure of ensuring improved governance and by extension performance of the institutions.<sup>73</sup>

Maher and Anderson examine the effect of governance on corporate and economic performance. They focus on the factors that promote efficient corporate governance by looking at various corporate governance systems and pointed out their strengths, weaknesses and economic implications. Their survey provided empirical evidence on the link between governance, firm performance and national economic growth. The study population comprised of countries

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<sup>71</sup> Sajadi, H. S., Maleki, M., Ravaghi, H., Michael, & Hadi, M. Evaluating the University's Governing Board: A Comprehensive Review of Its Domains and Indicators (2014). *American Journal of Educational Research*, 2(10), 892-897.

<sup>72</sup> Sewe, S.A. Perceived Factors Influencing Success of Marketing Activities of Universities in Kenya: A Case of Business Schools in Nairobi (2014) *Journal of Marketing for Higher Education*, 8(2), 29-35.

<sup>73</sup> European Corporate Governance Institute, *Corporate Governance and Economic Performance* (Oxford University Press, 2001)

whereas this study specifically targeted public universities in Kenya. Secondly, the study focused on economic performance whereas this study addressed issues of governance and its influence on the ability of the universities to meet stakeholder expectations.<sup>74</sup>

Steinberg provided a useful guide to Chief Executive Officers (CEOs) and directors on how to shape, lead and oversee organizations in order to achieve corporate goals, manage risks and compliance. He explored the role of the board in overseeing corporate strategy, risk management, CEO compensation, succession planning, crisis planning, performance measures, board composition and shareholder communication. Steinberg's book is a useful guide to boards of organizations but did not provide empirical evidence on the link between governance and meeting of the populace expectations in relation to public institutions. Thus, as a result, the study sought to provide the evidence on the relationship between corporate governance and the ability to adhere to the principles of governance in public universities in Kenya.<sup>75</sup>

Coleman examines the effect of corporate governance on the performance of firms in Africa by using both markets and accounting based performance measures. The study was done in 103 listed firms within the continent. The paper observed that governance provides the organizational climate for the internal activities of a company. The study's final findings were that governance enhances a firm's corporate competitiveness and largely influences the firm's performance. The study focused on firms in the continent of Africa while this study focused on public universities in Kenya. Further, the study addressed performance from the markets and accounting aspects whereas the study tackled adherence to corporate governance as a means of meeting the core mandates of the universities. This was with regards to inclusiveness, transparency, sustainability and effectiveness in the context of the Universities Act, 2012.<sup>76</sup>

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<sup>74</sup> Maher, M, Anderson T, "Corporate Governance Effects on Firms Performance and Economic Growth" (OECD 1999)

<sup>75</sup> Steinberg, R, "Governance, Risk Management and Compliance: It Can't Happen To Us-Avoiding Corporate Disaster While Driving Success", (John Wiley & Sons Inc, 2011)

<sup>76</sup> Coleman, A, "Corporate Governance and the Firms Performance in Africa: A Dynamic Panel Data Analysis" A Paper Presented before The International Conference on Corporate Governance in Emerging Markets on 15<sup>th</sup>-17<sup>th</sup> November 2007



The International Finance Corporation, World Bank Group, in their work titled "corporate governance: Sub-Saharan Africa" addressed the need for Sub Saharan countries to embrace corporate practices in order to improve the investment climate in their countries. It emphasized that governance helps in risk mitigation, leads to increased financial and operation performance and boosts investor confidence. The work outlined the benefits of corporate governance in attracting investors in sub Saharan countries. This study aimed at emphasizing the benefits of corporate governance in enhancing performance in public universities in Kenya.<sup>77</sup> This was a critical area of study especially with the advent of reforms in the public sector institutions which was aimed at infusing current best practices and efficiency as borrowed from the private sector.<sup>78</sup> The Universities Act, 2012 is a piece of legislation geared on enhancing reforms in the university sector and the study interrogated the extent to which it has affected corporate governance practices.

Mulili explored the challenges encountered by developing countries in the process of adopting corporate governance ideals. He tackled governance practices of the public sector organizations in developing countries and observed that governance structures in these institutions were wanting which explained the various challenges in the institutions. He recommended the adoption of good governance by the management of the institutions. The study addressed the issue of governance in public sector organizations in developing countries while the study addressed the issue of corporate governance in public universities in Kenya, and explored the relationship between the enactment of the Universities Act and realization of corporate governance practices.<sup>79</sup>

Abdulraheem and Muammed, examined issues and challenges relating to corporate governance in Nigerian higher education. They concluded that lack of corporate governance is a major factor contributing to the unstable structure in the Nigerian Higher education. The study explored the interplay between corporate governance and the structure in Nigerian higher education whereas

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<sup>77</sup> International Finance Corporation, World Bank Group, "Corporate Governance: Sub-Saharan Africa" [http://www.ifc.org/wps/wcm/connect/Topics\\_Ext\\_Content/IFC\\_External\\_Corporate\\_Site/Corporate+Governance/Advisory\\_Services\\_Regional](http://www.ifc.org/wps/wcm/connect/Topics_Ext_Content/IFC_External_Corporate_Site/Corporate+Governance/Advisory_Services_Regional)

<sup>78</sup> Aduda David Reforming the public university sector, A Working Paper For The World Bank Kenya

<sup>79</sup> Mulili, B, Corporate governance in developing countries: the case for Kenya (February 2011), International Journal of Business Administration, Vol 2, No 2

this study centered on the interplay between corporate governance and performance in public universities in Kenya.<sup>80</sup> The study sought to make comparisons with a view of finding out the situation in Nigeria and comparing it to the Kenyan situation.

Osisoma examined the role of the internal auditor in the enforcement of governance principles in Nigerian universities. He identified the challenges facing the universities as a result of non-adherence to governance principles and addressed the role of the internal auditor in ensuring compliance and adherence. Although the study relates to universities, it was bent on the role of the internal auditor. On the contrary, this study focused on the university as a whole and addressed corporate governance.<sup>81</sup>

Festo and Nkote examined the relationship of corporate governance and financial performance in private universities in Uganda. They observed that there was need to formulate better policies and make up manageable councils and senate committees that understood their role, managed contingency and improved board effectiveness. The study population in the study was private universities in Uganda whereas the current study focused on public universities in Kenya. Further, the study gauged the universities from a financial aspect whereas this study tackled corporate governance in the context of the Universities Act, 2012.<sup>82</sup>

Wanyama and Olweny investigated the effects of corporate governance on the financial performance of listed insurance companies in Kenya. They established that there was a strong relationship between corporate governance practices and the firm's performance. The study focused on listed insurance companies in Kenya while this study focused on public universities in Kenya. Further, the study gauged the companies from the financial perspective whereas the

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<sup>80</sup> Abdulraheem, I & Muammed, A, "Corporate Governance in Nigerian Higher Education: Issues and Challenges", (2014), European Journal of Business and Management, Vol 6, No 2

<sup>81</sup> Osisoma, B, "Governance in Nigerian Universities: The Position of the University Internal Auditor", paper presented at national conference of committee of heads of internal audit departments in Nigerian universities on 5<sup>th</sup> November, 2012) [http://www.academia.edu/4177504/Governance\\_in\\_Nigerian\\_Universities](http://www.academia.edu/4177504/Governance_in_Nigerian_Universities)

<sup>82</sup> Festo, T, & Nkote, I, "Corporate Governance in Private Universities: Financial Performance Perspective", (December 2013) Journal of Business Law and Ethics, Vol 1, No 1

current study tackled corporate governance in the context of the Universities Act, 2012 with a bias to determining adherence to the requisite ideals of governance in the universities.<sup>83</sup>

Kinyua pointed out the impediments to effective management and performance by corporate managers in public administration and governance. The study averred that corporate management leadership is critical to the success of public administration and management in state owned corporations. He recommended training of the corporation managers on the rules and regulations of public administration and related procedures. The study narrowed down to the leadership aspect of governance while this study centered on corporate governance aspects as outlined in the Universities Act, 2012.<sup>84</sup>

Makokha examined the relationship between compliance with corporate governance and the level of corruption in state corporations in Kenya. He discussed how corporate governance standards can be used to combat corruption in state corporations. The study established that there was a correlation between compliance with corporate governance standards and the level of corruption in state owned enterprises. The study offered useful input on how corporate governance could be used to entrench a value system in an organization thereby acting as a tool to fight corruption. This study on the other hand examined corporate governance as a tool for enhancing the implementation of a social welfare mandate. Secondly, the study population in the study was state corporations whereas the current study's target population was public universities in Kenya<sup>85</sup>

Mwaura carried out a study to establish the causes of failure of state owned enterprises. He arrived at the conclusion that the initiatives adopted to make parastatals more effective were inadequate and that there was need to streamline the regulations that govern parastatals. This study examined the level of realisation of the ideals of corporate governance in public

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<sup>83</sup> Wanyama D, & Olweny T, "Effects of Corporate Governance on Financial Performance of Listed Insurance Firms in Kenya", (2013), Public Policy and Administration Research, Vol 3, No 4

<sup>84</sup> Kinyua, P, "Effective Management and Performance in State Owned Corporations in Kenya: An Assessment of Impediments to Corporate Governance Practices by Public Managers and Administrators", (2012), International Knowledge Sharing Platform, Vol 2, No 6

<sup>85</sup> Makokha, J, "Corruption in State Corporations in Kenya: Compliance with Corporate Governance Standards as a Measure to Combat Corruption", (University of Nairobi, LLM thesis, 2014) unpublished

universities as contained in the Act. Secondly, the study targeted parastatals while the current study specifically targeted public universities in Kenya.<sup>86</sup>

Miring'u and Muoria pointed out the problems being faced by state corporations as a result of non-adherence to corporate governance principles. They mainly focused on the relationship between financial performance and the composition and size of the board. The study base in the study comprised of state corporations whereas the present study focused on public universities. Secondly, the study focused on financial performance whereas the study looked at the ability of the universities to adhere to the statutory ideals of corporate governance. Thirdly, the study examined corporate governance from the composition and size of the board aspect but this study measured corporate governance from the provisions of the Universities Act, 2012.<sup>87</sup>

Miniga revealed that adoption of corporate governance principles by regulatory state corporations plays a part in the improvement of financial performance. The study recommended that the government ought to enforce the measures it had laid down on corporate governance to ensure public organizations were following them. The study focused on regulatory state corporations as the study population while the present study focused on public universities in Kenya. Further, the study addressed performance from the financial aspect whereas the study did not look at performance but the ability of the Universities Act, 2012 to ensure corporate governance practices were realized in the requisite manner.<sup>88</sup>

Mulili tackled the issue of corporate governance in Kenya's public universities. He observed that the universities faced a number of challenges which pointed to poor governance. He concluded his study by making various recommendations in the area of corporate governance. The study addressed the issue of corporate governance in public universities in Kenya prior to the enactment of the Universities Act, 2012. The present study on the other hand addressed the issue

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<sup>86</sup> Mwaura, K, "The Failure of Corporate Governance in State Owned Enterprises and the Need for Restructured Governance in Fully and Partially Privatised enterprises: The Case of Kenya", (2007), Fordham International Law Journal, Vol 31, No 1

<sup>87</sup> Miring'u, A, & Muoria, E, "An Analysis of the Effects of Corporate Governance on Performance of Commercial State Corporations in Kenya", (April 2011), International Journal of Business and Public Management, Vol 1, No 1

<sup>88</sup> Miniga, J, "Relationship between Corporate Governance Practices and Financial Performance of Regulatory State Corporations in Kenya" (University of Nairobi, MBA Thesis, November 2013) unpublished

of compliance with corporate governance provisions as contained in the Universities Act, 2012, and explored the influence of the statute in ensuring realization of optimal governance standards.<sup>89</sup>

From the literature, the studies conducted on public universities were done before the enactment of the Universities Act, 2012. No known documented study which is within the knowledge of the study had been conducted in the area of corporate governance following the enactment of the Act. Equally, no known study had been conducted to determine how the enactment of the Universities Act had influenced governance practices in the universities. This study intended to address this gap.

Furthermore, from the above mentioned texts and articles the target population used to investigate the corporate governance varied. It included countries, Africa, sub-Saharan Africa, Uganda, Nigeria, state corporations in Kenya, regulatory state corporations in Kenya and listed insurance companies in Kenya. Only one of the texts specifically addressed corporate governance and public universities in Kenya. This gap was addressed in the study.

Finally, the preceding texts and articles measured performance from a financial or an economic aspect. The study sought to bring out the element of the realization of the ideals of corporate governance in the context of the Universities Act, 2012 as a measure of determining the extent to which it affects the running and management of the institutions. This gap has been closed in this study.

## **1.8 Limitations**

Firstly, there was limited local publication in the area of study. This limitation was minimized by the review of global and regional literature in the area of study.

Secondly, the research focused on a sensitive issue of good corporate governance which barred

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<sup>89</sup> Mulili, B, "Towards the Best Corporate Governance Practices Model for Public Universities in Developing Countries, the Case of Kenya", (Southern Cross University, DBA Thesis 2011)

the officers filling the questionnaires from openly divulging information. This limitation was overcome by the study devising a questionnaire that did not require the names of the officers to be disclosed.

Thirdly the study had no control over the respondent's attitudes, thoughts and beliefs. This impacted on the data collection exercise especially as regards the aspect of the authenticity of the data collected in the event of arising of bias and allied motivations from the respondents. The study overcame the challenge by way of imploring on the respondents to try as much as possible to be honest and truthful in their answers for the authenticity of the study.

The study equally encountered the challenge of failure to access official records from the different institutions. This was motivated by the fact that most of the public universities had a lot of bureaucratic red-tape as regards access to information which they considered as sensitive. The study overcame the challenge by way of providing an introductory letter from the University of Study as proof of the authenticity of the data collection exercise.

The study was further limited to the institutions that it focused on, the top management participants and the time frame that the study was carried out. This was a challenge that limited the study findings to the institutions, cadres of the respondents and the time period. This was a factor that limited the study with regards to the ability to make generalizations of the findings.

On the other hand, the research focused on the Universities Act, 2012 as the measure of ascertaining the corporate governance practices employed in the institutions reached during the study. Other statutes guiding the operations of the public institutions like the State Corporations Act were not interrogated as the measure of defining the extent to which the universities conformed to the ideal requisites. The study was thus limited in terms of only aligning the research to the dictates of the provisions in the Universities Act, 2012.

The study also encountered the challenge of very busy respondents in the senior top management positions who were not readily available to participate during the data collection exercise. The limitation was surmounted by way of having them delegate the task to their immediate juniors

who proffered the requisite information for the study.

Lastly as much as corporate governance practices are motivated by many principles, the study was limited to inclusivity, effectiveness and efficiency, transparency and accountability.

## **1.9 Hypothesis**

The study was guided by the hypothesis that owing to the current legal and institutional framework under which public universities operate, they are limited in their implementation of the ideals of corporate governance as contained in the Universities Act 2012. The prevailing situation has caused lack of program ownership due to non- inclusivity. Failure to have efficient and effective administrative systems occasioned by skewed appointments which are not motivated by merit has eroded the goodwill from the public. Lack of transparency has failed to ensure effective checks and balances in the public universities and failure to ensure the ideals of corporate governance has compromised the financial sustainability of the public universities.

## **1.10 Chapter breakdown**

The output of this research is presented in a seven chapter format. Chapter 1 entails the proposal. This contains the introduction and background to the study, the statement of the research problem, the justification for undertaking the study, the research objectives, the research questions that guided the study, the theoretical framework, the literature review, specification of the research design and methodology adopted and the limitations of the research.

Chapter 2 interrogated the objectives of public universities under the Universities Act 2012.

Chapter 3 evaluated the inclusivity principle and the challenges faced by public universities in relation to this principle. It contains the legal basis of the principle, how it was reflected in the public universities legal instruments and the prevailing situation with regards to its implementation and it is concluded by comparing it with practices in other jurisdictions.

Chapter 4 examined the establishment of efficient, effective governance systems and practices as a principle. It interrogated challenges faced by public universities in relation to this principle. It also contained the legal basis of the principle and how it is reflected in the public universities legal instruments vis- a vis practices in other jurisdictions.

Chapter 5 discussed transparency as a principle, the challenges faced by public universities in relation to this principle. It also contained the legal basis of the principle, how it was reflected in the public universities legal instruments and how it is being implemented locally in comparison to other jurisdictions.

Chapter 6 discussed sustainability as a principle, the challenges faced by public universities in relation to this principle. It also contained the legal basis of the principle, how it was reflected in the public universities legal instruments and how it is being implemented locally in comparison to other jurisdictions.

Chapter 7 presented the conclusions drawn on the research problem. The study outlined the recommendations informed by the conclusions of the study and made necessary recommendations for legal reform and also makes policy suggestions.



## CHAPTER TWO- MANDATE OF PUBLIC UNIVERSITIES

### 2.0 Introduction

Universities are established to facilitate the achievement of university education objectives as outlined in the Act.<sup>90</sup> Besides, the Kenyan Government is pursuing vision 2030 and the universities are key players in achieving it.<sup>91</sup> Public universities have an obligation to the larger communities to ensure that the envisaged ideals of their inception are actualized. They should assure access to education for the communities in an equitable manner and embrace rational utilization of the allocated resources for the benefit of the populace. Public Universities are equally accountable to the citizenry because they draw their funding from the exchequer and are thus obligated to the public.

Despite most of the public universities having been certified as compliant to the industry expectations as pertains to quality standards they have not lived up to the public's expectations. Current situations in the institutions and the anecdotal records from public institutions like the NCIC gives a stark contrast of the expectations of the public as pertains to the conduct of the universities.

The essence of enacting the Universities Act was to align the running and management of the institutions to the demands of the ongoing reforms in the public sector.<sup>92</sup> This was with a view of ensuring accountability and openness in the management of public institutions. The reforms have seen the advent of performance contracting and enactment of service charters detailing the obligations that the institutions have to the wider public. This is in line with the demands of corporate governance in the public sector institutions.

### 2.1 Legal framework of public universities

Public universities are guided by various legal instruments in the discharge of their functions. To

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<sup>90</sup> Universities Act 2012, s 3

<sup>91</sup> Gudo, C, "University Expansion in Kenya and Issues of Quality Education: Challenges and Opportunities", (November 2011), International Journal of Business and Social Science, Vol 2, No 20

<sup>92</sup> Ibid

begin with, they are subject to the provisions of the Constitution of Kenya. In addition, they are required to adhere to the provisions of the Universities Act, which is the Act that establishes them. Furthermore, to fully realize their mandates, public universities are also supposed to adhere to other Acts of Parliament. Public universities are for instance required to adhere to provisions of the Public Procurement and Disposal Act 2015. This Act assures transparency and efficiency in the procurement and disposal processes. In addition, to ensure financial prudence, the universities are mandated to comply with the Financial Management Act 2012. The university council affairs and procedures are also regulated under the State Corporations Act. Furthermore, the Leadership and Integrity Act expounds on the provisions of chapter six of the Constitution and mandates state officers and public officers governing public universities to uphold integrity and work ethics. In order to ensure regional, ethnic balance and peaceful coexistence in the universities the provisions of the National Cohesion and Integration Act have to be observed. The Disabilities Act provisions should also be upheld in order to assure the rights of the persons living with disabilities.

Public universities are also governed by individual Charters issued pursuant to the Act.<sup>93</sup> A public university is mandated under section 23 of the Act to make such statutes and regulations as it consider appropriate to regulate the affairs of the respective university. The statutes should however be subject to the provisions of the Act and the Charter. Additionally, public universities fall under the definition of public service as provided for in the Constitution of Kenya.<sup>94</sup>

## **2.2 Institutional framework of public universities**

Public Universities fall under the Ministry of Education, Science and Technology (MoEST). The Ministry is responsible for national policies and programmes that help Kenyans access quality and affordable, school education, post-school, higher education and academic research.<sup>95</sup>

To regulate university education, the Act has under Part II thereof established the Commission for University Education. The Commission's functions includes *inter alia* the promotion of the

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<sup>93</sup> Universities Act 2012, s 13

<sup>94</sup> Constitution of Kenya 2010, Article 260

<sup>95</sup> Ministry of Education, Science and Technology, "Background Information" (2015) <http://www.education.go.ke/home/index.php/about-us-moe/background-information> accessed on 23<sup>rd</sup> February 2015

objectives of university education; promotion and setting standards and assuring relevance in the quality of university education; monitoring and evaluating the state of university education systems in relation to the national development goals; undertaking or causing to be undertaken regular inspections, monitoring and evaluation of universities to ensure compliance with the provisions of this Act or any regulation under section 70; and on a regular basis inspecting universities in Kenya.

Public universities are also subject to other regulatory government bodies and are either supposed to make reports to them or seek their approval on several matters. These bodies include treasury, parliament and the state corporations' advisory committee.

### **2.3 Specific mandate of public universities under the Act**

The Act of Parliament that governs all universities in Kenya is the Universities Act. It came into force on the 13<sup>th</sup> day of December 2012. The Act in Section 3 thereof outlines the objectives of university education as advancement of knowledge through teaching, scholarly research and scientific investigation. The Act also outlines promotion of learning in the student body and society generally; promotion of cultural and social life of society; support and contribution to the realization of national economic and social development; the promotion of the highest standards in and quality of teaching research; education, training and retraining higher level professional, technical and management personnel; the dissemination of outcomes of research conducted by the university to the general community; facilitation of lifelong learning through provision of adult and continuing education is also envisaged in the Act; fostering of capacity for independent critical thinking among its students; promotion of gender balance and equality of opportunity among students and employees and promotion of equalization for persons with disabilities, minorities and other marginalized groups as other functions of the university.

In the discharge of their functions under the Universities Act, public universities should be guided by the national values and principles of governance as set out under Article 10 of the Constitution of Kenya.<sup>96</sup> They are also called upon to promote quality and relevance of their programmes; to enhance equity and accessibility of their services. They are required to promote

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<sup>96</sup> Universities Act 2012, s 3(2)

inclusive, efficient, effective and transparent governance systems and practices. They are also expected to maintain public trust; ensure sustainability and adoption of best practices in management and institutionalization of systems of checks and balances and promote private-public partnership in university education and in the same vein develop and institutionalize non-discriminatory practices.<sup>97</sup> Under section 47 of the Act, a Public University should within four months from the end of each financial year submit to the Auditor General the accounts of the University. The accounts are to be audited and reported in accordance with the Public Audit Act 2003.<sup>98</sup>

## 2.4 Results of the Survey: Socio-demographic section of the questionnaire

The questionnaires were filled by the respondents in an exercise conducted by the study in person and returned on completion. The study objectives motivated the thematic organization of the study. This was after verifying the collected data and establishing any incomplete information before the data analysis process. The interview schedule and observation sheets were equally organized sequentially.

The introductory section of the questionnaire sought to establish the respondent's socio-demographic information with regard to their positions at work and length of service with a view of relating it to the study context. This was with an aim of integrating it with their understanding of the Universities Act. The response rate was as per the table below.

**Table 2 Response rate**

<b>Responses</b>	<b>Frequency</b>	<b>Percentage</b>
Questionnaires returned	45	83
Questionnaires not returned	9	17
Total	54	100

A total of 54 questionnaires were issued out in the data collection exercise and 45 of them were dully filled and returned. The response reflected a positive and enhanced questionnaire return

<sup>97</sup> Universities Act 2012, s 3(2) (a),(b),(c),(d), and (f)

<sup>98</sup> Public Audit Act 2003, s 47 (3)

rate owing to the fact that 83% of the respondents filled and returned the questionnaires. This vindicated the study with regard to the ability of the respondents to understand the thrust of the research which was reflected in the enhanced return rate. Further, the response rate was interpreted to mean that the relevance of the study context to the respondents made them appreciate and participate willingly during the data collection exercise.

As regards the respondent's positions in the universities, the study sought to target the top management. In most of the institutions, the top management personnel were effectively reached though in some instances, owing to the busy nature of their offices some officers delegated to their assistants. This assured the generation of the requisite information which enabled the fruition of the study.

On the Length of time the respondents had served at the universities, the study sought to establish the period in which the top management personnel had served in the institutions in the administrative capacities. The responses were as shown in table 2.2

**Table 3 Lengthy of service of the top personnel**

<b>Responses</b>	<b>Frequency</b>	<b>Percentage</b>
Less than 1 year	5	11
1 -5 years	18	40
6 – 10 years	7	15
11 – 15 years	8	19
16 – 20 years	7	15
Total	45	100

The responses shown in table 2.2 reflected a situation whereby most of the top management personnel had served in the institutions for periods of 1 – 5 years (n=18) (40%). The responses equally reflected the situation whereby the respondents had served for varied periods of time and this reflected exposure and experience which was optimal with regard to generating information which was of value to the study. This was by virtue of the fact that the respondents had interacted with the management and administrative programs in the public universities

adequately before and after the inception of the Universities Act 2012 and were thus rightfully positioned with regard to providing the required research information. The study further established that all of them were aware of the Universities Act 2012 and were adequately informed with regard to the provisions of the statute and effectively related it to the context of the study. This rightfully positioned the study with regard to generating the requisite information and the ability to make informed responses.

## CHAPTER THREE-INCLUSIVITY

### 3.0 Introduction

This chapter discusses the inclusivity principle and the challenges faced by public universities in relation to this principle. It also outlines the legal basis of the principle, how it was reflected in the public universities legal instruments and the prevailing situation with regards to its implementation. It also sets out the review of the data collected and its interpretation. On the strength of the collected data and its interpretation, the chapter proceeds to interrogate the corporate governance practices in the context of the Universities Act.

### 3.1 Inclusivity principle

The working definition of inclusivity that is adopted in this study is the capacity of the university to promote access to both students and staff to admissions, employment and other opportunities by embracing the promotion of equity through the assurance of gender parity, regional balance, addressing of social and ethnic disparities to ensure non-discriminatory and participatory decision making thereby curbing student and staff unrest.<sup>99</sup>

Inclusivity is addressed in this study under the following subheadings.

- Promotion of access to admission for students
- Promotion of access to the citizens to employment and other opportunities
- Promotion of equity by addressing regional, ethnic and social disparities
- Promotion of participation of staff and students in decision making.

### 3.2 Legal Basis of the inclusivity Principle

The Universities Act contains provisions requiring public universities to promote inclusive governance systems and practices for assured equity and accessibility of their

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<sup>99</sup> Kinyanjui, K, “The Transformation of Higher Education in Kenya, Challenges and Opportunities” paper presented at the “Mijadala on social policy, governance and development in Kenya” (2007) [https://www.google.co.ke/?gws\\_rd=ssl#q=PROF+KABIRU+TRANSFORMATION+OF+HIGHER+EDUCATION+IN+KENYA](https://www.google.co.ke/?gws_rd=ssl#q=PROF+KABIRU+TRANSFORMATION+OF+HIGHER+EDUCATION+IN+KENYA) accessed on 18<sup>th</sup> February 2015

services.<sup>100</sup> Adherence to the national values and principles of governance as set out under Article 10 of the Constitution of Kenya is also provided for in the Act.

Article 10 (1) of the Constitution of Kenya specifies the national values and principles of governance binding state organs, officers and persons. The Constitution advocates for inclusivity as envisaged in the national values and principles of governance through democratic ideals and protection of the marginalized as articulated in the bill of rights.<sup>101</sup> Article 27 further guarantees equality to citizenry devoid of discrimination. The right to education is guaranteed under Article 43 of the Constitution<sup>102</sup>.

Article 54(b) assures persons with physical challenges the rights to access educational facilities thus mandating universities to integrate their infrastructure needs in the planning and construction. Affirmative action rules stipulate that five percent of elective and appointive positions are to be held by physically challenged persons. Article 56, takes care of the minorities interests as regards their participation in governance by giving them special opportunities.<sup>103</sup>

Inclusiveness is also envisaged in the public service by way of public participation in policy making.<sup>104</sup> The Constitution of Kenya assures the representation of all the communities and emphasizes for equality in public appointments regardless of gender and physical challenge.<sup>105</sup> Public universities are expected to adhere to the provisions of Article 10 of the Constitution of Kenya 2010 as they expend their services to the public.

The Universities Act advocates for inclusivity under Section 3(1) (j) by providing for gender parity and equality in the students' and employees' fraternity.<sup>106</sup> The universities are supposed to ensure equity in the access to services by all meriting persons.<sup>107</sup> In further compliance with the Constitution of Kenya 2010, non-discriminatory practices should be employed in the institutions.

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<sup>100</sup> section 3(b) and 3 (c) of the universities Act, 2012

<sup>101</sup> Article 10 of the Constitution of Kenya 2010

<sup>102</sup> Article 27 of the Constitution of Kenya 2010

<sup>103</sup> Constitution of Kenya 2010, p 48

<sup>104</sup> Article 232 of the Constitution of Kenya 2010

<sup>105</sup> Article 232 of the Constitution of Kenya 2010

<sup>106</sup> Article 3(1) (k) of the Universities Act 2012

<sup>107</sup> Article 3(1) (b) of the Universities Act 2012



Section 29 (b) of the Act, stipulates the right to academic freedom, in line with the provision of equal opportunities. Appointment to the Council and to senior posts staff like those of the Vice Chancellor and the Deputy Vice Chancellor should be done in a meritorious manner.<sup>108</sup>

Participation of students in university affairs is catered for by the provision establishing the student's association. Representation of students in senate by the student leadership on matters affecting their well-being is also catered for in the provisions.<sup>109</sup>Inclusivity in the allocation of university resources has been addressed in the Act since it provides for a board of trustees which is mandated to ensure a transparent and fair manner of making allocations to universities.<sup>110</sup>

### **3.3 Promotion of access for students to admission**

The study envisages access to admissions as the possibility of the candidates who qualify for university entry to apply and be considered for academic programs slots.<sup>111</sup>

In the article “Transformation of higher education in Kenya; challenges and opportunities”, Professor Kabiru indicated that universities faced the challenge of how to increase access to higher education to cater for the increasing number of high school leavers who desire tertiary education. Prof Kabiru also alluded to the fact that equity was also a major challenge in universities. He pointed out that there existed gender, regional, ethnic and social disparities and inequalities in the universities. He proposed adoption of admission policies that articulate the criteria for attracting more students from disadvantaged regions, gender and poor communities which are underrepresented in strategic and competitive programmes like sciences, medicine, engineering and law. He also recommended putting in place institutional mechanisms to support the needy and underprivileged students' access to higher education.<sup>112</sup>

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<sup>108</sup> Section 35, 36 & 39 of the Universities Act 2012

<sup>109</sup> Section 41 of the Universities Act.

<sup>110</sup> Section 54 of the Universities Act 2012

<sup>111</sup> Tracy B, Nico C & Pundy P “Universities and economic development in Africa; Case a study Kenya and University of Nairobi ;Working paper for the ministry of higher education science and technology

<sup>112</sup> Kinyanjui, K, “The Transformation of Higher Education in Kenya, Challenges and Opportunities” paper presented at the "Mijadala on social policy, governance and development in Kenya" (2007) [https://www.google.co.ke/?gws\\_rd=ssl#q=PROF+KABIRU+TRANSFORMATION+OF+HIGHER+EDUCATION+IN+KENYA](https://www.google.co.ke/?gws_rd=ssl#q=PROF+KABIRU+TRANSFORMATION+OF+HIGHER+EDUCATION+IN+KENYA) accessed on 18<sup>th</sup> February 2015

Currently, there is a challenge on how to increase access to higher education to cater for the increasing number of school leavers and others who desire university education, while maintaining quality and ensuring equity and affordability. It is recommended that the Existing universities be expanded, targeting specific programmes which are backbones of socio-economic development such as medicine, engineering and the sciences.<sup>113</sup>

The Act has established the Kenya Universities and Colleges Placement Board to take care of access issues by way of equity in admissions under Part VIII. The Board coordinates placement of students to universities and advises the Government on matters relating to placement of students under section 56(1) (a).<sup>114</sup>The Board is mandated to promote equity through affirmative action for marginalized communities, minorities and persons with physical challenges.<sup>115</sup> Development of the criteria for enabling student's access to courses applied for based on qualifications and priorities is also a preserve of the board.<sup>116</sup>Public universities are thus limited in assuring inclusivity in the admission process. The implementation by the board of the affirmative action for female students' admission to universities is a step in the right direction.<sup>117</sup>More should however be done to cater for the marginalized, the minorities and the physically challenged by way of policy provisions.

Public universities are under section 57 of the Act allowed to admit self-sponsored students who qualify. The public universities should be magnanimous enough to offer opportunities to physically challenged persons by giving them bursaries, rebates or fee concessions with an aim of enhancing their access to admissions for academic programmes.

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<sup>113</sup> Ibid

<sup>114</sup> Section 56(1) (d) of the Universities Act

<sup>115</sup> Section 56(2) of the Universities Act 2012.

<sup>116</sup> Section 56(3) of the Universities Act 2012.

<sup>117</sup> Kerubo J.O Promoting gender equity in higher education; an examination of sustainable interventions in selected public universities in Kenya (2009), London Review of Education Vol 1 p71-81

### **3.4 Promotion of access to employment and other opportunities**

The study premised access to employment and other opportunities as the ability of the public universities to operate within the confines of the law with regard to ensuring fairness and openness in conferring of employment opportunities to all citizens who merit.<sup>118</sup>

Ethnic culture is a challenge in public universities and their expansion has been motivated by the desire for ethno- regional location of universities as opposed to national intellectual and social development. The politicisation of the location of new Public Universities and University Colleges as reward for political support and catering of local elite needs of ascension to University Management positions has negated the import of the expansion.<sup>119</sup> Section 26 of the Universities Act advocates for universities to be established in each county thereby legislating the expansion and allowing the entrenchment of politicisation.

Staffing of senior management positions by members of the local ethnic group has characterized university management. The National Cohesion and Integration Commission reported that the appointment of Vice-Chancellors and College Principals was done according to tribal considerations and was spreading to other ranks of employment in Kenya's public universities. Statistics from the survey conducted by NCIC, showed that six ethnic communities which are the Kikuyu, Luo, Luhya, Kalenjin, Kisii and the Kamba occupy 70.8% of all jobs available in the higher leaning institutions thus they are not reflective of the national face as envisaged by the Constitution. NCIC went ahead and noted that the problem with university expansion as an ethnic territory in Kenya is that the institutions never gets to evolve and attract the requisite academic capital that can place the institutions in good stead as vehicles for development.<sup>120</sup>

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<sup>118</sup> Nguata P.W “Challenges of implementing workforce diversity policies in Kenyan public universities “(2013)A published research project submitted in partial fulfillment of MBA University of Nairobi

<sup>119</sup> Oanda, I, &Jowi, J, “University Expansion and the Challenges to Social Development in Kenya: Dilemmas and Pitfalls”, (2012), JHEA/RESA, Vol 10, No 1, pp 49-71

<sup>120</sup> National Cohesion and Integration Commission, “Briefs on Ethnic Diversity of Public Universities in Kenya”, (2012)

<http://cohesion.or.ke/~cohesion/images/downloads/briefs%20of%20ethnic%20audit%20of%20public%20universities%20-%20final.pdf>

In the words of Mazrui, “instead of universities being arenas of universal values and intellectual fraternity, they seem to be deteriorating into beehives of ethnicity.”<sup>121</sup> The unrest at the University of Eldoret puts this issue into perspective. It serves as a wake-up call to the Government to deal with the issue of negative ethnicity in institutions of higher learning. Promotion and appointment of academic staff at the University of Eldoret was the cause of the riots that hit the institution in February 2015. A number of lecturers, including those from the local Kalenjin community, sought the help of politicians, the local youth group and the university student leaders to push for their promotion. The lecturers were unhappy with the outcome of the interviews for promotions that were conducted in December 15 to 17, 2014, which left most of them out. It was alleged that the said promotions were biased towards lecturers from outside the local community.<sup>122</sup>

Sadly, students from other ethnic communities were also targeted in the incident.<sup>123</sup> Following the unrest, the Cabinet Secretary Ministry of Education, Science and Technology, said that Kenyans had a right to work anywhere in the Country. He insisted that he would not allow university management to be determined at the village level. Similarly, the University’s Academic Staff Union (UASU) organizing secretary noted that entrenching tribalism in universities would compromise the quality of education. On this note, he urged politicians to keep away from university management in Kenya.<sup>124</sup>

The ethnic culture also manifested itself at Moi University where a section of North Rift leaders stormed the university’s main campus premises in Kesses, Eldoret protesting against the appointment of the institutions acting Vice-Chancellor. They threatened to stop the university’s 32<sup>nd</sup> graduation ceremony. They argued that an ‘outsider’ had been appointed to head the university and instead proposed the appointment of a local community member.<sup>125</sup>

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<sup>121</sup> Mazrui, A, “Are Universities being tribalised?”, Daily Nation, (10<sup>th</sup> February 2008)

<sup>122</sup> Wanzala, O, “University of Eldoret Staffing Row Takes Ethnic Turn As Leaders Join Fray”, (21<sup>st</sup> February 2015) <http://www.nation.co.ke/news/University-of-Eldoret-Dispute-Isaac-Melly/-/1056/2631562/-/25x5jrz/-/index.html> accessed on 4th June 2016

<sup>123</sup> Ibid

<sup>124</sup> Ibid

<sup>125</sup> <http://www.trendingpost.co.ke/2016/09/north-rift-leaders-protest-against-appointment-of-vice-chancellor-at-moi-university.html>

Furthermore, owing to the ethnic culture in public universities, Vice-Chancellors and Principals continue to be appointed along tribal lines or on the basis of dominant ethnic affinities in the regions where the universities are located, rather than merit, a practice that flows downwards to other ranks in the institution. Newly created universities especially those that are located in the country side are urging teaching staff from the locality of the university to move there to help develop their university and are using accelerated promotion without any academic credentials as a bait, alternatively academic staff who have stagnated at one grade for a long time mostly due to lack of academic merit are moving to the new institutions established within their ethnic enclaves and are being given higher academic grades.<sup>126</sup>

The study sought to enumerate the representation of the various ethnic communities in Kenya among the University staff from the sampled institutions. The study established that all the institutions under study had profound ethnicity as pertains access to opportunities available thus negating the essence of inclusivity in the institutions. The responses showed that the dominant ethnic group in the study area which was the central region of the Republic of Kenya, the kikuyu, held most of the employment opportunities in the university staff. Most of the respondents estimated the population strength of the kikuyu ethnic group in the representation of staff to be in the region of 60% while the other communities were left to share the other positions. This was the position in all the universities visited during the data collection exercise.

The responses reflected failure on the part of the institutions to ensure equity in the availment of employment opportunities to the citizens of the Republic of Kenya. This was a confirmation of a previous report by the National Cohesion and Integration Commission.<sup>127</sup> The report reflected lack of fairness in employment opportunities in the public universities. The report indicated that there were numerous cases of skewed employment opportunities in favour of the dominant communities in the regions where the universities were situated. The study thus was of the view that the provisions for inclusivity based on the requirements of equal opportunities in terms of employment access for all citizens regardless of their ethnic dispositions was not strictly enforced and adhered to in the public universities sampled.

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<sup>126</sup> Oanda, I, &Jowi, J, “University Expansion and the Challenges to Social Development in Kenya: Dilemmas and Pitfalls”, (2012), JHEA/RESA, Vol 10, No 1, pp 49-71

<sup>127</sup> National Cohesion and Integration Commission report, 2015

Furthermore, observation of the relations within the staff especially the lower level cadres like the gate men and other support staff in the universities showed that the members of the local communities employed in the institutions conversed in local dialects thus reflecting the ingrained practices of exclusivity based on the ethnic affiliation. By so doing, they risked alienating other persons who were not from the local communities. The Legal Officer of the Commission for University Education was of the view that the universities had been advised to ensure that they had the right distribution in terms of ethnic diversity in the membership of staff.

The provisions of the National Cohesion and Integration Act, 2008<sup>128</sup> equally stipulates the essence of non-discrimination in employment opportunities in all public institutions based on ethnic disposition.

The study also sought to find out information on the number of local suppliers and workers as compared to those from other counties. The study was of the view that local suppliers had been given greater preference as opposed to the ideal situation of encouraging competitive bidding in the procurement process. In the same vein, members of the local community had greater leeway with regards to access to employment opportunities in comparison to persons from outside the counties that the institutions were located. The practices localized the institutions further as opposed to perpetuating the ideals of nationalism and inclusivity.

The responses depicted a situation whereby the majority of the respondents alluded to the fact that most of the suppliers providing goods and services to the institutions came from the counties where the universities were located. On a ratio of 60% to 40%, the responses showed that the bulk of the volume of the business that the universities transacted was carried out by the local suppliers and contractors as opposed to those from outside the counties. The responses showed that preference was given to the local suppliers and this was a factor that may have been predisposed by local influence peddling and the motivations to jump start the local economies. In the same vein, employment opportunities were equally given to the local residents at a higher percentage in comparison to those who were not from within the county.

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<sup>128</sup> National Cohesion and Integration Act, 2008

This confirmed the previous findings which alluded to the local communities being the major beneficiaries of the employment opportunities within the institutions. The study thus deduced that emphasis was placed on giving preference to local suppliers and contractors in the provision of goods and services and equally to local communities in accessing employment opportunities from the percentage in the institutions. The study deduced the risk of failure to ensure quality and merit owing to practices which may be exploited to placate local communities at the expense of ensuring international best practices are met.

The responses from the Legal Officer of the Commission for University Education equally showed that the institution had played its rightful role with regard to inspecting and confirming the ability of the universities to conform to the expected standards. This had resulted in some of the universities being forced to close down some campuses which did not meet the standards stipulated. Provisions to ensure that the human resource component was up to the task had also been put in place by providing for strict requirements in the CUE guidelines 2014 on the minimum academic qualifications of teaching staff in universities. Requirements for minimum contact hours between the students and teaching staff, presence of amenities and attendant professional requisites for different skills areas had also been stipulated. These were measures put in place with a view of enhancing and ensuring that quality standards were met by the universities. He further articulated on the need for the universities to conform to the provisions of the Public Procurement and Disposal Act, 2015 by way of advertising for the contracts in media outlets with national coverage to make the process competitive with a view of encouraging national inclusion. He also enumerated on the need to comply with e- procurement requirements as a measure of enforcing the integrity and openness of the procurement process.

The situation in the sampled universities depicted failure on their part to ensure that the tenets of inclusivity were espoused and embraced. This was in respect to access to employment and procurement opportunities. To curb the ethnic culture menace, CUE should enforce the provisions of the NCIC Act and Universities Act. They can do this by naming and publishing the non-compliant institutions and employing sanctions in liaison with treasury to reduce the capitation for non-compliant institutions as a measure of enforcing compliance.

### **3.5 Promotion of equity by addressing regional, ethnic and social disparities**

The study defined equity as the ability by public universities to consider the staff and student populace based on previous marginalization and assuring access to opportunities to disenfranchised groups by expanding their thresholds.<sup>129</sup>

Equity challenges are rampant in public universities and they begin with the provisions for university entry which entail the KCSE results from examinations conducted nationally where some of the communities are very marginalised in comparison to the highly endowed communities. The marginalisation is in regard to lack of learning facilities and adverse conditions and environment obtaining in their localities. This occasions heavy disparities when the two segments of society sit for the same examination and are expected to compete on a neutral footing. This limits the marginalised segments' ability to gain access to university admission and to access competitive courses.<sup>130</sup>

Socio economic inequalities in the country also impact negatively on the ability of students from economically disadvantaged backgrounds to afford university education. In some instances, the admitted students are unable to complete their programmes owing to financial constraints.<sup>131</sup> In other cases, some of the cultural orientations of some communities in Kenya hinder the ability of the female gender to have the same leverage as the male gender in education access opportunities. This is because the cultural inclinations are predisposed towards favouring members of the male gender in comparison to those of the female gender.<sup>132</sup>

Further, in the employment and promotion of staff, the failure to embrace openness shrouds the recruitment and promotion processes in secrecy. This disenfranchises persons who do not have contacts they can rely on to sway the jobs and promotions in their favour.<sup>133</sup>

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<sup>129</sup> kabiru kinyanjui, the transformation of higher education in Kenya: challenges and opportunities, a paper presented at the Mijadala on social policy, governance and development in Kenya on 9<sup>th</sup> July 2007

<sup>130</sup> Mulongo G "Inequality in accessing higher education in Kenya; Implications for economic development and well-being"(2013) International journal of humanities and social science Vol 3 No 16

<sup>131</sup> Ibid

<sup>132</sup> Ibid

<sup>133</sup> Nge'the J M "Determinants of academic staff retention in public universities in Kenya" published thesis doctor of philosophy (2013) in HR JKUAT



The study sought to establish the composition of the university councils and management boards in terms of membership. The study deduced that the membership of the university Councils and the Management Board comprised of nominees of the Cabinet Secretary MOEST and representative of Treasury. This negates the principle of inclusivity because staff and student representation lacks from the composition of the council yet they are major stakeholders in the universities. Further, public participation as envisaged in the statutory provisions does not suffice in the appointment processes. These defeats the essence of inclusivity by excluding the wider stakeholder input. In addition, the study also deduced that there were few students and staff with disabilities in the universities but they were adequately represented in the students' council and staff union. The study thus opined that the essence of inclusivity as envisaged in the ideals of the Act with regard to equity was not realized to the expected standards.

The responses showed that the constitution of the university councils was largely reflective of the persons appointed by the Cabinet Secretary of the Ministry of Education Science and Technology and nominees to represent the Principal Secretaries of the Ministry of Education Science and Technology and Treasury. The Vice Chancellors acted as secretaries to the university councils based on the executive roles that they played in the universities. The provision to ensure representation of gender as guided by the two thirds gender rule was largely factored in and this was an indicator that women were considered for positions in the university councils. Only one of the universities reached in the data collection exercise had not adhered to the provisions of the two thirds gender rule in the constitution of the university councils.

The management boards consisted of the vice chancellors, deputy vice chancellors, registrars, finance officers and legal officers. The constitution of the management boards equally reflected efforts to ensure the two thirds gender rule was enforced in most of the institutions except in two institutions whereby it had not been adhered to. This reflected adherence to the provisions of the law which stipulates the enforcement of the gender rule as a basis of ensuring inclusivity and equity with regards to gender parity. As regards inclusion of persons with physical challenges in leadership positions in the universities, only two universities had physically challenged persons

in their councils. This may be attributed to the failure to meet the required academic qualifications meriting positions in the organs.

The study deduced that efforts had been made to ensure inclusivity in the organs of management on the premise of the gender rule but more ought to be done to ensure persons with disabilities were given opportunities to serve in the organs of management. The Legal Officer of the Commission for University Education confirmed that the provisions for putting in place the university councils were clearly stipulated in the Act guiding the administration and management of the institutions. He confirmed that the situation of having the Cabinet Secretary appoint persons into office based on their individual proficiencies was guided by the statutes in force.

The study also sought to ascertain the representation of staff and students with disability in the public universities. The study opined that representation of students and staff with disability was minimal and as such the public universities had failed to assure equity as an element of inclusivity. This was supported by very low numbers of persons with disability that were deduced from the responses. The responses were however indicative of a situation where the universities had put in place formal structures to take care of the persons with special needs more so in the realms of physical disability. Provisions to ensure that there were slots for persons with disability in the students governing councils had been put in place. This was a factor which brought to the fore the recognition of the special group and showed accountability on the part of the universities to the group by virtue of assuring it opportunities to vote for persons to champion for their issues, by way of legitimate suffrage as enshrined in the bill of rights. This gave them the mandate to have representation and an opportunity to voice issues that affected them collectively. The members of staff living with disabilities were equally given room to engage and raise issues affecting them collectively through formal channels. This gave them a sense of belonging and the ability to feel included and effectively part and parcel of the institutions.

Further, an observation of the physical infrastructure in the institutions confirmed that they had taken care of the needs of the persons with disabilities. This was by way of making provisions for ramps, special sanitation blocks and parking facilities for them. This was an indication that the institutions had strived to ensure that the needs of the members of the institution who had

disabilities had been taken into account. The only undoing was that most of the old buildings in the institutions did not have the requisite provisions to ensure that the persons with disabilities were taken care of by having ramps and other improvements to ensure their comfort. The Legal Officer in the Commission for University Education confirmed that it was a prerequisite for the universities to ensure that the membership and especially so, persons with disability were made as comfortable as possible by virtue of ensuring that all the physical amenities were accessible to them. This was a condition which was always evaluated during the inspection visits to check and confirm compliance with the statutory provisions in the Universities Act.

To assure equity, measures should be put in place to have provisions for the representation of students and staff in the university governing organs. In addition, CUE should enforce the provisions of the Disabilities Act which stipulates that 5% of the employment and admission opportunities in the universities should be afforded to persons with disability.

### **3.6 Promotion of participation of staff and students in decision making.**

The study premised participation as the ability of public universities to involve the students and staff in the institutional governance.<sup>134</sup>

The ideals of university governance are to ensure the participation of the critical stakeholders like students and staff in the decision making processes. The current Council structure lacks stakeholder representation thereby hindering democratic decision making. There are no student and staff representatives sitting in the current University Councils. The Council consists of the Chairperson, the Principal Secretary in the Ministry for the time being responsible for university education; the Principal Secretary in the Ministry for the time being responsible for finance; five members appointed by the Cabinet Secretary through an open process and the Vice-Chancellor who shall be an ex-officio member.<sup>135</sup>

Disruptions of the university business by student and staff strikes can be attributed to their non-involvement by the universities in the decision making process. Numerous strikes and closures

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<sup>134</sup> Obondoh A. “politics of participatory decision making in campus governance “(2013) published thesis University of Nairobi

<sup>135</sup> Section 36 of the Universities Act, 2012.

pose a big challenge to public universities. The strikes prolong the time required to complete university education, disrupt academic life and drive prospective students and staff to private and overseas institutions.<sup>136</sup> Several grievances by students occasion the strikes. On 20<sup>th</sup> May 2014, students from the University of Nairobi, Technical University of Mombasa, Jomo Kenyatta University of Science and Technology and Masinde Muliro University went on rampage protesting a proposed increase in their tuition fees.<sup>137</sup>

Failure by some institutions to have some academic programmes accredited has also been one of the students' grievances. Indeed, on 22<sup>nd</sup> day of October 2014, students of Dedan Kimathi University of Technology went on strike alleging that the institution had failed to spearhead certification of the nursing and engineering courses forcing them to undertake additional courses after graduation. Students at Technical University of Mombasa also went on rampage for two weeks in the month of September 2014 over a similar course. They alleged that the engineering programmes offered at the university were not accredited by the Engineering Regulation Board.<sup>138</sup>

“Punitive” examination rules occasioned a student’s strike at Egerton University in December 2014.<sup>139</sup> At Moi University, law students engaged police in running battles on 3<sup>rd</sup> October 2014, protesting against the indefinite closure of their annex campus. The closure was done by a circular issued by the Council following the failure by lecturers to provide teaching services to the students for four weeks. The lecturers had allegedly, been pushing for the review of their salaries; an issue which the Council had down played.<sup>140</sup> On the other hand, delayed disbursement of Higher Education Loans Board loans caused University of Nairobi and

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<sup>136</sup> Mwiria, K, “Public and Private Universities in Kenya”, (James Currey Ltd, UK, 2007)

<sup>137</sup> Standard media, “DedanKimathi students strike over denied certification of certain courses by institution”, (22<sup>nd</sup> October 2014) <http://www.standardmedia.co.ke/ktn/video/watch/2000084704/dedan-kimathi-students-strike-over-denied-certification-of-certain-courses-by-institution> accessed on 23rd march 2015

<sup>138</sup> Magazine Reel, “Technical University of Mombasa Closed After Students Unrest” (1<sup>st</sup> October 2014) <http://www.magazinereel.com/technical-university-of-mombasa-closed-after-students-unrest/> accessed on 18th February 2015<sup>2</sup>

<sup>139</sup> Kulei, L, “Egerton University Closed After Students Strike” (8<sup>th</sup> December 2014) <http://www.standardmedia.co.ke/article/2000143953/varsity-closed-after-student-strike> accessed on 18th February 2015

<sup>140</sup> [mediamaxnetwork.co.ke/peopledaily/110065/moi-university-students-stage-street-protests](http://mediamaxnetwork.co.ke/peopledaily/110065/moi-university-students-stage-street-protests) accessed on 18<sup>th</sup> February 2015

Technical University of Mombasa students to go on strike on 20<sup>th</sup> September 2014.<sup>141</sup> Staff grievances that occasion strikes range from; alleged embezzling of funds by the top management, failure by the Government to honour collective bargaining agreements with workers and poor pay.<sup>142</sup>

The study sought to find out the extent to which the universities were involved in the formulation of the Universities Act. The study opined that the process of formulating the Act was participatory. In support of this deduction, the respondents confirmed that their institutions had participated in the formulation of the Universities Act, 2012. The responses showed that the formulation of the Act was consultative and had taken cognisance of the importance of stakeholder participation. It was an indication of the fact that a widely encompassing process was undertaken with a view of ensuring that the industry players' input was taken into account. The respondents confirmed that stakeholder participation meetings took place and that the varied organs of management in the institutions participated by way of giving their views in form of written memoranda and other presentations. The Legal Officer of the Commission for University Education equally confirmed that the universities were involved in the formulation of the Act by way of participation and by memoranda in the various stakeholder meetings carried out.

The study also sought to establish the parties involved in the formulation of the academic calendars in the universities. The study's opinion is that the academic calendar formulation process was not participatory and was thus not inclusive. The responses showed that management organs largely played significant roles in the formulation of the academic calendars. The senate and the management boards came out strongly as the organs which played the most critical roles in the formulation of the academic calendars. The representation of the students in senate was confirmed when the formulation of the academic calendars was being done. On the other hand, despite the representation of the students in senate being taken into account when formulating the academic calendars, the sentiments shared showed that their contribution was

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<sup>141</sup> Standard Media, "Students Riot over Higher Education Loans Board Loan Delay", (20<sup>th</sup> September 2014) <http://www.standardmedia.co.ke/thecounites/article/2000135558/students-riot-over-helb-delay> accessed on 18th February 2015

<sup>142</sup> Wangui, J, "University Lecturers Threaten to Strike over Pay", (12<sup>th</sup> January 2014) <http://www.capitalfm.co.ke/news/2014/01/university-lecturers-threaten-to-strike-over-pay/> accessed on 18th February 2015

however negligible. This was an indication that they played a minor role in the decision making process as regards the formulation of the academic calendars though their representation in senate was assured. The interview schedule with the Legal Officer of the Commission For University Education yielded a position which showed that in most instances, failure to take into consideration the sentiments and feelings of the students in the planning and decision making processes in the universities occasioned breakdown of communication and gave rise to strife leading to strikes and unrest. This was occasioned by the failure to ensure that the students were involved in pertinent decision making processes like in the formulation of the academic calendars in the universities. This was an issue which directly affected them but was overlooked by many administrators leading to misgivings from the affected students. The officer confirmed that the Commission had recorded many cases of breakdown of order in the institutions which could be attributed to non inclusivity in the governance programs. The officer alluded to concerted efforts to ensure inclusivity in the activities undertaken within the public universities with a view of stemming any incidences of dissent and breakdown of order.

### **3.7 Conclusion**

Based on the inclusivity elements studied, which were access to admission, access to employment and other opportunities and equity and participation in decision making, the ideals of the inclusivity principle in the public universities had not been realized. In the United States of America, the federal law has provisions for ensuring the principles of equity and inclusion in the universities.<sup>143</sup> The provision is taken care of by section 351 of the State Education Law.<sup>144</sup> The law stipulates that all persons who merit should be provided with the highest quality of education and the broadest possible access. The universities should also be fully representative of all segments of the population. The universities have respect for diversity and have provisions for recognition of inclusive excellence by virtue of respecting all the members of the communities regardless of their gender, religion, race and ethnic background.<sup>145</sup>

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<sup>143</sup> Lee, A., Porch, R., Shaw M., and Williams, R. Engaging Diversity in Undergraduate Classrooms; A Pedagogy for Developing Intercultural Competence;(2012) ASHE higher Education Report Volume 38, Number 2, Mass: A Wiley Periodical (p132)

<sup>144</sup> Association of American Colleges and Universities. (2015). "Committing to Equity and Inclusive Excellence: A Campus Guide for Self-Study and Planning."

<sup>145</sup> Adams, M., Bell, L., and Griffin, P. Teaching for Diversity and Social Justice, (2nd ed.). (2007). New York: Rout ledge.

The law has provisions for ensuring that all universities in the federal state create an office of diversity, equity and inclusion within the institution. This is premised on the need to ensure that the pertinent concerns of the stakeholders in the highly volatile and diverse communities within the USA are taken care of.<sup>146</sup> This is a contrast to the situation in the Republic of Kenya where the universities are left on their own to manage their provisions for ensuring inclusion within the framework of the Universities Act, but are not forced by the provisions of the law to have offices ensuring enforcement of the ideals of inclusion within them.

In Australia, legal provisions have been put in place to take care of inclusion in the universities.<sup>147</sup> Special preference is given to students with disability with an aim of ensuring that they benefit from access to academic programs. The persons living with physical disability are assured greater access owing to the opportunities for rebates and waiver on fees payment.<sup>148</sup> This has encouraged inclusivity on a higher scale in the jurisdiction and equally ensured that the students feel obligated to attend the universities despite their disability by virtue of the free access to education opportunities. Policy provisions should be explored to take care of persons with disabilities in emulation of the situation in Australia with a view of bridging inequalities and conferring affirmative action.

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<sup>146</sup> Danowitz, MA and Tuitt, F. Enacting Inclusivity through Engaged Pedagogy: (2011) A Higher Education Perspective, Equity & Excellence in Education,

<sup>147</sup> Berlach, R. G., & Chambers, D. J. Inclusivity imperatives and the Australian national curriculum.(2011).The Educational Forum, 75, 52-65.

<sup>148</sup> Elliott, S. N., Davies, M., & Kettler, R. J. Australian students with disability accessing NAPLAN :( 2012). Lessons from a decade of inclusive assessment in the United States International Journal of Disability, Development and Education, 59(1), 7-19

## **CHAPTER FOUR– EFFECTIVENESS AND EFFICIENCY**

### **4.0 Introduction**

This chapter discusses the effectiveness and efficiency principle and the challenges faced by public universities in relation to this principle. It also outlines the legal basis of the principle, how it was reflected in the public universities legal instruments and the prevailing situation with regards to its implementation. It also sets out the review of the data collected and its interpretation. On the strength of the collected data and its interpretation, the chapter proceeds to interrogate the corporate governance practices in the universities.

### **4.1 Effectiveness and efficiency principle**

Effective and efficient management of public sector organizations is an issue in many countries as was observed by Melese, Blandin, and O’Keefe. Public sector organizations are increasingly being held more accountable for their performance and therefore expected to operate efficiently and effectively.<sup>149</sup>The working definition for efficiency and effectiveness adopted by this study is having governance and management in the public universities executed in a meritorious manner. Effectiveness and efficiency is addressed in this study under the following subheadings.

- Having an independent board which has its appointment based on relevant technical expertise and;
- Presence of a board governed by clear legal and regulatory frameworks that are not overlapping.

### **4.2 Legal basis of the effectiveness and efficiency principle**

Article 10 of the Constitution of Kenya 2010 emphasises the national values and principles of public service. It stipulates that state organs should practice good corporate governance and should ensure there is no discrimination in the appointment process.

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<sup>149</sup> Melese, F, et al, “A New Management Model for Government: Integrating Activity Based Costing, the Balanced Scorecard and Total Quality Management with Planning, Programming and Budgeting System”, (2004), International Public Management Review, Vol 5, No 2, pp103-131



Further, Chapter six of the Constitution of Kenya 2010, more specifically Article 73(2) (a), provides that appointments into leadership positions should be on the basis of personal integrity, competence and suitability. In addition, according to Article 73(2) (b) persons appointed to leadership should uphold objectivity and impartiality in decision making and should ensure that decisions are not influenced by nepotism, favouritism or other improper motives or corrupt practices.

In the values and principles of public service outlined in Article 232 of the Constitution, state organs are called upon to be effective and efficient.<sup>150</sup> Further, the Article stipulates that appointments should be based on fair competition and merit.<sup>151</sup>

Under the Universities Act, 2012 the Cabinet Secretary is mandated to make Council appointments through an open process.<sup>152</sup> Similarly, he should ensure that the Vice- Chancellor is appointed through a competitive process.<sup>153</sup> Other high ranking administrative staff who are required to be appointed pursuant to a competitive process are the Deputy Vice Chancellors.<sup>154</sup>

### **4.3 An independent board**

The study considered the independence of the board as the capacity of the university councils to exhibit impartiality while managing the institutions.<sup>155</sup> The Universities Act, identifies the University Council as the governing body of the university.<sup>156</sup> It is supposed to promote the objects of the university, and in consultation with the university management, formulate policy and statutes for proper and effective governance of the university. The council has the mandate through a competitive process to appoint senior management entailing the Vice-Chancellor (VC) and the Deputy Vice-Chancellors (DVCs). University councils have nine members. All members are required to possess the required academic qualifications, should have high integrity, professional and moral values.<sup>157</sup> The composition should collectively provide balanced

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<sup>150</sup> Article 232(1) (b) universities Act 2012

<sup>151</sup> Article 232(1) (g) universities Act 2012

<sup>152</sup> section 36(1) (d) universities Act 2012

<sup>153</sup> Section 39(1)(a). universities Act 2012

<sup>154</sup> Section 35(1)(v) universities Act 2012

<sup>155</sup> Cloete T, (2011), Universities and Economic Development in Africa, CHET 2011.

<sup>156</sup> Universities Act, 2012

<sup>157</sup> Ibid

competencies to the council for effective governance of a university. Collective competencies of council members should include financial management, university leadership, human resource management, legal, information communication technology and research experiences. The Council members should also possess key interpersonal skills like communication and teamwork.

The Universities Act envisages staggered appointment of council members to allow for continuity and maintenance of institutional memory.<sup>158</sup>The Cabinet Secretary in charge of university education is mandated to make appointments whilst taking into account gender and ethnic balance as well as inclusion of persons with disabilities and people from marginalized groups.<sup>159</sup>The policy provision giving the Cabinet Secretary powers to appoint the university council members compromises their independence owing to the fact that the membership draws its allegiance to the executive.

All the members of the University Council (the most powerful organ in the university) are appointees of the Cabinet secretary yet one of Council's critical functions is policy formulation which is a strategic element in any higher education institution.<sup>160</sup>Out of the nine Council Members, eight are Government representatives.<sup>161</sup>The Vice Chancellor who is also an *ex-officio* member of Council is also an appointee of the Cabinet Secretary.<sup>162</sup>From this composition, the Council lacks autonomy from the Government. This management structure hinders effective governance since decision making is highly politicized. Further, the Council ends up having members who lack the requisite skills mix or experience in running a university.<sup>163</sup>The efficiency and effectiveness of the Council and the management is therefore constrained by the many agency problems that arise from these political appointments.<sup>164</sup>

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<sup>158</sup> Universities Act 2012

<sup>159</sup> Ibid

<sup>160</sup> Ngome, C, "Country Higher Education Profile (Kenya)", in Altbach, P, &Teferra, D, "African Higher Education: *An International Reference Handbook*", (Bloomington: Indiana University Press 2003) 360

<sup>161</sup> Universities Act 2012, s 36

<sup>162</sup> Section 39 of the Universities Act, 2012.

<sup>163</sup> SRI INT'L, parastatals in Kenya; assessment of their impact and an action plan for reform; final report prepared for Kenya association of manufacturers 1(1992).

<sup>164</sup> Fordham international law journal Vol 31 issue I 1997 the failure of corporate governance in state owned enterprises and the need for restructured governance in fully and partially privatized enterprises; the case of Kenya, Kiarie Mwaura

Indeed, the appointment of the Jomo Kenyatta University of Agriculture and Technology (JKUAT) Council was challenged in Joseph Mutuura Mbeeria and another versus Cabinet Secretary for Education, Science and Technology & 2 others. This was a petition that was commenced under Articles 10, 23, 47, 73, 165 and 232 of the Constitution which faulted the Cabinet Secretary for appointing the Council of JKUAT without adhering to the laid down constitutional and statutory principles of inclusiveness and openness in public appointments. The petitioner also invoked the provisions of section 36(1) (d) of the Universities Act, 2012 which provided that five members of council must be appointed through an open process. The court in its judgment concurred with the Petitioner and held that the JKUAT Council had not been appointed through an open process and was thus improperly constituted.<sup>165</sup> Subsequently, the JKUAT Council appealed against the decision to the Court of Appeal where Waki J.A declined to grant to the appellant their application for extension of time to file a notice of appeal. In his finding, the judge observed that it was the obligation of the court to ensure that the Constitution of Kenya 2010 was complied with.<sup>166</sup>

Government appointment of other high ranking administrative officers in public universities is yet another challenge to the institutions. The Vice Chancellor and the Deputy Vice Chancellors of public universities are government appointees or government representatives.<sup>167</sup> Charles Ngome in his analysis of the situation in Kenya elaborates on the centralized system of governance in public universities where power is concentrated in the hands of the Vice-Chancellors. This is a situation that challenges public universities owing to failure to ensure merit in the selection process. This nature of appointments outlines a scenario of external imposition. The Association of African Universities (AAU) supported study reveals that, “the decentralization of leadership, accountability to faculty and associated departments or units has proved to be the greatest management challenge to the university administration in our time.”<sup>168</sup> He concurs with Ngome,<sup>169</sup> on the fact that there is politicisation of university

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<sup>165</sup> Nairobi Industrial Court Petition No. 33 of 2013, available at <http://www.kenyalaw.org> accessed on 3<sup>rd</sup> June 2015

<sup>166</sup> Nairobi Court of Appeal Civil Application Number 320 of 2014 (UR 242 of 2014) The Council, Jomo Kenyatta University of Agriculture and Technology Versus Joseph Mutuura Mbeera & 3 Others available at <http://www.kenyalaw.org> accessed on 3<sup>rd</sup> June 2015

<sup>167</sup> Section 35 (1) (v) and Section 39(1) (a) of the Universities Act

<sup>168</sup> Obondoh, A, “Politics of Participatory Decision Making in Campus Governance” (Association of African Universities, 2003)

management and functions as characterized by the overpowering presence of the government in critical appointments. The study thus deduced that the policy provisions empowering the Cabinet Secretary to appoint the university council members and senior staff in the university compromised their independence.

The study sought to enumerate the extent to which the appointments in the university councils were made pursuant to an open recruitment process and the qualifications and skills of the council members. The study opined that the appointment process was not open thereby inhibiting the impartiality and independence of the councils. This opinion is supported by the responses which showed that all the respondents acknowledged the fact that appointment of persons to the university councils was the prerogative of the Cabinet Secretary of MoEST. The individual skills were taken into account and academic proficiency was a key determining factor. Nomination by the Principal Secretaries' in charge of Treasury and MoEST were equally done in the wake of the provisions of the Act, as regards constitution of university councils.

The responses depicted knowledge of the processes which were followed while constituting the university councils. The essence of merit equally came to the fore as a factor which was a key guiding principle in the appointments made. An observation in the universities websites reflected well-endowed institutions with regard to the skills possessed by the members of the university councils. Different fields of professions were represented in the councils. A reflection of the enormous diversity with regards to the competencies and professional inclinations of the memberships showed that the decision making organs had the benefit of a wide repository with regard to knowledgeable persons. The study thus deduced that the appointing authority had strived to ensure appointment of persons with diverse professional and academic backgrounds to the university councils. The Legal Officer of the Commission for University Education confirmed that there were modalities to ensure that the universities had effective and efficient processes with regard to governance. He was of the view that the MoEST had robust internal processes to vet and confirm the integrity of the persons sitting in the university councils. The processes ensured that the persons appointed by the Cabinet Secretary merited the positions and

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<sup>169</sup> Ngome, C, "Country Higher Education Profile (Kenya)", in Altbach, P, &Teferra, D, "African Higher Education: An International. Reference Handbook", (Bloomington: Indiana University Press 2003) 360

were up to the task with regard to individual disposition and proficiency. The officer alluded to the fact that the university councils were constituted in a manner which was deemed above board and beyond reproach. The study however encountered some misgivings from the respondents during the data collection exercise. Some of them were of the view that some council members did not merit their positions. They were of the view that if the appointment process was made more transparent and competitive, the institutions would attract better qualified persons. They also advocated for the opening up of the process to competition in order to relieve the institutions from their dependence on government.

The study further sought to confirm the most recent inspection and evaluation exercises carried out by the CUE as a measure of ensuring compliance with the provisions and objectives of university education under the Act. The study opined that inspections were being carried out by CUE though they required to do a lot more to ensure enforcement. The responses alluded to the conduct of inspections and evaluations in all the universities sampled during the study within the past two years. Four of the universities had been inspected in the year 2016 while two had been inspected in 2015. The responses were an indication that the CUE regularly carried out inspection and evaluation activities to ensure compliance with the provisions and objectives of university education under the Act. It was a pointer to the capacity of the institution to effectively carry out its mandate of regulating university education. It can thus be deduced that CUE was actively executing its mandate in ensuring compliance with the Act. This served as a measure of enforcing the requisite standards envisaged to ensure optimal delivery and the upholding of quality.

The Legal Officer of the CUE confirmed that regular evaluations were carried out in the institutions as a measure of enhancing the quality standards and ensuring adherence to the provisions of the law. The essence of the evaluations and inspections was to ensure that the institutions discharged their mandates within the spectrums provided for in the Act. The Legal Officer further enumerated that the university councils were supposed to exhibit independence and play their roles effectively for the good of the institutions. This was intended to ensure that the governance standards were applied to the requisite thresholds. The study however observed

trends which questioned the autonomy and independence of the university councils in the wake of interrogating secondary data. This findings question the ability of the provisions of the Act, as presently formulated to assure the institution's ability to thrive and operate efficiently in line with the expected standards. It calls for a re evaluation of the Act and inclusion of provisions which guarantee the independence of the university councils.

The study interrogated the university websites with a view of confirming whether the universities had clearly defined structures which exhibited the chains of command in the institutions and the respective office holders. Many of the universities had posted the membership of the councils and holders of management positions in the institutions' websites'. This was an indication that they extolled the organs of management and took pride in showing them out to the public as opposed to situations whereby opaqueness in the structures of management was exhibited in some institutions. The study equally observed exemplary service delivery from the gates of the institutions to the reception areas during the data collection exercise. This showed that the institutions had come of age in their client relations and customer service operations and it was an indicator of efficiency on their part.

#### **4.4 Clear legal and regulatory frameworks for the boards**

CUE is the regulatory body that is charged with the mandate of ensuring that the programs in the universities are run in the expected manner.<sup>170</sup>The mandate of the Commission includes, institutional establishment and award of charters; collecting, analyzing and disseminating university education data; approving the process of design and development of new programmes; approving accreditation bodies, except for those bodies mandated to do the same by Acts of Parliament like the Engineers Registration Board, Medical Practitioners and Dentists Board, the Council for Legal Education; and entering into memoranda of understanding with other relevant bodies.<sup>171</sup>Despite the provisions of the law bestowing the regulatory role on CUE, numerous other institutions police and regulate the activities of the universities.<sup>172</sup>Some members of the councils are equally subject to their appointing authority especially the nominees of Treasury and

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<sup>170</sup> Universities Act 2012

<sup>171</sup> Universities Act, 2012.

<sup>172</sup> Universities Act, 2012.

the MoEST. The prevailing situation has negative implications on the ability of the institutions to ensure that they meet the demands of all the entities regulating them. Furthermore, dual regulation creates confusion and lack of clarity in the universities.

Governance by multiple agents is yet another reason why public institutions and their boards are not able to operate efficiently and effectively.<sup>173</sup> A public university is governed by several agents being the managers, the state and the public officials. Inefficiency of the public universities arises because the public officials who have the power to appoint the Council and issue managerial directives do not always act in the best interest of the university but in the interest of their appointing authority.<sup>174</sup> Unlike private companies, the ultimate internal control of parastatals lies in the Government. This is manifested through the political appointments and the various directives issued by the Government.<sup>175</sup>

The inspector of state corporations has a large impact on the running of public universities. Indeed public universities are state corporations as per the provisions of the State Corporations Act.<sup>176</sup> The operations and activities are also largely controlled by the State Corporations Advisory Committee (SCAC) established under section 26 of the State Corporations Act. The SCAC envisages having one person sitting in the university councils. This is despite the clear provision of the Act that stipulates that the Council should comprise of 9 members.<sup>177</sup>

In addition, public universities fall under the Ministry of Education, Science and Technology (MoEST). The Ministry is responsible for national policies and programmes that help Kenyans access quality and affordable, school education, post-school, higher education and academic research. Indeed in the Act, the Cabinet Secretary is responsible for among many things the appointment of council and the high ranking administrative officers in the universities<sup>178</sup>, policy

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<sup>173</sup> Jim Brumby & Michael Hyndman, "state owned enterprises governance; focus on economic efficiency in Corporate governance, state owned enterprises and privatization 11 (org. econ. corporation & dev (OECD) ed, 1998.

<sup>174</sup> Jim Brumby & Michael Hyndman, "state owned enterprises governance; focus on economic efficiency in Corporate governance, state owned enterprises and privatization 11 (org. econ. corporation & dev (OECD) ed, 1998 p 38-41

<sup>175</sup> R.W James & S.Ligunya, organizational relationships and the control of parastatals in Tanzania, 5 E.Afr.L.Rev. 39 (1972)

<sup>176</sup> Section 2 of the State Corporations Act.

<sup>177</sup> section 36 of the Universities Act 2012

<sup>178</sup> section 35 (1) (v), section 36 and section 39(1) (a) of the universities act

formulation,<sup>179</sup> appointment of the members of the CUE and the Commission Secretary<sup>180</sup> establishment of Universities<sup>181</sup> appointment of the board of trustees that manages the university fund<sup>182</sup> appointment of the members of the Kenya Universities and Colleges Central Placement Board<sup>183</sup> and the making of regulations for the better carrying out of the objects and the provisions of the Act.<sup>184</sup> From the above, the Cabinet Secretary has the power to give directions to public universities. Unlike private companies where a board of directors sets the objectives of the company, the Cabinet Secretary is responsible for identifying the objectives in public universities. The Council must answer to the Cabinet Secretary. Owing to this structure, there is extensive ministerial intervention in the functioning of the boards which impairs their independence and objectivity when they make decisions.<sup>185</sup>

In addition, public universities are subject to overlapping regulations. Firstly as already alluded to, they are subject to both the State Corporations Act and the provisions of the Act. Further, when implementing various academic programmes, they are required to comply with other Statutes which at times conflict with the provisions of the Act thereby subjecting some programmes to dual regulation being; regulation by CUE and regulation by the professional body. A good example of the confusion being occasioned by dual accreditation is the issue surrounding the accreditation of engineering programmes. The Engineers Act, 2012 gives the Engineers Board of Kenya authority to approve and accredit engineering programmes in public and private universities and other tertiary level educational institutions offering education in engineering.<sup>186</sup> On the other hand, the Act under section 5(j) thereof gives the mandate of accrediting universities to CUE.<sup>187</sup> In addition, the dual regulation has also affected Law and medical programs in the universities because it is not clear at what point the professional bodies should be engaged in the accreditation process. Indeed, the issue of dual accreditation has been

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<sup>179</sup> section 5(b) of the universities act 2012

<sup>180</sup> section 6 & 9 of the Universities Act

<sup>181</sup> part III of the Universities Act 2012

<sup>182</sup> section 54 of the universities act 2012

<sup>183</sup> section 55 of the universities act 2012

<sup>184</sup> Section 70 of the Universities Act, 2012

<sup>185</sup> Fordham international law journal vol 31 issue I 1997 the failure of corporate governance in state owned enterprises and the need for restructured governance in fully and partially privatized enterprises; the case of Kenya, Kiarie Mwaura

<sup>186</sup> Engineers Act, s 7 (1) (I)

<sup>187</sup> Universities Act 2012, The Universities Regulations 2014



cited as the cause of some students riots in the recent past.

Furthermore, public universities are subjected to excessive regulation by several Government bodies. To begin with, they are answerable to the parent ministry MoEST. Additionally, the Ministry of Finance approves the university's budgetary requirements. On the other hand, the SCAC directs the operations of the Council. Moreover, the accounts of the universities have to be audited by the auditor general. The universities are also regulated by the CUE to ensure they guarantee quality to the students. The numerous approval requirements and regulations enumerated above constrains the expediency of the decision making processes in the universities. Sometimes delays to obtain the necessary approvals derail the implementation of strategic decisions by the Council and the University management.<sup>188</sup>

The study sought to find out the number of government agencies that influenced and approved the university budgets before the councils and management implemented them. The study is of the opinion that several laws and Government bodies influence the operations of universities thereby rendering them inefficient and ineffective. This opinion is supported by the responses that showed that the MoEST, Treasury and Parliament played a role in influencing and approving the budgets before the universities council and management could implement them. The responses confirmed the fact that the university budgets went through a series of processes before getting the final approval on the budgetary appropriations. This was an indication of a multi-layered process geared towards confirming the appropriations as a measure of enhancing fiduciary. The multilayered approvals introduced a lot of bureaucratic bottlenecks which were an impediment to the running and management of the institutions.

The Legal Officer of the CUE confirmed that the budgetary appropriations and spending plans of the universities had to be verified by MoEST, Treasury and Parliament and thereafter given approval by the Controller of Budget. This he confirmed was a rigorous process which at times disenfranchised the institutions when there were delays in obtaining the approvals. This ultimately resulted to operational inefficiency and failure by the universities to meet the requisite

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<sup>188</sup> SRI INT'L, parastatals in Kenya; assessment of their impact and an action plan for reform; final report prepared for Kenya association of manufacturers 1(1992).

service delivery thresholds. He called for a review of the processes involved with the aim of enhancing efficiency and reducing the bureaucratic hindrances thereby ensuring delivery by the institutions.

Despite the multi layered regulation of public universities, financial malpractices were still abound in the institutions as evidenced by the records from the controller of budget and auditor general's office.<sup>189</sup> Cases of documented impropriety in the fiscal programmes in the institutions have cast them in negative light especially as regards their ability to conform to the regulatory provisions guiding the sector.<sup>190</sup> This has negative implications on the ability of the institutions responsible for ensuring compliance to effectively discharge their mandates in line with the statutory provisions. It gives rise to the risk of duplicity and occasions regulatory inertia.<sup>191</sup> The responses from the Legal Officer of the CUE equally showed that the institution had played its rightful role with regard to inspecting and confirming the ability of the universities to conform to the expected standards. This had resulted in some of the universities being forced to close down some campuses which did not meet the standards stipulated. The study deduced that despite the prevailing situation whereby the CUE has the responsibility of regulating the universities, several other state agencies still carried out the functions. This occasioned duplicity and over- regulation of the public universities.

#### **4.5 Conclusion**

Based on the elements of effectiveness and efficiency studied being; an independent board and a board governed by clear and regulatory framework, it is the study's opinion that the ideals of effectiveness and efficiency have not been realized. In this regard, the Kenyan university education sector is a stark contrast to the European Union with places high emphasis on regulation and the level of autonomy in the institutions. The universities in the Republic of Kenya are subject to the control of the Cabinet Secretary of the MoEST by virtue of the appointments of the council members. The need to streamline the regulation of the universities

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<sup>189</sup> Controller and auditor general's reports on public universities in Kenya, 2013-2014.

<sup>190</sup> Ibid, 2013-2014

<sup>191</sup> Ogutu, W Corporate Malfeasance In Public Institutions, the Challenges In The Regulatory Spheres, ( 2014) Working paper for Transparency International

and reduce the numbers of entities playing diverse roles in the regulatory processes is of great imperative.

In the European Union, member states legal autonomy is always granted to the universities by government boards of trustees which encompass representation from industry players.<sup>192</sup>The governance roles are clarified and the protocol defining the systems of administration and management reviewed are established within the institutions. Emphasis is placed on the engagement of pertinent stakeholders entailing the local communities, industry and student community with a view of defining and clarifying individual responsibilities and institutional expectations in the governance prism.<sup>193</sup>The financial management standards are always integrated to ensure participation by all departments. This enhances accountability and synchrony between the individual departments and the institution. It ensures optimal planning and efficiency in the administrative structures. The procurement function is undertaken through a competitive bidding process whereby information communication technology infrastructure is installed to enhance the credibility of the process.<sup>194</sup>All the public institutions are forced to adopt standard procurement processes, engage qualified procurement staff and establish robust mechanisms for handling procurement complains.<sup>195</sup>This ensures that there are good mechanisms for undertaking supplies contracts in the institutions and value for money is assured in the process.<sup>196</sup>The human resource recruitment and training is equally done on a needs basis. Contract hiring basis frees the institutions from the enormous costs expended in the recruitment process by virtue of engaging professionals to undertake the task.<sup>197</sup>Merit based promotion and tenure-track system linked to staff performance is adopted by the institutions. This ensures that meritocracy is enhanced and misgivings about the promotion systems are minimized. This is a stark contrast to the Kenyan situation whereby promotions and procurement in many institutions is not done on merit.

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<sup>192</sup> Committee of University Chairmen (2014). Guide for Members of Higher Education Governing Bodies in the UK.

<sup>193</sup> Fielden, J. and Richardson, G) Measuring the Grip of the State.(2008)CHEMS/ACU London

<sup>194</sup> Ireland Office of the Attorney General Universities Act.(2007). Irish Statute Book. Dublin

<sup>195</sup> New Zealand Tertiary Education Advisory Commission Shaping a Shared Vision: (2010). Initial Report of the Tertiary Education Advisory Commission. Government of New Zealand

<sup>196</sup> United Kingdom National Committee of Inquiry into Higher Education (2007).Report of the National Committee of Inquiry into Higher Education London: Crown Copyright

<sup>197</sup> Virginia Secretary of Education The Restructured Higher Education Financial and Administrative Operations Act.(2008). Commonwealth of Virginia.

## CHAPTER FIVE-TRANSPARENCY

### 5.0 Introduction

This chapter discusses the transparency principle and the challenges faced by public universities in relation to this principle. It also outlines the legal basis of the principle, how it was reflected in the public universities legal instruments and the prevailing situation with regards to its implementation. It also sets out the review of the data collected and its interpretation. On the strength of the collected data and its interpretation, the chapter proceeds to interrogate the corporate governance practices in the context of the Universities Act.

### 5.1 Transparency principle

Public universities should uphold transparent governance systems and practices which institutionalise checks and balances. Moreover, the administrative and management structures of the public universities should be analyzed and streamlined to create efficient, effective, responsive and lean structures to avoid wastage of resources, duplicated responsibilities and overlapping mandates where members of different levels are members at the next level.<sup>198</sup>In addition, there is need for managers responsible for these institutions to understand that public institutions must be held to high standards of ethical and transparency requirements. In this regard, public universities are expected to be efficient and accountable managers of public resources.<sup>199</sup>This is by way of upholding accountability and transparency in the utilisation of the existing resources.<sup>200</sup>

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<sup>198</sup> Kinyanjui, K, "The Transformation of Higher Education in Kenya, Challenges and Opportunities" paper presented at the "Mijadala on social policy, governance and development in Kenya" (2007) [https://www.google.co.ke/?gws\\_rd=ssl#q=PROF+KABIRU+TRANSFORMATION+OF+HIGHER+EDUCATION+IN+KENYA](https://www.google.co.ke/?gws_rd=ssl#q=PROF+KABIRU+TRANSFORMATION+OF+HIGHER+EDUCATION+IN+KENYA) accessed on 18<sup>th</sup> February 2015

<sup>199</sup> Public and private universities in Kenya. New challenges, issues & achievements Kilemi Mwiria, Njuguna Ngethe, Charles Ngome, Douglas Ouma-Odero, Violet Wawire, & Daniel Wesonga James Currey Ltd, UK (2007)[http://www.foundation-partnership.org/pubs/kenya/kenya\\_2007.pdf](http://www.foundation-partnership.org/pubs/kenya/kenya_2007.pdf) accessed on 24th February 2015

<sup>200</sup> Kabiru Kinyanjui "The transformation of higher education in Kenya: challenges and opportunities" paper presented at the 'mijadala on social policy, governance and development in Kenya' sponsored by development policy management form on 9 July, 2007 at Nairobi Safari Club. <http://www.dpmf.org/images/12.pdf> accessed on 24th February 2015.

The study deems transparency as the ability of public universities to be honest and open by disseminating information.<sup>201</sup>The institutions should ensure that they allow public scrutiny of their financial and other operations and should in addition, institutionalise checks and balances in their processes. Transparency is addressed in this study under the following subheadings;

- Promotion of honesty, openness and dissemination of information
- Ensuring scrutiny of financial and other operations
- Institutionalising of checks and balances.

## **5.2 Legal basis of transparency**

The principle is founded on the provisions of the Constitution of Kenya 2010. Article 10(2) (c) outlines transparency and accountability as one of the national values and principles. Further, under Article 35 of the Constitution of Kenya 2010, citizens have the right to access information. The state is also mandated to publish and publicise information affecting the nation. Article 46 provides that consumers have the right to the necessary information which allows them to gain the full benefit from the goods and services. Chapter six, Article 73 (2) (d) provides that persons appointed to positions of leadership should be accountable to the public for their decisions and actions. Public institutions are also supposed to ensure openness and accountability including public participation in financial matters.<sup>202</sup>They should also undertake clear fiscal reporting.<sup>203</sup>Under Article 226, public entities should keep proper financial records which should be audited by the auditor general to ensure transparency. As regards procurement, public entities are mandated to ensure that their procurement processes are transparent under Article 227. Article 232(1) (f) on the principles and values of public service, public entities should be transparent.

Transparency and institutionalising of checks and balances is also anchored in Section 3(2) (c) and Section 3(2) (d) of the Act. As relates to finances, universities are called upon to make

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<sup>201</sup> Sajadi, H. S., Maleki, M., Ravaghi, H., Michael, & Hadi, M. (2014).Evaluating the University's Governing Board: A Comprehensive Review of Its Domains and Indicators.American Journal of Educational Research, 2(10), 892-897. <http://dx.doi.org/10.12691/education-2-10-7>

<sup>202</sup> Article 201(a)Constitution of Kenya 2010

<sup>203</sup> Article 201(e) Constitution of Kenya 2010

financial reports in line with the provisions of the Public Audit Act 2003.<sup>204</sup>The section also provides for the auditing of the university accounts by the auditor general.

### **5.3 Promotion of honesty, openness and dissemination of information**

In the study, openness and honesty means making publicly known true information about the university by relaying it through forums that are easily accessible by the public.<sup>205</sup>

Lack of openness and honesty in public universities has led to procurement processes and the financial status of universities being masked in secrecy. This has led to mismanagement of public funds and irregular procurement of goods and services without requisite disclosure. Further, corruption becomes entrenched in the institutions because possibilities of its detection becomes limited with inadequate disclosure. Similarly, conflict of interest and nepotism are rampant because there is no avenue of detecting these vices when information is scarce. Furthermore, without openness and dissemination of information, there can be skewed employment of staff and promotions in total disregard of merit and the human resource policies of the universities. This can be an avenue for propagating nepotism and favoritism contrary to the ideals of competition and merit as envisaged by the Constitution of Kenya.<sup>206</sup>

The study sought to establish the parties that were involved in the formulation of the universities budget and procurement plan. The study is of the opinion that there was openness and transparency in the formulation process. This deduction was informed by the respondents' indication that all departments were involved in the preparation of the budgets and procurement plans. This was through the participation by the heads of departments and section heads whose views were taken into account to ensure that the requisite provisions geared towards assuring academic programs wellness were satisfied. This was reflective of enhanced standards with regards to transparency and stakeholder involvement in the spending plans development. The study thus deduced that the universities strived to enhance the transparency standards by

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<sup>204</sup> section 47(3) of the Act

<sup>205</sup> Mbitha E.W “Transparency and accountability in Kenya:(2015) A review of the institutional framework for public service delivery”

<sup>206</sup> Ibid

ensuring the participation of the pertinent stakeholders from the departments involved in the delivery of the academic and other related institutional programs.

The Legal Officer of the CUE confirmed that there were provisions to ensure transparency in the governance systems of the universities especially as pertains to budgetary appropriations and expenditure planning. This was geared towards enforcing the participation of the critical sector players more so in the user departments as a measure of ascertaining that their critical needs were catered for. This was also a measure that enhanced the provisions of information sharing within the institutions in the inter-departmental and intra-departmental spectrums. It enhanced the governance provisions with regards to openness in the budget making process.

The study also sought to establish the last time that the universities audited accounts were published. The study opined that there was no dissemination of financial statements to the public for scrutiny and in this regard, public universities were not transparent. This was informed by the responses which depicted a situation whereby the practice of publishing the audited accounts was not very ingrained in the institutions. This was occasioned by the fact that only respondents in one institution acknowledged seeing audited accounts published in the public domain. An observation of the universities websites to confirm the presence of published audited accounts did not yield results. This was an indication that the requisite tenets of transparency envisaged with regards to public institutions publishing their audited accounts were not adhered to in the envisaged manner. The study confirmed that the service charters in place had provisions stipulating that the universities would always publish the certified accounts. Failure to publish the accounts negated the essence of transparency by the institutions as envisaged in the ideals of corporate governance standards. This occasioned the universities erosion of goodwill from the masses and other stakeholders like students and staff.

#### **5.4 Ensuring scrutiny of financial and other operations**

According to the study, public universities ensure scrutiny of financial and other operations when they open up their accounts for examination by the public, submit their accounts to the auditor

general to be audited and constantly have their operations audited by internal and external auditors to confirm compliance.<sup>207</sup>

One challenge currently facing some universities due to lack of scrutiny of financial statements is the failure to remit statutory deductions to the relevant institutions. Indeed, staff at the Technical University of Kenya went on rampage on the 20<sup>th</sup> November 2014 protesting the non-remittance of statutory deductions by the University.<sup>208</sup> In addition, without scrutiny of accounts, non-payment of part-time lecturers will go undetected. This negatively impacts on service delivery because the lecturers down their tools in protest. The non-payment of part time lectures has also led to several court cases against the universities which results in the further dwindling of the already scarce finances in court costs.<sup>209</sup> This can adversely affect the operations of the universities because the consequence is always a disgruntled and demotivated workforce. Moreover, inflation of budgets has been reported in universities where there is concealment of the financial statements.<sup>210</sup> Indeed, in the year 2014 staff members in all public universities engaged in a national wide strike protesting against alleged embezzling of funds by the top management.<sup>211</sup>

The study sought to find out whether the university accounts for the previous year were audited by the auditor general and whether they were approved. The study's opinion is that there was scrutiny of the financial statements in public universities and as a result, transparency in this area was being observed. This deduction is buttressed on the responses which confirmed that the university accounts for the previous year were audited by the auditor general and certificates of approval issued. The responses were a confirmation that the universities had strived to ensure

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<sup>207</sup> Wachira J, Ngahu S,& Wagoki J “ Effects of financial controls on financial management in Kenya’s public sector; A case of National Government departments in Mirangine sub county Nyandarua County”(2014 )IOSR journal of business and management Vol 16 No 10 pp 105-115

<sup>208</sup> Okoth E. “Technical University of Kenya fights to stay afloat”(24<sup>TH</sup> October 2016) IOSR journal of business and management Vol20 No 2pp321-335

<sup>209</sup> Wangare T.W, Ngari J M, & Waititu A Teaching experience of part time lecturers affect the quality of university education in Kenya”(2016 )“ European journal of research and reflection of educational sciences Vol 4 No 6 pp 2056-5852This

<sup>210</sup> <http://www.nation.co.ke/news/education/Senior-varsity-officials-face-the-sack-over-fraud/2643604-3199892-p9j9ol/index.html>Suspended senior varsity officials face the sack over fraud”ouma wanzala

<sup>211</sup> Wangui, J, “University Lecturers Threaten to Strike over Pay”, (12<sup>th</sup> January 2014) <http://www.capitalfm.co.ke/news/2014/01/university-lecturers-threaten-to-strike-over-pay/> accessed on 18th February 2015



that standards prescribed by the auditor general with regard to the Public Finance Management Act, 2012 had been met. The accounts also conformed to the provisions of the State Corporations Act. This was evident because universities had strived to enhance their book keeping standards and financial reporting provisions. Furthermore, provisions to ensure that the audited accounts of the institutions were duly approved and certified by the auditor general was a measure which enforced employment of current best practices with regard to financial reporting. This ensured that the institutions kept proper books of accounts which ultimately lend credence to their ability to meet accounting standards requisites. The study equally observed a provision in the institutions service charters that required submission of financial statements to the auditor general each financial year. This was a measure of confirming the fiduciary provisions within the institutions. In an interview with the Legal Officer of the Commission, he confirmed that the accounts of public universities were subjected to audit by the auditor general ever year. He however indicated that the universities were not specifically required to publish their accounts and alluded to the fact that this could be one of the reasons which was contributing to financial malpractices in the universities. He however indicated that the universities' financial standing was always a key issue that they interrogated in their evaluation and monitoring.

The study also sought to determine whether the university procurement processes had been audited to ensure compliance with the Public Procurement and Disposal Act, 2015 after the enactment of the Act. The study opined that the processes in the universities had only been partially audited and as such, transparency in this regard was yet to be fully realized. This deduction is supported by the responses which showed that out of the six universities reached during the data collection exercise, four had their systems evaluated and audited as a measure of ensuring compliance with the Act. This was an indication that the government agencies charged with the mandate of carrying out the function, had executed it though not to the required expectations by virtue of failing to reach out to all the institutions. The responses showed that the audited institutions had been given a clean bill of health which was a confirmation that the systems and processes in place were geared towards ensuring conformity to the provisions of the law guiding procurement processes in the institutions. Evidence of certification with marks of quality from international standards organizations and approval ratings from the internal and external auditors, were a pointer to the wellness of the procurement programs. There were

however misgivings about the procurement processes being carried out in some of the institutions going by the numerous complaints that had been lodged with the Public Procurement Oversight Authority. This was an indication that despite the laid down provisions, some of the institutions still failed to adhere and conform to the required standards.

The Legal Officer of the CUE confirmed that the institution had undertaken audits on the procurement processes with a view of confirming adherence to the Public Procurement Act, 2015. This was an indication that the Commission had put in place measures to ensure that the procurement function in the institutions was carried out in the requisite manner. Synergy between the activities of the Commission and the efficiency monitoring unit which oversees the activities of public institutions and state corporations was also confirmed as a measure that had been undertaken to enhance the procurement processes and align them to the statutory provisions. Institutional self-regulation with a view of attaining international acclaim as pertains to achieving marks of quality was a practice that was confirmed to have forced the universities to adhere to the provisions of the Public Procurement Act, 2015.

### **5.5 Institutionalising of checks and balances**

The study deemed institutionalisation of checks and balances as the putting in place of provisions to ensure that administrative and management organs have different members of different ranks to assure checks and balances.<sup>212</sup>

Contrary to this ideal, the Vice Chancellors have the largest degree of authority and responsibility within the universities.<sup>213</sup> To begin with, he is the Chairperson of the University Management Board and is thus responsible for the direction, organization and administration of the programmes of the university.<sup>214</sup> In addition, he is the chairperson of Senate and is thus responsible for all academic matters in the University. Notably, he is also the only staff member

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<sup>212</sup> Kinyanjui, K, "The Transformation of Higher Education in Kenya, Challenges and Opportunities" paper presented at the "Mijadala on social policy, governance and development in Kenya" (2007) [https://www.google.co.ke/?gws\\_rd=ssl#q=PROF+KABIRU+TRANSFORMATION+OF+HIGHER+EDUCATION+IN+KENYA](https://www.google.co.ke/?gws_rd=ssl#q=PROF+KABIRU+TRANSFORMATION+OF+HIGHER+EDUCATION+IN+KENYA) accessed on 18<sup>th</sup> February 2015

<sup>213</sup> Leadership in Kenyan public universities and the challenges of autonomy and academic freedom; an overview of trends since independence by Daniel N. Sifuna JHEA/RESA vol 10, no.1,2012.pp121-137 council for the development of social science research in Africa 2013

<sup>214</sup> Section 39 (2) (b) Universities Act 2012

in the University who sits in Council.<sup>215</sup> Under the Procurement Act 2015 he has the overall responsible for the procurement processes in the universities.<sup>216</sup> This structure bestows a lot of powers on the office of the Vice Chancellor and if requisite checks and balances and transparency requirements are not put in place, the power can be abused.

From the above, the study deduced that the universities were not transparent in regard to institutionalization of requisite checks and balances.

## 5.6 Conclusion

Based on the transparency elements studied, which were; honesty, openness and dissemination of information; ensuring scrutiny of financial and other operations and institutionalising of checks and balances, the ideals of the transparency principle had not been fully realized because there were gaps as regards dissemination of financial statements, scrutiny of procurement processes and the institutionalisation of checks and balances.

The World Bank introduced and made many nations adopt the concept of good governance with an aim of introducing standards and practices which would force them to reduce corruption and to become more accountable to the citizenry.<sup>217</sup> The concepts became one of the major fulcrums around which the achievement of the Millennium Development Goals was modeled.<sup>218</sup> The public institutions including universities were thus forced to embrace the concept of good governance with the essence of ensuring that they realized their obligations to the masses.<sup>219</sup> In order for universities to be responsive to the demands of the external publics, they have to embrace good governance, be effective and ensure transparency and the preservation of the integrity of the academic value system.<sup>220</sup>

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<sup>215</sup> Section 36(1) (e). Universities Act 2012

<sup>216</sup> Section 44 of the Procurement Act 2015

<sup>217</sup> Fletcher, D. E. —Recent Developments in Governance in the UK Higher Education Sector,| in IAUGB (ed.) 1<sup>st</sup> Meeting of International Association of University Governing Bodies —Society meets University| (Granada 23-24 October 2007), International Association of University Governing Bodies, Madrid, pp. 103-108

<sup>218</sup> DEST Managing the Challenges. The Governance and Management of Universities, (2002), Commonwealth Department of Education, Science and Training, Canberra

<sup>219</sup> Ingram, R.T. Effective Trusteeship. A Guide for Board Members of Public Colleges and Universities, (2004), Association of Governing Boards of Universities and Colleges, Washington D.C

<sup>220</sup> Salmi, J. —The Growing Accountability Agenda: Progress or Mixed Blessing? Paper presented at the IMHE General Conference on Outcomes of Higher Education: Quality, Relevance and OECD, Paris, 8-10 September 2008.

Many countries like Hungary, the United States and Germany drafted strong transparency laws to monitor public institutions. The statutes oblige all public universities to open their meetings to the communities and apply current best practices with a view of enhancing the governance arrangements.<sup>221</sup>The statutes also made provisions for internal structures which stipulated how the actors were to perform their mandates and the processes that were to be implemented This was aimed at tackling institutional and managerial dysfunctions.<sup>222</sup>The deficiencies related to work patterns in the universities were largely minimized by employing governance structures which have enhanced the transparency levels. The situation is a sharp contrast to the Kenyan position whereby despite the enactment of the Act, situations of breaches in the systems and structures of management still abound. Monitoring of the public universities to ensure compliance should be undertaken by CUE with stringent measures recommended on non-compliance.

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<sup>221</sup> Shattock, M. —Re-Balancing Modern Concepts of University Governance, in *Higher Education Quarterly*,(2004), Vol. 56, No. 3, Blackwell Publishing, Oxford, pp. 235-244.

<sup>222</sup> Ingram, R.T. *Effective Trusteeship. A Guide for Board Members of Public Colleges and Universities*,(2004), Association of Governing Boards of Universities and Colleges, Washington D.C.

## CHAPTER SIX: SUSTAINABILITY

### 6.0 Introduction

This chapter discusses the sustainability principle and the challenges faced by public universities in relation to this principle. It also outlines the legal basis of the principle, how it was reflected in the public universities legal instruments and the prevailing situation with regards to its implementation. It also sets out the review of the data collected and its interpretation. On the strength of the collected data and its interpretation, the chapter proceeds to interrogate the corporate governance practices in the context of the Universities Act.

### 6.1 Sustainability principle

In the public university sector, assurance of sustainability of the academic programs offered from the value for money as well as the optimal service delivery parameters is a key indicator of sustainability.<sup>223</sup> Relevance of the academic programs offered enhances client satisfaction and assures the continuity of the programs.<sup>224</sup> Historically, public sector enterprises were formed to create employment for large numbers of people. However, in the recent past, public sector management has become increasingly results and customer focused. There is growing unwillingness among communities and governments to accept the continuation of historic commitments simply because they are historic. In this environment, greater attention is being given to target, measurement, accountability, productivity, gains and the continued relevance and value of specific activities and programs.<sup>225</sup>

The study defines sustainability as the ability of a university to diversify its sources of income without compromising on quality and the ability of the university to expand based on proper planning.<sup>226</sup> Sustainability shall be addressed in this study under the following subheadings;

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<sup>223</sup> Sajadi, H. S., Maleki, M., Ravaghi, H., Michael, & Hadi, M. Evaluating the University's Governing Board: A Comprehensive Review of Its Domains and Indicators. American (2014). *Journal of Educational Research*, 2(10), 892-897

<sup>224</sup> Sewe, S.A. Perceived Factors Influencing Success of Marketing Activities of Universities in Kenya: A Case of Business Schools in Nairobi(2014) *Journal of Marketing for Higher Education*, 8(2), 29–35

<sup>225</sup> Jarrar, Y, & Schiuma, G, "Measuring Performance in the Public Sector: Challenges and Trends, Measuring Business Excellence", (2007), Vol 11, No 4, pp 4-8 available at Doi: 10.1108/13683040710837883, <http://dx.doi.org/10.1108/13683040710837883>

<sup>226</sup> Sewe, S.A. Perceived Factors Influencing Success of Marketing Activities of Universities in Kenya: A Case of Business Schools in Nairobi (2014) *Journal of Marketing for Higher Education*, 8(2), 29–35.

- Financial Sustainability
- Sustainability and quality of academic programs.

## 6.2 Legal basis of the principle

The principle is anchored upon the provisions of Article 10(2) (d) of the Constitution of Kenya 2010 which advocates for sustainable development. Under Article 46(1) (a), consumers have a right to goods and services that are of reasonable quality. Under section 3(2) (d) of the Act, public universities should ensure sustainability. They are also called upon to promote the highest standards and quality of teaching and research and ensure relevance of their programmes.<sup>227</sup> Under section 47 of the Act, a Public University should within four months from the end of each financial year submit to the Auditor General the accounts of the University. The accounts are to be audited and reported in accordance with the Public Audit Act 2003.<sup>228</sup>

## 6.3 Financial sustainability

For the purposes of this study, sustainable resource diversification refers to the ability of a university to ensure that it undertakes activities that enhances its financial position without compromising on quality and its objectives.<sup>229</sup>

Public universities face financial challenges. Like most African countries, higher education in Kenya was historically free, with the Government covering both tuition and living expenses.<sup>230</sup> In return, graduates were bound to work in the public sector for a minimum of three years. Economic difficulties, and the alarming increase in population, coupled with rising oil prices in 1973 changed this trend and resulted in the reduction of the recurrent budget allocated to higher education, and eventually the introduction of user charges.<sup>231</sup> Financial constraints started facing

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<sup>227</sup> section 3(1)(e) and section 3(2)(a) of the Universities Act

<sup>228</sup> Public Audit Act 2003, s 47 (3)

<sup>229</sup> Riechi A “Revenue diversification in Kenya’s public universities and implications for efficiency and equity; an analysis of educational finance in the African context”(2012)published thesis Doctor of philosophy, Kenyatta University

<sup>230</sup> Ogot, B, Weidman, J, “Prospectus for a Five-Year Program of Research on Higher Education in Kenya and East Africa”, 1993 Available at: <http://www.pitt.edu/~weidman/MasenoResearchProgram.html>

<sup>231</sup> Chronicle of Higher Education, “Kenya’s Universities Reject to Call to Admit More Students”. (2001) <http://chronicle.com/daily/2001/03/2001032805n.htm> accessed on 21st July 2015

public universities from the mid- 1980's. During this period, Government funding declined steadily as a result of a number of factors.

The main factor was the overall reduction in budgeting allocations to the service sectors including education which was experienced when Kenya's economic fortunes began to suffer a downturn due to mismanagement of national resources and poor leadership. Related to this, the structural adjustment programs sponsored by the Bretton woods institutions; the World Bank and the International Monetary Fund, recommended a reduction in social sector spending and emphasized the need for the beneficiaries of higher education to contribute towards the cost of their education. The overall net effect is that the universities have been operating under difficult budgetary constraints, characterized by rising payrolls and operational costs and escalating debts and deficits.

The underfunding of the universities was further intensified by the mismanagement of the limited resources available. The problem was further exacerbated by the rapid increase in student numbers partly occasioned by the double intake directive.<sup>232</sup>In the year 1994, the Government of Kenya decreased the education budget from 37 percent of its total annual recurrent budget to about 30 percent stating that it was not possible to allocate additional funding to higher education.<sup>233</sup>This shortfall in the public budget for higher education brought about the impetus for universities to look for alternative income generating sources, thus reducing their overdependence on the government budget.

Towards this end, several strategies for revenue diversification were adopted including; the introduction of the Module II programs in 1998, establishment of units for income generation which include training and consultancy, university press and other units such as farms and petrol stations.<sup>234</sup>Despite these measures by the universities, only a fraction of the considerable

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<sup>232</sup> Mwiria, K, "Public and Private Universities in Kenya", (James Currey Ltd, UK, 2007)

<sup>233</sup> Kiamba, C, "Private Sponsored Students and Other Income-Generating Activities at the University of Nairobi", (2004), *Journal of Higher Education in Africa*, Vol 2(2), 53-57,

<sup>234</sup> Kigotho, W, "Arap Moi Sets up Private College", (2000), *The Times Higher Education Supplement*, March 31, 2000

financial austerity was offset by the revenue generated.<sup>235</sup> As a result, cost sharing and user charges in Kenyan higher education was introduced in 1991 as a response to the ever-declining state budget, which did not keep pace with high student intake that was experienced when the first cohort of the 8-4-4 students entered the university.<sup>236</sup>

Indeed, public universities are struggling to meet their financial obligations as evidenced by a report by the Public Investments Committee (PIC). The committee interrogated audited accounts for the financial year 2013-2014, which revealed that most public universities reported negative working capital. In the report, which was debated and adopted by the National Assembly, some universities are technically insolvent, with current liabilities exceeding total current assets while other institutions operated in deficit during the period under review. This is despite the universities raking in billions from self-sponsored programmes commonly known as parallel programmes. The Committee, in its recommendations, said that the MoEST and the National Treasury should develop a sustainable financial mechanism for public universities.<sup>237</sup>

To address the current chronic resource deficits, public universities are expected to be efficient and accountable managers of public resources.<sup>238</sup> To attain this, they should also ensure more efficient and cost-effective use of the available institutional resources. Accountability and transparency should also be observed in the utilization of the existing resources. Besides, state universities should unlock and maximize returns from the vast assets at their disposal by recruiting competent investment managers to manage their assets and investments. Public universities will also be required to establish comprehensive financial management systems that ensure efficiency in the application of resources.<sup>239</sup>

The study sought to establish whether there were pending bills to suppliers and part-time

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<sup>235</sup> Kenya Ministry of Higher Education, Science & Technology (KMHEST), “Sessional Paper No. 14 of 2012 on reforming education and training sector in Kenya”, (2012), Nairobi: KMHEST available at [http://www.starthmore.edu/pdf/sessional\\_paper\\_19th\\_june\\_nqf.pdf](http://www.starthmore.edu/pdf/sessional_paper_19th_june_nqf.pdf)

<sup>236</sup> Sanyal, B, Martin, M, “Management of Higher Education with Special Reference to Financial Management in African Countries”, (March 1998) UNESCO: International Institute for Educational Planning (IIEP), Paris. France

<sup>237</sup> <http://www.standardmedia.co.ke/ureport/story/2000219540/list-of-public-universities-struggling-to-meet-financial-obligations> Patrick Kibet

<sup>238</sup> Mwiria, K, “Public and Private Universities in Kenya”, (James Currey Ltd, UK, 2007)

<sup>239</sup> Kenya Ministry of Higher Education, Science & Technology (KMHEST), “Sessional Paper No. 14 of 2012 on reforming education and training sector in Kenya”, (2012), Nairobi: KMHEST available at [http://www.starthmore.edu/pdf/sessional\\_paper\\_19th\\_june\\_nqf.pdf](http://www.starthmore.edu/pdf/sessional_paper_19th_june_nqf.pdf)



lecturers in the university and how this impacted on service delivery. The study opined that the ideals of financial sustainability had not been realized owing to the chronic resource deficiencies in the institutions. This was indeed confirmed by the respondents when they alluded to the fact that there were pending bills owed to suppliers for goods and services procured from contractors and part time lecturers.

The respondents confirmed that the service charters in the institutions had put in place provisions for stipulated time frames within which the goods and services procured were supposed to be paid for. The average time period within which the institutions were supposed to make payments to suppliers was two months in most of the institutions. The part time lecturers were equally supposed to be paid immediately after submitting students' marks. The situation in the universities was however different owing to longer periods of time that had been taken to clear the bills by the institutions. This denoted failure to conform to the provisions enacted in the service charters. It was an indication that the institutions had constraints in their cash flows thus the exhibition of the inefficiencies which were a pointer to the risk of non-sustainable programs. The ideal situations in the respective service charters of the institutions visited was not tenable owing to the fact that reduced government capitation occasioned budgetary deficits exposing the institutions to the risk of not meeting their obligations in the requisite manner. There was a general feeling that the prevailing situation negatively affected the service delivery standards. Further, the institutional programs implementation was at risk owing to the lack of requisite resources to meet all their financial obligations.

The Legal Officer of the CUE confirmed that the situation of pending bills was rife in the institutions. He alluded the underlying situation to inadequacies in financing owing to budgetary shortfalls. This led to lack of optimal resources by the institutions thereby making them unable to meet their financial obligations effectively. He was of the view that the institutions need to diversify their revenue streams and seek out alternative financing for their operational programs with a view of bridging the shortfalls of capitation from government.

The study observed diverse business activities carried out in the institutions during the data collection exercise. The most predominant activity was the module two academic programs

offered by the universities. Presence of farms which generated produce for sale, livestock keeping, catering establishment and production units within the universities were confirmed. This was evidence of the fact that the institutions were now seeking alternative revenues to alleviate shortfalls in their financing. Casual observation of the activities carried out in terms of the enterprises within the institutions showed evidence of well calculated risk taking ventures and mainly within the spectrums of the academic programs being offered by the institutions. This was evidence of the practical exposure given to students on their academic programs through the enterprises.

#### **6.4 Sustainability and quality of academic programs.**

The study deemed sustainability and quality of academic programs as the ability of a university to assure the worth of its programs by availing the requisite teaching and learning facilities and resources, while maintaining the recommended student lecturer ratio and adhering to the academic program requirements by CUE.<sup>240</sup>

Up to early 1990s, universities were funded by the Government, thereafter, the cost sharing and corporatization of companies was introduced. Public universities are now endeavoring to generate their own funds especially with the introduction of parallel degree programmes. This shift occurred when members of the public university management may not have been ready, trained and equipped with business management skills necessary for the management of Universities as business entities.<sup>241</sup> By focusing on financial independence, public universities are increasingly leaning towards massive enrolment of students since this translates into more income.<sup>242</sup> This massive enrolment is also attributable to the double intake directive that was issued in the 2011/2012 academic year, which largely compromises the quality of education.<sup>243</sup> Under Article 46 of the Constitution of Kenya 2010, public universities are mandated to offer to

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<sup>240</sup> Godo O, Olel A,&Oanda I University expansion in Kenya and issues of quality education: challenges and opportunities (2011)” “International journal of business and social science Vol 2 No. 20

<sup>241</sup> Waswa, F, and Swaleh, S, “Faculty Opinions on Emerging Corporatization in Public Universities in Kenya”, (August 2012), Herald Journal of Education and General Studies Vol. 1(1) pp. 009-015, available online <http://www./heraldjournals.org/hjeg/archive.htm>

<sup>242</sup> Waswa, F, and Swaleh, S, “Faculty Opinions on Emerging Corporatization in Public Universities in Kenya”, (August 2012), Herald Journal of Education and General Studies Vol. 1(1) pp. 009-015, available online <http://www./heraldjournals.org/hjeg/archive.htm>

<sup>243</sup> Gudo, C, et al, “University Expansion in Kenya and Issues of Quality Education: Challenges and Opportunities”, (November 2011), International Journal of Business and Social Science, Vol 2, No 20

their customers (students) service that is of reasonable quality.<sup>244</sup> Quality is gauged through certain variables; caliber and sufficiency of academic staff, learning and teaching facilities, contact hours and governance structures. All these variables were missing even before the double intake programme and the expansion of universities. Currently the situation is worse.<sup>245</sup> The double intake has resulted in lack of appropriate sitting space for students.<sup>246</sup>

At Kenyatta University, the 1990/91 double intake caused lack of lecture rooms of adequate size and as a result, the existing facilities were characterized by serious congestion, with some students being forced to sit outside the classroom and listen to lectures through the windows.<sup>247</sup> Further, in a report by the Public Universities Inspection Board, it was noted that the quality and quantity of teaching and learning materials impact in a very significant way, on the quality of teaching and research. The Board further noted that accelerated growth in student numbers in the public universities had not been matched by expansion of physical facilities and academic infrastructure and that some of the existing infrastructure was inadequate, dilapidated and in bad state of repair.<sup>248</sup>

To support this, a study by Calleb, Maureen and Ibrahim, showed that there was shortage at the universities in terms of library resources which negatively affected the quality of teaching and learning in the Universities.<sup>249</sup> Further, Prof. Eshiwani noted that, Universities were being forced to work under adverse conditions; poor salaries and lack of resources for non-salary academic expenditure, such as text books, journals, teaching and research equipment and maintenance of such equipment. He asserted that the situation had resulted in the lowering of academic standards and the quality of graduates.<sup>250</sup> Public universities should adhere to the CUE guidelines 2014

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<sup>244</sup> Constitution of Kenya 2010

<sup>245</sup> Oanda, I, & Jowi, J, "University Expansion and the Challenges to Social Development in Kenya: Dilemmas and Pitfalls", (2012), JHEA/RESA, Vol 10, No 1, pp 49-71

<sup>246</sup> Gudo, C, "University Expansion in Kenya and Issues of Quality Education: Challenges and Opportunities", (November 2011), International Journal of Business and Social Science, Vol 2, No 20

<sup>247</sup> Mwiria, K, & Nyukuri, M, "The Management of Double Intakes: A Case of Kenyatta University", (1992), Paris: international institute for educational planning (UNESCO), Document IIEP/RP/49.13

<sup>248</sup> Kinyanjui, K, "Transformation of Higher Education and Training in Kenya to Secure Kenya: Report of the Universities Inspection Board" (2006), <http://www.dpmf.org/images/12.pdf>

<sup>249</sup> Gudo, C, "University Expansion in Kenya and Issues of Quality Education: Challenges and Opportunities", (November 2011), International Journal of Business and Social Science, Vol 2, No 20

<sup>250</sup> Eshiwani, G, "University Expansion in Eastern Africa: Challenges and Options in Higher Education", (2009), Inter- University Council for East Africa (IUCEA) Newsletter, Vol 39, pp 17-22

which are quite elaborate on the physical facilities and academic programs requirements as well as the requirements for quality of programmes in place.

Owing to the expansion of universities, a few qualified lecturers are shared between the expanding public universities and the increasing number of private universities.<sup>251</sup> The limited permanent academic staff are forced to shuttle from one university to another offering their services to both regular and parallel students in public universities. They also teach in the private universities.<sup>252</sup> For effective teaching to take place at a university there is a minimum ratio of lecturer to students that has to be achieved. The Commission for University Education has worked out the recommended ratio per discipline.<sup>253</sup> Additionally, universities with strained budgets end up focusing more on physical expansion with little attention being paid to staff development programmes.<sup>254</sup>

Massive enrolment and expansion of Universities have also resulted in the increased mismatch between the academic programmes that the institutions are offering and the knowledge needs of the economy based on the Vision 2030 blueprint. The mismatch is deepened by the drive for the institutions to peg the academic programmes on institutional strategies to generate more funds as opposed to the country's development needs. As a result, increased duplication of academic programmes is being experienced instead of diversification.<sup>255</sup> Moreover, universities are designing more of the science based degrees in order to generate extra funds. Interestingly, the bulk of these degree programmes are in the field of arts since the initial investment in these programmes is comparatively lower than that incurred in science based programmes. This has created a surplus of graduates in this area yet the country desperately requires the strengthening

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<sup>251</sup> Oanda, I, & Jowi, J, "University Expansion and the Challenges to Social Development in Kenya: Dilemmas and Pitfalls", (2012), JHEA/RESA, Vol 10, No 1, pp 49-71

<sup>252</sup> Commission for Higher education, "proceedings of the stakeholders workshop on enhancing quality in higher education in Kenya" 13<sup>th</sup> - 15<sup>th</sup> August 2008 <http://www.cue.or.ke/old/downloads/Stakeholders%20Workshop%20on%20Enhancing%20Quality%20in%20Higher%20Education%20in%20Kenya.pdf>

<sup>253</sup> Commission for University Education, "University Standards and Guidelines 2014", Available at [http://www.cue.or.ke/images/phocadownload/UNIVERSITIES\\_STANDARDS\\_AND\\_GUIDELINES\\_June\\_2014.pdf](http://www.cue.or.ke/images/phocadownload/UNIVERSITIES_STANDARDS_AND_GUIDELINES_June_2014.pdf)

<sup>254</sup> Tettey, W, "Challenges of Developing and Retaining the Next Generation of Academics; Deficits in Academic Staff Capacity at African Universities", (New York: Partnership for higher education in Africa, 2010)

<sup>255</sup> Riechi, A, "Demand for Academic Programmes Offered in Kenya's Public Universities and their Relevance to the Labour Market.", (2008), Institute of Policy Analysis and Research, Discussion Paper 113/2010 available at <http://www.csae.ox.ac.uk/conferences/2008-edia/papers/265-riechi.pdf>

of the technical based programmes.<sup>256</sup>

Article 55(1) (b) also requires the State to ensure that the youth access relevant education and training.<sup>257</sup> Currently, there is a challenge on how to increase access to higher education to cater for the increasing number of school leavers and others who desire university education, while maintaining quality and ensuring equity and affordability. It is recommended that the existing universities be expanded, targeting specific programmes which are backbones of socio-economic development such as medicine, engineering and the sciences.<sup>258</sup> Any new universities should however be established on the basis of proper planning, availability of resources, and their potential to open up new frontiers of knowledge, research and economic opportunities.

Moreover, in order to curb the effects of the massive enrolment of students, public universities are encouraged to divert services such as catering and accommodation to the private sector as a measure of improving the quality of instruction and the efficiency of resource utilization and expansion.<sup>259</sup>

Sessional paper number 14 of 2012, summarizes the challenges of quality and relevance as inadequate facilities and appropriate teaching and learning environment; inadequate staff; weak collaboration with professional accreditation bodies; lack of external quality assurance in public universities; large class sizes; weak linkage between the competences acquired in some programmes and the demands of the market and inadequate research funding.<sup>260</sup>

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<sup>256</sup> Commission for Higher education, “proceedings of the stakeholders workshop on enhancing quality in higher education in Kenya” 13<sup>th</sup> - 15<sup>th</sup> August 2008

<sup>257</sup> Commission for the Implementation of the Constitution, “Aligning the Education Sector in Kenya to the New Constitution”, (27<sup>th</sup> September 2012), available at <http://www.cickenya.org/index.php/resource-center/blog/item/71-aligning-the-education-sector-in-kenya-to-the-newconstitution#.VPh54iz1gdU> accessed on 24<sup>th</sup> February 2015.

<sup>258</sup> Kinyanjui, K, “The Transformation of Higher Education in Kenya, Challenges and Opportunities” paper presented at the “Mijadala on social policy, governance and development in Kenya” (2007) [https://www.google.co.ke/?gws\\_rd=ssl#q=PROF+KABIRU+TRANSFORMATION+OF+HIGHER+EDUCATION+IN+KENYA](https://www.google.co.ke/?gws_rd=ssl#q=PROF+KABIRU+TRANSFORMATION+OF+HIGHER+EDUCATION+IN+KENYA) accessed on 18<sup>th</sup> February 2015

<sup>259</sup> Ibid

<sup>260</sup> Kenya Ministry of Higher Education, Science & Technology (KMHEST), “Sessional Paper No. 14 of 2012 on reforming education and training sector in Kenya”, (2012), Nairobi: KMHEST available at [http://www.starthmore.edu/pdf/sessional\\_paper\\_19th\\_june\\_nqf.pdf](http://www.starthmore.edu/pdf/sessional_paper_19th_june_nqf.pdf)

Recently as regards quality, the Commission for University Education (CUE) listed eight university satellite campuses for closure. According to CUE, the campuses had not met their accreditation criteria and were to be closed down in six months.<sup>261</sup> The said campuses were Egerton University Nairobi City Campus situated at Stanbank House, Moi Avenue, 5th to 10th Floor; JKUAT Westlands campus situated along Nairobi Kabarsarian Avenue (off Waiyaki Way); Africa Nazarene University Campus situated at Agrho House and Stanbank House, Moi Avenue; South Eastern Kenya University Nairobi Campus situated at Development House, Moi Avenue 6th Floor Southern Wing; St Paul's University Nairobi Campus situated at Church House Moi Avenue; Dedan Kimathi University of Technology Nairobi Centre situated at Union Towers; Masinde Muliro University of Science and Technology-Nairobi Campus situated at Kingsway Building Muindi Mbingu Street and Multi-Media University of Kenya at City Square.<sup>262</sup> Poor location, inadequate teaching staff and lack of teaching equipment and books were cited as some of the reasons for the closure notices.<sup>263</sup> Additionally, CUE averred that they carried out the accreditation of the campuses in line with the mandate bestowed on it by section 20(1) (d) of the Universities Act, 2012 and Section 43 of the Universities Regulations 2014.<sup>264</sup>

The study sought to establish the relative student population and academic staff ratio in the universities. The study is of the opinion that the quality of the programs being offered in public universities was being compromised because the universities did not comply with the recommended student lecturer ratio as follows; Applied Science 1:10; Arts and Humanities 1:15; Medical & allied Sciences 1:7; Pure and natural sciences 1:10; as per the CUE guidelines 2014. This meant that the ideals of sustainability were not being realized. To support this, from the six universities surveyed, the responses depicted varied ratios in the student and teaching staff population. The ratios were distributed as follows for the six institutions 1- 39, 1-42, 1- 50, 1-70, 1-89 and 1-101.

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<sup>261</sup> The Daily Nation on Thursday 18<sup>th</sup> June 2015 page 52

<sup>262</sup> Karanja, S, "Eight Varsity Campuses in Nairobi Face Closure for Flouting Stipulated Regulations", <http://mobile.nation.co.ke/news/city-varsity-campuses-closure/-/1950946/2756734/-/format/xhtml/item/1/-/t3tywkwz/-/index.html> accessed on 14th July 2015

<sup>263</sup> Wainainah, D, "Eight University Campuses Closed over Noisy Locations" (18<sup>th</sup> June 2015) <http://www.businessdailyafrica.com/Eight-university-campuses-closed-over-noisy-locations/-/539546/2757230/-/wlvhjwz/-/index.html> accessed on 14th July 2015

<sup>264</sup> Karanja, S, "Eight Varsity Campuses in Nairobi Face Closure for Flouting Stipulated Regulations", <http://mobile.nation.co.ke/news/city-varsity-campuses-closure/-/1950946/2756734/-/format/xhtml/item/1/-/t3tywkwz/-/index.html> accessed on 14th July 2015

The responses reflected a situation whereby some of the institutions had higher teaching staff student ratios while the others had lower ones. The prevailing situation may be alluded to the dwindling government capitation as well as the shortage of skills in some academic areas. The responses also depicted lack of optimal contact time being granted to the students by the lecturers. This may have negative implications on the quality of graduates being produced from the learning process. The study thus deduced that in most of the institutions the student -teaching staff ratio risked exposing the sustainability of the programs being undertaken owing to lack of adequate personnel.

The Legal Officer of the CUE confirmed that the institution had enforced provisions on quality by carrying out inspections to ascertain the delivery of relevant content in the curriculum. This was a confirmation that the Commission was effectively policing the institutions with a view of confirming their ability to meet the requisite standards and obligations to the consumers. The Commission confirmed that it had shut down institutions which had not adhered to the regulatory standards more so the requirement on the stipulated student-lecturer ratio.

Campuses of the institutions visited during the survey were confirmed to have been closed owing to failure to meet certain standards. This was an indication that the institutions had been forced to conform to the required standards by virtue of regulation. Closure of the institutions which did not meet the standards raised questions about the sustainability of some of the campuses operated by the universities and the ability of the universities to undertake feasibility studies before opening up new campuses. It also raised questions with regard to the capacity of the universities to have campuses which resonate with the needs of their target markets. This is in relation to their capacity to provide to the markets what they want in terms of the programs being offered.

The study also sought to establish the academic programs being undertaken in the universities. The study deduced that sustainability ideals had been compromised in regard to sustainability of the programs being offered especially bearing in mind vision 2030 which advocates for more science and technology courses. To support this, an interrogation of the responses proffered showed that the bulk of the academic programs undertaken were in the social sciences realm and business programs. The applied sciences, natural sciences and engineering programs were not as

many as the social sciences. The study findings were that the universities had an inclination towards arts and social sciences programs. This on the other hand has great implications on the country's development agenda which is anchored on the Vision 2030 and which has industrialization as the basis of propelling the nation's economy. The requisite investments in terms of having the universities playing their rightful role of developing the human resource component may however be compromised by the underlying situation. The study thus deduced that the institutions placed emphasis on the social sciences devoid of the applied sciences, natural sciences and engineering programs which may impact negatively on the countries development agenda with regards to industrialization, economic growth and poverty reduction.

The Legal Officer of the CUE confirmed that diverse arrays of academic programs were offered in the universities with the bulk of them constituting social sciences and business courses. This was occasioned by the fact that the science and technology based courses were more capital intensive as compared to the social sciences. As such, the universities tend to run more of the programs that are less expensive to implement. This however inhibited the institutions' ability to ensure conformance with the country's agenda of imparting more technical skills as opposed to the soft social sciences skills.

## **6.5 Conclusion**

Based on the sustainability elements studied, which were; financial sustainability and sustainability and quality of academic programs, the ideals of the sustainability principle have not been realized by the public universities.

Provisions for structural adjustment programs which were prescribed by the Bretton Woods Institutions to the developing countries exerted a lot of pressure to the public universities.<sup>265</sup> This occasioned a change of tact with regard to the investments made in the higher education sector especially so in the sub-Saharan Africa.<sup>266</sup> The universities were starved of the previous financing from government and forced to innovate with regard to raising alternative income to meet

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<sup>265</sup> Ogom, R. O. Tertiary Education and Development in Sub-Saharan Africa at the Dawn of the Twenty First Century: A Lost Hope, Or Present Opportunity? . (2007). *National Social Science Journal*, 29(1), 108-120.

<sup>266</sup> Wesonga, D., Ngome, C., Ouma-Odero, D. & Wawire, D. Private Provision of Higher Education in Kenya: (2006). *Trends & Issues in Four Universities*, Nairobi: East Africa Educational Publishers.



shortfalls in the budgetary provisions.<sup>267</sup>This put their programs into jeopardy especially with regard to capital intensive projects like infrastructure provisions. Inadequacies on the ability to carry out expansion programs with regards to physical facilities also limits the number of students who can undertake academic programs in the institutions for stipulated periods of time.<sup>268</sup> It thus affects the ability of the populace to comfortably access education programs and in the regard; the role of the public universities as institutions of ensuring equity and availing opportunities is compromised.

The public universities in sub-Saharan Africa have thus been forced to innovate and come up with collaborations with regard to research work, consultancies and exchange programs with development partners in other jurisdictions to fund their expansion activities.<sup>269</sup>This is geared towards enhancing the sustainability of the programs undertaken within the institutions by virtue of the input from the partner agencies. Alternative income generating activities like hiring out facilities in the institutions for conferences, offering commercial short-term courses and production activities have been undertaken by the universities.<sup>270</sup>This positively affects their ability to ensure that revenues are availed to subsidise their operational costs but exposes them to the risk of concentrating in their non-core areas at the expense of knowledge impartation to the detriment of the students. There is thus need to review the policy provisions with regards to budgetary allocations to the public universities to enhance their relevance and ensure that they meet their obligations to the public.<sup>271</sup>In Kenya, CUE should regularly inspect and evaluate the institutions to ensure sustainability and employ stringent measures to curb non-compliance. Alternative income generating activities should be explored by the public universities by emulating other sub-Saharan Africa universities.

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## **CHAPTER SEVEN- CONCLUSIONS AND RECOMMENDATIONS**

### **7.0 Introduction**

This chapter summarises the study findings and draws conclusions geared towards making recommendations for reforms in the governance spectrums in the public universities in line with the ideals of the Universities Act. The study findings and recommendations will ultimately add to the body of scholarly works in the realms of corporate governance in public universities. This will enable them realise their mandates and obligations to the citizens in a more enhanced manner. It may also occasion improved service delivery standards by the public universities.

### **7.1 Study findings and conclusions**

The study evaluated corporate governance in selected public universities in Kenya in the context of the Universities Act. The study was motivated by the fact that despite the enactment of the Act, the governance thresholds in the institutions were still below the ideal standards expected of them. It was also concerned that other than the Act, adequate legislative frameworks have been put in place to ensure transparency, effectiveness in the delivery of services, inclusivity with regard to access and sustainability of the programs undertaken. The legislative frameworks notwithstanding, the institutions have still performed below par and vices bordering on criminality and related malpractices have been reported in the institutions. The study thus sought to confirm the extent to which the enactment of the Universities Act, had affected the corporate governance practices in the institutions.

The objectives of the study were to investigate the extent to which the universities Act, 2012 has affected inclusivity, effectiveness and efficiency, transparency and sustainability of the programs carried out.

The study was guided by the hypothesis that owing to the current legal and institutional framework under which public universities operate, they are limited in their implementation of the ideals of good corporate governance as contained in the Universities Act. In this regard, failure to involve the stakeholders in public universities' governance has occasioned lack of ownership and incidences of strife. On the other hand, lack of efficient and effective administrative systems attributed to failure to observe merit has eroded the goodwill of the

institutions from the public. Moreover, lack of transparency in the public universities has led to a situation whereby there are no effective checks and balances leading to mismanagement of funds and fraud. Furthermore, non-adherence to the ideals of corporate governance and provisions of the statutory framework guiding the operations of public universities has compromised the sustainability of the programs carried out.

Since the enactment of the Universities Act, which was envisaged to streamline the management and administration programs of the universities, incidences of failure to achieve the ideals of the institutions still abound. Cases of strikes by students and teaching and non-teaching staff, incidences of financial malpractices, ingrained ethnicity and nepotism have still continuously been documented. This gives rise to the question whether the ideals of the Act, have been realised. The study had a focus on determining the extent to which the enactment of the Act had ensured achievement of inclusivity, effective and efficient systems, transparency and sustainability of programs in the universities.

### **7.1.1 Inclusivity**

With regard to the principle of inclusivity, the study found out that public universities had not promoted its ideals as envisaged in Article 10 (1) of the Constitution of Kenya. Public universities are supposed to ensure equity with regards to access to education and employment and other opportunities to the citizens. Despite the provisions of the law, documented reports from the National Cohesion and Integration Commission, show that the institutions have undertaken employment in a skewed and disproportionate manner. This has occasioned biased benefits to the members of the communities around the public universities as opposed to conferring equity to all the citizens nationally.

The findings from the primary data realised in the wake of the study confirmed that employment opportunities had been offered to the local communities and members of communities which were not from the localities where the universities were situated were left out. The study found out that the local communities had a representation of an average of 60% of all employment opportunities in comparison to the other ethnic groups. Inclusivity was observed in relation to stakeholder participation in governance. It was established that students played a very negligible

role in the preparation of the academic calendars by the senate. Compliance with provisions on gender parity was confirmed though not in all institutions. Persons with physical challenges were taken care of because provisions for amenities like ramps, sanitation facilities and special parking slots were confirmed but with a bias for the new buildings. The study thus concluded that the public universities had strived to enforce the provisions on inclusivity as envisaged in the Act but had not achieved this to the expected standards.

In some instances, implementation of inclusivity was hindered by the provisions of the law. In this regard, student and staff representation in Council could not be assured by the public universities because the Act had stipulated the membership of Council and had excluded such representation. Similarly, the public universities hands are tied in so far as assuring equity and access in the admission of government sponsored students to universities is concerned. This is so because the mandate to admit students has been bestowed on the Kenya Universities and Colleges Central Placement Board. The study confirmed the hypothesis that public universities had not achieved the ideals of the Act in the expected manner as pertains to the inclusivity principle owing to legal and institutional constraints.

### **7.1.2 Effectiveness and efficiency**

To achieve effectiveness and efficiency, public universities are supposed to continuously espouse national values and ideals of public service by way of practicing good governance and ensuring meritocracy. Public universities are supposed to conform to the ideals of chapter six of the Constitution and specifically Article 73(2) that places an emphasis on personal integrity, competence and suitability. The provision for ensuring independence and impartiality by the organs of management is equally a key tenet of ensuring effectiveness in the institutions. The appointment process of the council members is the prerogative of the Cabinet Secretary which to a large extent compromises the independence of the appointees. Provisions to ensure that the appointment processes of senior staff like the Vice Chancellors are competitive have also been undermined by the political influence surrounding the appointments.

The study found out that the persons sitting in the university councils largely merited the positions by virtue of their academic qualifications. The appointment process was however not

open and competitive therefore there was a risk of the council members' impartiality being compromised. Implementation of regulatory provisions aimed at enforcing standards and the ability of CUE to carry out compliance inspections was confirmed. This gave credence to the CUE with regards to its ability to effectively police the institutions. Service charters entailing the minimum standards expected of the institutions were confirmed. It was established that presence of multiple agents in the institutions derailed their operations. This was confirmed by the numerous approvals that were required before the budgetary appropriations were implemented by the institutions thereby occasioning operational inefficiency. Presence of debts owed to suppliers, part-time lectures and salary arrears for permanent staff depicted inefficiency in financial management.

In some scenarios, public universities remain constrained in a bid to ensure implementation of effectiveness and efficiency owing to the prevailing legal and institutional framework. To begin with, the Act provides for the membership of the Council which largely comprises of the Cabinet secretary's appointees. This largely compromises the independence of the board and public universities are left with no choice but to operate under this legal provision. Similarly, public universities are regulated by several statutes and several government bodies. As already alluded to, this greatly impacts on the effectiveness and efficiency of these institutions. The findings thus confirmed the study's hypothesis that public universities had failed to be effective and efficient owing to the prevailing legal and regulatory framework.

### **7.1.3 Transparency**

Transparency is a key pillar of governance in the public universities which can be achieved by institutionalisation of checks and balances. It is anchored in Section 3(2) (c) and Section 3(2) (d) of the Act. The universities are required to make financial reports in line with the provisions of the Public Audit Act, 2003. The universities are also supposed to comply with the provision of the Public Procurement and Disposal Act, 2015. Reports from the secondary data showed that public universities faced the challenge of financial malpractices stemming from the misappropriation of funds in disregard of the provisions of the Public Procurement and Disposal Act, 2015. Nepotism and skewed promotions that had been carried out in an opaque manner have equally been documented as issues affecting the public universities. Cases of academic

dishonesty with students engaging in examinations malpractices as well as cases of collusion between students and staff to manipulate the grading systems were still abound. This defeats the ideals of transparency in the administrative structures requisite to ensure good outcomes from the academic process.

The study found out that the universities had strived to ensure transparency in the budget making process by ensuring that critical players from the departments participated in the budgetary appropriations. The ability to conform to the Public Finance Management Act, 2012 detailing provisions for audit and approval of the accounts was evident though the universities failed to publish their audited accounts. The capacity to conform to the provisions of the Public Procurement and Disposal Act, 2015 was confirmed in the evaluations and audits carried out in the institutions. Provisions to meet requirements for international certification equally forced the institutions to conform to the requisites of the law. Regardless of the provisions of the law, numerous complaints were made to the Public Procurement Oversight Authority from aggrieved suppliers and contractors against the universities. This was an indication that they did not fully meet the expectations of the participants in the procurement process.

As regard publishing of accounts, the Act is silent on the issue and only provides for the auditing of the accounts by the auditor general. This explained the responses to the effect that the practice was not ingrained in the institutions. The research thus confirmed the hypothesis that lack of transparency in the public universities occasioned lack of effective checks and balances enough to ensure achievement of the requisite governance thresholds. As regards publishing of accounts, this was occasioned by lack of explicit provisions making this a requirement in the Act.

#### **7.1.4 Sustainability**

The sustainability principle is anchored on the provisions of article 10 (2) (d) of the Constitution of Kenya 2010. This envisages sustainable development nationally. Equally, the Act has provisions for ensuring sustainability. This is with regard to programs and standards in the quality of teaching and research. Under ideal circumstances, the provisions of the aforementioned articles should ensure equitable access for the youth to relevant education and training. This has however been limited by the chronic budgetary deficits occasioned by the dwindling government capitation. This is despite the rapid population growth and the resultant

increase in demand for education opportunities. The public universities are thus constrained in terms of capacity to accommodate all students who merit. The anecdotal reports from the MoEST and the double intake undertaken in the year 2011 leading to a lot of congestion in public universities are evidence enough of the questionable sustainability of programs.

The study findings showed that the universities which participated in the survey had pending bills owed to suppliers, part time lecturers and in some cases salary arrears due to staff. This was a confirmation of the fact that the institutions had budgetary deficits and had failed to meet their obligations to pertinent stakeholders. The universities engaged in enterprise activities and the predominant one was the module two academic program. This motivated rapid expansion by way of opening up satellite campuses to attract more students. Incidentally, all the participating universities had their satellite campuses shutdown by the regulator or the demand and supply forces within them. A look at the academic programs offered showed that they concentrated on the social sciences and the business courses. This had a negative implication on the national transformation agenda of becoming an industrialised economy because the provision of technical skilled personnel was not assured. It thus negated the sustainability of the institutions as pertains to their capacity to proactively stimulate national growth by providing the human resource component requisite for industrialisation.

From an institutional perspective, chronic resource deficiency has to a great extent been occasioned by the cutting down of the capitation to public universities by the Government. Further, there seems to be no structured way of supporting the capital intensive courses by the Government. Owing to this institutional framework, public universities have resulted to opening up of campuses without conducting feasibility studies; undertaking massive enrolment of students and are largely running social science programs since they are not capital intensive. The study thus confirmed the hypothesis that non adherence to the ideals of corporate governance and provisions of the statutory framework and institutional framework guiding the operations of public universities had compromised the sustainability of the programs carried out.

## **7.2 Recommendations**

The study made the following recommendations as per the themes of the study.

### **7.2.1 Amendments to the law**

The study proposed that the National Cohesion and Integration Act, 2008 should be amended to give the National Cohesion and Integration Commission authority to execute executive power where there are breaches in ethnic balance in the staff recruitment process of public institutions. This will ensure equity in the staff establishment within the public universities and will correct the ethnic imbalance thereby assuring inclusion.

The study recommended that the Universities Act be amended to ensure that the appointment of the university council members and senior university management staff is done in an open and competitive manner by advertising for the posts. The process of recruitment should incorporate public participation to avoid rogue persons being appointed. The role of the Executive should be reduced in the appointment of council members to enhance their autonomy. This will ensure that public universities have more effective and efficient systems attributable to their independence. Additionally, the Universities Act should be amended to include the major stakeholders in the composition of council. In this regard, staff and students should be adequately represented in the body. The Act should also limit the powers of the vice-Chancellors by introducing checks and balances in the management structure of the universities.

The study recommended amendments to the Public Procurement and Disposal Act, 2015 as a measure of exempting public universities from the rigorous provisions when they have optimal internal capacities. This will enable the universities to exploit internal expertise to undertake building and construction works which will ultimately facilitate in the saving of enormous costs and assist in the building of local capacities. This may enhance the efficiency of the procurement processes.

The study also recommends amendments to the Disabilities Act. This will facilitate enactment of affirmative action in relation to the disabled students. Fee rebates or waivers can be considered in this regard.



Lastly on the legal front, the study recommends synchronization of the overlapping statutes and regulations governing public universities. In this regard all the provisions of other Laws that are in conflict with the Universities Act should be amended to conform to it.

### **7.2.2 Policy suggestions**

The study recommends that public universities should be forced to implement inclusive governance systems by making it mandatory for them to embrace participatory processes. Measures should be put in place to always involve the stakeholders within the institutions to forestall incidences of internal strife and misgivings associated with non-inclusiveness. The Commission for University Education should employ measures to always audit the governance process to ensure mutualism and participatory programs on a continuous basis. These will ultimately enhance the corporate governance standards in the institutions.

The study recommends that the CUE should put in place provisions to audit the conformance with the institutional service charters. This may serve as a measure of ensuring that the public universities walk the talk as pertains to the realisation of their commitments to their constituents. Systems of rewards and sanctions should be put in place and be made publicly as a measure of evaluating and ensuring achievement of standards. This may ultimately enhance the efficiency of the institutions.

The study recommends that the CUE should come up with a criterion of naming and shaming public universities practicing tribalism and nepotism. They can also be rating them on these vices based on empirical findings. CUE can also liaise with Treasury with an aim of implementing financial sanctions on the institutions which continue practicing the vices.

As the regulator, CUE should monitor universities and ensure implementation of key laws which advocate for corporate governance ideals. These include the National Cohesion and Integration Act and the Disabilities Act.

Provisions to ensure that the public universities make public their audited and approved accounts were also recommended.

The commission for university education should put in place provisions mandating the public universities to comply with the law as well as to put in place the requisite infrastructure as a pre condition for licensing. This may facilitate prioritization of infrastructure and statutory compliance by the universities thereby assuring quality and proper service delivery.

As regard access to admissions, the Kenya Universities and Colleges Central placement Board should come up with a criteria that ensures that the marginalized, the minorities and the disabled are able to access university education. They should implement affirmative action similar to the one that has been implemented in relation to female students.

The study also recommends that policy provisions should be put in place to make it mandatory for the public universities to introduce technical courses within stipulated time periods. This measure may ensure more uptake of technical courses.

Lastly there should also be a concerted effort by the Government to support the capital intensive programs. Policy provisions should be formulated to guide the universities funding board in the implementation of this initiative. Further, the differentiated unit costing and the differentiated remuneration should be implemented fully as a measure of supporting these capital intensive programs.

### **7. 3 Suggestions for Further Studies**

The study suggests that a bigger study with a nationwide scope should be carried out to determine if the situation in the central region of the country applies to other areas. The study equally suggest that research should be carried out in private universities to find out the extent to which the enactment of the Universities Act, 2012 has affected their governance practices. Lastly, the study also recommends a study comparing the implementation of the corporate governance ideals prior to the enactment of the Act and after the enactment.

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## APPENDICES

### APPENDIX 1: Consent form

#### Consent Form

By Nelius Wanjiru Mwangi

Professor Albert Mumma (Supervisor)

University of Nairobi School of Law

Email- nellius.mwangi@gmail.com

You are invited to take part in a research study on corporate governance in public universities in the context of the Universities Act, 2012

**What the study is about:** This study seeks to find out the extent to which the enactment of the Universities Act 2012 has affected corporate governance practices in the institutions.

**What you will be asked to do:** As a participant in this research you will fill the provided questionnaire. The questions are about good corporate governance and how the implementation of the Universities Act has affected their implementation. The questionnaire will take about (30) minutes to fill.

**Risks and benefits:** The study does not portend any risks to you owing to the fact that it is purely academic and your identity will be treated in confidence. Immense benefits attributed to your participation may accrue to the higher education sector. This may be motivated by the policy recommendations accruing from the study.

**Taking part is voluntary:** Taking part in this study is completely voluntary. If you choose to be in the study you can withdraw at any time without consequences of any kind. Participating in this study does not mean that you are giving up any of your legal rights.

**Confidentiality:** Any report of this research that is made available to the public will not include your name or any other individual information by which you can be identified.

If you have questions or want a copy or summary of the study results kindly contact the study at the email address above. You will be given a copy of this form to keep for your records. If you have any questions about whether you have been treated in an illegal or unethical way, contact the University of Nairobi, School of Law – Department of Public Law via P. O. Box 30197 – 00100 Parklands Campus, Nairobi or at deanlaw@uonbi.ac.ke.

**Statement of Consent:** I have read the above information, and have received answers to any questions. I consent to take part in the research study on corporate governance in public universities in the context of the Universities Act, 2012

\_\_\_\_\_

Participant's Signature

## APPENDIX 2: Questionnaire for university top management staff

This is a research which has a focus on finding out good public corporate governance practices in the context of the Universities Act, 2012. Kindly fill in the questionnaire to the best of your ability and honestly. The information will be used for completing a university masters' degree research paper. Your time is highly appreciated.

1. Kindly indicate the position that you hold in the institution?

---

2. How long have you served in the institution in an administrative capacity?

Less than 1 year  1- 5 years  6-10 years  11-15 years  16-20 years

3. Are you aware of the Universities Act, 2012?

Yes  No

4. Did your institution participate in any way in the formulation of the Act? Kindly explain

---

5. What views from your institution were taken into account?

---

### INCLUSIVITY

6. How is your university Council and University Management Board constituted in terms of membership? Kindly enumerate

---

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7. How are the various ethnic communities in Kenya represented in terms of percentages in the university staff? Kindly enumerate to the best of your ability.

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8. Can a student having physical disability be able to access all the university facilities e.g transport, the classrooms, washrooms and the library? Kindly explain

---

9. When the University came up with the academic calendar, who was consulted in the university fraternity?

---

**EFFECTIVENESS AND EFFICIENCY**

10. Who appointed the current council members and were the appointments made pursuant to an open recruitment process?

---

11. Kindly enumerate the qualifications and skills of the current members of Council

---

12. When was the last time the University was inspected and evaluated by CUE to ensure compliance with the provisions and objectives of university education under the Act.

---

11. How many government agencies influence and approve the university budget before Council and Management implement it?

---

---

13. Kindly indicate the measures in place to ensure that the university serves the interests of the larger public devoid of the local parochial motivations?

---

**TRANSPARENCY**

14. Who was involved in the preparation of the current budget and procurement plan of the University?

---

15. Were the university accounts for the previous financial year audited by the Auditor general and were they qualified? Kindly explain

---

16. Following the enactment of the Procurement Act 2015 has the University procurement processes been audited to ensure compliance with the Act?

---

17. When the last time the institutions audited accounts was were published?

---

**SUSTAINABILITY**

18. What percentage of the university is funded by government, module II programmes and other income generating units respectively?

---

19. What is the current student and academic staff population?

---

20. Kindly enumerate the academic programmes being offered at the university in terms of science and technology courses and social sciences respectively.

---

21. How can the corporate governance principles in the university be enhanced?

---

Thank you for your time. This information is highly appreciated

### **APPENDIX 3: Interview schedule for the Legal Officer of the Commission for University Education**

1. Are you aware of the provisions of the Universities Act 2012?
2. Do you consider them as adequate enough to ensure sound administration and governance of the universities?
3. Was the input of stakeholders in the universities sector taken into account in the formulation of the Act?
4. Has there been an improvement in the systems of administration and governance in the public universities attributed to the Act as it's presently formulated?
5. Would you consider the systems of administration and governance in the universities as inclusive enough?
6. Has the Commission of University Education recorded cases of break down in the administration and governance attributed to failure to ensure inclusivity in the governance programs?
7. How has the situation been mitigated?
8. Would you consider the Universities Act as effective enough to ensure inclusive governance in the institutions?
9. Are there modalities in place to ensure effective and efficient systems in the universities with regard to governance?
10. Are the university councils constituted in a manner that would be considered above board?
11. Have there been cases whereby the public has felt that the management councils and other apparatus of management do not merit their positions? If yes how was the situation taken care of?

12. Would you consider the apparatus of management as presently constituted in the universities as autonomous enough?
13. Does the Universities Act provide a caution to enhance the independence of the apparatus of management in the institutions?
14. Does the Commission for University education have provision for ensuring transparency in the governance systems and practices within the institutions?
15. Are there provisions to provide all stakeholders with information of the financial dealings and related demands pertaining to transparency?
16. Have the provisions for transparency affected the financial management of the universities?
17. Has the provision for clear chains of command reduced overlaps and separated the duties in the organs of administration in the universities?
18. Would you consider the academic programs offered by the universities as sustainable?
19. Have there been cases whereby some universities have been asked to discontinue academic programs on the basis of their sustainability?
20. Are the universities encouraged to undertake income generating activities to bridge budgetary shortfalls?
21. Are there provisions to ensure the universities do not engage in the income generating activities at the expense of the core mandate which is knowledge dissemination?
22. Would you consider the Universities Act as presently constituted as suitable enough to ensure the sustainability of the programs undertaken?
23. How can corporate governance practices in the universities be improved on to ensure enhanced governance?

#### **APPENDIX 4: Secondary data interrogation guide**

The following documents will be reviewed.

1. Universities Act, 2012
2. The Constitution of Kenya, 2010
3. The National Cohesion and Integration Act
4. The Vision 2030
5. The respective universities charters

### **APPENDIX 5: Observation sheet**

1. Observe the inter-relations between the members of staff, students and local communities around the universities
2. Confirm the provisions of a ramp, sanitation facilities and related infrastructure to cater for the physically challenged
3. Interrogate the university websites with a view of confirming the presence of defined hierarchies as pertains to the chains of command and clearly demarcated administrative systems
4. Look out for the visible display of the service charters in a vivid manner within the universities
5. Observe the trends pertaining to service quality from the gates to the client reception areas and the different offices during the data collection exercise
6. Observe trends with regard to communication and interaction by the members of staff to determine the ability to exhibit nationalism especially in the spoken language
7. Observe the mutualism within the institutions as pertains to the capacity to have clear cut recognition of order with regard to seniority
8. Look out for any income generating activities in the institutions and try to establish their viability as pertains to longevity in terms of existence
9. Evaluate the campuses in operation and confirm the numbers of students registered especially for the module two programs to confirm their viability

**APPENDIX 6: Work plan  
Completion Date**

**Activity**

Research Proposal Completion	30 <sup>th</sup> September 2016
Data collection completion	20 <sup>th</sup> October 2016
Completion of Chapter 2, 3, 4, 5 and 6	30 <sup>th</sup> October , 2016
Defense of the report	November 2017
Hard Cover Bound Work Submission	November 2017

Signed by the Supervisee: .....

Date:

Signed by the Supervisor: .....

Date: