

**A SURVEY OF CORPORATE GOVERNANCE PRACTICES IN THE WATER SECTOR
IN KENYA**

BY

JAMES MODI OGUTU

**A MANAGEMENT RESEARCH PROJECT SUBMITTED IN PARTIAL
FULLFILMENT OF THE REQUIREMENTS OF THE DEGREE OF MASTER OF
BUSINESS ADMINISTRATION FACULTY OF COMMERCE, SCHOOL OF BUSINESS,
UNIVERSITY OF NAIROBI**

OCTOBER, 2010

DECLARATION

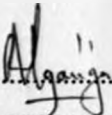
This is to certify that this management research project is my original work and has not been presented for any degree in any other university or institute of learning. Information from other sources has been duly acknowledged. No part of this work should be reproduced without permission of the author.



.....
JAMES MODI OGUTU

Dated this 15th day of November 2010

This management research project has been submitted for examination with my approval as the university supervisor.



.....
MR. JAMES NG'ANG'A

LECTURER,

UNIVERSITY OF NAIROBI.

Dated this 15th day of November 2010

DEDICATION

I dedicate this work to God, and to my family who have been very inspirational in my efforts to seek knowledge and to excel in all what I do in life.

TABLE OF CONTENTS

DECLARATION.....	ii
DEDICATION	iii
LIST OF FIGURES.....	viii
ACKNOWLEDGEMENTS	ix
ABBREVIATIONS AND ACRONYMS	x
ABSTRACT	xi
CHAPTER ONE.....	1
INTRODUCTION	1
1.1 Background of the Study	1
1.2 Statement of the problem	10
1.3 Objectives of the Study	12
1.4 Importance of the Study	12
CHAPTER TWO.....	14
LITERATURE REVIEW.....	14
2.1 Definition of Corporate Governance.....	14
2.2 Review of Theories	15
2.2.1 Shareholders Perspective.....	15
2.2.2 Stakeholder Perspective	20
2.3 Timeline on Water Governance in Kenya.....	23
2.4 Corporate Governance in Kenya	27
2.5 Importance of Corporate Governance	29
2.6 Best Practices With Respect To Corporate Governance	30
2.7 Corporate Governance Mechanism and their Interaction.....	30

2.8 Impediments to Implementation of Corporate Governance Mechanism	30
2.9 Empirical Studies	31
CHAPTER THREE	34
RESEARCH METHODOLOGY	34
3.0 Research Design.....	34
3.1 Population and Sample.....	34
3.2 Data Collection.....	34
3.3 Data Analysis	35
CHAPTER FOUR	36
DATA ANALYSIS	36
4.0 Introduction	36
4.1 General Information	36
4.1.1 Response Rate	36
4.1.2 Functional unit.....	37
4.1.3 Current position.....	37
4.1.4 Length of stay in the institution.....	37
4.2 Management and the board	38
4.2.1 Number of board members.....	38
4.2.3 Composition of the board in terms of gender.....	39
4.2.4 Boards effectiveness in exercising duties to achieve the organization	40
4.2.5 Frequency of board meeting.....	40
4.2.6 Assessment of board’s performance in terms of itself, individual members and chief executive.....	41
4.2.7 Level at which reports are discussed	42
4.2.8 Existence of succession plan for the senior management	42
4.3 Stakeholders.....	43

4.3.1 Means of communication to stakeholders	43
4.3.2 Internal and external stakeholders.....	43
4.3.3 Existence of policy guideline	43
4.4 Strategy, values performance and compliance	44
4.4.1 Extent to which the board of directors determine the operations of the organization....	44
4.4.2 Who ensures that the procedure and values that protect the assets and reputation of the institution are put in place?	45
4.4.3 Who monitors and evaluates the implementations of the institution's strategies, policies, and management performance	45
4.4.4 Who reviews the viability and financial sustainability of the institution	46
4.4.5 Measure in place to ensure that the institution complies with all relevant laws, regulations, governance practices, accounting and auditing standard?.....	47
4.4.6 Who enforces the measures?	47
CHAPTER FIVE	49
SUMMARY OF FINDINGS, CONCLUSIONS AND RECOMMENDATIONS	49
5.0 Introduction	49
5.1 Summary of Findings	49
5.2 Conclusions and recommendations	51
5.3 Limitations of Study	51
5.4 Cases for Further Research.....	52
REFERENCES	53

APPENDICES 57

APPENDIX 1: INSTITUTIONS UNDER THE WATER ACT, 2002..... 57

**APPENDIX 2: ROLES AND RESPONSIBILITIES FOR WATER AND SEWERAGE SUB
SECTOR INSTITUTIONS** 58

APPENDIX 3: WATER SECTOR INSTITUTIONS 60

APPENDIX 4: REQUEST LETTER TO PARTICIPATE IN RESEARCH 63

**APPENDIX 5: QUESTIONNAIRE SURVEY ON CORPORATE GOVERNANCE
PRACTICES** 64

LIST OF TABLES

Table 4.1: Functional unit.....	40
Table 4.2: Current position.....	40
Table 4.3: Length of service by employees	41
Table 4.4: Professional qualifications of board members.....	42
Table 4.5: Boards effectiveness.....	43
Table 4.6: Frequency of the board meeting.....	44
Table 4.7: Assessment of board’s performance.....	45
Table 4.8: At what level are the reports discussed.....	45
Table 4.9: Does the organization have a succession plan for the senior management	46
Table 4.10: Existence of policy guideline.....	47
Table 4.11: Extent to which the board of directors determine the operations of the organization.....	48
Table 4.12: Who ensures that the procedure and values that protect the assets and reputation of the institution are put in place.....	48
Table 4.13: Who monitors and evaluates the implementations of the institution's strategies, policies, and management performance	49
Table 4.14: Who reviews the viability and financial sustainability of the institution....	50
Table 4.15: Is there any measure in place to ensure that the institution complies with all relevant laws, regulations, governance practices, accounting and auditing standard.....	50
Table 4.16: Who enforces the measures.....	51

LIST OF FIGURES

Figure 1: Response rate.....	39
Figure 2: Gender Composition.....	42

ACKNOWLEDGEMENTS

Often in life there are those goals that we really aspire to. For me this is one of them. It has been a long journey to achieving this goal. Along the way, several people have been instrumental in allowing this project to be completed. To all these I say THANK YOU!

I wish to thank all those, without whose effort this research would never have been completed. It may not be possible to document the names of all those who contributed in one way or another to the success of this project. I must nevertheless, offer my special thanks to the following; first I would like to thank my wife, Lilian Akoth Modi who substantially encouraged me to go even further when it seemed impossible. This made me set high goals, strive and achieve them and for that I am grateful. To the children, Immaculate, Davis and Gloria for the many times they missed my attention while working on this project.

I also would like to thank my Supervisor, Mr. James Ng'ang'a, Lecturer in the University, without whose valuable guidance, patience and help this research would not have been completed. I also wish to extend my gratitude to all members of academic and non-academic staff of the Faculty of Commerce who immensely contributed in one way or another to my learning.

Special thanks also go to all the senior managers of the Water Sector Institutions who took their time to offer their views on this research and whose findings are analyzed in this study. And finally I would like to salute, all my fellow students, workmates and friends for their support, knowledge contribution and their understanding during the time of my studies.

JAMES MODI OGUTU

UNIVERSITY OF NAIROBI

OCTOBER, 2010

ABBREVIATIONS AND ACRONYMS

CEO	Chief Executive Officer
CGI	Corporate Governance Index
CMA	Capital Markets Authority
GCGC	German Corporate Governance Code
KEWI	Kenya Water Institute
KSE	Karachi Stock Exchange
MWI	Ministry of Water and Irrigation
NWCPC	National Water Conservation and Pipeline Corporation
NIB	National Irrigation Board
NSE	Nairobi Stock Exchange
OECD	Organization for Economic Cooperation and Development
PPPs	Public Private Partnerships
ROA	Return on Assets
ROE	Return on Equity
MBV	Market to Book Value
WAB	Water Appeals Board
WRMA	Water Resources Management Authority
WSB	Water Services Board
WSP	Water Services Provider
WSRB	Water Services Regulatory Board
WSTF	Water Services Trust Fund

ABSTRACT

A few years ago the buzzword was Globalization, now it is Corporate Governance. Corporate Governance is concerned with the manner in which the power of a corporation is exercised in the stewardship of the corporation's total portfolio of assets and resources with the objective of maintaining and increasing shareholder value and satisfaction of other stakeholders in the context of its corporate mission.

The purpose of the study was to survey corporate governance practices employed by water sector institutions in Kenya. The specific objectives were to determine whether these institutions have any corporate governance practices that they practice in the day to day running of their affairs. This has come in the wake of many business failures in the corporate global world.

The research design used was descriptive design using questionnaire. The target population of this study was 16 water sectors institutions formed by the Water Act 2002. The total population were examined. Data was collected through questionnaires that contained both open and closed ended questions, which were administered to the respondents. Data was analyzed by generating descriptive statistics such as percentages. In terms of presentation, the data was presented by using tables and pie charts.

The findings brought out the conclusion that the institutions embraced corporate governance practices and the boards and chief executive officers played a leading role in ensuring that it is attained. The study recommended that the institutions come up with criteria of how the board of directors can assess their performance as this is not currently done.

It also recommended that the boards should continue being keen on leadership, judgment, decision making and integrity which are key to best practices in corporate governance. It is hoped that the research findings will go a long way in provoking further research and discussion in this direction which would result into the long awaited solutions to corporate failures.

CHAPTER ONE

INTRODUCTION

1.1 Background of the Study

Corporate governance is the system by which the companies are directed and controlled. It is the way in which the affairs of the corporation are handled by their corporate boards and officers. Corporate governance can be defined as the manner in which the power of a corporate entity is exercised in the stewardship of the entity's total portfolio of assets and resources with the objective of maintaining and increasing shareholder value and satisfying other stakeholders within the context of the vision and mission of an enterprise. (Private Sector Corporate Governance Trust, 1999). The need for corporate governance arises because of the separation of management and ownership in the modern corporation. In practice, the interests of those who have effective control over a firm can differ from the interest of the shareholders of the firm. The agency problem can usually only be mitigated through the protections derived from good corporate governance.

Governance is concerned with the processes, systems, practices and procedures that govern institutions and the manner in which rules and regulations are applied and followed and the relationships that these rules and regulations create. Essentially governance addresses the leadership role within the institutional framework. (Private Sector Corporate Governance Trust 2002).

A Comparative Theory of Corporate Governance observed that corporate governance is used in two distinct ways. In Anglo-Saxon countries like the US and UK good corporate governance involves firms pursuing the interests of shareholders. In other countries like Japan, Germany and France corporate governance involves pursuing the interests of all stakeholders (Allen and Gale 2002).

Corporate governance is also defined as the process by which corporate entities are directed, controlled and held accountable (Centre for Corporate Governance in Kenya, 2005)

Corporate governance is concerned with the establishment of an appropriate legal, economic and institutional environment that would facilitate and allow business enterprises to grow and strive in order to maximize shareholder value while being conscious of the interests of other stakeholders and the society (Grant Thornton, Trends in corporate governance).

Principles of corporate governance includes: definition of authority and duties of members, appointments to the Board and top management, the nature of the organizational structure, corporate performance, viability and financial sustainability, corporate compliance with relevant laws and authorities, corporate communication and accountability. Others include; the balance of power, internal control procedures, assessment of the Board of Directors performance, corporate culture, social responsibility, recognition and utilization of professional skills and competencies and relationship between the Board and Management (Centre for Corporate Governance Trust,2002).

Corporate governance had its origin in the 18th century arising in response to the separation of ownership and control following the formation of joint stock companies. Adam Smith in his book the *Wealth of Nations* drew attention to an important governance issue in his commentary of joint stock companies:

“The directors of such companies however being managers rather of people’s money than of their own, it cannot well be expected that they would watch over it with the same anxious vigilance which partners in private co-partner frequently watch over their own...negligence and profusion, therefore, must always prevail, more or less in management of the affairs of such a company.5” (Cadbury 2002:4)

In the 19th century, the US State Corporation Laws enhanced the rights of corporate boards to govern without unanimous consent of shareholders in exchange for statutory benefits like appraisal rights, in order to make corporate governance more efficient. Since that time, and because America’s wealth has been increasingly securitized into various corporate entities and institutions, the rights of individual owners and shareholders became increasingly derivative and dissipated. Shareholders concerns on administration pay and stock losses periodically led to calls for corporate governance reforms.

In the 20th century and in the immediate aftermath of the U.S Wall street Crash of 1929 legal scholars such as Adolf Augustus Berle, Edwin Dodd, and Gardiner C. Means pondered on the changing role of the modern corporation in society. Berle and Means' monograph "The Modern Corporation and Private Property" (Macmillan, 1932) continues to have a profound influence on the conception of corporate governance in scholarly debates today. From the Chicago School of economics, Ronald Coase's 'Nature of the Firm' (1937) introduced the notion of transaction costs into understanding of why firms are founded and how they continue to behave. Fifty years later, Eugene Fama and Michael Jensen's "The separation of Ownership and Control"(1983, Journal of Law and Economics) firmly established the Agency Theory as a way of understanding corporate governance : the firm is seen as a series of contracts .Agency theory's dominance was highlighted in a 1989 article by Kathleen Eisenhardt (Academy of Management Review).

American expansion after World War II through the emergence of multinational corporations saw the establishment of the managerial class. Accordingly, the following Harvard School Management professors published influential monographs studying their performance: Myles Mace (entrepreneurship), Alfred D Chandler Jr. (business history). Jay Lorsch (organization behavior) and Elizabeth Maclver (organization behavior).According to Lorseh and Maclver "many large corporations have dominant control over business affairs without sufficient accountability or monitoring by their board of directors"

In 1985, The Treadway Commission was formed in the US following a number of financial failure, frauds and questionable business practices, reporting in 1987. It found that breakdowns in internal control were a contributory factor in nearly 50% of fraudulent financial reporting. Current preoccupation with corporate governance can be pinpointed at two events: The East Asian Crisis of 1997 saw the economies of Thailand, Indonesia, South Korea, Malaysia and Philippines severely affected by exit of foreign capital after property assets collapsed. The lack of corporate governance mechanisms in these countries highlighted the weaknesses of the institutions in their economies. The second event was the American corporate crises of 2001-2002 which saw the collapse of Enron and WorldCom and the ensuing scandals and collapses in other corporations such as Arthur Andersen, Global Crossing and Tyco. The collapse of Enron saw the enactment of the Sarbanes-Oxely Act (2001) in the US and Europe published the

Winter Report on Company Law reforms. In 2004 the Parmalat Scandal Shook Italy's Corporate Sectors.

Governance in the Water Sector

Water forms the lifeline of any society and has pervasive links to most aspects of rural, urban and economic development. The demand for water is on an ever-increasing spree due to population expansion, economic development and life-style changes. Performance of the sector under the traditional fully integrated firm of the government has been disappointing. Part of the blame for disappointing performance of the sector has been weak vulnerable institutions, weak incentive structure, lack of competitive forces and rules. The dissatisfaction with the quantity and quality of water is tremendous. The crisis in the water sector had made apparent the inherent limitations of the existing institutions in dealing effectively with this problem. (Saleth and Dinar, 2005).

Many experiments have been undertaken on restructuring of water institutions and experience suggests an emerging consensus on some key principles of institution reforms which include: commercialization in the delivery of water supply services, including small-scale providers, decentralization of service responsibility to the lowest appropriate levels of government to respond to local conditions, the building of autonomous utilities with a commercial orientation and financial viability for service delivery in urban and rural areas. (Saleth and Dinar, 2005).

Thus the direction and content of reforms is one of the most formidable challenge in recent times with debate focusing on privatization, efficiency gains but has also raised questions relating to its access of poor, affordability and mechanism of pro-poor regulation. The inclusion of a water access target among the Millennium Development Goals underscores the sector's close link to social equity. The challenge for policy planners and regulation was to meet both efficiency and social welfare objectives in the water sector balancing stakeholder interest. It is very important for a developing country like Kenya to assess the challenges it poses in the distributive justice to its population.

In Kenya, development in the sector has been guided by various policies and laws related to water developed both in the pre and post independence periods. The first law was the Water

Ordinance in 1927 followed by the Water Act Cap 372 in 1952. The National Water Master Plan (1992) recommended the revision of the Water Act Cap 372, the principal law for water development and use in Kenya then. The bottlenecks in this act with regard to policy formulation, regulation and service provision functions which were not separated included: inadequate funds for development, operation, maintenance of water supplies and management of water resources. Institutional capacity challenges especially the scarcity of qualified manpower and users lacking skills to properly operate and maintain water supplies. Unavailability of water resources due to its uneven distribution of water resources, ineffective coordination by various actors and sectors and lack of proper inter – linkages with other related sectors among others.

This led to the development of a national water policy in 1999, and enactment and implementation of the Water Act, 2002. The Water Act 2002 has established a new legal and institutional framework which gave the Ministry of Water and Irrigation (MWI) the mandate to carry out reforms through harmonizing the stakeholders by allocation of specialized roles to respective institutions as shown in appendices land 2. In the long-run, reforms are aimed at enhancing poverty reduction in the country and particularly in the rural areas through establishment and development of a well managed sustainable water sector.

Water Sector Reforms in Kenya

The significance of the water sector is noted in the present institutional arrangements for the management of the water sector in Kenya can be traced to the launch in 1974 of the National water Master Plan whose primary aim was to ensure availability of potable water, at a reasonable distance, to all households by year 2000. The plan aimed to achieve this objective by actively developing water supply systems, sinking of boreholes, construction of catchments dams and provision of the conveyance infrastructure in the form of pipes and furrows. To do so require that the government directly provide water services to consumers, in addition to its other roles of making policy, regulating the use of water resources and financing activities in the water sector.

The evolution of Kenya's Water Sector in the past has led to the emergence of a fairly sophisticated sector characterized by the presence of many sector institutions. The background

of reforms is a substantiation of the contributing factors to the need for reforms in the sector. With a rapidly growing population unmatched with a corresponding increase in water services, the water sector was obviously destined to reach a dead-end without adequate financial resources. Overriding and conflicting institutional roles, limited water resources, poor choice of technology, lack of proper coordination and trend of deteriorating services among others are factors that called for comprehensive reforms in the water sector. An attempt to discuss past reform initiatives and major hindrances in achieving set targets is also undertaken.

The institutional framework has been established with the implementation of the Water Act 2002. But with the drastic changes described in other quarters as “radical surgery of the water and sanitation sector”, it has become increasingly important to address issues with regard to policy, legal and regulatory, institutional, service provision, financing mechanism and pro-poor focus measures in order to achieve sustainability. The section on challenges to sustainability goes in-depth to identify key and crucial issues fundamental to achieving sustainability and attainment of the Millennium Development Goals. Regarding policy, key challenges include but are not limited to revision of the water policy in line with new policies on irrigation, environmental sanitation and hygiene, and environment, classification of water companies as private or public, attracting private investment and addressing the issue of existing liabilities of WSPs. On the other hand, legal and regulatory challenges include but not limited to; split of assets, economic viability of schemes and time scale of the service provision arrangements.

Water Sector Institutions

Ministry of Water and Irrigation has established the following institutions as part of the sector reforms process:

Water Reform Programme, whose role is to manage the implementation of the reform programmes.

The Water Resources Management Authority, which is responsible for the management of water resources as provided in Section 8 (i) of the Water Act, 2002.

The Catchment Area Advisory Committee that has the responsibility for management of water resources, conservation, use and apportionment of water resources in a defined catchment area as presented in Section 16(i) of the Water Act, 2002.

The Water Services Regulatory Board, whose role is to license and manage the supply of water and sewerage services in accordance with Section 47 of the Water Act, 2002.

Water Services Boards namely: Lake Victoria North Water Services Board, Lake Victoria South Water Services Board, Tana Water Services Board, Athi Water Services Board, TanaAthi Water Services Board, Coast Water Services Board, Rift Valley Water Services Board, Northern Water Services Board and Water Services Providers, whose service delivery roles are provided in Section 5 of Water Act, 2002.

Water Services Trust Fund, which has the mandate to mobilize financial resources for development and rehabilitation of water and sewerage services resources infrastructure, especially to underserved areas.

Water Appeals Board, whose mandate is conflict resolution within the sector management.

Functions of the Institutions

The functions of Water Appeal Board (WAB) as outlined in section 85 and 87 of the Water Act 2002 include: Hearing and determining appeals from decisions or orders of the authority, the minister or regulatory board, hearing and determining disputes in the water sector, performing other judicial functions that pertain to the use and development of water resources, making and varying rules of their procedures from time to time.

Section 83 of the Water Act 2002 mandates Water Services Trust Fund (WSTF) to assist in financing the provision of water services to areas without adequate water. The functions of WSTF include: Mobilizing, ensuring compliance with the rules of funding water services, ensuring disbursement of funds, and monitoring implementation of projects, carrying out technical and financial audits of projects appraising applications and proposals for financing of projects and establishing links with Water Service Boards in all parts of Kenya and other stakeholders in the water sector.

The National Water Conservation and Pipeline Corporation (NWPC) have the following functions: construction of dams, drilling of boreholes and bulky water supply.

The Kenya Water Institute (KEWI) is responsible for the following functions within the water sector: conducting training to the middle level personnel in the water sector, carrying out relevant research and producing their publications, providing consultancy and producing related

services specific to the water sector and providing commercial related training to the water sector.

The National Irrigation Board is responsible for the following: coordination of construction and rehabilitation of major irrigation and drainage infrastructure, operation and maintenance of major irrigation and drainage infrastructure, administering land in the public schemes and provide technical advice on maintaining a cropping calendar in consultation with the scheme and irrigation expansion.

Water Resource Management Authority (WRMA) under the water Act 2002 is responsible for: developing principles, guidelines and procedures for the allocation of water resources, monitoring and periodically reassessing the national water strategy, issuing, verifying, transferring and cancelling water permits, monitoring and enforcing the conditions attached to the water permits, regulating and protecting water resources quality from adverse impacts, managing and protecting water catchments, determining charges and levying water use fees, gathering and maintaining water information and publishing the same periodically, liaising with other actors for better regulation and management of water resources.

Section 47 of the Water Act 2002 spells out the function of the Water Services Regulatory Board (WASREB) as follows: Issuing licenses for provision of water services, determining standards for the provision of water to consumers, establishing procedures for handling complaints made by consumers against licences, monitoring compliances with established standards for the design, construction, operation and maintenance of facilities for water services, monitoring and regulating licenses and to enforce license conditions, advising licenses on procedures for dealing with complaints from consumers and to monitor the operations of the procedures, developing guidelines for fixing of tariffs for the provision of water services, developing model performance agreements for use between licensees and water service providers, monitoring the operation of agreement between water service boards and water service providers and taking appropriate action to improve their effectiveness, develop guidelines on regulations of water services to be adopted by licensees, publish forecast, projections and information on water services, disseminate information on water services,

promote water conservation and demand management measures, monitor and from time to time reassess the national water services strategy, determine fees, levies, premiums and other charges to be imposed on water services in accordance with the national water services strategy, gather and maintain information on water services and from time to time publish forecasts, projections and information on water services, liaise with other bodies for the better regulation and management of water services and advise the minister on matter related to water services.

Water Service Boards have delineated areas of supply to ensure provision of water services to all parts of the country. These are: Athi Water Services Board, Tana Water Services Board, Coast Water Services Board, Lake Victoria South Water Services Board, Lake Victoria North Water Services Board, Northern Water Services Board, Rift Valley Water Services Board and Tana-Athi Water Services Board. Functions of the WSBs, as outlined in Section 53 of the Water Act 2002, are: Efficient and economical provision of water services as authorized by licence, custodianship of water services provision assets, contracting, monitoring and enforcing agreements between WSBs and WSPs, in accordance with the regulations set by WSRBs in the licences, maintaining and acquiring assets, planning development and management and ensuring efficient and economical provision of water services authorized by the licence(www.watergovernance.org/).

Governance Structure of Water Sector

Water sector institutions operate in a Principal and Agency Relationship, with the institutions being the agents and the Ministry of Water and Irrigation being the Principal.

The governance structures of these institutions are substantially not established with the Corporate Governance framework in mind. The shareholders do not have a say in the day to day running of the business. There are no supervisory bodies set locally to check on their excesses of the parent ministry and the C.E.Os. All the institutions strategies and business priorities are left at the discretion of the Ministry, Minister, Board of Directors, C.E.Os and top management including annual financial and business plans. An effective professional and independent supervisory board is essential in the implementation of good corporate governance practices. Among areas where if corporate governance if well applied will result into success in these institutions include the following;

An important aspect of most of these institutions is the service provision part of business. Whereas these institutions are meant to offer service in their area of operation, majority are poorly positioned to offer these services. The available system coupled with resource constraint has made these institutions not to meet their mandate.

Other areas where committees can be set to ensure compliance with governance systems includes having effective Ministry Management Committee which will be responsible for implementation of operational strategies and policies as set by the government. This will compliment the Boards in making general and operating business decisions of strategic nature before implementation.

Compensation Committee whose role would be to assist the board in meeting its responsibilities with regard to oversight and determination of executive compensation and to review and make recommendations to the board with respect to major compensation plans, policies and programmes of the corporation.

The Asset and Liabilities Committee is responsible for financial risk management, especially liquidity, interest rate and market risk as well as balance sheet structure and capital management. Its key objective should be to ensure that sustainable and stable returns are guaranteed within a framework of acceptable financial risks and controls.

A Nominating and Corporate Governance Committee could be set with a mandate of evaluating and make recommendations to the Board of Directors for the appointment of directors; and evaluate the performance of the Board of Directors and its members and committees.

The Governance and Control Committee could be set to be responsible for establishing; operating and complying with the regulatory and internal control framework. The committee could be mandated to review the effectiveness of the internal control systems and monitors all compliance and regulatory issues.

1.2 Statement of the problem

The Water sector institutions are still in infancy stages as they have barely been around for 10 years and any corporate failure in this sector will impact negatively on the Kenyan economy. In this era of globalization, the place for institutions to remain relevant and withstand challenges of globalization they have to subscribe to the ideals and principles of corporate governance.

The world has seen giants collapse because of deficiencies in the governance of institutions. There is overwhelming evidence that major global corporate failures can be attributed to board of directors. Most business failures can be attributed to either incompetence by management and fraud perpetrated by the same.

No research has been made on governance practices in the water sector. Research on corporate failures has been limited to the general public sector without giving keen attention to a specific sector. Jebet (2001) observes that the late 1980s and early 1990s focus was more on governance of public sector. The underlying reasons for these concerns have been the realization that governance had led to wastage and misuse of public resources. It is in view of this that efforts were focused on privatization of these entities during that period.

Mulandi (2002) observes that in the public sector institutional investors have been known to influence corporate decisions by virtue of large shareholding, these have not been successful in ensuring acceptable good corporate governance practices in modern business.

Mwangi (2002) notes that Africa has special conditions which need to be addressed differently when applying Corporate Governance practices that were developed internationally. These conditions should be recognized and targets, indicators and benchmarks adopted accordingly. He argues that while the general principles of Corporate Governance apply to entities in these locations, there is need to develop special rules with respect to entities located in African.

Mwakanongo (2007) notes that the shipping industry have well designed practices of corporate governance some of which are very rich and detailed as they are drawn from their principals some of which are based in Europe. No review has ever been undertaken to access the corporate governance structures and practices of the water sector in Kenya.

As a result of these assessments a key question arises: Are the existing corporate governance practices adequate for water sector in Kenya to avoid any failures in the corporate arena?

1.3 Objectives of the Study

The objective of this research project is to survey corporate governance practices employed in the water sector in Kenya.

1.4 Importance of the Study

Corporate governance is a key element in enhancing investor confidence, promoting competitiveness and ultimately improving economic growth. It is at the top of the international development agenda as emphasized by James Wolfensohn, former World Bank President:

“The proper governance of companies will become as critical to the world economy as the proper governance of countries”

Cultural, political and economic norms influence the way in which a society approaches corporate governance and its impact on board leadership, management oversight and accountability. The challenge of policy makers is to reach an appropriate balance of legislative and regulatory reform, taking into consideration international best practice to promote enterprise, enhance competitiveness and stimulate investment. The findings of this study will be of importance to the following stakeholders:

Management- The findings will help the management to make informed strategic decisions on issues of corporate governance. This will also form a baseline study which can be used to measure progress in future implementations. It will also highlight to them how improvements in corporate governance practices can improve the decision making process within and between a company’s governing bodies and should thus enhance the efficiency of the financial and business operations.

Present and potential investors -Potential investors in the water sector and those who have already invested in the sector will become knowledgeable on the mitigating agency problems. It will highlight ways of reducing agency cost, thus maximizing the value of the institutions to investors. It also will reveal how stakeholders rights; especially shareholders rights are recognized and protected.

Government and other Regulatory bodies-To the government and other regulatory bodies, the study will provide information and methodologies which can be replicated in measuring performance of institutions in other sectors. The government will learn how legitimate corporations that are managed with integrity, probity and transparency fair in the corporate world and borrow some of the practices to be incorporated in public and government agencies.

Academia- The study will offer a basis for further academic investigations into the areas of corporate governance and the agency problem. It will also serve as a reference tool for educational institutions that will train the next generation of managers, investors and policy makers on good corporate practices. It will highlight show from empirical evidence /studies how Corporate Governance contributes to competitiveness and facilitates corporate access to capital markets; this develops financial markets and economic growth.

Water Sector-The results of the study are also of interest to water sector institutions, employees and the society. This study will specifically highlight and bring into light how good corporate governance seeks to promote efficient, effective and sustainable corporations that contribute to the welfare of society by creating wealth, employment and solutions to emerging challenges. Some of the challenges will be adopted by other water institutions.

CHAPTER TWO

LITERATURE REVIEW

2.1 Definition of Corporate Governance

The term corporate governance is a relatively new one both in the public and academic debates, although the issues it addresses have been around for much longer, at least since Berle and Means (1932) and the even earlier Smith (1776). Corporate Governance is concerned with holding the balance between economic and social goals and between individual and communal goals. The corporate Governance framework is there to encourage the efficient use of resources and equally to require accountability for the stewardship of those resources. The aim is to align as nearly as possible the interest of individuals, corporations and society” (Cadbury 2002)

There isn't a university accepted definition of corporate governance. Defined broadly, corporate governance refers to the private and public institution, including laws, regulations and accepted business practices which in market economy, govern the relationship between corporate managers and entrepreneurs (“corporate insiders”) on one hand and those who invest resources in corporation on the other (Oman 2001). Other writers like Cochran and Wartick (1988) define corporate governance as “an umbrella term that includes specific issues arising from interaction among senior management, shareholders, boards of directors, and other corporate stakeholders.”

“Corporate Governance refers generally to the legal and organization framework within which and the principle and process by which corporation are governed. It refers in particular to the powers; accountability and relationship of those who participate in the directions and control of the company chief among these participants are the board of directors and management. These are aspects of corporate governance regime that have an impact on the relationship between shareholders and the company” (Du plessis J. et al 2005 pg1)

Governance has proved an issue since people began to organize themselves for a common purpose. How to ensure the power of organization is harnessed for the agreed purpose, rather than diverted to some other purpose, is a constant theme. The institution of Governance provides a framework within which the social and economic life of countries is conducted.

Corporate Governance concerns the exercise of power on corporate entities. The OECD provides the most authoritative functional definition of corporate Governance.

Corporate governance is the system by which business corporations are directed and controlled. The corporate governance structure specifies the distribution of rights and responsibilities among different participants in the corporation such as the board, managers, shareholders and other stakeholders, and spells out the rules and procedures for making decisions on corporate affairs. By doing this, it also provides the structure through which the company objectives are set, and the means of attaining those objectives and monitoring performance.

The significance of corporate Governance for the stability and equity of society is captured in the broader definition of the concept offered by World Bank; “corporate governance is concerned with holding the balance between economic and social goals and between individual and communal goals. The governance framework is there to encourage the efficient use of resources and equally to require accountability for the stewardship of those resources. The aim is to align as nearly as possible the interests of individual’s corporations and society.”

2.2 Review of Theories

The current debate on corporate governance has been polarized between, on the one hand, the shareholding paradigm and on the other hand the stake holding paradigm. The paradigm of shareholding and stakeholders are;

2.2.1 Shareholders Perspective

2.2.1.1 Inherent Property Rights Theory

The Inherent property rights conception is a very traditional wisdom based on the view that private ownership is fundamental to a desirable social order and to the development of an efficient economy. Thus private ownership rights are inviolable in any way. The inherence perspective was developed during the seventeenth and eighteenth centuries in corporate law theory. It was assumed that the right to incorporate is inherent in the right to own property and write contract and incorporations should be regarded as legal extensions of their owners (see Allen 1992). That doctrine asserts that the corporation as a legal group is simply created by the

state and is no more than a private association of shareholders. The new form of corporate property is the aggregation of individual property rights under a collective name, united by contract and protected by company law. Since shareholders are the owners of the corporation, the corporation has legitimate obligation and the managers have a fiduciary duty to act in the interest of the shareholders (Barker 1958, Mayson et al 1994). Under this theory, assets of the corporation are the property of the shareholders and directors and managers as agents of shareholders have no legal obligations to any other stakeholders (see Allen 1992, Blair 1995).

The Neoclassical economist Fredrick von Hayek and Milton Friedman are the major supporters of a liberal and individuals approach to property and corporate governance. For Hayek (1969), individuals owning private property and pursuing their self interest ensure the most efficient economic activities and outcome. Thus the corporation that uses shareholders capital must aim at maximizing profit to enhance shareholders value. If a corporation uses profit for any social purpose beyond the shareholders interest, this could be interpreted as managers' abuse of power and the allocation of corporate resources will not be efficient. Hayek goes on to argue that shareholders property rights in the corporation must be fully protected and shareholder control of the corporation must be strengthened. Friedman (1962, 1970) further asserts that the request for social responsibility of business is harmful to the foundation of a free society with a free enterprise, private property system.

In the recent debate on corporate governance, Sterberg (1998, 2000) defends the shareholder property rights view and seriously criticizes the stakeholder theory as undermining private property, agency duty, and value creating capabilities of a business. She then proposes to improve the Anglo-Saxon corporate governance system by enhancing the accountability of the company to its shareholders. This could be done either through effective internal monitoring such as shareholder voting rights, independent non-executive directors, and information disclosure to shareholders, or through the market of corporate control

2.2.1.2 Agency Theory

Agency theory can be traced back to Adam Smith (1937:700) who identified an agency problem (managerial negligence and profusion) in the joint-stock company. Under this theory, the central issue of corporate governance is equal to the problem of agents self interest behaviour in a

universal principal-agent relationship everywhere. A principal-agent relationship means that the principal (shareholder) delegates work to the agent (director and manager) who performs that work on behalf of the principal (Eisenhardt, 1989, p, 58). Based on the assumption of individuals maximizing their own utility, the agency theory asserts that managers as agents will not always act in the best interests of the shareholders and may pursue their own interest at the expense of the shareholders.

Agency theory concerns two problems occurring in the principle-agent relationship. The first is the difficulty or expense involve in the principle monitoring the agents behaviour and routine actions. The second problem is the different preferences concerning interactions between the principal and the agent because of their different attitude towards risk (Eisenhardt, 1989). Those problems lead to a particular type of management cost –‘agency cost’ –incurred as principal/owners attempts to ensure that agents /managers act in principals’ interest (Jensen and Meckling 1976).

The agency theory then focuses on solving the above problems by determining the most efficient contract governing the principal-agent relationship. Contractual relations are the essence of the firm, not only between shareholders, but also with employees, suppliers, customers, creditors and other stakeholders. The firm is not a reality, but a legal fiction created by a nexus of contracts of the principal-agent variety (Jensen & Meckling, 1976, p, 161). The firm is just like an ordinary market contracting between two people (Alchian & Demsetz, 1972, p, 119). As the agency problem exists for all of the contracts, thus writing a contract must provide safeguards for both the principal and the agents to align their interest. The key issue is the adoptions of an optimal incentive scheme to align the behaviour of the manager/agent with the interest of the owner/principal. The critical question is whether a behaviour oriented contract (e.g. salaries, hierarchical governance) is more efficient than an outcome oriented contract (e.g. commissions, stock options, transfer of property right, market governance) (Eistenhardt, 1989). The determination depends on the availability of complete information. When the behaviour of the agent is observed, a behaviour-based contract is optimal. When the agents’ behaviour is not fully observable, the principal has two options: to purchase information about the agent’s behaviour and reward that behaviour and to reward the agent on the basis on outcomes (e.g.

Profitability). Thus, the most efficient contract is the trade-off between the cost of measuring behaviour and the cost of measuring outcomes and transferring risk to the agents (Eisenhardt, 1985).

2.2.2.3 Stewardship Theory

The stewardship theory takes a different view on the nature of human beings from the agency theory and others (e.g. Marris, 1964; Nichols, 1969; Etzioni, 1975). While the agency theory is built on the assumption of self-interest human behaviour to assert that managers as agents cannot be trusted and should be fully monitored, the stewardship theory criticizes it as a false premise and claims instead the managers are good stewards of the corporation. Based on a traditional legal view of the corporation as a legal entity in which directors have a fiduciary duty to the shareholders, the stewardship theory argues that managers are actually behaving just like stewards to serve the shareholders interest and diligently work to attain a high level of corporate profit and shareholders returns. Thus, the separation of ownership from control does not inherently lead to a goal and interest conflict between shareholders and managers. The separation actually promotes the development of managerial profession, which is certainly beneficial for corporate performance and shareholders wealth. In this regard, empowering managers to exercise unencumbered authority and responsibility is necessary for the maximization of corporate profit and shareholders' value.

2.2.2.4 Finance Model

In a broad view, the finance model can be incorporated into the agency theory as a principal-agent, or finance, model (Keasy et al, 1995) because both are concerned with the effectiveness of market governance in ensuring that managers will act to maximize shareholders wealth. In a strict sense, the finance model is referred to the presupposed optimum of market-based governance asserted by financial economists, and is particularly associated with H.G Manne (1965) who advocated the market for corporate control. Thus, it is also called the efficient market model' (Blair, 1995, p, 107).

A theorem in financial economics is that the share price today fully reflects the market value of all future profits and growth that will accrue to the company. Believing in this assumption, the advocates of the finance model hold that shareholders interest are best served by maximizing

share price in the short run. The share price is an indicator of corporate performance and the stock market is the only objective evaluation of management performance. If a firm underperforms, its share price will be lower, which provides a chance for outsiders to buy the firm's stock and run the firm more efficiently in order to obtain a larger reward. The threat of a takeover provides management with an incentive to make efforts to perform better and maximize shareholders return in order to make their firm bid-proof. Therefore if the separation of ownership and control allows managers behaviour to deviate from shareholders value of profit maximization however the pressure of capital markets and takeovers are the most effective disciplines on managerial discretion (Alchian and Kessel, 1962; Manne, 1965).

Supporters of the finance model argue that corporate governance failure are best addressed by removing restrictions on factor markets and the market for corporate control (Fama. 1980). Shareholders residual voting right on takeover should be enhanced. They reject any ex post external interventions and additional obligations imposed on corporations which may distort free market mechanism (Hart, 1995). If any measures can be introduced to improve governance and to raise the value of the firm, it should be adopted without compulsion, such as a voluntary code adopted by Cadbury (see Keasy et al 1995).

2.2.2.5 Myopic Market Model

The myopic market model share a common view with the agency theory that the corporation should serve shareholders interest only. However the model criticizes the Anglo-American model of corporate governance as being fundamentally flawed by an over- concern with a short term interest- short –term stock market prices and short term expenditures due to huge market pressures.

This model argues that the current corporate governance system encourages managers to focus on short term performance by sacrificing long-term value and competitive capacity of the corporation (e.g. Hayes and Abernathy, 1980; Charkham, 1994; Sykes, 1994; Moreland, 1995). One of the features of the system is that the evaluation of both corporate performance and managerial efforts is heavily reliant on short term financial measurements, often judged on a 1year basis, sometimes even on a quarterly basis. Managers are forced to pay more attention to short term earning data and forecast and less attention to long term investment spending such as

our identity, our understanding of the specific person we are' and 'they cannot be reduced to contractual alliances for the temporary pursuit of gain' (Quoted in Warren, 2000,p,130). With the fundamental value of human rights and morality as a reference framework. The standard of a corporation's usefulness is not whether it creates individual wealth but whether it helps society gain a greater sense of the meaning of community by honouring individual dignity and promoting overall welfare (Sullivan and Conlon, 1997, p.713). Corporations are granted by the state not only as an economic entity for a commercial purpose, but more importantly as a social entity for general community needs. The corporation has a collective, rather than individual identity and executives are representatives and guardians of all corporate stakeholders' interest (see Hall, 1989).

This theory prefers to resolve dispute and conflicts of interest and overcome market failure and transactions cost by nationalizing corporations or by using legal intervention within a public law framework and improving the system of checks and balances.

2.2.2.2 Pluralistic Model

The pluralistic model supports the idea of multiple interest of stakeholders, rather than shareholders interest alone. It argues that the corporation should serve and accommodate wider stakeholder interest in order to make the corporation more efficient and more legitimate. Unlike the social entity theory that justifies stakeholders' interest on the basis of moral value and fundamental human rights, the pluralistic model legitimizes stakeholders' value in a more subtle way- more attuned to the traditional Anglo-American corporate governance mentality (Gamble and Kelly, 2001, p, 115). It suggest that corporate governance should not move away from ownership right, but that such right should not be solely claimed by, and thus concentrated in, shareholders; ownership rights can also be claimed by other stakeholders, particularly employees. Stakeholders who make firm specific investments and contributions and bear risks in the corporation should have residual claims and should participate in the corporate decision making to enhance corporate efficiency.

The pluralistic model is often connected with the instrumental position in claiming wide stakeholders' interests. Stake holding is regarded as an effective means of achieving specific ends, rather than as an end in itself. Most commonly it is argued that stake holding is instrumental in increasing efficiency, competition and profitability (Stoney and Winstanley, 2001, p.608)

2.2.2.3 Trusteeship Model

The trusteeship model adopts a realistic and descriptive perspective in viewing the current governing situation of a publicly held corporation. Drawing from the continental European conception of the corporation a social institution with a corporate personality, Kay and Silberston (1995) argue that a public corporation is not the creation of a private contract and thus not owned by any individual. Ownership is by definition where the owners have exclusive rights of possession, use, gain and legal disposition of a material object. Yet shareholders merely own their shares in a company and trade their shares with others in the stock market. They do not have rights to possess and use the assets of the company, to make decision about the direction of the company, and to transfer the assets of the company to others.

The residual claims of the shareholders are determined by the company and if the company's performance does not satisfy the shareholders requirements, the shareholders are left with a single option of 'exit' rather than 'voice' as shareholders in general are in no way able to monitor the management effectively and neither are they interested in running corporate business. In this sense, the assumption that the corporate is owned by the shareholders is in fact meaningless. For Kay and Silberston, ownership rights are not important to business. Many public institutions such as museums, universities, and libraries perform well without clear owners. Indeed, company law does not explicitly grant shareholders ownership rights because the corporation is regarded as an independent legal person separate from its members, and shareholders are merely the residual claimants of the corporation (see also Warren, 2000, p. 18). The company has its own assets, rights and duties, and has its own will and capacity to act and is responsible for its own actions. Therefore, Kay and Silberston reject the idea that management are the agents of shareholders. Instead they suggest that managers' are trustees of the corporation.

The trusteeship model differs from the agency model in two ways;

First the fiduciary duty of the trustees is to sustain the corporations' assets, including not only the shareholders wealth but also broader stakeholders' value such as the skills of employees, the expectation of customers and suppliers and the company's reputation in the society. Managers as trustees are to promote the broader interests of the corporation as a whole, not solely the financial interest of its shareholders.

Second, managers have to balance the conflicting interest of current stakeholders and future stakeholders and to develop the company's capacities in a long term perspective rather than focus on short term shareholders gain. To establish a trusteeship model, they ask for statutory changes in corporate governance. Such as changing the current statutory duties of the directors, ensuring the power of independent directors to nominate directors and select senior managers and appoint CEOs for a fixed four year term. Etc

2.3 Timeline on Water Governance in Kenya

After independent in 1963, the new government used five year development plans to harness the rapid development of the republic. The first development plan from 1964 to 1970 was mainly a carry- over from the colonial period whose focus was economic growth. Water development was declared important for the economy, and priority was given to schemes that were expected to be financially self-sustaining, such as water services for the municipalities.

In 1964, water Development Department was formed under the ministry of Agriculture, Animals Husbandry and Natural Resources to deal with both rural and small towns. Post independent changes were crucial due to increased water demands spurred by the population growth, urbanization and industrialization and other factors that led to the expanded use of water. Developing marginalized and neglected areas was a step to integrate the African population in the development and bring about equity in resource distribution.

Until 1964, the Hydraulic Branch of the Ministry of Works was responsible for water and sewerage development in urban areas. Rural water development was under the Ministry of Agriculture. However the responsibility for provincial setup of the division was divided between the Director of Water Development and the provincial Director of Agriculture. The distribution of authority and responsibility were vaguely defined leading to a persistent weakness in management of water supplies.

By 1972, Kenya had seen an improvement in the coverage of sewerage system. Inter-ministerial committee for rural water supply was established in February 1969, a decision that was made by the cabinet in order to accelerate the rate of community development. The committee had mandate to make recommendations and report to the ministry of agriculture on financial policy, water charges, rate collection, scheme selection criteria and evaluation of rural water development among others.

In 1972, the water development division was elevated to a department and the director of water development become directly responsible for the provincial organization. The water department was given the overall responsibility for water development in the country. The Ministry of Local Government was now in charge of water supplies in major municipalities.

Water Policy and Legislation

By 1965, the policy of cost recovery continued and all supplies were assessed from an economic viability point of view.

Around 1970, government policy shifted and water development became prioritized area for intervention. Backed by a strong economy, the government developed an ambitious program for a state led expansion of water development in the development plan 1970-1974. The program had the objective of “bringing acceptable water supply to the rural population before 2000”. Consequently, the total government water expenditure increased more than six folds.

The water act (cap 372) was deficient in providing an objective statement on what could constitute violation of law in so far as pollution was concerned. As a result, pollution problems in Kenya were normally handled on an ad hoc basis and only the most flagrant cases of pollution could be effectively controlled. Due to this predisposition it was deemed that any new legislation on control of pollution should be made under the water act either by introducing a new part or formulation of pollution within the act (Republic of Kenya, 1963 to 1972). Therefore in 1972, the water department released the interim report on the water pollution policy in Kenya which stated that the national goal to provide water for all in Kenya by the year 2000 need to go hand in hand with sewerage so as not to destroy the water sources through pollution. The report noted that 85% of the population at the time depended on the untreated water.

Post Independence

The first attempt to coordinate and streamline planning in the water and sanitization sector came as early as 1974 when the first National Water Master plan developed.

By 1979, it was obvious that the government goal of “water for all by the year 2000” was not achievable. The government accordingly reformulated its goal in the development plan for 1979

– 83: “to have an adequate water supply available to the entire population soon after the year 2000”.

This period witnessed a very high level of participatory development through emergence of self – help water projects, environmental sanitation projects, and inter-ministerial committee for rural water supply among other initiatives. Ministry of Water development saw conservation of environment prioritized and a secretariat established. There was a deliberate effort towards achieving equity in distribution of water supply as the government collaborated with international organization and other government in rural water development.

In the late 1980s there was a break with past policies with more emphasis on participation for progress and resource mobilization to attain sustainable development. After 1988, rural development was no longer of central focus in policy circles, instead there was movement towards cost sharing, retrenchment , sale of Parastatal, privatization, etc of some government function, price, import decontrols , removal of government subsidies and budget rationalization away from social programs.

On June 24th 1988, through legal notice No.270, the president ordered that the National Water Conservation and pipeline corporation NWCPC be established under the state corporation act. NWCPC supposed to operate those water supplies placed under its care on commercial. The main objectives were to commercialize water sector operations by determining the charges for water supplied by the corporation and establishing water tariffs structure for any particular consumer.

By 1990s, it emerged that the government lacked sufficient resources to match communities’ water needs. In response to unmatched resources to provide water for all by the year 2000, the government developed the national policy on water resources management as development sessional paper No. 1 of 1999.

Privatization and Commercialization of Water

In Kenya, privatization first became a major policy tool in 1980s with the IMF- World Bank Imposition of Structural Programs (SAPS) which forced the government to free markets and pull of out of loss making state enterprise. By the year 2002, public institutions which after independent held water more as a social good, were unable to render effective services hence paving way for the private sector to inject, commercial values to water supply in the country.

Through commercialization the water act required local authority to form autonomous water and sewerage companies with independent board of directors to provide water services and re-invest water revenues in service delivery improvement. The boards were also vested with power to license private water companies which could be a potential source of conflict with local Authorities.

Water Policy and Legislation

The presidential directive of April 1981, revised the then existing rural tariffs. The directive abolished temporary metered rural tariffs and unified official rural tariffs throughout the country in place of the existing geographically different tariffs. This directive started the direct influence of politicians on the policy in water sector. The directive lacked relevant consultation, coherence or accountability.

Under the district focus for Rural Development introduced in 1983, people were directly involved in the identification, design, implementation and management of projects and programs. This made the development more consistent with the needs and aspirations of citizenry. The decision making structure centered on the districts minimized the delays that often characterized centralized decision making systems. Resources were consequently equitably direct resources to areas of most needs.

In 1992, the ministry of water development released two important documents that continued to guide the sector up to the end of the decade. One was the delineation report whose main outcome was defined and improved definition of roles, functions and responsibilities of the principle actors in the sector, the Ministry of Water and Development and National Water Conservation and Pipeline Corporation. On the other hand, the National Water Master Plan set out long term for the much needed reforms in the management and development of the water sector.

The National Water Policy recommended the revision of water act cap 372. This act held up until 2002 when a new act known as water act 2002 was enacted. The water act 2002 was enacted with new institutions specified in the new decentralized setting. Decentralization leading to accountability and efficiency was the cornerstone of the act and called for a clear separation of functions within the sector (Nyangeri 2007).

2.4 Corporate Governance in Kenya

In November 1998 a workshop on the role of Non- Executive Directors was held at the Kenya College of Communication Technology Mbagathi, Nairobi. Although this seminar was sponsored and supported by leading organization with specific interest in corporate governance such as the Nairobi Stock Exchange (NSE), Capital Market Authority (CMA), Institute of Certified Public Accountant (ICPAK) and the Kenya Chapter of the Association of Chartered Public Accountants (ACCA) with participation drawn from many leading corporate organization, the organizers, M/s Dominion Consultant Limited, had no idea that this effort would develop into a major initiative on corporate governance, However, it was agreed that another forum be convened earlier the following year to deliberate more on the many issues that were mentioned but not exhaustively discussed. By the time the second seminar was being organized in March, 1999 at the white sands hotel, Mombasa it was becoming clear that the seminar would have to discuss major topics and principle of good Corporate Governance.

The reasons for this development included, but were not limited to;

The quality of governance at all levels was increasingly being seen as the most important factor for success of both the politico-economy and its institutions. An example locally would be Telkom Kenya who had to streamline their governance after the expiry of their monopoly era to remain in business.

Corporate Governance was increasingly taking centre stage, with the privatization and corporatization of the economies globally. Companies like Kenya Ports Authority and Kenya Railways had to embrace new governance mechanism in their operations.

There was greater expectation from society that corporate organizations, especially private one, should take a more leading role in the debate and implementation of economic revival strategies.

In the face of major scandals leading to the collapse of big corporations, especially state owned ones, with disastrous social and economic consequences, it was inevitable that the wider society, led by the mass media, would start questioning how these organization were run. Corporation that were failed by their management are like Kenya Co-operation Creameries, Kenya Pyrethrum Board and the defunct Kenya Farmers Associations.

Shareholders especially in publicly listed companies were becoming increasingly vocal demanding better transparency and disclosure of information from their directors.

Regulatory bodies, notably the CMA and the NSE were already hinting that they would require good Corporate Governance practices amongst the publicly listed companies. An initiative some have thought should be extended to private companies to.

The Mombasa seminar made important decision one of which was to create an interim committee with the mandate of doing all that was necessary to formulate a code of Best Practice for Corporate Governance in Kenya and to co-ordinate, where applicable, with other efforts in the region and beyond for the purpose of improving corporate Governance. The committee was also mandated to seek the establishment of a permanent organ to oversee the implementation of the code if the effort was to be sustained. The interim Committee set to work immediately and co-opted additional members from all organizations that were considered to have an interest in Corporate Governance. The committee also produced a first draft code of best practice and distributed it to over four hundred corporate organizations, development agencies, embassies and government departments with a request to send in comments about the draft and the way forward. The response was very encouraging and in the following weeks the committee was bold enough to register a trust, and to commence the organization of a workshop and seminar to further discuss and arrive at a wider consensus on the way forward. With the support of three development agencies, namely:

The Ford Foundation, the British Department for International Development and the Friedrich Ebert Foundation.

A two-day workshop of expert was held at Safari Park Hotel on the 6th and 7th October 1999. This was followed by a seminar attended by representative from over 70 corporate and other organization on the 8th October 1999.

Participant at the two functions resolved, among other things:

That the Code of Best Practice for Corporate Governance, as previously circulated and subsequently refined through expert input and comment from corporate responded, be adopted, printed and circulated as a guide for corporate Governance in Kenya.

That there was an agent need to establish a “Corporate Sector Foundation” to promote, coordinate and guide corporate governance in Kenya and

That the steering committee be mandated to proceed on the implementation of this resolution.

2.5 Importance of Corporate Governance

The importance of corporate governance cannot be overemphasized, with the globalization corporation good corporate governance plays a vital role in underpinning the integrity and efficiency of financial markets. Poor corporate governance weakens a company’s potential and at worst can pave the way for financial difficulties and even fraud. If companies are well governed, they will usually outperform other companies and will be able to attract investors whose support can help to finance further growth – (OECD (1999)).

Corporate governance also deals with the agency problem separation of management and finances. It assures financiers that their investment is soundly managed and that they will get a return on their financial investments. The agency problem is an essential element of the so called contractual view of the firm, developed by Coase (1937), Jensen and Meckling (1976) and Fama and Jensen (1983).

When fully implemented, good corporate governance ensures that large corporations are well-run institutions that earn the confidence of investors and lenders. The process ensures safeguards against corruption and mismanagement, while promoting fundamental values of a market economy in a democratic society. These are quite critical for the transitional African economies that are struggling to attract foreign direct investment. In a globalization economy, the implementation or otherwise of good corporate governance will increasingly determine the fate of individual companies and entire economies.

Corporate governance enhances the performance and ensures the conformance of corporations. They ensure corporate conformance with investors’ society interest and expectation by limiting the abuse of power, the siphoning-off of assets, the moral hazard and the wastage of corporate-controlled resources (so called “agency problems”). Simultaneously, they establish the means to monitor managers behaviour to ensure corporate accountability and provide for the cost-effective protection of investors and society’s interest vis-à-vis corporate insiders. Results from an extensive study of corporate governance in emerging markets by CSLA Global Emerging

Markets realized in April 2001 suggest that good governance pays. Elements of good governance considered include transparency, integrity and responsiveness to shareholders; focus on a few core businesses and firms' administration that largely benefit small investors. Corporate Governance has implications for economic development especially in helping to increase the flow of financial capital to firms in developing countries. This is quite important for policy makers in Africa who are concerned with attaining high long-term growth rates of about 7% per annum with the framework of the new partnership for Africa's Development (NEPAD). Without efficient companies or business enterprises, a country will not create wealth or employment. Without investment, companies will stagnate and collapse.

2.6 Best Practices With Respect To Corporate Governance

OECD observes that there is increasing evidence that link certain attributes to good governance and sustained improvement to organizational performance. These attributes were first articulated by the Nolan Committee of the UK in 1995 and have stood the test of time. These are: accountability, transparency/openness, integrity, stewardship, leadership and efficiency.

2.7 Corporate Governance Mechanism and their Interaction

Good corporate governance is not rocket science. It is common sense – little more than honest, transparent dealing by owners and managers. Of course, in the real world, this is more easily said than done. The real issues involve responsibilities and to whom the owners and managers owe them. In private enterprises, the confusion is between responsibilities owed to shareholders (especially majority shareholders), and managers, customers, creditors, workers and suppliers. There are many mechanism of control that investors can use such as ownership structure (large shareholders and creditors), the board of directors, the company secretary, use of external auditors the threat from the market of corporate control, remuneration schemes, and use of leverages, legal protection and pay per share price performance and external auditors.

2.8 Impediments to Implementation of Corporate Governance Mechanism

Corporate governance is the way in which businesses are directed, controlled and held to account for any financial transaction or work output. For this to happen successfully the organization must open them to scrutiny and ensure disclosure and transparency in its affairs. Governance fails due to: agency problems and self interest, managerial risk aversion, moral hazards, empire building and disengaged directors.

2.9 Empirical Studies

The purpose of this subsection is to review research in corporate governance and its impact. Research in corporate Governance have been ongoing ever since the introduction of the concept, however studies specific to the water sector have been few and I have no record of one that has been done and documented. This part review will serve three objectives namely;

It will show a corporate governance “mosaic” (i.e., the interaction among the actors and institutions that affect corporate governance) that encompasses a broader view of governance than has been considered in prior accounting research;

It will provide an overview of the principle findings of prior research; and it will identify important gaps in the research that represent promising avenues for future study.

One of the most important functions that corporate governance can play is in ensuring the quality of the financial reporting process. Leviit (1999) stated in a speech to directors. “The link between a company’s directors and its financial reporting system has never been more crucial.” further, the Blue Ribbon Commission (1999) called for auditors to discuss with the audit committee the quality and not just the acceptability of the financial reporting alternatives.

Corporate Governance has received increasing emphasis both in practice and in academic research (e.g. Blue Ribbon Committee report 1999; Ramsay Report 2001; Sarbanes-Oxley 2002; Bebchuk and Cohen 2004). This emphasis is due, in part , to the prevalence of highly publicized financial reposting fraud such as Enron, WorldCom, Aldelphia, and Parmalat, an unprecedented number of earnings restatements (Loomis 1999; Wu 2002 ; Larcker et al 2004) and claims of blatant earnings manipulation by corporate management (Krugman 2002). Further, academics research has found an association between weaknesses in governance and poor financial reporting quality, earning manipulation , financial statement fraud, and weaker internal controls (e.g. Dechaow et al 1996; Beasley 1996; Mc Mullen 1996;Beasley et al 1999; Beasley et al 200; Caecello et al 2000; Krishnan 2001;). Given these developments, there has been an emphasis on the need to improve corporate governance over the financial reporting process (e.g. Levit, 1999,) such as enacting reforms to improve the effectiveness of the audit committee (Blue Ribbon Committee 1999; Surbanes-Oxley Act 2002) and to make the board of directors and managements more accountable for ensuring the integrity of the financial report

(SEC 2002, The Business Roundtable 2002) as well as rapidly expanding of research on corporate governance.

Prior accounting research and the accounting profession have focused primarily on the board of directors and audit committee. For instance, the public oversight board (POB 1993) defined corporate governance as “those oversight activities undertaken by the board of directors and audit committee to ensure the integrity of the financial reporting process.” However a narrow view of corporate governance restricting it to only monitoring activities may potentially undervalue the role that corporate governance can play.

Further, in a recent meta-analysis of corporate governance research, Larcker et al (2004, 1) conclude that “the typical structural indicators used in academic research and institutional rating services have very limited ability to explain managerial behaviour and organizational performance”. Thus, a more comprehensive framework should consider all major stakeholders in governance mosaic, including those inside and outside the firm. For instance, the external auditor plays a significant role in monitoring financial reporting quality and hence can be viewed as an important participant in the governance process. We do not suggest that extant research has not looked at the role of the auditor but rather that the role of the auditor in the governance process is very complex as the auditor interacts with other stakeholders in the governance mosaic such as the audit committee and the management. In turn, the interplay among the stakeholders is affected by outside forces such as by regulators and stock exchanges as well as pressure to meet financial analysts. Further, the corporate governance mosaic suggest we need to look beyond much of the focus of current research in corporate governance that has concentrated on documenting association and not casual relationship (Larcker et al 2004) and to complement the current research by also investigating the substance of the interactions in the corporate governance arena. For example, although the emphasis in corporate governance has been on looking at issues of independence, Cohen et al. (2002) document that unless management allows itself to be monitored the substance of governance activities will be subverted.

On the local scene Jebet (2001) observes that the size of share ownership if widely dispersed leaves the largest shareholders with the control of board of directors by virtue of having more voting rights and minority shareholders end up not having any say in corporate governance.

Mulandi (2002) concludes that corporate governance audit is important in ensuring that companies actually comply with corporate governance principle. He further explains why external auditors are the preferred candidates to carry such assignments since they can maintain the independence required for such undertakings. Mureithi (2004) observes that the size of the board members has a significant correlation to leadership quality and corporate governance practice of a firm. Firms are encouraged to try and adopt different board structure like American style, and monitor which of the structures can support sound corporate governance framework. Maina (2007) reveal weaknesses in corporate governance especially in operationalizing principles of corporate governance and ensuring that they are upheld and practiced.

CHAPTER THREE

RESEARCH METHODOLOGY

3.0 Research Design

This study was concerned with the corporate governance practices and sought to evaluate the strength and effectiveness of the structures in place. In terms of corporate governance structures it focused on the practices in place, leadership structures of these organizations and the use of committees by the board. The questionnaire, attempted to bring out how the institutions applies the code of best practice. The research problem was conducted as a survey.

As has been mentioned earlier, this study was focused on institutions operating in the water sector in Kenya. The following is the procedure that was used for in data collection. The researcher contacted the senior managers of these institutions and explained the purpose of the research before leaving them with the study questionnaire which was tailored to gather all relevant data about the research problem.-see Appendix 5.

3.1 Population and Sample

Cooper and Schindler (2000), Population is the total collection of elements about which we wish to make some inference. The population sample of study included 16 water sector institutions formed by the Water Act 2002. The names and addresses of these institutions are available with the Ministry of Water and Irrigation as attached in Appendix 3.

The target population samples for this study were the 16 institutions which were considered as respondents.

3.2 Data Collection

The primary data was collected through semi-structured questionnaire distributed to senior managers of the 16 institutions and administered in person. The questionnaire used in this study contained a mix of questions, allowing open – ended and close – ended questions which included questions about the respondent's functional unit, work level, education background and how long he/she has been working for the institution.

The questionnaire sort to elicit information on the corporate governance practices, the use of various committees by the board and disclosure practice of the stakeholder they serve regardless of the background of the institution. The questionnaire also sort to establish the views and attitudes towards corporate governance further deepening and broadening of the reporting and

disclosure requirements in line with international standards. Data collection and analysis through questionnaire is simpler and speedier.

3.3 Data Analysis

The completed questionnaires were checked and verified for completeness, consistency and then data coded. The results were presented for analysis by using descriptive statistics such as, frequencies, proportions and percentages. The method allowed the data to be summarized in a simple, logical manner that enabled perspectives and interpretations to be easily obtained. It also gave the weights attached to each value of information and therefore be easy to understand. Charts and tables were used to supplement statistical analysis as they are appropriate for comparison of nominal data.



CHAPTER FOUR

DATA ANALYSIS

4.0 Introduction

In this chapter, the data from completed questionnaire was summarized and presented in tables, pie charts and percentages. It contains sections of discussion that are consistent with the objectives of the study; to survey corporate governance practices employed in the water sector in Kenya.

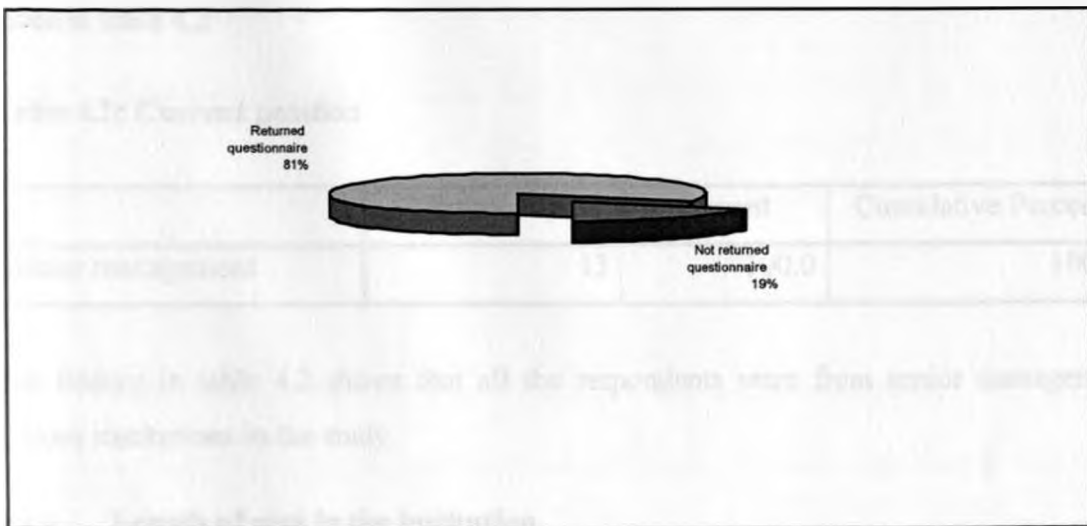
4.1 General Information

A total of 13 completed questionnaire guides were obtained from respondents. The general information considered for this study was; response rate, functional unit, position and length of stay in the institution.

4.1.1 Response Rate

Out of a population of 16 institutions presented in this study 13 responded. This gives an overall response rate of approximately 81.3% which the study considered adequate for analysis.

Figure 1: Response rate



4.1.2 Functional unit

The respondents were asked to state their functional unit. The results are given in table 4.1

Table 4.1: Functional unit

	Frequency	Percent	Cumulative Percent
Finance	8	61.5	61.5
Operations	2	15.4	76.9
Logistics	1	7.7	84.6
Administration	2	15.4	100.0
Total	13	100.0	

The findings presented in table 4.1 show that, 61.5% of the respondents were from finance unit, 15.4% from both operation and administration units and 7.7% from logistics unit. This shows that all the units identified for the study were included.

4.1.3 Current position

The respondents were asked to state their current position in the institutions. The findings are given in table 4.2

Table 4.2: Current position

	Frequency	Percent	Cumulative Percent
Senior management	13	100.0	100.0

The finding in table 4.2 shows that all the respondents were from senior management from various institutions in the study.

4.1.4 Length of stay in the institution

Length of service in the organization determined the rate at which staff changes jobs as well as the reliability of the information given by the respondents. The respondents were asked to state the length of service in their respective institutions. The results are given in table 4.3

Table 4.3: Length of service by employees

Number of service years	Frequency	Percent	Cumulative Percent
Under 5	4	30.8	30.8
6 to 14years	7	53.8	84.6
15 years and above	2	15.4	100.0
Total	13	100.0	

The result in table 4.3 shows that the respondents have worked in the organization for a period ranging from less than 5 years to over 15 years. 15.4% of the respondents had worked in the organizations for over 15 years, 53.8% had worked for a period of 6 to 14 years and 30.8% had worked for a period of less than 5 years. In general majority of the respondents have worked in the institutions for over 6 years, thus there is high level of understanding of the institutions operations.

4.2 Management and the board

This section covers information posed to the respondents on number of board members, professional qualification of board members, gender, and frequency of board meetings and effectiveness of the performance of the board.

4.2.1 Number of board members

The respondents were asked to state the number of board members in their institutions. The findings indicated that the institutions had board members ranging from four (4) to thirteen (13). More specific majority of the institutions had board made up of 12 members.

1.4.1 Composition of the board in terms of professional qualification.

The respondents were asked to state the number of professionals in their boards. The findings are as shown in table 4.4.

Table 4.4: Professional qualifications of board members

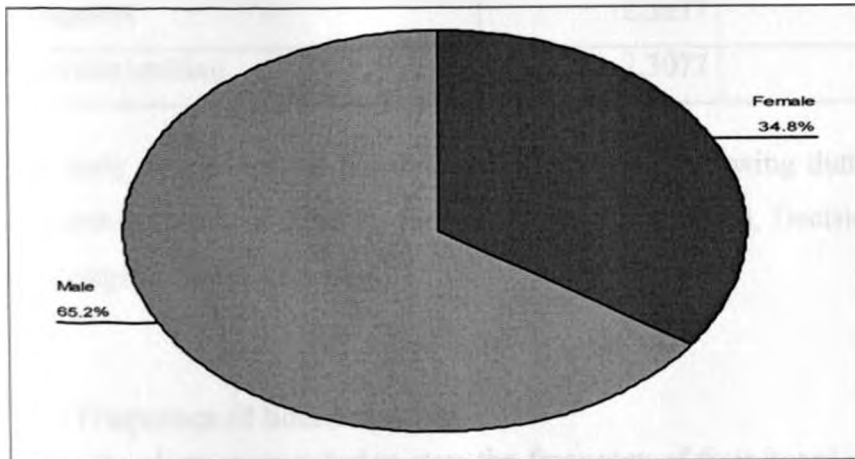
Qualification	Frequency	Percent	Cumulative Percent
lawyers	12	14.1	14.1
finance specialist	30	35.2	49.3
engineers	25	29.4	78.7
economists	18	21.3	100.0
Total	85	100.0	

As shown in table 4.4, majority of the respondents (35%) board members were finance specialist, 29.4% were engineers, 21.3% were economists and 14.1% were lawyers.

4.2.3 Composition of the board in terms of gender.

The respondents were asked to state the number of professionals in their boards. The findings are as shown in figure 2.

Figure 2: Gender Composition



As can be observed, in Figure 2, the respondent's board members were made up of 65.2 % male and 34.8% female.

4.2.4 Boards effectiveness in exercising duties to achieve the organization

The respondents were asked to rate the board's effectiveness in exercising some predetermined duties in a five point Likert scale. The range was 'strongly effective (1)' to 'strongly ineffective' (5). The scores of 'strongly effective' and 'effective' have been taken to present a variable which had an impact to a large extent (L.E) (equivalent to mean score of 0 to 2.5 on the continuous Likert scale ;($0 \leq S.E < 2.4$). The scores of 'to a uncertain' have been taken to represent a variable that had an impact to a moderate extent (M.E.) (equivalent to a mean score of 2.5 to 3.4 on the continuous Likert scale: $2.5 \leq M.E. < 3.4$). The score of both 'in-effective' and 'strongly ineffective' have been taken to represent a variable which had an impact to a small extent (S.E.) (equivalent to a mean score of 3.5 to 5.0 on a continuous Likert scale; $3.5 \leq S.E. < 5.0$). The findings are as shown in table 4.5.

Table 4.5: Boards effectiveness

	Mean	Std. Deviation
Leadership	2.3077	.94733
Integrity	2.3846	.86972
Enterprise	3.1538	.68874
Judgment	2.3077	.85485
Decision making	2.3077	1.03155

The study found that the boards were effective on following duties (mean score of 0 to 2.5); Leadership (mean of 2.3077), Judgment (mean of 2.3077), Decision making (mean of 2.3077) and Integrity (mean of 3.1538).

4.2.5 Frequency of board meeting

The respondents were asked to state the frequency of their board meetings. The findings are as shown in table 4.6.

Table 4.6: Frequency of the board meeting

	Frequency	Percent	Cumulative Percent
Once a year	4	30.8	30.8
Quarterly	9	69.2	100.0
Total	13	100.0	

The findings in table 4.6 show that majority (69.2%) of the institutions boards meet on quarterly basis while 30.8% of institutions boards meet once a year. Significant percent of institutions board meetings are on quarterly basis which is in line with the accepted practice of the quarterly review of the institutional performance. It was also noted that board's deliberations are normally communicated to stakeholders through board minutes, letters, emails, conferences, workshops and through top managements.

4.2.6 Assessment of board's performance in terms of itself, individual members and chief executive.

The respondents were asked to state whether the board assess its performance and effectiveness in terms of itself, individual members and chief executive. The findings are as shown in table 4.7.

Table 4.7: Assessment of board's performance

		Gender		Total
		yes	no	
Itself	Count	7	6	13
	%	53.8%	46.2%	100.0%
Individual members	Count	7	6	13
	%	53.8%	46.2%	100.0%
The chief executive	Count	11	2	13
	%	84.6%	15.4%	100.0%

The findings in table 4.7 indicated that the board assesses the performance and effectiveness of the chief executive more than itself and individual members, that is, 84.6% of the respondents

were of the opinion that the board assesses performance of the chief executive as compared to itself and individual members (53.8%) respectively. It was noted that this assessment were normally done on quarterly basis with reports written and communicated to the stakeholders from the assessment.

4.2.7 Level at which reports are discussed

The respondents were asked to state levels at which the reports of assessments were discussed. The findings are as shown in table 4.8.

Table 4.8: At what level are the reports discussed

	Frequency	Percent	Cumulative Percent
Committee meetings	3	23.1	23.1
Full board meetings	10	76.9	100.0
Total	13	100.0	

Majority of the institutions reports were discussed at full board meetings while only 23.1% of the institution discussed their reports during committee meeting.

4.2.8 Existence of succession plan for the senior management

The respondents were asked to state existence of succession plan for the senior management at their institutions. The results are shown in table 4.9.

Table 4.9: Does the organization have a succession plan for the senior management?

	Frequency	Percent	Cumulative Percent
Yes	9	69.2	69.2
No	4	30.8	100.0
Total	13	100.0	

As shown in table 4.9, most of the respondents (69.2%) were of the opinion that their institutions had succession plan for the senior management while 30.8% of the respondents felt that there is no succession plan for the senior management. It is therefore important to assess the

reason why other institutions do not have succession plan for the senior management and how they fill these positions when they fall vacant. Of those who had succession plan for the senior management, they normally carry out annual reviews to determine succession gaps and put in place plans to address through training and recruitment.

4.3 Stakeholders

This section covers information posed to the respondents on how institutions communicate with its stakeholders, accounting procedures, internal stakeholders and external stakeholder's policy guidelines.

4.3.1 Means of communication to stakeholders

The respondents were asked to state means through which institutions communicate to stakeholders. The respondents indicated that their institutions do communicate to stakeholders through letters, service performance charter, meetings, newsletters, newspapers radio, television talk shows and emails. The accounting procedures put in place to confirm these communications were minutes of attendance, officers in charge of communication, quarterly reports, complaints committees, performance targets and working reports.

4.3.2 Internal and external stakeholders

The respondents were asked to identify both internal and external stakeholders. Internal stakeholders identified were; staff clients, board's members, top management, suppliers, creditors, central government, local authorities, directors and farmers while external stakeholders were government, development partners, donors, other water institutions, non-governmental organizations, pipe manufactures and sponsors

4.3.3 Existence of policy guideline

The respondents were asked to state whether there exist policy guideline on how the institution relates to stakeholders. . The results are shown in table 4.10.

Table 4.10: Existence of policy guideline

	Frequency	Percent	Cumulative Percent
Yes	11	84.6	84.6
No	2	15.4	100.0
Total	13	100.0	

As shown in table 4.9, most of the respondents (84.6%) were of the opinion that their institutions had policy guideline on how the institution relates to stakeholders while 30.8% of the respondents did not have policy guideline on how relate to stakeholders.

4.4 Strategy, values performance and compliance

This section covers information posed to the respondent's on the responsibility of the boards, monitoring and evaluation of the strategies, and enforcement measures.

4.4.1 Extent to which the board of directors determine the operations of the organization.

The respondents were asked to state the extent to which the board of directors does determine some predetermined activities in the institution. The results are as shown in table 4.1

Table 4.11: Extent to which the board of directors determine the operations of the organization.

	Mean	Std. Deviation
The purpose and value of the institution	1.3846	.50637
The strategy and value of the institutions purpose	1.4154	.50637
Implementation of the institution value	1.2923	.85485

The finding in table 4.11 indicated that the board in all cases (mean less than 1.5000) do determine The purpose and value of the institution (mean of 1.3846), Implementation of the institution value (mean of 1.2923) and also determine the strategy and value of the institutions purpose (mean of 1.4154).

4.4.2 Who ensures that the procedure and values that protect the assets and reputation of the institution are put in place?

The respondents were asked to identify who ensures that the procedure and values that protect the assets and reputation of the institution are put in place. The results are as shown in table 4.12

Table 4.12: Who ensures that the procedure and values that protect the assets and reputation of the institution are put in place

	Frequency	Percent	Cumulative Percent
The board	6	46.2	46.2
The chief executive	2	15.4	61.5
Everybody in the management position including the board and the CEO	5	38.5	100.0
Total	13	100.0	

As indicated in table 4.12, 46.2% of the respondents were of the opinion that the board ensures that the procedure and values that protect the assets and reputation of the institution are put in place, 38.5% felt that everybody in the management position including the board and the CEO have the responsibility to ensures that the procedure and values that protect the assets and reputation of the institution are put in place.

4.4.3 Who monitors and evaluates the implementations of the institution's strategies, policies, and management performance

The respondents were asked to identify who monitors and evaluates the implementations of the institution's strategies, policies, and management performance. The results are as shown in table 4.13

Table 4.13: Who monitors and evaluates the implementations of the institution's strategies, policies, and management performance

	Frequency	Percent	Cumulative Percent
The board	8	61.5	61.5
The chief executive	2	15.4	76.9
The government	1	7.7	84.6
All departmental heads	1	7.7	92.3
Everybody in the management position including the board and	1	7.7	100.0
Total	13	100.0	

Findings in table 4.13 shows that the two key persons responsible for monitoring and evaluation/implementations of the institution's strategies, policies, and management performance were the board at 61.5% rating and the chief executive at 15.4%.

4.4.4 Who reviews the viability and financial sustainability of the institution?

The respondents were asked to identify who reviews the viability and financial sustainability of the institution. The results are as shown in table 4.14

Table 4.14: Who reviews the viability and financial sustainability of the institution?

	Frequency	Percent	Cumulative Percent
The board	8	61.5	61.5
The chief executive	3	23.1	84.6
Everybody in the management position including the board and	2	15.4	100.0
Total	13	100.0	

As indicated in table 4.14 the board (61.5%) and the chief executive (23.1%) are responsible to a great extent on review of the viability and financial sustainability of the institution. It was also noted that in most institution the reviews are carried out on quarterly basis.

4.4.5 Measure in place to ensure that the institution complies with all relevant laws, regulations, governance practices, accounting and auditing standard?

The respondents were asked to state whether there exist measure in place to ensure that the institution complies with all relevant laws, regulations, governance practices, accounting and auditing standard The results are as shown in table 4.15

Table 4.15: Is there any measure in place to ensure that the institution complies with all relevant laws, regulations, governance practices, accounting and auditing standard?

	Frequency	Percent	Cumulative Percent
Yes	12	92.3	92.3
No	1	7.7	100.0
Total	13	100.0	

As shown in table 4.15, most of the respondents (92.3%) were of the opinion that their institutions had measure in place to ensure that the institution complies with all relevant laws, regulations, governance practices, accounting and auditing standard while 7.7% of the respondents felt that their institutions did not have measure in place to ensure that the institution complies with all relevant laws, regulations, governance practices, accounting and auditing standard. Measures in place include; periodic audit carried out to ensure compliance with the reporting to government agencies (WASREB), statutory audit and performance contracting.

4.4.6 Who enforces the measures?

The respondents were asked to state who enforces the measures. The results are as shown in table 4.16

Table 4.16: Who enforces the measures

	Frequency	Percent	Cumulative Percent
The board	5	38.5	38.5
The chief executive	4	30.8	69.2
All departmental heads	1	7.7	76.9
Everybody in the management position including the board and the CEO	3	23.1	100.0
Total	13	100.0	

The results presented in figure 2 shows that the responsibility of enforcing the measures varies from institution to institution. More specific, 38.5% of the respondents stated that their board enforces the measures, 30.8% of the respondents stated that the chief executive enforces the measures, 23.1% of the respondents stated that Everybody in the management position including the board and the CEO enforces the measures and only 7.7% of the respondents stated that all departmental heads enforces the measures.

CHAPTER FIVE

SUMMARY OF FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

5.0 Introduction

This study was concerned with the corporate governance practices prevalent among water sector institutions in Kenya.

Chapter one of this study introduces the subject giving the background of the concept; it gives an overview of the environment within which water sector institutions operate in; and then examines the objective and importance of this study. The need to have this study is conceptualized in a vivid manner in this chapter.

Chapter two looks at the related studies done in this area of corporate governance and the different models that are there in corporate governance. A look at the best practices in Corporate Governance is done.

Chapter three and four takes you to the research methodology of the project and data analysis. In this chapter the findings of the study are summarized and discussed in relations to the objective of the study. This chapter includes conclusion, limitations, recommendations and suggestion for further research.

5.1 Summary of Findings

We can safely conclude that the representation of the respondents against the initial set target was significant and that the exercise was a success.

The objective of the study was survey corporate governance practices employed in the water sector in Kenya.

Foremost, the study found that majority of the board members were finance specialist, engineers and economists. The boards members were more effective Leadership, Judgment Decision making and Integrity, hence the institutions had boards which could be relied on.

It was noted that majority of the institutions boards meet on quarterly basis. This is in line with the accepted practice of the quarterly review of the institutional performance. It was also noted that board deliberations are normally communicated to stakeholders through board's minutes, letters, emails, conferences, workshops and through top managements.

The board assesses performance of the chief executive more as compared to itself and individual members on quarterly basis with reports written and communicated to the stakeholders from the assessment. Also the majority of the institutions reports were discussed at full board meetings.

The research findings established that most the institutions had succession plan for the senior management which are normally reviewed annually. Succession gaps are addressed through training and recruitment.

The respondents identified internal stakeholders to be staff, board members, suppliers, creditors and citizens while external stakeholders were: government, local authorities, development partners, donors, other water institutions, non -governmental organizations, pipe manufactures and sponsors.

It was apparent that the boards in all cases do determine the purpose and value of the institution, Implementation of the institution value and also determine the strategy and value of the institutions purpose.

In most institutions the board and the chief executive are charged with the responsibilities of ensuring that the procedure and values that protect the assets and reputation of the institution are put in place, monitoring, evaluation and implementations of the institution's strategies, policies, and management performance and reviews of the viability and financial sustainability of the institution.

The respondents unanimously agreed their institutions had measure in place to ensure that the institution complies with all relevant laws, regulations, governance practices, accounting and auditing standards. Measures in place include; periodic audit carried out to ensure compliance with the reporting to government agencies, statutory audit and performance contracting. These measures are mainly enforced by board, the chief executive and everybody in the management position including the board and the chief executive.

5.2 Conclusions and recommendations

From the foregoing analysis, the following conclusions can be drawn:

We can conclude that all institutions embraced corporate governance practices and the boards/chief executive's plays a leading role in most aspects of the institutions. Also the institutions have put in place checks and balances for all the persons assigned with responsibility.

However, I recommend that the institutions come up with programmes of how the board of directors can assess their performance as it was noted that they don't have mechanisms of assessing their performance. I further recommend that this should be annually the way they do to the chief executives and management.

The board of directors and chief executive officers should continue being keen on leadership, judgment, decision making and integrity which the main factors are guiding the boards in running the affairs of their institutions. Also, the relevant corporate governance stakeholders in the sector need to continue putting in place necessary infrastructure for corporate governance audits as this would provide increased value to the present day institutions and various stakeholders.

5.3 Limitations of Study

The main limitation of the study were time, money and the scepticism displayed by some of the respondents who ignored important aspects of the questionnaire while others even questioned the study's intention and were reluctant divulging information about their institutions.

Also the study involved a small number of persons who have direct interest in corporate governance matters. The results obtained, therefore, cannot be wholly conclusive on the feelings of all stakeholders to these institutions. It nevertheless provides an insight on what might be expected if the study could be extended to all key stakeholders in the water sector in Kenya.

5.4 Cases for Further Research

The importance of effective governance practices remains a key to success of any water sector institution. Stakeholders in the sector including key government agencies are therefore encouraged to further study corporate governance practices of boards of these institutions.

The study also should be broadened to include the views of board of directors, more senior managers and external auditors of these institutions as this could enlighten more on corporate governance practices.

REFERENCES

- Allen F and Gale D. (2002). *A Comparative Theory of Corporate Governance*.
- Beasley, M.S. (1996). *An empirical analysis of the relation between the board of director composition and financial statement fraud*. The Accounting Review (October), pp. 443-466
- Bebchuck and Cohen.(2004). *The Costs of entrenched boards*. Working Paper: Harvard Law School
- Blue Ribbon Committee. (1999). *Report and Recommendations of the Blue Ribbon Committee on Improving the Effectiveness of Corporate Audit Committees*. New York: New York Stock Exchange and Dealers Association of Securities Dealers.
- Cadbury. D. (2002), (2004). *Corporate Governance and Chairmanship*. A personal view
- Centre for Corporate Governance Trust. (2002). *Principles for Corporate Governance in Kenya*
- Centre for Corporate Governance in Kenya. (2005). *Guidelines on Corporate Governance in Cooperatives in Kenya*.
- Chandler, D.A. (2007). *Business History*.
- Cochran. P and Wartick. S. (1988). *Corporate Governance: A review of literature, financial executives*. Research Foundation, Moristown, New Jersey
- Cohen, J., Krishnamoorthy. G and A. Wright. (2002). *Corporate governance and the audit process*. Contemporary Accounting Research (Winter): 573-594.
- Dechaow, P.M. Sioan R.G., and Sweeney, A.P. (1996). *Causes and consequences of earnings manipulation: An analysis of firms subject to enforcement actions by the sec*. Contemporary Accounting Research (Spring), pp.1-36.
- Dine J. (2000), *The Governance of Corporate Groups*, Cambridge University Press, Cambridge

- Eisenhardt K.M, (1989). *Agency Theory: An Assessment and Review*, Academy of Management 14, 1, pp.57-74
- Fama,E and JensenM. (1983). *The Separation of Ownership and Control*.
- Gamble A., Kelly G. (2001). *Shareholders Value and the Stakeholder Debate in the UK*, Corporate Governance, Vol.9, No. 2, pp 110-11
- Hall K.L. (1989), *The Magic Mirror: Law in American History*, New York, Oxford University Press.
- Jebet, C. (2001) “*A study of Corporate Governance: The case of Quoted Companies in Kenya*” An Unpublished MBA project. University of Nairobi.
- Jensen M.C and Meckling, (1976), *Theory of the firm, Managerial Behaviour, Agency Costs and Ownership Structure*, Journal of Financial Economics, 3, pp.305-360
- Kay J., Silberston A. (1995), *Corporate Governance*, National Institute Economic Review, August, Vol. 84, pp. 84-97
- Keasy. K. Thompson S, Wright. M. (1997). Introduction: the *Corporate Governance problem-Competing Diagnoses and Solutions In:*
- Keasy. K. Thompson S, Wright. M. (1995). *Corporate Governance: Economic and Financial Issues*, Oxford University Press.
- Krishnan, J. (2001). *Corporate governance and Internal Control: An empirical analysis*. American Accounting Association Annual Meeting. Atlanta,Georgia.
- Krugman, P. (2002). *The insider game*. New York Times (July 12).
- Larker, D., S. Richardson and I.Tuna. (2004). *Does Corporate Governance really matter?* Working paper, The Wharton School.
- Levitt. A (1999). *Play up Shareholder rights to directors*. Investor Relations Business
- Lorsch, J. (1950). *Organization Behaviour*.
- Loomis, C.J. (1999). *Lies, damned lies, and managed earnings*. Fortune (August2).
- Mace, M. (2000). *Entrepreneurship*.
- Macmillan, (1932). *The Modern Corporation and Private Property*.
- Maina A, (2007). *A Survey of Corporate Governance Practices in Insurance Industry in Kenya*, MBA Project, University of Nairobi.

- Mwangi, A.K.G. (2002) “*A survey of Corporate Governance, Practices among Insurance Companies in Kenya*”. An Unpublished MBA Project, University of Nairobi
- Mulandi, K.T. (2002) “*A Survey of the opinion of Management and External Auditors of Public Quoted Companies and the need for Corporate Governance Audit in Kenya*” An Unpublished MBA Project, University Of Nairobi
- Mureithi A.M (2004) “*The relationship between Corporate Governance Mechanisms and Performance of firms quoted on the Nairobi Stock Exchange.*” An Unpublished MBA Project, University of Nairobi.
- Mutisya J.N. (2006). “*A Study of the Relationship between Corporate Governance and Financial Performance of Companies Listed on the NSE.*” An Unpublished MBA project, University of Nairobi.
- Mwakanongo, G.S. (2007).“*A survey of Corporate Governance Practices in Shipping Companies Operating in Kenya.*” An Unpublished MBA project, University Of Nairobi.
- National Water Policy. (1999). *Session Paper No.1*
- Nyangeri E. N. (2007). *Historical Timeline on Water Governance in Kenya*
- Oman, C.P. (2001). *Corporate Governance and National Development*. Available online: <http://www.oecd.org/dataoecd/19/61/2432585.pdf>.
- Osinde,R.N. (2007). *Improving Water Governance through Human Rights Based Approach in Kenya*. (www.watgovernance.org/)
- OECD (Organization for Economic Co-operation and Development) (1999) *Principles of Corporate Governance* (Paris: OECD)
- Private Sector Corporate Governance Trust. (1999). *Principles for Corporate Governance in Kenya and a Sample Code of Best Practice for Corporate Governance*.
- Private Sector Governance Trust. (2002) *Guidance for Good Corporate Governance in State-Owned Corporations*.
- Ramsay,I. (2001). Ramsay Report. *Independence of Australian Company auditors: Review of Current Australian requirements and proposals for reform*. Available online: <http://www.treasury.gov.au>. (Downloaded July 15th 2010)
- Republic of Kenya. (1972). *The Water Act Chapter 372*, Laws of Kenya Revised Edition. Government Printer, Nairobi
- Republic of Kenya. (2002). *The Kenya Gazette Supplement No. 107 (Acts No. 9): The Water Act 2002*. Government Printer, Nairobi, October 24

- Sacks J. (1997), *The Politics of Hope*, Jonathan Cape, London.
- Sarbanes, P., and M. Oxley. (2002). *Sarbanes-Oxley Act of 2002*. Washington, DC: United States Congress.
- Saleth, R.M and Dinar, A. (2005). *Can Water Institutions be Cured?*
- Smith, A. (1776). *Wealth of Nations*.
- Stoney C., Winstanley D. (2001), *Stakeholding: Confusion or Utopia? Mapping the Conceptual Terrain*, *Journal of Management Studies*, Vol.38, No.5, pp. 603-626.
- Sullivan D.P. and Conlon D.E. (1997), *Crisis and Transition in Corporate Governance Paradigms: The Role of the Chancery Court of Delaware*, *Law and Society Review*, Vol. 31, No. 4, pp. 713-763.
- Thornton, G. (2009). *Trends in Corporate Governance*.
- Warren R.C . (2000), *Corporate Governance and Accountability*, Liverpool Academic Press, Bromborough.
- Water Sector Reform Secretariat. (2005). *A Handbook of the Water Sector Reforms*. Water Sector Reform Secretariat, Nairobi.

APPENDICES

APPENDIX 1: INSTITUTIONS UNDER THE WATER ACT, 2002

1. Ministry of Water and Irrigation (MWI) –National level
2. Water Appeals Board (WAB) – National level
3. Water Services Trust Fund (WSTF) – National level
4. Water Resources Management Authority (WRMA) – National level
5. Catchment Area Advisory Committee (CAAC) – 6 No. at catchment level
6. Water Resources Users Association (WRUA) – Community based at Sub-catchment level
7. Water Services Regulatory Board (WASREB) – National level
8. Water Services Boards (WSBs) – 8 No. at regional level
9. Water Services Providers (WSPs) – according to need in WSBs
10. National Water Conservation and Pipeline Corporation (NWCPC) – National level
11. Kenya Water Institute (KEWI) – National level
12. National irrigation Board (NIB) – National level

APPENDIX 2: ROLES AND RESPONSIBILITIES FOR WATER AND SEWERAGE SUB SECTOR INSTITUTIONS

Institution	Roles and responsibilities
1. Ministry of Water and Irrigation (MWI)	<p>Development of legislation, policy and strategy formulation, sector coordination and guidance, and monitoring and evaluation</p> <p>Overall sector investments planning and resource mobilization</p>
2. Water Services Regulatory Board (WSRB)	<p>Regulation and monitoring of service provision (Water Service Boards and Providers)</p> <p>Issuing of licenses to Water service Boards</p> <p>Setting standards for provision of water services</p> <p>Developing guidelines (water tariffs etc)</p>
3. Water Services Boards (WSBs)	<p>Efficient and economic provision of water services</p> <p>Developing water and sewerage facilities, investments and planning and implementation</p> <p>Rehabilitation and replacement of infrastructure</p> <p>Applying regulations on water services and tariffs</p> <p>Procuring and leasing water and sewerage facilities</p> <p>Contracting Water Service Providers</p>
4. Water Services Providers (WSPs)	<p>Provision of water and sewerage services, ensuring good customer relations and sensitization, adequate maintenance of assets and reaching a performance level by regulation</p>

- | | |
|---|--|
| 5. Water Services Trust Fund (WSTF) | Financing provision of water and sewerage to disadvantaged groups (pro poor) as poverty fund |
| 6. Water Appeals Board (WAB) | Arbitration of water related disputes and conflicts between institutions and organizations |
| 7. National Water Conservation and Pipeline Corporation (NWCPC) | Construction of dams and drilling of boreholes |
| 8. Kenya Water Institute | Training and research |
-

Source: National Water Services Strategy, 2007

APPENDIX 3: WATER SECTOR INSTITUTIONS

1. Ministry of Water and Irrigation,
Maji House,
P. O. Box 49720,
NAIROBI
www.water.go.ke
2. National Water Conversation & Pipeline Corporation,
P. O. Box 30173-00100
NAIROBI
Tel: 531044/6/0722 338704
Fax: 531049
info@nwcpc.org.ke
3. Kenya Water Institute
P. O. Box 60013- 00200
NAIROBI
Tel: 607425/603905/0720 200060
Fax: 606718
kewi@accesskenya.co.ke
4. National Irrigation Board
P. O. Box 30372
NAIROBI
Tel: 2711380/2720434/0722521531
Fax: 2711347
nib@nib.org.ke
5. Water Services trust fund,
P.O. Box 49699,
NAIROBI
Fax: 2724357
Tel: 2722901/8/9/0722386317
info@wstfkenya.org
6. Water Appeals Board
P.O. Box 44111-00100
NAIROBI
Tel: 2724439
waterappealboard@yahoo.com

7. Lake Victoria North Water Services Board
P.O. Box 673-50100
KAKAMEGA
Off Ksm, KK highway Near Barclays Bank
Kefinco Complex
Tel: 056 30795/31506/0724526254
dmagomere@lvnwsb.co.ke
8. Northern Water Services Board
P. O. Box 495- 70100
GARISSA
Tel: 046 3598/0722 814155
northernwsb@yahoo.com
9. Coast Water Services Board
P. O. Box 90417- 80100
MOMBASA
Tel: 041 2317066/2315230/0722 736006
Fax: 041 2316471
cwsb@coastwaterboard.co.ke
10. Tana Water Services Board
P. O. Box 2192- 10100
NYERI
Tel: 061 2030765/2032282/0723 393072
Fax: 061 2034118
tanawaterboard@yahoo.com
11. Lake Victoria South Water Services Board
P. O. Box 3325
KISUMU
Tel: 057 2025128/0725 526609
Fax: 057 2025127/2024589
lakevicsouth@yahoo.com
12. Rift-Valley Water Services Board
P. O. Box 2451
NAKURU
Tel: 051 2213557/2213214/0722 528998
Fax: 2214915
rvwsb@africaonline.co.ke

13. **Tanathi Water Services Board**
P. O. Box 412,
KITUI
Kalawa Rd, KIDP Building
Tel: 044 22404/0722 244849
tanathiwsb@yahoo.com
14. **Water Services Regulatory Board**
P. O. Box 41621- 00100
NAIROBI
Tel: 2733561/2733582/0733 703638
Fax: 2733558/2733582
info@wsrb.or.ke
15. **Water Resources Management Authority**
P. O. Box 45250- 00100
NAIROBI
Tel: 2732291/2729950/0722 808064
wrma@wrma.or.ke
16. **Athi Water Services Board**
P. O. Box 45283- 00100
NAIROBI
Tel: 2724292/3/0722519568/0725674763
info@awsboard.go.ke

APPENDIX 4: REQUEST LETTER TO PARTICIPATE IN RESEARCH

James Modi
University of Nairobi,
P.O Box 30197, G.P.O,
Nairobi.

Dear Sir / Madam

RE: REQUEST FOR RESEARCH DATA

I am a post graduate student at the University of Nairobi, studying masters in Business Administration degree and specializing in finance. In partial fulfilment of the degree requirements, I am undertaking management research project on “A survey of corporate governance practices in the water sector in Kenya”.

You have been selected for this study and therefore would greatly appreciate if you can complete the attached questionnaire.

This study is purely for academic purposes and all information gathered shall be treated as confidential. This study may bring out some suggestion which could be useful for the sector. A copy of the final study shall be availed to you upon request once the study is complete.

Thank you in advance for the valuable contribution of your time and information.

Regards,

James Modi
Researcher

**APPENDIX 5: QUESTIONNAIRE SURVEY ON CORPORATE GOVERNANCE
PRACTICES**

SECTION 1: INTRODUCTION

1. Name of your institution _____
2. Nature of business _____
3. Date of incorporation _____
4. Please check the circle that represent your functional unit
 - Finance
 - Marketing
 - Operations
 - Logistics
 - Administration
 - Others(Specify) _____
5. Please indicate your work level (this part is optional)
 - a. Senior management
 - b. Director
6. For how many years have you been working with your institution?
 - a) Under 5
 - b) 6 to 14years
 - c) 15 years and above

SECTION 11: MANAGEMENT AND THE BOARD

- 1) What is the total number of board of directors? _____
- 2) What is the composition of the board in terms of professional qualification?
 - a). Lawyers (give number)
 - b). Finance specialist
 - c). CPA
 - d). Engineers
 - e). Economists
 - f). Other profession (list and give number) _____
- 3) What is the composition of board in terms of gender?
 - a). Male [_____]
 - b). Female [_____]
- 4) How effective do you consider the board to be in exercising the following so as to achieve the organization objectives? Please indicate your agreement or disagreement. For each attribute please circle the appropriate number to
Indicate whether you
 1. Strongly Effective
 2. Effective

- 3. Uncertain
- 4. In-effective
- 5. Strongly ineffective

Circle one and only one answer for each statement. There is no right or wrong answer to these questions. Just give your opinion

- | | | | | | |
|---------------------|---|---|---|---|---|
| a). Leadership | 1 | 2 | 3 | 4 | 5 |
| b). Integrity | 1 | 2 | 3 | 4 | 5 |
| c). Enterprise | 1 | 2 | 3 | 4 | 5 |
| d). Judgment | 1 | 2 | 3 | 4 | 5 |
| e). Decision making | 1 | 2 | 3 | 4 | 5 |

5) How frequently does the board meet?

- a). Once a year
- b). Twice a year
- c). Three times a year
- d). Quarterly
- e). Specify if not any of the above _____

6) How is their deliberations communicated to stake holders?

7) Does the board assess the performance and effectiveness of

- a) Itself
 - Yes
 - No
- b) Individual members
 - Yes
 - No
- c) The Chief Executive
 - Yes
 - No

8) If yes how frequently is this done

- a). For itself [_____]
- b). For individual members [_____]
- c). For the chief executive [_____]

9) Are reports made from these assessments

- Yes
- No

10) At what level are the reports discussed?

- a) Committee meetings
- b) Full board meetings
- c) Special meetings
- d) Others (indicate)

11) Are there any induction programs in place for new board members?

- Yes
- No

12) Are there continuous members skill development program for the board?

- Yes
- No

13) Is there any training program for the Management?

- Yes
- No

14) Is there any training program for the staff?

- Yes
- No

15) Does the organization have a succession plan for the senior management?

- Yes
- No

16) If yes briefly explain how it works _____

SECTION 111: STAKE HOLDERS

1).How does the institution communicate with its stakeholders?

2).To what extent is the institution accountable to its stakeholders?

3).What accounting procedures are there in place to affect this?

4).Do you think the stakeholders are satisfied with this

- a). Very satisfied
- b). Satisfied
- c). Not satisfied at all

5).Who are the internal stakeholders of the institution?

6).Who are the external stakeholders of the institution?

7).Is there a policy which guides how the institution should relate with them?

- a) Yes
- (b) No

SECTION IV: STRATEGY, VALUES PERFORMANCE AND COMPLIANCE

1) To what extent would you say the board of Directors do determine the following

(i) In all cases (ii) sometimes (iii) Not at all

a) The purpose and value of the institution []

b) The strategy and value of the institutions purpose []

c) Implementation of the institution value []

2) Who ensures that the procedure and values that protect the assets and reputation of the institution are put in place?

a) The board

b)The chief executive

c) The government

d) All departmental heads

e) Everybody in the management position including the board and the CEO

3) Who monitors and evaluates the implementations of the institution's strategies, policies, and management performance?

a) The board

b)The chief executive

c) The government

d) All departmental heads

e) Everybody in the management position

4) Who reviews the viability and financial sustainability of the institution?

a) The board

b)The chief executive

c) The stakeholders

d) All departmental heads

e) Everybody in the management position including the board and the CEO

5) How frequently is this done? _____

6) Is there any measure in place to ensure that the institution complies with all relevant laws, regulations, governance practices, accounting and auditing standard?

Yes

No

7) Please state the measure

8) Who enforces the measures?

a) The board

b) The chief executive

c) The stakeholders

d) All departmental heads

e) Everybody in the management position including the board and the CEO