



# MWONGOZO

*The Code of Governance for State Corporations*

Issued jointly by:  
Public Service Commission (PSC)



State Corporations Advisory Committee (SCAC)

January, 2015

# State Corporations Advisory Committee

## Our mandate

To advise government on all matters pertaining to the general administration of State Corporations.

## Vision

To be the preferred strategic adviser for development of a State Corporations sector that contributes meaningfully to the development of the country in a sustainable and cost effective manner.

## Mission

To provide leadership in development and implementation of systems and procedures for ensuring efficient management of State Corporations

## Core values

- |                    |                   |                   |
|--------------------|-------------------|-------------------|
| 1. Transparency    | 2. Accountability | 3. Integrity      |
| 4. Professionalism | 5. Innovativeness | 6. Customer focus |



Republic of Kenya

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KICC - Nairobi County

Photo courtesy: Kenya Yearbook Editorial Board



**Republic of Kenya**

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The Code of Governance for State Corporations

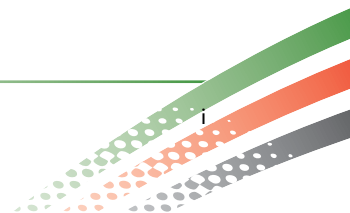
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*His Excellency Hon. Uhuru Kenyatta, C.G.H.,  
President and Commander - in - Chief of the  
Defence Forces of the Republic of Kenya*

## FOREWORD

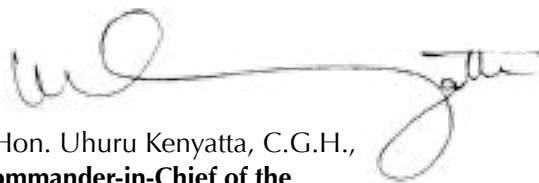
The imperative for Kenya to apply all of her resources to address the national development challenges is as important today as it was at independence. Today, we face increasing demands from our growing population, particularly from young people. There is a clear need to create employment and other opportunities for our people to lead decent and meaningful lives and for our country to trade and effectively tap the emerging resource boom. *Mwongozo* is my call to all public institutions to operate effectively and efficiently in order to assist our nation to realize our shared goals.

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

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

As a major milestone, the Constitution of Kenya, 2010 has taken significant steps to address the question of leadership, governance and management of public resources. The success of State Corporations is premised on the Government's role in ensuring that public institutions are effectively led and managed. To achieve these ends, we have developed *Mwongozo*, a Code of Governance for State Corporations aligned to the Constitution, that I am proud to issue. We need to implement *Mwongozo* in order to increase efficiency and accountability in the use and deployment of scarce public resources. *Mwongozo* allocates responsibilities for supervision, implementation and enforcement to different institutions while respecting the role of complementary agencies.

My Government is committed to the full implementation of all the provisions of *Mwongozo* and will accord the process all the support required to ensure that State Corporations deliver the expected outcomes that we all desire. I therefore call upon all of us in the public sector to adhere to *Mwongozo*. My issuance of *Mwongozo* should not be seen as an end in itself but as the first step towards propelling our governance ethos to the international arena. My Government is particularly eager to ensure that Kenya accedes to the Convention of the Organization for Economic Cooperation and Development (OECD) in the near future for purposes of entrenching corporate governance. In this regard, I will shortly be issuing *Mwongozo* as Regulations under section 30 of the State Corporations Act, Cap 446.



His Excellency Hon. Uhuru Kenyatta, C.G.H.,  
**President and Commander-in-Chief of the  
Defence Forces of the Republic of Kenya**  
December 2014.



***Joseph K. Kinyua, CBS***

*Chief of Staff and Head of Public Service*



***Prof. Margaret Kobia, PhD, CBS***

*Chairperson, Public Service Commission*

## PREFACE

Parastatal reforms currently taking place in Kenya are a deliberate Government response to the need for more effective utilization of public resources in the face of rising societal needs. These reforms are targeted at achieving improvements in public service delivery as part of the wider public reforms. To address the challenges of governance in State Corporations, the Government developed *Mwongozo* as a critical building block in entrenching principles and values of public service and best practices in corporate governance.

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

The state as the owner has established its overall expectations and set mandates for State Corporations which have been given operational autonomy and insulated from political interventions. The role of oversight institutions has been enhanced to monitor, consolidate and share information across government. *Mwongozo* recognizes that the most important tool for improving corporate governance is to appoint professional Boards with well-defined skillset; undertake board induction and evaluation and require regular performance reports. The reduction in the size of the Boards and the increase in the number of independent Board members is therefore a game changer in boardroom affairs.

*Mwongozo* addresses matters of effectiveness of Boards, transparency and disclosure, accountability, risk management, internal controls, ethical leadership and good corporate citizenship. These practices are at the core of the values and principles of Public Service as enshrined under Article 232 of the Constitution of Kenya, 2010. *Mwongozo* further provides a platform for addressing shareholder rights and obligations and ensuring more effective engagement with stakeholders. More importantly, *Mwongozo* will ensure that sustainability, performance and excellence become the hallmark of management of State Corporations.

*Mwongozo* lays a firm foundation for the management, governance and oversight of State Corporations. It is firmly grounded in our constitutional values and principles as well as best global practices. *Mwongozo* builds on gains realized from past reform efforts in the State Corporations sector. It is hoped that implementation of *Mwongozo* will result in effective and efficient State Corporations that deliver value to Kenyans in a transparent and accountable manner. The *Mwongozo* framework will lead to a positive impact on the Country's national budget while improving the public's perception of quality and delivery of public service. It is therefore the Government's determination that all the provisions of *Mwongozo* be fully and meticulously implemented by the State Corporations Advisory Committee (SCAC).

Joseph K. Kinyua, CBS  
**Chief of Staff and Head of  
Public Service**

Prof. Margaret Kobia, PhD, CBS  
**Chairperson, Public Service  
Commission**

# MEMBERS OF THE PARASTATAL REFORM IMPLEMENTATION COMMITTEE



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Implementation Committee*



## ACKNOWLEDGMENTS

Many dedicated public sector officers and private sector experts contributed to the development of *Mwongozo*. It is not possible to list by name every person and institution whose ideas, expertise and time went into the production of *Mwongozo*. However, the following deserve special mention.

High commendation goes to His Excellency The President, Hon. Uhuru Muigai Kenyatta, CGH, for the honour and trust bestowed on the Parastatal Reforms Implementation Committee to spearhead the reforms in the State Corporations Sector. His Excellency The President conceived the structural transformation, which led to his appointment of the Presidential Taskforce on Parastatal Reforms. He subsequently adopted the Taskforce Report and the wide ranging reform recommendations. He steered the reform process further through regular follow up, and gave direction for the development of *Mwongozo*.

*Mwongozo* is ultimately an integral part of the reform recommendations developed by the Presidential Taskforce on Parastatal Reforms that was co-chaired by Hon. Abdikadir Mohammed and Mr. Isaac Awuondo. The bold and radical reform measures that the Taskforce recommended heralded the birth of *Mwongozo*.

Many thanks also go to Mr. Joseph Kinyua, CBS, Chief of Staff and Head of the Public Service who ably took up the mantle of chairing the Implementation Committee appointed by H.E The President to oversee the implementation of the recommended reforms. Indeed *Mwongozo* is a critical output of the implementation process. The Chairman led a dedicated team that tirelessly put in their best to ensure that all the provisions in *Mwongozo* are sound and consistent with international best practice. The membership of the Committee comprised of Ms. Marianne Kitany, Dr. Kamau Thugge, Hon. Abdikadir H. Mohamed, Mr. Stephen Kirogo, Mr. Isaac Awuondo, Mr. Nelson Kuria, Dr. Mbui Wagacha, Dr. Korir A. Sing'oei and Ms. Christine Agimba. The Secretariat was headed by Mrs. Jane Mugambi while the Joint Secretaries were; Mr. Simon M. Indimuli, Mr. Hamisi M. Williams, Ms. Grace Wandera, Dr. Eric Aligula, Mr. Alexander George Owino, Mr. Brian Ikol, Mr. Morris Kaburu and Ms. Catherine Ochanda.

The Public Service Commission (PSC) under the Chairmanship of Prof. Margaret Kobia reviewed the Code to ensure that it promotes the values and principles set out in Articles 10 and 232 of the Constitution of Kenya, 2010.

We are also thankful to the Chairman of the Constitutional Implementation Committee for validating the values and principles in *Mwongozo* and providing for these under the Government Owned Entities Bill, 2014 which was reviewed by the Commission. Towards this end, the Vice Chairperson, Dr. Elizabeth Muli, convened various round-table sessions and her professionalism in the exercise was exemplary. The World Bank team, led by Alexander Berg provided valued benchmarks, thereby enriching the Code.

The State Corporations Advisory Committee (SCAC) through its Chairman Mr. Arthur Namu and the Secretary, Mrs. Jane Mugambi, was critical in facilitating the entire process. SCAC engaged the Institute of Certified Public Secretaries of Kenya (ICPSK) to assist in the development and validation of *Mwongozo*. The Institute, being the legally recognized professional corporate governance body in Kenya, guided the professional development of *Mwongozo* under the chairmanship of Ms. Catherine Musakali, who tirelessly engaged with various stakeholders to ensure that the provisions in *Mwongozo* are acceptable and conform to international standards.

**“Good governance must be well coordinated and orchestrated.”**



**Uhuru Park Fountain - Nairobi County**

*Photo courtesy: National Museums of Kenya*

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## ABBREVIATIONS

BCP	Business Continuity Plan
CEO	Chief Executive Officer
CMA	Capital Market Authority
CoK	Constitution of Kenya
EACC	Ethics and Anti- Corruption Commission
ICPSK	Institute of Certified Public Secretaries of Kenya
ICT	Information Communication Technology
OECD	Organization for Economic Co-operation and Development
PSC	Public Service Commission
SC	State Corporation
SCAC	State Corporations Advisory Committee
SMART	Specific, Measurable, Attainable, Realistic, and Time Bound
SRC	Salaries and Remuneration Commission



## INTRODUCTION AND BACKGROUND

Corporate governance is the structure and system of rules, practices and processes by which an organization is directed, controlled and held accountable. It encompasses authority, accountability, stewardship, leadership, direction and control exercised in organizations. Corporate governance essentially involves balancing the interests of the many stakeholders in an organization. These include its shareholders, management, customers, suppliers, financiers, government and the community. Corporate governance also provides the framework for achieving the objectives of the organization, and creates benchmarks for the measurement of corporate performance and disclosure.

The weak financial performance of the majority of SCs in Kenya has been attributed to an inadequate governance framework. The Presidential Taskforce on Parastatal Reforms noted in its report that SCs operate under a governance structure that was complex, involving relationship between Parliament, Ministries, Boards and CEOs. This complexity has been a source of confusion and conflict, particularly in the allocation of responsibilities, and in accountability for results. The improved performance and viability of SCs will require the development of an appropriate governance framework.

In recommending the development of a consolidated code of governance for SCs, the Taskforce identified the challenges that needed to be resolved. These were set out as: absence of a clear framework for recruitment, selection, appointment and inductions of Boards of SCs; lack of uniformity in the application of appointment procedures; inadequate induction processes for Board members; lack of proper skills mix and bloated Boards; shortcomings in the process of appointment of CEOs; lack of understanding of the role of Boards by directors; and fusing of the roles of the Chief Executive and Board Secretary.

This Code of Governance is anchored on the Constitution of Kenya, 2010. Article 10 of the Constitution entrenches national values and principles of governance while Article 73 places emphasis on public trust, honor and dignity of public offices. Personal integrity, and values and principles of public service are reinforced in Article 232, which also provides for efficiency, effectiveness and economic use of resources. The Code takes into consideration Chapter Six of the Constitution on Leadership and Integrity as well as the Public Officers and Ethics Act, 2003.

The achievement of Vision 2030, Kenya's long term development blue print requires full, transparent and accountable participation of SCs. Good corporate governance is therefore crucial in transforming SCs into engines of economic development and social wellbeing in the country. Further, good corporate governance promotes value enhancement for stakeholders including the public and the governments, thus ensuring that benefits flow to every aspect of the economy. Good corporate governance in the public sector in the country will result in accelerated development and fast track the transformation of the Kenyan economy into a newly industrialized country by 2030.

Global best practices demonstrate the strong linkage between good governance and enterprise growth and profitability. The institutionalization of good governance practices in the leadership and governance of SCs is therefore expected to spur growth, development, employment creation and economic transformation of the country.

In recognition of the mandate and the role of the Institute of Certified Public Secretaries of Kenya in championing good corporate governance, the Implementation Committee of the Presidential Taskforce recommendations requested the State Corporations Advisory

Committee jointly with the Institute to develop the Code of Governance for SCs. The Code takes into account the national context of the economic, social and political development, particularly, Vision 2030; and the Constitution of Kenya, 2010. It also includes lessons learned from international best practice in good corporate governance.


This Code of Governance therefore seeks to improve the governance of SCs by addressing the challenges identified by the Taskforce, and to pro-act to international best practice in corporate governance. In this respect, the Code incorporates lessons learned in the development of similar codes in United Kingdom, South Africa, Malaysia, Singapore and India. Specific provisions in the Malaysian Code of Corporate Governance, (2012), the King Code of Governance for South Africa (King III), (2009), and the SCAC Guidelines (2004), have been reviewed for their relevance to Kenya's SCs. Appropriate principles and practices have been incorporated in this Code, with modifications as necessary. Reference has also been made to the Corporate Governance Regulations of the Capital Markets Authority (CMA) and relevant principles and practices adopted, as necessary. This Code has incorporated some principles benchmarked from best practices by the SCAC Taskforce (2011) from China, South Africa, Singapore and Malaysia.

The Corporate Governance framework developed into this Code embodies the six principles of good governance developed by OECD, and which are now global benchmarks for corporate governance principles. These are: ensuring the basis for an effective corporate governance framework; the rights of shareholders and key ownership functions; the equitable treatment of shareholders; the role of stakeholders; disclosure and transparency; and the responsibilities of the Board. Further, the Code also takes into account the 2005 *OECD Guidelines on Corporate Governance of State-Owned Enterprises*, which were meant to cater for governance of state corporations. The governance guidelines include requirements that: State-owned enterprises should observe high standards of transparency in accordance with OECD principles of corporate governance; the boards of state-owned enterprises should have the necessary authority, competencies and objectivity to carry out their function of strategic guidance and monitoring of management; and members of the Board are required to act with integrity and be held accountable for their actions.

This Code of Governance is organized into eight chapters as follows:

- Chapter One - The Board of Directors
- Chapter Two - Transparency and Disclosure
- Chapter Three - Accountability, Risk Management and Internal Control
- Chapter Four - Ethical Leadership and Corporate Citizenship
- Chapter Five - Shareholder Rights and Obligations
- Chapter Six - Stakeholder Relationships
- Chapter Seven - Sustainability and Performance Management
- Chapter Eight - Compliance with Laws and Regulations

Each Chapter has an overarching governance statement; the principles, which are the underlying basis of the governance parameter; and the practices, which are the drivers of good governance in SCs.



This Code will be implemented on a “*comply or explain*” basis. The “*comply or explain*” approach recognizes that at the implementation of *Mwongozo*, SCs will be at different levels of compliance with corporate governance norms. This approach therefore allows organizations time to fully comply at a pace that is realistic in their circumstances and to learn from the experience of others, whilst at the same time taking responsibility and ownership for any non-compliance. While full compliance is expected, the approach positively recognizes that a satisfactory explanation, coupled with a roadmap to full compliance will, in certain circumstances be acceptable. This requires that the disclosures for non-compliance will need to be detailed and Boards will be held to account for any explanations given.

In the event that the provisions of this Code are in conflict with any sector specific code of governance, the higher standard shall prevail.

**“Peace, Love and Unity is the bedrock of good governance that propels us to greater heights of performance.”**



**Uhuru Gardens - Nairobi County**

*Photo courtesy: Kenya Yearbook Editorial Board*



# CHAPTER 1

## THE BOARD OF DIRECTORS

### Governance Statement

To achieve its strategic objectives, the organization should be led by an effective Board. The Board should be composed of competent, diverse and qualified members capable of exercising objective and independent judgment. The Board should have appropriate autonomy and authority to exercise its functions and should be accountable to shareholders and act responsibly towards stakeholders.

### Governance Principles

1. The composition and size of the Board should provide a diversity of gender, competencies and skills required for the effective leadership of the organization.
2. The Board should provide strategic direction to the organization, exercise control and remain accountable to shareholders.
3. The Board should ensure that Board members are inducted and that their skills and knowledge are continually developed to enhance effectiveness.
4. The performance of the Board, its committees and individual directors should be evaluated annually.

	Governance Parameter	Governance Practice
1.1	Appointment, Composition and Size	<ol style="list-style-type: none"><li>1. Board appointments shall be made in line with Article 27 of the Constitution of Kenya.</li><li>2. The Board should be appointed through a transparent and formal process governed by the overriding principle of merit.</li><li>3. The Board membership of all SCs shall be between seven and nine members.</li><li>4. The Chief Executive Officer shall be a Board member with no voting rights.</li><li>5. Board appointments should take into consideration the mix of skills and competencies required for the achievement of the organization's long-term goals.</li></ol>

	Governance Parameter	Governance Practice
		<ol style="list-style-type: none"> <li>6. At least one Board member should be a financial expert, meaning that he or she has the necessary qualifications and expertise in financial management or accounting and is a <i>bona-fide</i> member of a professional body regulating the Accountancy profession, and in compliance with the requirements thereof.</li> <li>7. At least one third of the Board members shall be independent upon appointment and maintain their independence during their term of service on the Board.</li> <li>8. For purposes of 1.1 (7) above, and 3.4(2) below, a Board member shall be considered independent if he/she: <ol style="list-style-type: none"> <li>(a) Is not in the Service of the National Government or any of the County Governments or of any statutory body or anybody or institution owned or controlled by the National Government or any County Government and who is not connected or does not have any other relationship, whether pecuniary or otherwise, with the SC, its associated companies, subsidiaries, or any holding company;</li> <li>(b) Has not been employed by the SC in an executive capacity within the last five (5) years;</li> <li>(c) Is not associated to an advisor or consultant to the SC or a member of the SC's senior management or a significant customer or supplier of the SC;</li> <li>(d) Has no personal service contract(s) with the SC or a member of the SC's senior management;</li> <li>(e) Is not a member of the immediate family of any person described above.</li> </ol> </li> <li>9. The chairpersons of all SCs shall be appointed by the President and shall at a minimum possess the qualifications, skills and experience set out in Attachment I.</li> <li>10. The Board members of SCs shall be appointed by the Cabinet Secretary of the parent ministry and shall at a minimum possess the qualifications, skills and experience set out in Attachment I.</li> <li>11. Each Board member shall be formally appointed to the Board through a Gazette Notice and thereafter an appointment letter.</li> <li>12. Board members shall be appointed by name, and shall sit on the Board in their individual capacity with no power to appoint alternates.</li> <li>13. Each Board member shall signify their acceptance</li> </ol>

	Governance Parameter	Governance Practice
		<p>of the appointment in writing.</p> <p>14. The appointing authority shall ensure that any person appointed to the Board of a SC satisfies the fit and proper requirements.</p> <p>15. The Board may recommend the removal of a member based on non-performance, non-attendance of meetings, unethical conduct or as set out in any constitutive documents or applicable law.</p>
1.2	Role and functions of the Board	<p>1. The Board should:</p> <ul style="list-style-type: none"> <li>(a) Exercise their role collectively and not individually.</li> <li>(b) Determine the organization’s mission, vision, purpose and core values.</li> <li>(c) Set and oversee the overall strategy and approve significant policies of the organization.</li> <li>(d) Ensure that the strategy is aligned with the purpose of the organization and the legitimate interests and expectations of its shareholders and other stakeholders.</li> <li>(e) Ensure that the strategy of the organization is aligned to the long term goals of the organization on sustainability so as not to compromise the ability of future generations to meet their own needs.</li> <li>(f) Approve the organizational structure.</li> <li>(g) Approve the annual budget of the organization.</li> <li>(h) Monitor the organization’s performance and ensure sustainability.</li> <li>(i) Enhance the corporate image of the organization.</li> <li>(j) Ensure availability of adequate resources for the achievement of the organization’s objectives.</li> <li>(k) Hire the CEO, on such terms and conditions of service as may be approved by the relevant government organ(s) and approve the appointment of senior management staff.</li> <li>(l) Ensure effective communication with stakeholders.</li> </ul>

	Governance Parameter	Governance Practice
1.3	Duties of Individual Board members	<p>1. Each Board member must:</p> <ul style="list-style-type: none"> <li>(a) Exercise the highest degree of care, skill and diligence in discharging their duties.</li> <li>(b) Act in the best interest of the organization and not for any other purpose.</li> <li>(c) Act honestly at all times and must not place themselves in a situation where their personal interests conflict with those of the organization.</li> <li>(d) Exercise independent judgment at all times.</li> <li>(e) Understand and accept the principle of collective responsibility.</li> <li>(f) Devote sufficient time to carry out their responsibilities.</li> <li>(g) Regularly update their knowledge and enhance their skills.</li> <li>(h) Promote transparency and accountability at Board level.</li> <li>(i) Promote teamwork within the Board and the organization.</li> <li>(j) Promote and protect the image of the organization.</li> <li>(k) Owe their duty to the organization and not to the nominating or appointing authority.</li> <li>(l) Owe the organization a duty to hold in confidence all information available to them by virtue of their position as a Board member.</li> </ul>



	Governance Parameter	Governance Practice
1.4	Role of the Chairperson	<p>1. The Chairperson should:</p> <ul style="list-style-type: none"> <li>(a) Provide overall leadership to the Board.</li> <li>(b) Play a key role in setting the agenda for Board meetings.</li> <li>(c) Conduct efficient Board meetings and guide the Board's decision-making process.</li> <li>(d) Encourage Board members to participate fully in Board deliberations.</li> <li>(e) Harness the collective skills of the Board and its committees.</li> <li>(f) Lead the annual Board Evaluation Process.</li> <li>(g) Monitor the performance of the CEO and lead in the evaluation of their performance.</li> <li>(h) Maintain close, but independent working relationship with the CEO.</li> <li>(i) Ensure appropriate balance of power between the CEO and the Board.</li> <li>(j) Be available for consultations with Board members and the CEO.</li> <li>(k) Ensure that there is a formal succession plan for Board members.</li> <li>(l) Ensure new Board members are inducted in accordance with the agreed induction programme.</li> <li>(m) Encourage Board members to develop their skills and competencies.</li> <li>(n) Promote a positive image of the organization.</li> <li>(o) Encourage a culture of transparency and teamwork among Board members.</li> <li>(p) Act as an informal link between the Board and shareholders.</li> <li>(q) Provide quarterly updates on governance matters and any issues thereof to the responsible Cabinet Secretary and SCAC.</li> </ul>

	Governance Parameter	Governance Practice
1.5	Term Limits for Board Members	<ol style="list-style-type: none"> <li>1. The tenure of a Board member shall not exceed a cumulative term of six years or two terms of three years each provided that upon first implementation of this Code, the appointing authority may extend the term of not more than a third of the members of the Board in order to achieve continuity as set out in 1.13 below.</li> <li>2. The renewal of a Board Member's tenure for a second term should be subject to a favorable evaluation.</li> </ol>
1.6	Multiple Directorships	<ol style="list-style-type: none"> <li>1. A Board member shall not hold such position in more than two (2) SCs at any one time to ensure effective participation in the Board.</li> <li>2. A Chairperson of a SC shall not hold such position in any other SC concurrently, in order to allow them devote sufficient time to steering the Board.</li> </ol>
1.7	Committees of the Board	<ol style="list-style-type: none"> <li>1. The Board should: <ol style="list-style-type: none"> <li>(a) Establish not more than four committees of the Board provided that the Board shall be at liberty to establish such ad-hoc committees as required to deal with any ad-hoc matters requiring focused attention such as the recruitment of the Chief Executive Officer.</li> <li>(b) Establish an Audit Committee, and a maximum of three other committees (by whatever name called), to discharge the following functions: <ol style="list-style-type: none"> <li>i. Governance</li> <li>ii. Risk</li> <li>iii. Compliance</li> <li>iv. Finance</li> <li>v. Technical matters</li> <li>vi. Strategy</li> <li>vii. Human Resources.</li> </ol> </li> </ol> </li> </ol>

	Governance Parameter	Governance Practice
		<ul style="list-style-type: none"> <li>(c) Provide Terms of Reference for each committee which should set out, as a minimum, objectives, delegated authority, operations and reporting mechanism to the Board.</li> <li>(d) Review the mandate of the committees periodically.</li> <li>(e) Determine the frequency of committee meetings.</li> <li>(f) Appoint the chairperson of each committee.</li> <li>(g) Annually review the effectiveness and performance of its committees.</li> </ul> <ol style="list-style-type: none"> <li>2. The Chairperson of the Board should not be a member of any committee save for an ad hoc committee.</li> <li>3. Committee members should have the necessary skills and expertise to execute their responsibilities.</li> <li>4. Where required skills are not available to the committee, the Board may, with the approval of the oversight body, co-opt non-Board members to the committee.</li> <li>5. The committees shall make recommendations to the Board</li> </ol>

	Governance Parameter	Governance Practice
1.8	Board Meetings	<ol style="list-style-type: none"> <li>1. Board members should:               <ol style="list-style-type: none"> <li>(a) Dedicate adequate time and effort for meetings.</li> <li>(b) Meet as regularly as required and at least quarterly in order to effectively lead the organization.</li> </ol> </li> <li>2. The Chairperson shall chair all Board meetings and in their absence or inability to chair for whatever reason, the members present shall appoint one of their number to preside over the meeting.</li> <li>3. The quorum for Board meetings shall be five members where the total Board membership is eight to nine and four where the total membership is seven and below.</li> <li>4. Board papers should be made available to Board members not less than ten days before the date of the meeting.</li> <li>5. The Corporation Secretary should attend all Board meetings and in their absence or inability to attend for whatever reason, the Board will appoint a Secretary for the meeting from amongst the staff of the Corporation.</li> </ol>
1.9	Board Work Plan	<ol style="list-style-type: none"> <li>1. Board members should ensure the development of an annual Board work plan.</li> <li>2. The Board work plan should at a minimum focus on:               <ol style="list-style-type: none"> <li>(a) A review of management's implementation of strategies, policies and plans.</li> <li>(b) Risk Assessment and Management.</li> <li>(c) Budgeting and Financial Management.</li> <li>(d) Quality Assurance Processes.</li> <li>(e) Board Evaluation.</li> <li>(f) Strategic planning and review.</li> <li>(g) Governance and compliance.</li> <li>(h) Competence development for Board members.</li> </ol> </li> </ol>



	Governance Parameter	Governance Practice
1.10	Board Induction and Continuous Skills Development	<ol style="list-style-type: none"> <li>1. The Board should:               <ol style="list-style-type: none"> <li>(a) Develop an induction programme for new Board members.</li> <li>(b) Ensure that a competence needs assessment is carried out and an annual development programme for a minimum of two days per Board member is put in place.</li> </ol> </li> <li>2. Board members should:               <ol style="list-style-type: none"> <li>(a) Ensure they are up-to-date with continuous professional development in their respective professional bodies.</li> <li>(b) Receive regular briefings on matters relevant to the business of the organization, changes in laws and regulations including government accounting policies and practices.</li> <li>(c) Be certified by an accredited body within six months of their appointment.</li> </ol> </li> </ol>
1.11	The Board Charter	<ol style="list-style-type: none"> <li>1. The Board should develop and adopt a Board Charter.</li> <li>2. The Board Charter should define the role, responsibilities and functions of the Board in the governance of the organization.</li> <li>3. The Board should periodically review its Board Charter.</li> </ol>
1.12	Board Evaluation	<ol style="list-style-type: none"> <li>1. The Board should:               <ol style="list-style-type: none"> <li>(a) Determine its performance criteria.</li> <li>(b) Undertake an annual evaluation of its performance.</li> </ol> </li> <li>2. The evaluation should cover the Board as a whole, its committees, individual members, the chairperson, the Chief Execution Officer and the Corporation Secretary.</li> </ol>

	Governance Parameter	Governance Practice
		<ol style="list-style-type: none"> <li>3. It is the responsibility of the Oversight body to facilitate the annual evaluation.</li> <li>4. The annual evaluation should result in a report with recommendations for implementation.</li> <li>5. The evaluation report should be shared with the relevant stakeholders.</li> <li>6. The re-appointment for a subsequent term for any Board member or CEO shall be based on a favourable evaluation as spelt out in the evaluation tool.</li> </ol>
1.13	The Governance Audit	<ol style="list-style-type: none"> <li>1. The Board, in consultations with the Oversight Office, should ensure that it subjects the organization to an annual governance audit by a member regulated by the Institute of Certified Public Secretaries of Kenya (ICPSK) and accredited for that purpose.</li> <li>2. The governance audit should among other areas cover the governance practices of the organization in the following parameters:               <ol style="list-style-type: none"> <li>(a) Leadership and strategic management;</li> <li>(b) Transparency and Disclosure;</li> <li>(c) Compliance with Laws and Regulations;</li> <li>(d) Communication with stakeholders;</li> <li>(e) Board independence and governance;</li> <li>(f) Board systems and procedures;</li> <li>(g) Consistent shareholder and stakeholders' value enhancement; and</li> <li>(h) Corporate social responsibility and investment.</li> </ol> </li> </ol>
1.14	Succession Planning	<ol style="list-style-type: none"> <li>1. The appointing authority should ensure that the tenures of Board members are staggered to ensure a phased transition.</li> </ol>

	Governance Parameter	Governance Practice
1.15	Board Remuneration	<ol style="list-style-type: none"> <li>1. The relevant authority should establish a formal and transparent remuneration policy and remunerate Board members fairly, ethically and responsibly.</li> <li>2. The relevant authority should ensure that the remuneration policy is linked to performance.</li> <li>3. The remuneration policy for Board members should clearly stipulate the elements of such remuneration including director's fees, attendance allowances and bonuses.</li> </ol>
1.16	Board Independence	<ol style="list-style-type: none"> <li>1. Board members should: <ol style="list-style-type: none"> <li>(a) Exercise independent judgment in discharging its duties.</li> <li>(b) Disclose all real or perceived conflicts of interest and manage these within an agreed framework.</li> <li>(c) Be free to seek independent advice in connection with their duties following an agreed procedure.</li> <li>(d) Not have served in the same organization as an employee until a minimum period of five years has elapsed.</li> </ol> </li> <li>2. Board members nominated by stakeholders should recognize that they owe their duties to the organization and not their nominating authority.</li> </ol>
1.17	Liability	<ol style="list-style-type: none"> <li>1. Board members should be held liable for their acts and omissions arising from their negligence, default, breach of duty or breach of trust.</li> </ol>
1.18	Appointment of the CEO	<ol style="list-style-type: none"> <li>1. The Board should: <ol style="list-style-type: none"> <li>(a) Appoint and remove the CEO.</li> <li>(b) Ensure that the CEO is recruited through a competitive process.</li> </ol> </li> </ol>

	Governance Parameter	Governance Practice
		<ul style="list-style-type: none"> <li>(c) Ensure that the CEO possesses the minimum qualifications and experience set out in Attachment I.</li> <li>(d) Define and approve authority levels for the CEO.</li> <li>(e) Set the performance targets of the CEO.</li> <li>(f) Ensure that it has put in place a succession plan for the CEO and other senior management staff.</li> </ul>
1.19	The Role of the CEO	<p>1. The CEO shall:</p> <ul style="list-style-type: none"> <li>(a) Be responsible for the day-to-day operations of the organization.</li> <li>(b) Provide leadership to senior management and staff.</li> <li>(c) Prepare the annual budgets and establish proper internal controls.</li> <li>(d) Be responsible for the execution and communication of the Board's strategies, decisions and policies.</li> <li>(e) Develop and recommend to the Board the annual business plans for the organization.</li> <li>(f) Ensure that the organization has an effective management structure including succession plans.</li> <li>(g) Ensure that all Board papers are accurately written, are relevant and are availed to the Board members in good time.</li> <li>(h) Serve as the link between the Board and the Management.</li> <li>(i) Be responsible for the achievement of the objectives of the organizations.</li> <li>(j) Put in place effective administrative structures, processes and systems.</li> <li>(k) Provide regular, thorough and prompt communication to the Board on key technical, financial and administrative matters.</li> <li>(l) Be responsible for stakeholder management and the enhancement of the corporate image of the organization.</li> </ul>

	Governance Parameter	Governance Practice
1.20	Appointment of Corporation Secretary	<ol style="list-style-type: none"> <li>1. The Board should:               <ol style="list-style-type: none"> <li>(a) Be assisted by a qualified, competent and experienced Corporation Secretary who shall be competitively recruited.</li> <li>(b) Appoint and remove the Corporation Secretary.</li> <li>(c) Ensure that the Corporation Secretary is qualified in terms of the provisions of the Certified Public Secretaries of Kenya Act or any statutory modifications or re-enactment.</li> <li>(d) Ensure that the Corporation Secretary is a member of the Institute of Certified Public Secretaries of Kenya in good standing.</li> <li>(e) Empower the Corporation Secretary to enable them effectively carry out their role.</li> </ol> </li> <li>2. The Corporation Secretary's relationship with Board members shall at all times be professional.</li> <li>3. The Corporation Secretary may provide full-time or part-time services depending on the needs of the organization.</li> <li>4. The Corporation Secretary shall not be a member of the Board.</li> </ol>
1.21	Role of Corporation Secretary	<ol style="list-style-type: none"> <li>1. The Corporation Secretary should:               <ol style="list-style-type: none"> <li>(a) Provide guidance to the Board on their duties and responsibilities and on matters of governance.</li> <li>(b) Assist the Board in carrying out the following:                   <ol style="list-style-type: none"> <li>i. Board induction and training</li> <li>ii. Updating the Board and Committee charters</li> <li>iii. Preparation of Board work plans</li> <li>iv. Board evaluation</li> <li>v. Governance audit</li> <li>vi. Implementation of the code of conduct and ethics.</li> </ol> </li> <li>(c) Ensure the timely preparation and circulation of Board and Committee papers.</li> </ol> </li> </ol>



	Governance Parameter	Governance Practice
		<ul style="list-style-type: none"> <li>(d) Ensure timely circulation of Board and Committee minutes.</li> <li>(e) Be the custodian of the seal of the Organization and account to the Board for its use.</li> <li>(f) Maintain and update the register of conflicts of interest.</li> <li>(g) Ensure that Board members are aware of all relevant laws affecting the organization.</li> <li>(h) Facilitate effective communication between the organization and the shareholders.</li> <li>(i) Ensure that annual returns are promptly filed with the relevant authorities.</li> <li>(j) Except in exceptional circumstances, ensure that Board and Committee papers are circulated in advance of any meeting.</li> </ul>
1.22	Separation of Roles	<ol style="list-style-type: none"> <li>1. The role of the Board should clearly be separated from that of the Management.</li> <li>2. The office of the Chairperson and that of the CEO should be held by different persons.</li> <li>3. The office of the CEO and that of the Corporation Secretary should be held by different persons.</li> </ol>

“Always remember that good governance is founded from our heritage.”



Gedi Ruins - Kilifi County

Photo courtesy: Kenya Yearbook Editorial Board



# CHAPTER 2

## TRANSPARENCY AND DISCLOSURE

### Governance Statement

Transparency and disclosure is an important aspect of corporate leadership and management. It creates and sustains confidence of investors, stakeholders and the wider society and provides opportunities for continuous improvement of business structures and processes. These shall be contained in the State Corporations quarterly and annual reports to be filled with the State Corporations Advisory Committee.

### Governance Principle

The Board shall ensure effective, accurate, timely and transparent disclosure of pertinent information on the SC's operations and performance.

	Governance Parameter	Governance Practice
2.1	Organizational Vision and Values	1. The Board shall ensure that the annual report includes a statement on the organizational vision and values and how these shape corporate behavior.
2.2	Policy on Corporate Governance	1. The Board shall include a statement of policy on good governance in the annual report. 2. The statement should indicate aspects of the <i>Mwongozo</i> that have not been complied with and reasons thereof.
2.3	Key Stakeholder Groups	1. The Board should disclose: (a) The key shareholders and the extent of their shareholding. (b) The key stakeholders who may have an influence on organizational performance and sustainability. (c) The nature of its engagement with key stakeholders and the outcome of those engagements in the annual report. (d) All relevant information to key stakeholders to enable them exercise their rights.

	Governance Parameter	Governance Practice
2.4	Governance structures	<p>1. The Board should:</p> <ul style="list-style-type: none"> <li>(a) Include in the annual report: <ul style="list-style-type: none"> <li>i. The governance structure including the composition and size of the Board, the committees of the Board and the Management.</li> <li>ii. Details about Board members including names, qualifications, date of appointments, terms served, other board memberships and any other relevant information.</li> </ul> </li> <li>(b) Disclose a summary of the Board evaluation results.</li> </ul>
2.5	Board Performance and Remuneration Structure	<p>1. The Board should disclose:</p> <ul style="list-style-type: none"> <li>(a) In the financial statements, the remuneration of directors, individually and collectively.</li> <li>(b) The salaries and remuneration of the Chief Executive Officer and the senior management.</li> <li>(c) A summary of the Board evaluation results.</li> </ul>
2.6	Code of Ethics and Conduct and Whistle-Blowing Policy	<p>1. The Board should disclose:</p> <ul style="list-style-type: none"> <li>(a) The Code of Ethics and Conduct of the organization on the website of the organization.</li> <li>(b) The policy of the organization on conflict of interest.</li> <li>(c) The policy of the organization on whistle blowing on the website of the organization.</li> <li>(d) To what extent the Code of Ethics and Conduct, Conflict of Interest and whistle-blowing policies have been effective in tackling unethical behavior in the organization.</li> </ul>
2.7	Key Organizational Risks	<p>1. The Board should:</p> <ul style="list-style-type: none"> <li>(a) Disclose in the annual report, the policy of the organization on risk management.</li> <li>(b) Disclose in the annual report, the key risks to which the organization is exposed.</li> <li>(c) Ensure complete, timely, relevant, accurate and accessible risk disclosure to stakeholders.</li> </ul>

	Governance Parameter	Governance Practice
2.8	Financial Reporting	<p>1. The Board should disclose:</p> <ul style="list-style-type: none"> <li>(a) In the annual report, the Management Discussion and Analysis which sets out: <ul style="list-style-type: none"> <li>i. The assessment of Management of the factors that affected the organization's financial condition and results of operation over the period under review; and</li> <li>ii. Known trends which are reasonably likely to have a material effect on the financial condition and results of operations in the future.</li> </ul> </li> <li>(b) That it has complied with applicable financial reporting standards in preparing the financial statements.</li> <li>(c) Any deviation from financial policies.</li> <li>(d) Related party transactions.</li> </ul>
2.9	Corporate Citizenship	<p>1. The Board should disclose the organization's policy on corporate social responsibility and investment.</p>
2.10	Procurement	<p>1. The Board should disclose:</p> <ul style="list-style-type: none"> <li>(a) The policy of the organization on procurement.</li> <li>(b) The top ten contracts of the organization in terms of value.</li> <li>(c) The number of legal challenges to procurement decisions including details of any that may have been successful.</li> </ul>
2.11	Compliance with Laws, Regulations and Standards	<p>1. The Board should disclose:</p> <ul style="list-style-type: none"> <li>(a) The extent of compliance with Laws, Regulations and Standards.</li> <li>(b) Material departure from compliance, the cause of non-compliance and the measures to address the same.</li> </ul>
2.12	Sustainability Reporting	<p>1. The Board should:</p> <ul style="list-style-type: none"> <li>(a) Include a commentary on sustainability in the half-yearly and Annual Report.</li> <li>(b) Disclose if the organization is a going concern based on the Triple Bottom Line concept.</li> <li>(c) Disclose to stakeholders the major sources of revenue and items of expenditure.</li> </ul>



“Good governance glues us  
together with a common fort.”



**Thimlich Ohinga - Migori County**

*Photo courtesy: National Museums of Kenya*



## CHAPTER 3

# ACCOUNTABILITY, RISK MANAGEMENT AND INTERNAL CONTROL

### Governance Statement

The Board has the responsibility of ensuring that the organization has adequate systems and processes of accountability, risk management and internal controls.

### Governance Principles

1. The Board should ensure the timely preparation of accurate financial statements.
2. The Board should ensure that effective processes and systems of risk management and internal controls are in place.
3. The Board should ensure that the procurement process is cost-effective and delivers value for money.

	Governance Parameter	Governance Practice
3.1	Financial Reporting	<p>1. The Board should:</p> <ol style="list-style-type: none"><li>(a) Ensure that the books of accounts are prepared on a timely basis.</li><li>(b) State in the annual report its responsibility for preparing the report and accounts</li><li>(c) Report in the annual financial statements and half-yearly Management Accounts that the organization is a going concern, with supporting assumptions or qualifications as necessary.</li><li>(d) Ensure that the external audit of the financial statements is completed and submitted within timelines stipulated in any law and Government policies.</li><li>(e) Ensure that an independent, competent and qualified external auditor conducts the annual audit of the organization in order to provide an objective assurance as to whether the financial statements fairly represent the financial position and performance of the organization.</li></ol>

	Governance Parameter	Governance Practice
3.2	Risk Management	<p>1. The Board should:</p> <ul style="list-style-type: none"> <li>(a) Ensure the development of a policy on risk management, which should take into account sustainability, ethics and compliance risks.</li> <li>(b) Set out its responsibility for risk management in the Board charter.</li> <li>(c) Approve the risk management policy and the risk management framework.</li> <li>(d) Delegate to management the responsibility to implement the risk management plan.</li> <li>(e) Monitor that risks taken are within the set tolerance and appetite levels.</li> <li>(f) Review the implementation of the risk management framework on a quarterly basis.</li> <li>(g) Appoint a Committee responsible for risk management in the organization.</li> <li>(h) Ensure that the Committee obtains relevant technical advice where necessary.</li> <li>(i) Evaluate the performance of the Committee once a year.</li> <li>(j) Establish a risk management function within the organization.</li> <li>(k) Ensure that risk assessment is carried out on a continuous basis.</li> <li>(l) Receive from the Internal Audit function, a written assessment of the effectiveness of the system of internal controls and risk management.</li> <li>(m) Receive assurance from Management that the risk management framework is integrated in the daily activities of the organization.</li> </ul>
3.3	Internal Controls	<p>1. The Board should:</p> <ul style="list-style-type: none"> <li>(a) Maintain an effective and efficient system of internal controls.</li> <li>(b) Set out its responsibility for internal controls in the Board Charter.</li> <li>(c) Delegate to management the responsibility of designing, implementing and monitoring effectiveness of internal control systems.</li> <li>(d) Receive from the internal audit function a written assessment of the effectiveness of the system of internal controls on a quarterly basis.</li> <li>(e) Receive from the external auditor an assessment of the effectiveness of the system of internal control after the audit process.</li> <li>(f) Ensure that the internal audit function monitors for rectification, weaknesses noted by the external auditor.</li> </ul>

	Governance Parameter	Governance Practice
3.4	Audit Committee and the External Auditor	<ol style="list-style-type: none"> <li>1. The Board Committee responsible for audit should oversee the internal audit function and the external audit.</li> <li>2. The Board should:               <ol style="list-style-type: none"> <li>(a) Ensure that the Chairperson of the Audit Committee is independent.</li> <li>(b) Ensure that at least one member of the Committee has relevant qualifications and expertise in audit, financial management or accounting, with experience and knowledge in risk management and is a member of a professional body in good standing.</li> <li>(c) Establish an internal audit function.</li> <li>(d) Ensure that there is an effective risk-based internal audit system.</li> <li>(e) Approve the internal audit charter.</li> <li>(f) Ensure that the internal audit function is independent.</li> <li>(g) Ensure that the internal audit function reports to the Committee.</li> <li>(h) Ensure that the Head of Internal Audit holds a Senior position in the management team, is professionally qualified and is a member in good standing, of the professional body responsible for regulating Auditors.</li> </ol> </li> <li>3. The Audit Committee should:               <ol style="list-style-type: none"> <li>(a) Meet with external auditors at least once a year.</li> <li>(b) Nominate the external auditor for appointment by the Shareholders.</li> <li>(c) Approve the terms of engagement and remuneration for the external auditor.</li> <li>(d) Deliberate on and propose solutions for any material findings in any audit report.</li> <li>(e) Review the quality and effectiveness of the external audit process.</li> </ol> </li> </ol>

	Governance Parameter	Governance Practice
3.5	Procurement Process	<p>1. The Board should:</p> <ul style="list-style-type: none"> <li>(a) Establish a procurement policy that promotes sustainability, high ethical standards and best practice.</li> <li>(b) Establish a procurement function in the organization, which is managed by competent and professionally qualified persons of high integrity.</li> <li>(c) Approve the annual procurement plan, which should be aligned with the annual budget.</li> <li>(d) Periodically review the implementation of the procurement plan.</li> <li>(e) Receive a quarterly report on the actual expenditure compared to the budget and demand explanations from management on any variances.</li> <li>(f) Ensure that the Committee responsible for risk monitors risks in the procurement process and that they are addressed in accordance with the organization's risk management policy.</li> <li>(g) Ensure that there exists a clearly documented audit trail of procurement activities.</li> </ul>
3.6	Information Communication Technology (ICT)	<p>1. The Board should:</p> <ul style="list-style-type: none"> <li>(a) Establish an ICT Policy, which is aligned to the objectives of the Organization.</li> <li>(b) Establish an ICT function in the organization.</li> <li>(c) Integrate ICT in the operations of the organization.</li> <li>(d) Ensure that an appropriate Business Continuity Plan (BCP) is in place.</li> <li>(e) Ensure that ICT related risks are identified and managed.</li> <li>(f) Utilize ICT in monitoring the performance of the organization.</li> </ul>

“Good governance is like a timeless shelter. The principle never changes.”



**Fort Jesus - Mombasa County**

*Photo courtesy: National Museums of Kenya*

# CHAPTER 4

## ETHICAL LEADERSHIP AND CORPORATE CITIZENSHIP

### Governance Statement

The operations of the organization should be guided by ethical practices that seek to promote good corporate citizenship.

### Governance Principle

The organization should commit to operate ethically and promote corporate social responsibility and investments.

	Governance Parameter	Governance Practice
4.1	Ethics and Integrity	<p>1. The Board should:</p> <ul style="list-style-type: none"><li>(a) Provide ethical leadership in the management of the organization.</li><li>(b) Establish the core values of the organization and ensure that the values are aligned to the Constitution of Kenya and underpin sustainable practices.</li><li>(c) Ensure that all members of the organization adhere to the core values.</li><li>(d) Ensure that the corporate strategy includes measurable targets for improving ethical behaviour.</li><li>(e) Ensure that the ethical practices of the organization are effectively monitored.</li></ul>
4.2	Code of Conduct and Ethics	<p>1. The Board should:</p> <ul style="list-style-type: none"><li>(a) Ensure that a code of conduct and ethics is developed.</li><li>(b) Ensure that all members of the organization subscribe to the code of conduct and ethics.</li><li>(c) Review the code of conduct and ethics as necessary.</li><li>(d) Promote ethical conduct and sanction misconduct.</li><li>(e) Ensure that a corporate gifts policy is in place.</li><li>(f) Receive from the Committee responsible for Governance and Compliance, a report on the level of adherence to the code of conduct and ethics by members of the organization.</li></ul>



	Governance Parameter	Governance Practice
4.3	Conflict of Interest	<ol style="list-style-type: none"> <li>1. The Board should ensure that a policy on the management of conflict of interests is in place.</li> <li>2. Board members shall:               <ol style="list-style-type: none"> <li>(a) Declare any real or perceived conflict of interest with the organization upon appointment to the Board.</li> <li>(b) Declare to the Board any real or perceived conflict of interest that may subsequently arise.</li> <li>(c) Not take part in any discussions or decision-making regarding any subject or transaction in which they have a conflict of interest.</li> <li>(d) Not influence in any manner whatsoever decision making on any matter in which they have interest.</li> </ol> </li> </ol>
4.4	Corporate Reputation and Image	<ol style="list-style-type: none"> <li>1. The Board should:               <ol style="list-style-type: none"> <li>(a) Ensure that the organization develops a strategy on corporate reputation and image.</li> <li>(b) Promote a positive image of the organization.</li> </ol> </li> </ol>
4.5	Corporate Social Responsibility and Investment	<ol style="list-style-type: none"> <li>1. The Board should ensure:               <ol style="list-style-type: none"> <li>(a) That a policy on good corporate citizenship is in place.</li> <li>(b) That the policy on good corporate citizenship is implemented.</li> <li>(c) That a sustainable and appropriate budget is allocated for corporate social responsibility and investment.</li> <li>(d) That the organization respects and promotes sustainable environment.</li> </ol> </li> </ol>
4.6	Whistle-Blowing	<ol style="list-style-type: none"> <li>1. The Board should ensure that:               <ol style="list-style-type: none"> <li>(a) There is a whistle blowing policy in the organization.</li> <li>(b) The whistle-blowing policy protects and prohibits victimization of those who disclose or provide information in good faith.</li> <li>(c) An independent party is responsible for receiving and investigating reports received.</li> </ol> </li> </ol>

**“Good governance is worth emulating. It is the sum total of what an institution becomes.”**



Siyu Fort - Lamu

*Photo courtesy: National Museums of Kenya*

# CHAPTER 5

## SHAREHOLDER RIGHTS AND OBLIGATIONS

### Governance Statement

The organizations should recognize the rights of all shareholders and in keeping with good governance practices ensure their equitable treatment.

### Governance Principle

The Board should protect the rights of all shareholders and optimize shareholder value.

	Governance Parameter	Governance Practice
5.1	Ownership Rights and Interests	<p>1. The Board should:</p> <ul style="list-style-type: none"><li>(a) Safeguard the rights of all shareholders.</li><li>(b) Ensure that there is an effective shareholder dispute resolution mechanism.</li><li>(c) Ensure that the shareholders receive adequate and timely information to enable them make appropriate decisions.</li><li>(d) Ensure that the financial statements are presented to shareholders in time.</li><li>(e) Ensure that where approved, shareholders receive dividends.</li><li>(f) Facilitate consultations amongst shareholders on key issues.</li><li>(g) Facilitate shareholders' education on their rights and obligations.</li></ul>
5.2	Shareholder Obligations	<p>1. The shareholders should:</p> <ul style="list-style-type: none"><li>(a) Monitor the performance of the Board.</li><li>(b) Appoint the Board through a transparent and formal process</li><li>(c) Approve remuneration of the Board members.</li><li>(d) Appoint the external auditor.</li><li>(e) Attend and participate in the general meetings.</li><li>(f) Approve the Financial Statements.</li><li>(g) Approve the distribution of profits.</li><li>(h) Approve all material transactions.</li><li>(i) Provide an environment that allows the Board to exercise independent judgment and decision-making.</li></ul>

	Governance Parameter	Governance Practice
5.3	Minority Shareholders	<p>1. The Board should:</p> <ul style="list-style-type: none"> <li>(a) Facilitate the participation of minority shareholders in material corporate decisions.</li> <li>(b) Ensure that minority shareholder rights are safeguarded.</li> <li>(c) Encourage minority shareholders to form shareholder associations to champion their rights where appropriate.</li> </ul>
5.4	Oversight by the State Corporations Advisory Committee	<p>1. The State Corporations Advisory Committee shall develop and issue guidelines on;</p> <ul style="list-style-type: none"> <li>(a) Board induction</li> <li>(b) Terms and Conditions of service for Chairpersons, Board members and staff</li> <li>(c) Board evaluation</li> <li>(d) Governance audit</li> <li>(e) Performance management</li> <li>(f) Any incentives and rewards for Board members</li> </ul> <p>2. The State Corporations Advisory Committee shall:</p> <ul style="list-style-type: none"> <li>(a) Develop and issue any policies, regulations, standards and such other guidance for the effective implementation of this Code.</li> <li>(b) Require evidence on compliance with the code</li> <li>(c) Determine and enforce any desirable sanctions for breach of this Code.</li> </ul>



**“The strength of good governance lies in simplicity and discipline.”**



Olorgesailie Prehistoric Site - Kajiado County

*Photo courtesy: National Museums of Kenya*

# CHAPTER 6

## STAKEHOLDER RELATIONSHIPS

### Governance Statement

Stakeholder relationships should be managed in a proactive manner to ensure the realization of the legitimate interests and expectations of stakeholders and the achievement of corporate objectives.

### Governance Principle

The effective management of stakeholder interests creates goodwill, promotes a positive image of the organisation and enhances the achievement of corporate goals.

	Governance Parameter	Governance Practice
6.1	Stakeholder Engagement	1. The Board should: (a) Carry out stakeholder mapping. (b) Ensure that a policy on the management of stakeholder relationships is developed and implemented. (c) Ensure periodic review of the policy for the management of stakeholder relationships. (d) Promote effective communication with stakeholders. (e) Ensure that stakeholder' interests, expectations and their power to influence the operations and direction of the organization are documented. (f) Ensure that the reputation of the organization and its linkage with stakeholders is a regular Board agenda item.
6.2	Stakeholder Rights	1. The Board should: (a) Identify the rights of key stakeholders and ensure that their rights are respected. (b) Take account of the legitimate interests and expectations of its stakeholders in its decision-making.
6.3	Dispute Resolution	1. The Board should: (a) Ensure that disputes with and among stakeholders are resolved effectively, efficiently and expeditiously. (b) Take reasonable steps to encourage stakeholders to solve their disputes through Alternative Dispute Resolution mechanisms.



	Governance Parameter	Governance Practice
6.4	Relationship with Governments	<p>1. The Board should:</p> <ul style="list-style-type: none"> <li>(a) Take proactive steps to manage its relationship with the National and County Governments.</li> <li>(b) Disclose in its annual report the nature of the organization's engagements with the National and County Governments and other SCs.</li> <li>(c) Ensure that policies, practices and strategic plans of the organization are aligned with Government directives, National Policies and National Development Goals, including the Kenya Vision 2030.</li> </ul>

**“Always remember that selfless leadership and resilience form the basis of good governance.”**



Kapenguria Cells - West Pokot County

*Photo courtesy: National Museums of Kenya*

# CHAPTER 7

## SUSTAINABILITY AND PERFORMANCE MANAGEMENT

### Governance Statement

Organizations should embrace policies that meet the needs of the present without compromising their ability to sustain their future development needs and objectives.

### Governance Principle

The goals and objectives of the organization should focus on the long term sustainability of the organization.

	Governance Parameter	Governance Practice
7.1	Sustainability Goals and Strategy	1. The Board should: <ul style="list-style-type: none"><li>(a) Integrate sustainability into the organization's strategy and management practices.</li><li>(b) Focus on the future sustainability of the organisation</li><li>(c) Adopt a holistic approach to economic, social, and environmental issues in their core business strategy.</li><li>(d) Take into account in their decision-making, the impact of the organization's operations on the community and the environment.</li><li>(e) Work closely with the management to ensure long term goals are well formulated and subsequently met.</li><li>(f) Focus on long term talent development.</li><li>(g) Ensure continuous innovation of its processes, products and services.</li></ul>
7.2	Performance Management	1. The Board should: <ul style="list-style-type: none"><li>(a) Put in place a performance management system that is linked to the mandate of the organization and which is aligned to the national development plans and sector performance standards.</li><li>(b) Set performance targets that will form the basis of performance evaluation.</li><li>(c) Ensure that the performance targets are Specific, Measurable, Attainable, Realistic, and Time bound (SMART).</li><li>(d) Agree on the performance parameters and targets with the National Government or oversight body as the case may be and ensure that the obligations of the parties are documented.</li><li>(e) Ensure that the performance targets are cascaded to the management and staff of the organization through a performance management system.</li><li>(f) Continually monitor organizational performance and identify areas that require improvement.</li></ul>



**“The Pillar of a shining institution is  
a reflection of good governance.”**



Vasco Da Gama Pillar - Kilifi County

*Photo courtesy: National Museums of Kenya*

## CHAPTER 8

### COMPLIANCE WITH LAWS AND REGULATIONS

#### Governance Statement

The organization should conduct its business affairs in full compliance with all applicable laws, rules and regulations.

#### Governance Principle

The organization shall comply with the Constitution, all applicable laws and regulations and in line with accepted national and international standards, as well as, the internal policies of the organization.

	Governance Parameter	Governance Practice
8.1	The Constitution of Kenya	The Board shall: (a) Ensure that the organization complies with the spirit and the letter of the Constitution. (b) Ensure that the policies, institutional frameworks and administrative procedures of the organization effectively support implementation of the Constitution.
8.2	Applicable Laws, Regulations and Standards	The Board should ensure that laws, rules, regulations, codes and standards which are applicable to the organization are identified, documented and observed. These shall among others include the Leadership and Integrity Act, 2012, and the Public Officers Ethics Act, 2003.
8.3	Compliance Strategy	The Board should: (a) Establish internal procedures and monitoring systems to promote compliance with applicable laws, regulations and standards. (b) Ensure that the compliance strategy is aligned to the operations of the organization.
8.4	Legal Compliance Audit and reporting	The Board should ensure: (a) That a legal compliance audit is carried out at least annually, with the objective of establishing the level of adherence to applicable laws, rules, regulations and standards. (b) That the recommendations in the Legal Compliance audit report are implemented. (c) That a comprehensive and independent legal audit is carried out, at least once every two years. (d) The Board shall file compliance reports on all statutory obligations in each quarter to the responsible Cabinet Secretary and SCAC.


## CONCLUSION

The objective of this Code of Governance is to promote the practice of good governance in the SC sector in Kenya. Implementation of the principles and practices will not only ensure sustainability of the organizations but will also contribute to accelerated national development for the benefit of *Wanjiku*. The Code is aligned to the Constitution of Kenya and international best practices. It is expected that the Code will assist the Boards of SCs to establish and enhance governance systems that will ensure the efficiency and effectiveness of the organizations.

This Code places an obligation on the Board, the Chief Executive Officer and the Corporation Secretary to promote good governance practices. It is envisaged that Board members and the Chief Executive Officer will take responsibility for full compliance with the Code. The Corporation Secretary, who is a professional on matters of governance and compliance, will be a key asset in assisting the Board to comply with the governance requirements set out in the Code. Governance tools have been developed to assist the Boards in the implementation of this Code including the Board Charter, the Code of Conduct and Ethics and Board Performance Evaluation Tool.

This Code is applicable to all SCs. It addresses specific dimensions of governance and has therefore, the potential to transform the governance of public institutions. For this to be realized, however, the Code should be fully implemented. The Code should be reviewed at least every five years to respond to the changes in the national and global environment. The practices of governance should, in particular, respond to the changing dynamics in the field of corporate governance.



A large herd of wildbeasts, including zebras and wildebeest, migrating across a savanna landscape. The animals are densely packed, moving from the foreground towards the background. The scene is set in a hazy, open plain with rolling hills in the distance. The lighting is soft, suggesting either dawn or dusk.

**“Good governance requires willingness and ability to embrace change.”**

**Wild-beast Migration - Narok County**

*Photo courtesy: Kenya Yearbook Editorial Board*

# ANNEXURE I

## SAMPLE BOARD CHARTER

### A. INTRODUCTION

This Board of Directors Charter (the “Charter”) defines the Board’s roles and responsibilities as well as functions and structures in a way that supports the members in carrying out their strategic oversight function. It provides the Board members with an opportunity to think creatively and critically about how their strategic and operational plans align with the organization’s strategic direction and expectations, with respect to governance.

The Charter will help the Board in directing the organization to maximize the long term value of services provided for all stakeholders. It is therefore imperative for Board members to understand their individual and collective roles with the purpose of helping the organization fulfill its mandate.

The Charter has been adopted by the organization, acting in accordance with *Mwongozo, Code of Governance for State Corporations* (‘the Code’), and is complementary to the requirements regarding the Board and Board members contained in applicable Kenyan laws and regulations. In particular, the principles and policies contained in the Charter are in addition to and are not intended to change or interpret any statute, law or regulation.

The Board of Directors will review this Charter at least annually and, if appropriate, revise this Charter from time to time. This Charter is available to all members of the Board for application and is posted on the organization’s website for the information of stakeholders.

### B. STATEMENT ON GOOD GOVERNANCE

The organization has adopted high standards and applies strict rules of conduct, based on the best corporate practices. As part of this commitment, the Board adheres to good corporate governance by embracing the following principles:

1. To observe high standards of ethical and moral behavior;
2. To act in the best interests of the organization;
3. To remunerate and promote fairly and responsibly;
4. To recognize the legitimate interests of all stakeholders; and
5. To ensure that the organization acts as a good corporate citizen.

In general, Board members shall act in the best interest of the organization and uphold their fiduciary responsibilities and duty of care. This involves not disclosing confidential information, avoiding real and perceived conflicts of interest, and favouring the interests of the organization over other interests. They will act honestly and in good faith so as to create a culture built on principles of integrity, accountability and transparency.

## C. GUIDING PRINCIPLES

In line with Section 3 of the Leadership and Integrity Act No. 19 of 2012 of the Laws of Kenya, the Board of Directors shall respect the values, principles and the requirements of the Constitution, including:

1. The national values and principles provided for under Article 10 of the Constitution;
2. The rights and fundamental freedoms provided for under Chapter Four of the Constitution;
3. The responsibilities of leadership provided for under Article 73 of the Constitution;
4. The principles governing the conduct of State officers provided for under Article 75 of the Constitution;
5. The educational, ethical and moral requirements in accordance with Article 99 (1) (b) and 193 (1)(b) of the Constitution;
6. In the case of County Governments, the objectives of devolution provided for under Article 174 of the Constitution; and
7. The values and principles of Public Service as provided for under Article 232 of the Constitution.

## D. THE BOARD OF DIRECTORS

The Board of Directors is the body of appointed members who jointly oversee the activities of the organization. The Board is expected to provide strategic direction, exercise control and remain accountable through effective leadership, enterprise, integrity and good judgment. It should be diverse in its composition, independent but flexible, pragmatic, objective and focused on balanced and sustainable performance of the organization.

### 1. Size of the Board

The Board shall have a minimum of seven (7) members and a maximum of nine (9) members.

### 2. Board Composition

The Board should ensure that:

- a) Its composition complies with requirements in the Constitution of Kenya and any applicable legislation;
- b) Its members can act independently;
- c) Each Board member understands the broad outline of the organization's policies;
- d) Each Board member is in good standing professionally and has sufficient expertise to perform his or her role as a Board member; and
- e) At least one member is a financial expert, meaning that he or she has expertise in financial management and accounting.

The Board will, in consultation with the committee responsible for governance, and taking into consideration the nature of the organization's mandate, prepare its profile including size, composition and members' expertise for stakeholder information.

### **3 Appointment of Board Members**

- i. The relevant appointing authority shall select and appoint Board members. Every appointment shall be by name and by notice in the Kenya Gazette but shall cease if the Board member:
  - (a) Serves the appointing authority with a written notice of resignation; or
  - (b) Is absent, without the permission of the Chairperson, from three consecutive meetings; or
  - (c) Is convicted of an offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding twenty thousand shillings; or
  - (d) Is incapacitated by prolonged physical or mental illness from performing his duties as a member of the Board; or
  - (e) Conducts himself in a manner deemed by the appointing authority to be inconsistent with membership of the Board.
- ii. Any removal of a Board member under (i) above, shall be through formal revocation.
- iii. The Corporation Secretary will ensure that a record of the appointment letter, gazette notice and written acceptance by the Board member are kept in the personal file of the Board member.

### **4. Independence of Board Members**

All Board members, including those nominated by stakeholders, should recognize that they owe their duties to the organization and not their nominating stakeholder.

### **5. Term Limits**

Board members shall hold office for a period not exceeding three (3) years, and are eligible for reappointment for one more term not exceeding three (3) years. A Board member may be appointed for a cumulative term not exceeding six (6) years. The renewal of a Board Member's tenure for a second term should be subject to an acceptable evaluation as determined during Board evaluations.

The appointing authority shall ensure staggering of Board appointments so that the respective expiry dates of the members terms fall at different time to ensure continuity.

### **6. Resignation from the Board**

A Board member may resign at any time by giving notice, in writing, to the appointing authority, copied to the Chairperson of the Board and the CEO of the organization.

The resignation shall take effect upon receipt of notice by the appointing authority or at any later time specified therein; and unless otherwise specified in the notice, the acceptance of such resignation shall not be necessary to make it effective.

### **7. Chairperson of the Board**

The Chairperson of the Board is primarily responsible for the activities of the Board and its committees. The role of the Chairperson includes approving the agenda for board meetings, chairing the meetings and ensuring that a record of proceedings of all Board activities is kept. The Chairperson should act as the spokesperson for the Board and is the principal contact for the CEO.

The Chairperson ensures that:

- a) The Board satisfies its duties and responsibilities;
- b) Board members when appointed participate in an induction programme and are thereafter continually developed based on identified development needs;
- c) Board members receive all information required for them to perform their duties;
- d) The Board develops and adheres to an annual work plan;
- e) The Board has sufficient time for consultation and decision-making;
- f) The Board constitutes committees and that the committees function properly;
- g) The performance of the Board, Board members, the CEO and the Corporation Secretary is evaluated annually;
- h) Problems relating to the performance of individual Board members are addressed;
- i) Internal disputes and conflicts of interest concerning individual Board members are addressed; and
- j) The Board has appropriate contact with the management.

## **8. Chief Executive Officer**

The CEO is an *ex-officio* Board member with no voting rights. The CEO and the Board play separate and distinct roles but work together to achieve organizational goals.

The Board is responsible for appointing the CEO, through a competitive process, and for removing them. The Board should also assist the CEO in selecting the management team and put in place a succession plan for both the CEO and the team.

The CEO is responsible for overseeing the execution of the Board's directions and policies to ensure desirable outcomes. The CEO therefore serves as the link between the Board and the Management.

The Board should provide the CEO with:

- a) Defined performance goals and authority levels;
- b) An attractive remuneration package;
- c) Regular formal performance review feedback;
- d) Constructive informal feedback on job performance;
- e) Reward for exceptional performance; and
- f) Prompt response to request for guidance or assistance.

The CEO should:

- (a) Demonstrate commitment to the organization's vision, mission, core values and mandate;
- (b) Achieve set performance objectives and targets;
- (c) Put in place effective administrative structures, processes and systems;
- (d) Provide regular, thorough and prompt communication to the Board on key technical,



financial and administrative matters;

- (e) Effectively represent the organization to stakeholders and enhance its public image; and
- (f) Promptly respond to Board member's requests for information.

## **9. Corporation Secretary**

The Board should be assisted by a suitably qualified, competent and experienced Corporation Secretary. The Corporation Secretary should satisfy the requirements of Chapter Six of the Constitution on leadership and integrity and be a Certified Public Secretary in good professional standing.

The Board should empower the Corporation Secretary to efficiently and effectively execute his or her duties and responsibilities. The Board is responsible for the appointment and removal of the Corporation Secretary.

The principle duties of the Corporation Secretary are:

- (a) Providing guidance to the Board and Board members individually on their duties, responsibilities and powers and how these should be exercised in the best interests of the organization;
- (b) Ensuring that board procedures are followed and reviewed regularly, and that the Board complies with the Law, rules and regulations;
- (c) Assisting the Chairperson in organizing Board activities, including providing information, preparing agenda, issuing notices and preparing for meetings, board evaluations and board development programs;
- (d) Providing secretarial services to the Board including ensuring that the Board work plan is prepared and adhered to, circulating board papers in advance of the meeting, keeping a record of attendance at meetings, keeping safe custody of the seal and a record of its usage, and preparing the Board for annual general meetings where applicable;
- (e) Ensuring that the minutes of the Board and Board committees are promptly prepared and circulated;
- (f) Keeping the Board abreast of and informed on, current governance thinking and practice; and
- (g) Coordinating the governance audit process.

## **10. Relationship Between Board and Management**

The Board and Management should execute their mandate in an environment of mutual trust and respect having regard to the principles of good governance. In this regard, the Board shall provide clear and distinct lines of responsibility and accountability, and maintain effective channels of communication.

## **11. Committees of the Board**

To effectively discharge its mandate, the Board shall establish committees with specific terms of reference.

The Board shall appoint into committees, members with requisite skills and competence to discharge allocated responsibilities. In the event that a committee lacks specific skills within its



membership, the Board may, with the approval of the oversight body, co-opt skilled non-Board members to serve on the committee, provided that the chair of a committee shall not be a co-opted member or the Chairperson of the Board. The Board may, from time to time, rotate Board members between the committees.

The Board remains collectively responsible for the decisions and actions taken by any committee. A committee may only perform the tasks delegated to it by the Board and may not exceed the authority or powers of the Board.

The Chairperson of each committee, in consultation with the Board, will determine the frequency of committee meetings as is necessary to fulfill the Committee's functions. The Chairperson of each committee, in consultation with management, will develop the committee's agenda. The Board will however determine the procedure and process within which committees may take independent professional advice at the organization's expense.

The committees will promptly report to the Board any actions taken for ratification and any major developments that they become aware of. The Board shall, as set out in the terms of reference of the respective committees, receive a report of the committee's findings and actions.

The Board has established the following standing committees:-

*[Organization must establish an Audit Committee in addition to a maximum of three other committees to cover the following functions:*

- *Governance*
- *Risk*
- *Compliance*
- *Finance*
- *Technical matters*
- *Strategy*
- *Human Resources.*

*Organizations may establish any other ad hoc committees to handle any special business.*

The Terms of Reference of any committee of the Board shall be developed by the Board in consultation with the oversight office (SCAC).

## **E. PRACTICES OF THE BOARD**

### **1. Board Responsibilities**

The basic responsibility of the Board members is to exercise their best judgment and to act in a manner that they reasonably believe to be in the best interest of the organization and its stakeholders. In discharging that obligation, the members should be entitled to rely on the honesty and integrity of the organization's management, staff and its external professional advisors and auditors.

In furtherance of its responsibilities, the Board will:

- (a) Determine the organization's mission, vision, purpose and core values;
- (b) Review, evaluate and approve, on a regular basis, long-term plans for the organization;
- (c) Review, evaluate and approve the organization's budget and financial forecasts;
- (d) Review, evaluate and approve major resource allocations and capital investments;
- (e) Ensure that the procurement process is cost-effective and delivers value for money;
- (f) Review and approve the operating and financial results of the organization;
- (g) Ensure effective, accurate, timely and transparent disclosure of pertinent information on

- the organization's operations and performance;
- (h) Ensure that effective processes and systems of risk management and internal controls are in place;
  - (i) Review, evaluate and approve the overall organizational structure, the assignment of senior management responsibilities and plans for senior management development and succession;
  - (j) Review, evaluate and approve the remuneration structure of the organization;
  - (k) Adopt, implement and monitor compliance with the organization's Code of Conduct and Ethics;
  - (l) Review on a quarterly basis the attainment of targets and objectives set out in the agreed performance measurement framework with the Government of Kenya;
  - (m) Review periodically the organization's strategic objectives and policies relating to sustainability and social responsibility/investment;
  - (n) Protect the rights of shareholders and optimize shareholder value;
  - (o) Enhance the organization's public image and ensure engagement with stakeholders through effective communication;
  - (p) Monitor compliance with the Constitution, all applicable laws, regulations and standards; and
  - (q) Review, monitor and ensure that the organization is effectively and consistently delivering on its mandate.

## **2. Responsibilities of Individual Board Members**

Each Board member shall:

- (a) Exercise the highest degree of care, skill and diligence in discharging their duties;
- (b) Act in the best interest of the organization and not for any other purpose;
- (c) Act honestly at all times and must not place themselves in a situation where their personal interests conflict with those of the organization;
- (d) Exercise independent judgment;
- (e) Devote sufficient time to carry out their responsibilities, regularly update their knowledge and enhance their skills;
- (f) Promote and protect the image of the organization;
- (g) Owe their duty to the organization and not to the nominating or appointing authority; and
- (h) Owe the organization the duty to hold in confidence all information available to them by virtue of their position as a Board member.

## **3. Principles of Public Service**

The Board, in performing its functions, shall be guided by the principles of Public Service as provided in Chapter Thirteen of the Constitution of Kenya, which include:

- (a) High standards of professional ethics;
- (b) Efficient, effective and economic use of resources;
- (c) Responsive, prompt, effective, impartial and equitable provision of services;
- (d) Involvement of stakeholders in policy making;
- (e) Accountability for administrative acts;
- (f) Transparent and timely provision to the public of accurate information;

- (g) Fair competition and merit as the basis of appointments and promotions;
- (h) Representation of Kenya's diverse communities; and
- (i) Affording adequate and equal opportunities for appointment, training and advancement, at all levels of public service, of men and women, members of all ethnic groups and persons with disabilities.

#### **4. Board and Committee Meetings**

Board meetings will be held at least four (4) times a year, and not more than 4 months shall elapse between the date of one meeting and the date of the next meeting. A schedule of dates of the meetings will be agreed upon by the Board members and set out in the Board work plan. Notices of the location and the timing of meetings will be issued prior to the meetings. The Board work plan may be adjusted if deemed necessary by the Board.

The quorum for a Board meeting will be five members where the total Board membership is eight to nine and four where the total membership is seven and below.

The quorum for Board committee meetings will not be less than three (3) members. Board members are expected to attend Board meetings and meetings of the committees on which they serve.

The Chairperson, CEO or Committee Chairpersons may from time to time invite senior managers, other employees and advisors to attend Board or Committee meetings whenever deemed appropriate.

The Board should set aside adequate time, annually, to discuss strategy and policy matters.

#### **5. Notice and Agenda for Meetings**

Notice and agenda of Board and committee meetings will issue from the Corporation Secretary as directed by the Chairperson of the Board or relevant committee. Each Board member is free to suggest the inclusion of items on the agenda by providing notice to the Chairperson at least fourteen (14) days' prior to the meeting, to enable preparation. Additional agenda items may be included in the agenda during the meeting subject to approval by the Board or the committee.

Save for the additional agenda items, the agenda for the meetings will be aligned to the Board's work plan which will establish a schedule of agenda subjects to be discussed during the year to the degree this can be foreseen.

Except for urgent cases, as determined by the Chairperson, detailed agenda accompanied by relevant supporting documents and recommendations will be provided to the Board members at least ten (10) days prior to a meeting. Board members should review these materials in advance of the meeting to enhance effectiveness.

#### **6. Venue of Meetings**

Board and committee meetings are generally held at the head office of the organization but may also take place elsewhere with relevant approvals. The time and venue of the meetings should be clearly communicated in the notice for the meeting.

In addition, meetings of the Board or committees may be held by video or conference call or by any other means of communication approved by the Board, provided that all members have been given prior notification and they can communicate with each other simultaneously.

## 7. Attendance of Meetings

The CEO shall attend all Board meetings and, if requested by the Board, other members of the senior management shall also attend a Board meeting in whole or in part.

A Board member who is unable to attend a meeting will explain their absence to the Chairperson and notify the Corporation Secretary for the purpose of recording the apology.

## 8. Procedure of Meetings

### *(a) Chairing of Meetings*

Board meetings shall be chaired by the Chairperson of the Board or in the case of a committee meeting, the Chairperson of that committee. In the absence of the Chairperson, one of the Board members designated by the Board members present at the meeting, will chair.

### *(b) Constitution of the Meeting*

The Board meeting will be constituted in accordance with constitutive documents of the organization and shall include a confirmation that there is quorum for the meeting to proceed and recording of attendance.

### *(c) Protocol of Board Meetings*

The Chairperson, having ensured that the meeting is properly constituted, will also ensure that at an appropriate time during the meeting, the minutes of the previous meeting are confirmed and matters arising therefrom handled.

A special meeting of the Board or Board Committee will not discuss any matter other than that specified in the agenda.

The conduct of Board meetings may also be undertaken through tele/video conferencing, in the case where some of the participants will not be physically present. The following guiding principles shall apply:

1. The Corporation Secretary should ensure that the constitutive documents of the organization allow for tele/video conferencing;
2. The Corporation Secretary shall ensure that the necessary arrangements are in place to facilitate effective and secure communication during the meeting;
3. On sending out the notice of the meeting, the Corporation Secretary shall also confirm whether each Board member or participant will attend physically or through tele/video conferencing;
4. At the start of the scheduled meeting and for the purpose of confirming quorum, a record of attendance shall be taken during which each Board member or participant will clearly state, for the record, their full name, location, type of device being used and give confirmation that they can clearly hear the others;
5. All Board members or participants shall identify themselves for the record before speaking and must confirm that they can clearly hear and/or see each other in the course of the meeting;
6. If a statement of a Board member or participant in the meeting via tele/video

conferencing is interrupted or garbled, the Chairperson shall request for a repeat or reiteration;

7. The Chairperson should ensure that resolutions are clarified for record purposes; and
8. The Chairperson should ensure that the agenda is suitable for tele/video conferencing.

#### *(d) Decision-Making*

The Board members, with the guidance of the Chairperson, should work towards unanimous adoption of resolutions. However, Board members are entitled to voice dissenting opinions and have these recorded in the minutes when unanimity cannot be reached.

Resolutions of the Board will be made at Board meetings or approved in writing by circulation, provided that in respect to the latter the proposed resolution is submitted to all Board members and none of them objects to this form of adoption. Approval of resolutions by circulation shall be effected in writing by all Board members. Objection to this method of adoption or to the proposed resolution should also be in writing.

#### *(e) Resolutions and Minutes*

Minutes must be drawn up for every Board and committee meeting with resolutions highlighted therein. The minutes should be circulated to the Board members as soon as possible after the meeting. Upon confirmation, the minutes should be signed by the Chairperson and added to the records of the organization. Substantial corrections to previous minutes will be recorded in the minutes of the meeting where the corrections are made and adopted by the Board members. Urgent resolutions may be drawn up and signed immediately in the relevant meeting.

#### *(f) Implementation of Resolutions*

Generally, the Board delegates to the CEO responsibility to implement the resolutions of the Board. The CEO may delegate some of these responsibilities to senior management. The Board is responsible for monitoring the implementation of the resolutions.

### **9. Liability of Board Members**

A Board member shall not be liable for any act done in good faith in carrying out duties and responsibilities in the organization. However, there is no limitation of liability for negligence or breach of the member's duty of care to the organization or its stakeholders, or for acts or omissions not in good faith, or which involve intentional misconduct or violation of the law.

### **10. Conflict of Interest**

A conflict of interest may arise where a Board member or close family member such as a spouse, child, parent or sibling has private interests that could improperly influence the performance of the Board member's official duties and responsibilities. Conflict may also arise where a Board member uses their office for personal gain.

Board members are required to avoid conflict of interest and deal at arms-length in any matter that relates to the organization. However, a Board member who identifies an area of conflict shall be required to disclose any actual or potential conflict of interest to the Board. In so reporting,



the Board member is required to provide all relevant information, including information which relates to their immediate family members by blood or marriage which is related to the area of conflict. When declared, the Board member shall abstain from decisions where the conflict exists.

The Corporation Secretary should keep a record of conflicts of interest declared, for accountability purposes, and as a rule of good practice on appointment and on regular intervals or at any time when circumstances change, all members shall in good faith disclose to the Board for recording, any other business or interest likely to create a potential conflict of interest.

### **11. Notice of Other Directorships**

Board members should carefully consider the number of other boards on which they can serve, consistent with the time and energy necessary to satisfy the requirements of the organization provided that a Board member shall not serve in more than three boards of State Corporations concurrently.

In furtherance of these considerations, Board members should notify the appointing authority in a timely fashion before accepting an invitation to serve on the Board of another public or private body. This prior notice is to allow discussion with the Chairperson of the Board and to obtain legal advice on whether such other service will interfere with the Board members service on the organization's Board, impact the Board member's independence, or create an actual or apparent conflict of interest for the Board member.

### **12. Board Members Access to Employees**

Board members should have full and free access to employees of the organization but such access should be arranged through the CEO. The Board members will use their judgment to ensure that any such access does not disrupt the operations of the organization.

### **13. Independent Advisors**

Board members may individually and collectively seek independent advice in connection with their duties in the corporation as and when required. Independent professional advice for the purposes of this Charter shall include legal advice, advice on matters of governance, the advice of accountants and other professional financial advisors on matters of law, accounting and other regulatory matters but shall exclude advice concerning the personal interests of the director concerned, such as matters relating to their appointment or disputes with the organization.

### **14. Interaction with Stakeholders**

Only designated representatives of the organization shall communicate on behalf of the organization with the Government, media, stakeholders and the general public.

### **15. Board Induction and Continuous Skills Development**

The Board will provide new Board members with an effective induction programme in order to familiarize them with their responsibilities as directors, general principles of corporate governance and Board practices. The induction programme will also provide the Board member with an orientation of the organization, strategic plans, financial status and policies, risk management, compliance programmes and the Code of Conduct and Ethics.

The Board will ensure that a competence needs assessment is carried out periodically and an annual development plan prepared to address identified gaps. In this regard, Board members will

be provided with access to, or notice of, continuing development programs that are designed to keep members abreast of the latest developments in sector best practice, corporate governance and critical issues relating to the operation of public sector boards.

The Board will satisfy itself that its members are up-to-date with continuous professional development in their respective professional bodies.

## **16. Board Remuneration**

Board members shall be remunerated for their services in accordance with the prevailing relevant legislative provisions and/or guidance from the relevant authority. In line with best practice, the remuneration should include base pay, attendance allowances and bonuses.

## **17. Board Performance**

The Board will conduct an annual evaluation to appraise its performance. This evaluation will be carried out in accordance with the Board Evaluation Tool.

The Board evaluation provides an opportunity for Board members to identify strengths, collective skill gaps and individual areas of improvement. The Board will also review the performance of each committee against the agreed Terms of Reference.

The Board will also evaluate the performance of the CEO and Corporation Secretary.

## **18. Board and Management Succession**

The Board will put in place a succession plan for both the Board and management and review the same regularly.

## **19. Governance Audit**

The Board should ensure that a governance audit of the organization is undertaken on an annual basis. The purpose of the governance audit is to ensure that the organization conforms to the highest standards of good governance. The governance audit should cover the following parameters among others:

- (a) Leadership and strategic management;
- (b) Transparency and Disclosure;
- (c) Compliance with Laws and Regulations;
- (d) Communication with stakeholders;
- (e) Board independence and governance;
- (f) Board systems and procedures;
- (g) Consistent shareholder and stakeholders' value enhancement; and
- (h) Corporate social responsibility and investment.

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This Board Charter is Effective from \_\_\_\_\_ day of \_\_\_\_\_

Signed:

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Chairperson

# ANNEXURE II

## CODE OF CONDUCT AND ETHICS

### 1. Background

#### 1.1 Introduction

The Code of Conduct and Ethics for State Corporations (SCs) focuses on ethical conduct and integrity at the workplace. It defines SC's commitment to the highest standards of behaviour so as to contribute to the achievement of the national development goals.

The Code sets out expectations for individual behaviour necessary to meet these standards and includes requirements and guidance to help you to carry out your role with integrity and in compliance with the law.

The Code cannot cover everything; it is therefore essential that you understand applicable laws and detailed policies that are relevant to your role. It is also important that the Code is not used as a substitute for the good judgment expected of Board members and employees working for any SC.

#### 1.2. Objective

By exemplifying the ethical behaviours and corporate values described in the Code, the organization will continue to uphold Article 10 of the Constitution of Kenya on National Values and Principles of Governance and Chapter 6 on Leadership and Integrity.

#### 1.3. Application

This Code applies to everyone in the SC – every Board member and employee – and also to contract staff. Adherence to the values in this Code is a condition of Board appointment or employment of staff.

A breach of this Code will result in disciplinary measures being taken, including separation from the SC.

### 2. Values

#### 2.1 Respect for People

Board members and employees are entitled to work in an environment in which people are treated with respect. Board members and employees must therefore avoid actions or behaviours that are or could be viewed as harassment and are required to treat all people with respect, dignity and fairness.

#### 2.2 Integrity

Board members and employees are expected to act with integrity by consistently upholding the highest standards of honesty and truthfulness. They should not use their positions to inappropriately obtain an advantage for themselves or to advantage or disadvantage others; and should take all possible steps to prevent and resolve any real, apparent or potential conflicts of interest between their official responsibilities and their private affairs.

#### 2.3 Transparency and Accountability

Transparency of operations, planning and reporting and a clear accountability framework are

fundamental principles that underlie good governance. It is expected that Board members and employees will work together in a spirit of openness, honesty and transparency. This will encourage engagement, collaboration and respectful communication.

## **2.4 Stewardship**

Every Board member and employee is responsible for using appropriately the assets entrusted to them. They are responsible for safeguarding the assets against waste, loss, damage, misuse, theft, misappropriation or infringement, in order to protect their value.

All transactions of the organization must be reflected accurately and fairly in the books of accounts. Falsification of asset records or misrepresentation of facts will constitute fraud.

## **2.5 Excellence**

Board members and employees shall demonstrate excellence by providing fair, timely, efficient and effective services to the public. They should exercise high levels of discipline and commitment in the performance of their duties. They are also required to continually improve the quality of policies, programs and services by fostering a work environment that promotes teamwork, learning and innovation.

## **3. Conflict of Interest**

Board members and employees must avoid conflicts of interest between their private activities and their part in the conduct of the organizations business.

A conflict of interest may arise where a Board member, employee or close family member such as a spouse, child, parent or sibling has private interests that could improperly influence the performance of the Board member or employee's official duties and responsibilities. Conflict may also arise where a Board member or employee uses their office for personal gain.

A real conflict of interest exists at the present time. An apparent conflict of interest could be perceived by a reasonable observer to exist, whether or not it is the case, and a potential conflict of interest could reasonably be foreseen to exist in the future. A conflict of duty arises, not because of an employee's private interests, but as a result of one or more concurrent or competing official roles. For example, these roles could include the employee's primary employment and his or her responsibilities in an outside role that forms part of their official duties, such as an appointment to a board of directors, or other outside function.

### **3.1 Prevention of Conflict of Interest**

Board members and employees maintain public confidence in the objectivity of their service by preventing and avoiding situations that could give the appearance of a conflict of interest or result in a potential or actual conflict of interest. In addition, Board members and employees are required to observe any specific conduct requirements contained in the statutes governing ethical behaviour and their profession, where applicable.

It is not possible to foresee every situation that could give rise to real, apparent or potential conflict of interest, however, where conflict arises, the Board member or employee should:

Excuse themselves, or anyone who works for them, from any decision-making that may create a conflict of interest with their private interests;

- (a) Disclose in writing, to the relevant authority the facts and explain the circumstances that create or could create the conflict of interest;
- (b) Seek guidance from the immediate authority;

- (c) Seek additional legal or financial guidance if you are a Board member;
- (d) Conduct your relationship with contractors and suppliers in a professional, impartial and competitive manner;
- (e) Refrain from the direct or indirect use of, or allowing the direct or indirect use of organization property, for anything other than officially approved activities;
- (f) Maintain the impartiality of the public service and not engage in any outside or political activities that impair or could be seen to impair their ability to perform their duties in an objective or impartial manner;
- (g) Be aware that the acceptance of any offer of future employment including consultancy or directorship with a contractor, supplier, customer or business partner constitutes a potential conflict of interest;
- (h) Ensure that concurrent outside appointments, such as to a Board of directors, are managed appropriately and that any resulting conflicts of duties are resolved in the public interest; and
- (i) Declare to the relevant authority, a benefit or income received either directly or indirectly from a contract with external parties on contractual or other arrangements. The relevant authority will determine whether the arrangement presents a real, apparent or potential conflict of interest, and may require that the contract be modified or terminated.
- (j) Similarly, a Board member or employee should not:
  - o Get involved in the hire, supervision, management or career planning of any relative;
  - o Make improper use of one's position or of confidential information gained in that position to achieve personal interests or direct gain;
  - o Allow relationships with contractors and suppliers to influence business decisions made on behalf of the organization; and
  - o Accept gifts or inducements, including hospitality that may place you under an obligation.

### **3.2 Use of Information Communication Technology**

Organizations recognize the importance of the use of Information Communication Technology (ICT) tools to conduct business and interact with stakeholders. Use of social networks in an official capacity must comply with the legislative requirements and the organization policy on the use of the internet and electronic networks. Board members and employees using ICT for personal or professional use are expected to exercise the same kind of judgment and criteria as would be applied to any other workplace decision.

### **3.3 Gifts, Hospitality and other Benefits**

Board members and employees should not accept any gifts, hospitality or other benefits that may have a real, apparent or potential influence on their objectivity in carrying out their official duties and responsibilities or that may place them under obligation to the donor.

As a general rule, Board members and employees should not accept gifts or other advantages except as set out in the Public Officer Ethics Act, 2003 and any other relevant statutes and policies.

### **3.4 Solicitation**

With the exception of fundraising for officially supported activities such as those relating to corporate social responsibility, Board members or employees may not solicit gifts, hospitality, other benefits or transfers of economic value from a person, group or company who has dealings with the organization. When fundraising for supported official activities, Board members or employees should ensure that they have prior written authorization from the relevant authority in order to



solicit donations, prizes or contributions in kind from external organizations or individuals.

**3.5 Register of Conflict of Interests**

The organization shall maintain a register to record conflict of interests.

**4. Whistle-Blowing**

Any person who has reason to believe that a Board member or employee has not acted in accordance with this Code should bring the matter to the relevant authority or the appropriate government agency.

The organization should not retaliate nor tolerate retaliation against any person who brings an issue to its attention in good faith.

**5. Resolution**

Board members and employees are expected to adhere to this Code. The Board members and employees are expected to resolve issues in a fair and respectful manner and consider informal processes such as dialogue or mediation.

In the event of an ethical dilemma or dispute, Board members and management may seek advice and support from other appropriate sources such as the Ethics and Anti-Corruption Commission (EACC), and any other oversight body.

**ACCEPTANCE**

I agree to the terms of the organization’s Code of Conduct and Ethics, which forms part of my Board appointment or contract of employment. I have read and understood the Code and agree to abide by its provisions.

I understand that any breach of its provisions will render me liable to appropriate disciplinary action.

.....  
Full Name of Board Member/Employee

.....  
Signature

.....  
Position

.....  
Date

**MWONGOGO; The Code of Governance for State Corporations**

**APPOINTMENT AND PERFORMANCE MANAGEMENT FRAMEWORK FOR BOARDS OF STATE CORPORATIONS**

Designation	Appointing Authority	Person specifications	Tenure	Remuneration	Performance Management
CHAIRPERSONS OF BOARDS	The President or as otherwise provided under any other written law	<ul style="list-style-type: none"> <li>i) Holds a degree in the relevant field from a university recognized in Kenya.</li> <li>ii) Has proven business management or other relevant professional experience.</li> <li>iii) Has served in a position of senior management for a period of at least six years.</li> <li>iv) Has not served in the same entity as an employee in the preceding five years.</li> <li>v) Meets the requirements of Chapter six of the Constitution</li> <li>vi) Meets the requirements of the fit and proper test.</li> </ul>	Three year term renewable once subject to evaluated performance	Determined by the State Corporations Advisory Committee in terms of section 10 of Cap. 446	Set PC targets and Signs corporate Performance Contract with the Cabinet Secretary of respective Ministries
BOARD MEMBERS	The Cabinet Secretary or as otherwise provided by any other written law	<ul style="list-style-type: none"> <li>i) Holds a degree in the relevant field from a university recognized in Kenya.</li> <li>ii) Has proven business management or other relevant professional experience.</li> <li>iii) Has served in a position of senior management for a period of at least six years.</li> <li>iv) Has not served in the same entity as an employee in the preceding five years.</li> <li>v) Meets the requirements of Chapter six of the Constitution</li> <li>vi) Meets the requirements of the fit and proper test.</li> </ul>	Three year term renewable once subject to evaluated performance	Determined by the State Corporations Advisory Committee in terms of section 10 of Cap. 446	Set PC targets and Sign corporate Performance Contract with the Cabinet Secretary of respective Ministries

Designation	Appointing Authority	Person specifications	Tenure	Remuneration	Performance Management
CHIEF EXECUTIVE OFFICERS	Respective Board of the State Corporation	<ul style="list-style-type: none"> <li>i) Holds a degree in the relevant field from a university recognized in Kenya</li> <li>ii) Has at least ten years knowledge and experience in the relevant field.</li> <li>iii) Meet the requirements of Chapter six of the Constitution.</li> <li>iv) Has served in a position of senior management for a period of at least five years.</li> <li>v) Meets the requirements of the fit and proper test.</li> </ul>	<ul style="list-style-type: none"> <li>i) Three year term or as otherwise provided under any other written law</li> <li>ii) Renewable once subject to performance evaluated by the Board</li> </ul>	Determined by the Respective Board within SCAC guidelines in terms of section 5(3) of Cap. 446	Signs performance contract with the respective Board and cascades the same
COMPANY/ CORPORATION SECRETARY	Respective Board of the State Corporation	<ul style="list-style-type: none"> <li>i) Holds a degree in the relevant field from a university recognized in Kenya</li> <li>ii) Meet the requirements of Chapter six of the Constitution.</li> <li>iii) Meets the requirements of the fit and proper test.</li> <li>iv) Certified Public Secretary (CPS) and member of the institute of Certified Public Secretary of Kenya in good standing;</li> <li>v) Proven experience as corporation secretary or in similar governance role;</li> </ul>	Employment terms applicable to the staff of the Corporation	Determined by the respective Board	Signs performance contract with the Chief Executive Officer

## GLOSSARY

Accountability Board Charter	Taking responsibility for actions. A document setting out the role and responsibilities of the Board, its powers and those of the various Board Committees, the separation of roles between the Board and Management; and the policies and practices of the Board in respect of corporate governance matters.
Board Work Plan	A document setting out the activities of the Board over a period of time.
Code	This Code of Corporate Governance for State Corporations, setting out a harmonized approach to Governance matters.
Comply or Explain	Full compliance with the Code is required but in the event of non-compliance reasons should be given with a detailed and acceptable action plan for achieving full compliance.
Corporate Social Investment	Donations, other kinds of financial assistance and contributions beyond financial assistance such as employee time, which bring benefits over and above those directly associated with core business activities.
Corporate Responsibility	The responsibility of the organization for the impact of its decisions and activities on society and its environment.
Ethics	A set of values, principles and moral standards that prescribe how a group of people behaves.
Fiduciary	A legal or ethical relationship of trust between two or more parties.
Fit and Proper Requirements	Requirements ensuring that only persons of good character are appointed as Board members. Such requirements include but are not limited to;  (a) The individual meets the requirements of Chapter Six of the Constitution (b) Is a recognized professional with relevant experience; (c) Has no convictions resulting from integrity related matters or civil liabilities.
Independence	Absence of undue influence and bias which could affect the ability of an individual to make objective decisions.

Internal Controls	A process used by the Board and Management to provide reasonable assurance regarding the reliability of financial reporting and compliance with applicable laws and regulations so as to achieve the objectives and long-term goals of an organization.
<i>Mali ya umma</i>	A Swahili term used in Kenya to describe public resources.
Management Discussion and Analysis	A section of a company's annual report in which management discusses numerous aspects of the organization, both past and present.
Member in Good Standing	Status assigned to a Member when he or she has remained current on a professional body's dues and continuous professional development credits.
<i>Mwongozo</i>	A Swahili word meaning guide, guidelines, direction or manual. It assumes a clear direction or path to follow.
Oversight Office	State Corporations Advisory Committee.
Risk	Real or potential events that may impact an organization's ability to achieve its objectives.
Risk Management	Process of identifying real or potential events that may impact the organization's ability to achieve its objectives and developing a framework for managing the risks.
Senior Management	The team at the highest level of the organization with the responsibility for day-to-day management.
Sustainability	Conducting operations in a manner that meets existing needs without compromising the ability of future generations to meet their needs.
Triple Bottom Line	The pursuit of balance in economic, social and environmental aspects in the management of an organization.
<i>Wanjiku</i>	A name that is used to signify the common man (and woman) in the context of national politics in Kenya.
Whistle-Blowing	Making a disclosure in the public interest or exposing alleged misconduct, dishonest or illegal activity occurring in an organization.



**“Good governance is everyone’s responsibility.”**



**Uhuru Gardens - Nairobi County**

*Photo courtesy: National Museums of Kenya*



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