

The Role of Oversight Boards in Observing Rule of Law: Are NGOs in Kenya Compliers with Regulatory Requirements or Fugitives?

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Abstract

The purpose of this study was to examine the role played by oversight boards in observing rule of law by Non-Governmental Organizations (NGOs) in Kenya. The objective of this study was to assess the extent to which rule of law as observed by NGO oversight Boards in Kenya influence accountability to stakeholders. A descriptive survey research design was used in this study and questionnaires were employed to collect quantitative data in an attempt to answer the research question. Test of hypothesis was done to establish if there was significant relationship between rule of law and accountability to stakeholders among the respondents. The ANOVA test of hypothesis revealed no significant relationship between accountability to stakeholders and rule of law ($p < 0.970$). This shows that rule of law indicators like renewing NGO's registration on time, did not have any significant influence on accountability to stakeholders. The results of a regression analysis done on the indicators of rule of law show a higher significance level ($P < 0.406$). To a greater extent, most decisions made by oversight boards are communicated to the management team. In regard to involving boards in playing oversight role, fewer NGOs do not involve their boards in decision-making, $P < 0.833$. This latter scenario represents disconnect between the management and the board; oversight is minimal and the board is largely asleep or absent, a characteristic of NGOs run by founder-directors and the board formed only to meet statutory requirements.

Keywords: Kenya, NGOs' Oversight Board, Rule of Law, Accountability

1 Introduction

Oversight role is played by the board of a Non-Governmental Organization (NGO) as a legal responsibility. Regardless of what board members are called, they are in essence the trustees in the literal and legal sense of the term (National Center for Nonprofit Board, 2012: 5) and; "The first obligation of any board of trustees is to know the law and establish compliance with it" (Letts, 2005:3).

Tandon (2006) identifies four different types of NGOs' governing boards as: Family boards, consisting of people sharing kinship; Invisible boards - comprising a small coterie of friends and family assembled by the founder(s) merely for the purposes of meeting statutory requirements on paper; Staff boards, that largely consists of current staff of an NGO; and Professional boards where the composition and functioning of the board is more formal. In the latter, the board evaluates or audits the performance of the Chief Executive Officer (CEO), senior staff and the NGO in a regular and formal manner, it offers on-going professional guidance to the NGO and shapes its policies and strategies, and in situations of crisis, the board is able to undertake true function of governance.

Insofar as an NGO works within a sovereign state, the most important measure by which an NGO is judged is its adherence to legal requirements. The board must know what laws apply and whether operations are in compliance. If legal obligations are not being met, the board must ensure that necessary corrections are made. Even though specific responsibilities can be delegated to the chief executive, in nearly all countries in Central and Eastern Europe, it is the board that vouches for the legal compliance of the NGO (Wyatt, 2004: 40).

Rule of law, observance of which boards are obliged to uphold as a legal duty, is a terminology open to multiple interpretations and usage. According to Stephenson (2008) a survey of its use in Germany, France and the United Kingdom concludes that the term has no one specific meaning. It "belongs to the category of open-ended concepts which are subject to permanent debate" Grote 1999: 271 in (Stephenson, 2008). This study, nevertheless, adopts the usage according to Vernon (2009) that, rule of law is adherence to and enforcement of transparent laws, policies, regulations and codes of conduct.

In the Republic of Kenya, the government put in place a regulatory organ called the Non-Governmental Organizations Coordinating Board. This board receives applications for NGO registration. While applying for registration, the applicants are required to submit a copy of their constitution with some compulsory clauses on governance structure, stating the board members, the management team, management of the NGO funds, and a clause on dissolution. In the latter clause the applicants must state that the assets of the NGO will be transferred to an organization with similar objectives upon dissolution (Gok, 2006).

1.1 Objective of the Study

To assess the extent to which rule of law as observed by NGO oversight Boards in Kenya influence accountability to stakeholders

1.2 Research Question

To what extent does rule of law as observed by NGO oversight Boards in Kenya influence accountability to stakeholders?

1.3 Research Hypothesis

In order to further understand the research question above, the following hypothesis was developed.

H_a: There is a significant relationship between rule of law as observed by NGO oversight Boards in Kenya and accountability to stakeholders.

1.4 Significance of the Study

It was hoped that the findings of this study would provide insights for a myriad of government ministries and aid agencies to develop policies and strategies that would inform their approaches to programmes and projects planning and implementation.

It was hoped that knowledge generated from this study would serve as a beneficial reference material to policy makers at the Kenyan NGO Coordination Board, students, both directors and programme managers in various NGOs, general readers and researchers in the field of NGO management and all individuals and organizations keen on upholding accountability in their programmes and projects.

1.5 Basic Assumptions of the Study

This study was anchored on the basic assumption that rule of law as observed by NGO oversight boards has influence on their accountability to stakeholders. The study assumed that the respondents to the questionnaires would be available, appreciated the purpose of the study, understood the questions posed, and gave candid responses. It is also assumed that the researcher took precaution to develop a well structured research instrument that was administered in a manner that minimised any bias.

1.6 Limitation of the Study

Some of the NGOs changed their physical addresses without notice and this made accessibility to their personnel and premises challenging; the people in management positions in the NGOs were often on the run - with very limited time to attend to issues that were not directly related to their immediate programme or project goals and objectives. To overcome the limitation of time and ensure a high response rate among the respondents, the research instruments were collected from the respondents as soon as they finished answering the questions. Where respondents needed more time, an arrangement was made to pick the questionnaires before the end of the day. The researcher also made follow up through telephone calls to the respondents requesting them to avail dully filled questionnaire at an agreed time, by leaving it with the organization's secretary or receptionist if the respondent would not be available in person. This ensured that at least one NGO staff was found in the organization to return the questionnaire.

1.7 Delimitation of the Study

This research was delimited to NGOs registered in Kenya, headquartered in the Municipality of Kisumu and working along the Lake Victoria Basin. Kisumu Municipality has a large number of these NGOs serving the communities along Kenya's Lake Victoria Basin. According to a survey done by NGOs Coordination Board in Kenya, the former Nyanza Province – now consisting of Kisumu, Siaya, Homa-Bay, Nyamira, Kisii and Migori Counties – is only second to Nairobi in terms of distribution of NGOs (NGOs Coordination Board, 2009: 28); and Kisumu Municipality as the de facto capital of the former Nyanza Province in Kenya, boasts of a larger concentration of NGOs than other parts of the greater western region, and based on this fact the study was delimited to Kisumu Municipality.

1.8 Conceptual Framework

This study was guided by the following conceptual framework, as perceived by the researcher, and shown in Figure 1. Rule of law that gives legal framework to NGO operation can be enacted and this would have a bearing on the level of accountability or lack of it to stakeholders. Boards ought to provide oversight and also understand what the law requires and establish mechanisms for compliance; this can be done by ensuring legal documents like registration certificates are renewed on time. Boards that neither have clear set of rules for its operation nor meet regularly to review running of projects creates accountability gap.

2 Literature Review

Governments may wish to enforce registration and monitoring mechanisms in order to keep track of NGO activities to avoid duplication and establishment of false organizations and to ensure quality and accountability according to Gilson et al., 1994; Green and Matthias, 1997 (in Mayhew, 2005). Governments may also desire to regulate, or even restrict, NGOs when they feel that NGOs siphon off resources which might otherwise have come to the state or where they are afraid that NGO activities could challenge state ideology, as explained by Hulme and Edwards 1997 (in Mayhew, 2005). NGOs on the other hand, may consequently be weary of state intervention for fear that their freedoms and independence will be undermined, although they may also acknowledge benefits in legislation to protect their activities and maintain their reputation (Mayhew, 2005).

The governments confer legal identity to NGOs and define the extent to which they can act legitimately and independently from the government. The outcome of legislation and regulation might be two-fold. First, it may create a free environment for NGO operations and make them subject to checks and balances as is the case in the Philippines, Bangladesh and Kenya (Slim, 2002; Kim, 2003; Songco, 2010; Kameri-Mbote, 2002). Second, legislation can be a conduit for curtailing freedoms of NGOs and make non-government activities difficult, for instance through uncalled for bureaucracy, high fees, and restrictions on receipt of aid. NGOs whose sources of funding have been extremely scrutinized, controlled and even taxes imposed on donor-funds include: Russia, Moldova, Venezuela, Uzbekistan, Algeria, Egypt, Eritrea, Ethiopia, and Zimbabwe (Vernon, 2009).

Virtually all European countries require that NGOs be registered to acquire legal personality in order to protect NGO's capital from founders or donors or creditors. In addition, any legal person may be required to present its basic data and annual accounts in a public register, besides submitting their annual accounts with a competent authority as a compulsory regulatory provision, as a means to ensure that credible information is provided to all parties with whom the organization enters into contracts (European Foundation Centre, 2011).

In both Taiwan and the Philippines, the government does not have a firm grip on regulating NGOs. The government maintains a soft stand on NGO regulation and sees the latter as an 'independent sector,' therefore, the government only facilitates their activities while slightly regulating them. In the Philippines, Government Department of Finance worked with NGO leaders to establish a self-regulatory mechanism and eventually put an NGO umbrella agency in charge of NGO certification process. The result was the creation of the Philippines Council for NGO Certification (PCNC) in 1997 when some of the largest NGO networks joined forces to set up good governance models for NGOs. Perhaps the only NGO that is based in a single developing country and focuses on accreditation of other NGOs is the PCNC of the Philippines. Grounded firmly on mechanisms of functional accountability and given teeth by the Philippine government's mandate that NGOs be accredited, PCNC has logged and certified 1,000 of that country's NGOs. They have also reportedly brought the estimated number of organizations acting as NGOs in the Philippines down to 6,000 - from estimates of 60,000 and even 249,000 to 497,000 (Kim 2003; Songco 2010).

For both the developing world and the economies in transition, the Philippines takes the enviable position of a trail-blazer, a pace-setter as well as a benchmark for NGO registration and regulatory framework. The aforementioned country has a reputation for being the first in Asia and among the first in the world to establish a regulatory body named the Philippine Council for NGO Certification (PCNC) as confirmed by (Kim 2003; Slim 2002; Songco 2010; Mayhew 2005; Antlöv, Ibrahim and van Tuijl, 2005).

Barr, Fafchamps and Owens, (2004) observe that in the UK, for instance, NGOs are registered with and report to the Charities Commission. The rationale for regulation is that, by diverting funds, unscrupulous individuals may undermine the public trust in NGOs and hence reduce funding to the NGO sector as a whole. (Kim, 2003) has noted that in Australia, in 1989, the National Security Council stated the need for accountability and the Royal Charter required organizations to register in order to be eligible to receive state funding. There is also the Corporate Act under which NGOs can be incorporated under the same regulation as business corporations. In addition, the Australian Council for Overseas Aid (ACFOA) has developed codes of conduct for their members and subsequently other development NGOs have attempted to follow suit.

On the other hand, Vietnam's strong socialist government defends its supremacy through a sophisticated framework of substantial structure and breadth – the government seeks to control rather than regulate and enable the NGO sector which remains weak. At the other extreme, Cambodia has weak government capacity with no formal policies toward the NGO sector, which is therefore dissipated and uncoordinated (Mayhew, 2005), while in Peru, there is no legislation obliging Civil Society Organization to be accountable (Cano, 2010).

Within the set-up of the Nepali government, it is the role of the Social Welfare Council to monitor the non-governmental organisations. In the Social Welfare Act of 1992, specific provisions are made that require INGOs to work in partnership with Nepali Organisation prohibiting them from direct implementation of programmes and projects in Nepal (Singh and Ingdal, 2007).

In Kenya, the NGOs are bound by law to submit annual financial reports to the Coordination Board and disclose sources of funding (Gok, 2006) and a registered NGO which fails to submit its annual returns within the

prescribed period shall be liable to a fine of twenty-five thousand Kenya Shillings (NGO Coordination Board, 2008).

In most Indonesian NGOs, the governing board or founders of individual NGOs dominate leadership, allowing for little to no input from staff (Kim, 2003). A large number of NGOs in Nepal are founded by individuals who feel it is their right to be both in the management and the board, therefore, the board's role in terms of checks and balances and ensuring internal control mechanisms are less emphasized by Nepali NGOs (Singh and Ingdal, 2007); while in many South Asian NGOs the board is 'sleeping' or invisible, and governance functions cannot be performed properly. A key issue in the arena of governance arises in situations where the founder is the leader of the NGO for a substantial period of time and most board members are individually known to and associated with the founder-leader. This has the potential to limit the autonomous identity of the board (Tandon, 2006); yet exemplary boards institutionalize a culture of inquiry, mutual respect, and constructive debate that leads to sound and shared decision-making; they are independent-minded, and as such, do not allow their votes to be unduly influenced by loyalty to the CEO (Lassner, 2006).

Kim (2003) also postulates that Australian NGOs rely largely on the board of directors of NGOs to provide governance and transparency in terms of fiduciary accountability and efficiency.

Among responsibilities conferred on Non-profit boards in the USA are: assuring compliance with local, state and federal laws and regulations; questioning unreasonable governmental intrusion; adhering to the highest ethical and moral standards of organization behaviour (National Center for Nonprofit Boards, 2012: 8).

In South Africa a number of laws govern Civil Society Organizations (CSOs), for example, Section 30 of the Income Tax Act imposes other conditions on the governance and operations of Public Benefit Organizations (PBO). For instance, the organization's constitution must provide that there are at least three unrelated persons with fiduciary responsibility for the organization and no single person directly or indirectly controls the decision making powers relating to the organization (Jillo and Kisinga, 2009:50).

NGO Coordination Board (2008) asserts that, in Kenya, all organizations registered under the NGOs Coordination Act, 1990 are expected to establish a substantive Board within one year after registration; separate their governance and management functions; clearly state the intervals at which they shall hold General Meetings; inform the NGOs Coordination Board within fourteen working days of any changes in the Board of the organization; seek approval from the NGOs Co-ordination Board before they make changes to the NGO's constitution.

In Rwanda, every NPO submits a detailed report on its achievements, balance sheet and financial situation by April 30 of every year. All local NPOs submit their reports to the Ministry of Local Government, while International NPOs submit their reports to the Ministry of International Affairs. Non submission of annual reports may lead to a suspension of the organization's (Jillo and Kisinga, 2009:50). Nevertheless, in Uganda, little monitoring is done by government as NGOs do not file income tax returns and few are able to provide coherent financial accounts (Barr, Fafchamps and Owens, 2004).

Within three months after the end of their financial year, it is a requirement that all registered NGOs in Kenya submit an annual report in compliance with the NGOs regulation 1992 (section 24). The Annual Report should have an audited account stating all income and expenditure for receipts and expenditure exceeding one million Kenya Shillings; contact address of the NGO and the incumbent contact person as well as information on Board meetings and Annual General Meetings (NGOs Coordination Board, 2008).

3 Research Methodology

3.1 Research Design

This study employed descriptive survey research design. This design that involves quantitative approaches is economical as well as efficient, and therefore appropriate for this study. This design had been chosen bearing in mind the often tight schedules under which the respondents from whom data were to be gathered operate. It was suitable for this study taking into consideration time constraints anticipated during the research. Descriptive survey design enabled the researcher to describe the population with respect to a given outcome and to collect information on many variables from a large number of respondents and hence it was an efficient way of collecting information for this particular study since it involved a large population. Kothari (2008) notes that it is considered a good design for research whose purpose is accurate description of a situation or of an association between variables.

3.2 Target Population

Target population is "that population to which a researcher wants to generalize the results of the study" (Mugenda and Mugenda, 2003); it means the entire set about which the researcher wishes to make generalizations; it may be people, objects or institutions (Spasford, 2007). In this study, the target population comprised 96 respondents from 96 NGOs in Kisumu Municipality; from each NGO there was one respondent, a project manager or an equivalent of a project manager.

3.3 Sample Size

Sample size was determined by using Krejcie and Morgan's (1970) table. The table suggested that, if the population reaches 100, the sample size must be 80. There is an interval of 10 for population sizes N falling between 100 and 300. Since the population of this study is 96, which is in-between 90 and 100, the best sample to use was arrived at by choosing population size N of 100 whose sample size S is 80.

4 Results and Discussions

In order to establish the level of adhere to rule of law in the organizations under study, the respondents were asked whether: the organizations renewed their legal documents on time; the organization involved its board in decision-making; board decisions are shared with management team; the board uses a clear set of rules for its own operation and; whether the board members have regular meetings to review the running of the projects. The findings are addressed in the subsequent tables and discussions.

4.1 The organization's renewal of legal documents before expiry

The study sought to find out the respondents' view about the validity of organizations' legal documents through timeliness of their renewal. When participants were asked to respond to the statement that; "The organization renews its legal documents on time before expiry." Table 1 shows that out of 76 respondents, 49 (64.5%) and 26 (34.2%) strongly agreed and agreed respectively; but 1 (1.3%) disagreed. From these findings, it is clear that rule of law, in terms of adhering to registration standards, are observed by majority of the NGOs in Kisumu Municipality. These results therefore indicate that the NGOs are accountable to the regulating authority through prompt renewal of legal documents like certificate of registration. A study in China on achievements and dilemmas of NGOs' governance by Xiaoguang and Li (2010) shows that NGOs in China neither have legal person status nor the status of a legal social organization and sometimes they engage in for-profit activities without paying taxes according to the law.

4.2 The Board's involvement in decision-making

The study sought to find out the respondents' view on whether the organization involves its board in decision-making. The responses were as indicated in Table 2. From the table, majority of the respondents either strongly agreed or agreed with the statement that the organization involves its board in decision-making. Among the 76 participants, 57 (75.0%) of the respondents strongly agreed and 17 (22.4%) agreed with the statement, compared to 1 (1.3%) who disagreed and another 1 (1.3%) who strongly disagreed that their organization involves its board in decision-making. From the results, it can be interpreted that over 90% of the respondents affirm that their boards take part in making decisions in the organization.

4.3 Board decision shared with management team

The study also sought to establish the extent to which board decisions are communicated to the management team. In responding to the question on whether the decision of the board is shared with the management team, majority of the respondents strongly agreed with the statement as shown in Table 3. From the study findings, 47 (61.8%) respondents strongly agreed with this statement; 27 (35.5%) agree and 2 (2.6%) disagree. In general, the study established that majority of the project managers strongly agreed that decisions of their board of directors are communicated to the management team. This suggests that in their mandate of providing oversight and guidance to the NGOs, most boards give feedback on the deliberations that take place in the boardrooms. This way, upward accountability to this group of stakeholders is assured, because when the management team receives communication from the board the former would be keen on implementing the decisions of the latter.

The findings of this study are in agreement with the tenets of the stakeholder theory. This theory suggests that managers must formulate and implement processes which satisfy all who have a stake in the business by integrating the relationships and interests of shareholders, employees and other groups in a way that guarantees the long-term success of the firm (Donaldson and Preston, 1995). This mandate of the management team of formulating and implementing activities, projects and programmes is made possible when a strong communication and feedback link is maintained between the highest decision-making organ of the organization (the board) and the managers.

4.4 Clear rules used by the board for its operation

The study sought to establish whether the board has put in place clear set of rules for its own operation. The results are as indicated in Table 4. The study reported findings regarding a set of rules used by the board for its own operation, 48 (63.2%) respondents strongly agreed, 27 (35.5%) agreed; while 1 (21.3%) disagreed with the statement that the board uses a clear set of rules for its own operation. From these findings, it emerged that governing boards within most NGOs have established a clear set of rules for the boards' own operations.

A study in Nepal on donors' best practices towards NGOs by Singh and Ingdal (2007) showed that

some of the registered NGOs have (or at least claim to have) governing rules and policies as required by the country's Social Welfare Council. However, just like in Kenya, most NGOs in Nepal are founded by groups of close network of friends and relatives and therefore the compliance with the governing rules and policies and the fairness of the internal governing systems can be questioned.

4.5 Board regular meetings to review running of projects

The NGO law in Kenya demands that NGO boards have regular meetings to assess and guide the management in reviewing progress in realizing organizational strategic plans and projects. In their constitutions filed by the NGO Coordination Board, the NGOs should clearly stipulate the number of times its own governing board would meet for the purposes of providing oversight. This study therefore sought to establish whether the governing boards within various NGOs comply with this regulatory requirement by holding regular meetings to review running of its projects. From the results shown in Table 5, 51 (67.1%) strongly agreed and 24 (31.6%) agreed that their boards conduct regular meetings to review the running of the projects. Out of the 76 respondents only 1 (1.3%) disagreed with the statement. Majority of the board of governors within the NGOs from which respondents were drawn indeed comply with the regulatory requirement of holding regular meetings. A board that upholds the law by having consistent meetings is considered to be accountable to its regulatory organ (upward accountability) and its management and beneficiary community (downward accountability).

4.6 Results of test of hypothesis

The study also sought to test hypothesis to establish if there were significant relationship between rule of law and accountability to stakeholders among the respondents as shown in Table 6. On the significance column the ANOVA results show a statistical significance $p = .970$ while the p value was set to be significant at $p < 0.05$ level. The ANOVA test of hypothesis revealed no significant relationship between accountability to stakeholders and rule of law ($p < 0.970$). We then fail to reject the null hypothesis at $p < 0.05$. This shows that rule of law indicators like renewing NGO's registration on time, did not have any significant influence on accountability to stakeholders.

4.7 Regression analysis on rule of law

This study gives an output of regression analysis on rule of law in table 7 to establish its influence on accountability to stakeholders. The analysis was done on a set of indicators namely; timely renewal of legal documents; involving oversight board in decision-making; sharing the boards decisions with the management team; the board's use of a clear set of rules for its own operation; and the board having regular meetings to review the running of projects and/or programmes. The results of a regression analysis done on the indicators of rule of law like involving oversight board in decision-making show a higher significance level ($P < 0.406$). To a greater extent, most decisions made by oversight boards are communicated to the management team. In regard to involving boards in playing oversight role, fewer NGOs do not involve their boards in decision-making, $P < 0.833$. This latter scenario represents disconnect between the management and the board; oversight is minimal and the board is largely asleep or absent, a characteristic of NGOs run by founder-directors and the board formed only to meet statutory requirements.

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Table 1 *Organization's legal documents*

Statement	The organization renews its legal documents on time before expiry	
	Freq	%
Strongly Agree	49	64.5
Agree	26	34.2
Disagree	1	1.3
Strongly Disagree	0	0.0
Total	76	100.0

Table 2 *Board's involvement in decision-making*

Statement	The organization involves its board in decision-making	
	Freq	%
Strongly Agree	57	75.0
Agree	17	22.4
Disagree	1	1.3
Strongly Disagree	1	1.3
Total	76	100.0

Table 3 *Board decision shared with management team*

Statement	Board decisions are shared with management team	
	Freq	%
Strongly Agree	47	61.8
Agree	27	35.5
Disagree	2	2.6
Strongly Disagree	0	0.0
Total	76	100.0

Table 4 *Board operating on a clear set of rules*

Statement	The board uses a clear set of rules for its own operation	
	Freq	%
Strongly Agree	48	63.2
Agree	27	35.5
Disagree	1	1.3
Strongly Disagree	0	0.0
Total	76	100.0

Table 5 *Board meetings for review of projects*

Statement	The board members have regular meetings to review the running of projects/programmes	
	Freq	%
Strongly Agree	51	67.1
Agree	24	31.6
Disagree	1	1.3
Strongly Disagree	0	0.0
Total	76	100.0

Table 6 *ANOVA output of test of hypothesis two*

Model		Sum of squares	df	Mean square	F	Sig.
1	Regression	.159	5	.032	.179	.970 ^a
	Residual	12.472	70	.178		
	Total	12.632	75			

Table 7 Predictors of rule of law coefficients

Model	B	SE	Beta(β)	t	Sig.
1(Constant)	1.264	.202		6.261	.000
The organization renews its legal documents on time before expiry	.035	.106		.043	.328
The organization involves its board in decision-making.	-.022	.101		-.029	.212
Board decisions are shared with management team	-.092	.110		-.122	.835
The board uses a clear set of rules for its own operation	.058	.119		.073	.488
The board members do have regular meetings to review the running of the project/program	-.018	.107		-.022	.169

a. Dependent Variable: Means Accountability

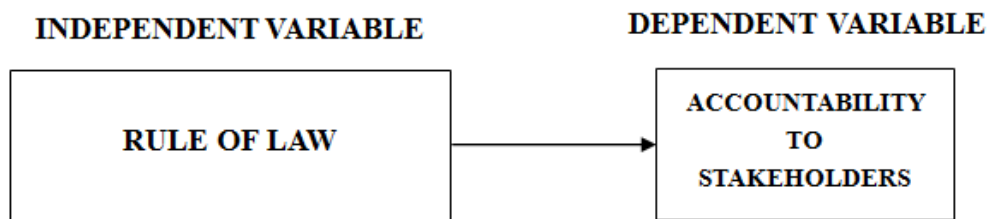


Figure 1. Conceptual framework showing Independent Variable and Dependent Variable

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