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Governance Capabilities And Their Influence On Delivery Of Constitutional Mandate Among Constitutional Commission's In Kenya

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Abstract: *Over the years leaders have been faced with a set of challenges in a bid to meet customer expectations in service delivery, Kenya has experienced a fundamental change over the years in delivering public service, with the latest being the establishment of Constitutional Commissions to enhance efficiency and effectiveness in service delivery. This study sought to analyze the governance capabilities and its influence on the delivery of the Constitutional mandate. The specific objective of the study was to examine the influence of board governance capabilities on delivery of constitutional mandate. The study was guided by the Resource Base Theory, and Dynamic Capacity Theory. The study utilized a mixed-method research design targeting three Constitutional Commissions under Article 59 of the Constitution of Kenya. The study employed a stratified sampling technique, comprising of purposive and simple random sampling. A sample size of 177 respondents was drawn from the target population of 330 from the three constitutional commissions. This study used a questionnaire as the research instruments. Descriptive statistical tools and inferential statistics were used for data analysis. The results showed that the board governance capabilities (p<0.05; ß=0.287), had a positive performance in the delivery of constitutional mandate by the constitutional commissions. The correlation findings also showed a positive and statistically significant correlation between strategic leadership capabilities and Performance (r=0.333, p<0.01). The study recommends that the constitutional commission board members should collectively and accountable for ensuring that the commissions are performing towards the achievement of constitutional mandate.*

Keywords: *governance, board governance capabilities, constitutional mandate, constitutional commissions*

I. INTRODUCTION

Dynamic capability is a multidimensional construct which deals with strategic challenges encountered in an organization (Barreto, 2010). According to Teece et al. (1997), dynamic competencies are defined as the firm's capability to assimilate, construct, and reconfigure internal and external competencies to discourse incremental changes in moderately dynamic environments. Recently, scholars have made an important contribution and have elaborated dynamic capabilities in terms of organization path evolution, asset position, and distinctive processes (Teece, 2007). Teece et al. (1997) highlighted two distinct components of dynamic capabilities: firstly the dynamic component deals with how to confront the delinquent of rekindling of competencies; and secondly, the capabilities component emphasizes the significance management teams in shaping and determining the competencies of organizations in terms of (1) positions, (2) paths, and (3) processes.

Different organizational competencies are recognised as dynamic capabilities in different scholarly literature: Aldridge

(2007) defined Strategic capability as the capability to advance wide-ranging based leadership approaches and the capability to employ strategic thinking and govern an organization economically. Harris (2008) identified Human Resource Capabilities as the organizational learning activities aimed at improving performance and personal development to improve individual, his job, and the organization for effective service delivery. Bouzinab (2006) defined board governance capabilities as the well-designed segment of the corporate governance structure, which includes the obligatory skills to accomplish the control functions, such as financial auditing, managerial supervision, hiring of employees and overseeing the day-to day operations.

According to Eisenhardt and Martin (2000) capabilities can be reconfigured via reintegration, recombination, acquirement, and scaling of resources. On the other hand, (Lavies, 2006) describes that the mechanisms for reconfiguring capabilities include replacement of the overall competency portfolio, aptitude development comprising continuous trialling, and ability enhancement through decisive managerial action and organizational investments (Lavie, 2006). According to Kogut and Zander (1992), new capabilities are frequently fostered by recombining existing abilities with other knowledge, which is shaped by the organizing principles controlling an organization's functions. Additionally, the framework of organizational competencies offers the conceptual foundation for ascertaining the operational procedures, and vibrant abilities in the public sector.

According to Weber & Khademian, (2008) the concept of capability includes skills, repertoires, capacities, commitments, and readiness. Weick & Sutcliffe, (2001) define governance capability as the ability of policymakers to observe problems and to act accordingly, and the ability of the governance system to enable such observing and acting. Bhatta (2006) defines Governance capacity as the capability of actors to define and shape the various processes that are necessary to provide goods and services that are demanded in society. Bhatta (2006) further note that this capacity is said to be conditioned by many variables, including the regulatory structure in which production takes place, and the institutional context that is evident in a particular setting. According to Cadbury Committee, (1992) governance capabilities are the process of administrating, directing, monitoring, and controlling firms to achieve desired goals. It is about the full set of protecting and managing conflicting interests and working relationships between the board, top management teams, staff, and other stakeholders.

The board of directors plays a more active and dynamic role in resource allocation decisions and firm strategy making processes (McNulty and Pettigrew, 1999). The Value Creating Governance perspective proposed by Allaire and Firsirotu (2009) provides an interesting general framework with four pillars consisting of (1) Board legitimacy and credibility; (2) Strategy process and dialogue; (3) The quality of financial and strategies information and (4) A calibrated compensation and incentive system. According to Allaire and Firsirotu, (2009) those pillars are important for governance to create value, board legitimacy, and credibility that is considered as a sine qua non-antecedents of any effective governance system.

According to Fama (1980), the board of directors are viewed as an important tool or devise to scrutinize the company manager‘s decisions. From the agency theory viewpoint, the role of the board of directors is to provide the most effective device to attain corporate governance that ensures their interests; in other words, it is instituted primarily to mitigate agency problems (Fama, 1980). Resource dependency theory sees the board of directors as a co-optative mechanism with the role of calibrating the firm with external environmental demands (Aguilera and Cuervo-Cazurra, 2009). Solomon (2010) recommended some principles to be complied in the construction of boards, to ensure the best structure: meeting frequently, effective communication between board members and shareholders, willingness to consider suggestions from each other, high level of integrity, concern about financial risks and awareness and rationale to solve financial problems and to take any course of action to improve the efficiency of the company.

The role of the board in monitoring the senior management and providing guidance for strategy is important in improving organizational performance. In an exploratory study of French co-operatives, Allemand, Brullebaut, and Raimbault (2013) concluded that the role of the board can be enhanced by improving decision-making, choosing good governance bodies, and having an efficient interaction between the board and management. According to their study, the role of the board in organization strategy starts with the identification and ensuring commitment of the core mission and values of the cooperative, and also its ability to predict the future. The role of the board in collective decision-making was found to be enhanced by setting up committees to debate specific issues and making recommendations to the board to concentrate on the important. According to the positivist stream of the agency theory, boards should primarily play a control role in the firm decision-making process. Fama and Jensen (1983) consider the decision process in terms of a system formed by mainly two components: (1) The decision management component, consisting in the initiation phase where proposals for resource allocation and utilization are generated, and followed by the implementation phase during which ratified decisions should be executed and translated in real actions; (2) The decision control component, referring to the ratification of the decisions initiatives to be implemented and to the monitoring of these decisions through measuring their output performance and through the determination of the agents' reward mechanisms associated with it.

In an attempt to study how activities and capabilities of managers affect the performance of an organization, Gilley & Boughton (2006) identified six symptoms called managerial malpractice in organizations. These are a selection of new managers from among the best performers regardless of the presence or lack of interpersonal skills, promoting employees that lack supervisory or management talent and retaining managers who are ineffective in securing results through others (Hemsley, 2001). Corporate governance and management competence in an organization thus should be linked to financial performance (Peter, 2002). An important role of the board in decision-making is empowering management, to make operational decisions aligned to the strategic outcomes (Cui, 2016). The chief executive of an organization is equally motivated and empowered by support from the board of directors as another staff is by their supervisors. In two studies based on employees of Norwegian faith-based organizations and municipal healthcare, Amundsen and Martinsen (2015) showed that empowering leadership is an important antecedent to job satisfaction, psychological empowerment, work effort, and creativity in the workplace. The results from structural equation modelling indicated that empowering leadership positively affected psychological empowerment and was mediated by self-leadership. Boards can also empower management by ensuring there is in place a performance management system that gives accurate information about the goals that their work requires (Swiatczak, Morner, & Finkbeiner, 2015).

According to Krug and Aguilera (2005) firm-specific and hard to imitate resources are embedded in the accumulated director's experience and knowledge about the firm and its environment. Teece et al, (1997) emphasize that the processes of development and deployment of these governance resources-when combined with other firm resources to coordinate, to transform, to reconfigure, and to integrate internal and external resources lead to superior board strategies and dynamic capabilities. Thus, according to Alaire and Firsirotu (2009), value-creating governance perspective along with strategy processes based on relevant board strategies capabilities and the use of financial and strategic information and the setting of a calibrated compensation system based on relevant monitoring capabilities are conceived as government resources and capabilities that may significantly discriminate successful acquisitions from unsuccessful ones.

The Constitution of Kenya 2010 outline three arms of Government namely; Executive, Legislature, and the Judiciary (Sihanya, 2013). It also provides for 14 constitutional commissions and two (2) independent offices. The independent office and constitutional commissions are expected to bring forth strategic recommendation facing the implementation of the constitution of Kenya. The constitutional commissions are required to check presidential power. The constitutional commissions were established to secure specific constitutional objectives under Article 249 (1) of the constitution of Kenya: (a) To safeguard the sovereignty of the people (b) To ensure the observance of democratic values and principles by State organs; Thus it was hoped that constitutional commissions and independent offices would help secure popular sovereignty, liberty, and service delivery as well as help limit arbitrary and oppressive powers of the Government (Sihanya, 2013). However, events at various constitutional commissions continue to bring into focus the architecture of the governance framework of these independent institutions. The acumen about the nature of governance and leadership capabilities that impact leader behaviour and thriving are instrumental for selecting and developing the necessary competencies that promote credible relationship among subordinates, nurture teamwork and collaborative effort and build core values and norms. Therefore, there is a need to rethink the philosophy of board governance capabilities and their influence in the delivery of constitutional mandate by the constitutional commission in Kenya.

II. METHODOLOGY

This study used mixed methods design which integrated both qualitative and quantitative data. Mixed method design provided opportunities for testing alternative interpretations of the data, and for arriving at convergence (Polit & Beck, 2003). A survey questionnaire was used to collect data from the constitutional commission. In this study the formula by Kothari and Garg (2014) was used to get a good representative of the population.

$$n = \frac{Z^2pqn}{e^2(N-1) + Z^2pq}$$

$$n = \frac{1.96^2(0.5)\,(0.5)\,330}{0.05^2(330-1) + 1.96^2(0.5)\,(0.5)}$$

n = 177

Whereby:

n is the sample size

Z = the standard normal deviate at the required confidence level. Assuming at 95% confidence level the value of Z is 1.96

N= Target population

e = standard error term (the level of statistical significance) as 0.05

p = the proportion in the target population estimated to have characteristics as 0.5

q = 1-p

Constitutional Commissions Clusters	Population (Approx.)	Proportional Sample size	Sample percentage %
Kenya National Commission on Human Rights	120	64	36%
Gender and Equality Commission	115	60	34%
Commission on Administrative of Justice	95	53	30%
Total	**330**	**177**	**100**

Table 2.1: Sample Size Distribution

III. RESULTS AND DISCUSSION

A. RESULTS

a. *RESPONSE RATE*

The researcher distributed a total of 177 questionnaires to the respondents in the three constitutional commission. 135 duly filled questionnaires were returned out of possible 177 giving a response rate of 76.2%. According to Saunders, Lewis and Thornhill (2007) a 30 to 40% response is considered adequate. Based on these assertions, the response rate achieved in this study can be considered sufficient to give the findings adequate reliability.

b. *GENDER OF THE RESPONDENTS*

The study sought to establish the respondents' gender. The results are presented in Table 3.1.2

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Gender	Frequency	Percentage
Male	55	40.7%
Female	80	59.3%
Total	**135**	**100.0**

Table 3.1.2: Gender of the Respondents

From the results, 40.7% (55) were male and 59.3 %(80) were female. This is a clear indication that females form the majority of the employees among Article 59 Constitutional Commissions. This is a good distribution which represents a fair gender balancing, an indication of successful efforts of various gender mainstreaming campaigns by various stakeholders and the Kenyan Constitution 2010.

c. *DISTRIBUTION OF RESPONDENTS BY PERIOD WORKED IN THE ORGANIZATION*

The number of years worked in an organization determines the understanding and experience of a person in the organization. In this study, majority of the respondents (62.2%) had worked in their respective organizations and institutions for more than 4 years and very few had worked with their organizations for less than one year (10.4%) while (27.4%) had worked for 1-3 years. This implies that the majority had good understanding of their organizations and could give reliable information about the leadership capabilities of the organization.

d. *DESCRIPTIVE STATISTICS FOR BOARD GOVERNANCE CAPABILITIES*

The study analysed the percentage, mean and standard deviation of the components of Board governance capabilities. Table 3.1.4 shows the results of the findings.

Board Governance Item Capacity Level	N	VL %	L %	M %	H %	VH %	Mean	Std Dev
The Organisation board governance has the capability to exercise: Personal integrity and objectivity including no conflicts of interest that would prevent the organization from discharging its responsibilities	135	4.4	12.6	56.3	20.7	5.9	3.1111	0.86098
The Organisation board governance has the capability to exercise: leadership, teamwork/consensus building, systems thinking, and sound judgment on difficult and complex matters that come before a governing body	135	3.7	11.9	37.8	40	6.7	3.3407	0.90737
The Organisation board governance has the capability to exercise: transformational innovation that led to the development and implementation of new approaches and solutions to problems and applying new technology and practices to improve processes and generate unique solutions to emerging concerns.	135	4.4	8.1	40	29.6	17	3.4667	1.01334
The Organisation board governance has the capability to exercise: corporate leadership governance that ensures understands of the structure and rules of the board, its relationship with Management in the monitoring and oversight of the organization's practices	135	3	6.7	32.6	37	20.7	3.6593	0.97860
The organization board governance has the capacity to use organizational Vision, Value, Purpose and Strategies as a basis for discussions and decisions with various stakeholders.	135	4.4	8.1	36.3	27.4	23,7	3.5778	1.07528

Table: 3.1.4: Descriptive Statistics for Board Governance Capabilities

The findings indicates that the respondents agreed that there was a moderate capacity level in terms of exercise personal integrity and objectivity including no conflicts of interest that would prevent the organization from discharging its responsibilities (Mean = 3.1111; Std Dev =0.86098). Respondents also agreed (Mean = 3.3407; Std Dev =0.90737) that there was a high capacity level to exercise leadership, teamwork/consensus building, systems thinking, and sound judgment on difficult and complex matters that come before a governing body. The findings further indicates that there was a moderate capacity level to exercise transformational innovation that led to the development and implementation of new approaches and solutions to problems and applying new technology and practices to improve processes and generate unique solutions to emerging concerns

(Mean = 3.4664; Std Dev =1.01334). In addition, respondents concurred that there was a high capacity level to exercise corporate leadership governance that ensures the structure and rules of the board, its relationship with Management in the monitoring and oversight of the organization's practices (Mean = 3.6593; Std Dev =0.9786). Finally, the respondents concurred (Mean = 3.5778; Std Dev =1.07528) that there was a moderate capacity level in using organizational Vision, Value, Purpose and Strategies as a basis for discussions and decisions with various stakeholders.

According to Bouzinab (2006) board legitimacy and credibility reflect the quality of governance resources, Board capabilities refer to the firm specified, and difficult to imitate, corporate governance processes and board capacity to use the acquired governance resources and competences available to the firm in order to achieve organizational goals (Bouzinab, 2006). Zahra and Pearce (1989) opined that the effectiveness of the board will result in better subsequent firm performance. Zona and Zattoni (2007) in their study found that the effectiveness of boards of directors is strongly influenced by group-level processes such as open and critical debate (cognitive conflict), which affects the quality of decision making. Shen (2003) argued that teamwork is seen as important to the board process and enhance board effectiveness in complex and ambiguous strategic decisions.

Randoy and Jenssen (2004) found that board independence is not associated with firm performance based on accounting measures. Bhagat and Black (2002) also failed to show that greater board independence leads to improve better firm performance. According to Adams, Hermalin and Weisbach (2010), there is no robust empirical evidence that board independence improves firm performance.

e. CHI SQUARE TEST FOR BOARD GOVERNANCE CAPABILITIES

To examine the difference of associations between the bivariate categorical variables, a Chi-Square test for association was done for the independent variables and dependent to test the statistical difference of Board Governance capabilities among the commissions.

	Value	df	Asymptotic Significance (2-sided)
Pearson Chi-Square	5.122[a]	6	.528
Likelihood Ratio	6.236	6	.397
Linear-by-Linear Association	1.380	1	.240
N of Valid Cases	135		

Table: 3.1.5: Chi- Square Tests between board governance capabilities and organization

Table 3.1.5 shows a Chi-Square value = 5.122, p = 0.528. The p value is more than 0.05 and hence there is no statistically difference between how board governance capabilities influence delivery of constitutional mandate among the three constitutional commission. All the three commission have a linear association of 138% on how board governance capabilities influence delivery of constitutional mandate.

f. EFFECTS OF GOVERNANCE CAPABILITIES ON THE EXECUTION OF CONSTITUTIONAL MANDATE

The study analyzed the percentage in regards to the effectiveness of governance capabilities on the execution of constitutional mandate. Table 3.1.6 shows the results of the findings.

Interventions	**Percentage**		
	Promotion of the people sovereignty	**Secured the observation by state organ the democratic values and principles**	**Promoted constitutionalism**
Board Governance Capabilities	30.0 %	32 %	38 %

Table 3.1.6: Effects on the execution of constitutional mandate

In regards to board governance capabilities, about thirty eight percent (38%) of the respondents indicated that, to a great extent, board governance capabilities were effective in promoting constitutionalism in Kenya, while about thirty two percent (32%) said that to a small extent, board governance was effective in securing the observation by state organ the democratic values and principles in Kenya. In addition, about thirty percent (30%) of the respondents indicated that board governance capabilities were effective in influencing the promotion of the people's sovereignty in Kenya.

g. FACTOR ANALYSIS FOR BOARD GOVERNANCE CAPABILITIES

As shown in Table 3.1.7, all the attributes of board governance capabilities were retained for subsequent analysis since all of them had factor loading greater than 0.5. The modal factor loading was excellent with least reported load being good and it showed that actions taken by constitutional commissions have chances of yielding desired results. Amongst those that had excellent loadings were ability of organization in transformation innovation that led to development and implementation of new approach to emerging concern and board relationship with management in the monitoring and oversight of the organisation's practices. The highest reported factor loading was 0.765.

Item	**Factor Loading**
Board governance personal integrity	.764
Board governance teamwork and consensus building	.661
Board governance transformational innovation	.765
Corporate leadership governance	.668
Ability to use organizational vision values for strategic decision	.762

Table 3.1.7: Board Governance Capabilities Components Matrix

Table 3.1.7 shows the loadings of the five variables. The higher the absolute value of the loading, the more the factor contributes to the variable. The organization board capacity to exercise transformational innovation that led to the development and implementation of new approach to work scored a factor component of 76.5%. This was followed by respondents who were in agreement that the organization board capacity to exercise personal integrity and objectivity in discharging organizational mandate with a factor component of 66.4%. The statement on the board capacity to use organizational vision, mission and values as a basis for discussion and donor funding scored a factor component of 76.2%. While the statement on the board capacity to exercise corporate leadership governance that ensure effective monitoring and oversight of the organization practices scored a factor component of 66.8%. On the other hand, the statement on the board capability to exercise teamwork and provide sound judgment on complex matters scored a factor component of 66.1%. From the analysis, majority of the respondents were in agreement that board governance capabilities influence the delivery of constitutional mandate in Kenya, this can be seen from the mean score of 72.4%. None of the statements required to be dropped since their factor components were above 30%, which is recommended threshold for inclusion of variable into the final model (Hair, Black & Babin, 2010).

h. HYPOTHESES TESTING RESULTS

This study sought to investigate the influence of governance capabilities on the delivery of constitutional mandate in Kenya. From the correlation and regression analysis conducted in the testing, the following results were obtained:

Model		Unstandardized Coefficients		Standardized Coefficients	t	Sig.
		B	Std. Error	Beta		
1	(Constant)	1.416	.154		9.196	.000
	Board Governance Capabilities	.287	.070	.333	4.077	.000

Table 3.1.8: Coefficients of Board Governance capabilities

H_{01}: *Board Governance capabilities has no significant influence on delivery of constitutional mandate in Kenya*.

The results obtained in table 3.1.8 (coefficient matrix), revealed that board governance capabilities has a positive and significant influence on delivery of constitutional mandate the constant a= 1.416, if the independent variable of board governance capabilities is held constant then there will be a positive performance in the delivery of constitutional mandate by 1.416., The regression coefficient for board governance capabilities was positive and significant (ß = 0.287) with a t-value=4.077 (p-value=0.000). Therefore, the study rejects the null hypothesis and accepts the alternative hypothesis that for each increase in board governance capabilities, there is a 0.287 unit's increase in delivery of constitutional mandate.

According to Lin (2005) the board is the most fundamental corporate governance structure in any organization. Board attributes or characteristics may influence strategic decision-making and subsequently firm performance (OECD, 1999).The results confirm studies by Hillman, et al., (2000); Linck, Netter and Yang (2012) who submitted that the growth of any listed company depends on the independence of the leaders employed to manage the company. The results also concur with those of Letting (2011) in his study of companies listed on Nairobi's Securities Exchange who established that Boards had a significant influence on performance of those organizations. The study is inconsistent with those of (Ongore 2011; Hu and Izumida, 2008) that corporate governance structures of state corporations were weak to offer any meaningful impact on performance. Similarly, the findings agree with conclusions reached by Khan and Awan (2012) that practice of poor relationship between the Board and Management negatively affected Egyptian listed firms' performance. Resource base view and capability theory support the study findings.

IV. CONCLUSIONS AND RECOMMENDATIONS

A. CONCLUSIONS

The study concludes that board governance capabilities had a positive significant linear relationship with the execution of constitutional mandate. This relationship was established by Pearson correlation coefficient. The study revealed that there was a strong positive relationship between board governance capabilities and the execution of constitutional mandate. Thus, board governance capabilities make a major contribution to transformational innovation, corporate leadership and corporate strategy.

B. RECOMMENDATION

Based on this study's findings, it the recommendation of this study that members of the board be collectively responsible and accountable for ensuring that the organisation is performing towards the achievement of constitutional mandate, that the members should set and safeguard the vision and values of the organisation and ensure that the vision and values remain relevant and up to date, the members should also promote stewardship in team work and ensure that decision making complies with the constitutional and legal obligation.

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